

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 556  
State and Local Government Committee Substitute Adopted 5/12/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S556-PCS55486-RN-42

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 1 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 1. There is hereby established as a part of government of the City of Asheville, a Civil Service Board which shall have the powers and perform the duties specified in this Act with respect to the classified service of the City of Asheville as defined in this Act. The City Manager shall recommend, and the City Council shall approve, shall provide funding for the operational needs of the Civil Service Board in the City's annual budget."

**SECTION 2.** 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



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1 Council. In the event of a vacancy on the Board, such vacancy shall be filled by the body or  
2 group, choosing the member, a successor to whom is to be chosen, and in the manner herein  
3 provided for the selection of such member.

4 (b) Former employees of the City of Asheville shall be eligible to serve as a member of  
5 the Asheville Civil Service Board provided they have been separated from City employment  
6 for a period of not less than seven consecutive years prior to becoming a member of the Board.  
7 No person shall be eligible to serve as a Civil Service Board member if such person directly, or  
8 indirectly through any corporation, partnership, or other entity, or contract, subcontract, or  
9 otherwise benefits financially from a business relationship with the City, or if such person has  
10 an immediate family member or spouse of the immediate family member who directly, or  
11 indirectly through any corporation, partnership, or other entity, or contract, subcontract, or  
12 otherwise benefits financially from a business relationship with the City. No person shall  
13 engage or benefit directly or indirectly from any contractual work or employment with the City  
14 for a period of not less than two years following the expiration date of that person's term of  
15 office as a member of the Civil Service Board. The foregoing restrictions shall not be  
16 retroactively applied to the current term of anyone currently serving on the Board at the time  
17 this subsection is enacted.

18 (c) The Asheville City Clerk or the Clerk's designee shall be the Civil Service Board  
19 Secretary and shall perform all required ministerial functions and duties for the Board  
20 including, but not limited to, the electronic recording of and the preparation of minutes of all  
21 Civil Service Board meetings and hearings, the custody of all Board records and the posting  
22 and issuing of meeting notices to Board members and to the public in accordance with the  
23 Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. The Secretary shall  
24 distribute the agenda for regular meetings and the approved minutes for all regular meetings to  
25 all City employees. Posting the agenda and minutes on an electronic bulletin board or similar  
26 location accessible to all employees shall be sufficient compliance with this requirement. To  
27 assist the Secretary in performing the functions and duties, all Civil Service Board meetings  
28 shall be electronically recorded and transcripts thereof made available to the Board members  
29 upon request without charge. All other persons shall be entitled to the Civil Service Board's  
30 recordings and records upon request made pursuant to the Public Records Act, Chapter 132 of  
31 the General Statutes, except for those items to which disclosure is prohibited by  
32 G.S. 160A-168, the Personnel Privacy Act, or other laws governing the privacy or  
33 confidentiality of employee or personnel records.

34 (d) The Board shall meet in January of each year to adopt a regular meeting schedule.  
35 The deadline for receiving items for the regular Board's meetings shall be seven days prior to  
36 the meeting. Special meetings may be called by the chair and shall be called upon written  
37 request signed by two or more Board members and submitted to the Board Secretary not less  
38 than seven days prior to the date of the requested special meeting. The notice for all meetings  
39 shall contain a meeting agenda which shall include a section for other business to hear and  
40 consider any other matters related to the Board's function and duties and which may be  
41 addressed by any member of the Board and by any person in attendance. Within a reasonable  
42 time after a meeting, the Board shall supply the Director of Human Resources with notification  
43 of any actions, reports, or recommendations made by the Board, and the Human Resources  
44 Department shall notify affected members of the classified service of actions, reports, and  
45 recommendations made by the Board.

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

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

1 "Section 3. The classified service of the City shall include all officers and employees of the  
2 City of Asheville, except officers elected by the people, the city manager, directors of  
3 departments, as defined in the city charter, assistant directors of departments, (by whatever title  
4 designated) as described in the City's organizational plan, and members of advisory boards  
5 appointed by ~~such~~ directors, the city clerk, or any deputy clerk of the City of Asheville, and  
6 members of any board or commission appointed by the Council, and employees of independent  
7 boards now choosing their own employees."

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

10 "Section 4. The Civil Service Board shall make, and may amend substantive rules for  
11 promoting efficiency in the classified service of the City as provided in Section 5 of this Act.  
12 Such rules and any amendment thereto, shall be submitted to the Council for approval, and  
13 shall be open to public inspection, when filed with the Council for approval. The City Council,  
14 after giving members of the classified service and citizens of Asheville an opportunity to be  
15 heard at a public hearing, shall act upon such proposed rules and amendments, and such rules  
16 or amendments, when approved by a majority vote of the Council, shall be in full force and  
17 effect. The Civil Service Board shall also make, and may amend, procedural rules for the  
18 conduct of its official proceedings and functions as provided for by this act. The Council may,  
19 before approval, amend the rules or amendments thereto, submitted to it for approval."

