

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 406*

Short Title: Change SPA Exemption Process.

(Public)

Sponsors: Senators Blust; Clark, Cochrane, Foxx, Horton, Ledbetter, and Shaw of Guilford.

Referred to: State Government, Local Government, and Personnel.

March 17, 1997

A BILL TO BE ENTITLED

1
2 AN ACT MODIFYING THE MANNER OF DESIGNATING POSITIONS AS
3 EXEMPT FROM THE STATE PERSONNEL ACT, REQUIRING THE
4 APPROVAL OF THE GENERAL ASSEMBLY BEFORE CERTAIN POSITIONS
5 MAY BE DESIGNATED AS POLICY-MAKING CONFIDENTIAL POSITIONS
6 EXEMPT FROM THE STATE PERSONNEL ACT, AND CHANGING THE
7 TREATMENT OF POLICY-MAKING CONFIDENTIAL EMPLOYEES
8 RELATIVE TO COVERAGE UNDER CERTAIN PROVISIONS OF THE STATE
9 PERSONNEL ACT.

10 The General Assembly of North Carolina enacts:

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

12 **"§ 126-5. Employees subject to Chapter; exemptions.**

13 (a) The provisions of this Chapter shall apply to:

14 (1) All State employees not herein exempt, and

15 (2) To all employees of the following local entities:

16 a. Area mental health, developmental disabilities, and substance
17 abuse authorities.

18 b. Local social services departments.

19 c. Local public health departments.

1 d. Local emergency management agencies that receive federal
2 grant-in-aid funds.

3 An employee of a consolidated county human services agency created
4 pursuant to G.S. 153A-77(b) is not considered an employee of an entity
5 listed in this subdivision.

6 (3) County employees not included under subdivision (2) of this subsection
7 as the several boards of county commissioners may from time to time
8 determine.

9 (b) As used in this section, "~~polycymaking position~~" section:

10 (1) 'Elected department head' means members of the Council of State and
11 includes the State Board of Education.

12 (2) 'Policy-making confidential position' means a position delegated with
13 the authority to impose the final decision as to a settled course of action
14 to be followed within a department, agency, or division. that has been (i)
15 designated as such by either the Governor or by an elected department
16 head and (ii) approved by the General Assembly, in accordance with the
17 provisions of this section.

18 (c) Except as to the policies, rules, and plans established by the Commission
19 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,
20 and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
21 Chapter shall not apply to:

22 (1) A

23 to a State employee who is not a career State employee as defined by this Chapter.
24 Except as to the policies, rules, and plans established by the Commission pursuant to G.S.
25 126-4(1), 126-4(2), 126-4(3), and 126-4(5), and except as to the provisions of Articles 6
26 and 7 of this Chapter, the provisions this Chapter shall not apply to employees in policy-
27 making confidential positions.

28 (2) ~~One confidential assistant and two confidential secretaries for each~~
29 ~~elected or appointed department head and one confidential secretary for~~
30 ~~each chief deputy or chief administrative assistant.~~

31 (3) ~~Employees in polycymaking positions designated as exempt pursuant to~~
32 ~~G.S. 126-5(d).~~

33 (4) ~~The chief deputy or chief administrative assistant to the head of each~~
34 ~~State department who is designated either by statute or by the~~
35 ~~department head to act for and perform all of the duties of such~~
36 ~~department head during his absence or incapacity.~~

37 (c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions
38 of this Chapter shall not apply to:

39 (1) Constitutional officers of the State.

