

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1420  
Judiciary I Committee Substitute Adopted 7/25/02

Short Title: Shakedown Prevention.

(Public)

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Sponsors:

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Referred to:

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June 13, 2002

1 A BILL TO BE ENTITLED  
2 AN ACT TO STRENGTHEN THE PENALTIES AGAINST IMPROPER AND  
3 COERCIVE POLITICAL FUND-RAISING PRACTICES AGAINST STATE  
4 EMPLOYEES AND TO APPLY THE LAW TO ALL STATE EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 126-13 reads as rewritten:

7 "§ 126-13. **Appropriate political activity of State employees defined.**

8 (a) Purpose. The purpose of this section is to ensure that State employees are not  
9 restricted from political activities while off duty and to ensure that public funds are not  
10 used for political or partisan activities.

11 It is not the purpose of this section to allow infringement upon the rights of  
12 employees to engage in free speech and free association. Every State employee has a  
13 civic responsibility to support good government by every available means and in every  
14 appropriate manner. Employees shall not be restricted from affiliating with civic  
15 organizations of a partisan or political nature, nor shall employees, while off duty, be  
16 restricted from attending political meetings, or advocating and supporting the principles  
17 or policies of civic or political organizations, or supporting partisan or nonpartisan  
18 candidates of their choice in accordance with the Constitution and laws of the State and  
19 the Constitution and laws of the United States of America.

20 (a1) As an individual, each State employee retains all the rights and obligations of  
21 citizenship provided in the Constitution and laws of the State of North Carolina and the  
22 Constitution and laws of the United States of America; however, no State employee  
23 ~~subject to the Personnel Act or temporary State employee shall:~~

- 24 (1) Take any active part in managing a campaign, or campaign for  
25 political office or otherwise engage in political activity while on duty  
26 or within any period of time during which he is expected to perform  
27 services for which he receives compensation from the State;  
28 (2) Otherwise use the authority of his position, or utilize State funds,  
29 supplies or vehicles to secure support for or oppose any candidate,

1 party, or issue in an election involving candidates for office or party  
2 nominations, or affect the results thereof.

3 (a2) The provisions of subdivision (1) of subsection (a1) of this section do not  
4 apply to elected State officials. The provisions of subdivision (2) of subsection (a1) of  
5 this section apply to State employees and elected State officials.

6 (a3) Nothing in subsection (a1) of this section shall prohibit any otherwise lawful  
7 action of an elected State official to communicate with constituents, to formulate  
8 legislation or public policy, to discuss legislation or public policy, to discuss that elected  
9 State official's conduct in office, and to perform any of the customary and usual  
10 activities of that office or elective State office generally.

11 (b) No head of any State department, agency, or institution or other State  
12 employee exercising supervisory authority shall make, issue, or enforce any rule or  
13 policy the effect of which is to interfere with the right of any State employee as an  
14 individual to engage in political activity while not on duty or at times during which he is  
15 not performing services for which he receives compensation from the State. A State  
16 employee who is or may be expected to perform his duties on a twenty-four hour per  
17 day basis shall not be prevented from engaging in political activity except during  
18 regularly scheduled working hours or at other times when he is actually performing the  
19 duties of his office.

20 (c) The willful violation of this subdivision—section shall be a Class 1  
21 misdemeanor.

22 (d) The provisions of this section apply to all State employees without exception.  
23 For purposes of this section, the term "State employees" includes public school  
24 employees, community college employees, and employees of The University of North  
25 Carolina."

26 **SECTION 2.** G.S. 126-14 reads as rewritten:

27 **"§ 126-14. ~~Promise or threat~~ Coercion by State employee, elected State official, or**  
28 **appointee to obtain political contribution or support.**

29 (a) It is unlawful for ~~a any State employee—employee, elected State official, or a~~  
30 ~~person appointed to State office, other than elective office or office on a board,~~  
31 ~~commission, committee, or council whose function is advisory only, whether or not~~  
32 ~~subject to the Personnel Act, to coerce:~~

33 (1) ~~a State employee subject to the Personnel Act,~~

34 (2) ~~a probationary State employee,~~

35 (3) ~~a temporary State employee, or~~

36 (4) ~~an applicant for a position subject to the Personnel Act~~

37 office to coerce any State employee or applicant for State employment to support or  
38 contribute to a political candidate, political committee as defined in G.S. 163-278.6, or  
39 political party or to change the party designation of ~~his—that person's~~ voter registration  
40 by any threat, including threatening that change in employment status—~~or~~status,  
41 discipline or preferential personnel treatment will occur with regard to ~~a person listed in~~  
42 subdivisions (1) through (4). that person, any other State employee, or any applicant for  
43 State employment.

