

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 405  
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Short Title: Amend State Personnel Act/AB.

(Public)

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Sponsors:

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Referred to:

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March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE PERSONNEL ACT RELATING TO THE DEFINITION OF CAREER STATE EMPLOYEE, THE GROUNDS FOR STATE EMPLOYEE APPEALS, THE INVESTIGATORY DUTIES OF THE OFFICE OF STATE PERSONNEL, AND THE PRIORITY CONSIDERATION OF STATE EMPLOYEES IN FILLING VACANCIES; TO PROVIDE FOR THE ADOPTION OF AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE BY THE STATE PERSONNEL COMMISSION; AND TO ALLOW ALTERNATIVE OBSERVANCE OF THE NEW YEAR'S HOLIDAY.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 126 of the General Statutes is amended by adding a new section to read:

**"§ 126-1.1. Career State employee defined.**

For the purposes of this Chapter, unless the context clearly indicates otherwise, 'career State employee' means a State employee who:

- (1) Is in a permanent position appointment; and

1           (2) Has been continuously employed by the State of North Carolina in a  
2           position subject to the State Personnel Act for the immediate 24  
3           preceding months."

4           Sec. 2. G.S. 126-1A is repealed.

5           Sec. 3. G.S. 126-5(c) reads as rewritten:

6           "(c) Except as to the policies, rules, and plans established by the Commission  
7           pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7,  
8           and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this  
9           Chapter shall not apply to:

10          (1) A State employee ~~who:~~ who is not a career State employee as defined  
11          by this Chapter.

12          a. ~~Is in a primary level position and has not been continuously~~  
13          ~~employed by the State of North Carolina for the immediate 12~~  
14          ~~preceding months;~~

15          b. ~~Is in a secondary level or professional position and has not been~~  
16          ~~continuously employed by the State of North Carolina for the~~  
17          ~~immediate 24 preceding months; or~~

18          e. ~~Is in a management level or consultant position and has not been~~  
19          ~~continuously employed by the State of North Carolina for the~~  
20          ~~immediate 36 preceding months.~~

21          d. Repealed by Session Laws 1991, c. 354, s. 3.

22          (2) One confidential assistant and two confidential secretaries for each  
23          elected or appointed department head and one confidential secretary for  
24          each chief deputy or chief administrative assistant.

25          (3) Employees in policymaking positions designated as exempt pursuant to  
26          G.S. 126-5(d).

27          (4) The chief deputy or chief administrative assistant to the head of each  
28          State department who is designated either by statute or by the  
29          department head to act for and perform all of the duties of such  
30          department head during his absence or incapacity."

31          Sec. 4. G.S. 126-4 reads as rewritten:

32       **"§ 126-4. Powers and duties of State Personnel Commission.**

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

35          (1) Position classification plans which shall provide for the classification  
36          and reclassification of all positions subject to this Chapter according to  
37          the duties and responsibilities of the positions.

38          (2) Compensation plans which shall provide for minimum, maximum, and  
39          intermediate rates of pay for all employees subject to the provisions of  
40          this Chapter.

41          (3) For each class of positions, reasonable qualifications as to education,  
42          experience, specialized training, licenses, certifications, and other job-  
43          related requirements pertinent to the work to be performed.

- 1 (4) Recruitment programs designed to promote public employment,  
2 communicate current hiring activities within State government, and  
3 attract a sufficient flow of internal and external applicants; and  
4 determine the relative fitness of applicants for the respective positions.
- 5 (5) Hours and days of work, holidays, vacation, sick leave, and other  
6 matters pertaining to the conditions of employment. The legal public  
7 holidays established by the Commission as paid holidays for State  
8 employees shall include Martin Luther King, Jr.'s Birthday and Veterans  
9 Day. The Commission shall not provide for more than 11 paid holidays  
10 per year except that in those years in which Christmas Day falls on a  
11 Tuesday, Wednesday, or Thursday, the Commission shall not provide  
12 for more than 12 paid holidays.
- 13 (5a) In years in which New Year's Day falls on Saturday, the Commission  
14 may designate December 31 of the previous calendar year as the New  
15 Year's holiday, provided that the number of holidays for the previous  
16 calendar year does not exceed 12 and the number of holidays for the  
17 current year does not exceed 10. When New Year's Day falls on either  
18 Saturday or Sunday, the constituent institutions of The University of  
19 North Carolina that adopt alternative dates to recognize the legal public  
20 holidays set forth in subdivision (5) of this section and established by  
21 the Commission may designate, in accordance with the rules of the  
22 Commission and the requirements of this subdivision, December 31 of  
23 the previous calendar year as the New Year's holiday.
- 24 (6) The appointment, promotion, transfer, demotion and suspension of  
25 employees.
- 26 (7) Cooperation with the State Board of Education, the Department of  
27 Public Instruction, the University of North Carolina, and the  
28 Community Colleges of the State and other appropriate resources in  
29 developing programs in, including but not limited to, management and  
30 supervisory skills, performance evaluation, specialized employee skills,  
31 accident prevention, equal employment opportunity awareness, and  
32 customer service; and to maintain an accredited Certified Public  
33 Manager program.
- 34 (7a) The separation of employees.
- 35 (8) A program of meritorious service awards.
- 36 (9) The investigation of complaints and the issuing of such binding  
37 corrective orders or such other appropriate action concerning  
38 employment, promotion, demotion, transfer, discharge, reinstatement,  
39 and any other issue defined as a contested case issue by this Chapter in  
40 all cases as the Commission shall find justified.
- 41 (10) Programs of employee assistance, productivity incentives, equal  
42 opportunity, safety and health as required by Part 1 of Article 63 of  
43 Chapter 143 of the General Statutes, and such other programs and

1 procedures as may be necessary to promote efficiency of administration  
2 and provide for a fair and modern system of personnel administration.  
3 This subdivision may not be construed to authorize the establishment of  
4 an incentive pay program.

5 (11) In cases where the Commission finds discrimination or orders  
6 reinstatement or back pay whether (i) heard by the Commission or (ii)  
7 appealed for limited review after settlement or (iii) resolved at the  
8 agency level, the assessment of reasonable attorneys' fees and witnesses'  
9 fees against the State agency involved.

10 (12) Repealed by Session Laws 1987, c. 320, s. 2.

11 (13) Repealed by Session Laws 1987, c. 320, s. 3.

12 (14) The implementation of G.S. 126-5(e).

13 (15) Recognition of State employees, public personnel management, and  
14 management excellence.

15 (16) The implementation of G.S. 126-7.

16 (17) An alternative dispute resolution procedure.

17 ~~Such~~ The policies and rules of the Commission shall not limit the power of any  
18 electd or appointed department head, in his the department head's discretion and upon his  
19 the department head's determination that it is in the best interest of the Department, to  
20 transfer, demote, or separate a State employee who is not a career State employee as  
21 defined by this Chapter.

22 ~~(1) Employee in a primary level position who has not been continuously~~  
23 ~~employed by the State of North Carolina for the immediate 12 preceding~~  
24 ~~months;~~

25 ~~(2) Employee in a secondary level or professional position who has not~~  
26 ~~been continuously employed by the State of North Carolina for the~~  
27 ~~immediate 24 preceding months; [or]~~

28 ~~(3) Employee in a management level or consultant position who has not~~  
29 ~~been continuously employed by the State of North Carolina for the~~  
30 ~~immediate 36 preceding months.~~

31 (4) Repealed by Session Laws 1991, c. 354, s. 2, effective July 1, 1993."

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

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

36 Sec. 6. G.S. 126-7(c)(7) reads as rewritten:

37 "(7) An employee who disputes the fairness of his or her performance  
38 appraisal or the amount of ~~the~~ a performance bonus awarded or who  
39 believes that he or she was unfairly denied a career growth recognition  
40 award or performance bonus shall first discuss the problem with his or  
41 her supervisor. Appeals of the supervisor's decision shall be made only  
42 to the grievance committee or internal performance review board of the  
43 department, agency, or institution which shall make a recommendation

1 to the head of the department, agency, or institution for final ~~decision~~.  
2 decision, or when consented to by both the agency and the employee,  
3 the supervisor's decision may be appealed by following the alternative  
4 dispute resolution process adopted by the State Personnel Commission.  
5 The State Personnel Director shall help a department, agency, or  
6 institution establish an internal performance review board or, if it  
7 includes employee members, to use its existing grievance committee to  
8 hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and  
9 G.S. 126-22, 126-25, and 126-34, performance pay disputes, including  
10 disputes about individual performance appraisals, shall not be  
11 considered contested case issues."

