

House File 2596 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 657)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning civil service commissions, disciplinary
2 procedures, leaves of absence, providing a civil penalty, and
3 making a penalty applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5611HV 82
6 md/rj/5

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1 1 Section 1. Section 400.1, subsection 1, Code Supplement
1 2 2007, is amended to read as follows:
1 3 1. In cities having a population of eight thousand or over
1 4 and having a paid fire department or a paid police department,
1 5 the mayor, one year after a regular city election, with the
1 6 approval of the council, shall appoint three civil service
1 7 commissioners ~~who~~. ~~The mayor shall publish notice of the~~
1 8 ~~names of persons selected for appointment no less than thirty~~
1 9 ~~days prior to a vote by the city council. Commissioners shall~~
1 10 hold office, one until the first Monday in April of the second
1 11 year, one until the first Monday in April of the third year,
1 12 and one until the first Monday in April of the fourth year
1 13 after such appointment, whose successors shall be appointed
1 14 for a term of four years. In cities having a population of
1 15 more than seventy thousand, the city council may establish, by
1 16 ordinance, the number of civil service commissioners at not
1 17 less than three.

1 18 Sec. 2. Section 400.2, Code 2007, is amended to read as
1 19 follows:

1 20 400.2 QUALIFICATIONS == ~~CONFLICT OF INTEREST PROHIBITED~~
1 21 ~~CONTRACTS~~.

1 22 1. The commissioners must be citizens of Iowa, eligible
1 23 electors as defined in chapter 39, and residents of the city
1 24 preceding their appointment, and shall serve without
1 25 compensation. A person, while on the commission, shall not
1 26 hold or be a candidate for any office of public trust.
1 27 However, when a human rights commission has been established
1 28 by a city, the director of the commission shall ex officio be
1 29 a member, without vote, of the civil service commission.

1 30 2. Civil service commissioners, with respect to the city
1 31 in which they are commissioners, shall not do any of the
1 32 following:

1 33 a. ~~sell~~ Sell to, or in any manner become parties, directly
1 34 or indirectly, to any contract to furnish supplies, material,
1 35 or labor to the city ~~in which they are commissioners except as~~
2 1 ~~provided in section 362.5~~.

2 2 b. Have an interest, direct or indirect, in any contract
2 3 or job of work or material or the profits thereof or services
2 4 to be furnished or performed for the city.

2 5 3. A contract entered into in violation of subsection 2 is
2 6 void.

2 7 4. A violation of ~~this conflict of interest provision the~~
2 8 provisions contained in subsection 2 is a simple misdemeanor.

2 9 Sec. 3. Section 400.9, subsections 2 and 4, Code 2007, are
2 10 amended to read as follows:

2 11 2. The commission shall establish guidelines for
2 12 conducting the examinations under subsection 1. It may
2 13 prepare and administer the examinations or may hire persons
2 14 with expertise to do so if the commission approves the
2 15 examinations and if the examinations apply to the position in
2 16 the city for which the applicant is taking the examination.
2 17 It may also hire persons with expertise to consult in the

2 18 preparation of such examinations if the persons so hired are
2 19 employed to aid personnel of the commission in assuring that a
2 20 fair examination is conducted. A fair examination shall
2 21 explore the competence of the applicant in the particular
2 22 field of examination. The names of persons approved to
2 23 administer any examination under this section shall be posted
2 24 in the city hall at least twenty-four hours prior to the
2 25 examination.

2 26 4. If there is a certified list of qualified candidates
2 27 for a promotional appointment, the following procedures shall
2 28 be followed:

2 29 a. A publication stating that interviews are being
2 30 scheduled to make a new certified list to fill a vacancy in a
2 31 civil service promotional grade classification shall be posted
2 32 for at least five working days before the closing date for the
2 33 interviews in the same locations where examination notices are
2 34 posted.

2 35 b. An employee who wishes to voluntarily demote or to
3 1 laterally transfer into a vacancy and has previously been or
3 2 is currently in the classification where the vacancy exists,
3 3 shall notify the civil service commission of the employee's
3 4 interest in the vacant position. The employee shall be added
3 5 to the list of candidates to be interviewed and considered for
3 6 the vacancy.

