

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1096

FINAL READING

Introduced by Friend, 10; Pahls, 31.

Read first time January 23, 2008

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to volunteer fire and rescue departments;
2 to amend section 35-901, Reissue Revised Statutes of
3 Nebraska; to provide for the hiring of a fire chief
4 in certain cities of the first class as prescribed; to
5 change provisions relating to volunteer department trust
6 funds; to adopt the Volunteer Emergency Responders Job
7 Protection Act; and to repeal the original section.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that matters relating to
2 emergency medical first response and fire protection are matters of
3 state concern, particularly in larger cities that rely primarily or
4 entirely upon volunteers to provide these services. Recognizing the
5 increasing complexity and difficulty of providing these services,
6 the stringent and growing training demands made upon volunteers,
7 the demographics of an aging population, the economic pressures
8 that deny or inhibit employers from granting the opportunity for
9 volunteers to respond to emergency calls during business hours, and
10 the economic costs to residents and businesses of financing either
11 a paid or partly paid emergency response system, the Legislature
12 hereby declares the necessity of establishing a system and process
13 whereby certain cities of the first class would be required to
14 review, study, and modify on a continuing basis their emergency
15 response systems, with appropriate public input, based upon local
16 conditions and circumstances.

17 Sec. 2. Not later than January 5, 2009, each city of the
18 first class with a population in excess of thirty-seven thousand
19 five hundred inhabitants shall employ a full-time fire chief with
20 appropriate training, credentials, and experience and for whom
21 firefighting or emergency medical first response is a full-time
22 career. The fire chief shall be appointed by the mayor with the
23 approval of the city council or by the city manager in cities that
24 have adopted the city manager plan of government. The fire chief
25 shall have the immediate superintendence of the fire prevention,

1 fire suppression, and emergency medical first response services
2 and the facilities and equipment related to such services of the
3 city. The fire chief shall promulgate, implement, and enforce rules
4 governing the actions and conduct of volunteer members of the
5 department so as to be in conformity with the personnel policies of
6 the city.

7 Sec. 3. (1) In addition to such other duties as may be
8 performed by the fire chief employed pursuant to section 2 of this
9 act, he or she shall keep and maintain full and complete records
10 regarding the twelve-month period ending thirty days prior to the
11 annual report of the chief to the city council as provided for in
12 subsection (2) of this section. Such records include, but are not
13 limited to, the number of volunteers in active volunteer service
14 providing emergency response services to the city including their
15 ages, the amount and type of training received by each volunteer
16 during the course of his or her time of service as an active
17 volunteer, the number of new volunteers recruited during such
18 period, the number of volunteers who ceased to be active volunteers
19 during that period, the basic information regarding each volunteer
20 specified in section 35-1309.01, the number and nature of calls or
21 requests for emergency services, the response time for each call,
22 to be calculated from the time of receipt of the dispatch to the
23 time of arrival of the first fire or rescue emergency response
24 vehicle at the site of the request, the number of volunteers
25 responding to each call, and the time each call was received. The

1 city council may specify any additional information to be gathered
2 or collected by the fire chief or as the fire chief may recommend.

3 (2) The fire chief shall collate and analyze the
4 information gathered pursuant to subsection (1) of this section
5 and shall, no less than once in any twelve-month period, on a
6 date specified by the city council, provide a report to the
7 city council at a regular council meeting on the prior year's
8 experience regarding the volunteer department and shall make such
9 recommendations as he or she deems appropriate.

10 Sec. 4. Section 35-901, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 35-901 (1) For purposes of this section, volunteer
13 department shall mean volunteer fire department or volunteer
14 first-aid, rescue, or emergency squad or volunteer fire company
15 serving any city, village, county, township, or rural or suburban
16 fire protection district.

17 (2) Each Except as provided in subsection (4) of this
18 section, each volunteer department may establish a volunteer
19 department trust fund. All general donations, or contributions,
20 bequests, or annuities made to the volunteer department and all
21 money raised by or for the volunteer department shall be deposited
22 in the trust fund. The trust fund shall be under the control
23 of the volunteer department, and the volunteer department may
24 make expenditures from the trust fund as it deems necessary. The
25 treasurer of the volunteer department shall be the custodian of the

1 trust fund.

2 (3) The trust fund shall not be considered public funds
3 or funds of any city, village, county, township, or rural or
4 suburban fire protection district for any purpose, including the
5 Nebraska Budget Act, nor shall any city, village, county, township,
6 or rural or suburban fire protection district incur any liability
7 solely by reason of any expenditure from such fund except liability
8 for property when any city, village, county, township, or rural
9 or suburban fire protection district receives title to property
10 acquired with money from such fund.

11 (4) (a) If the total amount of expenditures and receipts
12 in the trust fund exceeds one hundred thousand dollars in
13 any twelve-month period, the volunteer department shall inform
14 any city, village, county, township, or rural or suburban fire
15 protection district receiving service from the department and such
16 entity may examine or cause to be examined all books, accounts,
17 vouchers, records, and expenditures with regard to the trust fund.

