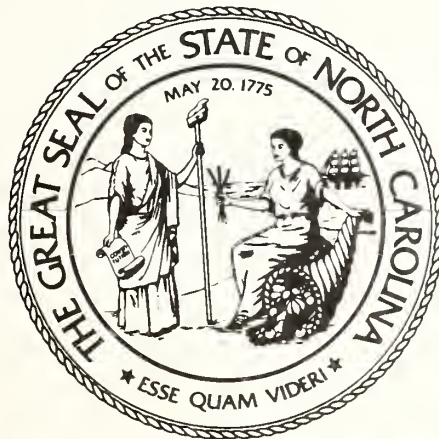


REPORT TO THE  
HOUSE OF REPRESENTATIVES  
OF THE  
1975 GENERAL ASSEMBLY  
OF  
NORTH CAROLINA  
BY THE  
COMMITTEE ON THE  
**RIGHTS AND RESPONSIBILITIES**  
OF **STATE EMPLOYEES**



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 House of Representatives  
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 MANUFACTURERS AND LABOR  
 WILDLIFE RESOURCES

February 1, 1975

Speaker James C. Green  
 House of Representatives  
 General Assembly of North Carolina  
 State Legislative Building  
 Raleigh, North Carolina 27611

Dear Speaker Green:

Pursuant to the direction of House Resolution 2192 of the 1973 General Assembly of North Carolina, Second Session 1974, the Committee on the Rights and Responsibilities of State Employees hereby transmits to you the attached report. Additional copies are available, at your direction to be sent to all members of the North Carolina House of Representatives, to interested members of the North Carolina Senate, to other State government officials, to the press, and to requesting members of the general public. Distribution will be handled by the Legislative Services Office and through the Legislative Library.

Very truly yours,

James E. Long, Chairman  
 Committee on the Rights and  
 Responsibilities of State  
 Employees

JEL:ejs  
 Attachment



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## I. COMMITTEE CHARGE

House Resolution 2192 of the 1973 General Assembly of North Carolina, Second Session 1974, was adopted on April 12, 1974. (For the full text of the resolution, see Appendix A.) This resolution created a Committee to Study the Rights and Responsibilities of State Employees, and charged the Committee to make "a study of the present State Personnel Act as it relates to the rights afforded to State employees in the scope of their employment by the State of North Carolina." The report contained in the following pages is the Committee's response to the direction in the creating resolution to "report its findings and recommendations to the Speaker of the House of Representatives ... no later than the first day of February, 1975."

## II. ORGANIZATION

The resolution which established this study provided for seven Committee members to be Representatives appointed by the Speaker of the House, and for one member to be appointed by each of the two State employee associations. The Speaker appointed Representatives William P. Bradley, John W. Brown, John J. Hunt, J.P. Huskins, James E. Long, Ernest B. Messer, and Howard F. Twiggs. The North Carolina State Employees' Association appointed Mr. Emmett Burden and the North Carolina Government Employees' Association appointed Mr. Floyd Bass. Representative Long was elected Chairman at the first meeting.

Although it was not anticipated in the specific language of the resolution, the non-legislator members of the Committee agreed to serve in an advisory capacity, without compensation by the State. This was necessary in order to have the Committee supported through channels normally available to regular legislative committees. (See the September 30, 1974, Legislative Services Office letter in Appendix B.) Arrangements for professional staffing were made with Mr. William Potter from the Legislative Services Office and Dr. Donald Hayman from the Institute of Government. Ms. Ellen Sprenkel was employed as clerk to the Committee.

### III. PROCEEDINGS

The Committee pursued its study of the State Personnel System and its relationship to State employees through the latter months of 1974 and on into January 1975. During this time the Committee was able to draw on the experience and ability of two members of the State Personnel Department, Mr. Sam W. Badgett and Mr. Troy Dodson, and the Committee received the cooperation and assistance of the State Personnel Director, Mr. Alfred B. Boyles. Using these sources and its own staff, the Committee was able to supplement the considerable experience and knowledge of its own membership. The report resulting from this combination of resources brings with it the best efforts of a legislatively created Committee complemented by positive input from the executive branch of State government and from employee representatives.



Issues that were explored by the Committee included the following: (1) providing binding, mandatory authority for the State Personnel Board; (2) modification of the nature of the present Board, from part-time citizen members to full-time professionals, or other changes; (3) providing State employees with a meaningful right to the privacy of their personnel records, but at the same time providing reasonable access to these records by responsible State officials; (4) defining or redefining coverage of the State Personnel Act, describing and justifying exempt positions; and (5) protecting the procedural and substantive rights of State employees before the Board by requiring adherence to certain provisions of the Administrative Procedure Act and by providing for the payment of certain legal fees in some cases of employee appeals.

The Committee based its study on an examination of the present State Personnel Act, General Statutes Chapter 126 (see Appendix C). In making the study, the Committee reviewed personnel procedures in other states. The Committee directed staff counsel to research and report on specific questions and problems which arose in the discussion of the personnel systems.

In the next section of the report, the Committee sets out the reasoned conclusions that resulted from its examination of these issues. The Committee also offers its recommendations as they relate to these conclusions, to be implemented by the suggested legislation in Section V of the Report.

## IV. CONCLUSIONS AND RECOMMENDATIONS

(1) The Committee concluded that the best interest of the State and of State employees will be served by authorizing the State Personnel Board to issue binding and mandatory decisions in lieu of present advisory recommendations.

(2) The Committee decided not to recommend changing the basic nature of the present Personnel Board, but recommends a modification of the method of appointing members of the State Personnel Board.

(3) The Committee concluded that the present statutes do not adequately protect the personnel records of all State employees, and that further protection should be provided.

(4) The Committee decided that the present exempt positions should be redefined in some respects, conforming the Personnel Act to State Government Reorganization and requiring exempt policy-making positions to be designated and reported to the General Assembly by the Governor.

(5) The Committee found that it is desirable to include the State Personnel System under some parts of the new Administrative Procedure Act, and that provisions should be made for State payment of reasonable attorney and witness fees when the State Personnel Board finds that an applicant or employee has been improperly treated.

## V. PROPOSED LEGISLATION AND COMMENTS

(1) Modifications to the Present Structure

## A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 126 OF THE GENERAL STATUTES OF NORTH CAROLINA, MODIFYING THE STATE PERSONNEL SYSTEM.

Section 1. All amending provisions of this bill refer to G.S. Chapter 126 as it appears in North Carolina General Statutes 1974 Replacement Volume 3B.

Sec. 2. G.S. 126-2 is amended by rewriting the second sentence of subsection (b) to read as follows:

"One member of the Board shall be appointed from a list of at least three employees of the State subject to this chapter nominated by the North Carolina State Employees' Association, one member shall be appointed from a list of at least three employees of the State subject to this chapter nominated by the North Carolina Government Employees' Association, two members shall be appointed from a list of at least six individuals nominated by the North Carolina Association of County Commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large (the first two members appointed from nominees of the State employee associations shall fill vacancies caused by the departure of Board members initially chosen from employees of the State subject to the Personnel Act without the nomination requirements, and if

vacancies occur at different times the North Carolina State Employees' Association nominee shall fill the first opening). Members of the Board appointed after the effective date of the act shall be appointed subject to confirmation by the Senate of the General Assembly of North Carolina. If the General Assembly is not in session when an appointment is made, the appointee shall temporarily exercise all of the powers of a confirmed member until the convening of the next legislative session. If the Senate does not act on confirmation of a proposed member within 30 legislative days of the submission of the name, the member shall be considered confirmed. If the Governor does not appoint a new member within 60 calendar days of the occurrence of a vacancy or the rejection of an appointment by the Senate, the remaining members of the Board shall have the authority to fill the vacancy."

