

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

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

1 Section 4.02 of Act 404 of the 1953 Regular Session (Acts
2 1953, p. 472), now appearing as Section 45-8A-23.091 of the
3 Code of Alabama 1975, to provide that employees appointed by
4 the city manager would be appointed subject to the personnel
5 policies of the city.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 45-8A-22.01, 45-8A-22.02,
8 45-8A-22.03, 45-8A-22.08, 45-8A-22.09, 45-8A-22.10,
9 45-8A-22.11, 45-8A-22.12, and 45-8A-22.13, Code of Alabama
10 1975, are amended to read as follows:

11 "§45-8A-22.01.

12 ~~"As used in this subpart, unless the context clearly~~
13 ~~requires a different meaning: "City" means the City of~~
14 ~~Anniston in Calhoun County; "employee" means any person~~
15 ~~including firemen and policemen, not excepted by Section~~
16 ~~45-8A-22.02 who is employed in the service of the City of~~
17 ~~Anniston; "board" means the civil service board created by~~
18 ~~this subpart; "appointing authority" means in the case of~~
19 ~~employees in the offices of the elected officers of the city,~~
20 ~~such elected officers; in the case of all other city~~
21 ~~employees, the city governing body, or the board or other~~
22 ~~agency supervising their work.~~

23 "As used in this subpart, the following words have
24 the following meanings:

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

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

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

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

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

18 "§45-8A-22.02.

19 "(a) The provisions of this subpart shall not apply
20 to ~~all officers and employees in the service of the city or~~
21 ~~any board, agency, or instrumentality thereof except: or the~~
22 following: (1) Elective officers; (2) members of appointive
23 boards, commissions, and committees; (3) all employees of the
24 city board of education engaged in the profession of teaching
25 or in supervising teaching in the public schools; (4)
26 attorneys, physicians, surgeons, nurses, and dentists employed
27 in their professional capacities; (5) the judge of any court;

1 (6) independent contractors receiving their remuneration from
2 public funds under contracts awarded by competitive bidding;
3 (7) any person whose employment is subject to the approval of
4 the United States government or any agency thereof; (8) the
5 secretary of the chief executive officer of the city; (9) the
6 following employees of the Anniston Museum of Natural History:
7 Director, assistant director for programs and marketing,
8 museum business manager, curator of natural history, curator
9 of exhibits, artist II, artist I, assistant preparator,
10 exhibit fabricator, naturalist, registrar, public relations
11 coordinator, museum building and grounds supervisor, museum
12 technician, museum horticulturist, museum display technician,
13 and preparator and any new classifications in the exempt
14 category of employment which are created by the Anniston
15 Museum Board.

16 "(b) The provisions of the civil service system
17 provided in this subpart shall not apply to any person
18 employed by the city except civil service employees and
19 grandfathered employees.

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

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

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

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

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

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

16 "§45-8A-22.03.

17 "All civil service employees and grandfathered
18 employees of the city shall be governed by civil service rules
19 and regulations prescribed in or promulgated pursuant to this
20 subpart, administered by a civil service board, the creation
21 of which is provided for in Section 45-8A-22.04. Present civil
22 service employees and grandfathered employees shall remain in
23 their respective employments during good behavior; but nothing
24 herein shall be construed to prevent or preclude the removal
25 of an employee for cause in the manner hereinafter provided;
26 and such employees, except for appointment, shall be subject
27 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
26 regulations governing dismissals, suspensions, layoffs,
27 terminations, and leaves of absence, and the severance of ~~an a~~

1 civil service employee's and a grandfathered employee's
2 relationship with the city shall be in accordance with such
3 regulations.

4 "§45-8A-22.09.

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

22 "§45-8A-22.10.

23 "The board shall make and keep a register of all
24 persons eligible and available for appointment to each class
25 of position in the ~~service of the city~~ police department and
26 fire department, ranked according to ability; it is provided,
27 however, that no examination shall be given and no register

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

27 "§45-8A-22.11.

