

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 315  
Committee Substitute Favorable 4/23/97

Short Title: State Hires Most Qualified.

(Public)

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Sponsors:

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Referred to:

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February 25, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS, TO PROVIDE FOR BROADER PROTECTIONS FOR STATE EMPLOYEES REPORTING GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT ACTIVITIES, AND TO PROVIDE FOR THE REPORTING OF CERTAIN HIRINGS AND OTHER MATTERS TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

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

**"§ 126-14.2. Political hirings limited; open and fair competition; rules.**

(a) It is the policy of this State that State departments, agencies, and institutions select the most qualified persons for State government employment based upon job-related qualifications of applicants for employment in accordance with G.S. 126-7.1, Articles 6 and 13 of Chapter 126, and State personnel policies approved by the State Personnel Commission, and not based upon political affiliation, except that certain

1 policy-making positions in State government employment may be filled on bases  
2 including political affiliation as provided by G.S. 126-5.

3 (b) The personnel policies and procedures of the executive, legislative, and judicial  
4 branches shall be updated to implement nonpolitical hirings in accordance with  
5 subsection (a) of this section.

6 (c) The State Personnel Commission shall adopt rules to:

7 (1) Encourage open and fair competition for positions in State government  
8 employment.

9 (2) Ensure the proper and thorough advertisement of job openings in State  
10 government employment and lengthen, as appropriate, the period for  
11 submitting applications for State government employment. Further, the  
12 State Personnel Commission may require that a closing date shall be  
13 posted for each job opening.

14 (3) Assure that State departments, agencies, and institutions follow similar  
15 selection processes when hiring State employees.

16 (4) Assure that State supervisory personnel receive adequate training to  
17 carry out the State's policy of hiring the most qualified persons."

18 Section 2. G.S. 126-5(c1) reads as rewritten:

19 "(c1) Except as to the provisions of G.S. 126-14.2(a) and (b) and Articles 6 and 7 of  
20 this Chapter, the provisions of this Chapter shall not apply to:

21 (1) Constitutional officers of the State.

22 (2) Officers and employees of the Judicial Department.

23 (3) Officers and employees of the General Assembly.

24 (4) Members of boards, committees, commissions, councils, and advisory  
25 councils compensated on a per diem basis.

26 (5) Officials or employees whose salaries are fixed by the General  
27 Assembly, or by the Governor, or by the Governor and Council of State,  
28 or by the Governor subject to the approval of the Council of State.

29 (6) Employees of the Office of the Governor that the Governor, at any time,  
30 in his discretion, exempts from the application of the provisions of this  
31 Chapter by means of a letter to the State Personnel Director designating  
32 these employees.

33 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant  
34 Governor, at any time, in his discretion, exempts from the application of  
35 the provisions of this Chapter by means of a letter to the State Personnel  
36 Director designating these employees.

37 (8) Instructional and research staff, physicians, and dentists of The  
38 University of North Carolina.

39 (9) Employees whose salaries are fixed under the authority vested in the  
40 Board of Governors of The University of North Carolina by the  
41 provisions of G.S. 116-11(4), 116-11(5), and 116-14.

42 (10) Repealed by Session Laws 1991, c. 84, s. 1.

- 1 (11) North Carolina School of Science and Mathematics' employees whose  
2 salaries are fixed in accordance with the provisions of G.S. 116-  
3 235(c)(1) and G.S. 116-235(c)(2).  
4 (12) Employees of the North Carolina Low-Level Radioactive Waste  
5 Management Authority whose salaries are fixed pursuant to G.S. 104G-  
6 5(g)(1) and G.S. 104G-5(g)(2).  
7 (13) Employees of the North Carolina Hazardous Waste Management  
8 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and  
9 G.S. 130B-6(g)(2).  
10 (14) Employees of the North Carolina State Ports Authority.  
11 (15) Employees of the North Carolina Global TransPark Authority.  
12 (16) The executive director and one associate director of the North Carolina  
13 Center for Nursing established under Article 9F of Chapter 90 of the  
14 General Statutes."

15 Section 3. G.S. 126-34.1 reads as rewritten:

16 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

- 17 (a) A State employee or former State employee may file in the Office of  
18 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
19 Statutes only as to the following personnel actions or issues:  
20 (1) Dismissal, demotion, or suspension without pay based upon an alleged  
21 violation of G.S. 126-35, if the employee is a career State employee.  
22 (2) An alleged unlawful State employment practice constituting  
23 discrimination, as proscribed by G.S. 126-36, including:  
24 a. Denial of promotion, transfer, or training, on account of the  
25 employee's age, sex, race, color, national origin, religion, creed,  
26 political affiliation, or handicapping condition as defined by  
27 Chapter 168A of the General Statutes.  
28 b. Demotion, reduction in force, or termination of an employee in  
29 retaliation for the employee's opposition to alleged  
30 discrimination on account of the employee's age, sex, race, color,  
31 national origin, religion, creed, political affiliation, or  
32 handicapping condition as defined by Chapter 168A of the  
33 General Statutes.  
34 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for  
35 protesting an alleged violation of G.S. 126-16.  
36 (4) Denial of the veteran's preference granted in accordance with Article 13  
37 of this Chapter in initial State employment or in connection with a  
38 reduction in force, for an eligible veteran as defined by G.S. 126-81.  
39 (5) Denial of promotion for failure to post or failure to give priority  
40 consideration for promotion or reemployment, to a career State  
41 employee as required by G.S. 126-7.1 and G.S. 126-36.2.

