

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 866
HOUSE BILL 956

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE STATE
PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is hereby amended: (a) by adding a new sentence to subdivision (9) at the end thereof to read as follows:

"'Reinstatement' as used in this subdivision refers to the reemployment of a former State employee who separated from service in good standing."; and (b) by rewriting subdivision (11) to read as follows:

"(11) In cases where the commission finds discrimination or orders reinstatement or back pay whether (i) heard by the commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved."

Sec. 2. G.S. 126-5(b), as the same appears in the 1976 Interim Supplement to the General Statutes, is hereby amended and rewritten to read as follows:

"(b) The provisions of the Chapter shall not apply to public school superintendents, principals, teachers, other public school employees, and employees of the offices of the Governor and the Lieutenant Governor.

(c) Except as to Articles 6 and 7, the provisions of the Chapter shall not apply to instructional and research staff, physicians and dentists of The University of North Carolina; employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), G.S. 116-11(5), and G.S. 116-14; community colleges' employees whose salaries are fixed in accordance with the provisions of G.S. 115A-5 and G.S. 115A-14; members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis; officials or employees whose salaries are fixed by the Governor or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State or the Advisory Budget Commission or the General Assembly; employees of the General Assembly and its agencies and temporary employees of activities ancillary to the General Assembly; employees of the Judicial Department; blind or visually handicapped employees of the Department of Human Resources, Division of Services for the Blind, Business Enterprise Section, vending stand employees; constitutional officers of the State.

(d) Except as to the policies, rules and plans established by the commission pursuant to G.S. 126-4(1), G.S. 126-4(2), G.S. 126-4(3), G.S. 126-4(4), G.S. 126-4(5), G.S. 126-4(6), G.S. 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) An employee of the State of North Carolina who has not been continuously employed by the State of North Carolina for the immediate five preceding years.

- (2) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the administrative head to act for and perform all of the duties of such administrative head during his absence or incapacity.
- (3) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.
- (4) Other deputies, administrative assistants, division or agency heads or other employees, by whatever title, that serve in policy-making positions and any confidential secretary or confidential assistant to any such deputy, administrative assistant, division or agency head or employee, such positions to be designated by the Governor or by each elected department head in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate by May 1 of the year in which the oath of office is administered to each Governor. In the event of a vacancy in the office of Governor or in a department headed by a member of the Council of State, the person who succeeds to or is appointed or elected to fill such unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after the oath of office is administered to such person.
- (5) Any employee holding a position which is created or transferred to a different department, or in which a reorganization of a department has occurred, after May 1 of the year in which the oath of office is administered to the Governor, and which is designated as a policy-making position by the Governor or by each elected department head; such designation to be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.
- (6) Subsequent to the designation of a policy-making position as exempt as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor or by an elected department head in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate."

Sec. 3. G.S. 126-5(c), as the same appears in the 1976 Interim Supplement to the General Statutes, is amended and rewritten to read as follows:

"(e) If an employee with five or more continuous years of service to the State in a subject position either transfers, on or after January 8, 1977, to a position designated as exempt or who occupied a position that prior to January 8, 1977, was subject to the State Personnel Act and that position is declared exempt on or after January 8, 1977, upon leaving such designated position, for reasons other than just cause, such employee shall have priority to any position that becomes available for which the employee is qualified. No employee shall be placed in an exempt position without prior written notification that such position is so designated."

Sec. 4. G.S. 126-5(d), as the same appears in the Interim Supplement to the General Statutes, is amended and rewritten to read as follows:

"(f) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the question shall be investigated by the State Personnel Office and decided by the State Personnel Commission, and any appeal shall be to the Governor whose decision shall be

final. Provided, however, if the Governor does not act on such appeal within 60 days then the decision of the State Personnel Commission shall be final."

Sec. 5. G.S. 126-5(e), as the same appears in the 1976 Interim Supplement to the General Statutes, is amended and rewritten to read as follows:

"(g) For the purposes of this section, a policy-making position is one in which the job duties include a significant input into and control over the final determination of a settled course of action affecting the level or nature of services of a defined governmental program. A position empowered with the authority to impose the final decision as to a settled course of action to be followed by an entire department, agency, or division is considered a policy-making position."

Sec. 6. G.S. 126-7, as the same appears in the 1976 Interim Supplement to the General Statutes, is amended and rewritten to read as follows:

"§ 126-7. Automatic and merit salary increases for State employees. — It shall be considered a part of the personnel policy of this State that salary increases as provided in the compensation plan shall be granted in accordance with a standard of efficiency as established by the State Personnel Commission. Each employee whose performance merits his retention in service shall be granted a salary increase in an amount corresponding to the increments between steps of the applicable salary range at least once each year until he reaches the third step of the salary range established for the class to which his position is assigned. Prior to July 1 of each biennium, each agency, board, commission, department, or institution of State government subject to the provisions of this Article shall file with the State Personnel Director a written description of the plan or method it is currently following in awarding or allocating efficiency or merit salary increments. At the same time, each such agency, board, commission, department, or institution shall cause a copy thereof to be distributed to each employee. The State Personnel Director, with the approval of the State Personnel Commission, shall modify, alter or disapprove any such plan submitted to him which he deems not to be in accordance with the provisions of this Article. Within the limit of available funds, each employee meeting higher standards may be granted increases up to but not exceeding the maximum of the salary range established for the class to which his position is assigned. If, in addition to the salary ranges, the State Personnel Commission shall establish uniform provisions for a system of payments over and above the standard salary ranges on the basis of longevity in service, that plan of payments shall not be considered in applying this policy governing annual salary increments. The head of each department, bureau, agency, or commission, when making his budget request for the ensuing biennium, shall anticipate the funds which will be required during the biennium for the purpose of paying salary increments and shall include those amounts in his budget request. In no case shall the amount estimated for annual increments above the third step of the range exceed two-thirds of the sum which would be required to grant increments to all the personnel of the agency then receiving or who will receive a salary equal to or above the third step of the salary range. With the approval of the State Personnel Commission, State departments, bureaus, agencies, or commissions with 25 or less employees subject to the provisions of this Chapter may exceed the two-thirds restrictions herein provided."