COMMENT:

State employee associations would be authorized to nominate members of the Board. Now these two members are chosen from State employees without any nomination requirement. Six nominees would be required of the Association of County Commissioners. Now the Association submits "a list". A new provision would be added to require confirmation of future appointments by the North Carolina Senate.

Sec. 3. G.S. 126-2(f) is amended by changing the first word "Five" to read "Four".

COMMENT:

The quorum requirement would be reduced from five to four. The Committee found in discussions with the Personnel Department staff that the Board

of seven members often found it difficult to achieve a quorum. The suggested change in present practice to allow an appellant to the Board to disqualify a Board member from the hearing under proposed G.S. 126-23 and the current statute, G.S. 150A-32(b), would make it more difficult to achieve a quorum.

Sec. 4. G.S. 126-3 is rewritten to read as follows:

"§126-3. Office of State Personnel established; administration and supervision; appointment, compensation and tenure of Director. There is hereby established the Office of State Personnel (hereinafter referred to as 'the Office') which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State Government Reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws, the Office of State Personnel shall exercise all of its statutory powers independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as 'the Director') appointed by the Board and subject to its supervision. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the Board."

COMMENT:

The Personnel Department would continue to be within the Department of Administration for organizational purposes, but the Secretary of Administration would exercise no control over the Personnel Department. This would repeal the efforts of reorganization in G.S. 143A-9 (amended 1971). The

change in present law to place appointment of the Director with the Board would be a return to pre-1971 practice and would make the Director more responsive to the direction of the Board which is charged with overseeing State personnel practices.

Sec. 5. G.S. 126-4 is amended by rewriting subsection (9) to read as follows:

"(9) The investigation of complaints and the hearing of appeals of applicants, employees, and former employees and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Board shall find justified."

COMMENT:

The Committee recommends that the State Personnel Board be given binding authority in all cases as the Board shall find justified. Under current law, the Board may only issue advisory opinions which are not binding on the agency involved. It was the opinion of the Committee that most State employees felt that an appeal to the Board is an expensive exercise in futility since the agency involved can ignore the Board's decision.

Approximately 5,000 State employees now have the right of appeal to the Board with the Board issuing final binding decisions in cases of alleged discrimination (see September 20, 1973, letter from U.S. Civil Service Commission and list, attached as Appendix E). The Equal Employment Opportunity section of the Federal "Standards for a Merit System of Personnel Administration" requires that State "...regulations will include provisions for appeals in cases of alleged discrimination to an impartial body, whose determination shall be binding upon a finding of discrimination."

The recommendation by the Committee would give the Board wide latitude to appoint the applicant or reinstate, promote, demote or transfer the aggrieved employee to another State position. The Board could, when it finds justification, order payment of back wages, reinstatement of leave and retirement benefits or such other correction action as seems proper. With this broad discretion, the

Board should have the necessary authority to insure the employee a meaningful appeal and also insure efficiency in State government personnel practices.

Sec. 6. G.S. 126-4 is further amended by redesignating subsection (10) as subsection (13) and by inserting new subsections (10), (11) and (12) to read as follows:

"(10) In cases where the Board finds discrimination or orders reinstatement, the assessment of reasonable attorney fees and witness fees against the State agency involved."

COMMENT:

This provision would give the employee some financial relief when the aggrieved action was found by the Board to be particularly discriminatory.

"(11) The appointment of hearing officers to hear appeals at various locations around the State as provided for in Article 3 of G.S. Chapter 150A, and the relationship of the record made by such hearing officers to proceedings by the Board."

COMMENT:

The Committee believes that by authorizing the Board to appoint hearing officers and to hold hearings at various locations throughout the State, the cost to an aggrieved employee of pursuing an appeal to the Board will be reduced. In order to make the appeals process meaningful, the expense to the employee must be reduced. The use of hearing officers in the hearing process should reduce the hearing load on the Board which at the present time is forced to spend many hours each month hearing appeals.

"(12) The employment of independent attorneys to represent the Department when some conflict would result from using Department of Justice attorneys."

## COMMENT:

A new provision would be added to authorize employment by the Board of private attorneys in conflict situations. The usual procedure is to use attorneys from the Department of Justice to advise the Board. A conflict could arise when outside legal counsel should be provided to the Board to insure a fair and impartial hearing for all concerned.

Sec. 7. G.S. 126-5 is amended by rewriting subsection

(b) in its entirety to read as follows:

"(b) The provisions of this Chapter shall not apply to the following persons or employees: public school superintendents, principals, teachers, and other public school employees; 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), 116-11(5), and 116-14; community colleges' employees whose salaries are fixed in accordance with the provisions of G.S. 115A-5 and 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; 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, Bureau of the Employment for the Blind Division; constitutional officers of the State and except as to salaries:



- (1) 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;
- (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) Other deputies, administrative assistants, division or agency heads or other employees, by whatever title, that serve in policy-making positions, 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;
- (4) One confidential secretary to each position designated under the provisions of G.S. 126-5(b) (3);
- (5) All employees of the offices of the Governor and Lieutenant Governor."

**COMMENT:**

Most of the present basic exemption provisions would be retained. Modifications are suggested to conform the Personnel Act with State government reorganization. Exempt policy-making positions would be designated by the Governor or elected department head, with a report to the General Assembly.

The Committee found the designation of exempt positions to be one of the most difficult determinations it had to make. G.S. 126-5(b)

is a rewrite of the current law to conform with changes made by the Reorganization of State Government in 1971 and 1973 and the Reorganization of Higher Education in 1971.

Subparagraphs (1), (2) and (4) recognize the fact that each department head, whether elected or appointed by the Governor, needs to have administrative assistants who are responsive to him and his goals and programs. The secretarial staff for the agency head and his two administrative positions should also be exempted positions so the administrators can have confidence in their personal staff.

Subparagraph (3) recognizes that each governor or elected department head must be able to bring in his "team" to implement his programs. This proposal would allow the Governor, in the case of executive departments where he appoints the Secretary, or the Secretary of the department where he is elected by the voters, to designate those positions which he believes are to be policy-making positions which are important to the implementation of his programs. The designation of such exempt positions by May 1 of the year in which a new Governor takes office would determine at that time which positions would be exempt for the next four years.

Subparagraph (5) would exempt the staff positions for the Offices of Governor and Lieutenant Governor since the office would be held for only four years.

Sec. 8. G.S. 126-5 is amended by adding subsections (c) and (d) to read as follows:

"(c) Any career employee who has occupied a position subject to the personnel act and who is replaced after the position is exempted as provided in G.S. 126-5 (b) shall be provided with all possible assistance in being appropriately relocated in State Government. Any person appointed to an exempt position shall not be considered a career employee in that position. If a career employee in a subject position transfers to an exempt position, the career employee may retain status in his

former position as if on leave of absence for the term of his exempt appointment.

COMMENT:

This provision would allow a career State employee who has been in a position subject to the Personnel Act (SPA) to receive a promotion to a position which has been designated as exempt from the Personnel Act (EPA). After a change in administration, he would be allowed to revert to a SPA position and continue his career with State government. This would insure that qualified career employees would be willing to take promotions without fear of dismissal at the next change of administration. "Career Employee" would be defined by the Board and the specified protections would apply to employees within the definition.

