

LEGISLATIVE BILL 550

Approved by the Governor February 11, 2010

Introduced by Avery, 28.

FOR AN ACT relating to the Military Code; to amend sections 55-101, 55-120, 55-121, 55-125, 55-126, and 55-135, Reissue Revised Statutes of Nebraska; to change provisions relating to Military Department personnel; to provide peace officer powers and duties to National Guard members; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 55-101, Reissue Revised Statutes of Nebraska, is amended to read:

55-101 Sections 55-101 to 55-181 and section 7 of this act shall be known and may be cited as the Military Code.

Sec. 2. Section 55-120, Reissue Revised Statutes of Nebraska, is amended to read:

55-120 The Military Department shall consist of the Adjutant General in the minimum grade of major general, lieutenant colonel, one deputy adjutant general, chief of staff of the Military Department, or deputy director with a minimum grade not less than of colonel, one assistant adjutant general or chief of staff for Army National Guard affairs and one assistant adjutant general or chief of staff for Air National Guard affairs, each in the grade of brigadier general, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel as may be necessary to comply with such tables of organization as are prescribed for this state by the laws or regulations of the United States. in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

Sec. 3. Section 55-121, Reissue Revised Statutes of Nebraska, is amended to read:

55-121 The Adjutant General shall be appointed by the Governor from the active or retired commissioned officers of the National Guard of this state. Such Adjutant General shall be or have been a commissioned officer who has actively served in the National Guard of this state for at least five years, shall have attained at least the grade of lieutenant colonel, and shall be able to become eligible for promotion to general officer. If a retired officer is appointed, he or she shall not have been retired for more than two years at the time he or she is considered for appointment. He or she shall hold his or her office as provided in section 55-136. He or she shall receive for his or her services such salary as the Governor shall direct, payable ~~monthly,~~ biweekly, except that such salary shall not exceed the annual pay and allowances of regular military officers of equal rank. If funds made available by the federal government are in excess of the amount payable as directed by the Governor, the excess shall be used to reduce the amount required to be paid by the state. Due to the interrelated nature of the Adjutant General's state and federal duties, the Adjutant General shall not be required to take paid or unpaid leave or leaves of absence to perform his or her federal duties, whether or not under federal orders. The Adjutant General shall continue to receive his or her salary during all such periods. The Adjutant General shall only be required to take leave or leaves of absence during those times when he or she is absent and performing neither his or her state nor federal duties as Adjutant General. This section shall not apply if the Adjutant General is called to active duty of the United States under 10 U.S.C.

Sec. 4. Section 55-125, Reissue Revised Statutes of Nebraska, is amended to read:

55-125 (1) The Adjutant General ~~may~~ shall appoint a deputy adjutant general, a chief of staff of the Military Department, or a deputy director. The officer shall hold the minimum grade of ~~not less than~~ colonel as provided in section 55-120. No person shall be eligible for such appointment and service unless he or she is an active member of the Nebraska National Guard. He or she shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general, chief of staff of the Military Department, or deputy director.

(2) ~~The Adjutant General shall appoint an officer with a grade of~~

~~not less than major who may act as United States property and fiscal officer. The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General. All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United States property and fiscal officer may appoint, with the approval of the Adjutant General, one or more may also appoint an assistant United States property and fiscal officer officers, each with the minimum grade of not less than captain. These officers~~ The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

Sec. 5. Section 55-126, Reissue Revised Statutes of Nebraska, is amended to read:

55-126 The deputy adjutant general, chief of staff of the Military Department, or deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general, chief of staff of the Military Department, or deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. ~~If a~~ In the case of absence of both the Adjutant General and the deputy adjutant general, chief of staff of the Military Department, or deputy director, ~~has not been appointed,~~ the Adjutant General may delegate the authority to perform the duties of the Adjutant General to any active officer of the Nebraska military who shall hold at least the rank of colonel. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall receive such salary as the Adjutant General shall direct, payable ~~monthly.~~ biweekly. Such salary shall not exceed the annual pay and allowances of regular military officers of equal rank, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska.

Sec. 6. Section 55-135, Reissue Revised Statutes of Nebraska, is amended to read:

55-135 The number and grade of officers and enlisted personnel shall be as prescribed by the United States Department of the Army and the Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized, but in case of war, invasion, insurrection, riot, or imminent danger, the Governor may temporarily increase them to meet such emergencies. All officers shall hold their commissions until separated by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among officers shall be filled by appointment, subject to such regulations relating thereto as now or may hereafter be promulgated by the United States Government.

Sec. 7. While in the active service of the state or on orders under 32 U.S.C., as a member of the militia of this state or another state, by direction or request of the Governor, members of the National Guard are peace officers and conservators of the peace with the power to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law. They may call any person to their aid and, when necessary, may summon the power of the state. The authority to perform peace officer duties will be established within the official order to duty and may be limited by the Governor, in writing, as necessitated by the mission.

Sec. 8. Original sections 55-101, 55-120, 55-121, 55-125, 55-126, and 55-135, Reissue Revised Statutes of Nebraska, are repealed.