

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H

2

HOUSE BILL 223  
Committee Substitute Favorable 3/23/23

Short Title: OSHR/Various SHRA Changes.

(Public)

Sponsors:

Referred to:

March 1, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING VARIOUS CHANGES TO THE STATE HUMAN RESOURCES ACT  
3 AND RELATED LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 126-14.3 reads as rewritten:

6 "**§ 126-14.3. Open and fair competition.**

7 The State Human Resources Commission shall adopt rules or policies to:

8 ...

9 (3) Require that a closing date shall be posted for each job opening, unless an  
10 exception for critical classifications has been approved by the State Human  
11 Resources ~~Commission~~ Commission or as a special exception through the  
12 Office of State Human Resources.

13 ...

14 (9) Allow an individual the option of having the individual's application  
15 considered for future job postings if the individual has been identified as a  
16 qualified applicant within the same or comparable classification.

17 (10) Authorize agencies to make job offers as soon as possible after the completion  
18 of the interviews for a position. These rules or policies shall include, without  
19 limitation, authorizing agencies to make job offers that are contingent upon  
20 satisfactory reference checks and, if required, satisfactory background  
21 checks."

22 **SECTION 2.** G.S. 126-24 reads as rewritten:

23 "**§ 126-24. Confidential information in personnel files; access to such information.**

24 All other information contained in a personnel file is confidential and shall not be open for  
25 inspection and examination except to the following persons:

26 (1) The employee, applicant for employment, former employee, or his properly  
27 authorized agent, who may examine his own personnel file in its entirety  
28 except for (i) letters of reference solicited prior to employment, or (ii)  
29 information concerning a medical disability, mental or physical, that a prudent  
30 physician would not divulge to a patient. An employee's medical record may  
31 be disclosed to a licensed physician designated in writing by the  
32 ~~employee;employee.~~

33 (2) The supervisor of the ~~employee;employee.~~

34 (2a) A potential State or local government supervisor, during the interview  
35 process, only with regard to performance management ~~documents;documents~~  
36 or to prevent application fraud.



- 1 (3) Members of the General Assembly who may inspect and examine personnel  
2 records under the authority of ~~G.S. 120-19~~; G.S. 120-19.
- 3 (4) A party by authority of a proper court order may inspect and examine a  
4 particular confidential portion of a State employee's personnel ~~file~~; and file.
- 5 (5) An official of an agency of the federal government, State government or any  
6 political subdivision thereof. Such an official may inspect any personnel  
7 records when such inspection is deemed by the department head of the  
8 employee whose record is to be inspected or, in the case of an applicant for  
9 employment or a former employee, by the department head of the agency in  
10 which the record is maintained as necessary and essential to the pursuance of  
11 a proper function of said agency; provided, however, that such information  
12 shall not be divulged for purposes of assisting in a criminal prosecution, nor  
13 for purposes of assisting in a tax investigation.

14 Notwithstanding any other provision of this Chapter, any department head may, in his  
15 discretion, inform any person or corporation of any promotion, demotion, suspension,  
16 reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant,  
17 employee or former employee employed by or assigned to his department or whose personnel  
18 file is maintained in his department and the reasons therefor and may allow the personnel file of  
19 such person or any portion thereof to be inspected and examined by any person or corporation  
20 when such department head shall determine that the release of such information or the inspection  
21 and examination of such file or portion thereof is essential to maintaining the integrity of such  
22 department or to maintaining the level or quality of services provided by such department;  
23 provided that prior to releasing such information or making such file or portion thereof available  
24 as provided herein, such department head shall prepare a memorandum setting forth the  
25 circumstances which the department head deems to require such disclosure and the information  
26 to be disclosed. The memorandum shall be retained in the files of said department head and shall  
27 be a public record."

28 **SECTION 3.** G.S. 126-10 reads as rewritten:

29 **"§ 126-10. Personnel services to local governmental units.**

30 (a) The State Human Resources Commission may make the services and facilities of the  
31 Office of State Human Resources available upon request to the political subdivisions of the State.  
32 The State Human Resources Commission may establish reasonable charges for the service and  
33 facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit  
34 of the general fund.

35 (b) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity  
36 indicates that it will permanently appoint a person who does not meet the class specification's  
37 minimum qualifications for a position subject to the State Human Resources Act, except for  
38 trainee and work-against appointments, the Office of State Human Resources may contact any  
39 relevant members of the board supervising that local entity, the county manager and  
40 commissioners, and the Department of Health and Human Services. The message may identify  
41 the particular qualifications that the proposed appointee would need to meet to have the minimum  
42 qualifications of the class specification.

43 (c) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity  
44 requests that the Office of State Human Resources make the final determination as to whether  
45 the employee or applicant meets the minimum qualifications, the Office of State Human  
46 Resources may share the relevant portions of the personnel file of a specific employee or  
47 applicant with the Deputy Director of the Public Health or Social Services Division of the  
48 Department of Health and Human Services, or similar State departmental staff, to assist in  
49 determining qualification status."

50 **SECTION 4.(a)** G.S. 95-47.6 reads as rewritten:

51 **"§ 95-47.6. Prohibited acts.**

1 A private personnel service shall not engage in any of the following activities or conduct:

2 ...

3 (13) Impose or attempt to collect any fee that is prohibited by G.S. 126-18 from  
4 the State, or any of its agencies, for aiding or assisting any person in obtaining  
5 employment with the State."

