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Short Title: OSHR Modernization/Technical Changes.

(Public)

Sponsors:

Referred to:

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT ENHANCING THE EFFECTIVENESS AND EFFICIENCY OF STATE
3 GOVERNMENT BY MODERNIZING THE STATE'S SYSTEM OF HUMAN
4 RESOURCES MANAGEMENT.

5 The General Assembly of North Carolina enacts:

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7 **PART I. CAREER STATE EMPLOYEES**

8 **SECTION 1.** G.S. 126-1.1(a) reads as rewritten:

9 "(a) For the purposes of this Chapter, unless the context clearly indicates otherwise,
10 "career State employee" means a State employee or an employee of a local entity who is
11 covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

- 12 (1) Is in a permanent ~~position~~, position with a permanent appointment, and
13 (2) Has been continuously employed by the State of North Carolina or a local
14 entity as provided in G.S. 126-5(a)(2) in a position subject to the North
15 Carolina Human Resources Act for the immediate ~~24~~12 preceding months."
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17 **PART II. STATE HUMAN RESOURCES COMMISSION CHANGES**

18 **SECTION 2.** G.S. 126-4 reads as rewritten:

19 **"§ 126-4. Powers and duties of State Human Resources Commission.**

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

- 22 ...
23 (10) Programs of employee assistance, productivity incentives, equal opportunity,
24 safety and health as required by Part 1 of Article 63 of Chapter 143 of the
25 General Statutes, and such other programs and procedures as may be
26 necessary to promote efficiency of administration and provide for a fair and
27 modern system of personnel administration. ~~This subdivision may not be
28 construed to authorize the establishment of an incentive pay program.~~
29"

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31 **PART IV. OTHER MODERNIZING AND CONFORMING CHANGES**

32 **SECTION 4.** G.S. 126-6.2(a) reads as rewritten:



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1 "(a) Beginning January 1, 1998, and ~~quarterly~~annually thereafter, the head of each State
2 agency, department, or institution employing State employees subject to the North Carolina
3 Human Resources Act shall report to the Office of State Human Resources on the following:

4 (1) The costs associated with the defense or settlement of administrative
5 grievances and lawsuits filed by current or former State employees and
6 applicants for State employment, including the costs of settlements,
7 attorneys' fees, litigation expenses, damages, or awards incurred by the
8 respective State agencies, departments, and institutions. The report shall
9 include an explanation of the fiscal impact of these costs upon the operations
10 of the State agency, department, or institution.

11 (2) Any other human resources functions or actions as may be requested by the
12 Director of the Office of State Human Resources in order for the Office to
13 evaluate the efficiency, productivity, and compliance of a State agency,
14 department, or institution with policies, including, but not limited to, the
15 compensation of State employees, voluntary shared-leave programs, equal
16 employment opportunity plans and programs, and work options programs."

17 18 **PART V. ORGANIZATIONAL AND EMPLOYEE POLICY CHANGES**

19 **SECTION 5.1.** G.S. 126-7.1 reads as rewritten:

20 "**§ 126-7.1. Posting requirement; State employees receive priority consideration;**
21 **reduction-in-force; Work First ~~hiring~~hiring; reorganization through**
22 **reduction.**

23 (a) All vacancies for which any State agency, department, or institution openly recruit
24 shall be posted in a place readily accessible to employees within at least the following:

25 (1) The personnel office of the agency, department, or institution having the
26 vacancy; and

27 (2) The particular work unit of the agency, department, or institution having the
28 vacancy.

29 If the decision is made, initially or at any time while the vacancy remains open, to receive
30 applicants from outside the recruiting agency, department, or institution, the vacancy shall also
31 be listed on a website maintained by the Office of State Human Resources for the purpose of
32 informing current State employees and the public of such vacancy. The State agency,
33 department, or institution may not receive approval from the Office of State Human Resources
34 to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of
35 the Office of State Human Resources that it complied with these posting requirements. The
36 agency, department, or institution which hires any person in violation of these posting
37 requirements shall pay such person when employment is discontinued as a result of such
38 violation for the work performed during the period of time between his initial employment and
39 separation.

40 (b) State employees to be affected by a reduction in force shall be notified of the
41 reduction in force as soon as practicable, and in any event, no less than 30 days prior to the
42 effective date of the reduction in force.

43 (c) The State Human Resources Commission shall adopt rules ~~to provide that and~~
44 policies governing the priority and salary rights of State employees separated from State
45 employment as the result of reductions in force who accept a position in State government to
46 provide that the employee shall be paid a salary no higher than the maximum of the salary
47 grade of the position accepted.

48 (d) Subsection (a) of this section does not apply to vacancies which must be filled
49 immediately to prevent work stoppage or the protection of the public health, safety, or security.

50 (e) If a State employee subject to this section:

1 (1) Applies for another position of State employment that would constitute a
2 promotion; and
3 (2) Has substantially equal qualifications as an applicant who is not a State
4 employee;
5 then the State employee shall receive priority consideration over the applicant who is not a
6 State employee. This priority consideration shall not apply when the only applicants considered
7 for the vacancy are current State employees.

