

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 549*

Short Title: Clarify State Personnel Act Scope.

(Public)

Sponsors: Representatives Fitch; H. Hunter and Stamey.

Referred to: Public Employees.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CLARIFICATION ON THE APPLICATION OF THE
3 VARIOUS PROVISIONS OF CHAPTER 126 OF THE GENERAL STATUTES
4 TO THE DIFFERENT CATEGORIES OF STATE EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 126-5 reads as rewritten:

7 **"§ 126-5. Employees subject to Chapter; exemptions.**

8 (a) ~~The~~ All provisions of this Chapter shall apply to:

9 (1) ~~All State employees not herein exempt, employees, including employees~~
10 of State boards, commissions, councils, or authorities, except as:

11 a. Expressly exempted in this Chapter; or

12 b. Expressly exempted by some other provision of law, and

13 (2) To employees of area mental health, mental retardation, and substance
14 abuse authorities and to employees of local social services
15 departments, public health departments, and local emergency
16 management agencies that receive federal grant-in-aid funds; and the
17 provisions of this Chapter may apply to such other county employees
18 as the several boards of county commissioners may from time to time
19 determine.

20 (b) As used in this section, 'policymaking position' means a position delegated
21 with the authority to impose the final decision as to a settled course of action to be
22 followed within a department, agency or division.

23 (c) Except as to the policies, rules, and plans established by the Commission
24 pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-4(7),

1 126-4(8), 126-4(10), 126-4(14), and 126-4(15), and 126-7, and except as to the
2 provisions of Articles ~~6 and 7~~ 4, 5, 6, 7, 10, 12, 13, and 14 of this Chapter, the
3 remaining provisions of this Chapter shall not apply to:

- 4 (1) An employee of the State of North Carolina who:
5 a. Is in a grade 60 or lower position and has not been continuously
6 employed by the State of North Carolina for the immediate 12
7 preceding months;
8 b. Is in a grade 61 to grade 65 position and has not been
9 continuously employed by the State of North Carolina for the
10 immediate 36 preceding months;
11 c. Is in a grade 66 to grade 70 position and has not been
12 continuously employed by the State of North Carolina for the
13 immediate 48 preceding months; or
14 d. Is in a grade 71 or higher position and has not been
15 continuously employed by the State of North Carolina for the
16 immediate 60 preceding months.
17 (2) One confidential assistant and two confidential secretaries for each
18 elected or appointed department head and one confidential secretary
19 for each chief deputy or chief administrative assistant.
20 (3) Employees in ~~polycymaking~~—positions designated as ~~exempt~~
21 policymaking pursuant to G. S. 126-5(d).
22 (4) The chief deputy or chief administrative assistant to the head of each
23 State department named in G. S. 126-5(d)(1) who is designated either
24 by statute or by the department head to act for and perform all of the
25 duties of such department head during his absence or incapacity.

26 (c1) Except as to the provisions of Articles ~~6 and 7~~ 5, 6, 7, and 14 of this Chapter,
27 the remaining provisions of this Chapter shall not apply to:

- 28 (1) Constitutional officers of the State.
29 (2) Officers and employees of the Judicial Department.
30 (3) Officers and employees of the General Assembly.
31 (4) Members of boards, committees, commissions, councils, and advisory
32 councils compensated on a per diem basis.

33 Notwithstanding the provisions of this subsection, the policies, plans, and procedures
34 established by the Commission pursuant to G. S. 126-4(5) related to paid leave and
35 holidays will apply to the regular classified employees of the Judicial Department.

- 36 ~~(5) Officials or employees whose salaries are fixed by the General~~
37 ~~Assembly, or by the Governor, or by the Governor and Council of~~
38 ~~State, or by the Governor subject to the approval of the Council of~~
39 ~~State.~~
40 ~~(6) Employees of the Office of the Governor that the Governor at any~~
41 ~~time, in his discretion, exempts from the application of the provisions~~
42 ~~of this Chapter by means of a letter to the State Personnel Director~~
43 ~~designating these employees.~~

