

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

3

HOUSE BILL 495*
Committee Substitute Favorable 4/22/15
Committee Substitute #2 Favorable 4/29/15

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:

6
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."
16

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 ...
30 (19) Administration of the temporary employment service which shall provide
31 temporary staffing services for North Carolina State Government.

32 The policies and rules of the Commission shall not limit the power of any elected or
33 appointed department head, in the department head's discretion and upon the department head's
34 determination that it is in the best interest of the Department, to transfer, demote, or separate a
35 State employee who is not a career State employee as defined by this Chapter."



1
2 **PART III. TEMPORARY EMPLOYMENT SERVICES**

3 **SECTION 3.** Article 1 of Chapter 126 is amended by adding a new section to read:

4 **"§ 126-5.1. Temporary employment service established.**

5 (a) There is established in the Office of State Human Resources a temporary
6 employment service program to be administered by the Office of State Human Resources,
7 subject to the approval of the State Human Resources Commission. The temporary
8 employment service program shall provide temporary staffing services for North Carolina State
9 Government at a cost-effective rate. The State Human Resources Director shall charge the
10 respective agencies for use of the temporary workforce, which shall include the cost of
11 administering the program. The Director shall be responsible for the efficient operation of the
12 program that meets the needs of State agencies.

13 (b) Except as to the provisions of Articles 6, 7, 14, and 15 of this Chapter, the
14 provisions of this Chapter shall not apply to employees staffed through the temporary
15 employment service.

16 (c) All divisions, departments, and agencies of the State may only employ temporary
17 employees through the temporary employment service as established in this section.

18 (d) The State Human Resources Commission shall promulgate all policies necessary for
19 the administration of the temporary employment service and necessary to implement this
20 section.

21 (e) Compliance. -

22 (1) A temporary assignment in the same agency and same job function cannot
23 exceed 12 months.

24 (2) An agency with a need for services to be performed for more than a year
25 may obtain an extension from the State Human Resources Director upon a
26 showing that the agency has requested funding for the job function from the
27 General Assembly and such funding has not been approved.

28 (3) If no extension is granted under subdivision (2) of this subsection, and a
29 temporary assignment in a division, department, or agency exceeds 12
30 months, the State Human Resources Director, with the approval of the State
31 Human Resources Commission, shall implement corrective action as
32 provided in G.S. 126-3(9)."

33
34 **PART IV. OTHER MODERNIZING AND CONFORMING CHANGES**

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

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

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

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

PART V. ORGANIZATIONAL AND EMPLOYEE POLICY CHANGES**SECTION 5.1.** G.S. 126-7.1 reads as rewritten:**"§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force; Work First ~~hiring~~ hiring; reorganization through reduction.**

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

- (1) The personnel office of the agency, department, or institution having the vacancy; and
- (2) The particular work unit of the agency, department, or institution having the vacancy.

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

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

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

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

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

- (1) Applies for another position of State employment that would constitute a promotion; and
- (2) Has substantially equal qualifications as an applicant who is not a State employee;

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

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

- (1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and
- (2) Has substantially equal qualifications as any other applicant;

then within all State agencies, the State employee who has been notified of or separated due to a reduction in force shall receive priority consideration over all other applicants. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment

1 priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be
2 considered as equal.

3 (f1) If a State employee who has been separated due to reduction in force or who has
4 been given notice of imminent separation due to reduction in force accepts or rejects an offer
5 for a position of State employment that is equal to or higher than the position held or equal to
6 or higher than the salary earned by the employee at the time of separation or notification, then
7 the employee's acceptance or rejection of that offer shall satisfy and terminate the one-time,
8 12-month priority granted by subsection (f) of this section.

