

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-303
SENATE BILL 532

AN ACT REWRITING THE LAWS RELATED TO THE CIVIL SERVICE BOARD
OF THE CITY OF ASHEVILLE, AND AUTHORIZING BUNCOMBE COUNTY
TO CONDUCT AN ADVISORY REFERENDUM ON ZONING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 757 of the 1953 Session Laws, as amended, reads as rewritten:

"Section 1. There is hereby established as a part of government of the City of Asheville, ~~a municipal corporation of the State of North Carolina a Department of Civil Service, to be under the general management and control of a Director of Civil Service, acting in cooperation with a Civil Service Board, and having Board which shall have the powers and performing-perform~~ the duties specified in this Act with respect to the classified service of the City of Asheville as ~~hereinafter defined.~~ defined in this Act. The City Manager shall provide for the operational needs of the Civil Service Board in the City's annual budget.

~~Sec. 2. Section 2. The Civil Service Board shall consist of five (5) members as follows: The Director of Civil Service, and one additional member who shall be chosen by the Council of the City of Asheville at a meeting of said Council, with fifteen (15) days after the ratification of this Act, and shall serve at the pleasure of said Council. Two (2) members, who shall be elected by the members of the classified service of the City, as hereinafter defined, at an election for that purpose, to be called by the City Manger, and held within fifteen (15) days after the naming of the above two members by the Council, and after ten (10) days written notice to each employee of said classified service, said two (2) members to serve for a term of two years and until the election of their successors by the members of said classified service biennially thereafter. Within five (5) days after the election of the two (2) members of the board by the employees of the classified service, the City Manager shall call a meeting of the four members of the board then chosen, at which meeting, or an adjournment thereof, within five days thereafter, said members shall select by a majority vote, a fifth (5th) member of the board. If such member is not so elected, then the City shall choose a fifth (5th) member, of said board. The fifth (5th) member of the board shall serve for a term of two years and until the election of his successor biennially thereafter in the same manner as above provided.~~

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. 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 ~~said-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.

~~Sec. 3. Section 3.~~ The classified service of the ~~city-City~~ shall include all officers and employees of the City of Asheville, except officers elected by the people, the city manager, directors of departments, as defined in the city charter, and members of advisory boards appointed by such directors, the city clerk, ~~the clerk of the police court,~~ or any deputy clerk of the City of Asheville, and members of any board or commission appointed by the ~~council,~~ Council, and employees of independent boards now choosing their own employees.

~~Sec. 4. Section 4.~~ The Civil Service Board shall make, and may amend, rules for promoting efficiency in the classified service of the ~~city, for the appointment, promotion, transfer for the layoff, reinstatement, suspension and removal of employees~~ classified service. City as provided in Section 5 of this Act. Such rules and any amendment thereto, shall be submitted to the ~~said-council~~ Council for approval, and shall be open to public inspection, when filed with the ~~said-council~~ Council for such approval. The ~~city council,~~ City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon such proposed rules and amendments, and such rules or amendments, when approved by a majority vote of the ~~council,~~ Council, shall be in full force and effect. The ~~council~~ Council may, before approval, amend the rules or amendments thereto, submitted to it for approval.

~~Sec. 5. Section 5.~~ Such rules, ~~above mentioned,~~ as authorized in Section 4 of this Act, among other things, may provide:

- (1) For the standardization and classification of all positions and employments in the classified service of the ~~city.~~ City. Such classification into groups and subdivisions shall be based upon and graded according to duties and responsibilities, and so arranged as to promote the filling of the higher grades, so far as practicable, through promotions. The City Manager or his or her designee shall consult representative employees in the Police and Fire Departments to establish criteria to be used to fill each position within those respective departments, including lateral entry positions. If only one representative employee is consulted, he or she shall be a representative chosen by the employees of the respective department. If a group of two or more employees is established for purposes of this subdivision, at least one-half of the employees shall be chosen by the employees of the respective department. The Civil Service Board shall have the authority to approve any criteria established and the criteria shall apply only to persons promoted or hired after the effective date of the approval. This provision shall not apply to hiring or promotional processes initiated prior to the effective date of this Act.
- ~~(2) For open competitive tests to ascertain the relative fitness of all applicants for appointment in the competitive class.~~
- ~~(3) For public notice of the time and place of all competitive tests, at least ten days in advance thereof, by publication in the paper of the city having the largest or second largest circulation and in all copies of the issues thereof having the largest circulation in the city, and by posting a notice in conspicuous place in the city hall.~~
- ~~(4) For the creation of eligible lists upon which shall be entered the names of the successful applicants in the order of their standing in the competitive tests, and without reference to the time of the test.~~
- ~~(5) For the rejection of applicants or eligibles who do not satisfy reasonable requirements as to age, sex, physical condition and moral character or who have attempted deception or fraud in connection with any test or their application therefor.~~
- ~~(6) For the certification to the appointing author from the appropriate eligible list, for filling a vacancy in the competitive class, of the three names standing highest in such list.~~
- ~~(7) For temporary employment without test, in the absence of an eligible list; but no such temporary employment shall continue after the establishment of a suitable eligible list nor for more than sixty days.~~
- ~~(8) For temporary employment for transitory work without test, but such employment shall require the consent of the Director of Civil Service in each case, and shall not continue for more than sixty days nor be renewed.~~