- 1 ~~(7) Employees of the Office of the Lieutenant Governor, that the~~
2 ~~Lieutenant Governor, at any time, in his discretion, exempts from the~~
3 ~~application of the provisions of this Chapter by means of a letter to the~~
4 ~~State Personnel Director designating these employees.~~
5 ~~(8) Instructional and research staff, physicians, and dentists of the~~
6 ~~University of North Carolina.~~
7 ~~(9) Employees whose salaries are fixed under the authority vested in the~~
8 ~~Board of Governors of The University of North Carolina by the~~
9 ~~provisions of G.S. 116-11(4), 116-11(5), and 116-14.~~
10 ~~(10) Employees of community colleges whose salaries are fixed in~~
11 ~~accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.~~
12 ~~(11) North Carolina School of Science and Mathematics employees whose~~
13 ~~salaries are fixed in accordance with the provisions of G.S. 116-~~
14 ~~235(e)(1) and G.S. 116-235(e)(2).~~
15 ~~(12) Employees of the North Carolina Low Level Radioactive Waste~~
16 ~~Management Authority whose salaries are fixed pursuant to G.S.~~
17 ~~104G-5(g)(1) and G.S. 104(G)-5(g)(2);~~
18 ~~(13) Employees of the North Carolina Hazardous Waste Management~~
19 ~~Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)~~
20 ~~and G.S. 130B-6(g)(2).~~
21 ~~(14) Employees of the North Carolina State Ports Authority.~~
22 (c1.1) Except as to:
23 (1) Those policies, plans, and procedures established by the Commission
24 pursuant to G.S. 126-4(5) related to paid leave and holidays; and
25 (2) The provisions of Articles 5, 6, 7, and 14 of this Chapter,
26 the remaining provisions of this Chapter shall not apply to:
27 (1) Officials or employees whose salaries are fixed by the General
28 Assembly, or by the Governor, or by the Governor and Council of
29 State, or by the Governor subject to the approval of the Council of
30 State.
31 (2) Employees of the Office of the Governor that the Governor, at any
32 time, in his discretion, exempts from the application of the remaining
33 provisions of this Chapter by means of a letter to the State Personnel
34 Director designating these employees.
35 (3) Employees of the Office of the Lieutenant Governor, that the
36 Lieutenant Governor, at any time, in his discretion, exempts from the
37 application of the remaining provisions of this Chapter by means of a
38 letter to the State Personnel Director designating these employees.
39 (4) Employees whose salaries are fixed under the authority vested in the
40 State Board of Community Colleges pursuant to G.S. 115D-3.
41 (5) Employees of the North Carolina Low-Level Radioactive Waste
42 Management Authority whose salaries are fixed pursuant to G.S.
43 104G-5(g)(1) and G.S. 104G-5(g)(2).

- 1 (6) Employees of the North Carolina Hazardous Waste Management
2 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)
3 and G.S. 130B-6(g)(2).
4 (7) All State employees whose positions are created or identified in
5 statutes other than this Chapter, when those statutes contain language
6 that has been interpreted and applied to exempt those employees from
7 all provisions of this Chapter.
8 (8) North Carolina School of Science and Mathematics' employees whose
9 salaries are fixed pursuant to G.S. 116-235(c)(1) and G.S. 116-
10 235(c)(2).

11 (c1.2) Except as to:

- 12 (1) The minimum leave provisions of G.S. 126-8 as applied to those
13 employees who regularly work 12 months each year; and
14 (2) The provisions of Articles 5, 6, 7, and 14 of this Chapter,
15 the remaining provisions of this Chapter shall not apply to:

- 16 (1) Instructional and research staff, physicians, and dentists of The
17 University of North Carolina.
18 (2) Employees whose salaries are fixed under the authority vested in the
19 Board of Governors of The University of North Carolina pursuant to
20 G.S. 116-11(4), 116-11(5), and 116-14.
21 (3) Employees of the North Carolina State Ports Authority.

22 (c2) ~~The~~ Except as to the provisions of Article 14 of this Chapter, the remaining
23 provisions of this Chapter shall not apply to:

- 24 (1) Public school superintendents, principals, teachers, and other public
25 school employees.
26 (3) Employees of community colleges whose salaries are fixed pursuant to
27 G.S. 115D-5 and G.S. 115D-20.

28 (c3) Except as to the policies, rules, and plans established by the Commission
29 pursuant to G.S. 126-4(5) and the provisions of ~~Article 6~~ Articles 6 and 14 of this
30 Chapter, the remaining provisions of this Chapter shall not apply to: Teaching and
31 related educational classes of employees of the Department of Correction, the
32 Department of Human Resources, and any other State department, agency or institution,
33 whose salaries shall be set in the same manner as set for corresponding public school
34 employees in accordance with Chapter 115C of the General Statutes.

35 (c4) The State Personnel Commission shall establish a position and appointment
36 type for certain field force positions and employees in the Division of Highways,
37 Department of Transportation, where, in the judgment of the Commission, such
38 appointment is for a position that is an entry level occupation, is for a duration of at
39 least one-half of the workdays of each pay period for at least nine calendar months per
40 year, and is reflective of employment practices in competing labor markets. This
41 appointment type shall be for 'permanent hourly employees.' Except as to the policies,
42 rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), and
43 126-4(3), and except as to the provisions of ~~Articles 6 and 7~~ Articles 5, 6, 7, and 14 of this
44 Chapter, the provisions of this Chapter shall not apply to permanent hourly employees.

1 The State Personnel Commission regulations shall provide that these employees will be
2 guaranteed two hours show-up pay when work is postponed, and pay for holidays
3 falling within periods of employment.

4 ~~(e5) Notwithstanding any other provision of this Chapter, Article 14 of this~~
5 ~~Chapter shall apply to all State employees, public school employees, and community~~
6 ~~college employees.~~

7 (d) (1) General. – The Governor may designate certain positions as
8 ~~exempt~~ policymaking positions, as provided below, in each of the
9 following departments:

- 10 a. Department of Administration;
- 11 b. Department of Economic and Community Development;
- 12 c. Department of Correction;
- 13 d. Department of Crime Control and Public Safety;
- 14 e. Department of Cultural Resources;
- 15 f. Department of Human Resources;
- 16 g. Department of Environment, Health and Natural Resources;
- 17 h. Department of Revenue; and
- 18 i. Department of Transportation.

19 The Secretary of State, the Auditor, the Treasurer, the Attorney
20 General, the Superintendent of Public Instruction, the Commissioner
21 of Agriculture, the Commissioner of Insurance, and the Labor
22 Commissioner may designate as ~~exempt~~ policymaking positions, as
23 ~~provided below, consistent with the provisions of subdivisions (2)~~
24 ~~through (7) of this subsection, in their respective offices. Positions~~
25 ~~designated as policymaking pursuant to this subdivision shall be~~
26 ~~exempt from those provisions of this Chapter set forth in G.S. 126-~~
27 ~~5(c)(3).~~

28 (2) Number. The number of ~~policymaking~~ positions designated as ~~exempt~~
29 ~~policymaking~~ in each department of office listed in subsection (d) (1),
30 except the Department of Economic and Community Development,
31 shall be limited to one and two tenths percent (1.2%) of the number of
32 full-time positions in the department office, or 30 positions in the
33 department or office, or 30 positions, whichever is greater. The
34 Governor may designate ~~as 85~~ policymaking ~~85~~ positions as ~~exempt~~ in
35 the Department of Economic and Community Development.
36 Provided, however, that the Governor or elected department head may
37 request that additional ~~policymaking~~ positions be designated as ~~exempt~~
38 ~~policymaking~~. The request shall be made by sending a list of
39 ~~policymaking~~ positions designated as policymaking that exceed the
40 limit imposed by this subsection to the Speaker of the North Carolina
41 House of Representatives and the President of the North Carolina
42 Senate. A copy of the list also shall be sent to the State Personnel
43 Director. The General Assembly may authorize all, or part of, the
44 additional ~~policymaking~~ positions to be designated as ~~exempt~~.

1 policymaking. If the General Assembly is in session when the list is
2 submitted and does not act within 30 days after the list is submitted,
3 the list shall be deemed approved by the General Assembly, and
4 ~~policymaking~~ positions shall be designated as ~~exempt~~-policymaking. If
5 the General Assembly is not in session when the list is submitted, the
6 30-day period shall not begin to run until the next date that the General
7 Assembly convenes or reconvenes, other than for a special session
8 called for a specific purpose not involving the approval of the list of
9 additional positions to be designated as ~~exempt~~-policymaking; the
10 ~~policymaking~~ positions shall not be designated as ~~exempt~~-policymaking
11 during the interim.

12 (3) ~~Letter. These positions shall be designated—~~Those positions designated
13 as policymaking pursuant to G.S. 126-5(d)(1); those confidential
14 assistants or secretaries described in G.S. 126-5(c)(2); and those chief
15 deputies or chief administrative assistants described in G.S. 126-
16 5(c)(4) shall be listed in a letter to the State Personnel Director, the
17 Speaker of the House of Representatives, and the President of the
18 Senate by May 1 of the year in which the oath of office is administered
19 to each Governor unless the provisions of ~~subsection (d)(4) subdivision~~
20 (4) of this subsection apply.

