

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 637

Introduced by Vargas, 7.

Read first time January 20, 2021

Committee:

1 A BILL FOR AN ACT relating to public health; to amend sections 23-174.10,
2 71-1623, 71-1631, 71-1632, and 71-1635, Reissue Revised Statutes of
3 Nebraska, and sections 17-121 and 17-208, Revised Statutes
4 Cumulative Supplement, 2020; to change and eliminate powers of
5 certain cities and villages; to change provisions relating to the
6 authority of certain local boards of health to control contagious
7 diseases; to eliminate certain review and approval powers of the
8 Department of Health and Human Services relating to rules and
9 regulations of local boards of health; to eliminate certain local
10 health director powers as prescribed; to provide county or district
11 health departments with exclusive powers to control contagious or
12 infectious disease; to eliminate boards of health for cities of the
13 first class; to harmonize provisions; to repeal the original
14 sections; and to outright repeal section 16-238, Revised Statutes
15 Cumulative Supplement, 2020.

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

1 Section 1. Section 17-121, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 17-121 ~~(1) A city of the second class shall have the power to make~~
4 ~~regulations to prevent the introduction and spread of contagious,~~
5 ~~infectious, or malignant diseases into the city, to make quarantine laws~~
6 ~~for that purpose, and to enforce such regulations.~~

7 (1) ~~(2)~~ In cities of the second class with a commission plan of
8 government as provided in the Municipal Commission Plan of Government Act
9 and cities of the second class with a city manager plan of government as
10 provided in the City Manager Plan of Government Act, a board of health
11 ~~may shall~~ be created consisting of five members: The mayor, who shall be
12 chairperson, and four other members. One member shall be a physician or
13 health care provider, if one can be found who is willing to serve. Such
14 physician or health care provider, if appointed, shall be the board's
15 medical advisor. If the city manager has appointed a chief of police, the
16 chief of police shall serve on the board as secretary ~~and quarantine~~
17 ~~officer.~~

18 (2) ~~(3)~~ In all other cities of the second class, a board of health
19 ~~may shall~~ be created consisting of four members: The mayor, who shall be
20 chairperson, the president of the city council, and two other members.
21 One member shall be a physician or health care provider, if one can be
22 found who is willing to serve. Such physician or health care provider, if
23 appointed, shall be the board's medical advisor. If the mayor has
24 appointed a chief of police, the chief of police shall serve on the board
25 as secretary ~~and quarantine officer.~~

26 (3) ~~(4)~~ A majority of the board of health shall constitute a quorum
27 and ~~may shall~~ enact rules and regulations, which shall have the force and
28 effect of law, to safeguard the health of the people of such city, may
29 enforce them, and may provide fines and punishments for the violation of
30 any such rules and regulations. The board of health shall have power to
31 ~~and shall~~ make all necessary rules and regulations relating to matters of

1 sanitation of such city, including the removal of dead animals, the
2 sanitary condition of the streets, alleys, vacant grounds, stockyards,
3 wells, cisterns, privies, waterclosets, cesspools, and all buildings and
4 places not specified where filth, nuisances, or offensive matter is kept
5 or is liable to or does accumulate. The board of health may regulate,
6 suppress, and prevent the occurrence of nuisances and enforce all laws of
7 the state and ordinances of the city relating to nuisances or to matters
8 of sanitation of such city. The board of health shall also have control
9 of hospitals, dispensaries, places for treatment of sick, and related
10 matters under such restrictions and provisions as may be provided by
11 ordinance of such city.

12 Sec. 2. Section 17-208, Revised Statutes Cumulative Supplement,
13 2020, is amended to read:

14 17-208 (1) The village board of trustees may appoint a village
15 clerk, treasurer, attorney, engineer, overseer of the streets, and chief
16 of police and other such officers as shall be required by ordinance or
17 otherwise required by law.

18 (2)(a) The village chief of police or any other police officer may
19 appeal to the village board of trustees his or her removal, demotion, or
20 suspension with or without pay. After a hearing, the village board of
21 trustees may uphold, reverse, or modify the action.

