

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 633**

Introduced by Nordquist, 7.

Read first time January 23, 2013

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to the Civil Service Act; to amend sections  
2 19-1829 and 19-1833, Reissue Revised Statutes of  
3 Nebraska; to include contract violations under  
4 disciplinary provisions of the act; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 19-1829, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           19-1829 The Civil Service Act shall only apply to full-  
4 time firefighters or full-time police officers of each municipality,  
5 including any paid full-time police or fire chief of such department.  
6 All appointments to and promotions in such department shall be made  
7 solely on merit, efficiency, and fitness, which shall be ascertained  
8 by open competitive examination and impartial investigation. If the  
9 appointing authority fills a vacancy in a position subject to the  
10 Civil Service Act, the appointing authority shall consider factors  
11 including, but not limited to:

12           (1) The multiple job skills recently or currently being  
13 performed by the applicant which are necessary for the position;

14           (2) The knowledge, skills, and abilities of the applicant  
15 which are necessary for the position;

16           (3) The performance appraisal of any applicant who is  
17 already employed in the department, including any recent or pending  
18 disciplinary actions involving the employee;

19           (4) The employment policies and staffing needs of the  
20 department together with contracts, ordinances, and statutes related  
21 thereto;

22           (5) Required federal, state, or local certifications or  
23 licenses necessary for the position; and

24           (6) The qualifications of the applicants who are already  
25 employed in the department and have successfully completed all parts

1 of the examination for the position. No person shall be reinstated in  
2 or transferred, suspended, or discharged from any such position or  
3 employment or found in violation of any contractual agreement  
4 contrary to the Civil Service Act.

5 Sec. 2. Section 19-1833, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 19-1833 (1) No person in the civil service who shall have  
8 been permanently appointed or inducted into civil service under the  
9 Civil Service Act shall be removed, suspended, demoted, ~~or~~  
10 discharged, or found to be in violation of any contractual agreement  
11 except for cause and then only upon the written accusation of the  
12 police or fire chief, the appointing authority, a sworn officer or  
13 firefighter, or any citizen or taxpayer.

14 (2) The governing body of the municipality shall  
15 establish by ordinance procedures for acting upon such written  
16 accusations and the manner by which suspensions, demotions, removals,  
17 discharges, findings of violation of any contractual agreement, or  
18 other disciplinary actions may be imposed by the appointing authority  
19 or grieved or appealed by any sworn officer or firefighter. At least  
20 one copy of the rules and regulations, and any amendments to such  
21 rules and regulations, shall be made available for examination and  
22 reproduction by members of the public. One copy of the rules and  
23 regulations and any such amendments shall be given to each full-time  
24 firefighter and full-time police officer.

25 (3) Any person so removed, suspended, demoted, ~~or~~

1 discharged, or found to be in violation of any contractual agreement  
2 may, within ten days after being notified by the appointing authority  
3 of such removal, suspension, demotion, ~~or discharge,~~ or finding of  
4 violation of any contractual agreement, file with the commission a  
5 written demand for an investigation, whereupon the commission shall  
6 conduct such investigation. The governing body of the municipality  
7 shall establish procedures by ordinance consistent with this section  
8 by which the commission shall conduct such investigation. At least  
9 one copy of the rules and regulations, and any amendments to such  
10 rules and regulations, shall be made available for examination and  
11 reproduction by members of the public. One copy of the rules and  
12 regulations and any such amendments shall be given to each full-time  
13 firefighter and full-time police officer. Such procedures shall  
14 comply with minimum due process requirements. The commission may be  
15 represented in such investigation and hearing by the municipal  
16 attorney. ~~if authorized by the appointing authority.~~ If the municipal  
17 attorney does not represent the commission, the commission may be  
18 represented by special counsel appointed by the commission for any  
19 such investigation and hearing. The investigation shall be confined  
20 to the determination of the question of whether or not such removal,  
21 suspension, demotion, ~~or discharge,~~ or finding of violation of any  
22 contractual agreement was made in good faith for cause which shall  
23 mean that the action was not arbitrary or capricious and was not made  
24 for political or religious reasons.

25 (4) After such investigation, the commission shall hold a

1 public hearing after giving reasonable notice to the accused of the  
2 time and place of such hearing. Such hearing shall be held not less  
3 than ten or more than twenty days after filing of the written demand  
4 for an investigation and a decision shall be rendered no later than  
5 ten days after the hearing. At such hearing the accused shall be  
6 permitted to appear in person and by counsel and to present his or  
7 her defense. The commission may affirm the action taken if such  
8 action of the appointing authority is supported by a preponderance of  
9 the evidence. If it shall find that the removal, suspension,  
10 demotion, ~~or discharge,~~ or finding of violation of any contractual  
11 agreement was made for political or religious reasons or was not made  
12 in good faith for cause, it shall order the immediate reinstatement,  
13 compensation, or reemployment of such person in the position or  
14 employment from which such person was removed, suspended, demoted, ~~or~~  
15 discharged, or found to be in violation of any contractual agreement,  
16 which ~~reinstatement~~ shall, if the commission in its discretion so  
17 provides, be retroactive and entitle such person to compensation and  
18 restoration of benefits and privileges from the time of such removal,  
19 suspension, demotion, ~~or discharge,~~ or finding of contractual  
20 violation. The commission upon such hearing, in lieu of affirming the  
21 removal, suspension, demotion, ~~or discharge,~~ or finding of  
22 contractual violation, may modify the order of removal, suspension,  
23 demotion, or discharge or the finding of violation of any contractual  
24 agreement by directing a suspension, with or without pay, for a given  
25 period and the subsequent restoration to duty or demotion in position

1 or pay. The findings of the commission shall be certified in writing  
2 to and enforced by the appointing authority.

3 (5) If such judgment or order be concurred in by the  
4 commission or a majority thereof, the accused or governing body may  
5 appeal to the district court. Such appeal shall be taken within  
6 forty-five days after the entry of such judgment or order by serving  
7 the commission with a written notice of appeal stating the grounds  
8 and demanding that a certified transcript of the record and all  
9 papers, on file in the office of the commission affecting or relating  
10 to such judgment or order, be filed by the commission with such  
11 court. The commission shall, within ten days after the filing of such  
12 notice, make, certify, and file such transcript with and deliver such  
13 papers to the district court. The district court shall proceed to  
14 hear and determine such appeal in a summary manner. The hearing shall  
15 be confined to the determination of whether or not the judgment or  
16 order of removal, discharge, demotion, or suspension or the finding  
17 of contractual violation made by the commission was made in good  
18 faith for cause which shall mean that the action of the commission  
19 was based upon a preponderance of the evidence, was not arbitrary or  
20 capricious, and was not made for political or religious reasons. No  
21 appeal to such court shall be taken except upon such ground or  
22 grounds.

23 If such appeal is taken by the governing body and the  
24 district court affirms the decision of the commission, the  
25 municipality shall pay to the employee court costs and reasonable

1 attorney's fees incurred as a result of such appeal and as approved  
2 by the district court. If such appeal is taken by the governing body  
3 and the district court does not affirm the decision of the  
4 commission, the court may award court costs and reasonable attorney's  
5 fees to the employee as approved by the district court.

6                   Sec. 3. Original sections 19-1829 and 19-1833, Reissue  
7 Revised Statutes of Nebraska, are repealed.