

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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**HOUSE BILL 1197
Committee Substitute Favorable 5/4/07
Senate State & Local Government Committee Substitute Adopted 6/28/07
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Short Title: Statesville Civil Service Change.

(Local)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE CHARTER OF THE CITY OF STATESVILLE TO
2 MODIFY THE POWERS AND DUTIES OF THE CIVIL SERVICE BOARD AND
3 AMENDING THE ACT ESTABLISHING THE BUNCOMBE COUNTY
4 SHERIFF'S PERSONNEL ADVISORY BOARD.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article V of the Charter of the City of Statesville, being
8 Chapter 289 of the 1977 Session Laws, as amended by Chapter 799 of the 1981 Session
9 Laws, reads as rewritten:

10 "ARTICLE V.

11 "CIVIL SERVICE BOARD.

12 "Sec. 5.1. Members; Term of Office. The Civil Service Board of the City,
13 hereinafter referred to as the 'Board', shall consist of five members. Terms shall begin
14 on the first day of July and expire on the last day of June.

15 The present members of the Board shall continue to serve until their present terms
16 expire. That person appointed to fill the first term expiring shall be appointed to a
17 three-year term. Of those appointed to the next three terms expiring, one shall serve a
18 one-year term, one shall serve a two-year term, and one shall serve a three-year term.
19 That person appointed to fill the last present term expiring shall serve a three-year term.
20 These staggered terms are to ensure that a majority of the terms shall not expire during
21 the same year. After the expiration of the term of these appointments, all appointments
22 shall be for a three-year term.

23 "Sec. 5.2. Appointment of Members; Vacancies; Reappointments. All members of
24 the Board shall be appointed by the senior Resident Judge of the Superior Court of the
25 Judicial District of which Iredell County is a part. Vacancies on the Board shall be filled
26 by appointment in the same manner, and any member appointed to fill a vacancy shall
27 serve the remainder of the unexpired term. No member of the Board, after having served

1 a full two or three-year term, shall be eligible for reappointment to the next succeeding
2 term.

3 "Sec. 5.3. Qualifications; Removal From Office. Any person, other than a member
4 of the City Council, an elective officer, a member or employee of the police or fire
5 department, or an employee of the City, who is a qualified voter in the municipal
6 elections in the City, shall be eligible for membership on the Board; provided that at
7 least two members shall be of a political party different from that of the majority of the
8 Board. Each member of the Board shall take an oath (or affirmation) for the faithful
9 discharge of the duties of his office. The members of the Board shall be subject to
10 removal from office by the senior Resident Superior Court Judge for any cause which,
11 in his discretion, makes such removal in the best interests of the public.

12 "Sec. 5.4. Election of Officers; Duties; Records Open to Public. The Board shall
13 elect from its membership a chairman and a secretary for a term of one year. The
14 chairman shall preside at all meetings of the Board. The secretary shall keep the minutes
15 of the proceedings of the Board and shall be the custodian of all papers and records
16 pertaining to the business of the Board, and shall perform such other duties as the Board
17 may direct. All of the records of the Board shall be open to public inspection, during
18 normal business hours at their place of keeping, except where otherwise prohibited by
19 law.

20 ~~"Sec. 5.5. Powers and Duties. The Board shall establish and fix requirements of~~
21 ~~applicants for employment in the police department and the fire department of the City,~~
22 ~~not contrary to State law. These requirements shall be printed and made available for~~
23 ~~public inspection and for the use of the employees of and applicants for employment in~~
24 ~~such departments. The board shall institute an affirmative action program in locating,~~
25 ~~testing and employing qualified blacks for entry level positions in police and fire~~
26 ~~departments, maintain accurate records and report regularly to city council on progress~~
27 ~~made in complying with federal court order.~~The Board shall hear grievances as to
28 promotions, demotions, suspensions, and terminations of members of the fire and police
29 departments.

