

1 HB563
2 157525-6
3 By Representatives Boyd, Wood, Brown and Hurst (N & P)
4 RFD: Local Legislation
5 First Read: 04-MAR-14

1
2 ENROLLED, An Act,

3 Relating to the City of Anniston in Calhoun County,
4 Alabama; to amend Sections 2, 3, 4, 9, 10, 11, 12, 13, and 14
5 of Act 592 of the 1953 Regular Session (Acts 1953, p. 838), as
6 amended, now appearing as Section 45-8A-22.01, et seq., Code
7 of Alabama 1975, establishing a civil service system; to
8 provide that all persons employed in positions within the
9 police and fire departments of the city on the effective date
10 of this act and thereafter, and all other employees on the
11 effective date of this act who do not opt-out of the civil
12 service system, as long as an employee remains in his or her
13 current position, shall continue as civil service employees
14 subject to the civil service system; to provide that other
15 employees of the city shall be subject to any personnel
16 policies and procedures established by the city council and
17 shall not be subject to the civil service system; and to amend
18 Section 4.02 of Act 404 of the 1953 Regular Session (Acts
19 1953, p. 472), now appearing as Section 45-8A-23.091 of the
20 Code of Alabama 1975, to provide that employees appointed by
21 the city manager would be appointed subject to the personnel
22 policies of the city.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 45-8A-22.01, 45-8A-22.02,
25 45-8A-22.03, 45-8A-22.08, 45-8A-22.09, 45-8A-22.10,

1 45-8A-22.11, 45-8A-22.12, and 45-8A-22.13, Code of Alabama
2 1975, are amended to read as follows:

3 §45-8A-22.01.

4 ~~"As used in this subpart, unless the context clearly~~
5 ~~requires a different meaning: "City" means the City of~~
6 ~~Anniston in Calhoun County; "employee" means any person~~
7 ~~including firemen and policemen, not excepted by Section~~
8 ~~45-8A-22.02 who is employed in the service of the City of~~
9 ~~Anniston; "board" means the civil service board created by~~
10 ~~this subpart; "appointing authority" means in the case of~~
11 ~~employees in the offices of the elected officers of the city,~~
12 ~~such elected officers; in the case of all other city~~
13 ~~employees, the city governing body, or the board or other~~
14 ~~agency supervising their work.~~

15 "As used in this subpart, the following words have
16 the following meanings:

17 "(1) APPOINTING AUTHORITY. The city manager or as
18 otherwise authorized pursuant to Section 45-8A-23.091.

19 "(2) BOARD. The civil service board created by this
20 subpart.

21 "(3) CITY. The City of Anniston in Calhoun County.

22 "(4) CIVIL SERVICE EMPLOYEE. Any person who is
23 employed in the service of the city in the police department
24 or fire department.

1 "(5) GRANDFATHERED EMPLOYEE. Any person who is
2 employed in the service of the city on the date upon which the
3 act adding this language becomes effective in a position that
4 is subject to the civil service system. A person to whom this
5 subdivision applies shall remain a civil service employee for
6 the purposes of this subpart unless the employee accepts a
7 promotion or employment in a different position with the city,
8 without regard to whether the different position was formerly
9 subject to the civil service system, or unless the employee
10 voluntarily opts-out of the civil service system through
11 proper notice, as set forth in this subpart.

12 "§45-8A-22.02.

13 "(a) The provisions of this subpart shall not apply
14 to all officers and employees in the service of the city or
15 any board, agency, or instrumentality thereof except: or the
16 following: (1) Elective officers; (2) members of appointive
17 boards, commissions, and committees; (3) all employees of the
18 city board of education engaged in the profession of teaching
19 or in supervising teaching in the public schools; (4)
20 attorneys, physicians, surgeons, nurses, and dentists employed
21 in their professional capacities; (5) the judge of any court;
22 (6) independent contractors receiving their remuneration from
23 public funds under contracts awarded by competitive bidding;
24 (7) any person whose employment is subject to the approval of
25 the United States government or any agency thereof; (8) the

1 secretary of the chief executive officer of the city; (9) the
2 following employees of the Anniston Museum of Natural History:
3 Director, assistant director for programs and marketing,
4 museum business manager, curator of natural history, curator
5 of exhibits, artist II, artist I, assistant preparator,
6 exhibit fabricator, naturalist, registrar, public relations
7 coordinator, museum building and grounds supervisor, museum
8 technician, museum horticulturist, museum display technician,
9 and preparator and any new classifications in the exempt
10 category of employment which are created by the Anniston
11 Museum Board.

