

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1139

Short Title: State Personnel Grievance Procedure.

(Public)

Sponsors: Representatives Sherrill; Pulley, Thompson, Crawford, Culp, Hurley, Justus, and Rayfield.

Referred to: State Government, if favorable, Judiciary II.

May 15, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO STREAMLINE THE REVIEW OF GRIEVANCES FILED BY STATE
3 EMPLOYEES AND APPLICANTS FOR STATE EMPLOYMENT.

4 The General Assembly of North Carolina enacts:

5 Section 1. The title to Article 8 of Chapter 126 of the General Statutes reads as
6 rewritten:

7 "ARTICLE 8.

8 ~~EMPLOYEE APPEALS OF GRIEVANCES AND DISCIPLINARY ACTIONS.~~
9 RESOLUTION OF EMPLOYMENT GRIEVANCES."

10 Sec. 2. Article 8 of Chapter 126 of the General Statutes is amended by adding
11 two new sections to read:

12 "§ 126-32. Short title.

13 This Article shall be known and may be cited as the State Personnel Act.

14 "§ 126-33. Definitions; time.

15 (a) Unless a different meaning is required by the context, as used in this Article:

16 (1) 'Agency' means all authorities, boards, bureaus, commissions, councils,
17 departments, divisions, and offices of the State government; The
18 University of North Carolina; and units of local government, but only
19 insofar as the unit of local government employs persons in a county or

1 area social services; public health; mental health, developmental
2 disabilities, or substance abuse department or authority; or a local
3 emergency management agency that receives federal grant-in-aid funds.

4 (2) 'Applicant' means a person who does not hold a probationary or
5 permanent position appointment as a State employee at the time the
6 person makes application for State employment.

7 (3) 'Career State employee' means a State employee who has been
8 continuously employed by an agency for 12 or more months prior to the
9 date of a personnel action or issue giving rise to a grievance under G.S.
10 126-34.1. The provisions of G.S. 126-1.1 do not apply to this Article.

11 (4) 'Commission' means the State Personnel Commission.

12 (5) 'File', when used in connection with a grievance, means the delivery of a
13 written complaint regarding a personnel action or issue to the personnel
14 officer of an agency.

15 (6) 'Final agency decision' has the same meaning as in G.S. 150B-36.

16 (7) 'Personnel officer' means the person within an agency who is designated
17 by the chief executive officer of the agency as the personnel officer with
18 whom a grievance is to be filed or, if no person is so designated, the
19 chief executive officer of the agency.

20 (b) Time shall be computed as provided by Rule 6 of the Rules of Civil Procedure,
21 G.S. 1A-1."

22 Sec. 3. G.S. 126-34 is repealed.

23 Sec. 4. G.S. 126-34.1 reads as rewritten:

24 "**§ 126-34.1. Grounds for contested case under the State Personnel Act Issues that may**
25 **be raised in a grievance defined.**

26 (a) ~~A State employee or former State employee may file in the Office of~~
27 ~~Administrative Hearings a contested case under Article 3 of Chapter 150B of the General~~
28 ~~Statutes a grievance only as to the following personnel actions or issues: issues and those~~
29 listed in subsections (c) and (d) of this section:

30 (1) ~~Dismissal, demotion, or suspension without pay~~ Dismissal based upon an
31 alleged violation of G.S. 126-35, if the employee is a career State
32 employee.

33 (2) An alleged unlawful State employment practice constituting
34 discrimination, as proscribed by G.S. 126-36, including:

35 a. Denial of promotion, transfer, or training, on account of the
36 employee's age, sex, race, color, national origin, religion, creed,
37 political affiliation, disability, or handicapping condition as
38 defined by Chapter 168A of the General Statutes.

39 b. Demotion, reduction in force, or termination of an employee in
40 retaliation for the employee's opposition to alleged
41 discrimination on account of the employee's age, sex, race, color,
42 national origin, religion, creed, political affiliation, disability, or

1 handicapping condition as defined by Chapter 168A of the
2 General Statutes.

3 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for
4 protesting an alleged violation of G.S. 126-16.

5 ~~(4) Denial of the veteran's preference granted in accordance with Article 13
6 of this Chapter in initial State employment or in connection with a
7 reduction in force, for an eligible veteran as defined by G.S. 126-81.~~

8 (5) Denial of promotion ~~for~~ as a result of a failure to post or failure to give
9 priority consideration for promotion ~~or reemployment~~, to a career State
10 employee as required by ~~G.S. 126-7.1 and G.S. 126-36.2.~~ G.S. 126-7.1(c)
11 by an agency other than the agency that employs the career State
12 employee.

13 ~~(6) Denial of an employee's request for removal of allegedly inaccurate or
14 misleading information from the employee's personnel file as provided
15 by G.S. 126-25.~~

16 (7) Denial of reemployment priority as required by G.S. 126-5(e)(1), 126-
17 5(e)(2), 126-7.1(c1), or 126-7.1(c2) to a former career State employee
18 by an agency other than the agency that separated the career State
19 employee as a result of a reduction in force.

20 (b) An applicant for ~~initial State employment~~ may file ~~in the Office of~~
21 ~~Administrative Hearings a contested case under Article 3 of Chapter 150B of the General~~
22 ~~Statutes based upon:~~ a grievance only as to the following personnel actions or issues and
23 those listed in subsection (b1) of this section:

24 (1) Alleged denial of employment in violation of G.S. 126-16.

25 ~~(2) Denial of the applicant's request for removal of allegedly inaccurate or
26 misleading information from the employee's personnel file as provided
27 by G.S. 126-25.~~

28 (3) Denial of equal opportunity for employment and compensation on
29 account of the employee's age, sex, race, color, national origin, religion,
30 creed, disability, or handicapping condition as defined by Chapter 168A
31 of the General Statutes. This subsection with respect to equal
32 opportunity as to age shall be limited to persons who are at least 40
33 years of age.

34 ~~(4) Denial of the veteran's preference in initial State employment provided
35 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.
36 126-81.~~

37 (5) A false accusation regarding, or disciplinary action relating to, a State
38 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

39 (b1) An applicant for initial State employment may file a grievance as to the denial
40 of the veteran's preference provided in Article 13 of this Chapter.

