

# Senate File 106 - Introduced

SENATE FILE \_\_\_\_\_  
BY DANIELSON

(COMPANION TO HF 80 BY HUNTER)

Passed Senate, Date \_\_\_\_\_ Passed House, 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 1634SS 83  
6 md/rj/5

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1 1 Section 1. Section 400.1, subsection 1, Code 2009, is  
1 2 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 2009, 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 2009, 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 prepare  
2 13 and administer the examinations or may hire persons with  
2 14 expertise to do so if the commission approves the examinations  
2 15 and if the examinations apply to the position in the city for

2 16 which the applicant is taking the examination. It may also  
2 17 hire persons with expertise to consult in the preparation of  
2 18 such examinations if the persons so hired are employed to aid  
2 19 personnel of the commission in assuring that a fair  
2 20 examination is conducted. A fair examination shall explore the  
2 21 competence of the applicant in the particular field of  
2 22 examination. The names of persons approved to administer any  
2 23 examination under this section shall be posted in the city  
2 24 hall at least twenty-four hours prior to the examination.

2 25 4. If there is a certified list of qualified candidates  
2 26 for a promotional appointment, the following procedures shall  
2 27 be followed:

2 28 a. A publication stating that interviews are being  
2 29 scheduled to make a new certified list to fill a vacancy in a  
2 30 civil service promotional grade classification shall be posted  
2 31 for at least five working days before the closing date for the  
2 32 interviews in the same locations where examination notices are  
2 33 posted.

2 34 b. An employee who wishes to voluntarily demote or to  
2 35 laterally transfer into a vacancy and has previously been or  
3 1 is currently in the classification where the vacancy exists,  
3 2 shall notify the civil service commission of the employee's  
3 3 interest in the vacant position. The employee shall be added  
3 4 to the list of candidates to be interviewed and considered for  
3 5 the vacancy.

3 6 c. Each candidate on a list of qualified candidates must  
3 7 be considered by the commission before another list may be  
3 8 created.

3 9 Sec. 4. Section 400.11, unnumbered paragraph 5, Code 2009,  
3 10 is amended to read as follows:

3 11 When there is no such preferred list or certified eligible  
3 12 list, or when the eligible list shall be exhausted, the person  
3 13 or body having the appointing power may temporarily fill a  
3 14 newly created office or other vacancy only until an  
3 15 examination can be held and the names of qualified persons be  
3 16 certified by the commission, and such temporary appointments  
3 17 are hereby limited to ninety days for any one person in the  
3 18 same vacancy, but such limitation shall not apply to persons  
3 19 temporarily acting in positions regularly held by another. A  
3 20 temporary appointment to a position regularly held by another  
3 21 shall be made according to the certified eligible list. Any  
3 22 person temporarily filling a vacancy in a position of higher  
3 23 grade for twenty days or more, shall receive the salary paid  
3 24 in such higher grade.

3 25 Sec. 5. Section 400.17, unnumbered paragraphs 3 and 4,  
3 26 Code 2009, are amended to read as follows:

3 27 Employees shall not be required to be a resident of the  
3 28 city or state in which they are employed, ~~but they shall~~  
3 29 ~~become a resident of the state at the time such appointment or~~  
3 30 ~~employment begins and shall remain a resident of the state~~  
3 31 ~~during employment.~~ Cities may set reasonable maximum  
3 32 distances outside of the corporate limits of the city that  
3 33 travel time limitations applicable to police officers, fire  
3 34 fighters, and other critical municipal employees may who  
3 35 choose to live outside the corporate limits of the city.

4 1 A person shall not be appointed, promoted, discharged, or  
4 2 demoted to or from a civil service position or in any other  
4 3 way favored or discriminated against in that position because  
4 4 of political or religious opinions or affiliations, race,  
4 5 national origin, sex, or age, or in retaliation for the  
4 6 exercise of any right enumerated in this chapter. However,  
4 7 the maximum age for a police officer or fire fighter covered  
4 8 by this chapter and employed for police duty or the duty of  
4 9 fighting fires is sixty-five years of age.

4 10 Sec. 6. Section 400.18, Code 2009, is amended to read as  
4 11 follows:

4 12 400.18 REMOVAL, DEMOTION, OR SUSPENSION.

4 13 1. ~~No~~ A person holding civil service rights as provided in  
4 14 this chapter shall not be removed, reprimanded, demoted, or  
4 15 suspended arbitrarily, except as otherwise provided in this  
4 16 chapter, but may be removed, reprimanded, demoted, or  
4 17 suspended after a hearing by a majority vote of the civil  
4 18 service commission, for neglect of duty, disobedience,  
4 19 misconduct, or failure to properly perform the person's  
4 20 duties.

4 21 2. The party alleging neglect of duty, disobedience,  
4 22 misconduct, or failure to properly perform a duty shall have  
4 23 the burden of proof.

4 24 3. A person subject to a hearing has the right to be  
4 25 represented by counsel at the person's expense or by the  
4 26 person's authorized collective bargaining representative.

4 27 Sec. 7. Section 400.20, Code 2009, is amended to read as  
4 28 follows:

4 29 400.20 APPEAL.

4 30 The reprimand, suspension, demotion, or discharge of a  
4 31 person holding civil service rights may be appealed to the  
4 32 civil service commission within fourteen calendar days after  
4 33 the reprimand, suspension, demotion, or discharge.

4 34 Sec. 8. Section 400.21, Code 2009, is amended to read as  
4 35 follows:

5 1 400.21 NOTICE OF APPEAL.