"(d) 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 Board, subject to the approval of the Governor, and such decision shall be final."

COMMENT:

The Board would make the decision as to whether an employee was subject to the Personnel Act in case of dispute.

Sec. 9. A new Article 7 is added to G.S. Chapter 126 to read as follows:

"Article 7

"Employee Appeals of Grievances and Disciplinary Action.

"§126-17. Grievance appeal for State employees. Any permanent State employee having a grievance arising out of or due to his employment and who does not allege discrimination because of his age, sex, race, color, national origin, religion, creed, physical disability, or political affiliation shall first

discuss his problem or grievance with his supervisor and follow the grievance procedure established by his department or agency. If the employee is not satisfied with the decision of the agency head, he may appeal to the State Personnel Board within 30 days of receipt of the agency's decision.

COMMENT:

A new statutory requirement would be enacted for grievance appeals not involving discrimination. This proposed section and the following four sections would be new to the statutes, but most of the provisions are similar to regulations recommended by the Board. These sections require the use of the agency's grievance appeal procedure in order to resolve the difference at the lowest levels of administration. The appeals process is available if the employee is not satisfied with the agency decision.

"§126-18. Written statement of reason for disciplinary action. No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action. The employee shall be permitted five days to reply in writing or to appeal to the head of the department. A copy of the written statement given the employee and the employee's reply, if any, shall be filed with the State Personnel Director within five days of their delivery and prior to the effective date thereof. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written

reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons.

COMMENT:

A new statutory requirement would be enacted to require a written statement of charges in a disciplinary action. The Committee found that the aggrieved employee often had no idea of the reason for the action complained of. It was felt that the employee could not be expected to defend himself against charges unless he knew what they were. This process of written charges might be temporarily delayed when the agency believed that the employee's continued presence on the job would disrupt the work of the employees or threaten their safety.

"§126-19. Appeal of unlawful State employment practice.

Any applicant for State employment or any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, lay-off or termination of employment was forced upon him because of his age, sex, race, color, national origin, religion, creed, political affiliation, or physical disability except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Board.

COMMENT:

A new statutory requirement would be enacted to provide for direct appeal to the Board in cases where the specified employment practices are alleged. If the employee believes that he is being discriminated against for one of the enumerated grounds, there is no point in following the normal grievance procedure which involves discussions with the supervisor and appeals to the agency head.

"§126-20. Personnel Director investigate, hear, recommend settlement; Personnel Board hear or review findings and make binding decision. The State Personnel Director or any other person or persons designated by the Board shall investigate the disciplinary action or alleged discrimination which is appealed to the Board. The State Personnel Board may hear the case or direct the State Personnel Director or other person or persons designated by the Board to conduct a hearing of the facts and issues. If, following the investigation and hearing, a settlement is agreed to by both parties, the State Personnel Director or the designated agent shall certify the settlement to the Board. If, following the investigation and hearing, there are issues and facts on which agreement cannot be reached, the Personnel Director or the designated agent shall report his findings to the Board with his recommendations. The Board at their next meeting, or as soon as possible thereafter, shall consider the report and modify, alter, set aside or affirm said report and certify its findings to the appointing authority which shall be binding. The State Personnel Board is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

## COMMENT:

A new statutory requirement would be enacted to provide for staff investigation of allegations, for hearing officer authorization, and for binding decisions by the Board on the results of the investigations or preliminary hearings.

This procedure would authorize the use of good personnel management by attempting to resolve real or imagined differences between the employee and management. The Board is given wide latitude in resolving the dispute and restoring loss wages or benefits.

Sec. 10. A new Article 8 is added to G.S. Chapter 126 to read as follows:

## "Article 8

"The Administrative Procedure Act and Modifications

"G.S. 126-21. The Administrative Procedure Act. The provisions of the Administrative Procedure Act, G.S. Chapter 150A, shall apply to the State Personnel System and hearing and appeal matters before the Board, except where there are specific statutory provisions to the contrary, including the following:

## COMMENT:

Parts of the Administrative Procedures Act (see Appendix D of the Report) would be made specifically applicable to the Personnel System, except for the provisions of the Procedure Act concerning rule making, parts of the rules of evidence, proposed decisions, and subpoenas.

(a) Article 2 of G.S. Chapter 150A, concerning rule making shall not apply.

## COMMENT:

The Personnel Board does not promulgate the rules anticipated by Article 2 of the Administrative Procedures Act or accept proposals for decisions as anticipated by G.S. 150A-32.

(b) G.S. 150A-27, concerning the rules of evidence, shall not apply, except on specific written request to the Board by an aggrieved party appearing before the Board.

COMMENT:

In an attempt to reduce the expense of appeals to the Board, the Committee recommends that the rules of evidence in hearings not apply unless the aggrieved party so chooses. This would insure that the aggrieved employee could process his only appeal without the assistance of legal counsel if he so chooses. This would allow the hearing to be informal, or it could be held with the formality of a court proceeding if the employee or his counsel so decided.

(c) G.S. 150A-32, concerning proposals for decision, shall not apply.

(d) The last sentence of G.S. 150A-25, concerning fees for subpoenaed witnesses, shall not apply."

COMMENT:

The change from the Administrative Procedures Act in (d) would not require the appealing employee to advance witness fees. This would be regulated under proposed G.S. 126-22.

"G.S. 126-22. Witness fees. The party requesting the subpoena to subpoenaed witnesses who are not State officials or employees shall pay witness fees in accordance with G.S. 7A-314. State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

COMMENT:

This proposed section would require the party desiring to subpoena a witness who is not a State employee to pay witness fees specified by law. State employees would not receive witness fees because they would still



receive their pay and receive administrative leave for their appearance before the Board. Travel expenses for State employees would be paid by the agency involved. This procedure would differ from the Administrative Procedures Act.

"G.S. 126-23. Disqualification of Hearing Officers.

A party may by making timely written objection cause the disqualification of up to two hearing officers assigned to hear his case, unless the hearing shall be before a member, or members of the Board. Board members may be disqualified only under the provisions of G.S. 150A-32(b) of the Administrative Procedures Act."

COMMENT:

Disqualification of hearing officers would be specified with reference to the Administrative Procedures Act. Board members could also be disqualified from the hearing. This would allow the hearing officer or aggrieved employee to disqualify a Board member who the employee believes would be prejudiced in his hearing.

Sec. 11. G.S. 126-10 is amended by deleting the words "State Personnel Department" in lines 2 and 3 in the 1974 Replacement of Volume 3B of the General Statutes of North Carolina and the substituting the words "Office of State Personnel."

COMMENT:

The change in terms from State Personnel Department to Office of State Personnel would be made in compliance with the Reorganization of State Government, as it is also changed in the proposed rewrite of G.S. 126-3.

Sec. 12. This act shall become effective on January 1, 1976.

(2) New Material

A BILL TO BE ENTITLED  
AN ACT TO PROTECT THE RIGHT OF PRIVACY OF STATE EMPLOYEES BY  
LIMITING ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. A new Article 9 is added to G.S. Chapter 126  
to read as follows:

"Article 9

"The Privacy of State Employee Personnel Records

"G.S. 126-24. Personnel files of State employees shall not  
be subject to inspection and examination as authorized by  
G.S. 132-6.