41 (c) In the case of a dispute A State employee or former State employee may file a
42 grievance as to whether a State employee's position is properly exempted as a policy-
43 making position, as defined in G.S. 126-5(b), from the State Personnel Act under G.S.

1 126-5, the employee may file in the Office of Administrative Hearings a contested case under
2 Article 3 of Chapter 150B of the General Statutes. G.S. 126-5(d).

3 (d) A State employee or applicant for State employment may file in the Office of
4 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
5 Statutes based upon a false accusation regarding, or disciplinary action relating to, the
6 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1. former State employee
7 may file a grievance as to the following personnel actions or issues:

8 (1) Demotion or suspension without pay based on an alleged violation of
9 G.S. 126-35, if the employee is a career State employee.

10 (2) Denial of the veteran's preference provided in Article 13 of this Chapter
11 in connection with a reduction in force, if the employee is a career State
12 employee.

13 (3) Denial of promotion as a result of a failure to post or failure to give
14 priority consideration for promotion to a career State employee as
15 required by G.S. 126-7.1(c) by the agency that employs the career State
16 employee.

17 (4) Denial of reemployment priority as required by G.S. 126-7.1(c1) or G.S.
18 126-7.1(c2) to a career State employee by the agency that separated the
19 career State employee as a result of a reduction in force.

20 (5) Denial of an employee's request for removal of allegedly inaccurate or
21 misleading information from the employee's personnel file as provided
22 by G.S. 126-25.

23 (6) Separation of a career State employee resulting from a reduction in
24 force where the employee alleges that the separation was arbitrary or
25 capricious because the agency failed to follow a plan for reduction in
26 force approved by the Office of State Personnel.

27 (e) ~~Any issue for which appeal to the State Personnel Commission through the~~
28 ~~filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not~~
29 ~~been specifically authorized by this section shall not be grounds for a contested case~~
30 ~~under Chapter 126."~~

31 Sec. 5. G.S. 126-34.2 reads as rewritten:

32 "**§ 126-34.2. Alternative dispute resolution. Applicability; procedure for certain**
33 **employees of units of local government.**

34 (a) Only the following provisions of this Article, as modified by this section, apply
35 to employees of a county or area social services; public health; mental health,
36 developmental disabilities, or substance abuse department or authority; or a local
37 emergency management agency that receives federal grant-in-aid funds: G.S. 126-33,
38 126-34.1, 126-34.2, 126-34.6(a), 126-34.6(b), 126-34.6(c), 126-34.6(d), 126-34.7, 126-
39 35, and 126-37. An employee of a county or area social services; public health; mental
40 health, developmental disabilities, or substance abuse department or authority; or a local
41 emergency management agency that receives federal grant-in-aid funds may raise only
42 the personnel actions or issues set out in the following provisions of G.S. 126-34.1 as a
43 grievance: subdivisions (1), (2), and (3) of subsection (a); subdivisions (1) and (2) of

1 subsection (b); and subdivisions (1) and (5) of subsection (d). An employee of a county
2 or area social services; public health; mental health, developmental disabilities, or
3 substance abuse department or authority; or a local emergency management agency that
4 receives federal grant-in-aid funds may raise a grievance as to the personnel actions and
5 issues listed in this section by filing a petition for ~~Notwithstanding the provisions of Articles~~
6 ~~6 and 7 of this Chapter, or the other provisions of this Article, with the consent of the parties, a~~
7 ~~matter for which a State employee, a former State employee, or an applicant for State~~
8 ~~employment has filed a contested case under Article 3 of Chapter 150B of the General~~
9 ~~Statutes may be handled in accordance with alternative dispute resolution procedures adopted by~~
10 ~~the State Personnel Commission. Statutes.~~ An employee of a county or area social services;
11 public health; mental health, developmental disabilities, or substance abuse department or
12 authority; or a local emergency management agency that receives federal grant-in-aid
13 funds shall file a grievance within 30 days after notice of the decision or action giving
14 rise to the grievance or, in the case of a grievance arising under G.S. 126-34.1(d)(5),
15 within 30 days after the employee discovers the allegedly inaccurate or misleading
16 information.

17 (b) ~~In its discretion, the State Personnel Commission may adopt alternative dispute~~
18 ~~resolution procedures for the resolution of matters not constituting grounds for a~~
19 ~~contested case under G.S. 126-34.1. As used in this section and in G.S. 126-37(b1), the~~
20 ~~phrase 'employee of a county or area social services; public health; mental health,~~
21 ~~developmental disabilities, or substance abuse department or authority; or a local~~
22 ~~emergency management agency that receives federal grant-in-aid funds' includes, with~~
23 ~~respect to a grievance that may be raised by an employee, a former employee of any of~~
24 ~~the listed departments and authorities, and, with respect to a grievance that may be raised~~
25 ~~by an applicant, an applicant for employment with any of the listed departments or~~
26 ~~authorities.~~

27 (c) ~~Nothing in this section shall be construed to limit the right of any person to file~~
28 ~~in the Office of Administrative Hearings a contested case under Article 3 of Chapter~~
29 ~~150B of the General Statutes."~~

30 Sec. 6. Article 8 of Chapter 126 of the General Statutes is amended by adding
31 six new sections to read:

32 **"§ 126-34.3. Initiation of a grievance; procedure for resolution of a grievance within**
33 **an agency.**

34 (a) An applicant, State employee, or former State employee may initiate a
35 grievance as to any of the personnel actions or issues set out in G.S. 126-34.1 by filing a
36 written complaint with the personnel officer of the appropriate agency. An applicant,
37 State employee, or former State employee shall file a grievance within 30 days after
38 notice of the decision or action giving rise to the grievance or, in the case of a grievance
39 arising under G.S. 126-34.1(d)(5), within 30 days after the State employee or former
40 State employee discovers the allegedly inaccurate or misleading information. The
41 appropriate agency for a grievance by an applicant is the agency with which the grievant
42 sought employment. The appropriate agency for a grievance by a State employee is the
43 agency with which the grievant is employed except that, if the grievance concerns an

1 application for employment by another agency, the appropriate agency is the agency with
2 which the grievant sought employment. The appropriate agency for a grievance by a
3 former State employee is the agency with which the grievant was formerly employed
4 except that, if the grievance concerns reemployment by another agency, the appropriate
5 agency is the agency with which the grievant sought reemployment.

