

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1656

101ST GENERAL ASSEMBLY

3234H.02P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 84.344, 285.040, 285.575, 320.097, 320.210, and 575.095, RSMo, and to enact in lieu thereof eight new sections relating to certain public employees, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 84.344, 285.040, 285.575, 320.097, 320.210, and 575.095, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 84.344, 285.040, 285.043, 285.575, 320.097, 320.210, 575.095, and 578.710, to read as follows:

84.344. 1. Notwithstanding any provisions of this chapter to the contrary, any city not within a county may establish a municipal police force on or after July 1, 2013, according to the procedures and requirements of this section. The purpose of these procedures and requirements is to provide for an orderly and appropriate transition in the governance of the police force and provide for an equitable employment transition for commissioned and civilian personnel.

2. Upon the establishment of a municipal police force by a city under sections 84.343 to 84.346, the board of police commissioners shall convey, assign, and otherwise transfer to the city title and ownership of all indebtedness and assets, including, but not limited to, all funds and real and personal property held in the name of or controlled by the board of police commissioners created under sections ~~[84.010]~~ **84.015** to 84.340. The board of police commissioners shall execute all documents reasonably required to accomplish such transfer of ownership and obligations.

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           3. If the city establishes a municipal police force and completes the transfer described  
15 in subsection 2 of this section, the city shall provide the necessary funds for the maintenance  
16 of the municipal police force.

17           4. Before a city not within a county may establish a municipal police force under this  
18 section, the city shall adopt an ordinance accepting responsibility, ownership, and liability as  
19 successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of  
20 the board of police commissioners subject to the provisions of subsection 2 of section 84.345.

21           5. A city not within a county that establishes a municipal police force shall initially  
22 employ, without a reduction in rank, salary, or benefits, all commissioned and civilian  
23 personnel of the board of police commissioners created under sections ~~[84.010]~~ **84.015** to  
24 84.340 that were employed by the board immediately prior to the date the municipal police  
25 force was established. Such commissioned personnel who previously were employed by the  
26 board may only be involuntarily terminated by the city not within a county for cause. The  
27 city shall also recognize all accrued years of service that such commissioned and civilian  
28 personnel had with the board of police commissioners. Such personnel shall be entitled to the  
29 same holidays, vacation, and sick leave they were entitled to as employees of the board of  
30 police commissioners.

31           6. ~~[(1)]~~ Commissioned and civilian personnel of a municipal police force established  
32 under this section ~~[who are hired prior to September 1, 2023,]~~ shall not be subject to a  
33 residency requirement ~~[of retaining a primary residence in a city not within a county but may~~  
34 ~~be required to maintain a primary residence located within a one hour response time.~~

35           ~~(2) Commissioned and civilian personnel of a municipal police force established~~  
36 ~~under this section who are hired after August 31, 2023, may be subject to a residency rule no~~  
37 ~~more restrictive than a requirement of retaining a primary residence in a city not within a~~  
38 ~~county for a total of seven years and of then allowing the personnel to maintain a primary~~  
39 ~~residence outside the city not within a county so long as the primary residence is located~~  
40 ~~within a one hour response time]. **The provisions of this subsection shall not apply to**~~  
41 ~~**employees appointed by the mayor or city council.**~~

42           7. The commissioned and civilian personnel who retire from service with the board of  
43 police commissioners before the establishment of a municipal police force under subsection 1  
44 of this section shall continue to be entitled to the same pension benefits provided under  
45 chapter 86 and the same benefits set forth in subsection 5 of this section.

46           8. If the city not within a county elects to establish a municipal police force under this  
47 section, the city shall establish a separate division for the operation of its municipal police  
48 force. The civil service commission of the city may adopt rules and regulations appropriate  
49 for the unique operation of a police department. Such rules and regulations shall reserve  
50 exclusive authority over the disciplinary process and procedures affecting commissioned

51 officers to the civil service commission; however, until such time as the city adopts such rules  
52 and regulations, the commissioned personnel shall continue to be governed by the board of  
53 police commissioner's rules and regulations in effect immediately prior to the establishment  
54 of the municipal police force, with the police chief acting in place of the board of police  
55 commissioners for purposes of applying the rules and regulations. Unless otherwise provided  
56 for, existing civil service commission rules and regulations governing the appeal of  
57 disciplinary decisions to the civil service commission shall apply to all commissioned and  
58 civilian personnel. The civil service commission's rules and regulations shall provide that  
59 records prepared for disciplinary purposes shall be confidential, closed records available  
60 solely to the civil service commission and those who possess authority to conduct  
61 investigations regarding disciplinary matters pursuant to the civil service commission's rules  
62 and regulations. A hearing officer shall be appointed by the civil service commission to hear  
63 any such appeals that involve discipline resulting in a suspension of greater than fifteen days,  
64 demotion, or termination, but the civil service commission shall make the final findings of  
65 fact, conclusions of law, and decision which shall be subject to any right of appeal under  
66 chapter 536.

