

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1742

Short Title: New Bern Civil Service.

(Local)

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Sponsors: Representatives Nichols; Wainwright and Edwards.

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Referred to: Local and Regional Government I.

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May 26, 1994

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE SIZE OF THE CIVIL SERVICE BOARD FOR THE  
2 CITY OF NEW BERN, AND TO PROVIDE FOR STAGGERED TERMS ON  
3 THAT BOARD.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. Section 42 of Chapter 1281 of the Session Laws of 1957, Chapter  
7 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws of 1961, Chapter  
8 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of 1969, Chapter  
9 785 of the Session Laws of 1971, and Section 4 of Chapter 1168 of the Session Laws of  
10 1981 reads as rewritten:

11 "Sec. 42. Civil Service for Police. (a) There shall be created a Civil Service  
12 Board for the City of New Bern, to consist of ~~three~~five members who shall be  
13 representative citizens of the City of New Bern, to be appointed by the board of  
14 aldermen to serve for a period of two years, except that one of the three members first  
15 appointed shall be appointed to serve for a period of one year who shall be replaced at  
16 the end of such term by a member who shall serve a term as above set ~~forth~~forth, and  
17 except that the initial term of the two members added to expand the Board from three  
18 members to five members shall be for one year. The Board of Aldermen may provide  
19 that the initial terms of the two additional members may extend beyond the initial one  
20 year to expire on the same month and date as the terms of the three other members.

21 No member of the Civil Service Board may serve on the board of aldermen or on the  
22 police force while a member of the Civil Service Board, and no member of said board  
23 shall serve more than one consecutive term. In case of a vacancy on the Civil Service

1 Board, the board of aldermen shall fill such vacancy for the unexpired term of said  
2 member. A majority of said board shall constitute a quorum.

3 The members of said Civil Service Board shall take an oath to faithfully perform  
4 their duties. The members of said board shall be subject to removal from office by a  
5 two-thirds vote of the board of aldermen, with or without cause.

6 (b) Said board, with the advice and counsel of the Chief of Police, shall establish  
7 and fix requirements for applicants for position in the police department and all persons  
8 who make application shall be subjected to an examination by said board which shall be  
9 competitive and free to all persons possessing the rights of suffrage and meeting the  
10 requirements of said board, subject to reasonable limitations as to residence, age, health,  
11 and moral character, and said examinations shall be practical in their nature and shall be  
12 limited to those matters which will fairly test the relative ability of the persons  
13 examined to discharge the duties and responsibilities of the positions which they are  
14 seeking, and shall include tests of physical qualifications, and health, but no applicant  
15 shall be examined concerning his political or religious opinions or affiliations.

16 (c) The Civil Service Board shall advertise for applicants for positions in the  
17 police department in a newspaper of general circulation in the City of New Bern. Said  
18 advertisement shall state the basic requirements and a closing date for receiving  
19 applications. Notice of time and place of every examination shall be given to each  
20 qualified applicant by the board at least five days prior to such examination.

21 (d) Said board shall prepare and keep a register of persons passing said  
22 examinations, graded according to their respective showings upon said examinations.  
23 Any applicant passing said examinations shall be eligible to be appointed a member of  
24 the police department. The Board of Aldermen shall, from time to time, select new  
25 appointees to the police department from such register, taking into consideration the  
26 grade which an applicant has made upon such examination, his physical condition,  
27 moral character and standing in the community. Such examination shall be held for  
28 applicants as often as said board shall determine to be necessary, but no less frequently  
29 than once every two (2) years, and the names of applicants appearing on the register of  
30 persons passing the examination shall constitute the register from which applicants for  
31 membership in the police department shall be selected, until the next examination shall  
32 be given. From the date of his selection by the Board of Aldermen, each new appointee  
33 to the police department shall serve in a probationary status for a period of twelve (12)  
34 months, during which said period the officer may be dismissed by the Chief of Police,  
35 with or without cause. The officer so dismissed shall have no opportunity for a hearing  
36 before the Civil Service Board, or otherwise, on the subject of his dismissal.

37 (e) No member of the police department coming under the jurisdiction of the  
38 Civil Service Board shall take any part in any election or political function other than  
39 that of exercising his right to vote, and any such member of the police department  
40 convicted of violating this provision by the Civil Service Board shall be dismissed from  
41 service of said department by the Civil Service Board.

42 (f) No member of the police department of the City of New Bern shall be  
43 dismissed, removed, or discharged except for cause upon written complaint and until  
44 after he has been given an opportunity to be heard by the Civil Service Board in his own

1 defense. In the event such member is convicted of violating the rules and regulations of  
2 the police department, said board may dismiss or discharge him from service, or may  
3 fine him or suspend him without pay for a period not to exceed ninety days. Upon the  
4 filing of a written complaint with the Civil Service Board by the chief of police,  
5 requesting that a member of the police department be discharged, the chief of police  
6 shall suspend such member from duty pending an investigation and hearing of the  
7 charges by the board. The hearing by the board shall be conducted as soon as is  
8 reasonably possible, and in no event longer than thirty days after the written complaint  
9 shall have been filed with the clerk of said board, unless the suspended member of the  
10 police department shall, in writing, file with said clerk a request for delay beyond said  
11 period of time. In the conduct of said investigation each member of said board shall  
12 have the power to secure by subpoena both the attendance and testimony of witnesses  
13 and the production of any documents or papers of any kind relevant to such  
14 investigation. The Civil Service Board may make such rules and regulations from time  
15 to time with respect to the manner in which the hearing shall be conducted as shall be  
16 desired by said board. The decision of the Civil Service Board shall be final.  
17 Notwithstanding any other provision herein set forth, the chief of police may suspend  
18 any member of the police department for violation of any of the rules and regulations of  
19 the police department for a period of time not to exceed three days at any one time, said  
20 suspension to be without pay. Such suspension by the chief of police shall not be  
21 subject to review by the Civil Service Board. Provided, however, that in the event the  
22 officer is subjected to another suspension within ninety days, said officer shall have the  
23 right to appeal such additional suspension to the Civil Service Board.