G.S. 126-25. Each department or agency shall maintain a  
current roster of all employees showing the name, date of  
original appointment to the State service, date of most recent  
promotion, demotion, or other position classification trans-  
actions, date and amount of most recent pay raise, present  
position title and salary, and the office or station to which  
the employee is assigned. Subject to State Personnel Board  
rules concerning safekeeping, this roster shall be made available  
for inspection and examination by any person during reasonable  
business hours.

G.S. 126-26. All other information contained in a State  
employee's personnel file is confidential and shall not be  
open for inspection and examination except to the following  
persons:

(1) the employee, or his properly authorized agent, who may examine his own personnel file in its entirety except for (a) letters of reference solicited prior to employment, or (b) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee;

(2) the supervisor of the employee;

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

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

(5) an employee or official of an agency of the Federal government, state government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is necessary and essential to the pursuance of a proper function of said agency.

G.S. 126-27. An employee who objects to material in his file because he considers it inaccurate or misleading may request that the material be removed from his file in accordance with the grievance procedure of that department.

G.S. 126-28. The State Personnel Board may prescribe such rules and regulations as it deems necessary to implement the provisions of this Article.

G.S. 126-29. It shall be unlawful for any public official knowingly and willfully to permit any person not authorized

under this Article to have access to or possession of any portion of a personnel file designated as confidential by this Article. Whoever unlawfully surrenders or permits access to a confidential portion of a personnel file shall be guilty of a misdemeanor and upon conviction fined not in excess of five hundred dollars.

G.S. 126-30. It shall be unlawful for any person not authorized under this Article knowingly and willfully to examine personnel records in their official filing place or to remove, or copy any portion of a personnel file designated as confidential by this Article. Whoever unlawfully examines, removes, or copies any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction fined not in excess of five hundred dollars."

Sec. 2. This act shall become effective on January 1, 1976.

COMMENT:

The present law dealing with public access to records maintained by State agencies (G.S. 132-6) appears to also require disclosure of an employee's personnel file. While the public's right of access to State Government cannot be denied, there is also a right of privacy for the individual State employee which must be protected. The Committee has attempted to balance these two rights in the foregoing proposed legislation.

The first section would remove personnel files of State employees from the general provisions of G.S. 132-6 which would allow inspection of any information in such files. Each governmental agency would be required to maintain a listing of employees giving such general information for each employee such as dates of job and pay change, current salary and assignment. The availability of this information should satisfy the "need to know" of the general public, including the news media as to pertinent data for public employees.

Other information in the employee's record would be confidential and not open to inspection, except as to specified persons who might need further details of an employee's file. The employee would be entitled to review his complete employment record, except for materials which are confidential because of their nature or the disclosure of which might be detrimental to the employee or an accurate appraisal of his service before obtaining State employment.

The employee's supervisor would be entitled to review the complete file in order to allow him to more completely judge the employee's potential. Members of the General Assembly and persons with a proper court order would still have access to employee records. Records would also be available to federal agencies, other State agencies, and political subdivisions of the State when the inspection is necessary.

The proposed bill contains a provision whereby an employee who objects to material in his file may request its removal in accordance with procedures established by his department.

The legislation gives the Board the authority to prescribe such rules as may be necessary to implement this Privacy Act. The Act would also provide criminal sanctions for any public official who permitted an unauthorized person access to personnel files or for an unauthorized person to examine or remove confidential portions of personnel files.



## GENERAL ASSEMBLY OF NORTH CAROLINA

1973 SESSION

HOUSE RESOLUTION 2192

Adopted April 12, 1974

ADOPTED  
SIMPLE  
RESOLUTION


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Sponsors      Representatives Long, Green of Bladen, Twiggs.

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Referred to: Calendar

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April 11, 1974

A HOUSE RESOLUTION TO CREATE A COMMITTEE TO STUDY THE RIGHTS AND RESPONSIBILITIES OF STATE EMPLOYEES.

Whereas, the rights and responsibilities of State employees as set forth in the State Personnel Act and in other jurisdictions are subject to various interpretations by many people; and

Whereas, the current appeals process does not provide due process for State employees in the hearing of grievances; and

Whereas, such denial of due process takes away a basic right of State employees; and

Whereas, the federal authorities have presently mandated a different set of rules and regulations for a large segment of State employees;

Now, therefore, be it resolved by the House of Representatives:

Section 1. There is hereby created a Legislative Study Committee to be known as the "Committee on the Rights and Responsibilities of State Employees".

Sec. 2. The "Committee" shall be composed of nine members, seven of whom are to be appointed by the Speaker of the House, and shall include members of both political parties. One member of the "Committee" shall be appointed by the North

Carolina State Employees Association and one member appointed by the North Carolina State Government Employees Association.

Sec. 3. The "Committee" is specifically charged with a study of the present State Personnel Act as it relates to the rights afforded to State employees in the scope of their employment by the State of North Carolina. Other areas that may be studied, but are not limited to, shall include rules, regulations, policies, procedures and practices concerning employee-employer relations in the State government of North Carolina.

Sec. 4. The "Committee" shall report its findings and recommendations to the Speaker of the House of Representatives at the earliest possible date, but, in any event, no later than the first day of February, 1975.

Sec. 5. This resolution shall become effective upon adoption.



NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE SERVICES OFFICE  
2129 STATE LEGISLATIVE BUILDING  
RALEIGH 27601



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FISCAL RESEARCH DIVISION  
TELEPHONE 829 4910

September 30, 1974

Representative James E. Long  
Post Office Box 690  
Burlington  
North Carolina 27215

Dear Jim:

I am enclosing with this letter a copy of the initial meeting notice that you requested for the Special House Committee on State Employees' Rights and Responsibilities.

I had an opportunity to talk with Speaker Ramsey this past Friday, and he has authorized our office to support this Committee as a House committee if the two members from the state employees associations serve only as advisory members. Anticipating that the representatives of the North Carolina State Employees Association and the North Carolina State Government Employees Association will serve only as unofficial, nonvoting advisory members, without compensation, the Legislative Services Office will be able to provide support services to the Committee. Our Disbursing Office will make payments of subsistence and mileage allowances for Committee meetings with the approval of the Legislative Services Commission. (I suggest that you might want to secure a blanket approval for payment of subsistence and mileage for your estimate of the maximum number of Committee meetings from Speaker Ramsey as Services Commission Chairman.) The Services Office will also be able to arrange staffing for the Committee. A secretary of the Committee's choosing will be compensated for her time working with the Committee at the rate paid a Legislative Committee Clerk I, at her experience step. Professional staff services offered by the Legislative Services Office may be supplemented by an employed consultant from the

Representative James E. Long  
September 30, 1974  
Page 2

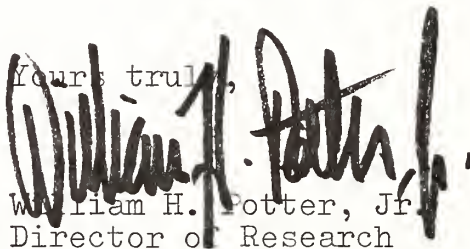
(27-B)

Institute of Government or elsewhere, but payment to any such consultant should be budgeted (probably at the rate of \$75 per day) and approved by the Speaker. The Committee will be able to meet in the Legislative Building in rooms designated by the Building Superintendent (each meeting should be cleared with the Superintendent's Office). Supplies can be drawn from the Disbursing Office, and printing arranged through the Services Office.