67 9. A city not within a county that establishes and maintains a municipal police force  
68 under this section:

69 (1) Shall provide or contract for life insurance coverage and for insurance benefits  
70 providing health, medical, and disability coverage for commissioned and civilian personnel of  
71 the municipal police force to the same extent as was provided by the board of police  
72 commissioners under section 84.160;

73 (2) Shall provide or contract for medical and life insurance coverage for any  
74 commissioned or civilian personnel who retired from service with the board of police  
75 commissioners or who were employed by the board of police commissioners and retire from  
76 the municipal police force of a city not within a county to the same extent such medical and  
77 life insurance coverage was provided by the board of police commissioners under section  
78 84.160;

79 (3) Shall make available medical and life insurance coverage for purchase to the  
80 spouses or dependents of commissioned and civilian personnel who retire from service with  
81 the board of police commissioners or the municipal police force and deceased commissioned  
82 and civilian personnel who receive pension benefits under sections 86.200 to 86.366 at the  
83 rate that such dependent's or spouse's coverage would cost under the appropriate plan if the  
84 deceased were living; and

85 (4) May pay an additional shift differential compensation to commissioned and  
86 civilian personnel for evening and night tours of duty in an amount not to exceed ten percent  
87 of the officer's base hourly rate.

88           10. A city not within a county that establishes a municipal police force under sections  
89 84.343 to 84.346 shall establish a transition committee of five members for the purpose of:  
90 coordinating and implementing the transition of authority, operations, assets, and obligations  
91 from the board of police commissioners to the city; winding down the affairs of the board;  
92 making nonbinding recommendations for the transition of the police force from the board to  
93 the city; and other related duties, if any, established by executive order of the city's mayor.  
94 Once the ordinance referenced in this section is enacted, the city shall provide written notice  
95 to the board of police commissioners and the governor of the state of Missouri. Within thirty  
96 days of such notice, the mayor shall appoint three members to the committee, two of whom  
97 shall be members of a statewide law enforcement association that represents at least five  
98 thousand law enforcement officers. The remaining members of the committee shall include  
99 the police chief of the municipal police force and a person who currently or previously served  
100 as a commissioner on the board of police commissioners, who shall be appointed to the  
101 committee by the mayor of such city.

          285.040. 1. As used in this section, "public safety employee" shall mean a person  
2 trained or authorized by law or rule to render emergency medical assistance or treatment,  
3 including, but not limited to, firefighters, ambulance attendants and attendant drivers,  
4 emergency medical technicians, emergency medical technician paramedics, dispatchers,  
5 registered nurses, physicians, and sheriffs and deputy sheriffs.

6           2. No public safety employee of a city not within a county, **except for an employee**  
7 **appointed by the mayor or city council,** [~~who is hired prior to September 1, 2023,~~] shall be  
8 subject to a residency requirement [~~of retaining a primary residence in a city not within a~~  
9 ~~county but may be required to maintain a primary residence located within a one-hour~~  
10 ~~response time.~~

11           ~~3. Public safety employees of a city not within a county who are hired after August~~  
12 ~~31, 2023, may be subject to a residency rule no more restrictive than a requirement of~~  
13 ~~retaining a primary residence in a city not within a county for a total of seven years and of~~  
14 ~~then allowing the public safety employee to maintain a primary residence outside the city not~~  
15 ~~within a county so long as the primary residence is located within a one-hour response time].~~

**285.043. No employee of a political subdivision of this state, except for an**  
2 **employee appointed by a mayor or city council, shall be required, as a condition of**  
3 **employment, to reside within a specified jurisdiction. This section shall not apply to and**  
4 **shall be superseded by any requirement of an elected or appointed official.**

          285.575. 1. This section shall be known and may be cited as the "Whistleblower's  
2 Protection Act".

