

incompetent and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or, upon the recommendation of an inspecting officer; such retirement or discharge shall be by order of the Governor, and in either case shall be subject to provisions of this section. Before making such order a board of not less than three commissioned officers, one of whom shall be a surgeon, shall be appointed whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit or incompetent from any cause to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board in any case that may come before it shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts-martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the Governor, stating cause of incapacity, whether from disability, unfitness or incompetence; and if he approves such findings, such officer shall be placed on the retired list or discharged, as provided for in this section. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list or discharged by the action of such board before having had a full and fair hearing before the board, if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of such board arising under this section, unless the officer designated to be placed upon the retired list or discharged shall within twenty days after being notified that he will be so retired or discharged serve on the Adjutant-General a notice in writing that he demands a hearing and examination before such boards. Boards shall be appointed by the Governor for officers above the grade of Colonel and Captain of the Naval Brigade, and by the commanding officer of the First Brigade for officers below the grade of Brigadier-General, and for officers in the Naval Brigade below the rank of Captain by the commanding officer of the Naval Brigade. The Governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the active service of the National Guard, on the recommendation of the commanding officer of the First Brigade or Naval Brigade. Vacancies created by the operation of this section shall be filled in the same manner as other vacancies.

52. Commanding officers of regiments and of battalions not part of regiments shall appoint and warrant the non-commis-