24 (g) Promotions and demotions of members of the police department shall be  
25 within the discretion of the Chief of Police.

26 The Chief of Police may suspend any member of the police department for violation  
27 of the rules and regulations of the police department for a period of time not to exceed  
28 30 days at any one time, said suspension to be without pay. Such suspension by the  
29 Chief of Police shall not be subject to review by the Civil Service Board; provided,  
30 however, that in the event the officer is subjected to another suspension within ninety  
31 (90) days, said officer shall have the right to appeal such additional suspension to  
32 the Civil Service Board, and any hearing conducted by the Civil Service Board pursuant  
33 to such appeal shall be covered by the rules herein below set forth.

34 In the event the Chief of Police shall determine that a member of the police  
35 department should be discharged or subjected to disciplinary action not within the  
36 power of the Chief of Police under the above provisions of this section, the Chief shall  
37 reduce his charges against the said member of the police department to writing,  
38 including his recommendation relative to discharge, fine, or suspension without pay,  
39 and shall file a copy of the same with the clerk to the Civil Service Board and deliver a  
40 copy to the said member of the police department personally or by certified mail, return  
41 receipt requested. Upon delivery of said written charges and recommendations to the  
42 member of the police department, if the Chief's recommendation is that the member be  
43 discharged or be suspended, the Chief of Police shall suspend such member from duty  
44 forthwith. If the charged officer shall not file a request for hearing by the Civil Service

1 Board with the clerk to said Board within five days after the delivery of the charges and  
2 recommendations to him, the recommendation of the Chief shall thereupon become  
3 effective. In the event said charged officer requests a hearing within said specified  
4 period of time, then and in that event, the hearing by the Board shall be conducted as  
5 soon as is reasonably possible, and in no event later than 30 days after the written  
6 charges have been filed with the clerk to said board, unless the suspended member of  
7 the police department shall, in writing, file with said clerk a request for delay beyond  
8 said period of time, stating the reason therefor. In the event of such request, the Board  
9 shall grant a reasonable postponement if, in its opinion, it is merited by the request,  
10 keeping in mind the welfare of the individual and the police department.

11 If a charged member of the police department, who has requested such hearing, shall  
12 withdraw his request, the recommendation of the Chief shall become effective  
13 immediately, and no hearing shall be conducted by the Civil Service Board.

14 (h) Each member of said Board shall have the power to secure by subpoena both  
15 the attendance and testimony of witnesses and the production of any documents or  
16 papers of any kind relative to such investigation, at such hearing. Such subpoenas may  
17 be directed to any law enforcement officer within the State of North Carolina for  
18 service.

19 The Civil Service Board may make such rules and regulations, from time to time,  
20 with respect to the manner in which the hearing shall be conducted as shall be desired  
21 by the Board. Such hearings may be open or closed to spectators. Witnesses who are to  
22 appear before the Board may be sequestered. Testimony offered before the Board shall  
23 be recorded by mechanical process or by court reporter. The ordinary rules of  
24 evidences shall not apply, but the hearing shall be conducted with decorum. The  
25 decision of the Civil Service Board shall be final.

26 (i) In the event the charged police officer is found guilty of violating the rules  
27 and regulations of the police department, the Civil Service Board may discharge him,  
28 fine him, or suspend him without pay for a period not to exceed 90 days. In addition,  
29 the Civil Service Board may attach such conditions to his reinstatement to duty as it  
30 deems advisable.

31 (j) In the event a member of the police department shall be appointed by the  
32 Board of Aldermen as Chief of Police and shall, prior to his retirement, lose his position  
33 as said Chief of Police by removal, failure of reappointment, or resignation, he may, at  
34 his option, then reassume his position as a member of the police department of the City  
35 of New Bern, and in such capacity shall perform such duties as may be assigned him by  
36 his successor in office. During a period of six months following his resumption of  
37 duties as a member of the police department rather than as Chief of Police, he shall  
38 receive as compensation a salary not less than that of the pay grade in which he was  
39 serving at the time of his appointment as Chief, together with such increases in pay as  
40 have been given in the intervening period to that pay grade; provided, however, said  
41 individual shall be subject to disciplinary action as herein provided, as are other  
42 members of the police department.

1       (k)    The board shall make an annual report of its actions for the preceding year  
2 and said annual report shall be kept in the files of said board and copy delivered to the  
3 board of aldermen.

4       The city manager or his designee shall act as secretary to the Civil Service Board  
5 and shall keep the minutes of its meetings and shall be custodian of all papers and  
6 records pertaining to the business of said board and shall keep a record of all  
7 examinations held and shall perform such other duties as the board may require.

8       (l)    The members of said Civil Service Board shall serve without compensation.

9       (m)    The provisions of this Civil Service Section shall not apply to the chief of  
10 police."

11       Sec. 2. This act is effective upon ratification.