

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 447

5 By: Senator J. Hutchinson  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING CIVIL SERVICE; AND  
9 FOR OTHER PURPOSES.  
10

### Subtitle

11 TO AMEND THE LAW CONCERNING CIVIL  
12 SERVICE.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 14-51-102 is amended to read as follows:  
20 14-51-102. Applicability.

21 In addition to ~~all~~ other powers possessed by ~~cities~~ a city of the first  
22 class, ~~these cities~~ a city of the first class may establish a board of civil  
23 service commissioners for ~~the~~ the city's police and fire departments ~~of their~~  
24 cities at the discretion of the city or upon presentation of a petition of  
25 qualified electors equaling ten percent (10%) of total votes cast in the  
26 preceding mayoral general election.  
27

28 SECTION 2. Arkansas Code § 14-51-202 is amended to read as follows:  
29 14-51-202. Qualifications of commissioners.

30 (a) The commissioners shall be:

31 (1) Citizens of the ~~State of Arkansas~~ state and residents of the  
32 city for more than three (3) years preceding their appointments; and

33 (2) Qualified electors of the city at all times during their  
34 appointments.

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



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

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

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

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

12  
13 SECTION 3. Arkansas Code § 14-51-206 is amended to read as follows:  
14 14-51-206. Attorney for commission and city.

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

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

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

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27 SECTION 4. Arkansas Code § 14-51-301 is amended to read as follows:  
28 14-51-301. Rules and regulations generally.

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

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

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

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

3 (b) These rules shall provide for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28  
29 SECTION 5. Arkansas Code § 14-51-303 is amended to read as follows:

30 14-51-303. Political activities.

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



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

3 ~~14-51-304. Employees and salaries fixed.~~

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

7  
8 ~~14-51-305. Certification for compensation.~~

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

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

15  
16 SECTION 7. Arkansas Code § 14-51-308 is amended to read as follows:

17 14-51-308. Suspension, discharge, or reduction in rank or  
18 compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) Shall be returned to active status immediately.

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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.