3           2. As used in this section, the following terms shall mean:

4 (1) "Because" or "because of", as it relates to the adverse decision or action, the  
5 person's status as a protected person was the motivating factor;

6 (2) "Employer", an entity that has six or more employees for each working day in  
7 each of twenty or more calendar weeks in the current or preceding calendar year. "Employer"  
8 shall not include the state of Missouri or its agencies, instrumentalities, or political  
9 subdivisions, including but not limited to any public institution of higher education, a  
10 corporation wholly owned by the state of Missouri, an individual employed by an employer,  
11 or corporations and associations owned or operated by religious or sectarian organizations;  
12 **except that, "employer" shall include all public employers;**

13 (3) "Proper authorities", a governmental or law enforcement agency, an officer of an  
14 employee's employer, the employee's supervisor employed by the employer, or the  
15 employee's human resources representative employed by the employer;

16 (4) "Protected person", an employee of an employer who has reported to the proper  
17 authorities an unlawful act of his or her employer; an employee of an employer who reports to  
18 his or her employer serious misconduct of the employer that violates a clear mandate of  
19 public policy as articulated in a constitutional provision, statute, or regulation promulgated  
20 under statute; or an employee of an employer who has refused to carry out a directive issued  
21 by his or her employer that if completed would be a violation of the law~~[-An employee of an  
22 employer is not a protected person if:~~

23 ~~(a) The employee is a supervisory, managerial, or executive employee or an officer of  
24 his or her employer and the unlawful act or serious misconduct reported concerns matters  
25 upon which the employee is employed to report or provide professional opinion; or~~

26 ~~(b) The proper authority or person to whom the employee makes his or her report is  
27 the person whom the employee claims to have committed the unlawful act or violation of a  
28 clear mandate of public policy];~~

29 (5) "The motivating factor", the employee's protected classification actually played a  
30 role in the adverse decision or action and had a determinative influence on the adverse  
31 decision or action.

32 3. This section is intended to codify the existing common law exceptions to the at-  
33 will employment doctrine and to limit their future expansion by the courts. This section, in  
34 addition to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all  
35 claims of unlawful employment practices.

36 4. It shall be an unlawful employment practice for an employer to discharge an  
37 individual defined as a protected person in this section because of that person's status as a  
38 protected person.

39 5. A protected person aggrieved by a violation of this section shall have a private  
40 right of action for actual damages for violations of this section but not for punitive damages.

41 However, if a private right of action for damages exists under another statutory or regulatory  
42 scheme, whether under state or federal law, no private right of action shall exist under this  
43 ~~[statute]~~ **section.**

44 6. Any party to any action initiated under this section may demand a trial by jury.

45 7. A protected person aggrieved by a violation of this section shall have a private  
46 right of action that may be filed in a court of competent jurisdiction. The only remedies  
47 available in such an action shall be:

48 (1) Back pay;

49 (2) Reimbursement of medical bills directly related to a violation of this section; and

50 (3) Additionally, if a protected person proves, by clear and convincing evidence, that  
51 the conduct of the employer was outrageous because of the employer's evil motive or reckless  
52 indifference to the rights of others, then, such person may receive double the amount awarded  
53 under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this  
54 subdivision, the provisions of section 510.263 shall be applied as though liquidated damages  
55 were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of  
56 this subsection were compensatory damages.

57 8. The court, in addition to the damages set forth in subsection 7 of this section, may  
58 award the prevailing party court costs and reasonable attorney fees; except that a prevailing  
59 respondent may be awarded reasonable attorney fees only upon a showing that the case was  
60 without foundation.

320.097. 1. As used in this section, "fire department" means any agency or  
2 organization that provides fire suppression and related activities, including but not limited to  
3 fire prevention, rescue, emergency medical services, hazardous material response,  
4 dispatching, or special operations to a population within a fixed and legally recorded  
5 geographical area.

6 2. No employee of a fire department ~~[who has worked for seven years for such~~  
7 ~~department]~~ shall, as a condition of employment, be required to reside within a fixed and  
8 legally recorded geographical area ~~[of the fire department if the only public school district~~  
9 ~~available to the employee within such fire department's geographical area is a public school~~  
10 ~~district that is or has been unaccredited or provisionally accredited in the last five years of~~  
11 ~~such employee's employment. Employees who have satisfied the seven-year requirement in~~  
12 ~~this subsection and who choose to reside outside the geographical boundaries of the~~  
13 ~~department shall reside within a one-hour response time. No charter school shall be deemed a~~  
14 ~~public school for purposes of this section.~~

15 3. ~~No employee of a fire department who has not resided in such fire department's~~  
16 ~~fixed and legally recorded geographical area, or who has changed such employee's residency~~  
17 ~~because of conditions described in subsection 2 of this section, shall as a condition of~~

18 ~~employment be required to reside within the fixed and legally recorded geographical area of~~  
19 ~~the fire department if such school district subsequently becomes fully accredited].~~

