

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 110\*

Short Title: State Personnel Tech. Amendments.

(Public)

Sponsors: Representatives Fitch, Barbee, Barnes, Howard, Nye; Oldham, and Stamey.

Referred to: Public Employees.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL AND CLARIFYING AMENDMENTS  
TO CHAPTER 126 OF THE GENERAL STATUTES REGARDING THE STATE  
PERSONNEL SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4 reads as rewritten:

**"§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (1) ~~A position~~ Position classification plan—plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.
- (2) ~~A compensation plan—~~ Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
- (3) For each class of positions, reasonable ~~qualifications, as to age, character, physical condition, and other attributes—~~ qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.
- (4) ~~A recruitment program to attract applicants to public employment~~ Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

- 1 (5) Hours and days of work, holidays, vacation, sick leave, and other  
2 matters pertaining to the conditions of employment. The legal public  
3 holidays established by the Commission as paid holidays for State  
4 employees shall include Martin Luther King, Jr.'s, Birthday ~~for all years~~  
5 ~~after 1987, and Veterans Day.~~ Provided, however, that the Commission  
6 shall not provide for a greater number of total paid holidays than were  
7 established for the year 1986. The Commission shall not delete Veterans  
8 Day as a holiday. more than 11 paid holidays a year.
- 9 (6) The appointment, promotion, transfer, demotion and ~~suspension.~~  
10 suspension of employees.
- 11 (7) Cooperation with the Department of Public Instruction, ~~the State Board~~  
12 ~~of Education, the Board of Governors of Education,~~ the University of  
13 North Carolina, and the ~~colleges and universities~~ Community Colleges  
14 of the State and other appropriate resources in developing ~~pre-service~~  
15 and ~~in-service training programs.~~ programs in, including but not limited  
16 to, management and supervisory skills, performance evaluation,  
17 specialized employee skills, accident prevention, equal employment  
18 opportunity awareness, and customer service; and to maintain an  
19 accredited Certified Public Manager program.
- 20 (7a) The separation of employees.
- 21 (8) The evaluation of employee performance, the granting of ~~salary~~  
22 ~~increments,~~ performance salary increases, and a program of meritorious  
23 ~~service~~ service awards.
- 24 (9) The investigation of complaints and the issuing of such binding  
25 corrective orders or such other appropriate action concerning  
26 employment, promotion, demotion, transfer, discharge, ~~and~~  
27 ~~reinstatement~~ reinstatement, and any other issue defined as a contested  
28 case issue by this Chapter in all cases as the Commission shall find  
29 justified.
- 30 (10) ~~Such~~ Programs of safety, health, employee assistance, productivity  
31 incentives, equal opportunity and such other programs and procedures  
32 as may be necessary to promote efficiency of administration and  
33 provide for a fair and ~~reasonable~~ modern system of personnel  
34 administration. This subdivision may not be construed to authorize the  
35 establishment of an incentive pay program.
- 36 (11) In cases where the Commission finds discrimination or orders  
37 reinstatement or back pay whether (i) heard by the Commission or (ii)  
38 appealed for limited review after settlement or (iii) resolved at the  
39 agency level, the assessment of reasonable attorneys' fees and  
40 witnesses' fees against the State agency involved.
- 41 (14) The implementation of G.S. 126-5(e).
- 42 (15) Recognition of State employees, public personnel management, and  
43 management excellence.

1 Such policies and rules shall not limit the power of any elected or appointed  
2 department head, in his discretion and upon his determination that it is in the best  
3 interest of the Department, to transfer, demote, or separate a State

- 4 (1) Employee in a grade 60 or lower position who has not been  
5 continuously employed by the State of North Carolina for the  
6 immediate 12 preceding months;
- 7 (2) Employee in a grade 61 to grade 65 position who has not been  
8 continuously employed by the State of North Carolina for the  
9 immediate 36 preceding months;
- 10 (3) Employee in a grade 66 to grade 70 position who has not been  
11 continuously employed by the State of North Carolina for the  
12 immediate 48 preceding months; or
- 13 (4) Employee in a grade 71 or higher position who has not been  
14 continuously employed by the State of North Carolina for the  
15 immediate 60 preceding months."

16 Sec. 2. G.S. 126-5(e) reads as rewritten:

17 "(e) An exempt employee may be transferred, demoted, or separated from his  
18 position by the department head authorized to designate the exempt position except:

- 19 (1) When an employee who has the minimum service requirements  
20 described in subsection (c)(1) above but less than 10 years of  
21 cumulative service in subject positions prior to placement in an exempt  
22 position is removed from an exempt position, for reasons other than  
23 just cause, the employee shall have priority to any position that  
24 becomes available for which the employee is qualified, according to  
25 rules and regulations regulating and defining priority as promulgated  
26 by the State Personnel Commission; or
- 27 (2) When an employee who has 10 years or more cumulative service,  
28 including the immediately preceding 12 months, in subject positions  
29 prior to placement in an exempt position is removed from an exempt  
30 position, for reasons other than just cause, the employee shall be  
31 reassigned to a subject position within the same department or agency,  
32 or if necessary within another agency, and within a 35 mile radius of  
33 the exempt position, at the same grade and step-salary, including all  
34 across-the-board increases since placement in the position designated  
35 as exempt, as his most recent subject position.