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

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

17 (1) Training or education;

18 (2) Years of experience; and

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

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

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

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

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

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

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

38 "**§ 126-14.2. Political hirings limited.**

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

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

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

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

48 (3) Are determined to be substantially more qualified as compared to other
49 applicants for the position, after applying fair and valid job selection criteria,
50 in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this

- 1 Chapter, and State personnel policies approved by the State Human
2 Resources Commission.
- 3 (c) It is a violation of this section if:
- 4 (1) The complaining State employee or applicant for initial State employment
5 timely applied for the State government position in question;
- 6 (2) The complaining State employee or applicant for initial State employment
7 was not hired into the position;
- 8 (3) The complaining State employee or applicant for initial State employment
9 was among ~~the most~~-qualified persons applying for the position as defined in
10 this Chapter;
- 11 (4) The successful applicant for the position was not among ~~the most~~-qualified
12 persons applying for the position; and
- 13 (5) The hiring decision was based upon political affiliation or political
14 influence.
- 15 (d) The provisions of this section shall not apply to positions exempt from this Chapter,
16 except that this section does apply to exempt managerial positions as defined by
17 G.S. 126-5(b)(2)."

18 **SECTION 5.4.** G.S. 126-23(a) reads as rewritten:

19 "(a) Each department, agency, institution, commission and bureau of the State shall
20 maintain a record of each of its employees, showing the following information with respect to
21 each such employee:

- 22 (1) Name.
- 23 ~~(2) Age.~~
- 24 (3) Date of original employment or appointment to State service.
- 25 (4) The terms of any contract by which the employee is employed whether
26 written or oral, past and current, to the extent that the agency has the written
27 contract or a record of the oral contract in its possession.
- 28 (5) Current position.
- 29 (6) Title.
- 30 (7) Current salary.
- 31 (8) Date and amount of each increase or decrease in salary with that department,
32 agency, institution, commission, or bureau.
- 33 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
34 or other change in position classification with that department, agency,
35 institution, commission, or bureau.
- 36 (10) Date and general description of the reasons for each promotion with that
37 department, agency, institution, commission, or bureau.
- 38 (11) Date and type of each dismissal, suspension, or demotion for disciplinary
39 reasons taken by the department, agency, institution, commission, or bureau.
40 If the disciplinary action was a dismissal, a copy of the written notice of the
41 final decision of the head of the department setting forth the specific acts or
42 omissions that are the basis of the dismissal.
- 43 (12) The office or station to which the employee is currently assigned."

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

45 **"§ 126-24. Confidential information in personnel files; access to such information.**

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

- 48 (1) The employee, applicant for employment, former employee, or his properly
49 authorized agent, who may examine his own personnel file in its entirety
50 except for (i) letters of reference solicited prior to employment, or (ii)
51 information concerning a medical disability, mental or physical, that a

1 prudent physician would not divulge to a patient. An employee's medical
2 record may be disclosed to a licensed physician designated in writing by the
3 employee;

4 (2) The supervisor of the employee;

5 (2a) A potential State or local government supervisor, during the interview
6 process, only with regard to performance management documents;

7 (3) Members of the General Assembly who may inspect and examine personnel
8 records under the authority of G.S. 120-19;

9 (4) A party by authority of a proper court order may inspect and examine a
10 particular confidential portion of a State employee's personnel file; and

11 (5) An official of an agency of the federal government, State government or any
12 political subdivision thereof. Such an official may inspect any personnel
13 records when such inspection is deemed by the department head of the
14 employee whose record is to be inspected or, in the case of an applicant for
15 employment or a former employee, by the department head of the agency in
16 which the record is maintained as necessary and essential to the pursuance of
17 a proper function of said agency; provided, however, that such information
18 shall not be divulged for purposes of assisting in a criminal prosecution, nor
19 for purposes of assisting in a tax investigation.

20 Notwithstanding any other provision of this Chapter, any department head may, in his
21 discretion, inform any person or corporation of any promotion, demotion, suspension,
22 reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant,
23 employee or former employee employed by or assigned to his department or whose personnel
24 file is maintained in his department and the reasons therefor and may allow the personnel file of
25 such person or any portion thereof to be inspected and examined by any person or corporation
26 when such department head shall determine that the release of such information or the
27 inspection and examination of such file or portion thereof is essential to maintaining the
28 integrity of such department or to maintaining the level or quality of services provided by such
29 department; provided that prior to releasing such information or making such file or portion
30 thereof available as provided herein, such department head shall prepare a memorandum setting
31 forth the circumstances which the department head deems to require such disclosure and the
32 information to be disclosed. The memorandum shall be retained in the files of said department
33 head and shall be a public record."
34

35 **PART VI. EFFECTIVE DATE**

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