

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 241
HOUSE BILL 482

AN ACT TO MODIFY THE RALEIGH CIVIL SERVICE ACT.

The General Assembly of North Carolina enacts:

Section 1. Short title; purpose. This act may be cited as the Raleigh Civil Service Act. The general purpose of this act is to establish for the City of Raleigh a system of personnel administration based on merit principles.

Sec. 2. Personnel system. (a) Classified service and exceptions. The classified service of the City of Raleigh shall comprise all positions in the city service except the following which are exempt from this act:

- (1) Elected officials.
- (2) Employees or officials appointed by the city council or appointed by the city manager and approved by the city council and their immediate secretaries.
- (3) Department heads, division heads and their immediate secretaries.
- (4) Part-time or nonpermanent officers or employees.
- (5) Employees serving the probationary period before becoming permanent employees.
- (6) Any employee applying for promotion to one of the positions listed in subdivisions (2) through (4) of this section insofar as the promotion is concerned.

(b) Administration. The personnel system of the city shall be administered by an employee appointed and subject to the direction and supervision of the city manager.

(c) Personnel rules. The employee administering the personnel system shall prepare personnel rules. These rules shall include a listing of all positions by job classification which are exempted from the classified service by virtue of subsection (a). An employee's official position shall be that official job classification assigned to him as a result of his hiring or most recent promotion or demotion. Informal working titles shall not be used to determine the exempt status of any employee. The city manager shall refer such proposed rules to the Civil Service Commission, which shall report to the manager its recommendation thereof. The rules, including the recommendation of the Civil Service Commission and the recommendation of the city manager, shall be presented to the city council. The council, upon consideration of the recommendations, shall adopt the official personnel rules.

Sec. 3. Organization of Commission. (a) Creation. There is hereby created a Civil Service Commission for the city which shall be composed of seven members, all of whom shall be qualified voters of the city, and shall take the oath prescribed by law. Five members of the Commission shall be appointed by the city council from the

following classifications: one member shall be an attorney licensed to practice law in North Carolina; two members shall be individuals actively engaged in the management of a private business or industry; and two members shall be from the public at large. The other two members of the Commission shall be elected by the employees at large of the city who are subject to this act. The election of members by employees shall be under written procedures established by the city council. No member of the Commission shall be a city employee or officer nor shall any member be related to any city employee or officer. The chairman of the Commission shall be designated by the city council and serve as chairman at the pleasure of the council.

(b) Term of office; vacancy and classification. Members of the Commission shall serve terms of four years unless reappointed or reelection; provided, however, three initial members (one appointed by the city council from the management classification, one appointed by the city council from the public classification, and one elected by the employees of the city) shall serve for a term of two years.

The city council shall have the right to remove from office any member of the Commission, but only for malfeasance or failure to perform the duties required for the office. The Commission shall not have power to remove its own members. If a vacancy in the membership occurs through resignation or otherwise, a new member (from the same classification as the vacancy occurs) shall be appointed or elected to fill the unexpired term. Membership on the Commission may be held in addition to the number of offices permitted in G.S. 128-1.1.

Sec. 4. Merit principle and policy. All appointments, retentions and promotions of city officers and employees covered by this act shall be made solely on the basis of fitness and merit.

Sec. 5. Appeal board. The Civil Service Commission shall act as an appeal board to hear all appeals of employees regarding violation of city policy, relating to suspensions, layoff, removal, promotions, forfeiture of pay or loss of time, but the Commission shall have no jurisdiction to hear an appeal until all administrative remedies have been exhausted pursuant to the city's established grievance procedure. The Commission shall have no jurisdiction to hear matters involving lateral transfers unless it finds that such transfer was in effect a demotion. The Commission shall have the authority to affirm, modify, or reverse, as it deems necessary, those actions over which it has jurisdiction; provided, however, the Commission may not institute any action that will affect the right of other employees without first making all such employees a party to the proceeding. The Commission shall hear no appeals based on a failure to be promoted until the City Manager has completed the formal procedure for filling the vacancy and has named a person to fill the vacant position. Any modification or reversal of an administrative officers' decision or any other decision by the Commission shall require four affirmative votes. The Commission shall not have the authority to award actual damages, except salary adjustment and back pay. It shall not have the authority to award punitive damages. Reasonable attorney fees may be awarded upon the rendering of a decision or settlement in favor of the petitioning employee.

Sec. 6. Appeal procedure. (a) Right of Appeal. Any employee subject to the provisions of this act who has pursued a complaint that is subject to the Commission's authority through the established city grievance procedure, and who is dissatisfied with the decision of the administrative process may appeal that decision to the Civil Service Commission. Such appeal must be made within 30 days of the receipt of notice of the administrative decision.

(b) Request for Hearing. A request for hearing before the Commission must contain the following information:

1. The name, address, and telephone number of the person on whose behalf the request is being made.
2. The position held or applied for by the employee.
3. The number of years the employee has been continuously employed by the city.
4. The name of the department against whom the complaint is being brought.
5. The nature of the complaint (e.g. racial discrimination in promotion, dismissal without justifiable cause, etc.)
6. A concise statement of the facts necessary to an understanding of the situation upon which the complaint is based.
7. A statement of the relief desired.

