

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 556
PROPOSED COMMITTEE SUBSTITUTE S556-PCS75258-RF-33

Short Title: Asheville City Civil Service Board.

(Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAWS RELATING TO THE ASHEVILLE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 2. (a) The Civil Service Board shall consist of five members as follows: (i) two members who shall be chosen by the City Council at a meeting of the Council and they shall serve at the pleasure of the Council; (ii) two members who shall be elected by the members of the classified service of the City, as defined in this Act, at an election held for that purpose and on a normal City workday not less than 10 nor more than 30 days after written notice of the date of the election is provided to each member of the classified service; and (iii) one member who shall be selected by majority vote of the four other members already selected or elected at a meeting held within 30 days after the members elected by the classified service have taken office. If a member is not elected by majority vote of the four other members, the City Council shall appoint a member to the Board. Members of the Board shall serve two-year terms. All members of the Board shall be eligible for successive terms, in the same manner in which they were initially selected or elected and may serve beyond the end of their respective terms until their successors take office. The chair of the Civil Service Board shall be appointed annually by the City Council, or more often as needed, from among the membership of the Board. The members of the Board shall serve without compensation but may be reimbursed for expenses pursuant to policies adopted by the City.

The City Council shall, by ordinance not inconsistent with this act, establish the procedure for the election of the representatives of the employees in the classified service, and provide for meeting the expense for such elections. The members of the Civil Service Board must all be qualified voters of the City of Asheville, not employed by the ~~city~~ City or serving on the City Council. In the event of a vacancy on the Board, such vacancy shall be filled by the body or group, choosing the member, a successor to whom is to be chosen, and in the manner herein provided for the selection of such member.

(b) Former employees of the City of Asheville shall be eligible to serve as a member of the Asheville Civil Service Board provided they have been separated from City employment for a period of not less than 10 consecutive years prior to becoming a member of the Board. No person shall be eligible to serve as a Civil Service Board member if such person directly, or indirectly through any corporation, partnership or other entity, or contract, subcontract or



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1 otherwise benefits financially from a business relationship with the City, or if such person has
2 an immediate family member or spouse of the immediate family member who directly, or
3 indirectly through any corporation, partnership or other entity, or contract, subcontract or
4 otherwise benefits financially from a business relationship with the City. No person shall
5 engage or benefit directly or indirectly from any contractual work or employment with the City
6 for a period of not less than two years following the expiration date of that person's term of
7 office as a member of the Civil Service Board. The foregoing restrictions shall not be
8 retroactively applied to anyone currently serving on the Board at the time this subsection is
9 enacted.

10 (c) The Asheville Civil Service Board Secretary shall perform all required ministerial
11 functions and duties for the Board including, but not limited to, the electronic recording of and
12 the preparation of minutes of all Civil Service Board meetings and hearings, the custody of all
13 Board records and the posting and issuing of meeting notices to Board members and to the
14 public in accordance with the Open Meetings Law, Article 33C of Chapter 143 of the General
15 Statutes. To assist the Secretary in performing the functions and duties, all Civil Service Board
16 meetings shall be electronically recorded and transcripts thereof made available to the Board
17 members upon request without charge. All other persons shall be entitled to the Civil Service
18 Board's recordings and records upon request made pursuant to the Public Records Act, Chapter
19 132 of the General Statutes.

20 (d) Regular meetings of the Asheville Civil Service Board shall be held at least once
21 every month at a time and place to be determined by Board members. The deadline for
22 receiving items for the regular monthly Board's meetings shall be seven days prior to the
23 meeting. Special meetings may be called by the chairman and shall be called upon written
24 request signed by two or more Board members and submitted to the Board Secretary not less
25 than seven days prior to the date of the requested special meeting. The notice for all meetings
26 shall contain a meeting agenda which shall include a section for other business to hear and
27 consider any other matters related to the Board's function and duties and which may be
28 addressed by any member of the Board and by any person in attendance.

29 (e) No uniform employees of the City of Asheville shall be prohibited, directed, or
30 discouraged in any manner by a supervisor from wearing that employee's uniform while in
31 attendance at any Civil Service Board meeting."

