

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

**S**

**5**

**SENATE BILL 886\***

Transportation Committee Substitute Adopted 7/14/97

Finance Committee Substitute #2 Adopted 8/4/97

Fourth Edition Engrossed 8/7/97

House Committee Substitute Favorable 8/27/97

Short Title: Hire Among Most Qualified.

(Public)

---

Sponsors:

---

Referred to:

---

April 16, 1997

**A BILL TO BE ENTITLED**

**AN ACT AMENDING CHAPTER 126 OF THE GENERAL STATUTES TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS; RELATING TO THE DESIGNATION OF EXEMPT POSITIONS BY THE GOVERNOR AND OTHER MEMBERS OF THE COUNCIL OF STATE; LIMITING THE POLITICAL INVOLVEMENT OF MEMBERS OF THE GENERAL ASSEMBLY IN STATE GOVERNMENT PERSONNEL DECISIONS; EXTENDING BROADER PROTECTIONS TO STATE EMPLOYEES WHO REPORT GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT ACTIVITIES; AND REQUIRING THE REPORTING OF MONETARY SETTLEMENTS OF STATE GOVERNMENT PERSONNEL MATTERS AND CERTAIN PERSONNEL PRACTICES TO THE STATE PERSONNEL COMMISSION AND TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.**

The General Assembly of North Carolina enacts:

1 Section 1. Chapter 126 of the General Statutes is amended by adding the  
2 following new sections to read:

3 **"§ 126-14.2. Political hirings limited.**

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

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

13 (1) Have timely applied for a position in State government;

14 (2) Have the essential qualifications for that position; and

15 (3) Are determined to be substantially more qualified as compared to other  
16 applicants for the position, after applying fair and valid job selection  
17 criteria, in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and  
18 13 of this Chapter, and State personnel policies approved by the State  
19 Personnel Commission.

20 (c) It is a violation of this section giving rise to the remedies set forth in G.S. 126-  
21 14.4 if:

22 (1) The complaining State employee or applicant for initial State  
23 employment timely applied for the State government position in  
24 question;

25 (2) The complaining State employee or applicant for initial State  
26 employment was not hired into the position;

27 (3) The complaining State employee or applicant for initial State  
28 employment was among the most qualified persons applying for the  
29 position as defined in this Chapter;

30 (4) The successful applicant for the position was not among the most  
31 qualified persons applying for the position; and

32 (5) The hiring decision was based upon political affiliation or political  
33 influence.

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

37 **"§ 126-14.3. Open and fair competition.**

38 The State Personnel Commission shall adopt rules or policies to:

39 (1) Assure recruitment, selection, and hiring procedures that encourage  
40 open and fair competition for positions in State government  
41 employment and that encourage the hiring of a diverse State  
42 government workforce.

- 1           (2)    Assure the proper and thorough advertisement of job openings in State  
2                   government employment and lengthen, as appropriate, the period for  
3                   submitting applications for State government employment.
- 4           (3)    Require that a closing date shall be posted for each job opening, unless  
5                   an exception for critical classifications has been approved by the State  
6                   Personnel Commission.
- 7           (4)    Require that timely written notice shall be provided to each  
8                   unsuccessful applicant for State employment who is in the pool of the  
9                   most qualified applicants for a position, as defined by G.S. 126-14.2(b).
- 10          (5)    Assure that State departments, agencies, and institutions follow similar  
11                   selection processes when hiring State employees in accordance with this  
12                   Chapter.
- 13          (6)    Assure that State supervisory and management personnel, and personnel  
14                   professionals, receive adequate training and continuing education to  
15                   carry out the State's policy of hiring from among the most qualified  
16                   persons.
- 17          (7)    Establish a monitoring system to measure the effectiveness of State  
18                   agency personnel procedures to promote fairness and reduce adverse  
19                   impact on all demographic groups in the State government workforce.
- 20          (8)    Otherwise implement the State's policy of nonpolitical hiring practices  
21                   in accordance with this Chapter."