6 (b) The agency shall have 30 days from the date the grievance was filed to resolve
7 the grievance within the agency. The Commission shall adopt rules specifying minimum
8 procedures for agency informal internal resolution of grievances. Each agency shall
9 adopt written procedures for the informal internal resolution of grievances that are
10 consistent with rules adopted by the Commission. No agency procedure for the informal
11 internal resolution of grievances shall be applicable to any grievant until the Commission
12 has approved the procedure. Neither the agency nor the grievant shall be represented by
13 an attorney or third party during any meeting between any representative of the agency
14 and the grievant held in connection with the agency internal informal grievance
15 resolution procedure. The Commission shall not award and an agency shall not pay
16 attorneys' fees in connection with the agency internal informal grievance resolution
17 procedure.

18 (c) If the agency and the grievant resolve the grievance within 30 days of the date
19 on which the grievance was filed, the agency shall reduce the resolution of the grievance
20 to writing in a memorandum of agreement. The memorandum of agreement shall set out
21 all the terms and conditions of the resolution of the grievance and shall specify when the
22 terms and conditions become effective. The agency head or personnel officer and the
23 grievant shall sign the memorandum of agreement, and the agency shall submit the
24 memorandum to the Office of State Personnel for approval in accordance with rules
25 adopted by the Commission.

26 (d) If the agency and the grievant do not resolve the grievance within 30 days, the
27 grievant may proceed as provided in G.S. 126-34.4.

28 **"§ 126-34.4. Procedure for resolution of a grievance when the grievance is not**
29 **resolved within an agency.**

30 (a) If the agency and the grievant do not resolve the grievance within the 30-day
31 period provided for the informal internal resolution of the grievance by the agency under
32 G.S. 126-34.3, a grievant who is:

33 (1) An applicant for State employment whose grievance arises under G.S.
34 126-34.1(b) or G.S. 126-34.1(b1) may file a petition for a contested case
35 with the Office of Administrative Hearings under Article 3 of Chapter
36 150B of the General Statutes.

37 (2) A State employee or former State employee whose grievance arises
38 under G.S. 126-34.1(a) or G.S. 126-34.1(c) may file a petition for a
39 contested case with the Office of Administrative Hearings under Article
40 3 of Chapter 150B of the General Statutes.

41 (3) A State employee or former State employee whose grievance involves
42 personnel actions or issues arising under G.S. 126-34.1(d) may proceed
43 only as provided in G.S. 126-34.5.

1 (4) A State employee or former State employee whose grievance involves
2 personnel actions or issues included under both subdivisions (2) and (3)
3 of this section may proceed only by filing a petition for a contested case
4 with the Office of Administrative Hearings under Article 3 of Chapter
5 150B of the General Statutes.

6 (b) A grievant must file a petition for a contested case under subdivision (1), (2),
7 or (4) of subsection (a) of this section with the Office of Administrative Hearings as
8 provided in G.S. 150B-23(a) no later than 30 days after the last day of the 30-day period
9 provided for the informal internal resolution of the grievance by the agency under G.S.
10 126-34.3. If the grievant fails to file a petition for a contested case within 30 days after
11 the last day of the 30-day period provided for the informal internal resolution of the
12 grievance by the agency, the agency shall dismiss the grievance.

13 (c) A grievant must notify the personnel officer in writing if the grievant wishes to
14 proceed under G.S. 126-34.4(a)(3) and G.S. 126-34.5 no later than 15 days after the last
15 day of the 30-day period provided for the informal internal resolution of the grievance by
16 the agency under G.S. 126-34.3. If the grievant fails to notify the personnel officer that
17 the grievant wished to proceed under G.S. 126-34.4(a)(3) and G.S. 126-34.5 within 15
18 days after the last day of the 30-day period provided for the informal internal resolution
19 of the grievance by the agency, the agency shall dismiss the grievance.

20 **"§ 126-34.5. Expedited resolution of a grievance by a qualified neutral party.**

21 (a) If the agency and the grievant do not resolve a grievance arising under G.S.
22 126-34.1(d) within the 30-day period provided for the informal internal resolution of the
23 grievance by the agency under G.S. 126-34.3 and the grievant has notified the agency
24 that the grievant wishes to proceed with the grievance, the agency and the grievant shall
25 have five days in which to select a qualified neutral party by mutual agreement. Within
26 five days after the agency and the grievant mutually agree on a qualified neutral party, the
27 agency shall notify the Office of State Personnel of the grievance. The agency shall
28 include the name of the qualified neutral party in the notice. If the agency and the
29 grievant are unable to agree on a qualified neutral party, the agency shall notify the
30 Office of State Personnel of the grievance and shall include in the notice a request that
31 the Office of State Personnel select a qualified neutral party. The Office of State
32 Personnel shall select a qualified neutral party within five days after it receives the
33 request from the agency.

34 (b) The Office of State Personnel shall maintain a list of all persons who currently
35 meet the requirements for service as a qualified neutral party. An agency and a grievant
36 may select by mutual agreement any qualified neutral party whose name appears on the
37 list. In selecting a qualified neutral party by mutual agreement, the agency and the
38 grievant may choose any person who currently meets the requirements for service as a
39 qualified neutral party. In selecting a qualified neutral party when the agency and the
40 grievant cannot agree on a qualified neutral party, the Office of State Personnel shall
41 choose a person who currently meets the requirements for service as a qualified neutral
42 party and who has not served a qualified neutral party for the resolution of a grievance
43 involving the agency within the preceding six months.

1 (c) In order to serve as a qualified neutral party in the grievance resolution
2 process, a person shall:

3 (1) Not be a State employee or an agent of any State agency.

4 (2) Not have been a State employee or an agent of any State agency within
5 the preceding 12 months.

6 (3) Other than service as a qualified neutral party for the resolution of
7 another grievance, have no personal, financial, or business interest in, or
8 relationship with, the agency, the grievant, any other State agency, State
9 employee, or other person involved with the grievance; or any aspect of
10 the grievance.