3 7 c. Each candidate on a list of qualified candidates must
3 8 be considered by the commission before another list may be
3 9 created.

3 10 Sec. 4. Section 400.11, unnumbered paragraph 5, Code 2007,
3 11 is amended to read as follows:

3 12 When there is no such preferred list or certified eligible
3 13 list, or when the eligible list shall be exhausted, the person
3 14 or body having the appointing power may temporarily fill a
3 15 newly created office or other vacancy only until an
3 16 examination can be held and the names of qualified persons be
3 17 certified by the commission, and such temporary appointments
3 18 are hereby limited to ninety days for any one person in the
3 19 same vacancy, but such limitation shall not apply to persons
3 20 temporarily acting in positions regularly held by another. A
3 21 temporary appointment to a position regularly held by another
3 22 shall be made according to the certified eligible list. Any

3 23 person temporarily filling a vacancy in a position of higher
3 24 grade for twenty days or more, shall receive the salary paid
3 25 in such higher grade.

3 26 Sec. 5. Section 400.17, unnumbered paragraph 4, Code 2007,
3 27 is amended to read as follows:

3 28 A person shall not be appointed, promoted, discharged, or
3 29 demoted to or from a civil service position or in any other
3 30 way favored or discriminated against in that position because
3 31 of political or religious opinions or affiliations, race,
3 32 national origin, sex, or age, or in retaliation for the
3 33 exercise of any right enumerated in this chapter. However,

3 34 the maximum age for a police officer or fire fighter covered
3 35 by this chapter and employed for police duty or the duty of
4 1 fighting fires is sixty-five years of age.

4 2 Sec. 6. Section 400.18, Code 2007, is amended to read as
4 3 follows:

4 4 400.18 REMOVAL, DEMOTION, OR SUSPENSION.

4 5 1. ~~No~~ A person holding civil service rights as provided in
4 6 this chapter shall not be removed, reprimanded, demoted, or
4 7 suspended arbitrarily, except as otherwise provided in this
4 8 chapter, but may be removed, reprimanded, demoted, or
4 9 suspended after a hearing by a majority vote of the civil
4 10 service commission, for neglect of duty, disobedience,
4 11 misconduct, or failure to properly perform the person's
4 12 duties.

4 13 2. The party alleging neglect of duty, disobedience,
4 14 misconduct, or failure to properly perform a duty shall have
4 15 the burden of proof.

4 16 3. A person subject to a hearing has the right to be
4 17 represented by counsel at the person's expense or by the
4 18 person's authorized collective bargaining representative.

4 19 Sec. 7. Section 400.20, Code Supplement 2007, is amended
4 20 to read as follows:

4 21 400.20 APPEAL.

4 22 The reprimand, suspension, demotion, or discharge of a
4 23 person holding civil service rights may be appealed to the
4 24 civil service commission within fourteen calendar days after
4 25 the reprimand, suspension, demotion, or discharge.

4 26 Sec. 8. Section 400.21, Code 2007, is amended to read as
4 27 follows:

4 28 400.21 NOTICE OF APPEAL.

4 29 If the appeal be taken by the person reprimanded,
4 30 suspended, demoted, or discharged, notice thereof, signed by
4 31 the appellant and specifying the ruling appealed from, shall
4 32 be filed with the clerk of commission; if by the person making
4 33 such reprimand, suspension, demotion, or discharge, such
4 34 notice shall also be served upon the person reprimanded,
4 35 suspended, demoted, or discharged.

5 1 Sec. 9. Section 400.26, Code 2007, is amended to read as
5 2 follows:

5 3 400.26 PUBLIC TRIAL.

5 4 The trial of all appeals shall be public, and the parties
5 5 may be represented by counsel or by the parties' authorized
5 6 collective bargaining representative.

