

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1161

Short Title: Durham Fire Dept. Civil Service Board. (Local)

Sponsors: Representatives Alston, Morey, Hawkins, and Reives (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Local Government, if favorable, Rules, Calendar, and Operations of the House

June 1, 2022

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING THE CITY OF DURHAM TO ESTABLISH A FIRE
3 DEPARTMENT CIVIL SERVICE BOARD.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter VII of the Charter of the City of Durham, being Chapter 671
6 of the 1975 Session Laws, as amended, is amended by adding a new section to read as follows:
7 "Sec. 128. Fire Department Civil Service Board.

8 (a) There is hereby established as a part of the government of the City of Durham, a Fire
9 Department Civil Service Board (hereinafter "Board") which shall have the authority to hear all
10 Fire Department employee appeals from disciplinary action taken against the employee regarding
11 violations of Fire Department or City policy, including suspension, lay off, transfer, removal,
12 promotion, forfeiture of pay, or loss of time. The City Manager shall recommend, and the City
13 Council shall approve, funding for the operational needs of the Board in the City's annual budget.

14 (b) The Board shall consist of five members who shall be chosen by the City Council at
15 a meeting of the Council and they shall serve at the pleasure of the Council. Members of the
16 Board shall serve two-year terms. All members of the Board shall be eligible for successive terms
17 and may serve beyond the end of their respective terms until their successors take office. The
18 chair and secretary of the Board shall be appointed from among the membership of the Board.
19 The members of the Board shall serve without compensation but may be reimbursed for expenses
20 pursuant to policies adopted by the City. The members of the Board must all be qualified voters
21 of the City of Durham, not employed by the City or serving on the City Council. In the event of
22 a vacancy on the Board, the vacancy shall be filled by the City Council in a manner consistent
23 with the City Council's procedures for filling board vacancies. Each member of the Board shall
24 complete training requirements established by the City Council.

25 (c) Former employees of the City of Durham shall be eligible to serve as a member of
26 the Board provided they have been separated from City employment for a period of not less than
27 seven consecutive years prior to becoming a member of the Board. No person shall be eligible to
28 serve as a Board member if the person directly, or indirectly through any corporation, partnership,
29 or other entity, or contract, subcontract, or otherwise benefits financially from a business
30 relationship with the City, or if the person has an immediate family member or spouse of the
31 immediate family member who directly, or indirectly through any corporation, partnership, or
32 other entity, or contract, subcontract, or otherwise benefits financially from a business
33 relationship with the City. No person shall engage or benefit directly or indirectly from any
34 contractual work or employment with the City for a period of not less than two years following
35 the expiration date of that person's term of office as a member of the Board.



1 (d) The Board shall meet regularly, with the chair presiding. The secretary shall keep a
2 journal of Board proceedings and perform any other duties that may be required by the Board;
3 provided, however, the City Clerk shall provide notice of Board meetings and be the custodian
4 of all Board records. The City Manager shall designate a City employee to serve as the liaison
5 between the City and the Board and to assist, as needed, with administrative duties required for
6 the efficient administration of the Board. Within a reasonable time after a meeting, the Board
7 shall supply the Director of Human Resources with notification of any actions, reports, or
8 recommendations made by the Board, and the Human Resources Department shall notify affected
9 employees of the Fire Department of actions, reports, and recommendations made by the Board.
10 No uniform employees of the Fire Department shall be prohibited, directed, or discouraged in
11 any manner by a supervisor from wearing that employee's uniform while in attendance at any
12 Board meeting.

13 (e) The Board shall hear all employee appeals as provided in subsection (a) of this
14 section, provided that the appeal was filed with the City Clerk not later than 10 days after the
15 disciplinary action was taken against the employee. The Board shall have no jurisdiction to hear
16 an appeal until the employee has exhausted all administrative remedies pursuant to the City's
17 established grievance procedure, except in actions regarding transfers. Whenever a member of
18 the Fire Department is transferred against his or her will, the member shall be entitled to a hearing
19 before the Board to determine whether the action complained of was justified. At the hearing, the
20 burden of proving the justification of the action or omission complained of shall be upon the
21 City, and the member requesting the hearing shall be entitled to inspect and copy any records
22 upon which the City plans to rely at the hearing if the records are requested in writing by the
23 member or his or her attorney at least 10 days prior to the day set for the hearing. Any employee
24 of the Fire Department who requests a hearing before the Board shall be entitled to be represented
25 by his or her attorney at the hearing.

26 (f) The Board shall render its decision, which shall be drafted by the employee liaison
27 with the assistance of the Board's legal counsel, not later than 10 days after the conclusion of the
28 hearing. The Board may affirm, modify, or reverse the decision of the City, as it deems necessary.
29 The Board's decision shall contain findings of fact and conclusions, and shall be based on
30 competent, material, and substantial evidence in the record. Upon reaching its decision, the Board
31 shall, in writing, immediately inform the City Clerk and the member requesting the hearing of
32 the Board's decision. The City shall be responsible for implementing the Board's decision.

33 (g) By a majority vote of those members present and voting at any of its official meetings,
34 the Board may designate independent legal counsel of its choice to advise or represent the Board,
35 or both, on such occasions and in such matters as the majority of those Board members present
36 and voting deem to be appropriate and necessary. The Board shall establish a roster of attorneys
37 from which it may select counsel for the purpose of advising the Board during or in connection
38 with hearings held pursuant to this section. The list shall be subject to review and approval by
39 the City Attorney as to qualifications and fees. The City shall be responsible for the payment of
40 the professional legal services authorized under this subsection. In order to avoid the appearance
41 of any possible conflict of interest, the City Attorney shall serve as legal advisor to or attorney
42 for the Board, or both, only for those matters or proceedings when specifically requested to do
43 so in a writing that has been signed by no fewer than four members of the Board.

44 (h) No person about to be appointed to any position in the service of the Fire Department
45 shall sign or execute a resignation dated or undated, in advance of their appointment. No person
46 in the service of the Fire Department shall discharge, suspend, layoff, reduce in grade, in any
47 manner change the official rank or compensation of any person in the service of the Fire
48 Department, or promise or threaten to do so, for withholding or neglecting to make any
49 contribution or money or service or any valuable thing for any political purpose.

50 (i) It shall be the duty of the Board to supervise the execution of the provisions of this
51 section and the rules adopted pursuant to the authority granted by this section, and it shall be the

1 duty of all persons in the service of the Fire Department to comply with the rules and to aid in
2 their enforcement. Willful or deliberate violation of the provisions of this section or rules adopted
3 as authorized by this section by any person shall result in the Fire Department or City taking
4 appropriate disciplinary action up to and including dismissal. Any Fire Department employee or
5 official who threatens or intimidates other employees from exercising their rights under the
6 provisions of this section or rules adopted as authorized by this section shall be subject to the
7 Fire Department or City taking appropriate disciplinary action up to and including dismissal."

8 **SECTION 2.** If any provision of this act or its application is held invalid, the
9 invalidity does not affect other provisions or applications of this act that can be given effect
10 without the invalid provisions or application, and to this end, the provisions of this act are
11 severable.

12 **SECTION 3.** All laws, rules, or clauses in conflict with the provisions of this section
13 are hereby superseded or repealed as appropriate.

14 **SECTION 4.** This act is effective when it becomes law.