If the non-legislator members of the Committee serve only as advisory members, I believe that we can handle the above outlined services through our regular procedures. However, I should point out to you that we will not be able to pay Committee members who are not elected to the 1975 General Assembly after November 5, 1974.

I will arrange for copies of the State Personnel Manual and other materials for the initial meeting.

Let me know if I can be of further assistance, in this matter or otherwise.

Yours truly,  
  
William H. Potter, Jr.  
Director of Research

WHPjr:cjd

Enclosures

cc: Speaker James Ramsey

## GENERAL STATUTES OF NORTH CAROLINA

§ 126-1

CH. 126. STATE PERSONNEL SYSTEM

§ 126-2

**Chapter 126.****State Personnel System.****Article 1.****State Personnel System Established.**

Sec.

- 126-1. Purpose of Chapter; application to local employees.
- 126-2. State Personnel Board.
- 126-3. State Personnel Department established; administration and supervision; appointment, compensation and tenure of Director.
- 126-4. Powers and duties of State Personnel Board.
- 126-5. Employees subject to Chapter; exemptions.
- 126-6. Policies continued; powers, etc., transferred.

**Article 2.****Salaries and Leave of State Employees.**

- 126-7. Automatic and merit salary increases for State employees.
- 126-8. Minimum leave granted State employees.

**Article 3.****Local Discretion as to Local Government Employees.**

- 126-9. County or municipal employees may be

Sec.

- made subject to rules adopted by local governing body.
- 126-10. Personnel services to local governmental units.
- 126-11. Local personnel system may be established.

**Article 4.****Competitive Service.**

- 126-12. Governor and Council of State to determine competitive service.

**Article 5.****Political Activity of Employees.**

- 126-13. Appropriate political activity of State employees defined.
- 126-14. Promise or threat to obtain political contribution or support.
- 126-15. Disciplinary action for violation of Article.

**Article 6.****Equal Employment Opportunity.**

- 126-16. Equal employment opportunity by State departments and agencies and local political subdivisions.

**ARTICLE 1.***State Personnel System Established.*

§ 126-1. **Purpose of Chapter; application to local employees.** — It is the intent and purpose of this Chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this Chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this Chapter to establish local rules, local pay plans, and local personnel systems. (1965, c. 640, s. 2.)

**State Government Reorganization.** — The State personnel system was transferred to the Department of Administration by § 143A-84, enacted by Session Laws 1971, c. 864.

Cited in *Bean v. Darr*, 354 F. Supp. 1157 (M.D.N.C. 1973).

§ 126-2. **State Personnel Board.** — (a) There is hereby established the State Personnel Board (hereinafter referred to as "the Board").

(b) The Board shall consist of seven members who shall be appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two members of the Board shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be

## GENERAL STATUTES OF NORTH CAROLINA

§ 126-3

CH. 126. STATE PERSONNEL SYSTEM

§ 126-4

appointed from the public at large. Of the initial members of the Board, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(c) A member of the Board shall not be considered a public officer, or as holding an office or place of trust or profit within the meaning of Article XIV, Sec. 7, of the Constitution of this State, but shall be deemed a commissioner for a special purpose.

(d) The Governor may at any time after notice and hearing remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the Board who are employees of the State subject to the provisions of this Article shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Board.

(f) Five members of the Board shall constitute a quorum.

(g) The Governor shall designate one member of the Board as chairman.

(h) The Board shall meet quarterly, and at other times at the call of the chairman. (1965, c. 640, s. 2.)

**Editor's Note.** — The reference to the Constitution adopted in 1868, as amended. Constitution in subsection (c) is to the See now N.C. Const., Art. VI, § 9.

**§ 126-3. State Personnel Department established; administration and supervision; appointment, compensation and tenure of Director.** — There is hereby established the State Personnel Department (hereinafter referred to as "the Department."). The Department shall be separate and distinct from the Department of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Board and subject to its supervision. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the State Personnel Board. (1965, c. 640, s. 2.) *[But see G.S. 143A-9 for modification.]*

**§ 126-4. Powers and duties of State Personnel Board.** — Subject to the approval of the Governor, the State Personnel Board shall establish policies and rules governing each of the following:

- (1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.
- (2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
- (3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.
- (4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.
- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment.
- (6) The appointment, promotion, transfer, demotion, suspension, and separation of employees.
- (7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Higher Education, and the colleges and universities of the State in developing pre-service and in-service training programs.
- (8) The evaluation of employee performance, the granting of salary

## GENERAL STATUTES OF NORTH CAROLINA

§ 126-5

CH. 126. STATE PERSONNEL SYSTEM

§ 126-6

increments, and a program of meritorious service awards, which may include cash awards to be paid from savings resulting from the adoption of the employee suggestions, but in no case shall the cash award exceed ten percent (10%) of the savings resulting during the first year following adoption, or a maximum of one thousand dollars (\$1,000).

- (9) Hearing of appeals of applicants, employees, and former employees and the issuing of advisory recommendations in all appeal cases.
- (10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. (1965, c. 640, s. 2.)

**§ 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 welfare departments, public health departments, mental health clinics, and local civil defense agencies which 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) The provisions of this Chapter shall not apply to the following persons or employees: public school superintendents, principals, teachers, and other public school employees; instructional and research staff, physicians and dentists of the educational institutions of the State; business managers of the University of North Carolina and its several campuses, East Carolina University, and Appalachian State University; members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis, constitutional officers of the State and except as to salaries, their chief administrative assistants; employees of the General Assembly and its agencies and temporary employees of activities ancillary to the General Assembly; officials and 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; blind or visually handicapped employees of the Department of Human Resources; officials or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than the method provided by this Chapter, and explicitly pertaining to such officials or employees. 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 Department and decided by the State Personnel Board, subject to the approval of the Governor, and such decision shall be final. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1971, c. 1025, s. 2; 1973, c. 476, s. 143.)

**Editor's Note.** — Session Laws 1971, c. 1025, s. 2 inserted "blind or visually handicapped employees of the State Commission for the Blind, Bureau of Employment for the Blind Division" near the end of the first sentence in subsection (b).

The 1973 amendment substituted "Department of Human Resources" for "State Commission for the Blind, Bureau of Employment for the Blind Division" near the end of the first sentence of subsection (b).

**§ 126-6. Policies continued; powers, etc., transferred.** — (a) All classifications, grades, salaries, conditions of work, and rules and regulations established prior to July 1, 1965, by the State Personnel Council, the State Personnel Director or the North Carolina Merit System Council shall remain in force until amended, repealed, or superseded by the Board, acting under the authority of this Chapter.

(b) The State Personnel Board and the State Personnel Director herein provided shall be the successors of the State Personnel Council, the State Personnel Director, North Carolina Merit System Council, and the Merit System Supervisor. All records and property in the custody of these agencies

## GENERAL STATUTES OF NORTH CAROLINA

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CH. 126. STATE PERSONNEL SYSTEM

§ 126-8

and individuals are hereby transferred to the State Personnel Board and the State Personnel Department, effective July 1, 1965.

(c) Any status of employment or privilege previously attained by an employee in accordance with the State Personnel Act or the State Merit System Act shall continue under the provisions of this Chapter. (1965, c. 640, s. 2.)

## ARTICLE 2.

*Salaries and Leave of State Employees.*

**§ 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 Board. 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 intermediate salary step nearest to, but not exceeding, the middle of the salary range established for the class to which his position is assigned. Prior to July 1, 1965, 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 Board, shall modify, alter or disapprove any such plan submitted to it which it 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 Board shall establish uniform provisions for a system of payments over and above the standard salary ranges on a basis combining longevity in service and merit in the performance of duties, 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 increments above the step nearest but not exceeding the middle 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 during the first year of the biennium a salary equal to or above the intermediate step of the salary range. With the approval of the State Personnel Board, State departments, bureaus, agencies, or commissions with 25 or less employees subject to the provisions of this Chapter may exceed the two-thirds restriction herein provided. (1965, c. 640, s. 2.)

**§ 126-8. Minimum leave granted State employees.** — The amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Personnel Board which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. Sick leave allowed as needed to such State employees shall be at a rate not less than 10 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions of this section, no full-time State employee subject to the provisions of Chapter 126, as

## GENERAL STATUTES OF NORTH CAROLINA

§ 126-9

CH. 126. STATE PERSONNEL SYSTEM

§ 126-11

the same appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973, shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative to at least 30 days. (1965, c. 640, s. 2; 1973, c. 697, ss. 1, 2.)

**Editor's Note.** — The 1973 amendment rewrote the first sentence and added the third sentence.

## ARTICLE 3.

*Local Discretion as to Local Government Employees.*

**§ 126-9. County or municipal employees may be made subject to rules adopted by local governing body.** — (a) When a board of county commissioners adopts rules and regulations governing annual leave, sick leave, hours of work, holidays, and the administration of the pay plan for county employees generally and the county rules and regulations are filed with the State Personnel Director, the county rules will supersede the rules adopted by the State Personnel Board as to the county employees otherwise subject to the provisions of this Chapter.

(b) No county employees otherwise subject to the provisions of this Chapter may be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with this Chapter without approval of the State Personnel Board. Provided, however, that subject to the approval of the State Personnel Board, a board of county commissioners may adjust the salary ranges applicable to employees who are otherwise subject to the provisions of this Chapter, in order to cause the level of pay to conform to local financial ability and fiscal policy. The State Personnel Board shall adopt policies and regulations to ensure that significant relationships within the schedule of salary ranges are maintained.

(c) When two or more counties are combined into a district for the performance of an activity whose employees are subject to the provisions of this Chapter, the boards of county commissioners of the counties may jointly exercise the authority hereinabove granted in subsections (a) and (b) of this section.

(d) When a municipality is performing an activity by or through employees which are subject to the provisions of this Chapter, the governing body of the municipality may exercise the authority hereinabove granted in subsections (a) and (b) of this section. (1965, c. 640, s. 2.)

**§ 126-10. Personnel services to local governmental units.** — The State Personnel Board may make the services and facilities of the State Personnel Department available upon request to the political subdivisions of the State. The State Personnel Board may establish reasonable charges for the service and facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit of the general fund. (1965, c. 640, s. 2.)

**§ 126-11. Local personnel system may be established.** — The board of county commissioners of any county which shall establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system is found from time to time by the State Personnel Board to be substantially equivalent to the system established under Article 1 of this Chapter for employees of local welfare departments, public health departments, and mental health clinics, may include employees of these local agencies within the terms of such system. Employees covered by that system shall be exempt from the provisions of Article 1 of this Chapter. (1965, c. 640, s. 2.)

**Applied** in *Bean v. Darr*, 354 F. Supp. 1157 (M.D.N.C. 1973).

## GENERAL STATUTES OF NORTH CAROLINA

§ 126-12

CH. 126. STATE PERSONNEL SYSTEM

§ 126-16

## ARTICLE 4.

*Competitive Service.*

§ 126-12. **Governor and Council of State to determine competitive service.** — The Governor, with the approval of the Council of State, shall from time to time determine for which, if any of the positions subject to the provisions of Article 1 of this Chapter, appointments and promotions shall be based on a competitive system of selection. (1965, c. 640, s. 2.)

## ARTICLE 5.

*Political Activity of Employees.*

§ 126-13. **Appropriate political activity of State employees defined.** — As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in a partisan election involving candidates for office or party nominations, or affect the results thereof. (1967, c. 821, s. 1.)

§ 126-14. **Promise or threat to obtain political contribution or support.** — No State employee or official shall use any promise of personal preferential treatment or threat of loss to encourage or coerce any State employee subject to the Personnel Act or temporary State employees to support or contribute to any political issue, candidate, or party. (1967, c. 821, s. 1.)

**State Government Reorganization.** — The Veterans Affairs by § 143B-248, enacted by Adjutant General's Department was transferred to the Department of Military and Session Laws 1973, c. 620, s. 3.

§ 126-15. **Disciplinary action for violation of Article.** — Failure to comply with this Article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office. (1967, c. 821, s. 1.)

## ARTICLE 6.

*Equal Employment Opportunity.*

§ 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 or sex, to all persons otherwise qualified. (1971, c. 823.)



## GENERAL STATUTES OF NORTH CAROLINA

(State personnel Act)

## REORGANIZATION PROVISIONS

**§ 143A-9. Appointment of officers and employees; salaries of department heads.** — Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure. The salary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendation of the Governor. Salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly.

The head of a principal department shall appoint the chief deputy or chief assistant and such chief deputy or chief assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department.

In establishing the position of secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments. (1971, c. 864, s. 1.)

**§ 143A-10. Governor; continuation of powers and duties; staff.** — All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly. (1971, c. 864, s. 1.)



## GENERAL STATUTES OF NORTH CAROLINA

§ 150A-1

1974 SUPPLEMENT

§ 150A-1

## Chapter 150A.

## Administrative Procedure Act.

## Article 1.

## General Provisions.

Sec.

- 150A-1. Scope and policy.  
 150A-2. Definitions.  
 150A-3. Special provisions on licensing.  
 150A-4 to 150A-8. [Reserved.]

## Article 2.

## Rule Making.

- 150A-9. Minimum procedural requirements.  
 150A-10. Definition.  
 150A-11. Special requirements.  
 150A-12. Procedure for adoption of rules.  
 150A-13. Emergency rules.  
 150A-14. Adoption by reference.  
 150A-15. Continuation of rules.  
 150A-16. Petition for adoption of rules.  
 150A-17. Declaratory rulings.  
 150A-18 to 150A-22. [Reserved.]

## Article 3.

## Administrative Hearings.

- 150A-23. Hearing required; notice; intervention.  
 150A-24. Venue of hearing.  
 150A-25. Conduct of hearing; answer.  
 150A-26. Consolidation.  
 150A-27. Subpoena.  
 150A-28. Depositions and discovery.  
 150A-29. Rules of evidence.  
 150A-30. Official notice.  
 150A-31. Stipulations.  
 150A-32. Designation of hearing officer.  
 150A-33. Powers of hearing officer.  
 150A-34. Proposal for decision.  
 150A-35. No ex parte communication; exceptions.  
 150A-36. Final agency decision.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, makes this Chapter effective on and after July 1, 1975, and provides that it shall not affect any pending administrative hearings.

Session Laws 1973, c. 1331, s. 3, provides: "All references in the General Statutes to a section of Chapter 150 of the General Statutes not contained in this act and all references in the

Sec.

- 150A-37. Official record.  
 150A-38 to 150A-42. [Reserved.]

