

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 403  
Committee Substitute Favorable 4/21/11  
Senate State and Local Government Committee Substitute Adopted 6/14/11

Short Title: Contrib. Structures & Wilmington Civ. Serv.

(Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING MUNICIPALITIES TO APPLY DEMOLITION BY NEGLECT ORDINANCES TO CONTRIBUTING STRUCTURES LOCATED OUTSIDE LOCAL HISTORIC DISTRICTS AND TO AMEND THE CHARTER OF THE CITY OF WILMINGTON AS IT RELATES TO THE CITY'S CIVIL SERVICE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-400.15. Demolition by neglect to contributing structures outside local historic districts.**

Notwithstanding G.S. 160A-400.14 or any other provision of law, the governing board of any municipality may apply its demolition by neglect ordinances to contributing structures located outside the local historic district within an adjacent central business district. The governing board may modify and revise its demolition by neglect ordinances as necessary to implement this subsection and to further its intent. This subsection is applicable to any municipality with a population in excess of 100,000, provided such municipality (i) has designated portions of the central business district and its adjacent historic district as an Urban Progress Zone as defined in G.S. 143B-437.09 and (ii) is recognized by the State Historic Preservation Office and the U.S. Department of the Interior as a Certified Local Government in accordance with the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470, et seq.), and the applicable federal regulations (36 C.F.R. Part 61), but is located in a county that has not received the same certification."

**SECTION 2.(a)** Article XI of the Charter of the City of Wilmington, being Chapter 495 of the 1977 Session Laws, as amended by Chapter 342 of the 1981 Session Laws and S.L. 2010-73, reads as rewritten:

"ARTICLE XI.

"Civil Service.

~~"Sec. 11.1. Civil Service Commission established. There is created a Civil Service Commission consisting of five members. Each member must be a citizen and a resident of the City of Wilmington. No member shall be an officer or employee of the city, or be a member of the immediate family of an employee of the city or a former employee of the police or fire department. Applicants to the Civil Service Commission shall complete the City of Wilmington Boards and Commissions application process.~~

~~The employees of the City of Wilmington Fire Department who are subject to this Article, by a majority vote, shall name one member. The employees of the City of Wilmington Police~~



1 Department who are subject to this Article, by a majority vote, shall name one member. The  
2 City Council of the City of Wilmington, by a majority vote, shall name one member. The New  
3 Hanover County Medical Society governing board, by a majority vote, shall name one member.  
4 The sitting members of the Civil Service Commission, by a majority vote, shall name one  
5 member.

6 The members of the commission shall serve a term of three years unless removed by the  
7 appointing authority. A member may be removed by a majority vote of all members of the  
8 agency appointing that member.

9 A vacancy is caused by death, resignation, disqualification, or removal. A vacancy is filled  
10 by the agency authorized to name the member causing the vacancy. If the agency fails to fill the  
11 vacancy within 60 days after notification, the resident senior superior court judge of the judicial  
12 district that includes New Hanover County shall immediately fill the vacancy. Members  
13 appointed to fill a vacancy serve for the remainder of the unexpired term. Notwithstanding any  
14 other provision in this section, the member previously named by the Wilmington Ministerial  
15 Association governing body, shall be replaced with another member chosen by a majority vote  
16 of the sitting members of the Civil Service Commission. The member, who must complete the  
17 City of Wilmington Boards and Commissions application process, shall fill an at-large seat for  
18 a one-year term to run from August 1, 2010, through August 1, 2011.

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

23 The city clerk shall be designated as permanent recording secretary to the Civil Service  
24 Commission. The recording secretary shall maintain the minutes of commission meetings and  
25 hearings, keep custody of commission records and notify members of meetings. The director of  
26 personnel shall act as an ex officio member of the commission representing the city on  
27 personnel matters to be handled by the commission. The commission shall within a reasonable  
28 time, supply the director of personnel with notification of any actions, reports, or  
29 recommendations made by the commission. The personnel office shall notify affected police  
30 and fire department members of actions, reports and recommendations made by the  
31 commission.

32 (a) Establishment, Qualifications, and Restrictions. There is created a Civil Service  
33 Commission consisting of five regular members and one nonvoting ex officio member. Each  
34 regular member must be a citizen and a resident of the City of Wilmington. No regular member  
35 shall be an officer or employee of the city, or be a member of the immediate family of an  
36 employee of the city, or a former employee of the police or fire department. Applicants to the  
37 Civil Service Commission shall complete the City of Wilmington Boards and Commissions  
38 application process.