8 (f) If a State employee who has been separated due to reduction in force or who has
9 been given notice of imminent separation due to reduction in force:

10 (1) Applies for another position of State employment equal to or lower in salary
11 grade than the position held by the employee at the time of notification or
12 separation; and

13 (2) Has substantially equal qualifications as any other applicant;
14 then within all State agencies, the State employee who has been notified of or separated due to
15 a reduction in force shall receive priority consideration over all other applicants. This priority
16 shall remain in effect for a period of 12 months from the date the employee receives
17 notification of separation by reduction in force. State employees separated due to reduction in
18 force shall receive higher priority than other applicants with employment or reemployment
19 priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be
20 considered as equal.

21 (f1) If a State employee who has been separated due to reduction in force or who has
22 been given notice of imminent separation due to reduction in force accepts or rejects an offer
23 for a position of State employment that is equal to or higher than the position held or equal to
24 or higher than the salary earned by the employee at the time of separation or notification, then
25 the employee's acceptance or rejection of that offer shall satisfy and terminate the one-time,
26 12-month priority granted by subsection (f) of this section.

27 (f2) If a State employee who has been separated due to reduction in force or who has
28 been given notice of imminent separation due to reduction in force and who applies for a
29 position equal to or higher than the position held by the employee at the time of separation or
30 notification, but declines an interview for the position for which the employee applied, then the
31 employee's rejection of an offer of the interview for the position shall satisfy and terminate the
32 one-time, 12-month priority granted by subsection (f) of this section. The State Human
33 Resources Commission shall adopt a policy to carry out this subsection.

34 (g) "Qualifications" within the meaning of subsection (e) of this section shall consist of:

35 (1) Training or education;

36 (2) Years of experience; and

37 (3) Other skills, knowledge, and abilities that bear a reasonable functional
38 relationship to the abilities and skills required in the job vacancy applied for.

39 (h) Each State agency, department, and institution is encouraged to hire into State
40 government employment qualified applicants who are current or former Work First Program
41 participants.

42 (i) Each State agency, department, institution, university, community college, and local
43 education agency shall verify, in accordance with the Basic Pilot Program administered by the
44 United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each
45 individual's legal status or authorization to work in the United States after hiring the individual
46 as an employee to work in the United States.

47 (j) A department or office listed in G.S. 126-5(d)(1) or (2) may reorganize and
48 restructure its positions through a voluntary separation process, in accordance with a policy
49 approved by the State Human Resources Commission and subject to funding and approval by
50 the Office of State Budget and Management."

51 **SECTION 5.2.** G.S. 126-8.1(c) reads as rewritten:

1 "(c) ~~The Department of Administration~~ Office of State Human Resources may adopt
2 such rules and regulations as are reasonable and necessary to carry out the provisions of this
3 section, with the approval of the Governor."

4 **SECTION 5.3.** G.S. 126-14.2 reads as rewritten:

5 "**§ 126-14.2. Political hirings limited.**

6 (a) It is the policy of this State that State departments, agencies, and institutions select
7 ~~from the pool of~~ the most qualified persons for State government employment based upon
8 job-related qualifications of applicants for employment using fair and valid selection criteria.

9 (b) All State departments, agencies, and institutions shall select the most qualified
10 person from the pool of ~~the most~~ qualified persons for State government employment without
11 regard to political affiliation or political influence. For the purposes of this section, ~~the "most~~
12 ~~qualified"~~ qualified persons" shall mean each of the State employees or applicants for initial
13 State employment who:

- 14 (1) Have timely applied for a position in State government;
- 15 (2) Have the essential qualifications for that position; and
- 16 (3) Are determined to be substantially more qualified as compared to other
17 applicants for the position, after applying fair and valid job selection criteria,
18 in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this
19 Chapter, and State personnel policies approved by the State Human
20 Resources Commission.

21 (c) It is a violation of this section if:

- 22 (1) The complaining State employee or applicant for initial State employment
23 timely applied for the State government position in question;
- 24 (2) The complaining State employee or applicant for initial State employment
25 was not hired into the position;
- 26 (3) The complaining State employee or applicant for initial State employment
27 was among ~~the most~~ qualified persons applying for the position as defined in
28 this Chapter;
- 29 (4) The successful applicant for the position was not among ~~the most~~ qualified
30 persons applying for the position; and
- 31 (5) The hiring decision was based upon political affiliation or political
32 influence.

33 (d) The provisions of this section shall not apply to positions exempt from this Chapter,
34 except that this section does apply to exempt managerial positions as defined by
35 G.S. 126-5(b)(2)."

36 **SECTION 5.5.** G.S. 126-24 reads as rewritten:

37 "**§ 126-24. Confidential information in personnel files; access to such information.**

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

- 40 (1) The employee, applicant for employment, former employee, or his properly
41 authorized agent, who may examine his own personnel file in its entirety
42 except for (i) letters of reference solicited prior to employment, or (ii)
43 information concerning a medical disability, mental or physical, that a
44 prudent physician would not divulge to a patient. An employee's medical
45 record may be disclosed to a licensed physician designated in writing by the
46 employee;
- 47 (2) The supervisor of the employee;
- 48 (2a) A potential State or local government supervisor, during the interview
49 process, only with regard to performance management documents;
- 50 (3) Members of the General Assembly who may inspect and examine personnel
51 records under the authority of G.S. 120-19;

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

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

28 **SECTION 6.** Part V of this act becomes effective October 1, 2015, and applies to
29 employees separated on or after that date. The remainder of this act is effective when it
30 becomes law.