12 Sec. 7. Article 8 of Chapter 126 of the General Statutes is amended by adding  
13 a new section to read:

14 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

15 (a) A State employee or former State employee may file in the Office of  
16 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
17 Statutes only as to the following personnel actions or issues:

- 18 (1) Dismissal, demotion, or suspension without pay based upon an alleged  
19 violation of G.S. 126-35, if the employee is a career State employee.  
20 (2) An alleged unlawful State employment practice constituting  
21 discrimination, as proscribed by G.S. 126-36, including:  
22 a. Denial of promotion, transfer, or training, on account of the  
23 employee's age, sex, race, color, national origin, religion, creed,  
24 political affiliation, or handicapping condition as defined by  
25 Chapter 168A of the General Statutes.  
26 b. Demotion, reduction in force, or termination of an employee in  
27 retaliation for the employee's opposition to alleged  
28 discrimination on account of the employee's age, sex, race, color,  
29 national origin, religion, creed, political affiliation, or  
30 handicapping condition as defined by Chapter 168A of the  
31 General Statutes.  
32 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for  
33 protesting an alleged violation of G.S. 126-16.  
34 (4) Denial of the veteran's preference granted in accordance with Article 13  
35 of this Chapter in initial State employment or in connection with a  
36 reduction in force, for an eligible veteran as defined by G.S. 126-81.  
37 (5) Denial of promotion for failure to post or failure to give priority  
38 consideration for promotion or reemployment, to a career State  
39 employee as required by G.S. 126-7.1 and G.S. 126-36.2.  
40 (6) Denial of an employee's request for removal of allegedly inaccurate or  
41 misleading information from the employee's personnel file as provided  
42 by G.S. 126-25.

1       (b) An applicant for initial State employment may file in the Office of  
2 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
3 Statutes based upon:

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

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

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

13           (4) Denial of the veteran's preference in initial State employment provided  
14 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.  
15 126-81.

16       (c) In the case of a dispute as to whether a State employee's position is properly  
17 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the  
18 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of  
19 the General Statutes.

20       (d) A State employee or applicant for 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 false accusation regarding, or disciplinary action relating to, the  
23 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

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

28       Sec. 8. Article 8 of Chapter 126 of the General Statutes is amended by adding  
29 a new section to read:

30 **"§ 126-34.2. Alternative dispute resolution.**

31       (a) Notwithstanding the provisions of Articles 6 and 7 of this Chapter, or the other  
32 provisions of this Article, with the consent of the parties, a matter for which a State  
33 employee, a former State employee, or an applicant for State employment has filed a  
34 contested case under Article 3 of Chapter 150B of the General Statutes may be handled in  
35 accordance with alternative dispute resolution procedures adopted by the State Personnel  
36 Commission.

37       (b) In its discretion, the State Personnel Commission may adopt alternative dispute  
38 resolution procedures for the resolution of matters not constituting grounds for a  
39 contested case under G.S. 126-34.1.

40       (c) Nothing in this section shall be construed to limit the right of any person to file  
41 in the Office of Administrative Hearings a contested case under Article 3 of Chapter  
42 150B of the General Statutes."

43       Sec. 9. G.S. 126-7.1(c) reads as rewritten:

1       (c) If a State employee subject to this section:

2           (1) Applies for another position of State ~~employment; and~~ employment that  
3               would constitute a promotion; and

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

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

9           Sec. 10. Article 2 of Chapter 126 of the General Statutes is amended by  
10 adding a new section to read:

11 **"§ 126-7.2. Time limit for appeals of applicants and noncareer State employees.**

12       Any applicant or employee that has not attained career status, appealing any decision  
13 or action shall file a petition for contested case hearing with the Office of Administrative  
14 Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of  
15 the decision or action which triggers the right of appeal."

16           Sec. 11. This act is effective upon ratification, except that Sections 1 and 2  
17 become effective July 1, 1996, and Section 1 applies to all State employees employed on  
18 or after that date who have not attained career State employee status prior to that date.