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

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

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

- 1 (5) Officials or employees whose salaries are fixed by the General
2 Assembly, or by the Governor, or by the Governor and Council of State,
3 or by the Governor subject to the approval of the Council of State.
- 4 ~~(6) Employees of the Office of the Governor that the Governor, at any time,~~
5 ~~in his discretion, exempts from the application of the provisions of this~~
6 ~~Chapter by means of a letter to the State Personnel Director designating~~
7 ~~these employees.~~
- 8 ~~(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant~~
9 ~~Governor, at any time, in his discretion, exempts from the application of~~
10 ~~the provisions of this Chapter by means of a letter to the State Personnel~~
11 ~~Director designating these employees.~~
- 12 (8) Instructional and research staff, physicians, and dentists of The
13 University of North Carolina.
- 14 (9) Employees whose salaries are fixed under the authority vested in the
15 Board of Governors of The University of North Carolina by the
16 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 17 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 18 (11) North Carolina School of Science and Mathematics' employees whose
19 salaries are fixed in accordance with the provisions of G.S. 116-
20 235(c)(1) and G.S. 116-235(c)(2).
- 21 (12) Employees of the North Carolina Low-Level Radioactive Waste
22 Management Authority whose salaries are fixed pursuant to G.S. 104G-
23 5(g)(1) and G.S. 104G-5(g)(2).
- 24 (13) Employees of the North Carolina Hazardous Waste Management
25 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and
26 G.S. 130B-6(g)(2).
- 27 (14) Employees of the North Carolina State Ports Authority.
- 28 (15) Employees of the North Carolina Global TransPark Authority.
- 29 (16) The executive director and one associate director of the North Carolina
30 Center for Nursing established under Article 9F of Chapter 90 of the
31 General Statutes.
- 32 (c2) The provisions of this Chapter shall not apply to:
- 33 (1) Public school superintendents, principals, teachers, and other public
34 school employees.
- 35 (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session,
36 1986), c. 1014, s. 41.
- 37 (3) Employees of community colleges whose salaries are fixed in
38 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and
39 employees of the Department of Community Colleges whose salaries
40 are fixed by the State Board of Community Colleges in accordance with
41 the provisions of G.S. 115D-3.
- 42 (c3) Except as to the policies, rules, and plans established by the Commission
43 pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions

1 of this Chapter shall not apply to: Teaching and related educational classes of employees
2 of the Department of Correction, the Department of Human Resources, and any other
3 State department, agency or institution, whose salaries shall be set in the same manner as
4 set for corresponding public school employees in accordance with Chapter 115C of the
5 General Statutes.

6 (c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

7 (c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter
8 shall apply to all State employees, public school employees, and community college
9 employees.

10 (d) ~~(1) General. — The Governor may designate as exempt policymaking~~
11 ~~positions, as provided below, in each of the following departments:~~

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

21 ~~The Secretary of State, the Auditor, the Treasurer, the Attorney General,~~
22 ~~the Commissioner of Agriculture, the Commissioner of Insurance, and~~
23 ~~the Labor Commissioner may designate as exempt policymaking~~
24 ~~positions, as provided below, in their respective offices. The State Board~~
25 ~~of Education may designate as exempt policymaking positions, as~~
26 ~~provided below, in the Department of Public Instruction.~~

27 (2) ~~Number. — The number of policymaking positions designated as exempt~~
28 ~~in each department or office listed in subsection (d)(1), except the~~
29 ~~Department of Commerce, shall be limited to one and two-tenths~~
30 ~~percent (1.2%) of the number of full-time positions in the department or~~
31 ~~office, or 30 positions, whichever is greater. The Governor may~~
32 ~~designate 85 policymaking positions as exempt in the Department of~~
33 ~~Economic and Community Development. Provided, however, that the~~
34 ~~Governor, elected department head, or State Board of Education may~~
35 ~~request that additional policymaking positions be designated as exempt.~~
36 ~~The request shall be made by sending a list of policymaking positions~~
37 ~~that exceed the limit imposed by this subsection to the Speaker of the~~
38 ~~North Carolina House of Representatives and the President of the North~~
39 ~~Carolina Senate. A copy of the list also shall be sent to the State~~
40 ~~Personnel Director. The General Assembly may authorize all, or part of,~~
41 ~~the additional policymaking positions to be designated as exempt. If the~~
42 ~~General Assembly is in session when the list is submitted and does not~~
43 ~~act within 30 days after the list is submitted, the list shall be deemed~~

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

9 (3) Letter.— These positions shall be designated in a letter to the State
10 Personnel Director, the Speaker of the House of Representatives, and
11 the President of the Senate by May 1 of the year in which the oath of
12 office is administered to each Governor unless the provisions of
13 subsection (d)(4) apply.

14 (4) Vacancies.— In the event of a vacancy in the Office of Governor or in
15 the office of a member of the Council of State, the person who succeeds
16 to or is appointed or elected to fill the unexpired term shall make such
17 designations in a letter to the State Personnel Director, the Speaker of
18 the House of Representatives, and the President of the Senate within
19 120 days after the oath of office is administered to that person. In the
20 event of a vacancy in the Office of Governor, the State Board of
21 Education shall make these designations in a letter to the State
22 Personnel Director, the Speaker of the House of Representatives, and
23 the President of the Senate within 120 days after the oath of office is
24 administered to the Governor.

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

35 (6) Reversal.— Subsequent to the designation of a policymaking position as
36 exempt as hereinabove provided, the status of the position may be
37 reversed and made subject to the provisions of this Chapter by the
38 Governor, by an elected department head, or by the State Board of
39 Education in a letter to the State Personnel Director, the Speaker of the
40 North Carolina House of Representatives, and the President of the North
41 Carolina Senate.