30 "Sec. 5.5.1. Equal Opportunity. The Board shall maintain a program to insure that all
31 employment decisions made by any person under this section shall be made without
32 regard to race, religion, color, creed, national origin, sex, age, or handicapping
33 condition.

34 "Sec. 5.6. Compensation. The members of the Board shall receive as compensation
35 for each meeting the sum of fifteen dollars (\$15.00).

36 "Sec. 5.7. Rooms and Clerical Help. The City shall provide suitable rooms for the
37 Board and shall provide all necessary clerical and stenographic help and all stationery,
38 forms, and other supplies needed by the Board, and shall allow such reasonable use of
39 the facilities of the City ~~for the holding of examinations, and such other use as may be~~
40 necessary for the proper conduct of its affairs.

41 ~~"Sec. 5.8. Examination of Applicants. All applicants for sworn positions in the~~
42 ~~police department and qualified firefighters in the fire department of the City shall be~~
43 ~~subject to an examination by the Board, which examination shall be competitive and~~
44 ~~open to all persons, subject to a reasonable limitation as to age, health, moral character~~

1 and general reputation. The examination shall relate to those matters which will fairly
2 test the relative ability of the person examined to discharge in a proper fashion the
3 duties of the position which he seeks to be appointed to, and shall include tests of
4 physical, mental, and moral qualifications, but no applicant shall be examined
5 concerning his political opinions or affiliations. Due regard shall be given by the Board
6 in its examination of applicants for positions in the police department and fire
7 department to the experience or training of any applicant which may qualify him for the
8 duties which he would be called upon to discharge as a member of either department.

9 ~~"Sec. 5.9. Notice of Examinations. Notice of the time and place of every
10 examination shall be given by the Board by advertisement in some newspaper published
11 in the City.~~

12 ~~"Sec. 5.10. Eligibility List; Appointments. The Board shall prepare and keep an
13 eligibility list of persons successfully passing its examinations for the positions of
14 patrolmen and firefighters. Each person shall be graded according to his respective
15 showing upon such examinations, and the Board shall make appointments to vacancies,
16 which occur in the departments, on a basis of the grades made by the various applicants
17 upon the examinations so given. All examinations given by the Board shall be made
18 under the rules and regulations established by the Board.~~

19 ~~All names which remain on the eligibility list for a period of two years shall be
20 stricken therefrom; provided, however, any person who becomes eligible for
21 appointment to either the police department or fire department, and is given proper
22 notification that a vacancy exists, shall have seven days to accept or reject the
23 appointment and if he rejects same, his name shall be removed immediately from the
24 eligibility list.~~

25 ~~"Sec. 5.11. Appointment of Policemen and Firemen; Responsible to Mayor and
26 Council. The Chiefs and members of the Police and Fire Departments shall be appointed
27 by a majority vote of the Board.~~

28 ~~The Chiefs and members of the Police and Fire Departments shall be under the
29 direction and control of, and shall be directly responsible to, the Mayor and City
30 Council or, upon proper delegation, to the City Manager.~~

31 ~~"Sec. 5.12. Promotions. All promotions shall be by competitive examination within
32 the departments and shall be made by the respective chiefs, with the approval of the
33 Board.~~

34 ~~"Sec. 5.13. Acting Chiefs. Notwithstanding any other section to the contrary, if The
35 City Manager shall hire and may terminate the Chiefs of the fire and police
36 departments. If a vacancy occurs in the position of Chief and a new Chief is not
37 immediately appointed, an acting Chief shall be appointed by the City Manager from
38 within the department. The acting Chief shall have all the powers, duties and
39 responsibilities as does the Chief. The acting Chief may be removed from office at any
40 time by the City Manager, in which case he or she shall be restored to his former
41 position.~~

42 ~~"Sec. 5.14. Suspension of Fire and Police Chiefs. The mayor and city council or,
43 upon proper delegation, the city manager shall have the authority to suspend, demote or
44 terminate from employment the chief of either the police or fire department, but no such~~

1 ~~suspension, demotion or termination shall become final until concurred in by the civil~~
2 ~~service board.~~ The City Manager shall be responsible for the hiring, firing, and discipline
3 of the police and fire Chiefs.

