

1 INTRODUCED BY Jim Nelson ^{HOUSE} BILL NO. 402

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEPUTY SHERIFF TO APPEAL A TERMINATION
5 OF EMPLOYMENT TO A DISTRICT COURT; REQUIRING DISCIPLINARY ACTIONS AGAINST MEMBERS OR
6 OFFICERS OF A POLICE FORCE TO BE DETERMINED BY THE POLICE COMMISSION SUBJECT TO VETO
7 OR MODIFICATION BY THE MAYOR; AND AMENDING SECTIONS 7-32-2109, 7-32-2110, 7-32-4152,
8 7-32-4153, 7-32-4155, 7-32-4156, 7-32-4157, 7-32-4160, 7-32-4161, AND 7-32-4164, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 7-32-2109, MCA, is amended to read:

13 **"7-32-2109. Right to hearing on termination of deputy sheriff's employment.** ~~(1)~~ A deputy sheriff
14 whose employment is terminated ~~has a right of appeal~~ may, within 30 days of the termination of
15 employment, make application:

16 ~~(a) to the district court of the county where the deputy was employed; or for a hearing before the~~
17 court, with or without a jury, on the charges that resulted in termination of the deputy's employment.

18 ~~(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement~~
19 ~~if the deputy sheriff is covered by a collective bargaining agreement.~~

20 ~~(2) The appeal to the district court must be made within 30 days from the date of the termination~~
21 ~~of employment."~~

22
23 **Section 2.** Section 7-32-2110, MCA, is amended to read:

24 **"7-32-2110. Reinstatement of deputy sheriff.** In the event that a ~~termination is reversed or~~
25 ~~modified,~~ deputy prevails at the hearing provided for in 7-32-2109, the deputy must be reinstated as a
26 deputy sheriff at the same salary received by the deputy prior to the discharge or termination of
27 employment. The deputy is also entitled to rights that might have accrued to the deputy's benefit prior to
28 the discharge or termination of employment, including the salary that the deputy would have received ~~but~~
29 if not for the termination."

1 **Section 3.** Section 7-32-4152, MCA, is amended to read:

2 **"7-32-4152. Term and compensation of members of police commission.** (1) The appointees to the
3 police commission shall hold office for 3 years, and one member must be appointed annually at the first
4 regular meeting of the city council or commission in May of each year. However, a member serving on the
5 commission during the hearing or deciding of ~~an appeal~~ a case under 7-32-4155 shall continue to serve on
6 the commission for that ~~appeal case~~ until a decision has been made; a new member may not sit on the
7 ~~commission for business.~~

8 (2) The compensation of the members ~~of a board~~ must be fixed by the city council or commission,
9 not to exceed \$10 per day or ~~more than~~ \$50 per month ~~for any month~~ for each member in cities of the first
10 and second class."
11

12 **Section 4.** Section 7-32-4153, MCA, is amended to read:

13 **"7-32-4153. Meaning of word mayor.** Wherever the word "mayor" is used in 7-32-4109,
14 7-32-4160, ~~and~~ 7-32-4161, and [section 13], it is intended to include "city manager", "city commissioner",
15 or any other name or designation used to identify or designate the chief executive of any city or
16 municipality."
17

18 **Section 5.** Section 7-32-4155, MCA, is amended to read:

19 **"7-32-4155. Role of police commission in hearing and deciding ~~appeals brought by charges against~~**
20 **police members or officers.** (1) The police commission has jurisdiction and it is its duty to hear and
21 decide ~~appeals~~ all charges brought by any person against any member or officer of the police department,
22 including any charge that the member or officer: who has been disciplined, suspended, removed, or
23 discharged by an order of the mayor, city manager, or chief executive.

24 (a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the
25 member's or officer's duties;

26 (b) has been guilty of neglect of duty, misconduct of office, or conduct unbecoming a police officer;

27 (c) has been found guilty of any crime; or

28 (d) has engaged in conduct that has brought reproach upon the police force.

29 (2) It is the duty of the police commission, at the time set for hearing ~~an appeal of a charge against~~
30 a ~~police~~ member or officer, to hear and ~~determine~~ decide the ~~appeal charge~~ according to the rules of

1 evidence applicable to courts of record in the state."