39 (b) Appointment, Term, and Removal of Regular Members. The employees of the City  
40 of Wilmington Fire Department who are subject to this Article, by a majority vote, shall name  
41 one regular member. The employees of the City of Wilmington Police Department who are  
42 subject to this Article, by a majority vote, shall name one regular member. The City Council of  
43 the City of Wilmington, by a majority vote, shall name one regular member. The New Hanover  
44 County Medical Society governing board, by a majority vote, shall name one regular member.  
45 The sitting members of the Civil Service Commission, by a majority vote, shall select one  
46 member as a regular member of the Commission. The regular members of the Commission  
47 shall serve a term of three years unless removed by the appointing authority. A member may be  
48 removed by a majority vote of all members of the agency appointing that member.

49 (c) Vacancy. A vacancy on the Commission may be caused by the death, resignation,  
50 disqualification, or removal of a regular member. Such vacancy shall be filled by the  
51 appointing authority authorized to name the member causing the vacancy. If the appointing

1 agency fails to fill the vacancy within 60 days after notification, the senior resident superior  
2 court judge of the judicial district that includes New Hanover County shall be notified and shall  
3 immediately fill the vacancy. Regular members appointed to fill a vacancy shall serve for the  
4 remainder of the unexpired term.

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

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

18 (f) Ex Officio Member. The director of human resources shall act as a nonvoting ex  
19 officio member of the Commission and shall advise the Commission on all city and  
20 departmental policies, rules, regulations, and procedures. The Commission shall, within a  
21 reasonable time, supply the director of human resources with notification of any actions,  
22 reports, or recommendations made by the Commission. The human resources department shall  
23 notify affected police and fire department members of actions, reports, and recommendations  
24 made by the Commission.

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

31 ~~The act shall apply to an employee of the Fire Department of the City of Wilmington~~  
32 ~~certified in accordance with Section 11.5 of this act and whose primary function is that of~~  
33 ~~protecting life and property through firefighting, including those fire officers assigned to~~  
34 ~~supporting services of the fire service. The chief of the fire department is not covered by the~~  
35 ~~Civil Service Act.~~

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

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

48 (c) Fire Department. An employee of the fire department shall be civil service certified  
49 only if that employee (i) is a full-time regular employee of the City of Wilmington; (ii) has  
50 successfully completed the probationary period of employment as set forth in Section 11.5 of  
51 this Article; (iii) has received certification as either a firefighter or fire inspector by the State of

1 North Carolina; and (iv) continues to maintain such State certification while employed by the  
2 fire department in a primary function of protecting life and property through firefighting,  
3 including those fire officer positions assigned to supporting services of the fire service. Other  
4 than Section 11.4 of this act, the provisions of this Article shall not apply to the fire chief. The  
5 provisions of this Article shall not apply to any deputy fire chief appointed to such position  
6 after the date of the enactment of this Article.

7 "Sec. 11.3. Powers and duties. The ~~commission~~Commission:

- 8 ~~(a)~~(1) Shall approve reasonable requirements for employment and for examination  
9 of applicants. ~~Positions shall be publicized. Examinations shall be~~  
10 ~~competitive, open, and free to all persons meeting the commission's~~  
11 ~~requirements. Examinations shall be practical in character, shall be limited to~~  
12 ~~matters that fairly test the relative ability of the applicant to discharge the~~  
13 ~~duties of the position and shall include tests of mental and physical~~  
14 ~~qualifications and health. Employment procedures shall be consistent with~~  
15 ~~federal and State regulations and the affirmative action policy as adopted by~~  
16 ~~the city council. The director of personnel shall be responsible for~~  
17 ~~implementing and administering personnel policies and procedures approved~~  
18 ~~by the commission. Any standards for police or fire employees that are~~  
19 ~~established by the State of North Carolina shall be included in the~~  
20 ~~requirements for employment.~~
- 21 ~~(b)~~(2) Shall cause to be prepared and kept a register of persons passing the  
22 examinations. The established policy of the city will be followed in filling  
23 vacancies from the register. Shall only hear and decide appeals of dismissals  
24 or demotions filed by civil service certified employees of the police or fire  
25 department.
- 26 (3) Shall subpoena on behalf of the Commission, or any party to a hearing  
27 before the Commission, witnesses and compel the production of records,  
28 books, papers, documents, or tangible things. If a person fails or refuses to  
29 obey a subpoena issued pursuant to this subdivision, the Commission may  
30 apply to the Superior Court of New Hanover County for an order requiring  
31 that its order be obeyed, and the court shall have jurisdiction to issue these  
32 orders after notice to the proper parties.
- 33 (4) Shall comply with the provisions of G.S. 160A-168 during the conduct of an  
34 appeal hearing before the Commission.
- 35 ~~(c)~~(5) Shall make an annual report to the ~~city council, city manager, and to the~~  
36 ~~chiefs of the police and fire departments for posting on departmental bulletin~~  
37 ~~boards.~~ city council and city manager. The ~~commission~~ Commission may  
38 prescribe the form and content of the report.
- 39 ~~(d)~~(6) May secure necessary staff services and request assistance in the  
40 performance of its duties from the city manager.
- 41 ~~(e)~~(7) The ~~commission~~Commission may use the facilities of the city for holding  
42 any of its activities.
- 43 (8) May determine its own rules of procedure. The North Carolina Rules of  
44 Evidence and the North Carolina Rules of Civil Procedure shall not apply to  
45 any hearing before the Commission.

46 "Sec. 11.4. Appointment of chief of fire department and chief of police department.  
47 Appointments of the chief of the fire department and chief of the police department shall be  
48 made by the city council and in making appointments to chiefs of the fire and police  
49 departments, due consideration shall be given to persons already employees of the respective  
50 department.

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

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

12 ~~(b) The chief of the appropriate department may suspend, with or without pay, any  
13 employee of the police or fire department charged with violating any rule or regulation of the  
14 department, for a period not to exceed 30 calendar days. Within three working days after  
15 making any suspension, the chief shall file with the city manager a written statement setting  
16 forth the reasons for the suspension in detail. Within the same time, the chief shall give to the  
17 suspended officer a signed copy of the statement of the basis for the suspension. Within 10  
18 working days after his suspension, the employee may file with the city manager a written  
19 request for a hearing. The city manager shall conduct the hearing within 30 calendar days  
20 thereafter.~~

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

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

30 ~~Within 10 working days after dismissal or demotion, the employee may appeal by first  
31 filing with the secretary of the commission a written request for a hearing before the Civil  
32 Service Commission. Such request for hearing shall contain a written response to each of the  
33 enumerated charges which was filed in support of the discharge or demotion. The commission  
34 shall conduct a hearing within 60 calendar days after receipt of the request. Hearings shall be  
35 administrative in nature. 'Working days' for purposes of this subsection shall mean 8:30 a.m. to  
36 5:00 p.m., Monday through Friday except legal holidays.~~

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

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

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

48 ~~A person who may wish to appeal to the superior court shall file with the secretary of the  
49 commission a bond in an amount set by the commission, with sufficient surety conditioned that  
50 the person shall pay the cost of such appeal in the event such cost shall be levied against the  
51 person, and shall pay to the secretary the necessary fee for entering such appeal in the superior~~

1 court within 10 calendar days after entry of such order or decree appealed from, and upon  
2 appeal, the secretary of the Civil Service Commission shall forthwith transmit to the superior  
3 court a complete transcript of all papers and proceedings concerning the order or decree or  
4 action of the Civil Service commission appealed from, together with the appeal bond and fee.

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

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

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

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

31 (d) Appeal Powers of the Commission. If, at the completion of its hearing, the  
32 Commission shall find that:

33 (1) The employee has not committed the offense or offenses with which he or  
34 she has been charged, the Commission shall reinstate the employee and  
35 direct the city manager to reimburse any lost pay and benefits to the  
36 employee.

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

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

48 ~~"Sec. 11.7. Enforcement of subpoenas. Testimony before the Commission. In the conduct of~~  
49 ~~hearings or investigations, the members of the commission shall have the right and power to~~  
50 ~~compel by subpoena both the attendance and testimony of witnesses or for the production of~~  
51 ~~evidence that may be relevant to the case to be heard. The commission may apply to a court of~~

1 competent jurisdiction for an order requiring that its order be obeyed. No testimony of any  
2 witness before the commission may be used against the witness on the trial of any criminal  
3 prosecution other than for false swearing committed on examination.

4 All persons testifying before the ~~commission~~ Commission shall be administered the  
5 appropriate oath by the city clerk. The city clerk or other designated court recorder shall be  
6 responsible for recording all proceedings. Any person, while under oath, at an investigation by  
7 the ~~commission~~, Commission, willfully swearing falsely, shall be guilty of a misdemeanor.

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

12 **SECTION 2.(b)** This section applies to the City of Wilmington only.

13 **SECTION 3.** This act is effective when it becomes law.