4 "Sec. 5.14.1. Hiring Members of Police and Fire Departments; Promotions. The
5 Chiefs of the police and fire departments shall hire the members of their respective
6 departments. All promotions shall be by competitive examination within the
7 departments and shall be made by the respective Chiefs.

8 "Sec. 5.15. Suspensions; Demotions; Terminations. The Chief of the police or fire
9 department may suspend, demote, or terminate from employment any member of their
10 respective departments for the infraction of any departmental rules and regulations. The
11 Chief may also suspend a departmental employee during the investigation, hearing, or
12 trial of said employee on any criminal charge, when suspension would be in the best
13 interest of the department; where the suspension is terminated by full reinstatement of
14 the employee, back pay shall be recoverable. Suspensions for an infraction of
15 departmental rules and regulations of more than 15 days at any one time, or one which
16 would make the total number of days suspended exceed 25 during any six-month
17 period; demotions in rank and terminations may be appealed to the Board, upon written
18 request filed with the respective Chief within three days of notification of the
19 disciplinary action taken. The rules and regulations of each department may provide for
20 appeals in the case of all suspensions for infractions of departmental rules and
21 regulations; the Board shall have the power to hear such appeals. Upon notification of
22 an appeal, the Board may make such investigation as it may direct and shall hold a
23 hearing at which the accused shall be given an opportunity to be heard and present
24 evidence in his own behalf. The Board shall have power to subpoena witnesses and
25 compel testimony.

26 ~~The board shall have the authority to suspend, demote in rank, or terminate from~~
27 ~~employment any employee who has appealed.~~ The board shall have the authority to
28 sustain the disciplinary action imposed by the chief or vacate the same or impose such
29 disciplinary action as it may determine; provided that no such suspension, demotion or
30 termination action shall become final until concurred in it is concurred by the city
31 council.

32 ~~Notwithstanding any provisions to the contrary herein, a~~ Any probationary employee
33 of either department may be summarily discharged by the Chief of that department with
34 no right to appeal to the Board.

35 Decisions regarding disciplinary actions made by the Chiefs, where no right to
36 appeal exists, and all decisions of the Board under this section, shall be final and not
37 subject to judicial review.

38 This section shall not apply to terminations due to a reduction in personnel.

39 "Sec. 5.16. Political Activity. No member or employee of the police department or
40 the fire department shall contribute to or take part in any manner, directly or indirectly,
41 in any election or function involving the election of a candidate for municipal office,
42 other than casting his secret ballot.

43 No employee of the police department or the fire department shall seek a political
44 office while employed as a member of either department, and shall not be granted a

1 leave of absence prior to offering for election. Such employee shall automatically be
2 dropped from the payroll of the City on the date the filing fee is paid to the Election
3 Board."

4 **SECTION 2.(a)** Effective with the appointments made under Section 2(b) of
5 this act, Section 1 of Chapter 297 of the 1973 Session Laws reads as rewritten:

6 "**Section 1.** Creation. There is hereby created a Personnel Advisory Board for the
7 Sheriff's Department of Buncombe County which shall be composed of ~~three~~ five
8 members to be appointed by the senior regular resident Superior Court judge of the 28th
9 Judicial District."

10 **SECTION 2.(b)** Effective with the appointments made under this
11 subsection, Section 2 of Chapter 297 of the 1973 Session Laws reads as rewritten:

12 "**Sec. 2.** Terms, and Qualifications and Removal. The senior regular resident judge
13 of Superior Court shall, ~~on or before July 1, 1973, appoint the three members on or~~
14 before September 1, 2007, appoint the five members of his selection who shall
15 constitute the Personnel Advisory Board. The terms of office of the three persons
16 servicing on the date of the new appointments expire on that date. The initial term of
17 office of ~~one member~~ two members of the Board shall be for one year; the initial term
18 of office of ~~one member~~ two members shall be for two years; and the initial term of
19 office of one member shall be for three years. The resident judge shall determine and
20 announce the terms of the respective members of the Board.