42 (7) Hearing Officers.— Except as otherwise specifically provided by this
43 section, no employee, by whatever title, whose primary duties include

1 ~~the power to conduct hearings, take evidence, and enter a decision based~~
2 ~~on findings of fact and conclusions of law based on statutes and legal~~
3 ~~precedents shall be designated as exempt. This subdivision shall apply~~
4 ~~beginning July 1, 1985, and no list submitted after that date shall~~
5 ~~designate as exempt any employee described in this subdivision.~~

6 (d1) Policy-Making Confidential Positions. – The Governor and each elected
7 department head may specify certain policy-making positions for exemption from the
8 provisions of this Chapter only as provided by this subsection. Except as otherwise
9 provided by this subsection, the designated positions shall be approved by the General
10 Assembly before exempt status may become effective.

11 (1) Exemption Proposals. – By March 1 of the year in which the oath of
12 office is administered to each Governor, the Governor and each elected
13 department head shall submit a letter to the Speaker of the House of
14 Representatives, to the President Pro Tempore of the Senate, and to the
15 State Personnel Director listing by job title and position classification
16 each position proposed for designation as a policy-making confidential
17 position.

18 (2) Approval Process. – The General Assembly may consider together or
19 separately the Governor's list of proposed positions and the lists of the
20 respective elected department heads and may approve, disapprove,
21 modify, or take no action as to each respective list.

22 a. If all of the proposed positions are approved by the General
23 Assembly, then the Speaker of the House of Representatives and
24 the President Pro Tempore of the Senate shall jointly submit an
25 approval letter to the Governor or to the respective elected
26 department head and to the State Personnel Director by April 1 of
27 the year in which the oath of office is administered to each
28 Governor.

29 b. If the General Assembly approves some, but not all, of the
30 proposed positions on or before April 1 of the year in which the
31 oath of office is administered to each Governor, the number of
32 policy-making positions approved by the General Assembly shall
33 be no less than the number set forth in subdivision (3) of this
34 subsection.

35 c. If the General Assembly fails to approve any submitted list of
36 proposed positions by April 1 of the year in which the oath of
37 office is administered to each Governor, then the number of
38 exempt positions shall be the number of positions set forth in
39 subdivision (3) of this subsection.

40 (3) Number. – The number of policy-making confidential positions for each
41 executive branch department or office shall be as follows unless
42 otherwise provided for by the General Assembly in accordance with this
43 subsection:

1	a.	<u>Office of the Governor</u>	<u>87</u>
2	b.	<u>Housing Finance Agency</u>	<u>1</u>
3	c.	<u>Office of State Personnel</u>	<u>5</u>
4	d.	<u>Department of Administration</u>	<u>5</u>
5	e.	<u>Department of Commerce</u>	<u>5</u>
6	f.	<u>Department of Correction</u>	<u>5</u>
7	g.	<u>Department of Crime Control</u>	
8		<u>and Public Safety</u>	<u>5</u>
9	h.	<u>Department of Cultural Resources</u>	<u>5</u>
10	i.	<u>Department of Human Resources</u>	<u>5</u>
11	j.	<u>Department of Environment,</u>	
12		<u>Health, and Natural Resources</u>	<u>5</u>
13	k.	<u>Department of Revenue</u>	<u>5</u>
14	l.	<u>Department of Transportation</u>	<u>5</u>
15	m.	<u>Office of Lieutenant Governor</u>	<u>9</u>
16	n.	<u>Secretary of State</u>	<u>5</u>
17	o.	<u>Auditor</u>	<u>10</u>
18	p.	<u>Treasurer</u>	<u>10</u>
19	q.	<u>Attorney General</u>	<u>10</u>
20	r.	<u>Commissioner of Agriculture</u>	<u>10</u>
21	s.	<u>Commissioner of Insurance</u>	<u>10</u>
22	t.	<u>Commissioner of Labor</u>	<u>10</u>
23	u.	<u>Department of Public Instruction</u>	<u>10.</u>

The number of policy-making confidential positions that may be proposed by the Governor, however, shall not exceed one and two-tenths percent (1.2%) of the total number of full-time positions in the departments and offices which are listed as subdivisions a. through l. in the preceding table.