11 (4) Not have prior knowledge of the grievance or of any fact that bears on
12 the merits of the grievance.

13 (5) Successfully complete 40 hours of training in basic mediation or other
14 alternative dispute resolution methods.

15 (6) Successfully complete a training course provided by the Office of State
16 Personnel on policy and procedure under this Chapter and rules adopted
17 under this Chapter as they relate to the discipline and dismissal of State
18 employees and the resolution of grievances.

19 (7) Meet any other qualifications that the Commission shall establish by
20 rule.

21 (d) The Commission shall adopt rules specifying minimum procedures for the
22 expedited resolution of a grievance by a qualified neutral party. In the conduct of the
23 grievance resolution process, the qualified neutral party shall:

24 (1) Control the grievance resolution process.

25 (2) Maintain impartiality.

26 (3) Schedule meetings with designated agency representatives and the
27 grievant to mediate the grievance.

28 (4) Explain the procedures to be followed in, and the requirements of, the
29 grievance resolution process.

30 (5) Maintain the confidentiality of all communications that occur as a part
31 of the grievance resolution process.

32 (e) Any costs associated with the use of a qualified neutral party in the resolution
33 of a grievance shall be borne by the agency. The Commission shall establish a schedule
34 of rates to be paid to neutral parties in the resolution of grievances.

35 (f) Neither the agency nor the grievant shall be represented by an attorney or third
36 party during any proceeding conducted by the qualified neutral party. The Commission
37 shall not award and an agency shall not pay attorneys' fees in connection with
38 proceedings conducted by a qualified neutral party.

39 (g) If the agency and the grievant are able to resolve the grievance within 45 days
40 of the date on which the qualified neutral party is selected, the qualified neutral party
41 shall reduce the resolution of the grievance to writing in a memorandum of agreement.
42 The memorandum of agreement shall set out all the terms and conditions of the resolution
43 of the grievance and shall specify when the terms and conditions become effective. The

1 agency head or personnel officer and the grievant shall sign the memorandum of
2 agreement, and the agency shall submit the memorandum to the Office of State Personnel
3 for approval in accordance with rules adopted by the Commission. Upon approval by the
4 Office of State Personnel or the Commission, the agreement becomes a final order of the
5 Commission binding upon both the agency and the grievant.

6 (h) If the agency and the grievant are unable to resolve the grievance within 45
7 days of the date on which the qualified neutral party is selected, the agency and the
8 grievant may mutually agree to extend the time during which the qualified neutral party
9 may attempt to resolve the grievance.

10 (i) If the agency and the grievant are unable to resolve the grievance within 45
11 days of the date on which the qualified neutral party is selected or within the mutually
12 agreed extension period, the qualified neutral party shall prepare a written report on the
13 status of the grievance. The report shall include a statement of the facts involved in the
14 grievance as determined by the qualified neutral party; identify any law, rule, or policy
15 that the qualified neutral party determines to be relevant to the resolution of the
16 grievance; and state the qualified neutral party's recommended resolution of the
17 grievance. The qualified neutral party shall provide the agency and the grievant with a
18 copy of the report within five days after the date on which the 45-day expedited
19 grievance resolution period ends. The agency and the grievant shall have 10 days to
20 review the report and decide whether to accept the recommended resolution of the
21 grievance. If the agency and the grievant accept the recommended resolution of the
22 grievance, the qualified neutral party shall reduce the resolution of the grievance to
23 writing in a memorandum of agreement. The memorandum of agreement shall set out all
24 the terms and conditions of the resolution of the grievance and shall specify when the
25 terms and conditions become effective. The agency head or personnel officer and the
26 grievant shall sign the memorandum of agreement, and the agency shall submit the
27 memorandum to the Office of State Personnel for approval in accordance with rules
28 adopted by the Commission. Upon approval by the Office of State Personnel or the
29 Commission, the agreement becomes a final order of the Commission binding upon both
30 the agency and the grievant.

31 (j) Any dispute between the agency and the grievant regarding implementation of
32 a final order of the Commission resolving a grievance under this section shall be referred
33 to the Commission. The Commission shall attempt to resolve any dispute regarding
34 implementation of the order, shall determine whether the agency and the grievant have
35 substantially complied with the terms of the final order, and shall issue any supplemental
36 order it determines to be necessary to the implementation of the final order. In the event
37 that either the agency or the grievant fails to comply with a supplemental order of the
38 Commission, the agency or the grievant may file an action in the Superior Court of Wake
39 County to enforce the order.

40 (k) If the agency and the grievant do not accept the recommended resolution of the
41 grievance as provided in subsection (i) of this section, the grievant may file a petition for
42 a contested case under Article 3 of Chapter 150B of the General Statutes within 30 days
43 after the date on which the 45-day expedited grievance resolution period ends.

1 (l) If the Office of State Personnel and the Commission disapprove a
2 memorandum of agreement submitted for approval under this section or under G.S. 126-
3 34.3(d), the Office of State Personnel shall return the memorandum of agreement to the
4 agency with a written statement of objections. The agency and the grievant may amend
5 the memorandum of agreement and resubmit it to the Office of State Personnel for
6 approval. If the agency and the grievant do not agree on amendments to the
7 memorandum of agreement, the memorandum of agreement is void and the agency and
8 the grievant may proceed as provided in this Article.

9 **"§ 126-34.6. Administrative hearings.**

10 (a) No issue other than those specifically set out in G.S. 126-34.1 shall be grounds
11 under this Chapter for a contested case under Article 3 of Chapter 150B of the General
12 Statutes. No person may file a petition for a contested case with the Office of
13 Administrative Hearings unless the person has complied with the procedure set out in this
14 Article.

15 (b) In assigning an administrative law judge to preside over contested cases under
16 this Article, the Chief Administrative Law Judge shall give priority to contested cases
17 that involve a grievance under G.S. 126-34.1(a)(1) and G.S. 126-34.1(c). G.S. 150B-23.1
18 shall not apply to a contested case filed under this Article.