1 (b) Any person willfully violating this section shall be guilty of a ~~Class 2~~  
2 ~~misdemeanor~~. Class H felony.

3 (b1) Any candidate, political committee, or political party that accepts a  
4 contribution knowing it was coerced in violation of this section shall be subject to a  
5 civil penalty of up to three times the amount of the contribution. Any contribution that  
6 was coerced in violation of this section shall be returned to the contributor, regardless of  
7 whether the contributee knew it was coerced. Except as specified in this subsection, the  
8 State Board of Elections shall enforce the provisions of this subsection, using the  
9 methods set forth in G.S. 163-278.34(b) and (e).

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  
13 to discipline or change in employment status in accordance with the provisions of G.S.  
14 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to  
15 criminal penalties for perjury or civil liability for libel, slander, or malicious  
16 prosecution.

17 (c1) Every State employee covered by this section shall be covered with regard to  
18 the rights and duties of this section by the protections and rights of Article 14 of this  
19 Chapter.

20 (d) The provisions of this section apply to all State employees and applicants for  
21 State employment. For purposes of this section, the term "State employees" includes  
22 public school employees, community college employees, and employees of The  
23 University of North Carolina."

24 **SECTION 3.** G.S. 126-14.1 reads as rewritten:

25 "**§ 126-14.1. ~~Threat—Coercion by non-State employee to obtain political~~**  
26 **~~contribution or support.~~**

27 (a) It is unlawful for any person who is not a State employee, elected State  
28 official, or appointee to a State office to ~~coerce:~~

29 (1) ~~a State employee subject to the Personnel Act,~~

30 (2) ~~a probationary State employee,~~

31 (3) ~~a temporary State employee, or~~

32 (4) ~~an applicant for a position subject to the Personnel Act~~

33 coerce any State employee or applicant for State employment to support or contribute to  
34 a political candidate, political committee as defined in G.S. 163-278.6, or political party  
35 or to change the party designation of his voter registration by any threat, including  
36 explicitly threatening that change in employment ~~status—~~status, discipline or  
37 preferential personnel treatment will occur with regard to ~~any person listed in~~  
38 subdivisions (1) through (3) of this subsection. that person, any other State employee, or  
39 any applicant for State employment.

40 (b) Any person willfully violating this section shall be guilty of a ~~Class 2~~  
41 ~~misdemeanor~~. Class H felony.

42 (b1) Any candidate, political committee, or political party that accepts a  
43 contribution knowing it was coerced in violation of this section shall be subject to a  
44 civil penalty of up to three times the amount of the contribution. Any contribution that

1 was coerced in violation of this section shall be returned to the contributor, regardless of  
2 whether the contributee knew it was coerced. Except as specified in this subsection, the  
3 State Board of Elections shall enforce the provisions of this subsection, using the  
4 methods set forth in G.S. 163-278.34(b) and (e).

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

11 (c1) Every State employee covered by this section shall be covered with regard to  
12 the rights and duties of this section by the protections and rights of Article 14 of this  
13 Chapter.

14 (d) The provisions of this section apply to all State employees and applicants for  
15 State employment. For purposes of this section, "State employees" includes public  
16 school employees, community college employees, and employees of The University of  
17 North Carolina."

18 **SECTION 4.** G.S. 126-5(c) reads as rewritten:

19 "(c) Except as to the policies, rules, and plans established by the Commission  
20 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,  
21 and except as to the provisions of G.S. 126-13, 126-14, 126-14.1, and of Articles 6 and  
22 7 of this Chapter, the provisions of this Chapter shall not apply to:

- 23 (1) A State employee who is not a career State employee as defined by  
24 this Chapter.
- 25 (2) One confidential assistant and two confidential secretaries for each  
26 elected or appointed department head and one confidential secretary  
27 for each chief deputy or chief administrative assistant.
- 28 (3) Employees in exempt policymaking positions designated pursuant to  
29 G.S. 126-5(d).
- 30 (4) The chief deputy or chief administrative assistant to the head of each  
31 State department who is designated either by statute or by the  
32 department head to act for and perform all of the duties of such  
33 department head during his absence or incapacity."