12 "(b) The provisions of the civil service system
13 provided in this subpart shall not apply to any person
14 employed by the city except civil service employees and
15 grandfathered employees.

16 "(c) A grandfathered employee who remains a civil
17 service employee, at his or her discretion, may opt-out of the
18 civil service system by submitting a signed and verified
19 written notice to his or her appointing authority and a copy
20 to the board, attesting to all of the following:

21 "(1) That the employee is knowingly and voluntarily
22 withdrawing from the civil service system.

23 "(2) That the employee understands and acknowledges
24 that his or her withdrawal is permanent and irrevocable.

1 "(3) That the employee understands and acknowledges
2 that he or she permanently and irrevocably relinquishes his or
3 her status as a grandfathered employee, together with any and
4 all rights and privileges afforded by the board or its rules.

5 "(4) That the employee has relied upon his or her
6 own judgment in an exercise of his or her own free will and
7 has not been coerced, threatened, or otherwise forced to
8 withdraw from the civil service system.

9 "(5) The employee's withdrawal from the civil
10 service system shall take effect immediately upon his or her
11 delivery of notice, in accordance with this subdivision, at
12 which time the employee shall be subject to the personnel
13 policies and procedures adopted by the city council.

14 "§45-8A-22.03.

15 "All civil service employees and grandfathered
16 employees of the city shall be governed by civil service rules
17 and regulations prescribed in or promulgated pursuant to this
18 subpart, administered by a civil service board, the creation
19 of which is provided for in Section 45-8A-22.04. Present civil
20 service employees and grandfathered employees shall remain in
21 their respective employments during good behavior; but nothing
22 herein shall be construed to prevent or preclude the removal
23 of an employee for cause in the manner hereinafter provided;
24 and such employees, except for appointment, shall be subject
25 fully to the provisions of this subpart.

1 "§45-8A-22.08.

2 "The board shall have power to make rules and
3 regulations applicable to civil service employees and, in
4 part, to grandfathered employees, governing examinations,
5 eligible registers, appointments, transfers, salaries,
6 promotions, demotions, annual and sick leave, and such other
7 matters as may be necessary to accomplish the purposes of this
8 subpart. A rule or regulation of the board may be made
9 effective only after a public hearing is held on the proposal
10 thereof and after a certified copy thereof has been filed with
11 the city clerk. All employees shall be appointed upon a
12 non-partisan merit basis. There shall not be appointed, and
13 the board shall not examine, any person who is not a citizen
14 of the United States. ~~The~~ With regard to civil service
15 employees, the board shall: (1) Classify the different types
16 of services to be performed in the service of the city; (2)
17 prescribe qualifications, including those of education,
18 training, and experience, for the appointees and incumbents of
19 each class; (3) with the approval of the ~~appointing authority~~
20 city council, fix a maximum and minimum salary for each class;
21 and (4) allocate each position in the service to its proper
22 class. It shall provide for the periodic rating of civil
23 service employees and grandfathered employees according to
24 their merit to determine whether they are maintaining
25 standards of service. The board shall establish rules and

1 regulations governing dismissals, suspensions, layoffs,
2 terminations, and leaves of absence, and the severance of ~~an a~~
3 civil service employee's and a grandfathered employee's
4 relationship with the city shall be in accordance with such
5 regulations.

6 "§45-8A-22.09.

7 "The salary to be paid each ~~subordinate~~ civil
8 service employee and each grandfathered employee shall be
9 determined by his or her appointing authority; ~~and the salary~~
10 ~~to be paid each department head employee shall be determined~~
11 ~~by the city governing body;~~ but in every case the salary paid
12 shall be within the pay plan and pay rules and regulations
13 established by the board and shall be no more than the board
14 approves. It shall be unlawful for any official or employee to
15 draw or issue any warrant on the city treasury for the payment
16 of salary to any civil service employee or grandfathered
17 employee covered by the provisions of this subpart unless the
18 warrant is in an amount authorized by the board to be paid
19 such employee. A sum paid as salary contrary to the provisions
20 of this section may be recovered in an action brought by any
21 resident of the city against the official or employee who
22 draws or issues the warrant, or against the sureties on his or
23 her bond.