- ~~(9) For noncompetitive tests, for appointment to positions designated as requiring peculiar and exceptional qualifications of a scientific, managerial, professional or educational character.~~
- ~~(10) For promotion based on competitive tests and upon records of efficiency, character, conduct and seniority.~~
- ~~(11) For transfer from a position to a similar position in the same class and grade.~~
- ~~(12) For immediate reinstatement at the head of the eligible list of person who, without fault or delinquency on their part, are separated from the service or reduced in rank.~~
- ~~(13) For suspension for purpose of discipline, with or without pay, for not longer than ninety days, and for leave of absence with or without pay.~~
- ~~(14) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he so requests, been presented by the person responsible for his appointment with the reasons therefor specifically stated in writing and has been given an opportunity to be publicly heard in his own defense by the Civil Service Board. The written reasons for such discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.~~
- ~~(15) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities.~~
- (2) For temporary or part-time employment to meet the transitory or seasonal needs of the City, except no temporary or part-time employment may occur or continue in violation of applicable State or federal law.
- (3) For the establishment of a probationary period for new City employees prior to employees becoming members of the classified service, except no probationary period or any extension thereof may exceed one year in the aggregate.
- (4) For suspension for purpose of discipline, with or without pay, for not longer than 90 days.
- (5) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he or she so requests, been presented by the person responsible for his or her appointment with the reasons therefor specifically stated in writing and has been given an opportunity to be publicly heard in his or her own defense by the Civil Service Board, in accordance with Section 8 of this Act. The written reasons for the discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.

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

~~Sec. 6. There shall be kept in the department of Civil Service an application register in which shall be entered the names and addresses and the order and date of application of all applicants for civil service test and the office or employments which they seek. All applications shall be upon forms prescribed by the department for Civil Service.~~

~~Sec. 7. Tests required by the department of Civil Service shall be practical, shall relate to matters which fairly measure the relative fitness of applicants to discharge the duties of the position which they seek, and shall take account of character, training and experience. No question in any test shall relate to political or religious opinions, affiliations or service, and no appointment, transfer, layoff, promotion, reduction, suspension or removal shall be affected or influenced by such opinions, affiliations or service. Notice of the time, place and scope of each test shall be given by publication and posting as specified in Section 5 of this Act, and by mail, at least ten days in advance, to each applicant upon the appropriate lists of the application register.~~

~~Sec. 8. The list of applicants eligible to appointment by reason of civil service tests, which their grades, shall be known as the register of eligibles and shall be open to public inspection. The names of such eligibles shall be arranged in their respective lists in the order of their standing on test. The name of no person shall remain on the register of eligibles for more than two years without a new application, and, if the civil service rules as require, a new test.~~

~~Sec. 9. When any position in the classified service is to be filled, the officer having authority to fill such vacancy shall request of the director of civil service the certification of names of eligibles for appointment to such vacancy and upon receipt of such request the director of civil service shall promptly certify to such officer the names and addresses of the highest three eligibles on the list for the class or grade to which such position belongs, with their respective grades as shown on the register of eligibles. The appointing authority shall appoint to such position one of the persons whose names are so certified.~~

~~Sec. 10. Whenever practicable, vacancies in the classified service shall be filled by promotion, and the civil service rules shall indicate the lines of promotion from each lower to higher grade wherever experience derived in the lower grade tends to qualify for the higher. Any advancement in rank shall constitute promotion. Lists from which promotions are to be made shall be created as provided by the civil service rules, and the appointment of eligibles therefrom shall be made in the same manner as original appointments. When there are less than three names on the promotion list eligible for certification in any instance, then if the City Manager requests it, appointments to higher positions shall be made after competitive tests, in which persons not in the service of the city may compete, as well as applicants for such positions from the lower grades of the service, or from other branches thereof. In such case, appointment shall be made from the highest three eligibles, as in the case of other competitive tests.~~

~~Sec. 11. There shall be maintained in the department of civil service a list of all persons in the classified service showing in connection with each name the position held, the salary or wages paid, the data and character of appointment, and every subsequent change in status. Such list shall be known as the service register and every appointing officer or authority shall promptly transmit to the department of civil service all information requested for the establishment and maintenance of each register.~~

