

JUDICIARY: Doyle, Chair; Varn, Mann, Drake and Gentleman

FILED MAR 02 1987

SENATE FILE 294
BY VARN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the liability of a municipality in the
2 exercise of discretion by an officer or employee of the
3 municipality.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 294

1 Section 1. Section 613A.1, Code 1987, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5. "Discretionary function or duty" means
4 a policy-making decision or policy-implementing action
5 normally made or taken by the governing body of a
6 municipality, its officers, or management level employees and
7 includes, but is not limited to, a decision or action on or
8 involving one or more of the following considerations:

- 9 a. The type or level of a service provided by a
10 municipality.
- 11 b. A reduction in services provided by a municipality.
- 12 c. The number or level of employees or staff, or the
13 employee or officer job classes or positions of a
14 municipality.
- 15 d. The necessary qualifications of officers or employees.
- 16 e. The type or number of public improvements or facilities
17 to be constructed, reconstructed, altered, or replaced.
- 18 f. The design, specifications, or both the design and
19 specifications of public improvements and facilities if the
20 design or specifications chosen are within the range of
21 generally accepted standards at the time of construction,
22 reconstruction, alteration, or replacement.
- 23 g. The budget or expenditure of municipal funds including,
24 but not limited to, a decision necessitated by budgetary
25 constraints.
- 26 h. The issuance of bonds or incurring of any form of
27 municipal indebtedness authorized by law.
- 28 i. The decision of a peace officer not to stop, apprehend,
29 detain, arrest, or charge an individual suspected of a crime
30 if the decision was made without actual malice.
- 31 j. The time, order, priority, or sequence of any action
32 taken based on the considerations of this subsection.

33 Sec. 2. Section 613A.4, Code 1987, is amended by adding
34 the following new unnumbered paragraph:

35 NEW UNNUMBERED PARAGRAPH. This section shall not be

1 construed to create a claim not recognized by common law and
2 shall not be construed to amplify or extend any common law
3 theory of tort recovery.

4 EXPLANATION

5 This bill defines the term "discretionary function or duty"
6 as it relates to chapter 613A and, in particular, to claims
7 for acts or omissions for which a municipality is granted
8 immunity under section 613A.4, subsection 3.

9 The bill also provides that the provisions of section
10 613A.4 are not to be construed to create a claim not
11 recognized by common law or to extend any common law theory of
12 tort recovery.

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