22           Section 2. Chapter 126 of the General Statutes is amended by adding a new  
23 section to read:

24    "**§ 126-14.4. Remedies.**

25           (a)    A State employee or applicant for initial State employment who has reason to  
26                   believe that he or she was among the pool of the most qualified persons for a position in  
27                   State government employment and was denied employment or promotion in violation of  
28                   G.S. 126-14.2 because of political affiliation or political influence may complain directly  
29                   through the Civil Rights Division of the Office of Administrative Hearings, which shall  
30                   be responsible for making an initial determination of whether there is probable cause to  
31                   believe that there has been a violation of G.S. 126-14.2.

32                   The complaining State employee or applicant shall file a complaint with the Civil  
33                   Rights Division of the Office of Administrative Hearings within 30 days after the  
34                   complainant receives written notice that the position in question has been filled.

35                   The Civil Rights Division of the Office of Administrative Hearings shall promptly  
36                   make appropriate formal and informal inquiries in its investigatory, fact-finding role and  
37                   may consider any matter, document, or statement deemed pertinent to the initial  
38                   determination, including telephone conversations, in determining if there is probable  
39                   cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division  
40                   may apply to an administrative law judge in the Office of Administrative Hearings for the  
41                   issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding  
42                   phase of the complaint shall be completed by the Civil Rights Division within 30 days.

1       (b) The Civil Rights Division of the Office of Administrative Hearings shall notify  
2 the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the  
3 person may present any information to the Civil Rights Division that is pertinent to the  
4 initial determination of probable cause. The person alleged to have been hired in  
5 violation of G.S. 126-14.2 shall be notified of the results of the initial determination and  
6 shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-  
7 23(d).

8       (c) Upon an initial determination that there is probable cause to believe there has  
9 been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for  
10 a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General  
11 Statutes.

12       (d) An initial determination by the Civil Rights Division that there is not probable  
13 cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any  
14 rights under that section but shall not be admissible or binding in any separate or  
15 subsequent civil action or proceeding.

16       (e) Within 90 days after the filing of a contested case petition, the administrative  
17 law judge shall issue a recommended decision to the State Personnel Commission which  
18 shall include findings of fact and conclusions of law and, if the administrative law judge  
19 has found a violation of G.S. 126-14.2, an appropriate recommended remedy.

20       (f) Within 60 days of receipt of the official record by the Office of Administrative  
21 Hearings, the State Personnel Commission shall make a final written decision as to  
22 whether there has been a violation of G.S. 126-14.2. In any case where a violation is  
23 found, the State Personnel Commission shall take suitable action to correct the violation,  
24 which may include:

25           (1) Directing the State agency, department, or institution to declare the  
26 position vacant, and to hire from among the most qualified State  
27 employees or applicants for initial State employment who had applied  
28 for the position, or

29           (2) Requiring that the vacancy be posted pursuant to this Chapter.

30       (g) A career State employee with:

31           (1) Less than 10 years of service who was placed in an exempt managerial  
32 position, as defined by G.S. 126-5(b)(2), shall be given priority  
33 consideration for a position at the same salary grade equal to that held in  
34 the most recent position prior to the promotion if he or she has to vacate  
35 because of violation of G.S. 126-14.2.

36           (2) 10 or more years of service who was placed in an exempt managerial  
37 position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable  
38 position at the same grade and salary equal to that held in the most  
39 recent position prior to the promotion if he or she had to vacate because  
40 of violation of G.S. 126-14.2.