19 (c) The administrative law judge shall file a recommended decision in a contested
20 case under this Article within 180 days from the date on which the petition for a
21 contested case is filed. The Office of Administrative Hearings shall forward a copy of
22 the official record to the Commission and shall forward a copy of the recommended
23 decision to the agency and the grievant within 30 days of the date the administrative law
24 judge files the recommended decision.

25 (d) Notwithstanding G.S. 150B-44, the Commission has 90 days from the day it
26 receives the official record in a contested case from the Office of Administrative
27 Hearings or 90 days after its next regularly scheduled meeting that occurs at least 30 days
28 after the day it receives the official record, whichever is longer, to make a final decision
29 in the case. This time limit may be extended by agreement between the parties or, for
30 good cause shown, by the Commission for an additional period of up to 90 days.

31 (e) The report of the qualified neutral party is not admissible in any contested case
32 or subsequent judicial proceeding regarding the grievance, and the qualified neutral party
33 shall not be a witness in any contested case or subsequent judicial proceeding regarding
34 the grievance.

35 **"§ 126-34.7. Judicial review.**

36 Article 4 of Chapter 150B of the General Statutes governs judicial review of final
37 agency decisions under this Article. Notwithstanding G.S. 150B-43, an agency may not
38 seek judicial review of a final order of the Commission. This section shall not be
39 construed to limit the right of an agency to raise any issue within the scope of review set
40 out in G.S. 150B-51 in a response to a petition for judicial review, as provided in G.S.
41 150B-46.

42 **"§ 126-34.8. Reports.**

1 On or before 1 December of each year, the Office of State Personnel shall report to
2 the Joint Legislative Commission on Governmental Operations on the administration of
3 the grievance resolution procedure under this Article during the previous fiscal year. The
4 report shall include statistical information on the number of grievances filed, the nature of
5 the grievances, the disposition of the grievances, the time required to dispose of
6 grievances, the costs associated with the disposition of grievances, and the cost associated
7 with each grievance that is resolved by settlement. Every agency shall furnish to the
8 Office of State Personnel the information required to complete this report not later than 1
9 September of each year. The Office of Administrative Hearings shall furnish the Office
10 of State Personnel with statistical information to be included in the report on the number
11 of contested cases filed, the nature of the contested cases, the disposition of the contested
12 cases, and the time required to dispose of contested cases by 1 September of each year."

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

14 "~~(9) The investigation of complaints and the issuing of such binding corrective~~
15 ~~orders or such other appropriate action. The issuance of final orders and~~
16 ~~supplemental orders concerning employment, promotion, demotion,~~
17 ~~transfer, discharge, reinstatement, and any other personnel action or~~
18 ~~issue defined as a contested case issue by this Chapter in all cases as the~~
19 ~~Commission shall find justified. set in G.S. 126-34.1."~~

20 Sec. 8. G.S. 126-4(11) reads as rewritten:

21 "~~(11) In cases where the Commission finds discrimination or orders~~
22 ~~reinstatement or back pay whether (i) heard by the Commission or (ii)~~
23 ~~appealed for limited review after settlement or (iii) resolved at the~~
24 ~~agency level, the assessment of reasonable attorneys' fees and witnesses'~~
25 ~~fees against the State agency involved. The award of costs, witness fees,~~
26 ~~and attorneys' fees under Article 8 of this Chapter. Article 3 of Chapter~~
27 ~~6 of the General Statutes shall not apply to the award of costs, witness~~
28 ~~fees, or attorneys' fees under Article 8 of this Chapter."~~

29 Sec. 9. G.S. 126-5(h) reads as rewritten:

30 "(h) In case of dispute as to whether an employee is subject to the provisions of this
31 Chapter, the dispute shall be resolved as provided in ~~Article 3 of Chapter 150B.~~ G.S. 126-
32 34.1(c) and G.S. 126-34.3."

33 Sec. 10. G.S. 126-7(c) reads as rewritten:

34 "(c) Career growth recognition awards, cost-of-living adjustments, and
35 performance bonuses shall be based on annual performance appraisals of all employees
36 conducted by each department, agency, and institution. The State Personnel
37 Commission, under the authority of G.S. 126-4(8), shall adopt ~~policy and regulations~~ rules
38 for performance appraisal. ~~The policy and regulations~~ rules shall include the following:

39 (1) The performance appraisal system of each department, agency, or
40 institution shall be designed and administered to ensure that career
41 growth recognition awards, cost-of-living adjustments, and performance
42 bonuses are distributed fairly.

- 1 (2) To be eligible to distribute career growth recognition awards, cost-of-
2 living adjustments, and performance bonuses, a department, agency, or
3 institution shall have an operative performance appraisal system ~~which~~
4 that has been approved by the Commission. The performance appraisal
5 system adopted shall use a rating scale of five levels, with level four or
6 better qualifying for performance bonuses, level three or better
7 qualifying for career growth recognition awards, and level two or better
8 qualifying for cost-of-living adjustments. The performance appraisal
9 system adopted shall adhere to modern personnel management
10 techniques and practices in common use in the public and private
11 sectors.
- 12 (3) The State Personnel Director shall help departments, agencies, and
13 institutions to establish and administer their performance appraisal
14 systems and shall provide initial and ongoing training in performance
15 appraisal and performance system administration.
- 16 (4) An employee whose performance is rated at or above level four of the
17 rating scale shall be eligible to receive, subject to the rules ~~and~~
18 ~~regulations~~—of the Commission, a performance bonus unless the
19 employee's supervisor justifies in writing to the employee the decision
20 not to award the performance bonus. Other than the Commission, no
21 department, agency, or institution shall set limits so as to preclude an
22 employee whose performance exceeds management's expectations and
23 performance requirements from consideration for a performance bonus.
- 24 (4a) An employee whose performance is rated at or above level three of the
25 rating scale shall receive a career growth recognition award unless the
26 employee's supervisor justifies in writing to the employee the decision
27 not to give the career growth recognition award. The career growth
28 recognition award shall represent a two percent (2%) increase within the
29 employee's assigned pay grade. In no event shall any award increase an
30 employee's compensation above the maximum of the range. Other than
31 the Commission, no agency, department, or institution shall set limits so
32 as to preclude an employee whose performance meets or exceeds
33 management's expectations and performance requirements from
34 receiving a career growth recognition award.
- 35 (4b) An employee whose performance is rated at or above level two of the
36 rating scale and who is not involved in the final written stage of the
37 disciplinary procedure shall receive a cost-of-living increase. Other
38 than the Commission, no agency, department, or institution shall set
39 limits or initiate written disciplinary procedures for the purpose of
40 precluding an eligible employee from receiving a cost-of-living
41 adjustment.
- 42 (5) Repealed by Session Laws 1993, c. 388, s. 1.
- 43 (5a) Repealed by Session Laws 1993, c. 388, s. 1.

