

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 118
HOUSE BILL 470

AN ACT TO MAKE A TECHNICAL CORRECTION TO THE NEW BERN CIVIL SERVICE PROVISIONS FOR POLICE TO DELETE OLD REPEALED MATERIAL INADVERTENTLY APPEARING IN A 1993 REWRITE.

The General Assembly of North Carolina enacts:

Section 1. Section 42 of Chapter 1281 of the Session Laws of 1957, as amended by Chapter 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws of 1961, Chapter 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of 1969, Chapter 785 of the Session Laws of 1971, Section 4 of Chapter 1168 of the Session Laws of 1981, and Chapter 630 of the Session Laws of 1993, is rewritten to read:

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

No member of the Civil Service Board may serve on the Board of Aldermen or on the police force while a member of the Civil Service Board, and no member of said board shall serve more than one consecutive term. In case of a vacancy on the Civil Service Board, the Board of Aldermen shall fill such vacancy for the unexpired term of said member. A majority of said board shall constitute a quorum.

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

(b) Said board, with the advice and counsel of the Chief of Police, shall establish and fix requirements for applicants for positions in the police department, and all persons who make application shall be subjected to an examination by said board which shall be competitive and free to all persons possessing the rights of suffrage and meeting the requirements of said board, subject to reasonable limitations as to residence, age, health, and moral character, and said examinations shall be practical in their nature and shall be limited to those matters which will fairly test the relative ability of the persons

examined to discharge the duties and responsibilities of the positions which they are seeking, and shall include tests of physical qualifications and health, but no applicant shall be examined concerning his political or religious opinions or affiliations.

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

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

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

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

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

In the event the Chief of Police shall determine that a member of the police department should be discharged or subjected to disciplinary action not within the power of the Chief of Police under the above provisions of this section, the Chief shall reduce his charges against the said member of the police department to writing, including his recommendation relative to discharge, fine, or suspension without pay,

and shall file a copy of the same with the clerk of the Civil Service Board and deliver a copy to the said member of the police department personally or by certified mail, return receipt requested. Upon delivery of said written charges and recommendations to the member of the police department, if the Chief's recommendation is that the member be discharged or be suspended, the Chief of Police shall suspend such member from duty forthwith. If the charged officer shall not file a request for hearing by the Civil Service Board with the clerk to said Board within five days after the delivery of the charges and recommendations to him, the recommendation of the Chief shall thereupon become effective. In the event said charged officer requests a hearing within said specified period of time, then and in that event, the hearing by the Board shall be conducted as soon as is reasonably possible, and in no event later than 30 days after the written charges have been filed with the clerk to said Board, unless the suspended member of the police department shall, in writing, file with said clerk a request for delay beyond said period of time, stating the reason therefor. In the event of such request, the Board shall grant a reasonable postponement if, in its opinion, it is merited by the request, keeping in mind the welfare of the individual and the police department.

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

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

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

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

(i) In the event a member of the police department shall be appointed by the Board of Aldermen as Chief of Police and shall, prior to his retirement, lose his position as said Chief of Police by removal, failure of reappointment, or resignation, he may, at his option, then reassume his position as a member of the police department of the City of New Bern, and in such capacity shall perform such duties as may be assigned him by his successor in office. During a period of six months following his resumption of duties as a member of the police department rather than as Chief of Police, he shall receive as compensation a salary not less than that of the pay grade in which he was

serving at the time of his appointment as Chief, together with such increases in pay as have been given in the intervening period to that pay grade; provided, however, said individual shall be subject to disciplinary action as herein provided, as are other members of the police department.

(j) The Board shall make an annual report of its actions for the preceding year and said annual report shall be kept in the files of said Board and copy delivered to the Board of Aldermen.

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

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

(l) The provisions of this Civil Service Section shall not apply to the Chief of Police."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives