

JAN 19 1999

LOCAL GOVERNMENT

HOUSE FILE

95

BY DRAKE

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for representation of township trustees by  
2 county attorneys.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 95

1 Section 1. Section 331.756, subsection 64, Code 1999, is  
2 amended to read as follows:

3 64. Represent the township trustees in ~~counties-having-a~~  
4 ~~population-of-less-than-twenty-five-thousand~~ townships located  
5 in the county, except when the interests of the trustees and  
6 the county are adverse, as provided in section 359.18 359.19.

7 Sec. 2. Section 359.19, Code 1999, is amended to read as  
8 follows:

9 359.19 EMPLOYMENT OF COUNSEL.

10 When litigation ~~shall-arise-in-any-case-not-covered-by~~  
11 ~~section-359.18~~, arises involving the a right or duty of  
12 township trustees with reference to any matter within their  
13 jurisdiction, and the trustees become or are made parties to  
14 ~~such~~ the litigation, ~~they-shall-have-authority-to~~ the county  
15 attorney in the county where the township is located shall  
16 represent the trustees, unless the interests of the county and  
17 township are adverse. In that case, the trustees may employ  
18 attorneys in on behalf of ~~said~~ the township, and to levy the  
19 necessary tax to pay for ~~their~~ private attorney services, and  
20 to defray the expenses of ~~such~~ the litigation.

21 Sec. 3. Section 359.18, Code 1999, is repealed.

22 EXPLANATION

23 Code sections 359.18 and 359.19 currently provide that when  
24 litigation arises involving a township, the township trustees  
25 may employ a private attorney and levy a tax to pay for the  
26 attorney's services. However, if the county has a population  
27 of less than 25,000, the county attorney must serve as the  
28 attorney to the trustees. This bill provides that the county  
29 attorney must serve as the attorney for townships in all  
30 counties unless the county and township have adverse  
31 interests.

32 This bill may create a state mandate as provided in Code  
33 chapter 25.

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**HOUSE FILE 95  
FISCAL NOTE**

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A fiscal note for House File 95 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 95 provides that the county attorney must serve as the attorney for township trustees in all counties unless the county and township have adverse interests. Current law requires this in counties under 25,000 population. The Bill expands current law to include all counties.

**ASSUMPTIONS**

1. There are 23 counties with a population of 25,000 or more based upon the United States 1990 Census.
2. There are 34 counties with full-time county attorneys.
3. The 23 counties that would be added to current law all have full-time county attorneys.
4. Most legal matters affecting townships relate to cemetery maintenance and fence line disputes.
5. The actual number of township trustee legal matters which would require representation by the county attorney is unknown.
6. The impact would vary within the 23 counties affected, by the number of townships and the number of legal matters.

**FISCAL IMPACT**

The fiscal impact of House File 95 cannot be determined due to insufficient information.

Currently, township trustees can retain council when necessary and levy the necessary tax to cover the costs. Under the Bill the costs would be born by the county instead of the township. If a county attorney has available time to handle these cases, there may be a savings to the tax payers of those counties. If the county attorney is required to contract with a private attorney for these cases, the tax payers of the county may not realize any savings.

(LSB 1466HH, DPW)

FILED FEBRUARY 15, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR