

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 617  
HOUSE BILL 680

AN ACT TO AMEND THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5 is rewritten to read:

"§ 126-5. **Employees subject to Chapter; exemptions.** – (a) The provisions of this Chapter shall apply to all State employees not herein exempt, and to employees of local social services departments, public health departments, mental health clinics, and local civil defense agencies that receive federal grant-in-aid funds; and the provisions of this Chapter may apply to such other county employees as the several boards of county commissioners may from time to time determine.

(b) As used in this section, 'policymaking position' means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division.

(c) Except as to the policies, rules, and plans established by the Commission 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, and except as to the provisions of Article 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:
  - (a) is in a grade 60 or lower position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
  - (b) is in a grade 61 to grade 65 position and has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
  - (c) is in a grade 66 to grade 70 position and has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
  - (d) is in a grade 71 or higher position and has not been continuously employed by the State of North Carolina for the immediate 60 preceding months.
- (2) 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.
- (3) Employees in policymaking positions designated as exempt pursuant to G.S. 126-5(d).

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- (1) Constitutional officers of the State.
- (2) Officers and employees of the Judicial Department.
- (3) Officers and employees of the General Assembly.
- (4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
- (5) Officials or employees whose salaries are fixed by the General Assembly, or 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 consultation with the Advisory Budget Commission.
- (6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
- (9) 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), 116-1(5), and 116-14.
- (10) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.

(c2) The provisions of this Chapter shall not apply to:

- (1) Public school superintendents, principals, teachers, and other public school employees.
- (2) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(d)(1) General. The Governor may designate as exempt policymaking positions, as provided below, in each of the following departments:

- (1) Department of Administration;
- (2) Department of Commerce;
- (3) Department of Correction;
- (4) Department of Crime Control and Public Safety;
- (5) Department of Cultural Resources;
- (6) Department of Human Resources;
- (7) Department of Natural Resources and Community Development;
- (8) Department of Revenue; and

(9) Department of Transportation.

The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt policymaking positions, as provided below, in their respective offices.

- (2) Number. The number of policymaking positions designated as exempt in each department or office listed in subsection (d) (1), except the Department of Commerce, shall be limited to one and two-tenths percent (1.2%) of the number of full-time positions in the department or office, or 30 positions, whichever is greater. The Governor may designate 85 policymaking positions as exempt in the Department of Commerce. Provided, however, that the Governor or elected department head may request that additional policymaking positions be designated as exempt. The request shall be made by sending a list of policymaking positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional policymaking positions to be designated as exempt. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the policymaking positions shall be designated as exempt. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt; the policymaking positions shall not be designated as exempt during the interim.
- (3) Letter. These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d) (4) apply.
- (4) Vacancies. In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person.
- (5) Creation, Transfer, or Reorganization. The Governor or elected department head may designate as exempt a policymaking position

that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must 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) Reversal. Subsequent to the designation of a policymaking 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.
- (7) Hearing Officers. Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

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

- (1) When an employee who has the minimum service requirements described in subsection (c) (1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or
- (2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and step as his most recent subject position.

This subsection shall apply to employees removed from exempt positions after July 1, 1985.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is

necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

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

(h) 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."

Sec. 2. G.S. 126-4 is amended by adding a new subdivision to read:

"(14) The implementation of G.S. 126-5(e)."

Sec. 3. G.S. 126-4 is amended in the last paragraph by deleting the language "employee who has not been continuously employed by the State of North Carolina for the immediate five preceding years.", and substituting:

- "(1) employee in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) employee in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) employee in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
- (4) employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months."

Sec. 4. G.S. 126-39 is amended by deleting the language "who has been continuously employed by the State of North Carolina for five years" and substituting:

- "(1) in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
- (4) in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months".

Sec. 5. G.S. 126-13 is amended by designating the present provision as subsection "(a)" and adding a new subsection "(b)" to read:

"(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or

policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a misdemeanor."

Sec. 6. This act is effective upon ratification.

Except as otherwise provided in this act, application of this act shall be prospective only.

In the General Assembly read three times and ratified, this the 5th day of July, 1985.