

KFN  
7734.5  
.D5  
A25  
1993

**LEGISLATIVE  
RESEARCH COMMISSION**

---

**ALTERNATIVE APPROACHES TO DEAL WITH  
DISCRIMINATION IN EMPLOYMENT**



**REPORT TO THE  
1993 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

**LEGISLATIVE LIBRARY**

**A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE  
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.**

**ROOMS 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27611  
TELEPHONE: (919) 733-7778**

**OR**

**ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NORTH CAROLINA 27603-5925  
TELEPHONE: (919) 733-9390**

TABLE OF CONTENTS

Letter of Transmittal..... i

Legislative Research Commission Membership.....ii

PREFACE..... 1

COMMITTEE PROCEEDINGS..... 3

RECOMMENDATIONS.....10

APPENDICES

Appendix A:  
 Relevant portions of Chapter 754 of the 1991  
 Session Laws authorizing the study .....13

Appendix B:  
 House Bill 555 of the 1991 Session .....14

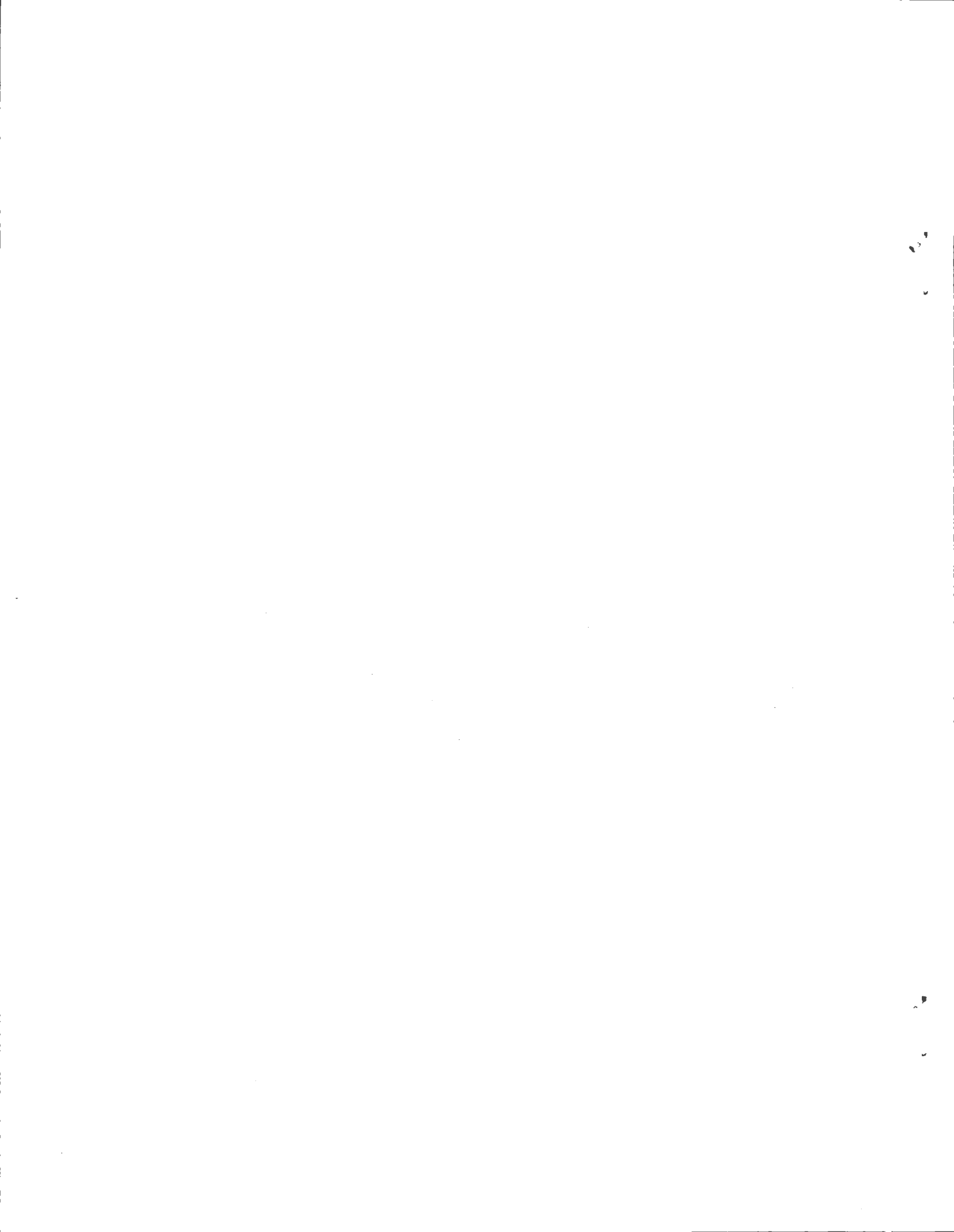
Appendix C:  
 Membership of the LRC Committee on  
 Alternative Approaches to Deal with  
 Discrimination in Employment.....16