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

4 (7) Any retaliatory personnel action that violates G.S. 126-85.

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

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

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

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

17 (4) Denial of the veteran's preference in initial State employment provided  
18 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.  
19 126-81.

20 (5) Denial of employment based upon political affiliation, except as to an  
21 exempt policy-making position.

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

26 (d) A State employee or applicant for State employment may file in the Office of  
27 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
28 Statutes based upon a false accusation regarding, or disciplinary action relating to, the  
29 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

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

34 Section 4. G.S. 126-84 reads as rewritten:

35 "**§ 126-84. Statement of policy.**

36 (a) It is the policy of this State that State employees shall be encouraged to report  
37 verbally or in writing to their supervisor, department head, or other appropriate authority,  
38 evidence of activity by a State agency or State employee constituting:

39 (1) A violation of State or federal law, rule or regulation;

40 (2) Fraud;

41 (3) Misappropriation of State Resources; ~~or~~

42 (4) Substantial and specific danger to the public health and ~~safety~~ safety; or

1           (5) Gross mismanagement, a gross waste of monies, or gross abuse of  
2           authority.

3           (b) Further, it is the policy of this State that State employees be free of  
4           intimidation or harassment when reporting to public bodies about matters of public  
5           concern, including offering testimony to or testifying before appropriate legislative  
6           panels."

7           Section 5. G.S. 126-85 reads as rewritten:

8           "**§ 126-85. Protection from retaliation.**

9           (a) No head of any State department, agency or institution or other State employee  
10          exercising supervisory authority shall discharge, threaten or otherwise discriminate  
11          against a State employee regarding the State employee's compensation, terms, conditions,  
12          location, or privileges of employment because the State employee, or a person acting on  
13          behalf of the employee, reports or is about to report, verbally or in writing, any activity  
14          described in G.S. 126-84, unless the State employee knows or has reason to believe that  
15          the report is inaccurate.

16          (a1) No State employee shall retaliate against another State employee because the  
17          employee, or a person acting on behalf of the employee, reports or is about to report,  
18          verbally or in writing, any activity described in G.S. 126-84.

19          (b) No head of any State department, agency or institution or other State employee  
20          exercising supervisory authority shall discharge, threaten or otherwise discriminate  
21          against a State employee regarding the employee's compensation, terms, conditions,  
22          location or privileges of employment because the State employee has refused to carry out  
23          a directive which in fact constitutes a violation of State or federal law, rule or regulation  
24          or poses a substantial and specific danger to the public health and safety.

25          (b1) No State employee shall retaliate against another State employee because the  
26          employee has refused to carry out a directive which may constitute a violation of State or  
27          federal law, rule or regulation, or poses a substantial and specific danger to the public  
28          health and safety.

29          (c) The protections of this Article shall include State employees who report any  
30          activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-  
31          64.6(c)(16)."

32          Section 6. (a) Beginning July 1, 1997, and quarterly thereafter, the head of each State  
33          agency, department, or institution employing State employees subject to the State  
34          Personnel Act shall report to the Office of State Personnel on the following:

35               (1) The costs associated with the defense or settlement of administrative  
36               grievances and lawsuits filed by current or former State employees and  
37               applicants for State employment, including the costs of settlements,  
38               attorneys' fees, litigation expenses, damages, or awards incurred by the  
39               respective State agencies, departments, and institutions. The report  
40               shall include an explanation of the fiscal impact of these costs upon the  
41               operations of the State agency, department, or institution.

42               (2) The use of position qualification equivalencies in the hiring of State  
43               employees where an applicant for State employment or a candidate for a

1                    promotion satisfies specific educational or experience qualifications for  
2                    a position by use of an equivalency relating to those specific  
3                    qualifications. The report shall include an explanation of the bases for  
4                    each use of an equivalency resulting in the hiring of an applicant for  
5                    State employment or the promotion of a State employee.

6                    (b)    Beginning May 1, 1998, and annually thereafter, the State Personnel  
7 Commission shall report to the Joint Legislative Commission on Governmental  
8 Operations on the costs associated with the defense or settlement of lawsuits and on the  
9 use of position qualification equivalencies, as compiled in accordance with subsection (a)  
10 of this section.

11                    Section 7. This act is effective when it becomes law.