32 **SECTION 2.** Section 4 of Chapter 757 of the 1953 Session Laws, as amended, and
33 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

34 "Section 2. The Civil Service Board shall make, and may amend substantive rules for
35 promoting efficiency in the classified service of the City as provided in Section 5 of this Act.
36 Such rules and any amendment thereto, shall be submitted to the Council for approval, and
37 shall be open to public inspection, when filed with the Council for approval. The City Council,
38 after giving members of the classified service and citizens of Asheville an opportunity to be
39 heard at a public hearing, shall act upon such proposed rules and amendments, and such rules
40 or amendments, when approved by a majority vote of the Council, shall be in full force and
41 effect. The Civil Service Board shall also make, and may amend, procedural rules for the
42 conduct of its official proceedings and functions as provided for by this act. The Council may,
43 before approval, amend the rules or amendments thereto, submitted to it for approval."

44 **SECTION 3.** Section 5 of Chapter 757 of the 1953 Session Laws, as amended, and
45 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

46 "Section 5. Such rules, as authorized in Section 4 of this Act, among other things, may
47 provide:

- 48 (1) For the standardization and classification of all positions and employment in
49 the classified service of the City. Such classification into groups and
50 subdivisions shall be based upon and graded according to duties and
51 responsibilities, and so arranged as to promote the filling of the higher

1 grades, so far as practicable, through promotions. The City Manager of his
2 or her designee shall consult representative employee in the Police and Fire
3 Departments to establish criteria to be used to fill each position within those
4 respective departments, including lateral entry positions. If only one
5 respective employee is consulted, he or she shall be a representative chosen
6 by the employees of the respective departments. If a group of two or more
7 employees is established for purposes of this subdivision, at least one-half of
8 the employees shall be chosen by the employees of the respective
9 department. The Civil Service Board shall have the authority to approve any
10 criteria established and the criteria shall apply only to persons promoted or
11 hired after the effective date of the approval. This provision shall not apply
12 to hiring or promotional processes initiated prior to the effective date of this
13 Act.

- 14 (2) For temporary or part-time employment to meet the transitory or seasonal
15 needs of the City, except no temporary or part-time employment may occur
16 or continue in violation of applicable state or federal law.
- 17 (3) For the establishment of a probationary period for new City employees prior
18 to employees becoming members of the classified service, except not
19 probationary period or any extension thereof may exceed one year in the
20 aggregate.
- 21 (4) For suspension for purpose of discipline, with or without pay, for not longer
22 than 90 days.
- 23 (5) For discharge or reduction in rank or compensation after the person to be
24 discharged or reduced has, if he or she so request, been presented by the
25 person responsible for his or her appointment with the reasons therefore
26 specifically stated in writing and has been given an opportunity to be
27 publicly heard in his or her own defense by the Civil Service Board, in
28 accordance with Section 8 of this Act. The written reasons for the discharge
29 or reduction and any reply in writing thereto by any such officer or
30 employee shall be filed with the ~~Department of Civil Service~~. Secretary of
31 the Civil Service Board for use and consideration by Board members in the
32 performance of their official functions and duties.
- 33 (6) For investigation and keeping a record of the efficiency of officers and
34 employees in the classified service, and for requiring markings and reports
35 relative thereto from appointing authorities."

36 **SECTION 4.** Section 7 of Chapter 757 of the 1953 Session Laws, as amended, and
37 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

38 "Section 7. The Council, the City Manager, the Chair of the Civil Service Board, or any
39 ~~person designated by any of them, two or more Civil Service Board members~~ may make
40 official investigations concerning the facts in respect to the operation and enforcement of the
41 provisions of this Act and of the rules established thereunder, and concerning the condition of
42 the Civil Service of the City or and branch thereof and may refer such matters to the Civil
43 Service Board for hearing in accordance with Section 8 of this Act, or for further investigation
44 as appropriate. At any person, or persons, making any investigation authorized or required by
45 this section, shall have the power to subpoena and require the attendance of witnesses. Such
46 subpoenas shall be issued by the Clerk of the Superior Court Division of the General Court of
47 Justice for Buncombe County upon the written request of any party authorized hereinabove to
48 make official investigations. A copy of the report of the investigation shall be filed with the
49 City Clerk for transmittal to the City Council of Asheville and be open for public inspection,
50 subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of
51 records in this State."

1 **SECTION 5.** Section 8 of Chapter 757 of the 1953 Session Laws, as amended, and
2 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

3 "Section 8. (a) Whenever any member of the classified service of the City is discharge,
4 suspended, reduced in rank, transferred against his or her will, or is denied any promotion or
5 raise in pay which he or she would be entitled to, that member shall be entitled to a hearing
6 before the Civil Service Board to determine whether or not the action complained of is
7 justified. The Board may also conduct hearings and render decisions on such matters as may be
8 referred to it pursuant to Section 7 of this act.

