

MAR 22 1973

Place On Calendar

HOUSE FILE 462

*Sen Schools 1/14/74 do pass 1/18*  
8 - N House File 462 *1/25/74*  
Judiciary— *amend. pass*  
Glenn, Chairman *3/13/74*  
Kennedy  
Shaw

BY COMMITTEE ON EDUCATION

Passed House, Date 5-15-73 (1364) Passed Senate, Date 4-11-74 (1327)

Vote: Ayes 89 Nays 0 Vote: Ayes 40 Nays 0

Approved 5-27-74

*Passed House for Senate amendment*  
4-17-74 (1832)

73-1

## A BILL FOR

1 An Act relating to municipal tort claims.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section six hundred thirteen A point one  
2 (613A.1), Code 1973, is amended by adding the following new  
3 subsection:

4 NEW SUBSECTION. "Officer" includes but is not limited  
5 to the members of the governing body.

6 Sec. 2. Section six hundred thirteen A point one (613A.1),  
7 subsection three (3), Code 1973, is amended to read as fol-  
8 lows:

9 3. "Tort" means every civil wrong which results in wrongful  
10 death or injury to person or injury to property or injury  
11 to personal or property rights and includes but is not re-  
12 stricted to actions based upon negligence; error or omission;  
13 nuisance; breach of duty, and nuisance whether statutory or  
14 other duty or denial or impairment of any right under any  
15 constitutional provision, statute, or rule of law.

16 Sec. 3. Section six hundred thirteen A point two (613A.2),  
17 Code 1973, is amended by adding the following new unnumbered  
18 paragraph:

19 NEW UNNUMBERED PARAGRAPH. A tort shall be deemed to be  
20 within the scope of employment or duties if the act or omission  
21 reasonably relates to the business or affairs of the  
22 municipality and the officer, employee, or agent acted in  
23 good faith and in a manner he believed to be in and not opposed  
24 to the best interests of the municipality.

25 Sec. 4. Section six hundred thirteen A point four (613A.4),  
26 unnumbered paragraph two (2), Code 1973, is amended to read  
27 as follows:

28 The remedy against the municipality provided by section  
29 ~~613A.2 for injury or loss of property or personal injury or~~  
30 ~~death resulting from any act or omission of an officer or~~  
31 ~~employee in the execution of a statute or ordinance, or of~~  
32 ~~officially adopted resolution, rule or regulation of a governing~~  
33 ~~body while acting in the scope of his office or employment~~  
34 shall hereafter be exclusive of any other civil action or  
35 proceeding by reason of the same subject matter against the

1 officer ~~or~~, employee, or agent whose act or omission gave  
2 rise to the claim, or his estate.

3 Sec. 5. Section six hundred thirteen A point five (613A.5),  
4 Code 1973, is amended to read as follows:

5 613A.5 LIMITATION OF ACTIONS. Every person who claims  
6 damages from any municipality or any officer, employee, or  
7 agent of a municipality for or on account of any wrongful  
8 death, loss or injury within the scope of section 613A.2 or  
9 section six hundred thirteen A point eight (613A.8) of the  
10 Code or under common law shall commence an action therefor  
11 within ~~three-months~~ one year, unless said person shall cause  
12 to be presented to the governing body of the municipality  
13 within sixty days after the alleged wrongful death, loss or  
14 injury a written notice stating the time, place, and  
15 circumstances thereof and the amount of compensation or other  
16 relief demanded. Failure to state the amount of compensation  
17 or other relief demanded shall not invalidate the notice;  
18 providing, the claimant shall furnish full information  
19 regarding the nature and extent of the injuries and damages  
20 within fifteen days after demand by the municipality. No  
21 action therefor shall be maintained unless such notice has  
22 been given and unless the action is commenced within two years  
23 after such notice. The time for giving such notice shall  
24 include a reasonable length of time, not to exceed ninety  
25 days, during which the person injured is incapacitated by  
26 his injury from giving such notice.

