

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 158

FINAL READING

(SECOND)

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

Read first time January 12, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to law enforcement; to amend sections
2 17-107, 17-208, and 23-1734, Reissue Revised Statutes
3 of Nebraska; to change provisions relating to removal
4 and discipline of police officers, village marshals,
5 and deputy sheriffs; to provide restrictions regarding
6 employment, investigation, removal, and discipline of
7 peace officers; to require rules and regulations; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

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

3 17-107 (1) A mayor of a city of the second class shall
4 be elected in the manner provided in the Election Act. The mayor
5 shall be a resident and registered voter of the city. If the
6 president of the council assumes the office of mayor for the
7 unexpired term, there shall be a vacancy on the council which
8 vacancy shall be filled as provided in section 32-568. The mayor,
9 with the consent of the council, may appoint such officers as
10 shall be required by ordinance or otherwise required by law. Such
11 officers may be removed from office by the mayor. The mayor,
12 by and with the consent of the council, shall appoint such a
13 number of regular police officers as may be necessary. All police
14 officers appointed by the mayor and council shall be removable
15 may be removed, demoted, or suspended at any time by the mayor
16 as provided in subsection (2) of this section. A police officer,
17 including the chief of police, may appeal to the city council such
18 removal, demotion, or other disciplinary action or suspension with
19 or without pay. to the city council. After a hearing, the city
20 council may uphold, reverse, or modify the removal or disciplinary
21 action.

22 (2) The city council shall by ordinance adopt rules and
23 regulations governing the removal, demotion, or suspension with
24 or without pay or discipline of any police officer, including
25 the chief of police. The ordinance shall include a procedure for

1 such removal, demotion, or suspension with or without pay of any
2 police officer, including the chief of police, upon the written
3 accusation of the police chief, the mayor, or any citizen or
4 taxpayer. The city council shall establish by ordinance procedures
5 for acting upon such written accusation, including: (a) Provisions
6 for giving notice and a copy of the written accusation to the
7 police officer; (b) the police officer's right to have an attorney
8 or representative retained by the police officer present with
9 him or her at all hearings or proceedings regarding the written
10 accusation; (c) the right of the police officer or his or her
11 attorney or representative retained by the police officer to be
12 heard and present evidence; and (d) the right of the police officer
13 as well as the individual imposing the action or their respective
14 attorneys or representatives to record all hearings or proceedings
15 regarding the written accusation. The ordinance shall also include
16 a procedure for making application for an appeal, specifications
17 on the period of time within which such application shall be
18 made, and provisions on the manner in which the appeals hearing
19 shall be conducted. Both the police officer and the individual
20 imposing the ~~disciplinary~~ action or their respective attorneys or
21 representatives shall have the right at the hearing to be heard and
22 to present evidence to the city council for its consideration. Not
23 later than thirty days following the adjournment of the meeting at
24 which the hearing was held, the city council shall vote to uphold,
25 reverse, or modify the ~~removal or disciplinary~~ action. The failure

1 of the city council to act within thirty days or the failure
 2 of a majority of the elected council members to vote to reverse
 3 or modify the ~~removal or disciplinary~~ action shall be construed
 4 as a vote to uphold the ~~removal or disciplinary~~ action. The
 5 decision of the city council shall be based upon its determination
 6 that, under the facts and evidence presented at the hearing,
 7 the ~~challenged removal or disciplinary~~ action was necessary for
 8 the proper management and the effective operation of the police
 9 department in the performance of its duties under the statutes of
 10 the State of Nebraska. Nothing in this section shall be construed
 11 to prevent the preemptory suspension or immediate removal from duty
 12 of an officer by the appropriate authority, pending the hearing
 13 authorized by this section, in cases of gross misconduct, neglect
 14 of duty, or disobedience of orders.

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

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

19 17-208 ~~(1)~~ (1)(a) The village board of trustees may
 20 appoint a village clerk, treasurer, attorney, overseer of the
 21 streets, and marshal or chief of police. Pursuant to subsection (2)
 22 of this section, the ~~- The village marshal or chief of police,~~ or
 23 any other police officer~~,~~ may ~~request a review by~~ appeal to the
 24 village board ~~of~~ his or her removal, demotion, or suspension with
 25 or without pay. ~~or any other disciplinary action taken against him~~

1 ~~or her.~~ After a hearing, the village board may uphold, reverse, or
2 modify the ~~removal or disciplinary~~ action.