Sec. 7. G.S. 126-16, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is hereby rewritten to read as follows:

"§ 126-16. Equal employment opportunity by State departments and agencies and local political subdivisions. — All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin, sex, age, or physical disability to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section

with respect to equal opportunity as to age shall apply only to those persons above the age of 40 years and under the age of 65 years."

Sec. 8. Article 6 of Chapter 126 of the General Statutes is hereby amended by adding thereto a new section, to read as follows:

"§ 126-17. Retaliation by State departments and agencies and local political subdivisions. — No State department, agency, or local political subdivision of North Carolina shall retaliate against an employee for protesting alleged violations of G.S. 126-16."

Sec. 9. G.S. 126-22, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is hereby rewritten to read as follows:

"§ 126-22. Personnel files not subject to inspection under G.S. 132-6. — Personnel files of State employees, former State employees, or applicants for State employment shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the department, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter which employs an individual, previously employed an individual, or considered an individual's application for employment, or by the office of State Personnel, and which information relates to the individual's application, selection or nonselection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment wherever located and in whatever form. Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee."

Sec. 10. G.S. 126-24, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is hereby amended by deleting from line 1 of the section the words "State employee's" and by inserting in line 1 of subdivision (1) after the word "employee," and before the phrase "or his properly authorized agent," the words: "applicant for employment, former employee,;" and G.S. 126-24 is hereby further amended by inserting in line 4 of subdivision (5) after the word "inspected" and before the words "as necessary" the following: "or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained".

Sec. 11. G.S. 126-25, as the same appears in the 1976 Interim Supplement to the General Statutes, is hereby amended by inserting in line 2 thereof after the word "employee" and before the words "who objects" the following: ", former employee or applicant for employment" and by inserting in line 3 of that section after the word "employee" at the end of the line the following: ", former employee, or applicant for employment".

Sec. 12. Article 7 of Chapter 126 of the General Statutes is hereby amended by adding thereto a new section to read as follows:

"§ 126-29. Access to material in file for agency hearing. — A party to a quasi-judicial hearing of a State agency subject to Article 7 of this act, or a State agency subject to Article 7 of this act which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion."

Sec. 13. G.S. 126-36, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is hereby amended by inserting at the end of line 4 thereof after the words "forced upon him" the following: "in retaliation for opposition to alleged discrimination or".

Sec. 14. Article 8 of Chapter 126 of the General Statutes is hereby amended by adding thereto a new section to follow G.S. 126-37, to read as follows:

"§ 126-38. **Time limit for appeals.** — Any employee appealing any decision or action to the commission shall file a written statement of appeal with the commission or its designate no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal."

Sec. 15. Article 8 of Chapter 126 of the General Statutes is hereby amended by adding thereto a new section, to follow G.S. 126-38, to read as follows:

"§ 126-39. **State employee defined.** — For the purposes of this Article, except for positions subject to competitive service and except for appeals brought under G.S. 126-16 and G.S. 126-25, the terms 'permanent State employee', 'permanent employee', 'State employee' or 'former State employee' as used in this Article shall mean a person who has been continuously employed by the State of North Carolina for five years at the time of the act, grievance, or employment practice complained of."

Sec. 16. G.S. 126-36, as the same appears in the 1975 Cumulative Supplement to Volume 3B of the General Statutes, is amended by deleting on lines 1 and 2 the words "applicant for State employment or"; and further amend Article 8 of Chapter 126 of the General Statutes by adding thereto a new section to follow G.S. 126-36 to read as follows:

"§ 126-36.1. **Appeal to Personnel Commission by applicant for employment.** — Any applicant for State employment who has reason to believe that employment was denied in violation of G.S. 126-16 shall have the right to appeal directly to the State Personnel Commission."

Sec. 17. G.S. 126-4, as the same appears in the 1975 Cumulative Supplement to Volume 3A of the General Statutes, is amended: (a) by inserting the word "and" after the word "demotion" in subsection (6), and changing the comma after the word "suspension" in subsection (b) to a period and deleting the remainder of subsection (6), and, (b) by renumbering subsection (7) as subsection (8) and the remaining subsections accordingly; and by adding a new subsection (7) to read as follows:

"(7) The separation of employees."

Sec. 18. G.S. 126-45 is hereby repealed.

Sec. 19. Notwithstanding any other provision of the act, the power granted to the Governor and elected department heads to designate policy-making positions by G.S. 126-5 and, as the same is amended by Section 2 of this act, may be exercised anytime within 120 days of the effective date of this act as to positions created or transferred or in which there was a significant change in duties between January 8, 1977, and the effective date of this act.

Sec. 20. G.S. 126-4, as the same appears in the 1975 Cumulative Supplement to Volume 3A of the General Statutes, is amended by adding at the end thereof a new paragraph to read as follows:

"Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the department, to transfer, demote, or separate a State employee who has not been continuously employed by the State of North Carolina for the immediate five preceding years."

Sec. 21. This act shall become effective July 1, 1977.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.