The employee shall send a copy of this letter to the City Personnel Director.

(c) Duties and Responsibilities of the City Administration. Within 15 days after an employee has requested a hearing, the city department involved must submit a letter to the Commission which includes the following:

1. The name of the employee against whom the action was taken.
2. The position last held by the employee.
3. The number of years of continuous city employment prior to the action taken.
4. The nature of the action taken (e.g. dismissal).
5. A special reference to the statute or policy under which the action was taken.
6. A concise statement of the fact situation which led to the action.

Sec. 7. Practice Before the Commission. (a) Rules of Evidence. Evidence will be admitted in accordance with the provisions of the State Administrative Procedure Act unless both parties agree to the use of the strict rules of evidence as used in the General Court of Justice. The testimony of all witnesses shall be taken under oath or a solemn affirmation. (b) Notice of Hearing. No less than 21 days before the hearing, both parties will receive a written notice of hearing, giving the date, time and location of the hearing and a statement of the issue to be resolved at the hearing.

(c) Subpoena. The Commission is authorized to issue subpoenas upon a written request by either party. When such written request is made, the Commission shall issue subpoena forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the Commission shall revoke

a subpoena if, upon a hearing the Commission finds that the evidence, the production of which is required, does not relate to a matter in the issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Commission shall not have the power to issue subpoenas on its own motion.

(d) **Conduct of Hearing.** The hearing itself shall be conducted very similarly to a trial. Both parties shall be allowed to make opening statements, which serve as outlines for what each party hopes to establish at the hearing. After the opening statements (which are optional), the employee shall present his evidence. After the employee has presented his evidence, the city shall present its evidence. If, after the city has presented its evidence, the employee wishes to present further evidence to the Commission to rebut evidence offered by the city, he may do so. All witnesses shall be sworn, and their testimony shall be recorded. Both oral testimony and documentary evidence may be presented to the Commission. Each party shall have an opportunity to cross-examine the witnesses of the opposing party. The Commission may neither call witnesses nor gather evidence to be presented for either party. It shall not act as an attorney for either party. The members of the Commission may ask questions of the witnesses to clarify factual situations and to obtain background facts necessary to a determination of the issues. Only those issues raised in the request for hearing may be heard and determined by the Commission. All questions of procedure and evidence shall be addressed to and decided by the Chairman whose ruling shall be binding unless a member of the Commission objects to such ruling. Upon objection, a majority of the Commission shall decide the question.

(e) **Burden of Proof.** The employee has the burden, by the greater weight of the evidence, to prove that the action taken against him was unjustified. If the employee alleges discrimination in the action taken, then the employee must present sufficient evidence to establish by the greater weight of the evidence that the city did discriminate against him. The burden of proof has no effect on the order of presentation of evidence, which is always employee, city, employee.

(f) **Closing Statements.** After all witnesses and evidence have been presented, each party may, if it chooses, make a closing statement. This is a summary of the evidence a party has presented at the hearing and what conclusions the party feels that evidence shows. The party with the burden of proof shall have the last closing statement.

(g) **Decision.** Once the hearing is concluded, the Commission shall consider all the evidence and issue a written proposal for decision. Each party shall be sent a copy of this proposal by certified mail. If either party disagrees with the proposal, it may, within five days request to appear before the Commission at its next meeting and present its position to the Commission. These appearances shall be limited to a 15 minute oral argument, although a party may also submit written arguments in favor of its position. The Commission shall hear no evidence at this hearing. The Commission shall consider all material before it and shall issue a final decision within a reasonable time, generally within five working days after the Commission meeting. If a party objects to the Commission's decision, that party may appeal the Commission's decision

to the Wake County Superior Court under the provisions of Article 4 of Chapter 150A of the General Statutes. This appeal must be taken within 15 days after the party receives notice of the Commission's decision.

Sec. 8. Effect of Disciplinary Action. The procedure for administrative appeal in the event of suspension, layoff, or removal from employment shall be established by personnel rules under the provisions of Section 2(c) of this act. However, in the event of reinstatement the affected employee shall be considered as uninterrupted in service.

Sec. 9. Discrimination Prohibited. No person in the service to the city or seeking admission thereto shall in any way be discriminated against because of race, creed, or color, or because of political or labor affiliations, or because of sex or marital status.

Sec. 10. Participation in Elections. No appointed officer or employee of the city shall in any manner contribute to, participate or take part in any election, primary or any political contests, other than exercising his right to vote; provided, the foregoing prohibition shall apply only to those elections, primaries or political contests for offices of the city. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to two hundred dollars (\$200.00), or both, in the discretion of the court and shall, upon conviction, be discharged from the service of the city.

Sec. 11. Meetings. All meetings of the Civil Service Commission shall be called and conducted according to the procedures governing public meetings found in Article 33C of Chapter 143, and in Chapter 160A of the North Carolina General Statutes.

Sec. 12. Severability Clause. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be invalid such decision shall not affect the validity of the remaining portions thereof. The General Assembly hereby declares that it would have passed this act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Sec. 13. Sections 1 and 2 of Chapter 1154, Session Laws of 1971 are repealed, and any matters pending before the Commission established under that act are transferred to the Commission established by this act for action and disposition.

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of April, 1981.