34 **SECTION 5.** G.S. 126-5(c1) reads as rewritten:

35 "(c1) Except as to the provisions of G.S. 126-13, 126-14, 126-14.1, and of Articles  
36 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- 37 (1) Constitutional officers of the State.
- 38 (2) Officers and employees of the Judicial Department.
- 39 (3) Officers and employees of the General Assembly.
- 40 (4) Members of boards, committees, commissions, councils, and advisory  
41 councils compensated on a per diem basis.
- 42 (5) Officials or employees whose salaries are fixed by the General  
43 Assembly, or by the Governor, or by the Governor and Council of

- 1 State, or by the Governor subject to the approval of the Council of  
2 State.
- 3 (6) Employees of the Office of the Governor that the Governor, at any  
4 time, in his discretion, exempts from the application of the provisions  
5 of this Chapter by means of a letter to the State Personnel Director  
6 designating these employees.
- 7 (7) Employees of the Office of the Lieutenant Governor, that the  
8 Lieutenant Governor, at any time, in his discretion, exempts from the  
9 application of the provisions of this Chapter by means of a letter to the  
10 State Personnel Director designating these employees.
- 11 (8) Instructional and research staff, physicians, and dentists of The  
12 University of North Carolina.
- 13 (9) Employees whose salaries are fixed under the authority vested in the  
14 Board of Governors of The University of North Carolina by the  
15 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 16 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 17 (11) North Carolina School of Science and Mathematics' employees whose  
18 salaries are fixed in accordance with the provisions of G.S.  
19 116-235(c)(1) and G.S. 116-235(c)(2).
- 20 (12) Employees of the North Carolina Low-Level Radioactive Waste  
21 Management Authority whose salaries are fixed pursuant to G.S.  
22 104G-5(g)(1) and G.S. 104G-5(g)(2).
- 23 (13) Employees of the North Carolina Hazardous Waste Management  
24 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)  
25 and G.S. 130B-6(g)(2).
- 26 (14) Employees of the North Carolina State Ports Authority.
- 27 (15) Employees of the North Carolina Global TransPark Authority.
- 28 (16) The executive director and one associate director of the North Carolina  
29 Center for Nursing established under Article 9F of Chapter 90 of the  
30 General Statutes.
- 31 (17) The executive director of the independent staff of the Information  
32 Resources Management Commission established under G.S.  
33 143B-472.41A.
- 34 (18) Employees of the Tobacco Trust Fund Commission established in  
35 Article 75 of Chapter 143 of the General Statutes.
- 36 (19) Employees of the Health and Wellness Trust Fund Commission  
37 established in Article 21 of Chapter 130A of the General Statutes.
- 38 (20) Employees of the North Carolina Rural Redevelopment Authority  
39 created in Part 2D of Article 10 of Chapter 143B of the General  
40 Statutes."

41 **SECTION 6.** G.S. 126-5(c2) reads as rewritten:

- 42 (c2) ~~The~~ Except for the provisions of G.S. 126-13, 126-14, 126-14.1, the  
43 provisions of this Chapter shall not apply to:

- 1           (1) Public school superintendents, principals, teachers, and other public  
2 school employees.
- 3           (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular  
4 Session, 1986), c. 1014, s. 41.
- 5           (3) Employees of community colleges whose salaries are fixed in  
6 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and  
7 employees of the Community Colleges System Office whose salaries  
8 are fixed by the State Board of Community Colleges in accordance  
9 with the provisions of G.S. 115D-3."

10           **SECTION 7.** G.S. 126-5(c3) reads as rewritten:

11           "(c3) Except as to the policies, rules, and plans established by the Commission  
12 pursuant to G.S. 126-4(5) and the provisions of G.S. 126-13, 126-14, 126-14.1, and of  
13 Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and  
14 related educational classes of employees of the Department of Correction, the  
15 Department of Health and Human Services, and any other State department, agency or  
16 institution, whose salaries shall be set in the same manner as set for corresponding  
17 public school employees in accordance with Chapter 115C of the General Statutes."

18           **SECTION 8.** This act becomes effective December 1, 2002, and applies to  
19 offenses committed on or after that date.