1 "Whenever a vacancy exists in ~~any position in the~~
2 ~~service of the city~~ the police or fire department, it shall be
3 filled by appointment of one of the five persons who rank
4 highest on the appropriate eligible register of the board or
5 by transfer within the service of the city from another
6 position of the same class. Whenever a vacancy exists in the
7 police or fire department that requires a promotion from
8 within ~~any service of the city~~ the police or fire department,
9 it shall be filled by appointment of one of the three persons
10 who rank highest on the appropriate eligible promotion
11 register of the board. The ranking layoff of the same class
12 shall be appointed in every instance. When the eligible list
13 submitted by the board to the appointing authority contains
14 less than five persons, the appointing authority may appoint
15 from the list, but shall not be required to appoint from the
16 list. In the event the appointing authority declines to
17 appoint from an eligible list containing less than five
18 persons, the appointing authority may request the board to
19 abolish the eligible list. Whenever it is impossible for the
20 board to certify eligible persons to a vacancy in the police
21 or fire department, the board may authorize the appointing
22 authority to fill the vacancy temporarily pending the
23 establishment of an eligible register. The authorization shall
24 not be given for longer than 120 days, and no such employees
25 shall have status under this subpart. All appointments, other
26 than temporary appointments, to the police and fire
27 departments shall be probationary for one year from the date

1 of appointment. A probationary subordinate employee of the
2 police department and fire department may be discharged by his
3 or her appointing authority for unsatisfactory service at any
4 time before the expiration of the probationary period, if the
5 action is approved by the board. A probationary civil service
6 department head employee may be discharged or demoted
7 similarly by his or her appointing authority upon approval by
8 the board. After the expiration of the probationary period, an
9 appointment of a civil service employee shall become
10 permanent.

11 "§45-8A-22.12.

12 "An appointing authority shall have authority to
13 suspend ~~an~~ a civil service employee or a grandfathered
14 employee for any personal misconduct, or fact, affecting or
15 concerning his or her fitness or ability to perform his or her
16 duties in the public interest. In the event ~~an~~ a civil service
17 employee or a grandfathered employee is suspended for more
18 than 30 days, he or she shall be entitled to a public hearing
19 by the board upon written demand filed within five days from
20 the date of the order of suspension. If, after hearing, the
21 board determines that the action of the appointing authority
22 was not with cause, the suspension shall be revoked.

23 "§45-8A-22.13.

24 "(a) ~~The governing body of the city, any member of~~
25 ~~the governing body, or the head of any department or office~~
26 appointing authority can remove, discharge, or demote any
27 civil service employee or grandfathered employee, ~~officer, or~~

1 ~~official of the city who is subject to the provisions of this~~
2 ~~subpart and who is directly under such governing body, member~~
3 ~~thereof, or department head,~~ provided that within five days a
4 report in writing of such action is made to the board, giving
5 the reason for such removal, discharge, or demotion. The civil
6 service employee or grandfathered employee shall have 10 days
7 from the time of notification of his or her discharge,
8 removal, or demotion in which to appeal to the board. The
9 board shall thereupon order the charges or complaint to be
10 filed forthwith in writing and shall hold a hearing de novo on
11 such charges. No permanent civil service employee or
12 grandfathered employee, ~~officer, or official of the city whose~~
13 ~~employment comes within the jurisdiction of this subpart, and~~
14 whose probationary period has been served, shall be removed,
15 discharged, or demoted except for some personal misconduct, or
16 fact, rendering his or her further tenure harmful to the
17 public interest, or for some cause affecting or concerning his
18 or her fitness or ability; and if such removal, discharge, or
19 demotion is appealed to the board, then the same will become
20 final only after a hearing upon written charges or complaint
21 has been had and after an opportunity has been given him or
22 her to face his or her accusers and be heard in his or her own
23 defense. Pending a hearing on appeal, the affected civil
24 service employee or grandfathered employee may be suspended;
25 and after such hearing the board may order the civil service
26 employee or grandfathered employee reinstated, demoted,
27 removed, discharged, or suspended, or take such other