41       Section 3. G.S. 126-5 reads as rewritten:

42       "**§ 126-5. Employees subject to Chapter; exemptions.**

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

- 1 (1) All State employees not herein exempt, and  
2 (2) To all employees of the following local entities:  
3 a. Area mental health, developmental disabilities, and substance  
4 abuse authorities.  
5 b. Local social services departments.  
6 c. Local public health departments.  
7 d. Local emergency management agencies that receive federal  
8 grant-in-aid funds.  
9 An employee of a consolidated county human services agency created  
10 pursuant to G.S. 153A-77(b) is not considered an employee of an entity  
11 listed in this subdivision.
- 12 (3) County employees not included under subdivision (2) of this subsection  
13 as the several boards of county commissioners may from time to time  
14 determine.
- 15 (b) As used in this section, ~~'policymaking position'~~ section:  
16 (1) 'Exempt position' means an exempt managerial position or an exempt  
17 policymaking position.  
18 (2) 'Exempt managerial position' means a position delegated with  
19 significant managerial or programmatic responsibility that is essential to  
20 the successful operation of a State department, agency, or division, so  
21 that the application of G.S. 126-35 to an employee in the position would  
22 cause undue disruption to the operations of the agency, department,  
23 institution, or division.  
24 (3) 'Exempt policymaking position' means a position delegated with the  
25 authority to impose the final decision as to a settled course of action to  
26 be followed within a department, agency, or ~~division~~ division, so that a  
27 loyalty to the Governor or other elected department head in their  
28 respective offices is reasonably necessary to implement the policies of  
29 their offices. The term shall not include personnel professionals.  
30 (4) 'Personnel professional' means any employee in a State department,  
31 agency, institution, or division whose primary job duties involve  
32 administrative personnel and human resources functions for that State  
33 department, agency, institution, or division.
- 34 (c) Except as to the policies, rules, and plans established by the Commission  
35 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,  
36 and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this  
37 Chapter shall not apply to:  
38 (1) A State employee who is not a career State employee as defined by this  
39 Chapter.  
40 (2) One confidential assistant and two confidential secretaries for each  
41 elected or appointed department head and one confidential secretary for  
42 each chief deputy or chief administrative assistant.

- 1 (3) Employees in exempt policymaking positions designated as ~~exempt~~  
2 pursuant to G.S. 126-5(d).
- 3 (4) The chief deputy or chief administrative assistant to the head of each  
4 State department who is designated either by statute or by the  
5 department head to act for and perform all of the duties of such  
6 department head during his absence or incapacity.
- 7 (c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions  
8 of this Chapter shall not apply to:
- 9 (1) Constitutional officers of the State.
- 10 (2) Officers and employees of the Judicial Department.
- 11 (3) Officers and employees of the General Assembly.
- 12 (4) Members of boards, committees, commissions, councils, and advisory  
13 councils compensated on a per diem basis.
- 14 (5) Officials or employees whose salaries are fixed by the General  
15 Assembly, or by the Governor, or by the Governor and Council of State,  
16 or by the Governor subject to the approval of the Council of State.
- 17 (6) Employees of the Office of the Governor that the Governor, at any time,  
18 in his discretion, exempts from the application of the provisions of this  
19 Chapter by means of a letter to the State Personnel Director designating  
20 these employees.
- 21 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant  
22 Governor, at any time, in his discretion, exempts from the application of  
23 the provisions of this Chapter by means of a letter to the State Personnel  
24 Director designating these employees.
- 25 (8) Instructional and research staff, physicians, and dentists of The  
26 University of North Carolina.
- 27 (9) Employees whose salaries are fixed under the authority vested in the  
28 Board of Governors of The University of North Carolina by the  
29 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 30 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 31 (11) North Carolina School of Science and Mathematics' employees whose  
32 salaries are fixed in accordance with the provisions of G.S. 116-  
33 235(c)(1) and G.S. 116-235(c)(2).
- 34 (12) Employees of the North Carolina Low-Level Radioactive Waste  
35 Management Authority whose salaries are fixed pursuant to G.S. 104G-  
36 5(g)(1) and G.S. 104G-5(g)(2).
- 37 (13) Employees of the North Carolina Hazardous Waste Management  
38 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and  
39 G.S. 130B-6(g)(2).
- 40 (14) Employees of the North Carolina State Ports Authority.
- 41 (15) Employees of the North Carolina Global TransPark Authority.

