

H - 3/13/98 Judiciary

FILED MAR 2 1998

SENATE FILE 2392  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2008)

Passed Senate, Date <sup>(p.645)</sup> 3-11-98 Passed House, Date \_\_\_\_\_  
Vote: Ayes 48 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to community service and inmate work programs.

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

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SF. 2392

1 Section 1. Section 669.2, subsection 4, Code Supplement  
2 1997, is amended to read as follows:

3 4. "Employee of the state" includes any one or more  
4 officers, agents, or employees of the state or any state  
5 agency, including members of the general assembly, and persons  
6 acting on behalf of the state or any state agency in any  
7 official capacity, temporarily or permanently in the service  
8 of the state of Iowa, whether with or without compensation,  
9 but does not include a contractor doing business with the  
10 state. Professional personnel, including physicians,  
11 osteopathic physicians and surgeons, osteopathic physicians,  
12 optometrists, dentists, nurses, physician assistants, and  
13 other medical personnel, who render services to patients or  
14 inmates of state institutions under the jurisdiction of the  
15 department of human services or the Iowa department of  
16 corrections, and employees of the commission of veterans  
17 affairs, are to be considered employees of the state, whether  
18 the personnel are employed on a full-time basis or render  
19 services on a part-time basis on a fee schedule or other  
20 arrangement. Criminal defendants while performing unpaid  
21 community service ordered by the district court, board of  
22 parole, or judicial district department of correctional  
23 services, or an inmate providing services pursuant to a  
24 chapter 28E agreement entered into pursuant to section  
25 904.703, and persons supervising those inmates under and  
26 according to the terms of the chapter 28E agreement, are to be  
27 considered employees of the state.

28 Sec. 2. Section 669.21, Code 1997, is amended to read as  
29 follows:

30 669.21 EMPLOYEES DEFENDED AND INDEMNIFIED.

31 The state shall defend any employee, and shall indemnify  
32 and hold harmless an employee against any claim as defined in  
33 section 669.2, subsection 3, paragraph "b", including claims  
34 arising under the Constitution, statutes, or rules of the  
35 United States or of any state. The duty to indemnify and hold

1 harmless shall not apply and the state shall be entitled to  
2 restitution from an employee if the employee fails to  
3 cooperate in the investigation or defense of the claim, as  
4 defined in this section, or, if, in an action commenced by the  
5 state against the employee, it is determined that the conduct  
6 of the employee upon which a tort claim or demand was based  
7 constituted a willful and wanton act or omission or  
8 malfeasance in office.

9 Sec. 3. Section 669.22, Code 1997, is amended to read as  
10 follows:

11 669.22 ACTIONS IN FEDERAL COURT.

12 The state shall defend any employee, and shall indemnify  
13 and hold harmless an employee of the state in any action  
14 commenced in federal court under section 1983, Title 42,  
15 United States Code, against the employee for acts of the  
16 employee while acting in the scope of employment. The duty to  
17 indemnify and hold harmless shall not apply and the state  
18 shall be entitled to restitution from an employee if the  
19 employee fails to cooperate in the investigation or defense of  
20 the claim or demand, or if, in an action commenced by the  
21 state against the employee, it is determined that the conduct  
22 of the employee upon which the claim or demand was based  
23 constituted a willful and wanton act or omission or  
24 malfeasance in office.

25 Sec. 4. Section 904.703, unnumbered paragraph 3, Code  
26 1997, is amended to read as follows:

27 The director may enter into a chapter 28E agreement with a  
28 county board of supervisors or county conservation board to  
29 provide inmate services for environmental maintenance  
30 including but not limited to brush and weed cutting, tree  
31 planting, and erosion control. ~~The board of supervisors or~~  
32 ~~conservation board shall reimburse the department of~~  
33 ~~corrections for the allowance paid the inmates by the~~  
34 ~~director. The supervision, security, and transportation of~~  
35 ~~inmates used pursuant to the chapter 28E agreement shall be~~

1 provided-by-the-department-of-corrections-

2 EXPLANATION

3 This bill makes changes relating to community service work  
4 programs for institutional and public service work programs  
5 for inmates of correctional institutions. The state tort  
6 claims act immunity provisions are amended to provide that  
7 persons supervising inmates who are performing services under  
8 a chapter 28E services agreement, are to be considered  
9 "employees of the state". An exception is added to provisions  
10 relating to the state's duty to indemnify and hold harmless an  
11 "employee of the state" in those cases in which the employee  
12 fails to cooperate in the investigation or defense of the  
13 claim. The state tort claims act provides tort claim  
14 liability coverage by the state for state employees who commit  
15 negligent acts or omissions during the course of their  
16 employment.

17 The bill deletes language which requires that a county  
18 board of supervisors or county conservation board reimburse  
19 the department of corrections for any allowances paid to  
20 inmates who are performing environmental maintenance services  
21 for the county under a chapter 28E agreement. The bill also  
22 deletes a requirement that the department of corrections  
23 provide the supervision, security, and transportation of  
24 inmates who are used to perform the environmental maintenance  
25 services under a chapter 28E agreement.

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