

LEGISLATIVE BILL 995

Approved by the Governor March 29, 1974

Introduced by Government, Military and Veterans Affairs Committee, Chambers, 11, Chmn.; Barnett, 26; Richendifer, 16; Carpenter, 48; Fellman, 4; Stull, 49; DeCamp, 40

AN ACT relating to counties; to provide a civil service system as prescribed for employees of counties having a population of one hundred fifty thousand to three hundred thousand inhabitants; to define terms; to provide for duties and powers; to provide penalties; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. The general purpose of this act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, fringe benefits, discharge and other related activities. All appointments and promotions under the provisions of this act shall be made based on merit and fitness.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Appointing authority shall mean elected officials and appointed department directors authorized to make appointments in the county service;

(2) Board of county commissioners shall mean the board of commissioners of any county with a population of one hundred fifty thousand to three hundred thousand inhabitants;

(3) Classified service shall mean the positions in the county service to which this act applies;

(4) County personnel officer shall mean the employee designated by the board of county commissioners to administer this act;

(5) Department shall mean a major functional unit of the county government headed by an elected official or

established by the board of county commissioners;

(6) Deputy shall mean an individual who serves as the first assistant to and at the pleasure of an elected official; and

(7) Elected official shall mean an officer elected by the popular vote of the people and known as the superintendent of schools, county attorney, public defender, sheriff, treasurer, clerk of the district court, register of deeds, county clerk, assessor, and the surveyor.

Sec. 3. The county service shall be divided into the classified service and the unclassified service. All officers and positions of the county shall be in the classified service unless specifically designated as being in the unclassified service established by this act. All county employees who have permanent status under any other act prior to the passage of this act shall have status under the provisions of this act without further qualification. Positions in the unclassified service shall not be governed by the provisions of this act and shall include the following:

(1) County officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

(2) The county personnel officer and the administrative assistant to the board of county commissioners;

(3) Bailiffs;

(4) Department heads and one principal assistant or deputy for each county department;

(5) Members of boards and commissions appointed by the board of county commissioners;

(6) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the board of county commissioners;

(7) Attorneys;

(8) Employees of the division of public health and welfare and civil defense who are covered by the State Merit System; and

(9) Deputy sheriffs.

Nothing in this act shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

Sec. 4. There is hereby created a personnel office in the office of the board of county commissioners, the executive head of which shall be the county personnel officer. In such office there shall be a personnel policy board consisting of five members with powers and duties provided in this act. The board of county commissioners shall make appropriations from the general fund to meet the estimated costs of administering the provisions of this act.

Sec. 5. (1) The members of the personnel policy board shall be persons in sympathy with the application of merit principles to public employment and who, except for one member, are not otherwise employed by the county. No member shall hold during his term, or shall have held for a period of one year prior thereto, any political office or a position as officer or employee of a political organization.

(2) Two members of the board shall be appointed by the board of county commissioners and two members shall be appointed by the elected department heads. One member shall be appointed by classified employees who are covered by the county personnel system.

(3) The first appointments made to the personnel policy board shall be for one, two, three, four, and five years. The board of county commissioners shall initially appoint members for terms of one and five years. The elected department heads shall initially appoint members for terms of two and four years. The classified employees who are covered by the county personnel system shall initially appoint a member for a term of three years. Thereafter, each member shall be appointed in the same manner for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term. Each member of the board shall hold office until his successor is appointed and qualified.

(4) The board of county commissioners and elected officials may remove any member of the personnel policy board for neglect of duty or misconduct in office, after first giving him a copy of the reasons for removal and providing for the member to be heard publicly before the

commissioners and elected officials. A copy of the charges and a transcript of the record of the hearing shall be filed with the county clerk.

(5) The personnel policy board shall elect a chairman from among its members. The board shall meet at such time and place as shall be specified by call of the chairman or the county personnel officer. At least one meeting shall be held quarterly. Three members shall constitute a quorum for the transaction of business. Board members shall serve without compensation.

Sec. 6. The powers and duties of the personnel policy board shall be:

(1) To review and make recommendations to the board of county commissioners on the personnel rules and regulations and any amendments thereto prior to the approval by the commissioners;

(2) To advise and assist the personnel officer on matters of personnel policy, administration and practice;

(3) To cooperate with and advise the personnel officer in fostering interest and cooperation of institutions of learning and civic, professional and employee organizations in the improvement of personnel standards and the development of high public regard for the county as an employer and for careers in the county service;

(4) To require the personnel officer to make or to make on its own initiative any investigation which it may consider necessary concerning the management of personnel in the county service;

(5) To review any grievance or case of disciplinary action of a classified service employee when appealed by such employee in accordance with approved personnel rules and regulations and issue a determination that is binding on all parties concerned;

(6) To make annual reports and recommendations to the board of county commissioners; and

(7) To perform such other duties as may be expressly set forth in this act and in the regulations adopted pursuant thereto.