1 disciplinary action as in their judgment is warranted by the
2 evidence and under the law. Charges may be filed by any
3 resident citizen of the city as follows: The charges must be
4 in writing, must set forth succinctly the matters complained
5 of, and must be sworn to before any member of the board or
6 before any person authorized to administer oaths. Upon the
7 receipt of such charges, the board, after due consideration,
8 shall determine whether in its opinion it considers that the
9 good of the service will be served by a trial thereon; and, if
10 not, such charges may be dismissed by the board. If in the
11 judgment of the board such charges are of a minor nature, such
12 charges may be referred by the board to the ~~proper department~~
13 ~~head~~ appointing authority who shall make an investigation of
14 the charges and make his or her recommendation to the board
15 within such time as the board may prescribe, as to what
16 disciplinary action, if any, should be taken. After such
17 recommendation is made by the ~~department head~~ appointing
18 authority and after due notice is given to the affected civil
19 service employee or grandfathered employee of the receipt of
20 such recommendation and the contents thereof, the board may,
21 in its discretion, adopt and order executed the action
22 recommended by the ~~department head~~ appointing authority, or
23 any part thereof. However, if the complainant or the affected
24 employee, or both of them, objects to the recommendation of
25 the ~~department head~~ appointing authority, the board shall hold
26 a public hearing de novo on the charges, and take such
27 disciplinary action as in their judgment is warranted by the

1 evidence and under the law. All hearings before the board
2 shall be open to the public. All testimony given in all
3 hearings before the board shall be taken down in shorthand by
4 a stenographer. In all cases, the decision of the board shall
5 be reduced to writing and entered in the record of the case.
6 In all proceedings before the board, the city attorney may
7 appear and prosecute all charges instituted by ~~the city~~
8 ~~governing body or any member thereof or by any department~~
9 ~~head,~~ the appointing authority when requested or directed to
10 do so by ~~such city governing body~~ the appointing authority. It
11 shall not be the duty of the city attorney to prosecute any
12 charges brought by a private citizen. In all proceedings
13 before the board, the city attorney may appear and represent
14 the interests of the city, and he or she shall also give such
15 legal advice and legal assistance to the board as may be
16 requested by it.

17 "The board and its specially authorized
18 representatives shall have the power to administer oaths, take
19 depositions, certify official acts, and issue subpoenas to
20 compel the attendance of witnesses and production of papers
21 necessary as evidence in connection with any hearing,
22 investigation, or proceeding within the purview of this
23 subpart. The chief of police or some other police officer of
24 the city shall serve all processes of the board, and shall
25 attend upon and preserve order at all public hearings
26 conducted by the board. In case a person refuses to obey such
27 subpoena, the board or its representative may invoke the aid

1 of any circuit court in order that the testimony or evidence
2 be produced. Upon proper showing, such court shall issue a
3 subpoena or order requiring the person to appear before the
4 board or its representative and produce all evidence and give
5 all testimony relating to the matter in issue. A person who
6 fails to obey such subpoena order may be punished by the court
7 as for contempt. The fees of witnesses for attendance and
8 travel shall be the same as fees for witnesses in the circuit
9 courts of this state, which fees shall be paid from the
10 treasury of the city.

11 "(b) Any person aggrieved by a decision of the board
12 may appeal such decision to the Circuit Court of Calhoun
13 County in equity within 30 days from the rendition of such
14 decision by the board. Review by the court shall be without a
15 jury and be confined to the record, and to a determination of
16 the questions of law presented; the board's findings of fact
17 shall be final and conclusive.

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

24 Section 2. All employees of the City of Anniston,
25 except civil service employees and grandfathered employees who
26 are subject to the civil service system, shall be employees of
27 the city subject to the personnel policies and procedures

1 adopted, and as amended, by the city council. The personnel
2 policies shall prescribe the classification for different
3 types of services to be performed, allocate each position of
4 employment, determine the salary to be paid to each employee,
5 and prescribe policies and procedures for the removal of
6 employees from a position of employment or the suspension,
7 demotion, or otherwise disciplining of employees.

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

10 "§45-8A-23.091.

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

18 "(1) Enforce all laws and ordinances.

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

26 "a. Any library board of the city;

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

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

6 "d. Any school board of the city;

7 "e. Any hospital board of the city;

8 "f. Any airport board of the city;

9 "g. Any housing authority;

10 "h. Any city plumbers or electricians boards;

11 "i. Any planning board of the city;

12 "j. Any zoning board of the city;

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

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

26 "(5) Recommend to the council such actions as he or
27 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.