SENATE FILE 2325
BY COMMITTEE ON LOCAL GOVERNMENT

(SUCCESSOR TO SF 457)
(SUCCESSOR TO SF 231)

(As Amended and Passed by the Senate March 4, 2024)

= New Language by the Senate

A BILL FOR

An Act relating to city civil service employees and related procedures and including effective date provisions.

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

Section 1. Section 364.3, Code 2024, is amended by adding the following new subsection:

NEW SUBSECTION. 18. A city with a civil service commission established under chapter 400 shall not adopt, enforce, or otherwise administer an ordinance, motion, resolution, or amendment, or use any other means, to establish a board or other entity for the purpose of citizen review of the conduct of police officers.

Sec. 2. Section 400.1, subsection 1, Code 2024, is amended to read as follows:

1. In cities having a population of eight thousand or over and having a paid fire department or a paid police department, the mayor, one year after a regular city election, with the approval of the council, shall appoint three civil service commissioners. The mayor shall publish notice of the names of persons selected for appointment no less than thirty days prior to a vote by the city council. Commissioners shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the third year, and one until the first Monday in April of the fourth year after such appointment, whose successors shall be appointed for a term of four years. In cities having a population of more than ~~seventy~~ fifty thousand, the city council ~~may~~ shall establish, by ordinance, the number of civil service commissioners at not less than ~~three~~ five but not more than seven.

Sec. 3. Section 400.18, subsections 1 and 3, Code 2024, are amended to read as follows:

1. A person holding civil service rights as provided in this chapter shall ~~not~~ only be removed, discharged, demoted, or suspended ~~arbitrarily, but may be removed, discharged, demoted, or suspended due to any act or failure to act by~~ with just cause and upon a finding by a preponderance of the evidence that an act or failure to act by the employee ~~that~~ is in ~~contravention~~ violation of law, city policies, or ~~standard operating procedures, or that in the judgment of the person~~

~~having the appointing power as provided in this chapter, or the chief of police or chief of the fire~~ department~~, is sufficient to show that the employee is unsuitable or unfit for employment~~ rules, or that the employee is physically or mentally unfit as determined under guidelines established pursuant to section 400.8A. This subsection shall not be construed to modify the rights, requirements, or procedures provided in section 400.8A or other rights, requirements, or procedures provided by law.

3. The city shall have the burden to prove that the act or failure to act by the employee was in ~~contravention~~ violation of law, city policies, or ~~standard operating procedures, or is sufficient to show that the employee is unsuitable or unfit for employment~~ department rules. For purposes of this chapter, the city shall establish each element of the charges specified under section 400.22 by a preponderance of the evidence. The city shall have the burden to prove that the punishment imposed upon the employee is proportionate, reasonable, and just in the totality of the circumstances under the factors provided in section 400.27, subsection 1, paragraph *"b"*.

Sec. 4. Section 400.19, Code 2024, is amended to read as follows:

400.19 Removal, discharge, demotion, or suspension of subordinates.

The person having the appointing power as provided in this chapter, or the chief of police or chief of the fire department, may, upon presentation of reasonable and just grounds for such action to the subordinate in writing, peremptorily remove, discharge, demote, or suspend a subordinate then under the person's or chief's direction due to any act or failure to act by the employee that is in ~~contravention~~ violation of law, city policies, or ~~standard operating procedures, or that in the judgment of the person or chief~~ department rules, and is ~~sufficient~~ deemed reasonably anticipated to be detrimental to ~~show that~~ the ~~employee is unsuitable or unfit for employment~~ public. This section

shall not be construed to modify the rights, requirements, or procedures provided in section 400.8A or other rights, requirements, or procedures provided by law.

Sec. 5. NEW SECTION. **400.22A Exculpatory evidence.**

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

Sec. 6. Section 400.23, Code 2024, is amended to read as follows:

400.23 Time and place of hearing.

Within ten days after such specifications are filed, the commission shall fix the time for a hearing, which shall be not less than five nor more than twenty days thereafter, and the place for hearing the appeal ~~and~~. The commission shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed. Hearings under this section shall be held during normal city business hours unless otherwise agreed to by the parties and the commission. The commission in its discretion may grant a continuance or stay of a hearing upon request.