2
3 **Section 6.** Section 7-32-4156, MCA, is amended to read:

4 **"7-32-4156. Appeals Charges to be in writing.** ~~An appeal~~ Any charge brought ~~by~~ against any
5 member or officer of the police force must be in writing in the form required by the police commission, and
6 a copy must be served upon the ~~mayor, city manager, or chief executive~~ accused member or officer at least
7 ~~30~~ 15 days before the time fixed for ~~the hearing of the appeal charge.~~"

8
9 **Section 7.** Section 7-32-4157, MCA, is amended to read:

10 **"7-32-4157. Rights of accused police member or officer.** ~~The appealing accused police member~~
11 or officer has the right to be present at the hearing in person and by counsel and to be heard and to give
12 and furnish evidence in the ~~police member's or officer's appeal defense.~~"

13
14 **Section 8.** Section 7-32-4160, MCA, is amended to read:

15 **"7-32-4160. Decision by police commission -- veto power of mayor.** (1) The police commission
16 shall, after the conclusion of the hearing, decide ~~the appeal~~ whether the charge was proven or not proven
17 and ~~must have~~ has the power, by a decision of a majority of the commission, to ~~sustain, modify, or overrule~~
18 ~~the disciplinary order of the mayor, city manager, or chief executive~~ discipline, suspend, remove, or
19 discharge any member or officer found guilty of the charge filed against the member or officer. The police
20 commission shall file a copy of its findings with the city clerk.

21 (2) The action of the police commission is subject to modification or veto by the mayor, which
22 must be made in writing and must give reasons for the modification or veto. The modification or veto is
23 a permanent record of the police commission. A decision by the police commission that a charge has not
24 been proven is final and conclusive and is not subject to modification or veto by the mayor.

25 (3) The mayor has 5 days from the police commission's filing of its findings with the city clerk to
26 make an order modifying or vetoing the police commission's findings and decision. The order is subject
27 to review by the district court in the same manner as an order issued under 7-32-4161."

28
29 **Section 9.** Section 7-32-4161, MCA, is amended to read:

30 **"7-32-4161. Enforcement of decision.** ~~The~~ When a charge against a member or officer of the police

1 force is found to be proven by the police commission and is not modified or vetoed by the mayor, the
 2 mayor shall make an order enforcing the decision of the police commission. The decision or order is subject
 3 to review by the district court of the proper county on all questions of fact and all questions of law."
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5 **Section 10.** Section 7-32-4164, MCA, is amended to read:

6 **"7-32-4164. Right to appeal.** ~~A member of the police force who is disciplined, suspended,~~
 7 ~~removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right~~
 8 ~~of appeal:~~

9 ~~(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement~~
 10 ~~if the member is covered by a collective bargaining agreement; or~~

11 ~~(2) to the police commission. A final decision of the police commission may be appealed~~ A member
 12 or officer of a police force may appeal a decision or order issued pursuant to 7-32-4161 to the district court
 13 of the proper county. The district court has jurisdiction to review all questions of fact and all questions of
 14 law in a suit brought by any ~~officer or member~~ or officer of the police force. A suit to review a decision or
 15 an order or for reinstatement to office may not be maintained unless the suit is begun within a period of
 16 60 days after the decision by the police commission or the order of the mayor has been filed with the city
 17 clerk."
 18

19 **NEW SECTION. Section 11. Hearing required prior to dismissal of member or officer.** A member
 20 or officer of a police force may not be discharged without a hearing before the police commission as
 21 provided in 7-32-4155 in all cities of the first and second class, all cities having an appointed and acting
 22 police commission, and all cities operating under the commission form, the commission-manager plan, or
 23 a mayor.
 24

25 **NEW SECTION. Section 12. Temporary suspensions.** The mayor or, subject to approval by the
 26 mayor, the chief of police may suspend a member or officer for a period not exceeding 10 days in any 1
 27 month, with or without pay. A member or officer suspended without pay is entitled to appeal the
 28 suspension to the police commission.
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30 **NEW SECTION. Section 13. Codification instruction.** [Sections 12 and 13] are intended to be

1 codified as an integral part of Title 7, chapter 32, part 41, and the provisions of Title 7, chapter 32, part
2 41, apply to [sections 12 and 13].

3 -END-