320.210. The state fire marshal shall appoint one assistant director and such other  
2 investigators and employees as the needs of the office require within the limits of the  
3 appropriation made for such purpose. ~~[Supervising investigators shall be at least twenty-five~~  
4 ~~years of age and shall have either a minimum of five years' experience in fire risk inspection,~~  
5 ~~prevention, or investigation work, or a degree in fire protection engineering from a~~  
6 ~~recognized college or university of engineering.]~~ No person shall be appointed as an  
7 investigator or other employee who has been convicted of a felony or other crime involving  
8 moral turpitude. Any person appointed as an investigator shall be of good character, shall be  
9 a citizen of the United States, ~~[shall have been a taxpaying resident of this state for at least~~  
10 ~~three years immediately preceding his appointment, and]~~ shall be a graduate of an accredited  
11 four-year high school or, in lieu thereof, shall have obtained a certificate of equivalency from  
12 the state department of elementary and secondary education, and shall ~~[possess ordinary~~  
13 ~~physical strength and be able to pass such physical and mental examinations as the state fire~~  
14 ~~marshal may prescribe]~~ **be a resident of Missouri at the time of appointment.** An  
15 investigator or employee shall not hold any other commission or office, elective or  
16 appointive, or accept any other employment **that would pose a conflict of interest** while he  
17 **or she** is an investigator or employee. An investigator or employee shall not accept any  
18 compensation, reward, or gift other than his **or her** regular salary and expenses for the  
19 performance of his **or her** official duties.

575.095. 1. A person commits the offense of tampering with a judicial officer if, with  
2 the purpose to harass, intimidate or influence a judicial officer in the performance of such  
3 officer's official duties, such person:

4 (1) Threatens or causes harm to such judicial officer or members of such judicial  
5 officer's family;

6 (2) Uses force, threats, or deception against or toward such judicial officer or  
7 members of such judicial officer's family;

8 (3) Offers, conveys or agrees to convey any benefit direct or indirect upon such  
9 judicial officer or such judicial officer's family;

10 (4) Engages in conduct reasonably calculated to harass or alarm such judicial officer  
11 or such judicial officer's family, including stalking pursuant to section 565.225 or 565.227[-] ;

12 **(5) Disseminates through any means, including by posting on the internet, the**  
13 **personal information of the judicial officer or the judicial officer's family.**

14 2. A judicial officer for purposes of this section shall be a judge **or commissioner of**  
15 **the state or federal court**, arbitrator, special master, juvenile officer, deputy juvenile officer,

16 state prosecuting or circuit attorney, state assistant prosecuting or circuit attorney, ~~juvenile~~  
17 ~~court commissioner,~~ state probation or parole officer, or referee.

18 3. A judicial officer's family for purposes of this section shall be:

19 (1) Such officer's spouse; or

20 (2) Such officer or such officer's spouse's ancestor or descendant by blood or  
21 adoption; or

22 (3) Such officer's stepchild, while the marriage creating that relationship exists.

23 4. **Personal information for purposes of this section shall include the home**  
24 **address, home telephone number, mobile telephone number, personal email address,**  
25 **Social Security number, federal tax identification number, checking and saving account**  
26 **numbers, credit card numbers, marital status, and identity of a child under eighteen**  
27 **years of age.**

28 [4.] 5. The offense of tampering with a judicial officer is a class D felony. **However,**  
29 **if a violation of this section results in death or bodily injury to the judicial officer or a**  
30 **member of the judicial officer's family, the offense is a class B felony.**

**578.710. 1. For purposes of this section, the following terms mean:**

2 (1) **"Elected official", any elected member of state government or any political**  
3 **subdivision thereof;**

4 (2) **"Law enforcement officer", any commissioned peace officer with the power**  
5 **to arrest for a violation of the criminal code who is employed by any unit of the state or**  
6 **any county, charter county, city, charter city, municipality, district, college, university,**  
7 **or any other political subdivision or is employed by the board of police commissioners as**  
8 **defined in chapter 84;**

9 (3) **"Personal information", the same meaning as defined in section 407.1500.**

10 2. **A person commits the offense of unlawful disclosing of personally identifiable**  
11 **information if he or she knowingly releases, publicizes, or otherwise publicly discloses**  
12 **the name, home address, Social Security number, or other personal information of a law**  
13 **enforcement officer or elected official with the intent to harass, intimidate, or cause**  
14 **death or bodily injury to the law enforcement officer or elected official.**

15 3. **The offense of unlawful disclosing of personally identifiable information is a**  
16 **class A misdemeanor. However, if a violation of this section is done with the intent to**  
17 **influence a law enforcement officer or elected official in the performance of such**  
18 **officer's or official's official duties, the offense is a class D felony.**

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