18 (b) Funds, fees, or charges solicited, collected, or
19 received by a volunteer department that are (i) in consequence
20 of the performance of fire or rescue services by the volunteer
21 department at a given place and time, (ii) accomplished through the
22 use by the volunteer department of equipment owned by the taxing
23 authority supporting such department and provided to the volunteer
24 department for that purpose, and (iii) paid by or on behalf of
25 the recipient of those services shall not be deposited in a trust

1 fund authorized by this section. Such funds are public funds of the
2 taxing authority supporting the volunteer department and are deemed
3 to have been collected by the volunteer department as the agent of
4 the taxing authority and are held by the department on its behalf.
5 If such funds are in the possession of a volunteer department,
6 the taxing authority shall cause all the books, accounts, records,
7 vouchers, expenditures, and statements regarding such funds to be
8 examined and independently audited at the expense of the taxing
9 authority by a qualified professional auditor or the Auditor of
10 Public Accounts for the immediately preceding five years.

11 ~~(4)~~ (5) Nothing in this section shall be construed or
12 deemed to permit a violation of the Nebraska Liquor Control Act.

13 ~~(5)~~ (6) All expenditures of public funds as defined in
14 the Nebraska Budget Act for support of a volunteer department or
15 its purposes shall be submitted as claims, approved by the taxing
16 authority supporting such department or its purposes, and published
17 as required by law. All such claims shall be properly itemized for
18 proposed expenditure or reimbursement for costs already incurred
19 and paid except as may be otherwise permitted pursuant to section
20 35-106.

21 ~~(6)~~ (7) All money raised pursuant to the Nebraska Bingo
22 Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card
23 Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be
24 subject to such acts with respect to the deposit and expenditure of
25 such money.

1 (8) No volunteer department shall solicit, charge, or
2 collect any funds, fees, or charges as described in subdivision
3 (4) (b) of this section without the express authorization of the
4 taxing authority supporting the department by vote of a majority
5 of the members of the governing body of such taxing authority.
6 Such authorization shall not extend beyond a twelve-month period
7 but may be renewed at the discretion of the taxing authority in
8 the same manner in which it was initially granted. Upon collection
9 or receipt, such funds, fees, or charges shall be remitted to
10 the designated officer of the taxing authority for deposit to
11 the account of the taxing authority. The taxing authority may
12 appropriate and expend some or all of such funds for the support of
13 a service award benefit program adopted and conducted pursuant to
14 the Volunteer Emergency Responders Recruitment and Retention Act.

15 Sec. 5. Sections 5 to 12 of this act shall be known and
16 may be cited as the Volunteer Emergency Responders Job Protection
17 Act.

18 Sec. 6. No employer shall terminate or take any other
19 disciplinary action against any employee who is a volunteer
20 emergency responder if such employee, when acting as a volunteer
21 emergency responder, is absent from or reports late to his or
22 her place of employment in order to respond to an emergency prior
23 to the time such employee is to report to his or her place of
24 employment.

25 Sec. 7. An employer may subtract from an employee's

1 earned wages any time such employee, acting as a volunteer
2 emergency responder, is away from his or her place of employment
3 because of such employee's response to an emergency.

4 Sec. 8. An employee acting as a volunteer emergency
5 responder shall make a reasonable effort to notify his or her
6 employer that he or she may be absent from or report late to his or
7 her place of employment in order to respond to an emergency.

8 Sec. 9. At an employer's request, an employee, acting
9 as a volunteer emergency responder, who is absent from or reports
10 late to his or her place of employment in order to respond to
11 an emergency shall provide his or her employer, within seven days
12 of such request, a written statement signed by the individual in
13 charge of the volunteer department or another individual authorized
14 to act for such individual that includes the following: The fact
15 that the employee responded to an emergency; the date and time of
16 the emergency; and the date and time such employee completed his or
17 her volunteer emergency activities.

18 Sec. 10. Prior to seeking protection pursuant to the
19 Volunteer Emergency Responders Job Protection Act, an employee
20 acting as a volunteer emergency responder shall provide his or
21 her employer with a written statement signed by the individual in
22 charge of the volunteer department or another individual authorized
23 to act for such individual notifying such employer that the
24 employee serves as a volunteer emergency responder. An employee
25 who is or who has served as a volunteer emergency responder

1 shall notify his or her employer when such employee's status as
2 a volunteer emergency responder changes, including termination of
3 such status.

4 Sec. 11. An employee who is terminated or against whom
5 any disciplinary action is taken in violation of the Volunteer
6 Emergency Responders Job Protection Act shall be immediately
7 reinstated to his or her former position, if wrongfully terminated,
8 without reduction of wages, seniority, or other benefits and shall
9 receive any lost wages or other benefits, if applicable, during
10 any period for which such termination or other disciplinary action
11 was in effect. An action to enforce the act may be brought by the
12 employee to recover any lost wages or other benefits, including
13 court costs and reasonable attorney's fees. An action to enforce
14 the act shall be commenced within one year after the date of
15 violation and shall be brought in the district court of the county
16 in which the place of employment is located.

17 Sec. 12. For purposes of the Volunteer Emergency
18 Responders Job Protection Act:

19 (1) Employee does not include a career firefighter or
20 law enforcement officer who is acting as a volunteer emergency
21 responder;

22 (2) Employer means any person employing ten or more
23 employees; and

24 (3) Volunteer emergency responder means a person who
25 has been approved by a governing body in Nebraska to serve

1 any volunteer fire department or volunteer first-aid, rescue,
2 ambulance, or emergency squad, or volunteer fire company,
3 association, or organization serving any city, village, or rural
4 or suburban fire protection district by providing fire protection
5 or emergency response services for the purpose of protecting life,
6 health, or property.

7 Sec. 13. Original section 35-901, Reissue Revised
8 Statutes of Nebraska, is repealed.