1 (6) The State Personnel Director may rescind any career growth recognition
2 award or performance bonus that does not appear to meet the intent of
3 the provisions of the performance appraisal system and require the
4 originating department, agency, or institution to reconsider or justify the
5 increase.

6 (7) An employee who disputes the fairness of his or her performance
7 appraisal or the amount of a performance bonus awarded or who
8 believes that he or she was unfairly denied a career growth recognition
9 award or performance bonus shall first discuss the problem with his or
10 her supervisor. ~~Appeals of~~ A grievance as to the supervisor's decision
11 ~~shall be made~~ may be initiated only to the grievance committee or by filing
12 a written complaint with the personnel officer of the agency with which
13 the grievant is employed. The personnel officer shall refer the
14 grievance to the internal performance review board of the department,
15 agency, or institution or referee. which ~~The internal performance review~~
16 ~~board or referee shall make a recommendation to the head of the~~
17 ~~department, agency, or institution~~ agency for a final decision, or when
18 consented to by both the agency and the employee, the supervisor's decision
19 may be appealed by following the alternative dispute resolution process
20 adopted by the State Personnel Commission. The State Personnel Director
21 shall help a department, agency, or institution establish an internal
22 performance review board or, if it includes employee members, to use its
23 existing grievance committee to hear performance pay disputes. ~~decision.~~
24 ~~Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34,~~ A
25 grievance as to a performance pay disputes, appraisal or a including
26 disputes about individual ~~the amount awarded as a performance appraisals,~~
27 ~~shall bonus is not be considered contested case issues.~~ a grievance under
28 G.S 126-34.1 and may not be raised in a petition for a contested case
29 under Chapter 150B of the General Statutes. The State Personnel
30 Commission shall adopt rules specifying minimum procedures for the
31 resolution within an agency of a grievance as to a performance appraisal
32 or the amount awarded as a performance bonus.

33 (7a) Each department, agency, and institution shall establish a performance
34 management and pay advisory committee as part of the performance
35 appraisal system. The purpose of the committee is to ensure that salary
36 increases and awards are made in an equitable manner. The committee
37 shall be responsible for reviewing:

- 38 a. Agency salary increase and award policies to determine whether
39 this section and any guidelines promulgated by the State
40 Personnel Commission have been adhered to;
- 41 b. Agency training and education programs to determine whether
42 all employees receive appropriate information; and

1 c. Performance appraisal ratings within the department, agency, or
2 institution to determine whether an equitable distribution has
3 been made.

4 The committee must have a minimum of five members. The head of
5 each department, agency, and institution shall appoint the members of
6 the committee with equal representation of nonsupervisory, supervisory,
7 and management employees. The committee shall elect its own chair.

8 The performance management and pay advisory committee shall
9 meet at least two times each year. The committee shall submit a written
10 report following each meeting to the head of the department, agency, or
11 institution. The report shall include recommendations for changes and
12 corrections in the administration of the performance management
13 system. The recommendations of the committee shall be advisory only.
14 The head of the department, agency, or institution shall respond to the
15 committee within three months. Copies of the report shall be included
16 in the report to the Office of State Personnel that is required of that
17 agency, department, or institution. Summaries of the report shall be
18 included in the annual reports that are mandated by this subsection.

19 (8) The State Personnel Director shall monitor the performance appraisal
20 system and the distribution of salary increases and awards within each
21 department, agency, and institution. Each department, agency, and
22 institution shall submit to the Director annual reports ~~which~~ that shall
23 include data on the demographics of performance ratings, the frequency
24 of evaluations, the distribution of salary increases and awards, and the
25 implementation schedule for salary increases and awards. The Director
26 shall analyze the data to ensure that salary increases and awards are
27 distributed fairly within each department, agency, and institution and
28 across all departments, agencies, and institutions of State government
29 and shall report back to each department, agency, and institution on its
30 appraisal and distribution performance.

31 (9) The State Personnel Director shall report annually on the
32 Comprehensive Compensation System to the Commission. The report
33 shall evaluate the performance of each department, agency, and
34 institution in the administration of its appraisal system and the
35 distribution of salary increases and awards within each department,
36 agency, and institution and across State government. The report shall
37 include recommendations for improving the performance appraisal
38 system and alleviating inequities. Copies of the report, as adopted by
39 the State Personnel Commission, shall be sent to the Governor,
40 Lieutenant Governor, President Pro Tempore of the Senate, Speaker of
41 the House of Representatives, the standing personnel committees of the
42 House of Representatives and the Senate, and the State Auditor. The
43 State Personnel Director shall recommend to the General Assembly for

1 its approval sanctions to be levied against departments, agencies, and
2 institutions that have deficient performance appraisal systems or that do
3 not link salary increases and awards to employee job performance.
4 These sanctions may include withholding salary increases and awards
5 from the managers and supervisors of individual employing units of
6 departments, agencies, and institutions in which discrepancies exist.

7 (10) Repealed by Session Laws 1993, c. 388, s. 1."

8 Sec. 11. G.S. 126-7.2 is repealed.

9 Sec. 12. G.S. 126-14(c) reads as rewritten:

10 "(c) A State employee subject to the Personnel Act, probationary State employee,
11 or temporary State employee who without probable cause falsely accuses a State
12 employee or a person appointed to State office of violating this section shall be subject to
13 discipline or change in employment status in accordance with the provisions of G.S. ~~126-~~
14 ~~35, 126-37, and 126-38~~ 126-35 and G.S. 126-37 and may, as otherwise provided by law, be
15 subject to criminal penalties for perjury or civil liability for libel, slander, or malicious
16 prosecution."