3 ~~(2)~~ (b) The village board of trustees shall by ordinance
4 adopt rules and regulations governing the removal, demotion, or
5 suspension with or without pay ~~or discipline~~ of any police officer,
6 including the village marshal or chief of police. The ordinance
7 shall include a procedure for such removal, demotion, or suspension
8 with or without pay of any police officer, including the village
9 marshal or chief of police, upon the written accusation of the
10 village marshal or chief of police, the chairperson, or any
11 citizen or taxpayer. The village board of trustees shall establish
12 by ordinance procedures for acting upon such written accusation,
13 including: (i) Provisions for giving notice and a copy of the
14 written accusation to the police officer; (ii) the police officer's
15 right to have an attorney or representative retained by the police
16 officer present with him or her at all hearings or proceedings
17 regarding the written accusation; (iii) the right of the police
18 officer or his or her attorney or representative retained by the
19 police officer to be heard and present evidence; and (iv) the
20 right of the police officer as well as the individual imposing the
21 action or their respective attorneys or representatives to record
22 all hearings or proceedings regarding the written accusation. The
23 ordinance shall also include a procedure for making application
24 for an appeal, specifications on the period of time within which
25 such application shall be made, and provisions on the manner in

1 which the appeals hearing shall be conducted. Both the police
2 officer and the individual imposing the ~~disciplinary~~ action or
3 their respective attorneys or representatives shall have the right
4 at the hearing to be heard and to present evidence to the village
5 board for its consideration. Not later than thirty days following
6 the adjournment of the meeting at which the hearing was held,
7 the village board shall vote to uphold, reverse, or modify the
8 ~~removal or disciplinary~~ action. The failure of the village board
9 to act within thirty days or the failure of a majority of the
10 elected board members to vote to reverse or modify the ~~removal~~
11 ~~or disciplinary~~ action shall be construed as a vote to uphold
12 the ~~removal or disciplinary~~ action. The decision of the village
13 board shall be based upon its determination that, under the facts
14 and evidence presented at the hearing, the ~~challenged removal~~
15 ~~or disciplinary~~ action was necessary for the proper management
16 and the effective operation of the police department in the
17 performance of its duties under the statutes of the State of
18 Nebraska. Nothing in this section shall be construed to prevent the
19 preemptory suspension or immediate removal from duty of an officer
20 by the appropriate authority, pending the hearing authorized by
21 this section, in cases of gross misconduct, neglect of duty, or
22 disobedience of orders.

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

25 ~~(3)~~ (2) The village board of trustees shall also appoint

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

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

19 23-1734 ~~(1)~~ (1)(a) Any deputy sheriff may be removed,
20 suspended with or without pay, or reduced in either rank or
21 grade or both rank and grade by the sheriff, after appointment or
22 promotion is complete, by an order in writing, stating specifically
23 the reasons therefor. Such order shall be filed with the sheriff's
24 office merit commission, and a copy thereof shall be furnished
25 to the person so removed, suspended, or reduced. Any person so

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

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

18 (2) Any deputy sheriff may grieve a violation of an
19 employment contract, a personnel rule, a state or local law, or
20 a written departmental policy or procedure to the commission.
21 The commission shall hear the grievance at the next regularly
22 scheduled meeting, or the commission may, at its discretion, set
23 a special meeting to hear the grievance. If the deputy sheriff
24 is subject to a labor agreement, all applicable procedures in the
25 agreement shall be followed prior to the matter being heard by the

1 commission. In all other cases, the matter shall be grieved, in
2 writing, to the commission within fifteen calendar days after the
3 date the deputy sheriff became aware of the occurrence giving rise
4 to the grievance. After hearing or reviewing the grievance, the
5 commission shall issue a written order either affirming or denying
6 the grievance. Such order shall be delivered to the parties to
7 the grievance or their counsel or other representative within seven
8 calendar days after the date of the hearing or the submission of
9 the written grievance.

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

17 Sec. 5. No municipality or county shall publicly
18 release a photograph of a peace officer who is the subject of
19 an investigation without the written permission of the peace
20 officer, except that the municipality or county may display a
21 photograph of a peace officer to a prospective witness as part
22 of an investigation and the municipality or county may provide a
23 photograph of a peace officer to the investigating individual to
24 display to a prospective witness as part of the investigation. This
25 section does not apply to any municipality or county accredited

1 through the Commission on Accreditation for Law Enforcement
2 Agencies.

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

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

21 Sec. 8. (1) Except as otherwise provided in a
22 collective-bargaining agreement, Chapter 19, article 18, or Chapter
23 23, article 17, any city of the first class and all county sheriffs
24 shall adopt rules and regulations governing the removal, suspension
25 with or without pay, or demotion of any peace officer, including

1 the chief of police. Such rules and regulations shall include: (a)
2 Provisions for giving notice and a copy of the written accusation
3 to the peace officer; (b) the peace officer's right to have an
4 attorney or representative retained by the peace officer present
5 with him or her at all hearings or proceedings regarding the
6 written accusation; (c) the right of the peace officer or his or
7 her attorney or representative retained by the peace officer to
8 be heard and present evidence; (d) the right of the peace officer
9 as well as the individual imposing the action or their respective
10 attorneys or representatives to record all hearings or proceedings
11 regarding the written accusation; and (e) a procedure for making
12 application for an appeal. Nothing in this section shall be
13 construed to prevent the preemptory suspension or immediate removal
14 from duty of an officer by the appropriate authority, pending the
15 hearing authorized by this section, in cases of gross misconduct,
16 neglect of duty, or disobedience of orders.

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

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