

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 447

By: Senator J. Hutchinson

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CIVIL SERVICE; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING CIVIL
SERVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 14-51-102 is amended to read as follows:
14-51-102. Applicability.

In addition to ~~all~~ other powers possessed by ~~cities~~ a city of the first class, ~~these cities~~ a city of the first class may establish a board of civil service commissioners for ~~the~~ the city's police and fire departments ~~of their cities~~ at the discretion of the city or upon presentation of a petition of qualified electors equaling ten percent (10%) of total votes cast in the preceding mayoral general election.

SECTION 2. Arkansas Code § 14-51-202 is amended to read as follows:
14-51-202. Qualifications of commissioners.

(a) The commissioners shall be:

- (1) Citizens of the ~~State of Arkansas~~ state and residents of the city for more than three (3) years preceding their appointments; and
- (2) Qualified electors of the city at all times during their appointments.

(b)(1) ~~No~~ A person on the commission shall not hold or be a candidate for any political office under any national, state, county, or municipal



government or be connected in any way in any official capacity with any political party or political organization.

(2)(A) ~~No person as enumerated in this subsection shall be~~ A person enumerated in this subsection is not eligible as a member of the board who at the time of his or her election ~~shall hold~~ holds any office.

(B) The commissioners shall be an impartial and independent body and shall not be employed by the city, the police department, or the fire department.

(c) The commissioners shall be familiar with ~~these statutes~~ civil service commission law, civil rights ~~laws~~ law, and all other state and federal public employment ~~laws~~ law.

SECTION 3. Arkansas Code § 14-51-206 is amended to read as follows:

14-51-206. Attorney for commission and city.

(a) ~~Except if~~ Unless the commission decides otherwise, the city attorney ~~shall act as~~ is the attorney for the commission in all trials or other legal transactions. ~~However, the commission may appoint an attorney to represent the commission if it so desires.~~

(b) The city attorney shall render impartial legal advice to the commissioners.

~~(b)(c)~~ (c) The city shall hire on an annual basis independent legal counsel to represent the city and the department head ~~when~~ at the time the city's managerial employment decisions are brought for review before the commission and in all trials, proceedings, or other legal transactions before the commission.

SECTION 4. Arkansas Code § 14-51-301 is amended to read as follows:

14-51-301. Rules and regulations generally.

(a)(1) The board provided for in this chapter shall prescribe, amend, and enforce local civil service rules and regulations governing the procedures and policies pertaining to the hiring, promotion, discipline, and discharge of the employees of the fire and police departments of its respective ~~cities~~ city as provided for in this chapter.

(2) The rules and regulations ~~shall~~ have the same force and effect of law.

(3) The board shall keep a record of its examinations and shall

investigate the enforcement and effect of this chapter and the rules as provided for in this section.

(b) These rules shall provide for:

(1)(A) The qualifications of each applicant for appointment to any position on the police or fire department.

(B)(i)(a) ~~No~~ A person ~~shall be~~ is not eligible for appointment to any position on the fire department who has not arrived at ~~twenty-one (21)~~ eighteen (18) years of age or who, except as provided in subdivision (b)(1)(C) of this section, has arrived at thirty-five (35) years of age.

(b) A civil service commission may require a person to be twenty-one (21) years of age to be eligible for appointment to a position on the fire department.

(ii) ~~No~~ A person ~~shall be~~ is not eligible for appointment on the police department affected by this chapter who has not arrived at twenty-one (21) years of age.

(C) ~~However, the~~ The maximum age limit for appointment to any position with a fire department in subdivision (b)(1)(B)(i) of this section ~~shall~~ does not apply to:

(i) ~~Any~~ A person who has at least two (2) years of previous experience as a paid firefighter with ~~another~~ a fire department and whose years of experience as a paid firefighter when subtracted from the person's age leaves a remainder of not more than ~~thirty-two (32)~~ thirty-four (34) years; or

(ii) ~~Any~~ A person who is applying for a position with a fire department in which the primary functions of the job involve duties that are administrative, managerial, or supervisory in nature;

(2)(A) Open competitive examinations to test the relative fitness of applicants for the positions.

(B)(i) The examinations are to be protected from disclosure and copying, except that the civil service commission shall designate a period of time following the conclusion of testing in which an employee taking an examination shall be entitled to review his or her own test results.

(ii) During the employee review process, the employee ~~may~~ shall not copy test questions in any form whatsoever.

(iii) Before the administration of an examination, a candidate for promotion shall be provided with information that includes an outline of the examination, the study materials, and the scoring process that will be used;

(3)(A) Public advertisement of all examinations by publication of notice in some newspaper having a bona fide circulation in the city and by posting of notice at the city hall at least ten (10) days before the date of the examinations.

(B) The examinations may be held ~~on the first Monday in April or the first Monday in October, or both, and more often if~~ as necessary under such rules and regulations and as may be prescribed by the board;

(4)(A)(i)(a) The creation and maintenance of current eligibles lists for each rank of employment in the departments, in which shall be entered the names of the successful candidates in the order of their standing in the examination. However, for ranks in each department ~~where~~ in which there may not be openings during the effective period of a list, the board may establish rules to create the eligibles list on an as-needed basis.

(b) If the board creates an eligibles list on an as-needed basis and a vacancy is created as a result of death, termination, resignation, demotion, retirement, or promotion, the chief of the fire department or the chief of the police department shall notify the board within five (5) business days, and the board shall schedule an examination to establish an eligibles list from which an appointment or promotion shall be made unless the position is determined to be eliminated or not funded by the governing body of the city.

(ii)(a) A person is not eligible for examination for advancement from a lower rank to a higher rank until that person has served at least one (1) year in the lower rank, except in case of emergency, which emergency shall be decided by the board. The board shall determine the rank or ranks eligible to be examined for advancement to the higher rank.

(b) If the board designates an effective period for eligibles lists of more than one (1) year under subdivision (b)(4)(B)(i) of this section, a person shall be eligible for examination for advancement from a lower rank to a higher rank if the person is within twelve (12) months of meeting the time in service requirement for eligibility. However, if that person takes the examination and then is placed on the

eligibles list for promotion, the person shall not be promoted from the eligibles list until the person meets the minimum service time requirement in the lower rank as established by the board.

(c) The eligibles list for promotion shall be certified within ~~ninety (90)~~ sixty (60) days upon completion of the examination process for advancement under this section.

(B)(i)(a) Unless the board designates a longer effective period for eligibles lists that is not less than one (1) year nor more than two (2) years, all lists for appointments or promotions as certified by the board shall be effective for the period of one (1) year.

(b)(1) If the period of the eligibles list is for more than one (1) year, the time period shall be established and certified before a component of the test is administered to an employee.

(2) After the eligibles list is certified, the time period shall not be extended.

(ii) At the expiration of ~~this period~~ time period under subdivision (b)(4)(B)(i) of this section, all right of priority under the lists shall cease;

(5)(A) The rejection of candidates as eligibles who fail to comply with reasonable requirements of the board in regard to age, ~~sex~~, or physical condition, ~~or~~ who have been guilty of a felony, or who have attempted fraud or deception in connection with the examination.

(B)(i) All applicants for appointment and all applicants for reinstatement shall undergo a suitable physical examination.

(ii)(a) The examination shall be conducted in the manner and form as provided by law.

(b) If no provision has been made by existing law for such examination, then the board may adopt proper rules and regulations to carry this subdivision (b)(5) into effect;

(6) Certification to the department head of the three (3) standing highest on the eligibility list for appointment for that rank of service, and for the department head to select for appointment or promotion one (1) of the three (3) certified to him or her and notify the commission ~~thereof~~;

(7)(A) A period of probation not to exceed twelve (12) months for potential fire department appointees and at least one (1) year but no

longer than two (2) years for potential law enforcement appointees before any appointment is complete and six (6) months before any promotion is complete, except that for the extended absence of the potential appointee due to illness, injury, or military service, the probation period may be extended for a time period equal to the period of the extended absence with the consent of the commission.

(B) During the period, the probationer may be discharged in case of an appointment or reduced in case of promotion by the chief of police or the chief of the fire department;

(8)(A) Temporary employees without examination with the consent of the commission, in cases of emergency, and pending appointment from the eligibles list.

(B)(i) Except as provided in subdivision (b)(8)(B)(iii) of this section, a temporary promotion or appointment for a vacancy created by death, termination, resignation, demotion, retirement, or promotion shall not be made for longer than ~~sixty (60)~~ thirty (30) days ~~when~~ at the time there is a current eligibles list, except to the extent necessary to comply with Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 20 C.F.R. Part 1002, as in effect on January 1, 2015.

(ii)(a) Except as provided in subdivision (b)(8)(B)(iii) of this section, in the absence of a current eligibles list, a temporary promotion or appointment may be allowed for a vacancy created by death, termination, resignation, demotion, retirement, or promotion until an eligibles list is certified unless the position is determined to be eliminated or not funded by the governing body of the city.

(b) A temporary promotion for a vacancy created by death, termination, resignation, demotion, retirement, or promotion shall not last longer than ~~sixty (60)~~ thirty (30) days, except to the extent necessary to comply with Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 20 C.F.R. Part 1002, as in effect on January 1, 2015.