~~Sec. 12. The treasurer shall not pay, nor shall any officer or employee of the city issue a check for the payment of any salary or compensation to any person holding or claiming to hold, a position in the classified service, unless the payroll or account of such salary or compensation shall bear the certificate of the director of civil service that the persons named therein have been appointed or employed and are performing service in accordance with the civil service provisions of this Act and the rules established thereunder, that their names appear upon the service register for the time for which such salary or compensation is claimed and that the salary or compensation is at the rate indicated on such register. If the treasurer or any officer or employee shall willfully or negligently violate any of the provisions of this Section, he and the sureties on his bond shall be liable to the City for the amount thereof and action may be brought therefor by an taxpayer for the use of the city without making previous request of the city to sue.~~

Section 6. The Civil Service Board shall have the authority, exercisable by any of its members, to review and approve all promotional processes in the Police and Fire Departments and may review any promotional decision in accordance with Section 7 of this Act but no promotional decision may be changed except in accordance with Section 8 of this Act. This section shall not apply to promotional processes initiated prior to the effective date of this Act.

~~Sec. 13. Section 7. The council, Council, the city manager, City Manager, the Director or chair of the Civil Service Board, or any person designated by any of them, may make investigations concerning the facts in respect to the operation and enforcement of the provisions of this Act and of the rules established thereunder, and concerning the condition of the civil service of the city City or any branch thereof. thereof and may refer such matters to the Civil Service Board for hearing in accordance with Section 8 of this Act, or for further investigation as appropriate. Written charges of misconduct or inefficiency against any officer or employee in the classified service may be filed with the Director of Civil Service by any person. The Civil Service Board shall investigate any such charges, or cause them to be investigated, and report the findings of the investigation, in writing, to the authority responsible for the appointment of the officer or employee against whom the charges have been made. Any person, or persons, making any investigation authorized or required by this Section, section, shall have the power to subpoena and require the attendance of witnesses. A copy of the report of such the investigation shall be filed with the city clerk and be open for public inspection. inspection, subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of records in this State.~~

~~Sec. 14. Section 8. (a) Whenever any member of the classified service of the City of Asheville is discharged, suspended, reduced in rank, transferred against his or her will, or is denied any promotion or raise in pay which he or she would be entitled to,~~

that member shall be entitled to a hearing before the Civil Service Board of the City of Asheville to determine whether or not the action complained of is justified.

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

(c) Any member of the classified service of the City of Asheville who requests a hearing pursuant to this ~~act~~ Act shall be entitled to be represented by counsel of his or her choice at all stages of the proceeding. ~~It shall be the duty of the city attorney to represent the city in cases where the complaining member of the classified service is represented by counsel.~~ The City may be represented by its attorney at any such hearing.

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

(e) The ~~civil service board~~ Civil Service Board shall render its decision in writing within five days after the conclusion of the hearing. If the ~~board~~ Board determines that the act or omission complained of is not justified, the ~~board~~ Board shall order to rescind whatever action the ~~board~~ Board has found to be unjustified and may order the ~~city~~ City to take such steps as are necessary for a just conclusion of the matter before the ~~board~~ Board. Upon reaching its decision, the ~~board~~ shall Board shall, in writing, immediately inform the city clerk and the member requesting the hearing of the ~~board's decision and shall do so in writing.~~ Board's decision.

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

~~Sec. 15. The Council shall be ordinance establish a schedule of compensation for officers and employees in the classified service which shall provide uniform compensation for like service. such schedule of compensation may establish a minimum and a maximum for any grade.~~

~~Sec. 16. Any applicant for any office or employment in the classified service who shall knowingly make any false statement in connection with any test shall thereby forfeit his right to be entered upon the eligible register and in case he has been appointed to an office or employment, he shall forfeit it and shall not within three years thereafter be eligible to appointment to any office or employment in the service of the City, nor shall he, during that time, be entitled to take any civil service test.~~

~~Sec. 17. No applicant for civil service test or for appointment to the classified service shall, either directly or indirectly, give, render or pay or promise to give, render or pay any money, service or other valuable thing to any person for or on account of, or in connection with, his test, appointment or proposed appointment, nor shall he ask for or receive any recommendation or assistance from any person in the services of the city other than a statement regarding any previous service to the city as a subordinate under such officer or employee.~~

~~Sec. 18. No person shall willfully or corruptly make any false statement, certificate, mark, grading or report in regard to any test or appointment held or made under the civil service provisions of this Act, or in any manner commit or attempt to commit any fraud on the impartial execution of any provisions of the civil service rules.~~

~~Sec. 19. No person in the administrative and/or classified service of the city shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or political purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political purpose from any person holding a position in the administrative and/or classified service. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment, to any position in the service of the city as a reward or return for personal or partisan political service.~~