## Article 4.

## Judicial Review.

- 150A-43. Right to judicial review.  
 150A-44. Right to judicial intervention when agency unreasonably delays decision.  
 150A-45. Manner of seeking review; time for filing petition; waiver.  
 150A-46. Contents of petition; copies served on all parties; intervention.  
 150A-47. Record filed by agency with clerk of superior court; contents of record; costs.  
 150A-48. Stay of board order.  
 150A-49. Procedure for taking newly discovered evidence.  
 150A-50. Review by court without jury on the record.  
 150A-51. Scope of review; power of court in disposing of case.  
 150A-52. Appeal to appellate division; obtaining stay of court's decision.  
 150A-53 to 150A-57. [Reserved.]

## Article 5.

## Publication of Administrative Rules.

- 150A-58. Short title and definition.  
 150A-59. Filing of rules.  
 150A-60. Form of rules.  
 150A-61. Authority of Attorney General to revise form.  
 150A-62. Public inspection and notification of current and replaced rules.  
 150A-63. Publication of rules.  
 150A-64. Judicial and official notice.

General Statutes to Article 18 of Chapter 143 or any of the sections contained therein (143-195 — 143-198.1) or to Article 33 of Chapter 143 or any of the sections contained therein (143-306 — 143-316) are hereby amended to read 'Chapter 150[A] of the General Statutes.'

## ARTICLE 1.

## General Provisions.

**§ 150A-1. Scope and policy.** — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this

action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to July 1, 1975, which provide for the summary suspension of a license. (1973, c. 1331, s. 1.)

§§ 150A-4 to 150A-8: Reserved for future codification purposes.

## ARTICLE 2.

### *Rule Making.*

**§ 150A-9. Minimum procedural requirements.** — It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in G.S. 150A-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any agency thereof. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article. (1973, c. 1331, s. 1.)

**§ 150A-10. Definition.** — As used in this Article, "rule" means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

- (1) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
- (2) Declaratory rulings issued pursuant to G.S. 150A-17;
- (3) Intraagency memoranda, except those to agency staff which implement or prescribe law or policy;
- (4) Statements of policy or interpretations that are made in the decision of a contested case;
- (5) Rules concerning the use or creation of public roads or facilities which are communicated to the public by use of signs or symbols;
- (6) Interpretative rules and general statements of policy of the agency. (1973, c. 1331, s. 1.)

**§ 150A-11. Special requirements.** — In addition to other rule-making requirements imposed by law, each agency shall:

- (1) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.
- (2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.
- (3) With respect to all final orders, decisions, and opinions made after July 1, 1975, make available for public inspection together with all materials that were before the deciding officers at the time the final order, decision, or opinion was made, except materials properly for good cause held confidential. (1973, c. 1331, s. 1.)

Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Motor Vehicles or the Department of Revenue.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies. (1973, c. 1331, s. 1.)

**§ 150A-2. Definitions.** — As used in this Chapter,

- (1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) "Contested case" is any agency proceeding, by whatever name called, wherein the legal rights, duties or privileges of specific parties are to be determined. Contested cases include, but are not limited to, proceedings involving rate making, price fixing and licensing. Contested cases shall not be deemed to include rule making and declaratory rulings.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in a trade, occupation, or other activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending or revoking a license.
- (5) "Party" means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the hearing agency where appropriate; provided, this shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.
- (6) "Person aggrieved" means any person, firm, corporation, or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business. (1973, c. 1331, s. 1.)

**§ 150A-3. Special provisions on licensing.** — (a) When a licensee makes timely and sufficient application for renewal of a license or a new license (including the payment of any required license fee) with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending such license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, an agency shall give notice to the licensee, pursuant to the provisions of G.S. 150A-23(c), of alleged facts or alleged conduct which warrant the intended

**§ 150A-12. Procedure for adoption of rules.** — (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 10 days before the public hearing and at least 20 days before the adoption, amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed.
- (2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.
- (3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(b) The agency shall transmit copies of the notice to the Attorney General and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) The agency shall publish the notice as prescribed in any applicable statute or, if none, shall publish the notice in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications. If the persons likely to be affected by the proposed rule are unorganized or diffuse in character and location, then the agency shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

(d) The public hearing shall comply with any applicable statute but is not subject to the provisions of this Chapter governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(e) The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. (1973, c. 1331, s. 1.)

**§ 150A-13. Emergency rules.** — If any agency finds that an imminent peril to the public health, safety, or welfare requires adoption, amendment, or repeal of a rule, without notice or upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. This rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under G.S. 150A-12 is not precluded. (1973, c. 1331, s. 1.)

**§ 150A-14. Adoption by reference.** — An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of this State or of the United States or by a generally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies

of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted. (1973, c. 1331, s. 1.)

**§ 150A-15. Continuation of rules.** — When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency. (1973, c. 1331, s. 1.)

**§ 150A-16. Petition for adoption of rules.** — Any person may petition an agency requesting the promulgation, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with G.S. 150A-12 and G.S. 150A-13. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review, which shall be limited to questions of abuse of discretion. (1973, c. 1331, s. 1.)

**§ 150A-17. Declaratory rulings.** — On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review. (1973, c. 1331, s. 1.)

§§ 150A-18 to 150A-22: Reserved for future codification purposes.

### ARTICLE 3.

#### *Administrative Hearings.*

**§ 150A-23. Hearing required; notice; intervention.** — (a) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given a reasonable notice of the hearing, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved;  
and
- (3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by registered mail. If given by registered mail, it shall be deemed to have been given on the date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by registered mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(d) Any person may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. In addition, any person interested in an agency proceeding may intervene and participate in that proceeding to the extent deemed appropriate by the hearing agency.

(e) All hearings under this Chapter shall be open to the public. (1973, c. 1331, s. 1.)

**§ 150A-24. Venue of hearing.** — When a hearing on a contested case is conducted by a hearing officer or less than a majority of an agency, the hearing shall be conducted in a county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence.

If the hearing is conducted by a majority of the agency, then the hearing shall be held in the county where the agency maintains its principal office.

When a different county would promote the ends of justice or better serve the convenience of witnesses, the agency hearing the case may in its discretion designate another county. In any case, however, the person whose property or rights are involved and the agency hearing the case may agree that the hearing is to be held in some other county.

The person whose property or rights are the subject matter of the hearing shall not be deemed to have waived any objection to venue merely by proceeding in the hearing. (1973, c. 1331, s. 1.)

**§ 150A-25. Conduct of hearing; answer.** — (a) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence. (1973, c. 1331, s. 1.)

**§ 150A-26. Consolidation.** — When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1973, c. 1331, s. 1.)

**§ 150A-27. Subpoena.** — An agency is hereby authorized to issue subpoenas upon its own motion or upon a written request. When such written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if, upon a hearing the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. (1973, c. 1331, s. 1.)



**§ 150A-28. Depositions and discovery.** — (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. An agency authorized to adjudicate contested cases may adopt rules providing for discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party. (1973, c. 1331, s. 1.)

**§ 150A-29. Rules of evidence.** — (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150A-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1.)

**§ 150A-30. Official notice.** — Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1973, c. 1331, s. 1.)

**§ 150A-31. Stipulations.** — (a) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1.)

**§ 150A-32. Designation of hearing officer.** — (a) An agency, one or more members of the agency, a person or group of persons designated by statute or one or more hearing officers designated and authorized by the agency to handle contested cases, shall be hearing officers in contested cases. Hearings shall be conducted in an impartial manner.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with

the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1.)

**§ 150A-33. Powers of hearing officer.** — A hearing officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to the General Court of Justice, Superior Court Division, during or subsequent to a hearing for an order to show cause why any person should not be held in contempt of the agency and its processes, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. (1973, c. 1331, s. 1.)