6 **SECTION 4.(b)** G.S. 126-18 reads as rewritten:

7 **"§ 126-18. Compensation for assisting person in obtaining State employment barred;**  
8 **exception.**

9 It shall be unlawful for any person, firm or corporation to collect, accept or receive any  
10 compensation, consideration or thing of value for obtaining on behalf of any other person, or  
11 aiding or assisting any other person in obtaining employment with the State of North Carolina;  
12 provided, however, any person, firm, or corporation that is duly licensed ~~and supervised~~ by the  
13 North Carolina Department of Labor as a private ~~employment service acting in the normal course~~  
14 ~~of business, personnel service pursuant to Article 5A of Chapter 95 of the General Statutes,~~ may  
15 collect such regular and customary fees for services rendered pursuant to a written contract when  
16 such fees are paid by someone other than the State of North Carolina; however, any person, firm,  
17 or corporation collecting fees for this service must have been licensed by the North Carolina  
18 Department of Labor as a private personnel service pursuant to Article 5A of Chapter 95 of the  
19 General Statutes for a period of not less than one year.

20 Any person, firm or corporation collecting fees for this service must ~~make a monthly report~~  
21 ~~to the Department of Labor listing the name of the person, firm or corporation collecting fees and~~  
22 ~~the person for whom a job was found, the nature and purpose of the job obtained, and the fee~~  
23 ~~collected by the person, firm or corporation collecting the fee. retain documents as required by~~  
24 G.S. 95-47.5. Violation of this section shall constitute a Class 1 misdemeanor."

25 **SECTION 5.** G.S. 96-29 reads as rewritten:

26 **"§ 96-29. Openings listed by State agencies.**

27 Every State agency shall list with the Division of Employment Security every job opening  
28 occurring within the agency which opening the agency wishes filled and which will not be filled  
29 solely by promotion or transfer from within the existing State government work force. The listing  
30 shall include a brief description of the duties and salary range and shall be filed with the Division  
31 within 30 days after the occurrence of the opening. ~~The State agency may not fill the job opening~~  
32 ~~for at least 21 days after the listing has been filed with the Division.~~ The listing agency shall  
33 report to the Division the filling of any listed opening within 15 days after the opening has been  
34 filled.

35 ~~The Division may act to waive the 21-day listing period for job openings in job classifications~~  
36 ~~declared to be in short supply by the State Human Resources Commission, upon the request of a~~  
37 ~~State agency, if the 21-day listing requirement for these classifications hinders the agency in~~  
38 ~~providing essential services."~~

39 **SECTION 6.** G.S. 126-4 reads as rewritten:

40 **"§ 126-4. Powers and duties of State Human Resources Commission.**

41 Subject to the approval of the Governor, the State Human Resources Commission shall  
42 establish policies and rules governing each of the following:

- 43 (1) Position classification plans which shall provide for the classification and  
44 reclassification of all positions subject to this Chapter according to the duties  
45 and responsibilities of the positions.
- 46 (2) Compensation plans which shall provide for minimum, maximum, and  
47 intermediate rates of pay for all employees subject to the provisions of this  
48 Chapter.
- 49 (3) For each class of positions, reasonable qualifications as to education,  
50 experience, specialized training, licenses, certifications, and other job-related  
51 requirements pertinent to the work to be performed. Classifications, class

1 qualifications, and classification specifications may be added, revised, and  
 2 deleted by the State Human Resources Commission, subject to the approval  
 3 of the Governor, or by the Director of the Office of State Human Resources  
 4 based on accepted labor market practices. All changes to classifications,  
 5 qualifications, and specifications by the Director of the Office of State Human  
 6 Resources shall be consistent with the classification plan structure approved  
 7 by the State Human Resources Commission and shall be reported to the State  
 8 Human Resources Commission at its next meeting that is more than five  
 9 business days from the date of the change.

10 ...."

11 **SECTION 7.** The State Human Resources Commission shall adopt a temporary rule,  
 12 followed by permanent rulemaking, concerning the hiring and compensation of trainees for local  
 13 government positions that are subject to the State Human Resources Act. The Commission shall  
 14 submit the rule and notice of public hearing to the Codifier of Rules no later than 60 days from  
 15 the effective date of this act.

16 **SECTION 8.** G.S. 126-34.02(b) reads as rewritten:

17 **"§ 126-34.02. Grievance appeal process; grounds.**

18 ...

19 (b) The following issues may be heard as contested cases after completion of the agency  
 20 grievance procedure and the Office of State Human Resources review:

21 ...

22 (4) Veteran's and National Guard preference. – An applicant for State  
 23 employment or a State employee may allege that he or she was denied  
 24 veteran's preference or national guard preference in violation of the law.

25 ...."

26 **SECTION 9.** G.S. 126-30(a) reads as rewritten:

27 **"§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State**  
 28 **employment; penalties.**

29 (a) Any employee who knowingly and willfully discloses false or misleading  
 30 information, or conceals dishonorable military service; or conceals prior employment history or  
 31 other requested information, either of which are significantly related to job responsibilities on an  
 32 application for State employment or any document attached to or supplementing an application  
 33 may be subjected to disciplinary action up to and including immediate dismissal from  
 34 employment. Dismissal shall be mandatory where the applicant discloses false or misleading  
 35 information in order to meet position qualifications. Application forms for State employment  
 36 shall include a statement informing applicants of the consequences of such fraudulent disclosure  
 37 or lack of disclosure. This statement shall also appear on any screen that allows an applicant to  
 38 attach materials to, or supplement, a State application."

39 **SECTION 10.** This act is effective when it becomes law.