

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 550

Introduced by Avery, 28.

Read first time January 21, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Military Code; to amend sections 55-101,
2 55-120, 55-125, 55-126, and 55-135, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 Military Department personnel; to provide peace officer
5 powers and duties to National Guard members; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 55-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 55-101 Sections 55-101 to 55-181 and section 6 of this
4 act shall be known and may be cited as the Military Code.

5 Sec. 2. Section 55-120, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 55-120 The Military Department shall consist of the
8 Adjutant General in the minimum grade of major general, lieutenant
9 colonel, one deputy adjutant general, chief of staff of the
10 Military Department, or deputy director with a minimum grade not
11 less than of colonel, one assistant adjutant general or chief of
12 staff for Army National Guard affairs and one assistant adjutant
13 general or chief of staff for Air National Guard affairs, each in
14 the grade of brigadier general, one assistant director for Nebraska
15 Emergency Management Agency affairs, and such other officers and
16 enlisted personnel as may be necessary to comply with such tables
17 of organization as are prescribed for this state by the laws
18 or regulations of the United States. in the number and grade
19 as prescribed by the United States Department of the Army and
20 Department of the Air Force personnel documents provided to the
21 National Guard or as otherwise authorized.

22 Sec. 3. Section 55-125, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 55-125 (1) The Adjutant General ~~may~~ shall appoint a
25 deputy adjutant general, a chief of staff of the Military

1 Department, or a deputy director. The officer shall hold the
2 minimum grade of not less than colonel as provided in section
3 55-120. No person shall be eligible for such appointment and
4 service unless he or she is an active member of the Nebraska
5 National Guard. He or she shall have had at least four years of
6 commissioned service in the Nebraska National Guard immediately
7 prior to appointment and shall have attained at least the grade of
8 lieutenant colonel and be eligible for promotion to colonel prior
9 to his or her appointment as deputy adjutant general, chief of
10 staff of the Military Department, or deputy director.

11 (2) The Adjutant General shall appoint an officer with
12 a grade of not less than major who may act as United States
13 property and fiscal officer. The chief of the National Guard Bureau
14 shall appoint a United States property and fiscal officer. The
15 officer shall hold the minimum grade of colonel. The Governor shall
16 nominate one or more officers for the position of United States
17 property and fiscal officer after consultation with the Adjutant
18 General. All nominees shall have attained at least the grade of
19 lieutenant colonel and be eligible for promotion to colonel prior
20 to his or her nomination. The United States property and fiscal
21 officer may appoint, with the approval of the Adjutant General,
22 one or more may also appoint an assistant United States property
23 and fiscal officer officers, each with the minimum grade of not
24 less than captain. These officers The United States property and
25 fiscal officer and each assistant United States property and fiscal

1 officer shall be appointed from among the active officers of the
2 Nebraska National Guard and shall have been commissioned officers
3 in the Nebraska National Guard for a period of at least four years
4 immediately prior to appointment.

5 (3) The Adjutant General shall appoint all additional
6 officers, clerks, and caretakers as may be required.

7 Sec. 4. Section 55-126, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 55-126 The deputy adjutant general, chief of staff of
10 the Military Department, or deputy director shall aid the Adjutant
11 General by the performance of such duties as may be assigned
12 by the Adjutant General. In case of absence or inability of the
13 Adjutant General, the deputy adjutant general, chief of staff of
14 the Military Department, or deputy director shall perform all or
15 such portion of the duties of the Adjutant General as the latter
16 may expressly delegate to him or her. If a In the case of absence
17 of both the Adjutant General and the deputy adjutant general,
18 chief of staff of the Military Department, or deputy director,
19 ~~has not been appointed,~~ the Adjutant General may delegate the
20 authority to perform the duties of the Adjutant General to any
21 active officer of the Nebraska military who shall hold at least
22 the rank of colonel. The deputy adjutant general, chief of staff
23 of the Military Department, or deputy director shall be bonded or
24 insured as required by section 11-201. The deputy adjutant general,
25 chief of staff of the Military Department, or deputy director shall

1 receive such salary as the Adjutant General shall direct, payable
2 monthly. Such salary shall not exceed the annual pay and allowances
3 of regular military officers of equal rank, except that when funds
4 made available by the federal government are in excess of the
5 amount payable as directed by the Adjutant General, the excess
6 shall be used to reduce the amount required to be paid by the State
7 of Nebraska.

8 Sec. 5. Section 55-135, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 55-135 The number and grade of officers and enlisted
11 personnel shall be as prescribed by the United States Department of
12 the Army and the Department of the Air Force personnel documents
13 provided to the National Guard or as otherwise authorized, but in
14 case of war, invasion, insurrection, riot, or imminent danger, the
15 Governor may temporarily increase them to meet such emergencies.
16 All officers shall hold their commissions until separated by reason
17 of resignation, disability, or pursuant to applicable regulations
18 issued by the Department of the Army or the Department of the Air
19 Force. Vacancies among officers shall be filled by appointment,
20 subject to such regulations relating thereto as now or may
21 hereafter be promulgated by the United States Government.

22 Sec. 6. While in the active service of the state or on
23 orders under 32 U.S.C., as a member of the militia of this state or
24 another state, by direction or request of the Governor, members of
25 the National Guard are peace officers and conservators of the peace

1 with the power to keep the same, to prevent crime, to arrest any
2 person liable thereto, or to execute process of law. They may call
3 any person to their aid and, when necessary, may summon the power
4 of the state. The authority to perform peace officer duties will be
5 established within the official order to duty and may be limited by
6 the Governor, in writing, as necessitated by the mission.

7 Sec. 7. Original sections 55-101, 55-120, 55-125, 55-126,
8 and 55-135, Reissue Revised Statutes of Nebraska, are repealed.