17 Sec. 13. G.S. 126-14.1(c) reads as rewritten:

18 "(c) A State employee subject to the Personnel Act, probationary State employee,
19 or temporary State employee, who without probable cause falsely accuses a person of
20 violating this section shall be subject to discipline or change in employment status in
21 accordance with the provisions of G.S. ~~126-35, 126-37, and 126-38~~ 126-35 and G.S. 126-37
22 and may, as otherwise provided by law, be subject to criminal penalties for perjury or
23 civil liability for libel, slander, or malicious prosecution."

24 Sec. 14. G.S. 126-25 reads as rewritten:

25 **"§ 126-25. Remedies of employee objecting to material in file.**

26 An ~~employee, employee or former employee or applicant for employment~~ who objects to
27 material in ~~his~~ the employee's file may place in ~~his~~ the file a statement relating to the
28 material ~~he~~ the employee considers to be inaccurate or misleading. An ~~employee,~~
29 ~~employee or former employee or applicant for employment~~ who objects to material in ~~his~~
30 the employee's file because ~~he~~ the employee or former employee considers it inaccurate
31 or misleading may seek the removal of ~~such~~ the material from ~~his~~ the file ~~in accordance~~
32 ~~with the grievance procedure of that department, including appeal to the State Personnel~~
33 ~~Commission by filing a grievance as provided in G.S. 126-34.1(d)(5) and G.S. 126-34.3.~~
34 ~~When a department, division, bureau, commission, or other an agency agrees or is ordered by~~
35 ~~the State Personnel Commission or by the General Court of Justice of this State to remove~~
36 ~~inaccurate or misleading material from an employee's file, which information was placed in~~
37 ~~the file by the supervisor or other agent of management, file,~~ it shall destroy the original and
38 all copies of the material removed and may not retain any inaccurate or misleading
39 information derived from the material removed."

40 Sec. 15. G.S. 126-35 reads as rewritten:

41 **"§ 126-35. Just cause; disciplinary actions for State employees.**

42 (a) No career State employee subject to the State Personnel Act shall be
43 discharged, suspended, or demoted for disciplinary reasons, except for just cause. In

1 cases of ~~such~~ disciplinary action, the employee shall, before the action is taken, be
2 furnished with a statement in writing setting forth ~~in numerical order~~ the specific acts or
3 omissions that are the reasons for the disciplinary action and the employee's ~~appeal rights~~.
4 ~~The employee shall be permitted 15 days from the date the statement is delivered to appeal to the~~
5 ~~head of the department.~~ grievance rights under this Article. However, an employee may be
6 suspended without warning for causes relating to personal conduct detrimental to State
7 service, pending the giving of written reasons, in order to avoid undue disruption of work
8 or to protect the safety of persons or property or for other serious reasons. ~~The employee,~~
9 ~~if he is not satisfied with the final decision of the head of the department, or if he is unable,~~
10 ~~within a reasonable period of time, to obtain a final decision by the head of the department, may~~
11 ~~appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after~~
12 ~~receipt of notice of the department head's decision.~~ The State Personnel Commission may
13 adopt, subject to the approval of the Governor, rules that define just cause.

14 (b) Notwithstanding any other provision of this Chapter, a reduction in pay or
15 position ~~which~~ that is not imposed for disciplinary reasons shall not be considered a
16 disciplinary action within the meaning of this Article. Disciplinary actions, for the
17 purpose of this Article, are those actions taken in accordance with the disciplinary
18 procedures adopted by the ~~State Personnel Commission~~ and specifically based on
19 unsatisfactory job performance, unacceptable personal conduct or a combination of the
20 two.

21 (c) ~~For the purposes of contested case hearings under Chapter 150B, an~~
22 ~~involuntary separation (such as a separation due to a reduction in force) shall be treated in~~
23 ~~the same fashion as if it were a disciplinary action."~~

24 Sec. 16. G.S. 126-36 reads as rewritten:

25 "**§ 126-36. Appeal of unlawful State employment practice.**

26 Any State employee or former State employee who has reason to believe that
27 employment, promotion, training, or transfer was denied him or her, or that demotion,
28 ~~layoff~~ layoff, or termination of employment was forced upon him or her in retaliation for
29 opposition to alleged discrimination or because of his or her age, sex, race, color, national
30 origin, religion, creed, political affiliation, disability, or ~~handicapped~~ handicapping
31 handicapping condition as defined by G.S. ~~168A-3~~ 168A-3, except where specific age, sex
32 sex, or physical requirements constitute a bona fide occupational qualification necessary
33 to proper and efficient administration, ~~shall have the right to appeal directly to the State~~
34 ~~Personnel Commission.~~ may file a grievance as provided in G.S. 126-34.3."

35 Sec. 17. G.S. 126-36.1 is repealed.

36 Sec. 18. G.S. 126-36.2 is repealed.

37 Sec. 19. G.S. 126-37 reads as rewritten:

38 "**§ 126-37. Personnel—Commission to review Administrative Law Judge's**
39 **recommended decision of administrative law judge and make final agency**
40 **decision.**

41 (a) ~~Appeals involving a disciplinary action, alleged discrimination, and any other~~
42 ~~contested case arising under this Chapter shall be conducted in the Office of~~
43 ~~Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no~~

1 ~~grievance may be appealed unless the employee has complied with G.S. 126-34. The~~
2 ~~State Personnel Commission shall make a final decision in these cases. The Commission~~
3 ~~shall make the final agency decision in a contested case brought under subdivisions (1),~~
4 ~~(2), and (4) of G.S. 126-34.4(a) and G.S. 126-34.5(k), as provided in G.S. 150B-36,~~
5 ~~except as provided in subsection (b1) of this section. The State Personnel Commission is~~
6 ~~hereby authorized to~~ may ~~reinst~~ate any employee to the position from which ~~he~~ the
7 employee has been removed, ~~to~~ order the employment, promotion, transfer, or salary
8 adjustment of any individual to whom it has been wrongfully ~~denied~~ denied, or ~~to~~ direct
9 other suitable action to ~~correct the abuse~~ remedy the grievance, which may include the
10 requirement of payment for any loss of salary ~~which~~ that has resulted from the
11 ~~improperly discriminatory~~ improper action of the appointing authority.

