

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 470

Short Title: New Bern Technical Correction.

(Local)

Sponsors: Representative Nichols.

Referred to: Local and Regional Government II.

March 14, 1995

A BILL TO BE ENTITLED

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2 SERVICE PROVISIONS FOR POLICE TO DELETE OLD REPEALED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

4 The General Assembly of North Carolina enacts:

5 Section 1. Section 42 of Chapter 1281 of the Session Laws of 1957, as
6 amended by Chapter 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws
7 of 1961, Chapter 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of
8 1969, Chapter 785 of the Session Laws of 1971, Section 4 of Chapter 1168 of the Session
9 Laws of 1981, and Chapter 630 of the Session Laws of 1993, is rewritten to read:

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

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

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

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

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

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

40 (e) No member of the police department coming under the jurisdiction of the Civil
41 Service Board shall take any part in any election or political function other than that of
42 exercising his right to vote, and any such member of the police department convicted of

1 violating this provision by the Civil Service Board shall be dismissed from service of said
2 department by the Civil Service Board.

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

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

13 In the event the Chief of Police shall determine that a member of the police
14 department should be discharged or subjected to disciplinary action not within the power
15 of the Chief of Police under the above provisions of this section, the Chief shall reduce
16 his charges against the said member of the police department to writing, including his
17 recommendation relative to discharge, fine, or suspension without pay, and shall file a
18 copy of the same with the clerk of the Civil Service Board and deliver a copy to the said
19 member of the police department personally or by certified mail, return receipt requested.
20 Upon delivery of said written charges and recommendations to the member of the police
21 department, if the Chief's recommendation is that the member be discharged or be
22 suspended, the Chief of Police shall suspend such member from duty forthwith. If the
23 charged officer shall not file a request for hearing by the Civil Service Board with the
24 clerk to said Board within five days after the delivery of the charges and
25 recommendations to him, the recommendation of the Chief shall thereupon become
26 effective. In the event said charged officer requests a hearing within said specified period
27 of time, then and in that event, the hearing by the Board shall be conducted as soon as is
28 reasonably possible, and in no event later than 30 days after the written charges have
29 been filed with the clerk to said Board, unless the suspended member of the police
30 department shall, in writing, file with said clerk a request for delay beyond said period of
31 time, stating the reason therefor. In the event of such request, the Board shall grant a
32 reasonable postponement if, in its opinion, it is merited by the request, keeping in mind
33 the welfare of the individual and the police department.

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

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

41 The Civil Service Board may make such rules and regulations, from time to time, with
42 respect to the manner in which the hearing shall be conducted as shall be desired by the
43 Board. Such hearings may be open or closed to spectators. Witnesses who are to appear

1 before the Board may be sequestered. Testimony offered before the Board shall be
2 recorded by mechanical process or by court reporter. The ordinary rules of evidence
3 shall not apply, but the hearing shall be conducted with decorum. The decision of the
4 Civil Service Board shall be final.

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

10 (i) In the event a member of the police department shall be appointed by the
11 Board of Aldermen as Chief of Police and shall, prior to his retirement, lose his position
12 as said Chief of Police by removal, failure of reappointment, or resignation, he may, at
13 his option, then reassume his position as a member of the police department of the City of
14 New Bern, and in such capacity shall perform such duties as may be assigned him by his
15 successor in office. During a period of six months following his resumption of duties as
16 a member of the police department rather than as Chief of Police, he shall receive as
17 compensation a salary not less than that of the pay grade in which he was serving at the
18 time of his appointment as Chief, together with such increases in pay as have been given
19 in the intervening period to that pay grade; provided, however, said individual shall be
20 subject to disciplinary action as herein provided, as are other members of the police
21 department.

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

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

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

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

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