9 (b) Any member of the classified service of the City who desires a hearing shall file his
10 or her request for hearing with the City Clerk within 10 days after learning of the act or
11 omission of which her or she complains but not before the member shall have exhausted his or
12 her remedy provided by the grievance procedures established by ordinance or policy of the City
13 and the grievance procedure shall be concluded within 30 days. If the grievance procedure is
14 not concluded with 30 days, the member may proceed as provided in this section. Upon receipt
15 of notice as required in this section, the City Clerk shall set the matter for hearing before the
16 Civil Service Board at a date not less than five nor more than fifteen days from the Clerk's
17 receipt of such notice. Except for the time for filing the initial request for hearing with the
18 Board, the Board may extend the time for taking action under this section for cause or by
19 agreement of the parties to the proceeding.

20 (c) Any member of the classified service of the City who requests a hearing pursuant to
21 the Act shall be entitled to be represented by its attorney at any such hearing.

22 (d) For such hearings, upon the written request of any party, the Board is authorized to
23 issue subpoenas for the attendance of witnesses or the production of documents.

24 ~~(d)~~(e) At such hearing, the burden of proving the justification of the act or omission
25 complained of shall be upon the City and the member requesting the hearing shall be entitled to
26 inspect any copy any records upon which the City plans to rely at the hearing if the records are
27 requested in writing by the member or his or her attorney prior to the day set for the hearing.

28 ~~(d)~~(f) The Civil Service Board shall render its decision in writing within five days after the
29 conclusion of the hearing. If the Board determines that the act or omission complained of is not
30 justified, the Board shall order to rescind whatever action the Board has found to be unjustified
31 and may order the City to take such steps as are necessary for a just conclusion of the matter
32 before the Board. Upon reaching its decision, the Board shall, in writing, immediately inform
33 the City Clerk and the member requesting the hearing of the Board's decision.

34 ~~(f)~~(g) Within ten days of the receipt of notice of the decision of the Board, either party
35 may appeal to the Superior Court Division of the General Court of Justice for Buncombe
36 County for a trial de novo. The appeal shall be effected by filing with the Clerk of the Superior
37 Court of Buncombe County a petition for trial in superior court, setting out the fact upon which
38 the petitioner relies for relief. If the petitioner desires a trial by jury, the petition shall so state.
39 Upon the filing of the petition, the Clerk of the Superior Court shall issue a civil summons as in
40 regular civil action, and the sheriff of Buncombe County shall serve the summons and petition
41 on all parties who did not join in the petition for trial. It shall be sufficient service upon the City
42 for the sheriff to serve the petition and summons upon the clerk of the City. Therefore, the
43 matter shall proceed to trial as any other civil action."

44 **SECTION 6.** Chapter 757 of the 1953 Session Laws, as amended, and as rewritten
45 by S.L. 1999-303, is amended by adding a new section to read:

46 "Section 8.1. By a majority vote of those members present and voting at any of its official
47 meetings, the Asheville Civil Service Board may designate independent legal counsel of its
48 choice to advise or represent the Board, or both, on such occasions and in such matters as the
49 majority of those Board members present and voting deem to be appropriate and necessary.
50 The City shall be responsible for the payment of such professional legal services. In order to
51 avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall

1 serve as legal advisor to or attorney for the Board, or both, only for those matters or
2 proceedings when specifically requested to do so in a writing that has been signed by no fewer
3 than four members of the Board."

4 **SECTION 7.** Section 10 of Chapter 757 of the 1953 Session Laws, as amended,
5 and as rewritten by S.L. 1999-303, reads as rewritten:

6 "Section 10. It shall be the duty of the Civil Service Board to supervise the execution of the
7 foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be
8 the duty of all persons in the service of the City to comply with such rules and to aid in their
9 enforcement. Willful or deliberate violation of the Asheville Civil Service Law (this act) or
10 Civil Service Rules by any person shall constitute a misdemeanor punishable by a fine not to
11 exceed the sum of five hundred dollars (\$500.00). Any City employee or any City official who
12 threatens or intimidates other employees from exercising their rights under the Asheville Civil
13 Service Law (this act) or Civil Service Rules shall be subject to discipline by the City,
14 including dismissal of employment with the City."

15 **SECTION 8.** If any section, subsection, subdivision, sentence, clause, or phrase of
16 this act shall for any reason be held to be invalid or unconstitutional, such decision shall not
17 affect the validity of the remaining portion of this act.

18 **SECTION 9.** All laws, rules, or clauses in conflict with the provisions of this act
19 are hereby superseded or repealed as appropriate.

20 **SECTION 10.** This act is effective when it becomes law.