12 (b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 572, s. 1.

13 (b1) ~~In appeals involving local government employees subject to this Chapter~~
14 ~~pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by~~
15 ~~Article 6 of this Chapter is found or in any case where a binding decision is required by~~
16 ~~applicable federal standards, the decision of the State Personnel Commission shall be~~
17 ~~advisory to the local appointing authority. The decision of the Commission in a contested~~
18 ~~case involving a grievance filed by an employee of a county or area social services;~~
19 ~~public health; mental health, developmental disabilities, or substance abuse department or~~
20 ~~authority; or a local emergency management agency that receives federal grant-in-aid~~
21 ~~funds shall be advisory to the board of county commissioners or other local or area~~
22 ~~authority except that a decision in a contested case involving discrimination in violation~~
23 ~~of Article 6 of this Chapter or involving an issue where a binding decision is required by~~
24 ~~applicable federal standards shall be the final agency decision. The State Personnel~~
25 ~~Commission shall comply with all requirements of G.S. 150B-44 in making an advisory~~
26 ~~decision. The local or area appointing authority shall, within 90 days of receipt of the~~
27 ~~advisory decision of the State Personnel Commission, issue a~~ written ~~written~~ final
28 agency decision either accepting, rejecting, or modifying the decision of the ~~State~~
29 ~~Personnel Commission. If the local or area appointing authority rejects or modifies the~~
30 ~~advisory decision, the local or area appointing authority must state in writing the specific~~
31 ~~reasons why it did not adopt the advisory decision. A copy of the final agency decision~~
32 ~~of the local or area appointing authority shall be served on each party personally or by~~
33 ~~certified mail, and on each party's attorney of record.~~

34 (b2) ~~The final decision is subject to judicial review pursuant to Article 4 of Chapter~~
35 ~~150B of the General Statutes. Appeals in which it is found that~~ The decision of the
36 Commission in a contested case involving discrimination prohibited by Article 6 of this
37 Chapter has occurred ~~or in any case where a binding decision is required by applicable~~
38 ~~federal standards shall be heard as all other appeals, except that the decision of the State~~
39 ~~Personnel Commission shall be final.~~ the final agency decision.

40 (b3) A final agency decision by the Commission or a local or area appointing
41 authority is subject to judicial review pursuant to Article 4 of Chapter 150B of the
42 General Statutes.

1 (c) If the local or area appointing authority is other than a board of county
2 commissioners, the local or area appointing authority ~~must give the county notice of the~~
3 ~~appeal taken pursuant to subsection (a) of this section. Notice must be given to the county~~
4 ~~manager or the chairman of the board of county commissioners by certified mail within 15 days~~
5 ~~of the receipt of the notice of appeal. shall notify the board of county commissioners that a~~
6 ~~petition for a contested case involving a grievance has been filed by mailing a copy of the~~
7 ~~petition to the clerk of the board of county commissioners within 15 days of the date the~~
8 ~~petition is served on the local or area appointing authority. The county may intervene in~~
9 ~~the appeal-contested case as provided in G.S. 150B-23(d) within 30 days of receipt of the~~
10 ~~notice. If the action-final agency decision is appealed to superior court court, the county~~
11 ~~may intervene in the superior court proceeding as provided in G.S. 150B-46 even if it has~~
12 ~~did not intervened-intervene in the administrative proceeding. The decision of the~~
13 ~~superior court shall be binding-on-bind the county even if the county does not intervene."~~

14 Sec. 20. G.S. 126-38 is repealed.

15 Sec. 21. G.S. 126-39 is repealed.

16 Sec. 22. G.S. 126-41 reads as rewritten:

17 "**§ 126-41. Attorney and witness fees. Costs, witness fees, and attorneys' fees.**

18 The decision of the Commission assessing or refusing to assess costs, reasonable
19 witness fees-fees, or a reasonable attorney's fee-attorneys' fees as provided in G.S. 126-
20 4(11) is a final agency decision appealable under Article 4 of Chapter 150B of the
21 General Statutes. The reviewing court may reverse or modify the decision of the
22 Commission if the decision is unreasonable or the award is inadequate. The reviewing
23 court shall award ~~court~~ costs and a reasonable attorney's fee for representation-attorneys'
24 fees to a grievant in connection with the appeal to an employee who obtains a reversal or
25 modification of the Commission's decision in an appeal-an award of costs, witness fees, or
26 attorneys' fees by the Commission under this section."

27 Sec. 23. G.S. 126-82(d) reads as rewritten:

28 "(d) Any eligible veteran who has reason to believe that he or she did not receive a
29 veteran's preference in accordance with the provisions of this Article or rules adopted
30 under ~~it may appeal directly to the State Personnel Commission. this Article may file a~~
31 grievance as provided in G.S. 126-34.1 and G.S. 126-34.3."

32 Sec. 24. Upon application to the Office of State Personnel, persons who are
33 certified as mediators by the Administrative Office of the Courts under G.S. 7A-38.2 and
34 who successfully complete the training course required by G.S. 126-34.5(c)(6), as
35 enacted by Section 6 of this act, may serve as qualified neutral parties without meeting
36 other requirements of G.S. 126-34.5(c) from 1 July 1997 until 1 July 1998.

37 Sec. 25. The State Personnel Commission shall adopt rules to implement the
38 provisions of this act as provided in G.S. 126-34.3(b), 126-34.5(c)(7), 126-34.5(d), and
39 126-34.5(e), as enacted in Section 6 of this act. Rules adopted pursuant to this section
40 shall become effective 1 July 1997 unless a later effective date is required by law. The
41 State Personnel Commission shall prepare a list of persons who may serve as qualified
42 neutral parties as provided by this act by 1 July 1997.

1 Sec. 26. Sections 1 through 23 of this act become effective 1 July 1997 and
2 apply to grievances filed on or after that date, except that G.S. 126-34.7, as enacted by
3 Section 6 of this act, becomes effective upon ratification and applies to any final agency
4 decision of the State Personnel Commission under G.S. 126-37 for which a petition for
5 judicial review has not been filed as provided in G.S. 150B-45. Sections 24, 25, and 26
6 of this act are effective upon ratification.