Sec. 7. Section 400.24, Code 2024, is amended to read as follows:

400.24 Oaths — books and papers — procedures.

1. The presiding officer of the commission or the council, as the case may be, shall have power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction.

2. The council or commission shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either party may designate. Issuance of subpoenas shall be consistent with the Iowa rules of civil procedure. The subpoenas shall be signed by the chairperson of the commission or mayor, as the case may be, or by an attorney representing a party before the commission. The council or

commission shall provide a copy of each subpoena to both parties upon issuance. A party, or an attorney representing a party, shall provide copies of any material produced in response to a subpoena to the opposing party upon receipt of such material.

3. The parties shall have the right to engage in discovery including the filing of interrogatories, requests for production of documents, and the taking of depositions. The commission shall hear and render rulings on any discovery disputes consistent with the Iowa rules of civil procedure.

Sec. 8. Section 400.26, Code 2024, is amended to read as follows:

400.26 Public trial.

The trial of all appeals shall be public, and the parties may be represented by counsel or by the parties' authorized collective bargaining representative. However, upon the request of the employee, the deliberations of the commission in a city with a population of less than two hundred thousand shall be held in closed session.

Sec. 9. Section 400.27, subsections 1, 2, and 3, Code 2024, are amended to read as follows:

1. *a.* The civil service commission has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter, and may affirm, modify, or reverse any case on its merits.

b. If the commission determines that the city proved the employee committed the charge as specified, the commission shall determine whether the removal, discharge, demotion, or suspension of the employee was with just cause based upon the totality of the circumstances. For the purposes of this subsection, the commission shall consider factors including the nature of the conduct at issue in the circumstances, the proportionality of the punishment to the conduct at issue, the employee's work history, whether the employee reasonably could comply with the policy or rule in the circumstances and

whether the employee's conduct was objectively reasonable in the circumstances, the employee's defenses or justifications, any mitigating or aggravating factors, whether the punishment is reasonably calculated to correct the employee's behavior or conduct, if the punishment is necessary to protect the public interest, whether the city, its employees, or the appointing authority acted in accordance with the law, city policies, department rules, or standard operating procedures, or if the policy failed in the circumstances. The commission shall only consider, order, or impose discipline upon the employee for charges proven by the city.

c. The commission shall reverse the city's decision and dismiss a specific charge with prejudice if the city fails to meet its burden of proof as to that charge.

d. The final decision of the commission shall be based upon a majority vote of the commission, shall be made in writing, and shall include findings of fact and conclusions relied upon, and reasoning or rationale for the decision, separately stated. The commission shall render and serve its final decision upon the parties by certified mail within thirty days of the close of the record or trial unless the parties consent to a later date in writing or on the record. The final decision may be served upon an employee by electronic mail with the consent of the employee.

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

b. Upon the filing of a notice of appeal pursuant to section 400.21, a city attorney, assistant city attorney, or solicitor who represents or has represented the commission shall not represent the city or its officers or employees in an appeal pending before the commission unless the employee waives the conflict of interest in writing or on the record. If the commission is required to hire a counselor or attorney that is not a city attorney, assistant city attorney, or solicitor as provided in this subsection, the city shall pay the costs incurred by the commission in employing a counselor or attorney under this section, and the commission shall independently seek and retain such an attorney.

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

3. The city or any civil service employee shall have a right to appeal to the district court from the final ruling or decision of the civil service commission. The appeal shall be taken within thirty days from the ~~filing~~ service of the formal decision of the commission. The district court of the county in which the city is located shall have full jurisdiction of the appeal. The scope of review for the appeal shall be ~~limited to~~ a trial de novo ~~appellate review without a trial or additional evidence~~.

Sec. 10. Section 400.27, Code 2024, is amended by adding the following new subsections:

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

NEW SUBSECTION. 6. In addition to any other remedies and relief, upon application, the district court may award an

employee who substantially prevails reasonable attorney fees, expert fees, and costs and expenses. The city civil service employee shall bear the burden to prove that the employee substantially prevailed in the judgment.

Sec. 11. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.