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

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

- 24 (1) For the standardization and classification of all positions and employment in  
25 the classified service of the City. Such classification into groups and  
26 subdivisions shall be based upon and graded according to duties and  
27 responsibilities, and so arranged as to promote the filling of the higher  
28 grades, so far as practicable, through promotions. The City Manager ~~of~~ or  
29 his or her designee shall consult representative employee in the Police and  
30 Fire Departments to establish criteria to be used to fill each position within  
31 those respective departments, including lateral entry positions. If only one  
32 respective employee is consulted, he or she shall be a representative chosen  
33 by the employees of the respective departments. If a group of two or more  
34 employees is established for purposes of this subdivision, at least one-half of  
35 the employees shall be chosen by the employees of the respective  
36 department. The Civil Service Board shall have the authority to approve any  
37 criteria established and the criteria shall apply only to persons promoted or  
38 hired after the effective date of the approval. This provision shall not apply  
39 to hiring or promotional processes initiated prior to the effective date of this  
40 Act.
- 41 (2) For temporary or part-time employment to meet the transitory or seasonal  
42 needs of the City, except no temporary or part-time employment may occur  
43 or continue in violation of applicable state or federal law.
- 44 (3) For the establishment of a probationary period for new City employees prior  
45 to employees becoming members of the classified service, except not  
46 probationary period or any extension thereof may exceed one year in the  
47 aggregate.
- 48 (4) For suspension for purpose of discipline, with or without pay, for not longer  
49 than 90 days.
- 50 (5) For discharge or reduction in rank or compensation after the person to be  
51 discharged or reduced has, if he or she so ~~request,~~ requests, been presented

1 by the person responsible for his or her appointment with the reasons  
2 therefore specifically stated in writing and has been given an opportunity to  
3 be publicly heard in his or her own defense by the Civil Service Board, in  
4 accordance with Section 8 of this Act. The written reasons for the discharge  
5 or reduction and any reply in writing thereto by any such officer or  
6 employee shall be filed with the ~~Department of Civil Service~~Director of  
7 Human Resources.

- 8 (6) For investigation and keeping a record of the efficiency of officers and  
9 employees in the classified service, and for requiring markings and reports  
10 relative thereto from appointing authorities."

11 **SECTION 6.** Section 7 of Chapter 757 of the 1953 Session Laws, as amended, and  
12 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

13 "Section 7. The ~~Council~~Council by majority vote of the total membership of the Council,  
14 the City Manager, the Chair of the Civil Service Board, or any person designated by any of  
15 them, or the Civil Service Board by majority vote of the total membership of the Board, may  
16 make official investigations concerning the facts in respect to the operation and enforcement of  
17 the provisions of this Act and of the rules established thereunder, and concerning the condition  
18 of the Civil Service of the City or and branch thereof and may refer such matters to the Civil  
19 Service Board for hearing in accordance with Section 8 of this Act, or for further investigation  
20 as appropriate. Any ~~person, person or persons~~body making any investigation authorized or  
21 required by this section, shall have the power to subpoena and require the attendance of  
22 witnesses. A copy of the report of the investigation shall be filed with the City Clerk and be  
23 open for public inspection, subject to the provisions of the Personnel Privacy Act or other laws  
24 governing the disclosure of records in this State."

25 **SECTION 7.** Section 8 of Chapter 757 of the 1953 Session Laws, as amended, and  
26 as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

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

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

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

46 (d) For such hearings, the Board is authorized to issue subpoenas for the attendance of  
47 witnesses or the production of documents.

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

1       ~~(e)~~(f) The Civil Service Board shall render its decision in writing within ~~five~~ten days after  
2 the conclusion of the hearing. If the Board determines that the act or omission complained of is  
3 not justified, the Board shall order to rescind whatever action the Board has found to be  
4 unjustified and may order the City to take such steps as are necessary for a just conclusion of  
5 the matter before the Board. Such decision shall contain findings of fact and conclusions, and  
6 shall be based on competent, material, and substantial evidence in the record. Upon reaching its  
7 decision, the Board shall, in writing, immediately inform the City Clerk and the member  
8 requesting the hearing of the Board's decision.

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

19       **SECTION 8.** Chapter 757 of the 1953 Session Laws, as amended, and as rewritten  
20 by S.L. 1999-303, is amended by adding a new section to read:

21       "Section 8.1. By a majority vote of those members present and voting at any of its official  
22 meetings, the Asheville Civil Service Board may designate independent legal counsel of its  
23 choice to advise or represent the Board, or both, on such occasions and in such matters as the  
24 majority of those Board members present and voting deem to be appropriate and necessary.  
25 The Civil Service Board shall establish a roster of attorneys from which it may select counsel  
26 for the purpose of advising the Board during or in connection with grievance hearings held  
27 pursuant to Section 8. Said list shall be subject to review and approval by the City Attorney as  
28 to qualifications and fees. The City shall be responsible for the payment of such professional  
29 legal services. The use of independent counsel for matters other than grievance hearings held  
30 pursuant to Section 8 shall be limited to 20 hours per year. In order to avoid the appearance of  
31 any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to  
32 or attorney for the Board, or both, only for those matters or proceedings when specifically  
33 requested to do so in a writing that has been signed by no fewer than four members of the  
34 Board."

35       **SECTION 9.** Section 10 of Chapter 757 of the 1953 Session Laws, as amended,  
36 and as rewritten by S.L. 1999-303, reads as rewritten:

37       "Section 10. It shall be the duty of the Civil Service Board to supervise the execution of the  
38 foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be  
39 the duty of all persons in the service of the City to comply with such rules and to aid in their  
40 enforcement. Willful or deliberate violation of the Asheville Civil Service Law (this act) or  
41 Civil Service Rules by any person shall result in the City taking appropriate disciplinary action  
42 up to and including dismissal. Any City employee or any City official who threatens or  
43 intimidates other employees from exercising their rights under the Asheville Civil Service Law  
44 (this act) or Civil Service Rules shall be subject to the City taking appropriate disciplinary  
45 action up to and including dismissal."

46       **SECTION 10.** If any section, subsection, subdivision, sentence, clause, or phrase  
47 of this act shall for any reason be held to be invalid or unconstitutional, such decision shall not  
48 affect the validity of the remaining portion of this act.

49       **SECTION 11.** All laws, rules, or clauses in conflict with the provisions of this act  
50 are hereby superseded or repealed as appropriate.

51       **SECTION 12.** This act is effective when it becomes law.