24 "§45-8A-22.10.

1 "The board shall make and keep a register of all
2 persons eligible and available for appointment to each class
3 of position in the ~~service of the city~~ police department and
4 fire department, ranked according to ability; it is provided,
5 however, that no examination shall be given and no register
6 kept for positions to be filled by persons designated by the
7 board as common laborers. Layoffs available for reemployment
8 in the police department and fire department shall be placed
9 at the head of the proper present and subsequent eligible
10 registers in the inverse order of their terminations.
11 ~~Employees~~ Civil service employees who voluntarily terminate
12 their services may be granted reemployment status upon proper
13 eligible registers under such circumstances and in such manner
14 as may be provided for in the board's rules and regulations,
15 subject, however, to stipulations of this section concerning
16 layoffs. Persons desiring appointment to the police or fire
17 department may file applications with the board, and the board
18 ~~shall~~, from time to time, shall conduct examinations to test
19 the ability of such applicants. All qualified applicants shall
20 be examined, and examinations shall be public, competitive,
21 and, subject to limitations specified by the board as to age,
22 residence, health, height, weight, habits, moral character,
23 and other factors pertinent to ability to discharge the duties
24 of the position, open to all citizens of the United States.
25 Examinations shall be practical in character and shall relate

1 to those matters which test the ability of the person examined
2 to discharge intelligently the duties of the position for
3 which he or she applies. In no case shall an appointment be
4 made from an eligible register ~~which~~ that is more than two
5 years old, and no eligible register shall be the result of
6 more than one examination.

7 "§45-8A-22.11.

8 "Whenever a vacancy exists in ~~any position in the~~
9 ~~service of the city~~ the police or fire department, it shall be
10 filled by appointment of one of the five persons who rank
11 highest on the appropriate eligible register of the board or
12 by transfer within the service of the city from another
13 position of the same class. Whenever a vacancy exists in the
14 police or fire department that requires a promotion from
15 within ~~any service of the city~~ the police or fire department,
16 it shall be filled by appointment of one of the three persons
17 who rank highest on the appropriate eligible promotion
18 register of the board. The ranking layoff of the same class
19 shall be appointed in every instance. When the eligible list
20 submitted by the board to the appointing authority contains
21 less than five persons, the appointing authority may appoint
22 from the list, but shall not be required to appoint from the
23 list. In the event the appointing authority declines to
24 appoint from an eligible list containing less than five
25 persons, the appointing authority may request the board to

1 abolish the eligible list. Whenever it is impossible for the
2 board to certify eligible persons to a vacancy in the police
3 or fire department, the board may authorize the appointing
4 authority to fill the vacancy temporarily pending the
5 establishment of an eligible register. The authorization shall
6 not be given for longer than 120 days, and no such employees
7 shall have status under this subpart. All appointments, other
8 than temporary appointments, to the police and fire
9 departments shall be probationary for one year from the date
10 of appointment. A probationary subordinate employee of the
11 police department and fire department may be discharged by his
12 or her appointing authority for unsatisfactory service at any
13 time before the expiration of the probationary period, if the
14 action is approved by the board. A probationary civil service
15 department head employee may be discharged or demoted
16 similarly by his or her appointing authority upon approval by
17 the board. After the expiration of the probationary period, an
18 appointment of a civil service employee shall become
19 permanent.

20 "§45-8A-22.12.

21 "An appointing authority shall have authority to
22 suspend ~~an~~ a civil service employee or a grandfathered
23 employee for any personal misconduct, or fact, affecting or
24 concerning his or her fitness or ability to perform his or her
25 duties in the public interest. In the event ~~an~~ a civil service

1 employee or a grandfathered employee is suspended for more
2 than 30 days, he or she shall be entitled to a public hearing
3 by the board upon written demand filed within five days from
4 the date of the order of suspension. If, after hearing, the
5 board determines that the action of the appointing authority
6 was not with cause, the suspension shall be revoked.

7 "§45-8A-22.13.