- 1 (16) The executive director and one associate director of the North Carolina  
2 Center for Nursing established under Article 9F of Chapter 90 of the  
3 General Statutes.
- 4 (c2) The provisions of this Chapter shall not apply to:
- 5 (1) Public school superintendents, principals, teachers, and other public  
6 school employees.
- 7 (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session,  
8 1986), c. 1014, s. 41.
- 9 (3) Employees of community colleges whose salaries are fixed in  
10 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and  
11 employees of the Department of Community Colleges whose salaries  
12 are fixed by the State Board of Community Colleges in accordance with  
13 the provisions of G.S. 115D-3.
- 14 (c3) Except as to the policies, rules, and plans established by the Commission  
15 pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions  
16 of this Chapter shall not apply to: Teaching and related educational classes of employees  
17 of the Department of Correction, the Department of Human Resources, and any other  
18 State department, agency or institution, whose salaries shall be set in the same manner as  
19 set for corresponding public school employees in accordance with Chapter 115C of the  
20 General Statutes.
- 21 (c4) Repealed by Session Laws 1993, c. 321, s. 145(b).
- 22 (c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter  
23 shall apply to all State employees, public school employees, and community college  
24 employees.
- 25 (c6) Except as to the policies, rules, and plans established by the Commission  
26 pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-  
27 14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles  
28 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt  
29 managerial positions.
- 30 (d) (1) General Exempt Positions in Cabinet Department. – The  
31 Governor may designate as ~~exempt policymaking positions, as provided~~  
32 ~~below, in each of a total of 100 exempt policymaking positions~~  
33 throughout the following departments:
- 34 a. Department of Administration;
- 35 b. Department of Commerce;
- 36 c. Department of Correction;
- 37 d. Department of Crime Control and Public Safety;
- 38 e. Department of Cultural Resources;
- 39 f. Department of Human Resources;
- 40 g. Department of Environment, Health, and Natural Resources;
- 41 h. Department of Revenue; and
- 42 i. Department of Transportation.

1           The Governor may designate exempt managerial positions in a number  
2           up to one percent (1%) of the total number of full-time positions in each  
3           cabinet department listed above in this sub-subdivision, not to exceed  
4           30 positions in each department. The Secretary of State, the Auditor, the  
5           Treasurer, the Attorney General, the Commissioner of Agriculture, the  
6           Commissioner of Insurance, and the Labor Commissioner may designate as  
7           exempt policymaking positions, as provided below, in their respective offices.  
8           The State Board of Education may designate as exempt policymaking  
9           positions, as provided below, in the Department of Public Instruction.

10           (2) ~~Number.~~ ~~The number of policymaking positions designated as exempt~~  
11           ~~in each department or office listed in subsection (d)(1), except the~~  
12           ~~Department of Commerce, shall be limited to one and two-tenths~~  
13           ~~percent (1.2%) of the number of full-time positions in the department or~~  
14           ~~office, or 30 positions, whichever is greater. The Governor may~~  
15           ~~designate 85 policymaking positions as exempt in the Department of~~  
16           ~~Economic and Community Development. Provided, however, that the~~  
17           (2) Exempt Positions in Council of State Departments and Offices. – The  
18           Secretary of State, the Auditor, the Treasurer, the Attorney General, the  
19           Commissioner of Agriculture, the Commissioner of Insurance, and the  
20           Labor Commissioner may designate exempt positions. The State Board  
21           of Education may designate exempt positions in the Department of  
22           Public Instruction. The number of exempt policymaking positions in  
23           each department headed by an elected department head listed above in  
24           this sub-subdivision shall be limited to 20 exempt policymaking  
25           positions or one percent (1%) of the total number of full-time positions  
26           in the department, whichever is greater. The number of exempt  
27           managerial positions shall be limited to 20 positions or one percent  
28           (1%) of the total number of full-time positions in the department,  
29           whichever is greater.