(4) Procedure When General Assembly Fails to Act or Approve by April 1. – When the General Assembly fails to act or to approve any positions as policy-making confidential positions by April 1 of the year in which the oath of office is administered to each Governor, then on or before May 1, a list of positions specifying job titles and position classifications shall be submitted by the Governor and each elected department head in a letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the State Personnel Director. The number of positions on each list shall not exceed the limits set forth in this section. All such positions submitted shall become exempt effective May 1.

(5) Failure to Submit List of Proposed Positions. – If the Governor or elected department head fails to submit the required list by May 1, no positions shall be designated as exempt for the respective department or office and those positions previously designated as policy-making confidential exempt positions shall become subject to this Chapter and

1 shall be considered vacant. Those vacancies shall be filled as provided
2 by subdivision (6) of this subsection.

3 (6) Exempt Positions That Become Subject to the State Personnel Act. – On
4 May 2 of the year in which the oath of office is administered to each
5 Governor, all positions that have been changed from exempt status to a
6 status not otherwise exempt from this Chapter will be considered
7 vacant. Vacancies shall be filled according to policies and rules for
8 positions subject to this Chapter. At the discretion of the Governor or
9 an elected department head, persons in those positions on May 1 of the
10 same year may remain in those positions on a temporary status and
11 apply for continued employment. However, no person shall occupy
12 such a changed status position on temporary status after May 31 of the
13 same year. The Director of the Office of State Personnel shall be
14 responsible for terminating all persons in such a temporary status and
15 shall be responsible for ensuring that any positions that become vacant
16 through the process set forth in this section are filled in accordance with
17 the policies and rules adopted by the Commission for positions subject
18 to this Chapter.

19 (7) When a Position Subject to This Chapter Becomes a Policy-Making
20 Confidential Position. – Whenever a career State employee is not
21 retained in a position that has changed from being subject to this
22 Chapter to a policy-making confidential position, the career State
23 employee shall be retained in employment in a position subject to this
24 Chapter in the same or another State department, agency, or institution.
25 A career State employee who is retained pursuant to this subdivision
26 shall be paid at the same pay grade and salary that the employee earned
27 before the change in status of the employee's former position and may
28 not be assigned to a position that is beyond a 35-mile radius of the
29 former position. A State department, agency, or institution may use
30 available salary reserve funds to meet the requirements of this
31 subdivision.

32 (8) A State employee in a policy-making confidential position serves at the
33 pleasure of the Governor or the elected department head. A State
34 employee in a policy-making confidential position may be transferred or
35 separated from employment by the Governor or by the elected
36 department head for any reason not prohibited by law.

37 (d2) No position, by whatever title, having primary duties that include the power to
38 conduct hearings, take evidence, and enter a decision based on findings of fact and
39 conclusions of law based on statutes and legal precedents shall be designated as a policy-
40 making confidential position.

41 (e) ~~An exempt employee may be transferred, demoted, or separated from his~~
42 ~~position by the department head authorized to designate the exempt position except:~~

- 1 (1) ~~When an employee who has the minimum service requirements~~
2 ~~described in subsection (c)(1) above but less than 10 years of~~
3 ~~cumulative service in subject positions prior to placement in an exempt~~
4 ~~position is removed from an exempt position, for reasons other than just~~
5 ~~cause, the employee shall have priority to any position that becomes~~
6 ~~available for which the employee is qualified, according to rules and~~
7 ~~regulations regulating and defining priority as promulgated by the State~~
8 ~~Personnel Commission; or~~
- 9 (2) ~~When an employee who has 10 years or more cumulative service,~~
10 ~~including the immediately preceding 12 months, in subject positions~~
11 ~~prior to placement in an exempt position is removed from an exempt~~
12 ~~position, for reasons other than just cause, the employee shall be~~
13 ~~reassigned to a subject position within the same department or agency,~~
14 ~~or if necessary within another agency, and within a 35 mile radius of the~~
15 ~~exempt position, at the same grade and salary, including all across the-~~
16 ~~board increases since placement in the position designated as exempt, as~~
17 ~~his most recent subject position.~~
- 18 (f) ~~A department head is authorized to use existing budgeted positions within his~~
19 ~~department in order to carry out the provisions of subsection (e) of this section. If it is~~
20 ~~necessary to meet the requirements of subsection (e) of this section, a department head~~
21 ~~may use salary reserve funds authorized for his department.~~
- 22 (g) No employee shall be placed in an exempt position without 10 working days
23 prior written notification that such position is so designated. A person applying for a
24 position that is designated as exempt must be notified in writing at the time he makes the
25 application that the position is designated as exempt.
- 26 (h) In case of dispute as to whether an employee is subject to the provisions of this
27 Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B."
28 Section 2. This act is effective when it becomes law.