8 "(a) ~~The governing body of the city, any member of~~
9 ~~the governing body, or the head of any department or office~~
10 appointing authority can remove, discharge, or demote any
11 civil service employee or grandfathered employee, ~~officer, or~~
12 ~~official of the city who is subject to the provisions of this~~
13 ~~subpart and who is directly under such governing body, member~~
14 ~~thereof, or department head,~~ provided that within five days a
15 report in writing of such action is made to the board, giving
16 the reason for such removal, discharge, or demotion. The civil
17 service employee or grandfathered employee shall have 10 days
18 from the time of notification of his or her discharge,
19 removal, or demotion in which to appeal to the board. The
20 board shall thereupon order the charges or complaint to be
21 filed forthwith in writing and shall hold a hearing de novo on
22 such charges. No permanent civil service employee or
23 grandfathered employee, ~~officer, or official of the city whose~~
24 ~~employment comes within the jurisdiction of this subpart, and~~
25 whose probationary period has been served, shall be removed,

1 discharged, or demoted except for some personal misconduct, or
2 fact, rendering his or her further tenure harmful to the
3 public interest, or for some cause affecting or concerning his
4 or her fitness or ability; and if such removal, discharge, or
5 demotion is appealed to the board, then the same will become
6 final only after a hearing upon written charges or complaint
7 has been had and after an opportunity has been given him or
8 her to face his or her accusers and be heard in his or her own
9 defense. Pending a hearing on appeal, the affected civil
10 service employee or grandfathered employee may be suspended;
11 and after such hearing the board may order the civil service
12 employee or grandfathered employee reinstated, demoted,
13 removed, discharged, or suspended, or take such other
14 disciplinary action as in their judgment is warranted by the
15 evidence and under the law. Charges may be filed by any
16 resident citizen of the city as follows: The charges must be
17 in writing, must set forth succinctly the matters complained
18 of, and must be sworn to before any member of the board or
19 before any person authorized to administer oaths. Upon the
20 receipt of such charges, the board, after due consideration,
21 shall determine whether in its opinion it considers that the
22 good of the service will be served by a trial thereon; and, if
23 not, such charges may be dismissed by the board. If in the
24 judgment of the board such charges are of a minor nature, such
25 charges may be referred by the board to the ~~proper department~~

1 ~~head~~ appointing authority who shall make an investigation of
2 the charges and make his or her recommendation to the board
3 within such time as the board may prescribe, as to what
4 disciplinary action, if any, should be taken. After such
5 recommendation is made by the ~~department head~~ appointing
6 authority and after due notice is given to the affected civil
7 service employee or grandfathered employee of the receipt of
8 such recommendation and the contents thereof, the board may,
9 in its discretion, adopt and order executed the action
10 recommended by the ~~department head~~ appointing authority, or
11 any part thereof. However, if the complainant or the affected
12 employee, or both of them, objects to the recommendation of
13 the ~~department head~~ appointing authority, the board shall hold
14 a public hearing de novo on the charges, and take such
15 disciplinary action as in their judgment is warranted by the
16 evidence and under the law. All hearings before the board
17 shall be open to the public. All testimony given in all
18 hearings before the board shall be taken down in shorthand by
19 a stenographer. In all cases, the decision of the board shall
20 be reduced to writing and entered in the record of the case.
21 In all proceedings before the board, the city attorney may
22 appear and prosecute all charges instituted by ~~the city~~
23 ~~governing body or any member thereof or by any department~~
24 ~~head~~, the appointing authority when requested or directed to
25 do so by ~~such city governing body~~ the appointing authority. It

1 shall not be the duty of the city attorney to prosecute any
2 charges brought by a private citizen. In all proceedings
3 before the board, the city attorney may appear and represent
4 the interests of the city, and he or she shall also give such
5 legal advice and legal assistance to the board as may be
6 requested by it.

7 "The board and its specially authorized
8 representatives shall have the power to administer oaths, take
9 depositions, certify official acts, and issue subpoenas to
10 compel the attendance of witnesses and production of papers
11 necessary as evidence in connection with any hearing,
12 investigation, or proceeding within the purview of this
13 subpart. The chief of police or some other police officer of
14 the city shall serve all processes of the board, and shall
15 attend upon and preserve order at all public hearings
16 conducted by the board. In case a person refuses to obey such
17 subpoena, the board or its representative may invoke the aid
18 of any circuit court in order that the testimony or evidence
19 be produced. Upon proper showing, such court shall issue a
20 subpoena or order requiring the person to appear before the
21 board or its representative and produce all evidence and give
22 all testimony relating to the matter in issue. A person who
23 fails to obey such subpoena order may be punished by the court
24 as for contempt. The fees of witnesses for attendance and
25 travel shall be the same as fees for witnesses in the circuit

1 courts of this state, which fees shall be paid from the
2 treasury of the city.