22 (b) The village board of trustees shall by ordinance adopt rules and
23 regulations governing the removal, demotion, or suspension with or
24 without pay of any police officer, including the village chief of police.
25 The ordinance shall include a procedure for such removal, demotion, or
26 suspension with or without pay of any police officer, including the
27 village chief of police, upon the written accusation of the village chief
28 of police, the chairperson of the village board of trustees, or any
29 citizen or taxpayer. The village board of trustees shall establish by
30 ordinance procedures for acting upon such written accusation, including:
31 (i) Provisions for giving notice and a copy of the written accusation to

1 the police officer; (ii) the police officer's right to have an attorney
2 or representative retained by the police officer present with him or her
3 at all hearings or proceedings regarding the written accusation; (iii)
4 the right of the police officer or his or her attorney or representative
5 retained by the police officer to be heard and present evidence; and (iv)
6 the right of the police officer as well as the individual imposing the
7 action or their respective attorneys or representatives to record all
8 hearings or proceedings regarding the written accusation. The ordinance
9 shall also include a procedure for making application for an appeal,
10 specifications on the period of time within which such application shall
11 be made, and provisions on the manner in which the appeals hearing shall
12 be conducted. Both the police officer and the individual imposing the
13 action or their respective attorneys or representatives shall have the
14 right at the hearing to be heard and to present evidence to the village
15 board of trustees for its consideration. Not later than thirty days
16 following the adjournment of the meeting at which the hearing was held,
17 the village board of trustees shall vote to uphold, reverse, or modify
18 the action. The failure of the village board of trustees to act within
19 thirty days or the failure of a majority of the elected board members to
20 vote to reverse or modify the action shall be construed as a vote to
21 uphold the action. The decision of the village board of trustees shall be
22 based upon its determination that, under the facts and evidence presented
23 at the hearing, the action was necessary for the proper management and
24 the effective operation of the police department in the performance of
25 its duties under the statutes of the State of Nebraska. Nothing in this
26 section shall be construed to prevent the preemptory suspension or
27 immediate removal from duty of an officer by the appropriate authority,
28 pending the hearing authorized by this section, in cases of gross
29 misconduct, neglect of duty, or disobedience of orders.

30 (c) This subsection does not apply to a police officer during his or
31 her probationary period.

1 (3) The village board of trustees may shall also appoint a board of
2 health consisting of three members: The chairperson of the village board
3 of trustees, who shall be chairperson, and two other members. One member
4 shall be a physician or health care provider, if one can be found who is
5 willing to serve. Such physician or health care provider, if appointed,
6 shall be the medical advisor to the board of health. If the village board
7 of trustees has appointed a chief of police, the chief of police may be
8 appointed to the board of health and serve as secretary ~~and quarantine~~
9 ~~officer~~. A majority of the board of health shall constitute a quorum and
10 may shall enact rules and regulations, which shall have the force and
11 effect of law, to safeguard the health of the people of such village and
12 prevent nuisances and unsanitary conditions. The board of health shall
13 enforce any such rules and regulations and provide fines and punishments
14 for violations.

15 (4) The village clerk, treasurer, attorney, engineer, overseer of
16 the streets, members of the board of health, and other appointed
17 officers, except regular police officers, shall hold office for one year
18 unless removed by the chairperson of the village board of trustees with
19 the advice and consent of the village board of trustees.

20 Sec. 3. Section 23-174.10, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 23-174.10 In any county which has adopted county zoning regulations,
23 the county board, by resolution, may make regulations as may be necessary
24 or expedient to promote the public health, safety, and welfare, including
25 regulations to prevent the introduction or spread of contagious,
26 infectious, or malignant diseases; may ~~to~~ provide rules for the
27 prevention, abatement, and removal of nuisances, including the pollution
28 of air and water; and may make and prescribe regulations for the
29 construction, location, and keeping in order of all slaughterhouses,
30 stockyards, warehouses, sheds, stables, barns, commercial feedlots,
31 dairies, junk and salvage yards, or other places where offensive matter

1 is kept, or is likely to accumulate. Such regulations shall be not
2 inconsistent with the general laws of the state and shall apply to all of
3 the county except within the limits of any incorporated city or village,
4 and except within the unincorporated area where a city or village has
5 been granted zoning jurisdiction and is exercising such jurisdiction.

