

LEGISLATIVE BILL 1096

Approved by the Governor March 31, 2008

Introduced by Friend, 10; Pahls, 31.

FOR AN ACT relating to volunteer fire and rescue departments; to amend section 35-901, Reissue Revised Statutes of Nebraska; to provide for the hiring of a fire chief in certain cities of the first class as prescribed; to change provisions relating to volunteer department trust funds; to adopt the Volunteer Emergency Responders Job Protection Act; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

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

Sec. 2. Not later than January 5, 2009, each city of the first class with a population in excess of thirty-seven thousand five hundred inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

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

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

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

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

(2) Each Except as provided in subsection (4) of this section,

each volunteer department may establish a volunteer department trust fund. All general donations, or contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.

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

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

(b) Funds, fees, or charges solicited, collected, or received by a volunteer department that are (i) in consequence of the performance of fire or rescue services by the volunteer department at a given place and time, (ii) accomplished through the use by the volunteer department of equipment owned by the taxing authority supporting such department and provided to the volunteer department for that purpose, and (iii) paid by or on behalf of the recipient of those services shall not be deposited in a trust fund authorized by this section. Such funds are public funds of the taxing authority supporting the volunteer department and are deemed to have been collected by the volunteer department as the agent of the taxing authority and are held by the department on its behalf. If such funds are in the possession of a volunteer department, the taxing authority shall cause all the books, accounts, records, vouchers, expenditures, and statements regarding such funds to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for the immediately preceding five years.

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

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

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

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

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

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

Sec. 7. An employer may subtract from an employee's earned wages any time such employee, acting as a volunteer emergency responder, is away

from his or her place of employment because of such employee's response to an emergency.

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

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

Sec. 10. Prior to seeking protection pursuant to the Volunteer Emergency Responders Job Protection Act, an employee acting as a volunteer emergency responder shall provide his or her employer with a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual notifying such employer that the employee serves as a volunteer emergency responder. An employee who is or who has served as a volunteer emergency responder shall notify his or her employer when such employee's status as a volunteer emergency responder changes, including termination of such status.

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

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

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

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

(3) Volunteer emergency responder means a person who has been approved by a governing body in Nebraska to serve any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad, or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting life, health, or property.

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