21 (4) Vacancies. In the event of a vacancy in the Office of the Governor or
22 in the office of a member of the Council of State, the person who
23 succeeds to or is appointed or elected to fill the unexpired term shall
24 make such designations in a letter to the State Personnel Director, the
25 Speaker of the House of Representatives, and the President of the
26 Senate within 120 days after the oath of office is administered to that
27 person.

28 (5) Creation, Transfer, or Reorganization. The Governor or elected
29 department head may designate as ~~exempt~~-policymaking a ~~policymaking~~
30 position that is created or transferred to a different department, or is
31 located in a department in which reorganization has occurred, after
32 May 1 of the year in which the oath of office is administered to the
33 Governor. The designation must be made in a letter to the State
34 Personnel Director, the Speaker of the North Carolina House of
35 Representatives, and the President of the North Carolina Senate within
36 120 days after such position is created, transferred, or in which
37 reorganization has occurred.

38 (6) Reversal. Subsequent to the designation of a ~~policymaking position as~~
39 ~~exempt as hereinabove provided,~~ position as policymaking pursuant to
40 G.S. 126-5(d)(1); any confidential assistant or secretary described in
41 G.S. 126-5(c)(2); or any chief deputy or chief administrative assistant
42 described in G.S. 126-5(c)(4), the status of the position may be
43 reversed and made subject to ~~the all~~ provisions of this Chapter by the
44 Governor or by an elected department head in a letter to the State

1 Personnel Director, the Speaker of the North Carolina House of
2 Representatives, and the President of the North Carolina Senate.

- 3 (7) Hearing Officers. Except as otherwise specifically provided by this
4 section, no employee, by whatever title, whose primary duties include
5 the power to conduct hearings, take evidence, and enter a decision
6 based on findings of fact and conclusions of law based on statutes and
7 legal precedents shall be designated as ~~exempt policymaking~~. ~~This~~
8 ~~subdivision shall apply beginning July 1, 1985, and no list submitted after~~
9 ~~that date shall designate as exempt any employee described in this~~
10 ~~subdivision.~~

11 (e) ~~An exempt employee may be transferred, demoted, or separated from his~~
12 ~~position by the department head authorized to designate the exempt position except:~~
13 Any employee in a position described in G.S. 126-5(c)(2), (c)(3), or (c)(4) may be
14 transferred, demoted, or separated from his position by the Governor, the department
15 head, or a designee, except:

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

31 (f) A department head is authorized to use existing budgeted positions within his
32 department in order to carry out the provisions of subsection (e) of this section. If it is
33 necessary to meet the requirements of subsection (e) of this section, a department head
34 may use salary reserve funds authorized for his department.

35 (g) No employee shall be placed in ~~an exempt~~ a position designated as:
36 policymaking pursuant to G.S. 126-5(d)(1); a confidential assistant or secretary
37 described in G.S. 126-5(c)(2); or a chief deputy or chief administrative assistant
38 described in G.S. 126-5(c)(4) without 10 working days prior written notification that
39 such position is so designated. ~~A person applying~~ An applicant for a ~~any such position~~
40 ~~that is designated as exempt~~ must be notified in writing at the time he makes the
41 application that the position is designated as exempt. ~~policymaking pursuant to G.S.~~
42 126-5(d)(1); is a confidential assistant or secretary as described in G.S. 126-5(c)(2); or a
43 chief deputy or chief administrative assistant as described in G.S. 126-5(c)(4).

1 (h) In case of dispute as to ~~whether~~ the extent to which an employee is subject to
2 the provisions of this Chapter, the question shall be investigated by the State Personnel
3 Office, and the dispute shall be resolved as provided in Article 3 of Chapter 150B."

4 Sec. 2. G.S. 126-15.1 reads as rewritten:

5 **"§ 126-15.1. Probationary State employee defined.**

6 As used in this Article, 'probationary State employee' means a State employee who
7 is exempt from ~~the Personnel Act~~ those provisions of this Chapter set forth in G.S. 126-
8 5(c), only because he has not been continuously employed by the State for the
9 appropriate period required by G.S. ~~126-5(e)-126-5(c)(1).~~"

10 Sec. 3. This act is effective upon ratification.