~~Sec. 20. Section 9. No person about to be appointed to any position in the service of the city City shall sign or execute a resignation dated or undated, in advance of such appointment. No person in the service of the city City shall discharge, suspend, layoff, reduce in grade or in any manner change the official rank or compensation of any person in such service, or promise or threaten to do so, for withholding or neglecting to make any contribution or money or service or any valuable thing for any political purpose. No person in the administrataive service of the city shall use his official authority to influence or coerce the political action of any person or body, or to interfere with any nomination or election to public office.~~

~~Sec. 21. No person in the administrative and/or classified service of the City of Asheville shall act as an officer of a political organization, take part in a political campaign, serve as a member of a committee of any such organization, or circulate, or seek signatures to any petition provided for by primary or election laws, or act as a worker in favor of or in opposition to any candidate for public office. This shall not be~~

~~construed to restrict the right of any employee in the qualified service, to vote in any election, when qualified.~~

~~Sec. 22. Section 10. It shall be the duty of the Director of Civil Service Board to supervise the execution of the foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be the duty of all persons in the service of the city City to comply with such rules and to aid in their enforcement. Any person, who, by himself or with others, willfully or corruptly deceives or obstructs any person in respect to his/her right to take part in any test for admission to the classified service of the city; or willfully and corruptly marks, grades or reports upon the test or proper standing of any person tested for appointment in the classified service, or aids in so doing; or willfully or corruptly makes any false representation as to the results of such tests or concerning persons so tested; or furnished special or secret information for the purpose of either improving or injuring the prospects or chances of a person tested, or to be appointed, employed or promoted; or impersonates any person, or permits or aids in any impersonation or appointment or request to be tested or registered; or who makes known or assists in making known to any applicant for test, in advance thereof, any question to be asked on such test, exercise the rights as stated herein; or willfully or through culpable negligence violates any of the provisions of this Act, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or by imprisonment for a term not exceeding six (6) months. If any such person be an applicant for competitive test, he shall be excluded therefrom; if he be an eligible, his name shall be removed from the register of eligibles; and if he be an officer or employee of the city, he shall immediately forfeit his office or employment.~~

~~Sec. 23. Any taxpayer in the city may maintain an action to recover for the City any sum of money paid in violation of the civil service provisions, or to enjoin the Director of Civil Service from attaching his certificate to a payroll, or account for services rendered, in violation of this Act or the rules made thereunder; and the rules made under the foregoing provisions shall for this and all other purposes have the force of law.~~

~~Sec. 24. Section 11. Any and all employees of the classified service as hereinabove defined, defined in this Act, who are members of the classified service as defined in this Act at the time of the first election of a Civil Service Director under this Act, shall, without test, certification or reappointment, or without complying with any of the provisions of this Act, relating in any way to qualifications for or appointment to the position she or he then holds, effective date of this Act, shall be deemed to hold and occupy such position as an employee of the civil service of the city City, as established by this Act, subject only to layoff, suspension suspension, or removal therefrom, as provided in this Act, and all of the provisions of this Act shall be applicable to any and all such employees.~~

~~Sec. 25. In case of emergency, declared to be such by a resolution adopted by the council in regular or special session, requiring, in the opinion of the council, the employment of more persons than are available for appointment from the eligible list in any branch of the classified service, or immediately available for appointment from~~

~~such list, the city council may, without waiting for an eligible list of employees, employ or authorize the employment of as many employees as, in the opinion of the council, may be needed to meet the emergency, such employment to continue throughout the emergency and until an eligible list of employees is available.~~

~~Sec. 26. Constitutionality of Act. Section 12.~~ If any ~~Section, section,~~ subsection, subdivision, sentence, ~~elause clause,~~ or phrase of this Act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

~~Sec. 27. Section 13.~~ All laws and clauses of laws in conflict with the provisions of this Act, ~~including all of Chapter 83 of the Session Laws of 1947, as amended by Chapter 459 of the Session Laws of 1951, and Chapter 1000 of the Session Laws of 1951, Act~~ are hereby repealed.

~~Sec. 28. The public interest requires that this act shall be in full force and effect from and after its ratification."~~

Section 2. Notwithstanding the provisions of this act, the existing Civil Service Board shall continue in operation, with no interruption in the term of any current member, and without affecting the manner of selection or eligibility for current service or successive terms of any member, and the powers, duties, and responsibilities of the Board shall be as prescribed by this act from and after the effective date of this act.

Section 3.(a) The board of commissioners of a county may direct the board of elections of that county to conduct a countywide advisory referendum on zoning in the unincorporated area of that county.

Section 3.(b) The board of commissioners shall decide the form and content of the issue on the ballot.

Section 3.(c) Any referendum under this section must be conducted on or before December 31, 1999.

Section 3.(d) This section applies to Buncombe County only.

Section 4. Sections 1 and 2 of this act become effective 30 days after they become law. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives