

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 729\*

Short Title: Wilmington Civil Service Rewrite. (Local)

Sponsors: Representatives Justice, McComas, and Hughes (Primary Sponsors).

Referred to: Local Government II, if favorable, Judiciary I.

March 23, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REWRITE THE WILMINGTON CIVIL SERVICE ACT.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article XI of the Charter of the City of Wilmington, being Chapter  
5 495 of the 1977 Session Laws, as amended by Chapter 342 of the 1981 Session Laws, reads as  
6 rewritten:

7 "ARTICLE XI. CIVIL SERVICE.

8 "Sec. 11.1. Civil Service Commission established. ~~There is created a Civil Service~~  
9 ~~Commission consisting of five members. Each member must be a citizen and a resident of the~~  
10 ~~City of Wilmington. No member shall be an officer or employee of the city, or be a member of~~  
11 ~~the immediate family of an employee of the city or a former employee of the police or fire~~  
12 ~~department.~~

13 ~~The employees of the City of Wilmington Fire Department, by a majority vote, shall name~~  
14 ~~one member. The employees of the City of Wilmington Police Department, by a majority vote,~~  
15 ~~shall name one member. The City Council of the City of Wilmington, by a majority vote, shall~~  
16 ~~name one member. The New Hanover County Medical Society governing board, by a majority~~  
17 ~~vote, shall name one member. The Wilmington Ministerial Association governing body, by a~~  
18 ~~majority vote, shall name one member.~~

19 ~~The members of the commission shall serve a term of three years unless removed by the~~  
20 ~~appointing authority. A member may be removed by a majority vote of all members of the~~  
21 ~~agency appointing that member.~~

22 ~~A vacancy is caused by death, resignation, disqualification, or removal. A vacancy is filled~~  
23 ~~by the agency authorized to name the member causing the vacancy. If the agency fails to fill the~~  
24 ~~vacancy within 60 days after notification, the resident senior superior court judge of the judicial~~  
25 ~~district that includes New Hanover County shall immediately fill the vacancy. Members~~  
26 ~~appointed to fill a vacancy serve for the remainder of the unexpired term.~~

27 ~~The city council shall set the compensation for allowances, if any, to be paid the members~~  
28 ~~of the commission. In November of each year, the commission shall elect a chairman and may~~  
29 ~~elect other officers. A majority of the members of the commission constitutes a quorum. The~~  
30 ~~commission may determine its own rules of procedure.~~

31 ~~The city clerk shall be designated as permanent recording secretary to the Civil Service~~  
32 ~~Commission. The recording secretary shall maintain the minutes of commission meetings and~~  
33 ~~hearings, keep custody of commission records and notify members of meetings. The director of~~  
34 ~~personnel shall act as an ex officio member of the commission representing the city on~~  
35 ~~personnel matters to be handled by the commission. The commission shall within a reasonable~~  
36 ~~time, supply the director of personnel with notification of any actions, reports, or~~  
37 ~~recommendations made by the commission. The personnel office shall notify affected police~~



1 ~~and fire department members of actions, reports and recommendations made by the~~  
2 ~~commission.~~

3 (a) Establishment, Qualifications, and Restrictions. There is created a civil service  
4 commission consisting of five regular members and one nonvoting ex officio member. Each  
5 regular member must be a citizen and a resident of the City of Wilmington. No regular member  
6 shall be an officer or employee of the city, or be a member of the immediate family of an  
7 employee of the city, or a former employee of the police or fire department.

8 (b) Appointment, Term and Removal of Regular Members. The employees of the City  
9 of Wilmington Fire Department who are subject to this Article, by a majority vote, shall name  
10 one regular member. The employees of the City of Wilmington Police Department who are  
11 subject to this Article, by a majority vote, shall name one regular member. The City Council of  
12 the City of Wilmington, by a majority vote, shall name one regular member. The New Hanover  
13 County Medical Society governing board, by a majority vote, shall name one regular member.  
14 The sitting members of the Civil Service Commission, by a majority vote, shall select one  
15 member to be confirmed by the City Council as a regular member of the commission.

16 The regular members of the commission shall serve a term of three years unless removed  
17 by the appointing authority. A member may be removed by a majority vote of all members of  
18 the agency appointing that member.

19 (c) Vacancy. A vacancy on the commission may be caused by the death, resignation,  
20 disqualification, or removal of a regular member. Such vacancy shall be filled by the  
21 appointing authority authorized to name the member causing the vacancy. If the appointing  
22 agency fails to fill the vacancy within 60 days after notification, the senior resident superior  
23 court judge of the judicial district that includes New Hanover County shall be notified and shall  
24 immediately fill the vacancy. Regular members appointed to fill a vacancy serve for the  
25 remainder of the unexpired term.

26 (d) Compensation, Officers, and Quorum. The City Council shall set the compensation  
27 for allowances, if any, to be paid the members of the commission. In November of each year,  
28 the regular members of the commission shall elect a chairman and may elect other officers. A  
29 majority of the regular members of the commission constitutes a quorum. There shall be a  
30 minimum of four regular members present to consider the appeal of a dismissal or demotion  
31 under this Article. A quorum will be required to consider nondisciplinary matters.

32 (e) Secretary. The city clerk shall act as permanent recording secretary to the Civil  
33 Service Commission. The recording secretary shall maintain the minutes of commission  
34 meetings and hearings, shall be custodian of all papers and records pertaining to the business of  
35 the commission, shall notify commission members of meetings, shall administer required oaths,  
36 shall be responsible for transmitting to the Superior Court of New Hanover County a complete  
37 transcript of all proceedings and papers concerning any commission order appealed to the  
38 court, and shall perform other duties as the commission may require.

39 (f) Ex Officio Member. The director of human resources shall act as a nonvoting ex  
40 officio member of the commission and shall advise the commission on all city and  
41 departmental policies, rules, regulations and procedures. The commission shall, within a  
42 reasonable time, supply the director of human resources with notification of any actions,  
43 reports, or recommendations made by the commission. The human resources department shall  
44 notify affected police and fire department members of actions, reports, and recommendations  
45 made by the commission.

46 ~~"Sec. 11.2. Jurisdiction. Application of Article. The Civil Service Act has jurisdiction over~~  
47 ~~an employee of the Police Department of the City of Wilmington certified in accordance with~~  
48 ~~Section 11.5 of this act and who is clothed with the full power of arrest and whose primary duty~~  
49 ~~is that of enforcing the criminal laws of the city and State, excluding those employees whose~~  
50 ~~primary responsibility is that of issuing parking tickets or collecting fees. The chief of the~~  
51 ~~police department is not covered by the Civil Service Act.~~

1 The act shall apply to an employee of the Fire Department of the City of Wilmington  
2 certified in accordance with Section 11.5 of this act and whose primary function is that of  
3 protecting life and property through fire fighting, including those fire officers assigned to  
4 supporting services of the fire service. The chief of the fire department is not covered by the  
5 Civil Service Act.

6 (a) General Application. The provisions of this Article shall only apply to civil service  
7 certified employees of the City of Wilmington police and fire departments as defined in this  
8 section.

9 (b) Police Department. An employee of the police department shall be civil service  
10 certified only if that employee: (i) is a full-time regular employee of the City of Wilmington;  
11 (ii) has successfully completed the probationary period of employment as set forth in Section  
12 11.5 of this act; (iii) has received certification as a criminal justice officer by the State of North  
13 Carolina; and (iv) continues to maintain such State certification while employed by the police  
14 department as a criminal justice officer. Other than Section 11.4 of this act, the provisions of  
15 this Article shall not apply to the chief of police. The provisions of this Article shall not apply  
16 to any deputy chief or auxiliary police officer appointed to such position after the date of the  
17 enactment of this Article.

18 (c) Fire Department. An employee of the fire department shall be civil service certified  
19 only if that employee: (i) is a full-time regular employee of the City of Wilmington; (ii) has  
20 successfully completed the probationary period of employment as set forth in Section 11.5 of  
21 this act; (iii) has received certification as either a firefighter or fire inspector by the State of  
22 North Carolina; and (iv) continues to maintain such State certification while employed by the  
23 fire department in a primary function of protecting life and property through firefighting,  
24 including those fire officer positions assigned to supporting services of the fire service. Other  
25 than Section 11.4 of this act, the provisions of this Article shall not apply to the fire chief. The  
26 provisions of this Article shall not apply to any deputy fire chief appointed to such position  
27 after the date of the enactment of this Article.

28 "Sec. 11.3. Powers and duties. The commission:

29 (a)-(1) Shall approve reasonable requirements for employment and for examination  
30 of applicants. ~~Positions shall be publicized. Examinations shall be~~  
31 ~~competitive, open, and free to all persons meeting the commission's~~  
32 ~~requirements. Examinations shall be practical in character, shall be limited to~~  
33 ~~matters that fairly test the relative ability of the applicant to discharge the~~  
34 ~~duties of the position and shall include tests of mental and physical~~  
35 ~~qualifications and health. Employment procedures shall be consistent with~~  
36 ~~federal and State regulations and the affirmative action policy as adopted by~~  
37 ~~the city council. The director of personnel shall be responsible for~~  
38 ~~implementing and administering personnel policies and procedures approved~~  
39 ~~by the commission. Any standards for police or fire employees that are~~  
40 ~~established by the State of North Carolina shall be included in the~~  
41 ~~requirements for employment.~~

42 (b)-(2) Shall cause to be prepared and kept a register of persons passing the  
43 examinations. The established policy of the city will be followed in filing  
44 ~~vacancies from the register.~~ Shall only hear and decide appeals of dismissals  
45 or demotions filed by civil service certified employees of the police or fire  
46 department.

47 (3) Shall subpoena on behalf of the commission, or any party to a hearing before  
48 the commission, witnesses and compel the production of records, books,  
49 papers, documents, or tangible things. If a person fails or refuses to obey a  
50 subpoena issued pursuant to this subdivision, the commission may apply to  
51 the Superior Court of New Hanover County for an order requiring that its

1 order be obeyed, and the court shall have jurisdiction to issue these orders  
2 after notice to the proper parties.

3 (4) Shall comply with the provisions of G.S. 160A-168 during the conduct of an  
4 appeal hearing before the commission.

5 ~~(e)-(5)~~ Shall make an annual report to the city council, city manager, council and  
6 city manager, and to the chiefs of the police and fire departments for posting  
7 on departmental bulletin boards. The commission may prescribe the form  
8 and content of the report.

9 ~~(d)-(6)~~ May secure necessary staff services and request assistance in the  
10 performance of its duties from the city manager.

11 ~~(e)-(7)~~ The commission may use the facilities of the city for holding any of its  
12 activities.

13 (8) May determine its own rules of procedure. The North Carolina Rules of  
14 Evidence and the North Carolina Rules of Civil Procedure shall not apply to  
15 any hearing before the commission.

16 "Sec. 11.4. Appointment of chief of fire department and chief of police department.  
17 Appointments of the chief of the fire department and chief of the police department shall be  
18 made by the city council and in making appointments to chiefs of the fire and police  
19 departments, due consideration shall be given to persons already employees of the respective  
20 department.

21 "Sec. 11.5. Probationary police and fire officers. Employees of the police and fire  
22 departments may be hired on a probationary basis for a period not to exceed 18 months. During  
23 this period the chief of the respective department may dismiss after notifying the city manager.  
24 At the end of the probationary period, an employee shall become certified, unless terminated  
25 prior thereto by action of the chief, with all rights and privileges contained in this Article.

26 ~~"Sec. 11.6. Disciplinary action. (a) Except as provided in Section 11.5 of this act, an~~  
27 ~~employee of the Police or Fire Department of the City of Wilmington may be dismissed only~~  
28 ~~for cause and with an opportunity to be heard in his or her own defense. Council retains the~~  
29 ~~authority to demote or terminate positions because of a lack of work or conditions beyond the~~  
30 ~~control of the city. And furthermore, nothing in this Article shall be so construed as to deprive~~  
31 ~~city council of its control over the finances of the city.~~

32 ~~(b) The chief of the appropriate department may suspend, with or without pay, any~~  
33 ~~employee of the police or fire department charged with violating any rule or regulation of the~~  
34 ~~department, for a period not to exceed 30 calendar days. Within three working days after~~  
35 ~~making any suspension, the chief shall file with the city manager a written statement setting~~  
36 ~~forth the reasons for the suspension in detail. Within the same time, the chief shall give to the~~  
37 ~~suspended officer a signed copy of the statement of the basis for the suspension. Within 10~~  
38 ~~working days after his suspension, the employee may file with the city manager a written~~  
39 ~~request for a hearing. The city manager shall conduct the hearing within 30 calendar days~~  
40 ~~thereafter.~~

41 ~~If the employee is suspended without pay and the city manager finds that the suspension~~  
42 ~~was not justified, or if the charges are dismissed, the employee shall be fully reimbursed for~~  
43 ~~any loss of pay.~~

44 ~~(c) With the approval of the city manager, the chief of the appropriate department may~~  
45 ~~dismiss or demote any employee for violating any rule or regulation of the department of which~~  
46 ~~the employee is a member. Within three working days after making any dismissal or demotion,~~  
47 ~~the chief of the department shall file with the Secretary of the commission a written list of~~  
48 ~~charges supporting the discharge or demotion. A copy of this statement shall be given to the~~  
49 ~~city manager and the employee.~~

50 ~~Within 10 working days after dismissal or demotion, the employee may appeal by first~~  
51 ~~filing with the secretary of the commission a written request for a hearing before the Civil~~

~~Service Commission. Such request for hearing shall contain a written response to each of the enumerated charges which was filed in support of the discharge or demotion. The commission shall conduct a hearing within 60 calendar days after receipt of the request. Hearings shall be administrative in nature. 'Working days' for purposes of this subsection shall mean 8:30 a.m. to 5:00 p.m., Monday through Friday except legal holidays.~~

~~If the commission determines that the employee has not violated a rule or regulation of the department, the commission shall reinstate with appropriate back pay. In the conduct of its investigations, the commission may subpoena witnesses, administer oaths and compel the production of evidence.~~

~~The commission upon finding any employee guilty may sustain the action of the chief or take any other action that may be deemed appropriate.~~

~~Any employee found guilty by the commission may appeal to a court of competent jurisdiction. The trial upon appeal shall be governed by the provisions of Article 4, Chapter 150A, of the General Statutes of North Carolina pertaining to Judicial Review of Decisions of Certain Administrative Agencies except that for purpose of G.S. 150A-45 the person seeking review must file a petition in the Superior Court of New Hanover County.~~

~~A person who may wish to appeal to the superior court shall file with the secretary of the commission a bond in an amount set by the commission, with sufficient surety conditioned that the person shall pay the cost of such appeal in the event such cost shall be levied against the person, and shall pay to the secretary the necessary fee for entering such appeal in the superior court within 10 calendar days after entry of such order or decree appealed from, and upon appeal, the secretary of the Civil Service Commission shall forthwith transmit to the superior court a complete transcript of all papers and proceedings concerning the order or decree or action of the Civil Service commission appealed from, together with the appeal bond and fee.~~

~~"Sec. 11.6. Dismissal, demotion, and appeal.~~

~~(a) General. A civil service certified employee of the police or fire department of the City of Wilmington may be dismissed or demoted only for cause and with an opportunity to be heard in his or her own defense. Notwithstanding any provision of this Article, the city council shall retain the authority to demote or terminate positions because of a lack of work or conditions beyond the control of the city and nothing in this Article shall be so construed as to deprive the city council of its control over the finances of the city. Further, notwithstanding any provision in this Article, the city manager shall retain all powers and authority granted to him by law and by the Charter of the City of Wilmington.~~

~~(b) Dismissal and Demotion. The chief of the appropriate department may, with the prior approval of the city manager, dismiss or demote any civil service certified employee of the police or fire department for violating any rule, regulation, policy, or procedure of the city or of the department of which the employee is a member. Within five working days after making any such dismissal or demotion, the chief of the department shall file with the secretary of the commission a written list of charges supporting the discharge or demotion. A copy of this statement shall be given to the city manager and the employee.~~

~~(c) Appeal of Dismissal or Demotion. No more than 10 working days after the effective date of his or her dismissal or demotion, the employee may appeal such dismissal or demotion to the Civil Service Commission by filing a written notice of appeal and request for a hearing with the secretary of the commission. The notice of appeal and request for a hearing shall contain a written response to each of the enumerated charges which was filed in support of the discharge or demotion. The commission shall conduct a hearing within a reasonable time after receipt of the request. Hearings shall be administrative in nature and shall be conducted in closed session unless an open session is requested by the employee. "Working days" for purposes of this subsection shall mean 8:00 A.M. to 5:00 P.M., Monday through Friday, except legal or city holidays.~~

1       (d) Appeal Powers of the Commission. If, at the completion of its hearing, the  
2 commission shall find that:

3           (1) The employee has not committed the offense or offenses with which he or  
4 she has been charged, the commission shall reinstate the employee and direct  
5 the city manager to reimburse any lost pay and benefits to the employee.

6           (2) The employee has committed the offense or offenses with which he or she  
7 has been charged, the commission shall sustain the action taken or may  
8 impose such other punishment as it deems just and proper.

9       (e) Appeal from Action of the Commission. Every decision of the commission shall be  
10 subject to review by the Superior Court of New Hanover County by proceedings in the nature  
11 of certiorari. Any party to a hearing before the commission may appeal any order of the  
12 commission to the Superior Court of New Hanover County by giving notice of appeal, in  
13 writing, to the clerk of superior court not later than 10 days after the entry of the order.  
14 Assignments of error must be filed with the court and served upon the commission and other  
15 parties no later than 30 days after entry of the order. The appeal to superior court shall be heard  
16 upon the record of proceedings at the hearing before the Commission.

17       ~~"Sec. 11.7. Enforcement of subpoenas. Testimony before the Commission. In the conduct~~  
18 ~~of hearings or investigations, the members of the commission shall have the right and power to~~  
19 ~~compel by subpoena both the attendance and testimony of witnesses or for the production of~~  
20 ~~evidence that may be relevant to the case to be heard. The commission may apply to a court of~~  
21 ~~competent jurisdiction for an order requiring that its order be obeyed. No testimony of any~~  
22 ~~witness before the commission may be used against the witness on the trial of any criminal~~  
23 ~~prosecution other than for false swearing committed on examination. All persons testifying~~  
24 ~~before the commission shall be administered the appropriate oath by the city clerk. The city~~  
25 ~~clerk or other designated court recorder shall be responsible for recording all proceedings. Any~~  
26 ~~person, while under oath, at an investigation by the commission, willfully swearing falsely,~~  
27 ~~shall be guilty of a misdemeanor.~~

28       ~~"Sec. 11.8. Personnel policies. Other city policies. Unless specifically excepted by this act,~~  
29 ~~all other ordinances and policies affecting the employees of the City of Wilmington shall apply~~  
30 ~~to employees under the Civil Service Act. Unless specifically excepted by this Article, all other~~  
31 ~~ordinances, rules, regulations, policies, and procedures affecting the employees of the City of~~  
32 ~~Wilmington shall apply to civil service certified employees."~~

33       **SECTION 2.** This act is effective when it becomes law.