Sec. 7. The board of county commissioners shall appoint a county personnel officer who shall be a person experienced in the field of personnel administration and in known sympathy with the application of merit

principles in public employment.

Sec. 8. In addition to other duties imposed upon him by or pursuant to this act, it shall be the duty of the county personnel officer:

(1) To apply and carry out the provisions of this act and the rules and regulations adopted thereunder;

(2) To attend meetings of the personnel policy board and to act as its secretary and keep minutes of its proceedings;

(3) To establish and maintain a roster of all employees in the classified service, in which there shall be set forth as to each employee the class title, pay or status, and other pertinent data;

(4) To appoint such employees of his office and such experts and special assistants as may be necessary to carry out effectively the provisions of this act;

(5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling and welfare;

(6) To encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments and institutions; and

(7) To perform such other lawful acts as he may consider necessary or desirable to carry out the purposes and provisions of this act.

Sec. 9. The county personnel officer shall, with the assistance of two advisory groups, one of classified employees and one of department heads, prepare and submit to the personnel policy board proposed personnel rules and regulations for the classified service. He shall give reasonable notice thereof to the heads of all agencies, departments, county employee associations, and institutions affected thereby, and they shall be given an opportunity, upon request, to appear before the board and present their views thereon. The personnel policy board shall submit the rules and regulations for adoption or amendment and adoption by resolution of the board of county commissioners. Amendments thereto shall be made in the same manner. The rules and regulations shall provide:

(1) For a single integrated classification plan covering all positions in the county service except those expressly exempt from the provisions of this act, which shall group all positions into defined classes containing a descriptive class title and a code identifying each class, and which shall be based on similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required and the same schedule of pay may be equitably applied to all positions in the same class. After the classification plan has been approved by the personnel policy board, the county personnel officer shall be responsible for the administration and maintenance of the plan and for the allocation of each classified position. Any employee affected by the allocation of a position to a class shall, upon request, be given a reasonable opportunity to be heard thereon by the personnel policy board who shall issue an advisory opinion to the personnel officer;

(2) For a compensation plan for all employees in the classified service, comprising salary schedules, hours of work, premium payments, special allowances, and fringe benefits, considering the amount of money available, the prevailing rates of pay in government and private employment, the cost of living, the level of each class of position in the classification plan, and other relevant factors. Initial, intervening, and maximum rates of pay for each class shall be established to provide for steps in salary advancement without change of duty in recognition of demonstrated quality and length of service. The compensation plan and amendments thereto shall be adopted in the manner prescribed for rules and regulations and shall in no way limit the authority of the board of county commissioners relative to appropriations for salary and wage expenditures;

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. The rules and regulations shall provide for the public announcement of the holding of examinations and shall authorize the personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. Examinations may be assembled or unassembled and may include various job-related examining techniques, such as rating training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measures of ability to perform the duties of the position. Examinations shall be scored objectively and employment registers shall be established in the order of final score. Certification of eligibility for appointment to vacancies shall be in

accordance with a formula which limits selection by the hiring department from among the highest ranking available and eligible candidates, but which also permits selective certification under appropriate conditions as prescribed in the rules and regulations;

(4) For promotions which shall give appropriate consideration to examinations and to record of performance, seniority and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service, and preference may be given to employees within the department in which the vacancy occurs;

(5) For the rejection of candidates who fail to comply with reasonable requirements of the personnel officer in regard to such factors as physical conditions, training and experience or who have been guilty of infamous or disgraceful conduct, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination;

(6) Prohibiting disqualification of any person from taking an examination, from promotion or from holding a position because of race, sex, except where it constitutes a bona fide occupational qualification, or national origin, physical disabilities, age, political or religious opinions or affiliations, or other factors which have no bearing upon the individual's fitness to hold the position;

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete, and during which period a probationer may be separated from his position without the right of appeal or hearing except as provided in section 15 of this act. After a probationer has been separated, he may again be placed on the eligible list at the discretion of the personnel officer. The rules shall provide that a probationer shall be dropped from the payroll at the expiration of his probationary period if, within ten days prior thereto, the appointing authority has notified the personnel officer in writing that the services of the employee have been unsatisfactory;

(8) When an employee has been promoted but fails to satisfactorily perform the duties of the new position during the probationary period, he shall be returned to a position comparable to that held immediately prior to promotion at the current salary of such position;

(9) For temporary or seasonal appointments of limited terms of not to exceed one year;

(10) For part-time appointment where the employee accrues benefits of full-time employment on a basis proportional to the time worked;

(11) For emergency employment for not more than thirty days with or without examination, with the consent of the county personnel officer and department head;

(12) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed;

(13) For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities and salary ranges;

(14) For layoff by reason of lack of funds or work or abolition of the position, or material change in duties or organization, for the layoff of nontenured employees first, and for reemployment of permanent employees so laid off, giving consideration in both layoff and reemployment to performance record and seniority in service;

(15) For establishment of a plan for resolving employee grievances and complaints;

(16) For hours of work, holidays and attendance regulations in the various classes of positions in the classified service, and for annual, sick and special leaves of absence, with or without pay, or at reduced pay;

(17) For the development of employee morale, safety and training programs;

(18) For a procedure whereby an appointing authority may suspend, reduce, demote or dismiss an employee for misconduct, inefficiency, incompetence, insubordination, malfeasance or other unfitness to render effective service and for the investigation and public hearing of appeals of such suspended, reduced, demoted or dismissed employee;

(19) For granting of leave without pay to a permanent employee to accept a position in the unclassified service, and for his return to a position comparable to that formerly held in the classified service at the conclusion of such service;

(20) For regulation covering political activity of employees in the classified service; and

(21) For other regulations not inconsistent with this act and which may be necessary for its effective implementation.

Sec. 10. (1) No county personnel, fiscal or other officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the county personnel officer or his authorized agent, in the manner he may prescribe, that the persons named therein have been appointed and employed in accordance with the provisions of this act and the rules and regulations adopted hereunder.

(2) The county personnel officer may, for proper cause, withhold certification from a payroll any specific item or items thereon. The personnel officer shall provide that certification of payrolls be made each year and that such certification shall remain in effect except in the case of an officer or employee whose status has changed after the last certification of his payroll, in which case no voucher for payment of salary to such officer or employee shall be issued or payment of salary made without further certification by the personnel officer.

Sec. 11. (1) Any county subject to this act may enter into reciprocal agreements, upon such terms as may be agreed upon, for the use of equipment, materials, facilities, and services with any public agency or body for purposes deemed of benefit to the county personnel system.

(2) The county personnel officer, with the approval of the board of county commissioners, may cooperate with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, training personnel, establishing lists from which eligible candidates shall be certified for appointment and for the interchange of personnel and their benefits.

Sec. 12. (1) An employee in the classified service who has completed his probationary period shall have permanent tenure until he resigns voluntarily or is separated in accordance with the rules and regulations governing retirement, dismissal or layoff.

(2) An employee in the classified service with a probationary, provisional, temporary or emergency appointment shall have no tenure under that appointment and may be separated from employment by his appointing authority without any right of appeal except as provided in section 15 of this act.

Sec. 13. Veterans' preference shall be granted to all applicants who are otherwise eligible for employment and who request such preference on their applications. In order to receive preference, the veteran must submit a copy of his discharge papers and, for disability credit, proof from the United States Veterans' Administration that the disability is at least ten per cent. To the passing score of veteran candidates, ten points shall be added for a disabled veteran and five points for all other veterans.

Sec. 14. (1) An employee holding a position in the classified service for six months or more immediately prior to the effective date of this act shall, upon the recommendation of the head of the agency in which he is employed, be continued in his position in the classified service without examination and shall acquire tenure. The salary of any such employee shall not be reduced as a result of the adoption of the classification plan or the compensation plan.

(2) An employee holding a position in the classified service for less than six months immediately prior to the effective date of this act may, upon the recommendation of the head of the agency in which he is employed, be continued in his position and have provisional status in the classified service until an examination for the position he occupies is offered. He shall then be admitted to the examination and if he passes the same he may be continued in his position in the classified service. If he does not pass the examination he shall be dismissed from his position within thirty days after a list of eligible candidates has been established for the position.

(3) Within thirty days after the effective date of this act, the head of every agency shall submit a list of the employees in each of the categories described in subsections (1) and (2) of this section, together with his recommendation, to the personnel officer.

Sec. 15. (1) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race,

national origin or other nonmerit factors shall be prohibited. Discrimination on the basis of age or sex or physical disability shall be prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration. The rules and regulations shall provide for appeals in cases of alleged discrimination to the personnel policy board whose determination shall be binding upon a finding of discrimination.

(2) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provision of this act or in any manner commit or attempt to commit any fraud preventing the impartial execution of this act and the rules and regulations promulgated pursuant to this act.

(3) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(4) No employee of the personnel office, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this act, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any persons with respect to employment in the classified service.

Sec. 16. (1) Whenever federal merit standards or the federal Hatch Act provisions are applicable to programs, the personnel policy board shall take such action as is necessary to assure that all personnel practices in those programs are in accordance with federal regulations, and those practices found not to be in compliance with such regulations shall not be implemented in those programs.

Sec. 17. Any person who willfully violates any provision of this act or of the rules and regulations adopted under this act shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both so fined and imprisoned.

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Sec. 18. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.