3 "(b) Any person aggrieved by a decision of the board
4 may appeal such decision to the Circuit Court of Calhoun
5 County in equity within 30 days from the rendition of such
6 decision by the board. Review by the court shall be without a
7 jury and be confined to the record, and to a determination of
8 the questions of law presented; the board's findings of fact
9 shall be final and conclusive.

10 "(c) All cases pending before the civil service
11 board provided by Title 62, Chapter 4 Article 8, Code 1940, on
12 September 11, 1953, shall be transferred to the board herein
13 provided for and the proceedings thereon shall be held and
14 conducted hereafter in accordance with the provisions of this
15 subpart."

16 Section 2. All employees of the City of Anniston,
17 except civil service employees and grandfathered employees who
18 are subject to the civil service system, shall be employees of
19 the city subject to the personnel policies and procedures
20 adopted, and as amended, by the city council. The personnel
21 policies shall prescribe the classification for different
22 types of services to be performed, allocate each position of
23 employment, determine the salary to be paid to each employee,
24 and prescribe policies and procedures for the removal of

1 employees from a position of employment or the suspension,
2 demotion, or otherwise disciplining of employees.

3 Section 3. Section 45-8A-23.091 of the Code of
4 Alabama 1975, is amended to read as follows:

5 "§45-8A-23.091.

6 "(a) The city manager shall be the head of the
7 administrative branch of the city government. He or she shall
8 be responsible to the council for the proper administration of
9 all affairs of the city and, subject to the provisions of any
10 civil service or merit system law applicable to such city and
11 except as otherwise provided herein, he or she shall have
12 power and shall be required to:

13 "(1) Enforce all laws and ordinances.

14 "(2) Appoint and, ~~when necessary for the good of the~~
15 ~~service,~~ remove all officers and ~~employes~~ employees of the
16 city except as otherwise provided by this part and except as
17 he or she may authorize the head of a department or office to
18 appoint and remove subordinates in such department or office;
19 provided that he or she shall not appoint or remove officers
20 and ~~employes~~ employees of--

21 "a. Any library board of the city;

22 "b. Any board of the city having control over any
23 park, recreation facility, fair, or exhibit;

1 "c. Any municipally owned public utility and any
2 municipally owned service enterprise, including inter alia
3 electric, gas, and water boards, agencies, etc.;

4 "d. Any school board of the city;

5 "e. Any hospital board of the city;

6 "f. Any airport board of the city;

7 "g. Any housing authority;

8 "h. Any city plumbers or electricians boards;

9 "i. Any planning board of the city;

10 "j. Any zoning board of the city;

11 "(3) Exercise administrative supervision and control
12 over all officers, employees, offices, department, boards, and
13 agencies created by this part or hereafter created by the
14 council, except those enumerated in paragraphs a. to j.,
15 inclusive, of subdivision (2) of this section, and except
16 those otherwise given independent status.

17 "(4) Keep the council fully advised as to the
18 financial conditions and needs of the city; to prepare and
19 submit the budget proposal annually to the council and be
20 responsible for its administration after its adoption; to
21 prepare and submit, as of the end of the fiscal year, a
22 complete report on the financial and administrative activities
23 of the city for such year.

24 "(5) Recommend to the council such actions as he or
25 she may deem desirable.

1 "(6) Prepare and submit to the council such reports
2 as may be required of him or her.

3 "(7) Perform such other duties as may be prescribed
4 by this part or required of him or her by ordinance or by
5 resolution of the council not inconsistent with this part.

6 "(b) All employees of the city, except civil service
7 employees and grandfathered employees, subject to appointment
8 and removal by the city manager or as otherwise authorized in
9 this section shall be subject to the personnel policies
10 adopted by the city council."

11 Section 4. All other sections of Chapter 8A of Title
12 45, Code of Alabama 1975, not expressly amended by this act
13 shall remain in full force and effect.

14 Section 5. All laws or parts of laws which conflict
15 with this act are repealed.

16 Section 6. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