5 2 If the appeal be taken by the person reprimanded,  
5 3 suspended, demoted, or discharged, notice thereof, signed by  
5 4 the appellant and specifying the ruling appealed from, shall  
5 5 be filed with the clerk of commission; if by the person making  
5 6 such reprimand, suspension, demotion, or discharge, such  
5 7 notice shall also be served upon the person reprimanded,  
5 8 suspended, demoted, or discharged.

5 9 Sec. 9. Section 400.26, Code 2009, is amended to read as  
5 10 follows:

5 11 400.26 PUBLIC TRIAL.

5 12 The trial of all appeals shall be public, and the parties  
5 13 may be represented by counsel or by the parties' authorized  
5 14 collective bargaining representative.

5 15 Sec. 10. Section 400.27, unnumbered paragraph 2, Code  
5 16 2009, is amended to read as follows:

~~5 17 The city attorney or solicitor shall be the attorney for  
5 18 the commission or when requested by the commission shall  
5 19 present matters concerning civil service employees to the  
5 20 commission, except the commission may hire a counselor or an  
5 21 attorney on a per diem basis to represent it when in the  
5 22 opinion of the commission there is a conflict of interest  
5 23 between the commission and the city council. The commission  
5 24 shall hire or retain an attorney to represent and advise the  
5 25 commission in its official duties. The counselor or attorney~~

5 26 hired by the commission shall not be the city attorney or  
5 27 solicitor. The city shall pay the costs incurred by the  
5 28 commission in employing an attorney under this section.

5 29 Sec. 11. NEW SECTION. 400.30A CIVIL PENALTY.

5 30 The county attorney shall enforce the provisions of this  
5 31 chapter. A person who willfully acts or fails to act in a  
5 32 manner tending to avoid or defeat a provision of this chapter  
5 33 is, in addition to any penalty imposed under section 400.30,  
5 34 subject to a civil penalty imposed by the court not to exceed  
5 35 five hundred dollars for each violation. The civil penalties  
6 1 paid pursuant to this section shall be deposited in the  
6 2 county's general fund.

6 3 Sec. 12. NEW SECTION. 400.32 LEAVE OF ABSENCE FOR  
6 4 CERTAIN EMPLOYEES.

6 5 A civil service employee who is an elected or appointed  
6 6 officer of an employee organization that is the representative  
6 7 of a bargaining unit or who is an elected officer or appointed  
6 8 representative of a statewide fire fighter organization may  
6 9 make written request to the city for a leave of absence from  
6 10 regular employment for such time as necessary to attend the  
6 11 meetings required by that office or position and to otherwise  
6 12 perform the duties of that office or position. The city shall  
6 13 grant such leave, and such leave shall be granted without any  
6 14 loss of pay, net credited service, and benefits earned and  
6 15 without any requirement to work extra hours to compensate for  
6 16 the amount of time missed. The written request for leave of  
6 17 absence shall include the length of the appointed or elected  
6 18 term to be served by the employee.

6 19 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
6 20 3, shall not apply to this Act.

6 21 EXPLANATION

6 22 This bill makes several changes to the civil service law.  
6 23 The bill specifies what contracting activities of  
6 24 commissioners are prohibited. The bill also changes who may  
6 25 provide counsel or legal services to the commission by  
6 26 requiring the use of independent counsel rather than a city  
6 27 attorney.

6 28 The bill requires the names of persons administering any  
6 29 appointment or promotion examination to be posted in the city  
6 30 hall prior to the examination. The bill also requires an  
6 31 appointing authority to consider each candidate on a list of  
6 32 qualified candidates before another list may be created and  
6 33 requires the use of a list of qualified candidates for  
6 34 temporary appointments.

6 35 Under current law, an employee under civil service is  
7 1 required to be a resident of the state. The bill eliminates  
7 2 the state residency requirement and the cities' authority to

7 3 set reasonable maximum distances that police officers, fire  
7 4 fighters, and other critical municipal employees may live  
7 5 outside the city. The bill instead allows cities to set  
7 6 reasonable maximum travel time limitations applicable to those  
7 7 employees who choose to live outside the city.

7 8 The bill prohibits retaliation against any individual based  
7 9 upon the exercise of any right enumerated in Code chapter 400.  
7 10 The bill specifies that the burden of proof is on the employer  
7 11 to prove neglect of duty, disobedience, misconduct, or failure  
7 12 to perform a duty. The bill also expands the appeal rights of  
7 13 civil service employees to include reprimands and clarifies  
7 14 who may represent an employee during a hearing or trial. The  
7 15 bill also creates a civil penalty not to exceed \$500 for  
7 16 violations of Code chapter 400.

7 17 The bill allows a civil service employee who is an elected  
7 18 or appointed officer of an employee organization that is the  
7 19 representative of a bargaining unit or who is an elected  
7 20 officer or appointed representative of a statewide fire  
7 21 fighter organization to be granted, upon written request, a  
7 22 leave of absence from regular employment for such time as  
7 23 necessary to attend the meetings required by that office or  
7 24 position and to otherwise perform the duties of that office or  
7 25 position. The leave shall be granted by the city without any  
7 26 loss of pay, net credited service, and benefits earned and  
7 27 without any requirement to work extra hours to compensate for  
7 28 the amount of time missed.

7 29 The bill may include a state mandate as defined in Code  
7 30 section 25B.3. The bill makes inapplicable Code section  
7 31 25B.2, subsection 3, which would relieve a political  
7 32 subdivision from complying with a state mandate if funding for  
7 33 the cost of the state mandate is not provided or specified.  
7 34 Therefore, political subdivisions are required to comply with  
7 35 any state mandate included in the bill.

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