

LEGISLATIVE BILL 158

Approved by the Governor May 13, 2009

Introduced by White, 8; Cornett, 45; Lathrop, 12; Mello, 5; Nordquist, 7.

FOR AN ACT relating to law enforcement; to amend sections 17-107, 17-208, and 23-1734, Reissue Revised Statutes of Nebraska; to change provisions relating to removal and discipline of police officers, village marshals, and deputy sheriffs; to provide restrictions regarding employment, investigation, removal, and discipline of peace officers; to require rules and regulations; and to repeal the original sections.

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

Section 1. Section 17-107, Reissue Revised Statutes of Nebraska, is amended to read:

17-107 (1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568. The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council shall be removable may be removed, demoted, or suspended at any time by the mayor as provided in subsection (2) of this section. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or other disciplinary action or suspension with or without pay. to the city council. After a hearing, the city council may uphold, reverse, or modify the removal or disciplinary action.

(2) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay or discipline of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (a) Provisions for giving notice and a copy of the written accusation to the police officer; (b) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (c) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (d) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the disciplinary action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the removal or disciplinary action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal or disciplinary action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(3) This section does not apply to a police officer during his or her probationary period.

Sec. 2. Section 17-208, Reissue Revised Statutes of Nebraska, is amended to read:

17-208 ~~(1)~~ (1)(a) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal or chief of police. Pursuant to subsection (2) of this section, the ~~-~~ The village marshal or chief of police, or any other police officer, may ~~request a review by appeal to the village board of his or her removal, demotion, or suspension with or without pay. or any other disciplinary action taken against him or her.~~ After a hearing, the village board may uphold, reverse, or modify the ~~removal or disciplinary action.~~

~~(2)~~ (b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay or discipline of any police officer, including the village marshal or chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police, upon the written accusation of the village marshal or chief of police, the chairperson, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the disciplinary action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the ~~removal or disciplinary action~~. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the ~~removal or disciplinary action~~ shall be construed as a vote to uphold the ~~removal or disciplinary action~~. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the ~~challenged removal or disciplinary action~~ was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

~~(3)~~ (2) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal or chief of police, the marshal or chief of police may be appointed to the board and serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations. The appointees shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Sec. 3. Section 23-1734, Reissue Revised Statutes of Nebraska, is amended to read:

23-1734 ~~(1)~~ (1)(a) Any deputy sheriff may be removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. Such order shall be filed with the sheriff's office merit commission, and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so

removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension with or without pay, or reduction, appeal to the commission from such order. The commission shall, within two weeks ~~from~~ after the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and have counsel or other representation and a public hearing. The finding and decision of the commission shall be certified to the sheriff and shall forthwith be enforced and followed, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended with or without pay, or reduced in rank until such finding and decision of the commission is so certified to the sheriff.

(b) This subsection does not apply to a deputy sheriff during his or her probationary period.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental policy or procedure to the commission. The commission shall hear the grievance at the next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy sheriff became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel or other representative within seven calendar days after the date of the hearing or the submission of the written grievance.

Sec. 4. After an applicant is hired by any municipality or county as a peace officer, no municipality or county may require the peace officer to produce or disclose the peace officer's personal financial records except pursuant to a valid search warrant or subpoena. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Sec. 5. No municipality or county shall publicly release a photograph of a peace officer who is the subject of an investigation without the written permission of the peace officer, except that the municipality or county may display a photograph of a peace officer to a prospective witness as part of an investigation and the municipality or county may provide a photograph of a peace officer to the investigating individual to display to a prospective witness as part of the investigation. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Sec. 6. No disciplinary action by any municipality or county may be included in a peace officer's personnel record unless such disciplinary action has been reduced to writing and the peace officer has been given a copy, and no correspondence may be included in a peace officer's personnel record unless the peace officer has been given a copy of the correspondence. The peace officer shall sign a written acknowledgement of receipt for any copy of a disciplinary action. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Sec. 7. No peace officer of any municipality or county may be discharged, subject to disciplinary action, or threatened with discharge or disciplinary action as retaliation for or solely by reason of the peace officer's exercise of his or her rights provided in section 17-107, 17-208, or 23-1734 or sections 4 to 7 of this act. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Sec. 8. (1) Except as otherwise provided in a collective-bargaining agreement, Chapter 19, article 18, or Chapter 23, article 17, any city of the first class and all county sheriffs shall adopt rules and regulations governing the removal, suspension with or without pay, or demotion of any peace officer, including the chief of police. Such rules and regulations shall include: (a) Provisions for giving notice and a copy of the written accusation to the peace officer; (b) the peace officer's right to have an attorney or representative retained by the peace officer present with him or her at all hearings or proceedings regarding the written accusation; (c) the right of the peace officer or his or her attorney or representative retained by the peace officer to be heard and present evidence; (d) the right of the peace officer as well as the individual imposing the action or their respective

attorneys or representatives to record all hearings or proceedings regarding the written accusation; and (e) a procedure for making application for an appeal. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(2) This section does not apply to a peace officer during his or her probationary period.

Sec. 9. Original sections 17-107, 17-208, and 23-1734, Reissue Revised Statutes of Nebraska, are repealed.