Appendix D:  
 Legislative Proposal I -- A BILL TO BE ENTITLED  
 AN ACT TO AMEND THE STATE PERSONNEL SYSTEM  
 LAWS CONCERNING EMPLOYMENT DISCRIMINATION,  
 AUTHORIZE THE CIVIL RIGHTS DIVISION OF THE  
 OFFICE OF ADMINISTRATIVE HEARINGS TO ISSUE  
 SUBPOENAS, AND AUTHORIZE THE ATTORNEY GENERAL  
 TO SEEK INJUNCTIVE RELIEF ON BEHALF OF THE  
 CIVIL RIGHTS DIVISION OF THE OFFICE OF  
 ADMINISTRATIVE HEARINGS  
 and a Section-by-Section Analysis of the Bill.....18

Appendix E:  
 Legislative Proposal II -- A BILL TO BE ENTITLED  
 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH  
 COMMISSION TO CONTINUE A STUDY OF ALTERNATIVE  
 APPROACHES TO DEAL WITH DISCRIMINATION IN  
 EMPLOYMENT .....21

Appendix F:  
 Concerns and Recommendations for Highway Patrol  
 Promotion Procedures .....23

KFN 7734.5 .D5 A25 1993



STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611





January 27, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on discrimination in employment. The report was prepared by the Legislative Research Commission's Committee on Alternative Approaches to Deal with Discrimination in Employment pursuant to Section 2.1 of Chapter 754 of the 1991 Session Laws.

Respectfully submitted,

  
Daniel T. Blue, Jr.  
Speaker of the House

  
Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission



1991-1992

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of  
the Senate  
Henson P. Barnes, Cochair

Senator Frank W. Ballance, Jr.  
Senator Howard F. Bryan  
Senator J. K. Sherron, Jr.  
Senator Lura Tally  
Senator Russell G. Walker

Speaker of the House of  
Representatives  
Daniel T. Blue, Jr., Cochair

Rep. Marie W. Colton  
Rep. W. Pete Cunningham  
Rep. E. David Redwine  
Rep. Frank E. Rhodes  
Rep. Peggy M. Stamey





## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1991 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Alternative Approaches to Deal with Discrimination in Employment was authorized by Section 2.1 of Chapter 754 of the 1991 Session Laws (1991 Regular Session). That act states that the Commission may consider House Bill 555 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 754 are included in Appendix A. A copy of House Bill 555 is included in Appendix B. The Legislative Research Commission grouped this study in its Labor area under the direction of Representative Pete Cunningham. The Committee is chaired by Senator Helen Marvin and Representative Annie B. Kennedy. The full membership of the Committee is listed in Appendix C of this report. A committee

notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Legislative Research Commission study Committee on Alternative Approaches to Deal with Discrimination in Employment convened for a total of nine meetings: a series of five after the close of the 1991 Session of the General Assembly (December 16, 1991; January 21, 1992; February 25, 1992; March 31, 1992; and April 22, 1992) and four meetings upon the completion of the 1992 Short Session: October 7, November 4, November 23, and December 18, 1992.

During its five earlier meetings, the Committee's primary effort was focused on identifying and defining specific issues and areas of concern which might warrant its attention during the study period. (A synopsis of these meetings can be found in the Committee's interim report to the 1992 Session of the General Assembly.) In the subsequent four meetings the Committee first examined questions relating to the grievance process for state employees and then attempted to develop solutions to address the problems which had been raised.