30           (2a) Designation of Additional Positions. – The Governor, elected  
31           department head, or State Board of Education may request that  
32           additional ~~policymaking~~ positions be designated as exempt. The request  
33           shall be made by sending a list of ~~policymaking exempt~~ positions that  
34           exceed the limit imposed by this subsection to the Speaker of the North  
35           Carolina House of Representatives and the President of the North  
36           Carolina Senate. A copy of the list also shall be sent to the State  
37           Personnel Director. The General Assembly may authorize all, or part of,  
38           the additional ~~policymaking~~ positions to be designated as ~~exempt~~.  
39           ~~exempt positions.~~ If the General Assembly is in session when the list is  
40           submitted and does not act within 30 days after the list is submitted, the  
41           list shall be deemed approved by the General Assembly, and the  
42           ~~policymaking~~ positions shall be designated as ~~exempt exempt~~ positions.  
43           If the General Assembly is not in session when the list is submitted, the



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

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

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

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

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

40 (7) Hearing Officers. – Except as otherwise specifically provided by this  
41 section, no employee, by whatever title, whose primary duties include  
42 the power to conduct hearings, take evidence, and enter a decision based  
43 on findings of fact and conclusions of law based on statutes and legal

1 precedents shall be designated as exempt. This subdivision shall apply  
2 beginning July 1, 1985, and no list submitted after that date shall  
3 designate as exempt any employee described in this subdivision.

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

6 (1) When an employee who has the minimum service requirements  
7 described in subsection (c)(1) above but less than 10 years of  
8 cumulative service in subject positions prior to placement in an exempt  
9 position is removed from an exempt position, for reasons other than just  
10 cause, the employee shall have priority to any position that becomes  
11 available for which the employee is qualified, according to rules and  
12 regulations regulating and defining priority as promulgated by the State  
13 Personnel Commission; or

14 (2) When an employee who has 10 years or more cumulative service,  
15 including the immediately preceding 12 months, in subject positions  
16 prior to placement in an exempt position is removed from an exempt  
17 position, for reasons other than just cause, the employee shall be  
18 reassigned to a subject position within the same department or agency,  
19 or if necessary within another agency, and within a 35 mile radius of the  
20 exempt position, at the same grade and salary, including all across-the-  
21 board increases since placement in the position designated as exempt, as  
22 his most recent subject position.

23 (f) A department head is authorized to use existing budgeted positions within his  
24 department in order to carry out the provisions of subsection (e) of this section. If it is  
25 necessary to meet the requirements of subsection (e) of this section, a department head  
26 may use salary reserve funds authorized for his department.

27 (g) No employee shall be placed in an exempt position without 10 working days  
28 prior written notification that such position is so designated. A person applying for a  
29 position that is designated as exempt must be notified in writing at the time he makes the  
30 application that the position is designated as exempt.

31 (h) In case of dispute as to whether an employee is subject to the provisions of this  
32 Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B."

33 Section 4. G.S. 126-34.1 reads as rewritten:

34 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

35 (a) A State employee or former State employee may file in the Office of  
36 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
37 Statutes only as to the following personnel actions or issues:

38 (1) Dismissal, demotion, or suspension without pay based upon an alleged  
39 violation of G.S. 126-35, if the employee is a career State employee.

40 (2) An alleged unlawful State employment practice constituting  
41 discrimination, as proscribed by G.S. 126-36, including:

42 a. Denial of promotion, transfer, or training, on account of the  
43 employee's age, sex, race, color, national origin, religion, creed,

1 political affiliation, or handicapping condition as defined by  
2 Chapter 168A of the General Statutes.

3 b. Demotion, reduction in force, or termination of an employee in  
4 retaliation for the employee's opposition to alleged  
5 discrimination on account of the employee's age, sex, race, color,  
6 national origin, religion, creed, political affiliation, or  
7 handicapping condition as defined by Chapter 168A of the  
8 General Statutes.

9 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for  
10 protesting an alleged violation of G.S. 126-16.

11 (4) Denial of the veteran's preference granted in accordance with Article 13  
12 of this Chapter in initial State employment or in connection with a  
13 reduction in force, for an eligible veteran as defined by G.S. 126-81.

14 (5) Denial of promotion for failure to post or failure to give priority  
15 consideration for promotion or reemployment, to a career State  
16 employee as required by G.S. 126-7.1 and G.S. 126-36.2.

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

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

21 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial  
22 determination found probable cause to believe there has been a violation  
23 of G.S. 126-14.2.