5 7 Sec. 10. Section 400.27, unnumbered paragraph 2, Code
5 8 2007, is amended to read as follows:

~~5 9 The city attorney or solicitor shall be the attorney for
5 10 the commission or when requested by the commission shall
5 11 present matters concerning civil service employees to the
5 12 commission, except the commission may hire a counselor or an
5 13 attorney on a per diem basis to represent it when in the
5 14 opinion of the commission there is a conflict of interest
5 15 between the commission and the city council. The commission
5 16 shall hire or retain an attorney to represent and advise the
5 17 commission in its official duties. The counselor or attorney
5 18 hired by the commission shall not be the city attorney or
5 19 solicitor. The city shall pay the costs incurred by the
5 20 commission in employing an attorney under this section.~~

5 21 Sec. 11. NEW SECTION. 400.30A CIVIL PENALTY.

5 22 The county attorney shall enforce the provisions of this
5 23 chapter. A person who willfully acts or fails to act in a
5 24 manner tending to avoid or defeat a provision of this chapter
5 25 is, in addition to any penalty imposed under section 400.30,
5 26 subject to a civil penalty imposed by the court not to exceed
5 27 five hundred dollars for each violation. The civil penalties
5 28 paid pursuant to this section shall be deposited in the
5 29 county's general fund.

5 30 Sec. 12. NEW SECTION. 400.32 LEAVE OF ABSENCE FOR
5 31 CERTAIN EMPLOYEES.

5 32 A civil service employee who is an elected or appointed
5 33 officer of an employee organization that is the representative
5 34 of a bargaining unit or who is an elected officer or appointed
5 35 representative of a statewide fire fighter organization may
6 1 make written request to the city for a leave of absence from
6 2 regular employment for such time as necessary to attend the
6 3 meetings required by that office or position and to otherwise
6 4 perform the duties of that office or position. The city shall
6 5 grant such leave, and such leave shall be granted without any
6 6 loss of pay, net credited service, and benefits earned and
6 7 without any requirement to work extra hours to compensate for
6 8 the amount of time missed. The written request for leave of
6 9 absence shall include the length of the appointed or elected
6 10 term to be served by the employee.

6 11 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection
6 12 3, shall not apply to this Act.

6 13 EXPLANATION

6 14 This bill makes several changes to the civil service law.
6 15 The bill specifies what contracting activities of
6 16 commissioners are prohibited. The bill also changes who may
6 17 provide counsel or legal services to the commission by
6 18 requiring the use of independent counsel rather than a city
6 19 attorney.

6 20 The bill requires the names of persons administering any
6 21 appointment or promotion examination to be posted in the city
6 22 hall prior to the examination. The bill also requires an
6 23 appointing authority to consider each candidate on a list of
6 24 qualified candidates before another list may be created and
6 25 requires the use of a list of qualified candidates for
6 26 temporary appointments.

6 27 The bill prohibits retaliation against any individual based
6 28 upon the exercise of any right enumerated in Code chapter 400.
6 29 The bill specifies that the burden of proof is on the employer
6 30 to prove neglect of duty, disobedience, misconduct, or failure
6 31 to perform a duty. The bill also expands the appeal rights of
6 32 civil service employees to include reprimands and clarifies
6 33 who may represent an employee during a hearing or trial. The
6 34 bill also creates a civil penalty not to exceed \$500 for
6 35 violations of Code chapter 400.

7 1 The bill allows a civil service employee who is an elected
7 2 or appointed officer of an employee organization that is the
7 3 representative of a bargaining unit or who is an elected
7 4 officer or appointed representative of a statewide fire

7 5 fighter organization to be granted, upon written request, a
7 6 leave of absence from regular employment for such time as
7 7 necessary to attend the meetings required by that office or
7 8 position and to otherwise perform the duties of that office or
7 9 position. The leave shall be granted by the city without any
7 10 loss of pay, net credited service, and benefits earned and
7 11 without any requirement to work extra hours to compensate for
7 12 the amount of time missed.
7 13 The bill may include a state mandate as defined in Code
7 14 section 25B.3. The bill makes inapplicable Code section
7 15 25B.2, subsection 3, which would relieve a political
7 16 subdivision from complying with a state mandate if funding for
7 17 the cost of the state mandate is not provided or specified.
7 18 Therefore, political subdivisions are required to comply with
7 19 any state mandate included in the bill.
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