**§ 150A-34. Proposal for decision.** — (a) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case, the decision shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the officials who are to make the decision.

(b) The proposal for decision shall contain proposed findings of fact and proposed conclusions of law. This proposal for decision shall be prepared by a person who conducted the hearing unless he becomes unavailable to the agency. If no such person is available, the findings may be prepared by one who has read the record, unless demeanor of witnesses is a factor. If demeanor is a factor, the portions of the hearing involving demeanor shall be held again, or the case shall be dismissed without prejudice.

(c) The parties, by written stipulation or at the hearing, may waive compliance with this section. (1973, c. 1331, s. 1.)

**§ 150A-35. No ex parte communication; exceptions.** — Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party or his representative, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis, or rate making in a contested case insofar as the case involves rate making or financial practices or conditions. (1973, c. 1331, s. 1.)

**§ 150A-36. Final agency decision.** — A final decision or order of an agency in a contested case shall be made, after review of the official record as defined in G.S. 150A-37(a), in writing and shall include findings of fact and conclusions

of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 or G.S. 150A-31. A copy of the decision or order shall be served upon each party personally or by registered mail and a copy furnished to his attorney of record. (1973, c. 1331, s. 1.)

**§ 150A-37. Official record.** — (a) An agency shall prepare an official record of a hearing which shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1973, c. 1331, s. 1.)

**§§ 150A-38 to 150A-42:** Reserved for future codification purposes.

#### ARTICLE 4.

##### *Judicial Review.*

**§ 150A-43. Right to judicial review.** — Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1.)

**§ 150A-44. Right to judicial intervention when agency unreasonably delays decision.** — Unreasonable delay on the part of any agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1973, c. 1331, s. 1.)

**§ 150A-45. Manner of seeking review; time for filing petition; waiver.** — In order to obtain judicial review of a final agency decision under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a local agency or local board and appealed to the State board, the petition may be filed in the superior court of the county where the original determination was made. Such petition may be filed at any time after final decision, but must be filed not later than 30 days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the

agency decision under this Chapter notwithstanding such waiver. (1973, c. 1331, s. 1.)

**§ 150A-46. Contents of petition; copies served on all parties; intervention.** — The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1.)

**§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs.** — Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1.)

**§ 150A-48. Stay of board order.** — At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the agency decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1.)

**§ 150A-49. Procedure for taking newly discovered evidence.** — At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be taken. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1973, c. 1331, s. 1.)

**§ 150A-50. Review by court without jury on the record.** — The review of agency decisions under this Chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo. (1973, c. 1331, s. 1.)

**§ 150A-51. Scope of review; power of court in disposing of case.** — The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1973, c. 1331, s. 1.)

**§ 150A-52. Appeal to appellate division; obtaining stay of court's decision.** — Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the agency decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1331, s. 1.)

**§§ 150A-53 to 150A-57:** Reserved for future codification purposes.

## ARTICLE 5.

### *Publication of Administrative Rules.*

**§ 150A-58. Short title and definition.** — (a) This Article may be cited as "The Registration of State Administrative Rules Act."

(b) As used in this Article, "rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

"Rule" shall not include:

- (1) Rules, procedures, or regulations which relate only to the internal management of any agency;
- (2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- (3) Dispositions of any specific issue or matter by the process of adjudication; and
- (4) Orders establishing or fixing rates or tariffs. (1973, c. 1331, s. 1.)

**§ 150A-59. Filing of rules.** — (a) Rules adopted by any agency on or after July 1, 1975, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after June 30, 1975, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. (1973, c. 1331, s. 1.)

**§ 150A-60. Form of rules.** — In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;

- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
- (4) Be in the physical form specified by the Attorney General. (1973, c. 1331, s. 1.)

**§ 150A-61. Authority of Attorney General to revise form.** — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catchlines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency. (1973, c. 1331, s. 1.)

**§ 150A-62. Public inspection and notification of current and replaced rules.** — (a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule. The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150A-61."

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public. (1973, c. 1331, s. 1.)

**§ 150A-63. Publication of rules.** — (a) The Attorney General shall compile index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1975, the Attorney General shall

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publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General. (1973, c. 1331, s. 1.)

**§ 150A-64. Judicial and official notice.** — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article. (1973, c. 1331, s. 1.)





## U. S. CIVIL SERVICE COMMISSION



1166 Merchandise Mart  
240 Peachtree Street, N. W.  
Atlanta, Georgia 30303  
Sept. 20, 1973

INFORMAL

TO: Mr. Claude Caldwell  
Personnel Director  
Raleigh, North Carolina

Mr. Hammond B. Smith, Regional Director for the Civil Service Commission, has asked Federal funding agencies to request assurances from their program agencies in North Carolina to honor the Personnel Board's decisions as final in cases of alleged discrimination until such time as the North Carolina Legislature has passed appropriate legislation. For your information we are enclosing copies of Mr. Smith's letters to the Federal agencies requesting that assurances be secured from the grant-aided agencies in North Carolina listed on the attachment.

Attachments

From: *C. Lane Reece*  
C. Lane Reece  
Chief, Merit Systems and Technical  
Assistance Branch, DIPP

DIPP-2 10/71

Commission for the Blind  
Department of Social Services  
Coordinating Council on Aging  
Dept. of Labor (Occupational Safety and Health  
Statistics and Occupational Safety and  
Health Administration)  
Division of Civil Preparedness  
North Carolina Federal Property Agency  
Manpower Council  
Employment Security Commission  
State Board of Health  
Office of Comprehensive Health Planning  
Medical Care Commission  
North Carolina Drug Authority  
Department of Mental Health

September 10, 1973

Mr. Eddie J. Sessions  
 Acting Regional Health Administrator, H  
 Attn: William B. Lyons  
 Public Health Service  
 Dept. of Health, Education & Welfare  
 Room 866, 50 Seventh St., N.E.  
 Atlanta, Georgia 30323

Dear Mr. Sessions:

The Equal Employment Opportunity section of the Federal "Standards for a Merit System of Personnel Administration" requires that State "...regulations will include provisions for appeals in cases of alleged discrimination to an impartial body whose determination shall be binding upon a finding of discrimination." It has recently come to our attention that it will be necessary for the North Carolina Legislature to amend the State Personnel Law (Chapter 126-4, (9) ) to give the Personnel Board authority to make a final decision in appeals alleging discrimination. Although the rules and regulations covering positions under the competitive service contain such a provision, it is our understanding that it is necessary for the State of North Carolina Legislature to take action to give the Personnel Board this authority.

At the time the above information came to our attention, legislation was pending in the North Carolina Legislature to amend the Personnel Law to give the Personnel Board final authority in cases of appeals alleging discrimination. The legislation did not pass the North Carolina Senate, which is now adjourned until January 1974. We are therefore requesting that your office secure a letter from each of the following programs funded by your agency assuring that they will honor the Personnel Board's decisions as final in cases of appeals alleging discrimination until such time as the appropriate legislation is passed. The programs about which we are concerned are located in the State Board of Health, Office of Comprehensive Health Planning, Medical Care Commission and the Department of Mental Health agencies.

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One copy of the assurances should be sent to this office, one copy to Mr. Caldwell, State Personnel Director, and one copy should be retained in your office.

Sincerely yours,

HAYMOND B. SMITH  
 Regional Director

cc:  
 Claude Caldwell ✓