24 (9) Denial of employment in violation of G.S. 126-14.2, where an initial  
25 determination found probable cause to believe that there has been a  
26 violation of G.S. 126-14.2.

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

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

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

34 (3) Denial of equal opportunity for employment and compensation on  
35 account of the employee's age, sex, race, color, national origin, religion,  
36 creed, political affiliation, or handicapping condition as defined by  
37 Chapter 168A of the General Statutes. This subsection with respect to  
38 equal opportunity as to age shall be limited to persons who are at least  
39 40 years of age. An applicant may not, however, file a contested case  
40 where political affiliation was the reason for the person's nonselection  
41 for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3),  
42 (ii) a chief deputy or chief administrative assistant position under G.S.

1 126-5(c)(4), or (iii) a confidential assistant or confidential secretary  
2 position under G.S. 126-5(c)(2).

3 (4) Denial of the veteran's preference in initial State employment provided  
4 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.  
5 126-81.

6 (5) Denial of employment in violation of G.S. 126-14.2, where an initial  
7 determination found probable cause to believe that there has been a  
8 violation of G.S. 126-14.2.

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

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

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

21 Section 5. G.S. 126-84 reads as rewritten:

22 "**§ 126-84. Statement of policy.**

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

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

27 (2) Fraud;

28 (3) Misappropriation of State Resources; or

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

30 (5) Gross mismanagement, a gross waste of monies, or gross abuse of  
31 authority.

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

36 Section 6. G.S. 126-85 reads as rewritten:

37 "**§ 126-85. Protection from retaliation.**

38 (a) No head of any State department, agency or institution or other State employee  
39 exercising supervisory authority shall discharge, threaten or otherwise discriminate  
40 against a State employee regarding the State employee's compensation, terms, conditions,  
41 location, or privileges of employment because the State employee, or a person acting on  
42 behalf of the employee, reports or is about to report, verbally or in writing, any activity

1 described in G.S. 126-84, unless the State employee knows or has reason to believe that  
2 the report is inaccurate.

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

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

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

16 (c) The protections of this Article shall include State employees who report any  
17 activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-  
18 64.6(c)(16)."

19 Section 7. Article 13B of Chapter 120 of the General Statutes is amended by  
20 adding a new section to read:

21 **"§ 120-86.1. Personnel-related action unethical.**

22 It shall be unethical for a legislator to take, promise, or threaten any legislative action,  
23 as defined in G.S. 120-47.1(4), for the purpose of influencing or in retaliation for any  
24 action regarding State employee hirings, promotions, grievances, or disciplinary actions  
25 subject to Chapter 126 of the General Statutes."

26 Section 8. (a) Beginning January 1, 1998, and quarterly thereafter, the head of each  
27 State agency, department, or institution employing State employees subject to the State  
28 Personnel Act shall report to the Office of State Personnel on the following:

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

36 (2) The modification of position descriptions resulting in changes in  
37 position qualifications to allow the use of educational, experience, or  
38 other equivalencies in the hiring or promotion of State employees where  
39 such equivalencies were not previously used in the position  
40 descriptions. The report shall include an explanation of the reasons for  
41 the changes in the position descriptions and the bases for the use of the  
42 equivalencies.

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

6           (c) Beginning May 1, 1998, and then annually thereafter, the State Personnel  
7 Commission, through the Office of State Personnel, shall report to the Joint Legislative  
8 Commission on Governmental Operations on outcomes with respect to State employee  
9 hirings, promotions, disciplinary actions, and compensation, based upon demographics.

10          (d) By May 1, 1998, the State Personnel Commission shall report to the Joint  
11 Legislative Commission on Governmental Operations on its development of a  
12 systematized approach to State employee recruitment utilizing standards and measures of  
13 outcomes across agency lines.

14          (e) By May 1, 1998, the State Personnel Commission shall conduct a study  
15 and make a report to the Joint Legislative Commission on Governmental Operations on  
16 the salary administration of positions exempt from the State Personnel Act as it relates to  
17 the placement of exempt positions in the salary range.

18           Section 9. This act is effective when it becomes law.