27 Sec. 6. Section six hundred thirteen A point seven  
28 (613A.7), Code 1973, is amended to read as follows:

29 613A.7 INSURANCE. The governing body of any municipality  
30 may purchase a policy of liability insurance insuring against  
31 all or any part of liability which might be incurred by such  
32 municipality or its officers, employees and agents under the  
33 provisions of section 613A.2 and section six hundred thirteen  
34 A point eight (613A.8) of the Code and may similarly purchase  
35 insurance covering torts specified in section 613A.4. The

1 premium costs of such insurance may be paid out of the gen-  
2 eral fund or any available funds or may be levied in excess  
3 of any millage tax limitation imposed by statute. Any  
4 independent or autonomous board or commission in the  
5 municipality having authority to disburse funds for a  
6 particular municipal function without approval of the governing  
7 body may similarly procure liability insurance within the  
8 field of its operation. The procurement of such insurance  
9 constitutes a waiver of the defense of governmental immunity  
10 as to those exceptions listed in section 613A.4 to the extent  
11 stated in such policy but shall have no further effect on  
12 the liability of the municipality beyond the scope of this  
13 chapter. The existence of any insurance which covers in whole  
14 or in part any judgment or award which may be rendered in  
15 favor of the plaintiff, or lack of any such insurance, shall  
16 not be material in the trial of any action brought against  
17 the governing body of any municipality, or their officers,  
18 employees or agents and any reference to such insurance, or  
19 lack of same, shall be grounds for a mistrial.

20 Sec. 7. Section six hundred thirteen A point eight  
21 (613A.8), Code 1973, is amended to read as follows:

22 613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing  
23 body shall defend any of its officers and, employees and  
24 agents, whether elected or appointed and, except in cases  
25 of malfeasance in office or willful or wanton neglect of duty,  
26 shall save harmless and indemnify such officers and, employees,  
27 and agents against any tort claim or demand, whether groundless  
28 or otherwise, arising out of an alleged act or omission  
29 occurring ~~in-the-performance-of-duty~~ within the scope of their  
30 employment or duties. Any independent or autonomous board  
31 or commission of a municipality having authority to disburse  
32 funds for a particular municipal function without approval  
33 of the governing body shall similarly defend, save harmless  
34 and indemnify its officers and, employees, and agents against  
35 such tort claims or demands. This section is intended to

1 confer power in addition to that conferred by section 368A.1.  
2 The duty to defend, save harmless, and indemnify shall  
3 apply whether or not the municipality is a party to the action  
4 and shall include but not be limited to cases arising under  
5 title forty-two (42) United States Code section one thousand  
6 nine hundred eighty-three (1983).

7 EXPLANATION

8 This bill provides that "officer" within chapter 613A in-  
9 cludes members of the governing body of the municipality.  
10 Presently there is some question whether persons such as  
11 school board members are "officers" of a municipality under  
12 the municipal tort claims act.

13 The definition of tort is expanded to include acts which  
14 may not presently be covered and is expanded to cover reason-  
15 able acts in the best interests of the municipality which  
16 might be outside the scope of employment or duty.

17 The governing body of a municipality is specifically granted  
18 authority to purchase insurance out of the general fund which  
19 may not presently be possible.

20 The statute of limitations is extended and made to apply  
21 to suits against individual employees, officers and agents  
22 and the act is made exclusive against the municipality where  
23 the tort is within the coverage of chapter 613A.

24

H-245

1 Amend House File 462 as follows:

2 1. Page 3, line 16, by inserting after the word  
3 "state" the following: "time or place or circum-  
4 stances or".

5 2. Page 3, by striking line 19 and inserting in  
6 lieu thereof the following: "~~regarding-the-nature~~  
7 ~~and-extent-of-the-injuries-and-damages~~".

H-245 Filed *Adopted 5/15*  
April 2, 1973

By NORLAND of Worth

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SENATE AMENDMENT TO HOUSE FILE 462

- 1 Amend House File 462 as follows:  
2 1. Page 2, line 18, by striking the word "paragraph"  
3 and inserting in lieu thereof the word "paragraphs".  
4 2. Page 2, line 23, by striking the word "he"  
5 and inserting in lieu thereof the following: "a  
6 reasonable person would have".  
7 3. Page 2, by inserting after line 24 the following  
8 new unnumbered paragraph:  
9 NEW UNNUMBERED PARAGRAPH. For the purposes of  
10 this chapter, employee includes a person who per-  
11 forms services for a municipality whether or not  
12 the person is compensated for the services, unless  
13 the services are performed only as an incident to  
14 the person's attendance at a municipality function.  
15 4. Page 4, line 25, by striking the first word  
16 "or" and inserting in lieu thereof the following:  
17 "er, willful and unauthorized injury to persons  
18 or property, or".

Received from the Senate  
April 16, 1974

*How  
concerning  
H/17*

H-331

- 1 Amend House File 462, page 3, line 11 by striking  
2 the following: "three-months one year" and inserting  
3 in lieu thereof the words "three months".

H-331 Filed *w.d. 5/15*  
April 18, 1973

By BITTLE of Polk  
MENKE of O'Brien

S-2068

1 Amend House File 462 as follows:  
2 1. Page 2, line 18, by striking the word "paragraph"  
3 and inserting in lieu thereof the word "paragraphs".  
4 2. Page 2, by inserting after line 24 the following  
5 new unnumbered paragraph:  
6 NEW UNNUMBERED PARAGRAPH. For the purposes of this  
7 chapter, employee includes a person who performs services  
8 for a municipality whether or not the person is compen-  
9 sated for the services, unless the services are performed  
10 only as an incident to the person's attendance at a  
11 municipality function.

S-2068 Filed and adopted By HANSEN  
January 25, 1974

S-2073

1 Amend House File 462, page 2, line 23, by  
2 striking the words "believed to be" and inserting  
3 in lieu thereof the following: "had reason to  
4 believe was".

S-2073 Filed *ruled out of order* BY DE KOSTER  
January 25, 1974 *with adoption of*  
*2451 4/11*

S-2451

1 Amend House File 462 as follows:  
2 1. Page 2, line 23, by striking the word "he"  
3 and inserting in lieu thereof the following: "a  
4 reasonable person would have".  
5 2. Page 4, line 25, by striking the first word  
6 "or" and inserting in lieu thereof the following:  
7 "ex, willful and unauthorized injury to persons  
8 or property, or".

S-2451 Filed *Adopted 4/11* By COMMITTEE ON JUDICIARY  
March 13, 1974

H-457

1 Amend House File 462, by striking from page 3,  
2 lines 29 through 35 and by striking from page 4, lines  
3 1 through 19, and by inserting in lieu thereof the  
4 following new paragraph:  
5 "613A.7 INSURANCE. The governing body of any  
6 municipality may purchase a policy of liability in-  
7 surance insuring against all or any part of liability  
8 which might be incurred by such municipality or its  
9 officers, through the department of general services,  
10 who then shall be charged with the responsibility of  
11 writing specifications for coverage and be authorized  
12 to purchase insurance individually, or collectively,  
13 from any insurance company licensed to do business in  
14 the state of Iowa, employees and agents under the  
15 provisions of section 613A.2 and section six hundred  
16 thirteen A point eight (613A.8) of the Code and may  
17 similarly purchase insurance covering torts specified  
18 in section 613A.4. The premium costs of such insur-  
19 ance may be paid out of the general fund or any avail-  
20 able funds or may be levied in excess of any millage  
21 tax limitation imposed by statute. Any independent  
22 or autonomous board or commission in the municipality  
23 having authority to disburse funds for a particular  
24 municipal function without approval of the governing  
25 body may similarly procure liability insurance within  
26 the field of its operation. The procurement of such  
27 insurance constitutes a waiver of the defense of  
28 governmental immunity as to those exceptions listed  
29 in section 613A.4 to the extent stated in such policy  
30 but shall have no further effect on the liability of  
31 the municipality beyond the scope of this chapter.  
32 The existence of any insurance which covers in whole  
33 or in part any judgment or award which may be rendered  
34 in favor of the plaintiff, or lack of any such insur-  
35 ance, shall not be material in the trial of any  
36 action brought against the governing body of any  
37 municipality, or their officers, employees or agents  
38 and any reference to such insurance, or lack of same,  
39 shall be grounds for a mistrial."

H-457 Filed *Last 5/15*  
May 7, 1973

By BYERLY of Polk

H-518

1 Amend House File 462, page 3, line 11, by strik-  
2 ing the words "one year" and inserting in lieu there-  
3 of the words "six months".

H-518 Filed and adopted  
May 15, 1973

By STANLEY of Muscatine  
BITTLE of Polk