21 At the expiration of the term of each member of said Board the resident judge shall
22 appoint a successor for a term of three years. Any vacancy in the Personnel Advisory
23 Board shall be filled in the manner herein provided for the appointment of members,
24 and the person so appointed shall serve for the unexpired term of the member whose
25 place he fills. Members of the Board shall hold office until their successors are
26 appointed and qualified.

27 All persons appointed to the Personnel Advisory Board shall be interested in
28 promoting a merit system of personnel administration and none shall ~~practice or have~~
29 ~~practiced law in the criminal courts of Buncombe County or hold or have held political~~
30 ~~office or an office in a political party during the previous three years.~~ be a current
31 elected officeholder.

32 The members of the Board shall serve without pay or remuneration but shall be
33 reimbursed for travel expenses incurred in the course of their duties.

34 The Board shall annually elect one of its members as chairman.

35 A member of the Board may be removed by the senior resident judge only for cause,
36 after being given a copy of the charges against him and an opportunity to be heard
37 publicly on such charges."

38 **SECTION 2.(c)** Section 3 of Chapter 297 of the 1973 Session Laws reads as
39 rewritten:

40 "**Sec. 3.** Duties of Personnel Advisory Board. The duties of the Personnel Board
41 shall be as follows:

- 42 (1) ~~to~~ To represent the public interest in the improvement of personnel
43 administration;

- 1 (2) ~~to~~ To advise the Sheriff of Buncombe County concerning personnel
2 administration, including minimum standards of employment
3 established by the Criminal Justice and Training and Standards
4 Council, and the methods used to publicize vacancies;
- 5 (3) ~~to~~ To make any investigations which it may consider desirable
6 concerning the administration of personnel in the Department;
- 7 (4) ~~to~~ To advise the Sheriff on such personnel rules as he shall establish;
8 and
- 9 (5) ~~to~~ To hear appeals, receive evidence, determine facts and make
10 recommendations to the Sheriff in case of employee appeals of
11 suspension, demotion ~~and dismissal~~ and/or dismissal, and to determine
12 and establish a rotating board for hiring and promotions."

13 **SECTION 2.(d)** Sections 5 and 6 of Chapter 297 of the 1973 Session Laws
14 read as rewritten:

15 "**Sec. 5.** Political Activity Restricted. Every employee has a civic responsibility to
16 support good government by every available means and in every appropriate manner.
17 Each employee may join or affiliate with civic organizations of a partisan or political
18 nature, may attend political meetings, and may advocate and support the principles or
19 policies of civic or political organizations in accordance with the Constitution and laws
20 of the State of North Carolina and in accordance with the Constitution and laws of the
21 United States of America. However, no employee of the Department ~~shall~~ shall, as a
22 duty of his office or employment, or as a condition for employment, promotion, or
23 tenure of office: (1) engage in any political activity while on duty, (2) be required ~~as a~~
24 ~~duty of his office or employment, or as a condition for employment, promotion, or~~
25 ~~tenure of office, to contribute~~ to contribute funds for political or partisan purposes, (3)
26 solicit, or act as custodian of, funds for political or partisan purposes, (4) coerce or
27 compel contributions for political or partisan purposes by any other employee of the
28 County, or (5) use any supplies or equipment of the County for political purposes. Any
29 violation of this section shall be deemed improper conduct and shall subject such
30 employee to dismissal or other disciplinary action by the Sheriff.

31 **Sec. 6.** Exemptions. All employees in the Sheriff's Department shall be subject to
32 this act except the Sheriff, the Chief Deputy Sheriff, ~~the Assistant Chief Deputy Sheriff~~
33 ~~and the Administrative Deputy Sheriff.~~ and the majors and captains of the Buncombe
34 County Sheriff's Department."

35 **SECTION 3.** This act is effective when it becomes law.