(iii) If an appeal is filed in connection with a vacancy that is created by a termination or demotion, the vacancy may be filled by a temporary promotion until all appeals in connection with the termination or demotion are exhausted.

(C) A vacancy ~~that is~~ created by vacation, bereavement

leave, medical leave, military leave, or suspension on a day-to-day basis may be filled by a temporary promotion on a day-to-day basis as vacancies occur.

(D) An increase in salary beyond the limits fixed for the grade ~~by the rules of the commission~~ may be allowed while an employee is working outside of his or her grade while temporarily promoted to fill a vacancy under this subdivision (b)(8);

(9)(A)(i) Establishing eligibility lists for promotion based upon open competitive examinations.

(ii) The examinations are to be protected from disclosure and copying, except that the civil service commission shall designate a period of time following the conclusion of testing in which an employee taking an examination shall be entitled to review his or her own test results.

(iii) During the employee review process, the employee ~~may~~ shall not copy test questions in any form whatsoever.

(iv) The exams may include a rating of applicants based on results of written, oral, or practical examinations, length of service, efficiency ratings, and educational or vocational qualifications.

(v)(a) Lists shall be created for each rank of service and promotions made from the lists as provided in this section.

(b) Promotions shall be made within ~~sixty (60)~~ thirty (30) calendar days of a vacancy created by death, termination, resignation, demotion, retirement, or promotion unless the position is determined to be eliminated, except to the extent necessary to comply with Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 20 C.F.R. Part 1002, as in effect on January 1, 2015.

(B) Advancement in rank or increase in salary beyond the limits fixed for the grade by the rules of the commission shall constitute a promotion;

(10) Suspension for not longer than thirty (30) calendar days and leave of absence;

(11)(A) Discharge or reduction in rank or compensation after promotion or appointment is complete, only after the person to be discharged or reduced has been presented with the reasons for the discharge or reduction in writing with a statement of just cause.

(B)(i) The person ~~se~~ discharged or reduced shall have the

right, within ten (10) calendar days from the date of notice of discharge or reduction, to reply in writing.

(ii) ~~Should~~ If the person ~~deny~~ denies the truth of the reasons upon which the discharge or reduction is predicated and ~~demand~~ demands a trial, the commission shall grant a trial as provided in this chapter.

(iii) The reasons and the reply shall constitute a part of the trial and be filed with the record;

(12) The adoption and amendment of rules after public notice and hearing;

(13) The preparation of a record of all hearings and other proceedings before it, which shall be stenographically reported; and

(14) A review of complaints filed by any citizen ~~pursuant to~~ under rules promulgated by the commission, including rules that give the commission the authority to consider certain personnel issues in executive session and to establish any necessary appellate procedures.

(c)(1) The board may prescribe, amend, and enforce rules and regulations that provide for and apply to a category of police officers whose promotion to any rank or grade below that of sergeant is exempted, in whole or in part, from subdivisions (b)(4) and (b)(9) of this section.

(2) If the board prescribes the rules and regulations authorized in subdivision (c)(1) of this section, the board shall prescribe criteria for the promotions.

(d) The commission shall adopt ~~such~~ rules ~~not inconsistent~~ consistent with this chapter for necessary enforcement of this chapter, but shall not adopt any rule ~~or rules which~~ that would authorize ~~any~~ interference with the day-to-day management or operation of a police or fire department.

SECTION 5. Arkansas Code § 14-51-303 is amended to read as follows:

14-51-303. Political activities.

In addition to ~~all~~ powers and duties provided by law, the civil service commissions for police and fire departments of cities of the first class and cities of the second class shall promulgate rules ~~and regulations~~ governing the political activities of fire department and police department personnel while on duty, in uniform, or in an official representative capacity of the city.

SECTION 6. Arkansas Code §§ 14-51-304 and 14-51-305 are repealed.

~~14-51-304. Employees and salaries fixed.~~

~~The city council or board shall from time to time fix the number of employees and the salaries to be drawn by each rank in the fire and police departments of its respective cities.~~

~~14-51-305. Certification for compensation.~~

~~(a) The secretary of the commission shall file with the treasurer or disbursing officer of his or her city a certificate of those entitled to compensation from the city under this chapter.~~

~~(b) No compensation shall be allowed to any member of the police or fire departments of the affected cities unless his or her name shall be so certified by the secretary.~~

SECTION 7. Arkansas Code § 14-51-308 is amended to read as follows:

14-51-308. Suspension, discharge, or reduction in rank or compensation.

(a)(1) ~~No~~ A civil service employee shall not be discharged, reduced in rank or compensation, or suspended for ~~three (3)~~ twenty-four (24) or more hours without being notified in writing of the discharge, reduction in rank or compensation, or the suspension for ~~three (3)~~ twenty-four (24) or more ~~days~~ hours and ~~its~~ the just cause for the discharge, the reduction in rank or compensation, or the suspension.

