

Senate File 231 - Introduced

SENATE FILE 231
BY COURNOYER

A BILL FOR

1 An Act relating to disciplinary action under city civil
2 service.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 400.18, subsections 1 and 3, Code 2023,
2 are amended to read as follows:

3 1. A person holding civil service rights as provided in
4 this chapter shall not be unreasonably or unjustly removed,
5 discharged, demoted, or suspended arbitrarily, but may be
6 removed, discharged, demoted, or suspended ~~due to any act or~~
7 ~~failure to act by~~ upon a finding by a preponderance of the
8 evidence that the employee committed an act or failure to act
9 that is in ~~contravention~~ violation of clearly established
10 law, ~~city or reasonable city~~ policies, or ~~standard operating~~
11 procedures, or that in the judgment of the person having the
12 appointing power as provided in ~~this chapter~~, or the chief of
13 police or chief of the fire department, is sufficient to show
14 that the employee is unsuitable or unfit for employment rules.

15 3. The city shall have the burden to prove that the act or
16 failure to act by the employee was in ~~contravention~~ violation
17 of clearly established law, or reasonable city policies, or
18 standard operating procedures, or is sufficient to show that
19 the employee is unsuitable or unfit for employment department
20 rules. For purposes of this chapter, the city shall establish
21 each element of the charges specified under section 400.22
22 by a preponderance of the evidence. The city shall have the
23 burden to prove that the punishment imposed upon the employee
24 is proportionate, reasonable, and just in the totality of the
25 circumstances.

26 Sec. 2. Section 400.19, Code 2023, is amended to read as
27 follows:

28 **400.19 Removal, discharge, demotion, or suspension of**
29 **subordinates.**

30 The person having the appointing power as provided in
31 this chapter, or the chief of police or chief of the fire
32 department, may, upon presentation of reasonable and just
33 grounds for such action to the subordinate in writing,
34 peremptorily remove, discharge, demote, or suspend a
35 subordinate then under the person's or chief's direction due

1 to any proven act or failure to act by the employee that is
2 in ~~contravention~~ violation of clearly established law, or
3 city policies, or ~~standard operating procedures~~, or that in
4 ~~the judgment of the person or chief~~ is sufficient immediately
5 detrimental to ~~show that the employee is unsuitable or unfit~~
6 for employment public.

7 Sec. 3. NEW SECTION. 400.22A Exculpatory evidence.

8 A person shall not knowingly withhold exculpatory evidence
9 from an employee subject to a written specification of charges
10 filed under section 400.22.

11 Sec. 4. Section 400.24, Code 2023, is amended to read as
12 follows:

13 **400.24 Oaths — books and papers.**

14 The presiding officer of the commission or the council, as
15 the case may be, shall have power to administer oaths in the
16 same manner and with like effect and under the same penalties
17 as in the case of magistrates exercising criminal or civil
18 jurisdiction. The council or commission shall cause subpoenas
19 to be issued for such witnesses and the production of such
20 books and papers as either party may designate. The subpoenas
21 shall be signed by the chairperson of the commission or mayor,
22 as the case may be, or by an attorney representing a party
23 before the commission.

24 Sec. 5. Section 400.26, Code 2023, is amended to read as
25 follows:

26 **400.26 Public trial.**

27 The trial of all appeals shall be public, and the parties
28 may be represented by counsel or by the parties' authorized
29 collective bargaining representative. However, upon the
30 request of the employee, the deliberations of the commission
31 shall be held in closed session.

32 Sec. 6. Section 400.27, subsections 1, 2, and 3, Code 2023,
33 are amended to read as follows:

34 1. a. The civil service commission has jurisdiction to hear
35 and determine matters involving the rights of civil service

1 employees under this chapter, and may affirm, modify, or
2 reverse any case on its merits.

3 b. If the commission determines that the city proved the
4 employee committed the charge as specified, the commission
5 shall determine whether the removal, discharge, demotion,
6 or suspension of the employee was unreasonable or unjust
7 based upon the totality of the circumstances. For the
8 purposes of this subsection, the commission shall consider
9 factors including the nature of the conduct at issue in the
10 circumstances, the proportionality of the punishment to the
11 conduct at issue, the employee's work history, whether the
12 employee reasonably could comply with the policy or rule in
13 the circumstances and whether the employee's conduct was
14 objectively reasonable in the circumstances, the employee's
15 defenses or justifications, any mitigating or aggravating
16 factors, whether the punishment is reasonably calculated to
17 correct the employee's behavior or conduct or if the punishment
18 is necessary to protect the public interest, and whether the
19 city, its employees, or the appointing authority acted in
20 accordance with the law, city policies, department rules, or
21 standard operating procedures. The commission shall only
22 consider, order, or impose discipline upon the employee for
23 charges proven by the city.

24 c. The commission shall reverse the city's decision and
25 dismiss a charge with prejudice if the city fails to meet its
26 burden of proof as to any element of the charge.

27 d. The final decision of the commission shall be based upon
28 a majority vote of the commission, except that removals shall
29 be upon a unanimous vote, made in writing and shall include
30 findings of fact and conclusions relied upon, and reasoning or
31 rationale for the decision, separately stated. The commission
32 shall render and serve its final decision upon the parties
33 within thirty days of the close of the record or trial unless
34 the parties consent to a later date in writing or on the
35 record.

1 2. a. The Except as otherwise provided in this section,
2 the city attorney or solicitor shall be the attorney for the
3 commission or when requested by the commission shall present
4 matters concerning civil service employees to the commission,
5 except the commission may hire a counselor or an attorney
6 on a per diem basis to represent it when in the opinion of
7 the commission there is a conflict of interest between the
8 commission and the city council. The counselor or attorney
9 hired by the commission shall not be the city attorney or
10 solicitor. The city shall pay the costs incurred by the
11 commission in employing an attorney under this section.

12 b. Upon the filing of a notice of appeal pursuant to
13 section 400.21, a city attorney, assistant city attorney, or
14 solicitor who represents or has represented the commission
15 shall not represent the city or its officers or employees in
16 an appeal pending before the commission unless the employee
17 waives the conflict of interest in writing or on the record.
18 If the commission is required to hire a counselor or attorney
19 that is not a city attorney, assistant city attorney, or
20 solicitor as provided in this subsection, the city shall pay
21 the costs incurred by the commission in employing an attorney
22 or counselor under this section.

23 c. An attorney or counselor who represents the commission
24 in an appeal before the commission shall be fair and impartial
25 toward the parties. The attorney representing the commission
26 may provide advice and counsel to the commission on matters
27 before it and assist the commission with its proceedings and
28 trial as may be necessary or requested.

29 3. The city or any civil service employee shall have a
30 right to appeal to the district court from the final ruling or
31 decision of the civil service commission. The appeal shall be
32 taken within thirty days from the filing service of the formal
33 decision of the commission. The district court of the county
34 in which the city is located shall have full jurisdiction
35 of the appeal. The scope of review for the appeal shall be

1 ~~limited to a trial de novo appellate review without a trial or~~
2 ~~additional evidence.~~

3 Sec. 7. Section 400.27, Code 2023, is amended by adding the
4 following new subsections:

5 NEW SUBSECTION. 2A. The commission shall provide for the
6 production of evidence and exchange of exhibits in advance of
7 trial. The city shall mark its exhibits with numbers. The
8 employee shall mark its exhibits with letters.

9 NEW SUBSECTION. 6. In addition to any other remedies
10 and relief, upon application, the district court may award a
11 prevailing employee reasonable attorney fees, expert fees, and
12 costs and expenses.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 This bill relates to procedures governing disciplinary
17 action taken against a city employee holding civil service
18 rights as provided by Code chapter 400.

19 The bill strikes language providing that an employee holding
20 civil service rights shall not be subject to disciplinary
21 action arbitrarily, but may be subject to disciplinary action
22 due to any act or failure to act by the employee that is in
23 contravention of law, city policies, or standard operating
24 procedures, or that in the judgment of the person imposing
25 disciplinary action, is sufficient to show that the employee
26 is unsuitable or unfit for employment. The bill instead
27 provides that an employee holding civil service rights shall
28 not be unreasonably or unjustly subject to disciplinary action,
29 but may be subject to disciplinary action upon a finding by
30 a preponderance of the evidence that the employee committed
31 an act or failure to act that is in violation of clearly
32 established law or reasonable city policies or department
33 rules.

34 The bill strikes language allowing an appointing authority
35 to peremptorily impose disciplinary action on a subordinate,

1 upon presentation of grounds for such action to the
2 subordinate, due to any act or failure to act by the employee
3 that is in contravention of law, city policies, or standard
4 operating procedures, or that in the judgment of the authority
5 is sufficient to show that the employee is unsuitable or
6 unfit for employment. The bill instead allows an appointing
7 authority to peremptorily impose disciplinary action on a
8 subordinate, upon presentation of reasonable and just grounds
9 for such action to the subordinate, due to any proven act or
10 failure to act by the employee that is in violation of clearly
11 established law or city policies or is immediately detrimental
12 to the public.

13 The bill includes various changes relating to appeals of
14 decisions regarding disciplinary action to city civil service
15 commissions. When an employee is charged with a violation, the
16 bill provides that the city shall establish each element of the
17 charges by a preponderance of the evidence and shall have the
18 burden to prove that the punishment imposed upon the employee
19 is proportionate, reasonable, and just in the totality of the
20 circumstances. The bill prohibits a person from knowingly
21 withholding exculpatory evidence from an employee so charged.
22 The bill permits an attorney representing a party in such an
23 appeal to sign a subpoena. The bill authorizes the commission
24 to deliberate in closed session upon request of the employee.
25 The bill requires the commission to provide for the production
26 of evidence and exchange of exhibits in advance of trial.

27 If the city civil commission determines that the city proved
28 the employee committed the charge as specified, the bill
29 requires the commission to determine whether the disciplinary
30 action was unreasonable or unjust based upon the totality of
31 the circumstances based on factors including those specified
32 in the bill. The bill provides that the commission shall
33 only consider, order, or impose discipline upon the employee
34 for charges proven by the city. The bill provides that the
35 commission shall reverse the city's decision and dismiss a

1 charge with prejudice if the city fails to meet its burden
2 of proof as to any element of the charge. The bill provides
3 that the final decision of the commission shall be based upon
4 a majority vote of the commission, except that removals shall
5 be upon a unanimous vote, made in writing and shall include
6 findings of fact and conclusions relied upon, and reasoning
7 or rationale for the decision, separately stated. The bill
8 requires the commission to render and serve its final decision
9 upon the parties within 30 days of the close of the record or
10 trial unless the parties consent to a later date in writing or
11 on the record.

12 The bill provides procedures for counsel representing the
13 city in an appeal to a city civil services commission.

14 The bill strikes language providing that the scope of review
15 for an appeal of the decision of the city civil service to
16 district court shall be limited to de novo appellate review
17 without a trial or additional evidence. The bill instead
18 provides that the scope of review shall be a trial de novo.
19 The bill provides that in addition to any other remedies and
20 relief, upon application, the district court may award a
21 prevailing employee reasonable attorney fees, expert fees, and
22 costs and expenses.