6 Sec. 4. Section 71-1623, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 71-1623 Sections 71-1601 to 71-1625 shall vest in each health
9 district the powers heretofore granted to other governmental subdivisions
10 by all acts covering the same subject matter, and particularly by the
11 pertinent parts of subdivisions (3) and (28) of section 14-102 and
12 sections 14-101, 14-103, 14-219, 14-501, 15-201, 15-235, 15-236, 15-237,
13 16-201, 16-231, ~~16-238~~, 16-239, 16-308, 17-114, 17-121, 17-122, 17-207,
14 17-208, 18-1901, 19-501, 23-104, 23-105, 68-104, 68-114, 71-501, 71-503,
15 and 79-526. It is not intended to repeal nor to amend any of the statutes
16 listed in this section or any portion of them, but to suspend the
17 exercise of the powers therein granted during the period that a health
18 district is actually functioning so far as any governmental subdivision
19 is concerned that may be within the county containing such health
20 district.

21 Sec. 5. Section 71-1631, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 71-1631 Except as provided in subsection (4) of section 71-1630, the
24 board of health of each county, district, or city-county health
25 department organized under sections 71-1626 to 71-1636 shall, immediately
26 after appointment, meet and organize by the election of one of its own
27 members as president, one as vice president, and another as secretary
28 and, either from its own members or otherwise, a treasurer and shall have
29 the power set forth in this section. The board may elect such other
30 officers as it may deem necessary and may adopt and promulgate such rules
31 and regulations for its own guidance and for the government of such

1 health department as may be necessary, not inconsistent with sections
2 71-1626 to 71-1636. The board of health shall, with the approval of the
3 county board and the municipality, whenever a city is a party in such a
4 city-county health department:

5 (1) Select the health director of such department who shall be (a)
6 well-trained in public health work though he or she need not be a
7 graduate of an accredited medical school, but if he or she is not such a
8 graduate, he or she shall be assisted at least part time by at least one
9 medical consultant who shall be a licensed physician, (b) qualified in
10 accordance with the state personnel system, and (c) approved by the
11 Department of Health and Human Services;

12 (2) Hold an annual meeting each year, at which meeting officers
13 shall be elected for the ensuing year;

14 (3) Hold meetings quarterly each year;

15 (4) Hold special meetings upon a written request signed by two of
16 its members and filed with the secretary;

17 (5) Provide suitable offices, facilities, and equipment for the
18 health director and assistants and their pay and traveling expenses in
19 the performance of their duties, with mileage to be computed at the rate
20 provided in section 81-1176;

21 (6) Publish, on or soon after the second Tuesday in July of each
22 year, in pamphlet form for free distribution, an annual report showing
23 (a) the condition of its trust for each year, (b) the sums of money
24 received from all sources, giving the name of any donor, (c) how all
25 money has been expended and for what purpose, and (d) such other
26 statistics and information with regard to the work of such health
27 department as may be of general interest;

28 (7) Enact rules and regulations, subsequent to public hearing held
29 after due public notice of such hearing by publication at least once in a
30 newspaper having general circulation in the county or district at least
31 ten days prior to such hearing, and enforce the same for the protection

1 of public health and the prevention of communicable diseases within its
2 jurisdiction, ~~subject to the review and approval of such rules and~~
3 ~~regulations by the Department of Health and Human Services;~~

4 (8) Make all necessary sanitary and health investigations and
5 inspections;

6 (9) In counties having a population of more than four hundred
7 thousand inhabitants as determined by the most recent federal decennial
8 census, enact rules and regulations for the protection of public health
9 and the prevention of communicable diseases within the district, except
10 that such rules and regulations shall have no application within the
11 jurisdictional limits of any city of the metropolitan class and shall not
12 be in effect until (a) thirty days after the completion of a three-week
13 publication in a legal newspaper, (b) approved by the county attorney
14 with his or her written approval attached thereto, and (c) filed in the
15 office of the county clerk of such county. A county shall comply with
16 this subsection within six months after a determination that the
17 population has reached more than four hundred thousand inhabitants as
18 determined by the most recent federal decennial census;

19 (10) Investigate the existence of any contagious or infectious
20 disease and adopt measures, ~~with the approval of the Department of Health~~
21 ~~and Human Services,~~ to arrest the progress of the same;

22 (11) Distribute free as the local needs may require all vaccines,
23 drugs, serums, and other preparations obtained from the Department of
24 Health and Human Services or purchased for public health purposes by the
25 county board;

26 (12) Upon request, give professional advice and information to all
27 city, village, and school authorities on all matters pertaining to
28 sanitation and public health;

29 (13) Fix the salaries of all employees, including the health
30 director. Such city-county health department may also establish an
31 independent pension plan, retirement plan, or health insurance plan or,

1 by agreement with any participating city or county, provide for the
2 coverage of officers and employees of such city-county health department
3 under such city or county pension plan, retirement plan, or health
4 insurance plan. Officers and employees of a county health department
5 shall be eligible to participate in the county pension plan, retirement
6 plan, or health insurance plan of such county. Officers and employees of
7 a district health department formed by two or more counties shall be
8 eligible to participate in the county retirement plan unless the district
9 health department establishes an independent pension plan or retirement
10 plan for its officers or employees;

11 (14) Establish fees for the costs of all services, including those
12 services for which third-party payment is available; and

13 (15) In addition to powers conferred elsewhere in the laws of the
14 state and notwithstanding any other law of the state, implement and
15 enforce an air pollution control program under subdivision (23) of
16 section 81-1504 or subsection (1) of section 81-1528, which program shall
17 be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401
18 et seq. Such powers shall include without limitation those involving
19 injunctive relief, civil penalties, criminal fines, and burden of proof.
20 Nothing in this section shall preclude the control of air pollution by
21 resolution, ordinance, or regulation not in actual conflict with the
22 state air pollution control regulations.

23 Sec. 6. Section 71-1632, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 71-1632 Except as provided in subsection (4) of section 71-1630, the
26 health director of a county, district, or city-county health department
27 shall have the power and duty to (1) be the executive officer of the
28 local boards of health; (2) appoint, subject to any applicable county or
29 city civil service laws, rules, or regulations, a properly functioning
30 staff and other personnel as may be necessary, whose qualifications shall
31 conform to the United States Public Health Standards and whose

1 remuneration shall conform to an established compensation schedule set by
2 such local board of health and which is reviewed and approved annually by
3 such board; and (3) review annually, with the local board of health, the
4 proposed budget of the department; ~~(4) organize, with the approval of the~~
5 ~~local board of health, a citizens' advisory health council that will aid~~
6 ~~in developing a public health program to meet the particular needs,~~
7 ~~hazards, and problems of the health district; and (5) organize, with the~~
8 ~~approval of the local board of health, a medical and dental advisory~~
9 ~~committee.~~

10 Sec. 7. Section 71-1635, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-1635 (1) When the county board of any county or counties creates
13 a health department as provided by sections 71-1626 to 71-1636, every
14 other local, municipal, or county public health agency or department,
15 except city or county hospitals, may be abolished, and such county or
16 district health department may be given full control over all health
17 matters in the county or counties, including all municipalities in the
18 county in conformity with the rules, regulations, and policies of the
19 Department of Health and Human Services. When a city has joined in the
20 establishment of a city-county health department, such city-county health
21 department may be given such control over all health matters in the city
22 as may be provided by agreement between the county and the city with the
23 approval of the Department of Health and Human Services. If the health
24 department in a county or city is changed, any lawful ordinance,
25 resolution, regulation, policy, or procedure relating to any of the
26 functions conferred by sections 71-1626 to 71-1636 of the former health
27 department shall remain in full force and effect until it is repealed or
28 replaced or until it conflicts with a subsequently enacted measure.

29 (2) In addition to the authority described in subsection (1) of this
30 section, any health department established as provided by sections
31 71-1626 to 71-1636, except those established pursuant to subsection (4)

1 of section 71-1630, shall, except to the extent limited by section
2 71-502, have exclusive control and authority over the investigation of
3 the existence of any contagious or infectious disease and be authorized
4 to adopt such measures, which shall have the force and affect of law, as
5 it deems necessary to limit the spread and ameliorate the presence of
6 such disease within the territorial boundaries of the health department.

7 Sec. 8. Original sections 23-174.10, 71-1623, 71-1631, 71-1632, and
8 71-1635, Reissue Revised Statutes of Nebraska, and sections 17-121 and
9 17-208, Revised Statutes Cumulative Supplement, 2020, are repealed.

10 Sec. 9. The following section is outright repealed: Section 16-238,
11 Revised Statutes Cumulative Supplement, 2020.