(2) In case of suspension, discharge, or reduction, the affected or accused person shall have written notice of the action and just cause at the time action is taken.

(b)(1) Within ten (10) calendar days after the notice in writing is served upon the officer, private, or employee, the person may request a trial before the board of civil service commissioners on the charges alleged as the grounds for the discharge, the reduction in rank or compensation, or the suspension for three (3) days twenty-four (24) or more hours if he or she so desires.

(2)(A) ~~In the event~~ If a request for trial is made, the ~~municipal~~ civil service commission shall fix a date for the trial not more than fifteen (15) calendar days after the request is made.

(B)(i) If the request for trial is not made within ten (10) calendar days from the date of service of notice, the discharge, the reduction in rank or compensation, or the suspension for ~~three (3) days~~ twenty-four (24) or more hours shall become final, and no trial shall be granted after that date.

(ii) The appeal shall be taken by either party by filing a notice of appeal with the commission within thirty (30) calendar days from the date of the decision. ~~The, with the~~ responsibility of filing an appeal and paying for the transcript of the proceedings before the commission ~~shall be~~ borne by the party desiring to appeal the commission's decision.

(iii) Upon receiving notice of an appeal, the commission ~~will~~ shall prepare a written order containing its decision and ensure that the transcript and evidence ~~be made~~ are available for filing in the circuit court ~~once~~ after the appealing party has paid the cost of preparing the transcript.

(iv) ~~However, if~~ If the court determines ~~that~~ the party appealing the commission's decision took the appeal in good faith and with reasonable cause to believe he or she would prevail, the commission shall reimburse the appealing party for the cost of the transcript.

(c)(1) In the event of a trial, the officer, private, or employee requesting the trial shall be notified of the date and place of the trial at least ten (10) calendar days prior to the date ~~thereof~~ of the trial.

(2) The officer, private, or employee shall have compulsory process to have witnesses present at the trial.

(d)(1) The chair of the commission shall preside at all trials ~~and~~, shall determine and decide all questions relative to pleadings and the admissibility of evidence, and shall consider legal advice from the attorney for the commission.

(2) The decision of the commission shall be by a majority vote of the members of the commission, with consideration given to whether the justification of the cause of the suspension, reduction of rank, or discharge is based on evidence.

(e)(1)(A) A right of appeal by the city or employee is given from any decision of the commission to the circuit court within the jurisdiction of which the commission is situated.

(B)(i)(a) The appeal shall be taken by filing with the

commission, within thirty (30) calendar days from the date of the decision, a notice of appeal. ~~The, with the~~ responsibility of filing an appeal and paying for the transcript of the proceedings before the municipal civil service commission shall be borne by the party desiring to appeal the commission's decision.

(b) The city shall follow the ruling of the commission pending the outcome of the appeal.

(ii) Upon receiving notice of an appeal, the commission ~~will~~ shall prepare a written order containing its decision and ensure that the transcript and evidence ~~be made~~ are available for filing in the circuit court ~~once~~ after the appealing party has paid the cost of preparing the transcript.

(iii) ~~However, if~~ If the court determines that the party appealing the commission's decision took the appeal in good faith and with reasonable cause to believe he or she would prevail, the commission shall reimburse the appealing party for the cost of the transcript.

(iv) The circuit court may award reasonable attorney's fees to the prevailing party for the proceedings in circuit court.

(C)(i) The court shall review the commission's decision on the record and in addition may hear testimony or allow the introduction of any further evidence upon the request of either the city or the employee.

(ii) The testimony or evidence ~~must~~ shall be competent and otherwise admissible.

(2)(A) A right of appeal is also given from any action from the circuit court to the Supreme Court.

(B) The appeal shall be governed by the rules of procedure provided by law for appeals from the circuit court to the Supreme Court.

(f) ~~In the event that~~ If it is finally determined that there was a wrongful suspension, discharge, or reduction in rank of ~~any~~ an employee, the employee ~~shall be:~~

(1) Is entitled to judgment against the city for whatever loss ~~he or she~~ the employee may have sustained by reason of his or her suspension, discharge, or demotion, taking into consideration any remuneration ~~which~~ that the ~~officer, private, or~~ employee may have received from other sources pending the final determination of his or her case; and

(2) Shall be returned to active status immediately.

SECTION 8. Arkansas Code § 14-51-311 is amended to read as follows:

14-51-311. Political discrimination prohibited.

~~No person in any~~ A person in a police department or fire department affected by this chapter shall not be appointed, reduced, suspended, discharged, or otherwise discriminated against because of his or her political opinion, activities, or affiliation.