36 ~~This subsection shall apply to employees removed from exempt positions after July~~  
37 ~~1, 1985."~~

38 Sec. 3. G.S. 126-6 reads as rewritten:

39 "~~§ 126 ♦ (a) All classifications, grades, salaries, conditions of work, and rules and~~  
40 ~~regulations established prior to July 1, 1965, by the State Personnel~~  
41 ~~Council, the State Personnel Director or the North Carolina Merit~~  
42 ~~System Council shall remain in force until amended, repealed, or~~  
43 ~~superseded by the Board, acting under the authority of this Chapter.~~

1       (b) ~~The State Personnel Board and the State Personnel Director herein provided~~  
2 ~~shall be the successors of the State Personnel Council, the State Personnel Director,~~  
3 ~~North Carolina Merit System Council, and the Merit System Supervisor. All records and~~  
4 ~~property in the custody of these agencies and individuals are hereby transferred to the~~  
5 ~~State Personnel Board and the State Personnel Department, effective July 1, 1965.~~

6       (e) ~~Any status of employment or privilege previously attained by an employee in~~  
7 ~~accordance with the State Personnel Act or the State Merit System Act shall continue~~  
8 ~~under the provisions of this Chapter."~~

9       Sec. 4. G.S. 126-7(c)(7) reads as rewritten:

10       "(7) An employee who disputes the fairness of his performance evaluation  
11       or the sufficiency of the increase awarded or who believes that he was  
12       unfairly denied a performance increase shall first discuss the problem  
13       with his supervisor. Appeals of the supervisor's decision shall be made  
14       only to the grievance committee or internal performance review board  
15       of the department, agency, or institution which shall make a  
16       recommendation to the head of the department, agency, or institution  
17       for final decision. The State Personnel Director shall help a  
18       department, agency, or institution establish an internal performance  
19       review board or, if it includes employee members, to use its existing  
20       grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-  
21       34, performance pay disputes, including disputes about individual  
22       performance appraisals, shall not be considered contested case ~~issues.~~  
23       issues, unless the employee alleges that the disputed performance  
24       management decision is a result of discrimination pursuant to G.S.  
25       126-36."  
26

27       ♦ Sec. 5. G.S. 126-7.1(c) reads as rewritten:

28       "(c) If a State ~~employee:~~employee subject to this section:

29       (1) Applies for another position of State employment; and

30       (2) Has substantially equal qualifications as an applicant who is not a State  
31       employee

32 then the State employee shall receive priority consideration over the applicant who is  
33 not a State employee. This priority consideration shall not apply when the only  
34 applicants considered for the vacancy are current State employees."

35       Sec. 6. G.S. 126-11(d) reads as rewritten:

36       "(d) In order to define 'substantially equivalent,' the State Personnel Commission  
37 is authorized to promulgate rules and regulations to implement the federal merit system  
38 standards and these regulations at a minimum shall include: recruitment and selection of  
39 employees; position classification; pay administration; training; employee relations;  
40 equal employment opportunity; and records and reports."

41       Sec. 7. G.S. 126-16 reads as rewritten:

42       "**§ 126-16. Equal opportunity for employment and compensation by State**  
43       **departments and agencies and local political subdivisions.**

1 All State departments and agencies and all local political subdivisions of North  
2 Carolina shall give equal opportunity for employment and compensation, without regard  
3 to race, religion, color, creed, national origin, sex, age, or handicapping condition as  
4 defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age,  
5 sex or physical requirements constitute bona fide occupational qualifications necessary  
6 to proper and efficient administration. This section with respect to equal opportunity as  
7 to age shall be limited to individuals who are at least 40 years of age ~~but less than 70~~  
8 ~~years of age.~~ age."

9 Sec. 8. G.S. 126-35 reads as rewritten:

10 **"§ 126-35. Written statement of reason for disciplinary action.**

11 No permanent employee subject to the State Personnel Act shall be discharged,  
12 suspended, or ~~reduced in pay or position,~~ demoted for disciplinary reasons, except for just  
13 cause. In cases of such disciplinary action, the employee shall, before the action is  
14 taken, be furnished with a statement in writing setting forth in numerical order the  
15 specific acts or omissions that are the reasons for the disciplinary action and the  
16 employee's appeal rights. The employee shall be permitted 15 days from the date the  
17 statement is delivered to appeal to the head of the department. ~~A copy of the written~~  
18 ~~statement given the employee and the employee's appeal shall be filed by the department with~~  
19 ~~the State Personnel Director within five days of their delivery.~~ However, an employee may  
20 be suspended without warning for causes relating to personal conduct detrimental to  
21 State service, pending the giving of written reasons, in order to avoid undue disruption  
22 of work or to protect the safety of persons or property or for other serious reasons. The  
23 employee, if he is not satisfied with the final decision of the head of the department, or  
24 if he is unable, within a reasonable period of time, to obtain a final decision by the head  
25 of the department, may appeal to the State Personnel Commission. Such appeal shall be  
26 filed not later than 30 days after receipt of notice of the department head's decision."

27 Sec. 9. G.S. 126-74 reads as rewritten:

28 **"§ 126-74. Work Options Program established.**

29 There is established a Work Options Program for State employees in the ~~Division~~  
30 Office of State Personnel to be administered by the State Personnel Commission. The  
31 State Personnel Director shall assign an employee within the ~~Division Office~~ of State  
32 Personnel, to be known as the State Work Options Coordinator, to direct the Work  
33 Options Program as established in this Article."

34 Sec. 10. G.S. 126-83 reads as rewritten:

35 **"§ 126-83. Exceptions.**

36 Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only  
37 certain Articles of this Chapter apply to some employees, this Article applies to all  
38 persons covered by this Chapter except those exempted by G.S. 126-5(c) (2), G.S.  
39 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but  
40 this Article does not apply to those persons covered by G.S. 126-5(a)(2). G.S. 128-15  
41 shall apply to those persons exempted from coverage of this Article, but shall not apply  
42 to any person covered by this Article."

43 Sec. 11. This act is effective upon ratification.