### **October 7, 1992 Meeting**

At its first meeting after the completion of the 1992 Regular Session, the Committee began to pursue questions relating to the State employee grievance process. Mr. Ed Smith, Director of the Civil Rights Division of the Office of Administrative Hearings, explained in detail the need for and rationale behind each provision in the proposal that was presented, from his office, to the Committee at its April 22 meeting.

With considerable discussion the Committee made decisions to amend the State Personnel Act:

- To change the filing period for employment discrimination cases from the present 30 days to 180 days in order to eliminate confusion and more closely track the present federal law;
- To require that all state agencies and departments notify employees of their right to file an employment discrimination action, and include information as to when, where, and how to file an action;
- To allow employees, former employees, or applicants to grieve any employment-related action arising out of the denial of such when unlawful employment discrimination was the basis used for the determination;
- To enable employees occupying policy-making exempt positions to come within the purview of the employment discrimination provisions of the State Personnel Act; and finally
- To provide for comparable damages for prevailing parties.

The Committee further agreed to amend the appropriate general statute to specifically provide the Civil Rights Division of the Office of Administrative Hearings with the authority to issue subpoenas. The statute would also be amended to clarify that the Attorney General would have the responsibility for instituting civil action to seek injunctive relief.

Mr. Danny Addison of the North Carolina Human Relations Commission presented, for the Committee's consideration, draft fair employment practices legislation entitled AN ACT TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, AND DISABILITY. He gave a brief summary of the draft provisions with full discussion and committee review being scheduled for a later meeting. In summarizing, he pointed out that the proposed legislation:

- Represented an updated redraft of the original HB 555 filed in the 1991 Session of the General Assembly;
- Incorporated into state law those changes or provisions to Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA) which were adopted by Congress in the Civil Rights Act of 1991;
- Applies to employers with 15 or more employees and as such, only mirrors current federal law;
- If adopted, would be enforced by the North Carolina Human Relations Commission which would have investigative, conciliation, and when warranted, suit-filing authority;
- Contains a provision which states specifically that any current common law rights or remedies are not to be diminished; and
- Includes language to enable local governments which so desire, to develop their own fair employment practices program.

Members of Equal Treatment Now, an organization of current and former state employees whose goal is to end discrimination in North Carolina state government, petitioned the Committee that they be allowed to make comments. Several members, Mr. Harry King, Mr. Isaiah Green, and Mr. William Peace, spoke briefly about their experience regarding employment discrimination in state government. During the course of their comments, the Committee raised several concerns. This resulted in the Committee's request for demographic data on state government departments and a decision to hold a public hearing to further identify and examine the problem areas.

#### **November 4, 1992 Meeting**

In an effort to gain insight into the problems that may exist in state government in the employment arena and further guide the Committee's work, the Committee held a

public hearing to receive comments, observations, and experiences relating to discrimination in employment.

Twenty-two individuals addressed the Committee and shared their personal experiences, concerns and observations or presented views representing a consensus of the members in their organization(s). Agency representatives were to be given an opportunity to respond to concerns or address general issues at the Committee's subsequent meeting.

### **November 23, 1992 Meeting**

Representatives from several agencies addressed the Committee in follow-up to a number of points which had been raised at the public hearing. Ms. Jane Gray from the Office of the Attorney General stated that discrimination in employment is not rampant in state government. To document the statement, she provided figures as to the number of cases filed and rulings of discrimination made during the last several years. Ms. Gray also explained her office's responsibility in defending state government agencies in general and in these cases in particular. She also spoke to the general adequacy of current law in addressing issues of discrimination in employment.

Ms. Barbara Coward, Administrator for the State Personnel Commission with the Office of State Personnel (OSP), provided information and clarified policy items for the Committee. She reminded members of the State Personnel Commission's mandate, described the Commission's role in the appeals process, and cited the numbers and types of cases handled by the Commission for the past two years. She explained OSP's policy approach regarding outside attorneys representing employees at the department hearing stage in the grievance process.

Ms. Nellie Riley, Director of Equal Employment Opportunity Services at the Office of State Personnel, provided demographic information as to the percentages of

women and minorities in the various federal occupational categories in North Carolina state government. Her figures indicated that minorities are the lowest-paid group of each category, even within occupational groupings where they have the greatest numerical presence. She further concluded that the number of women and minorities decreases consistently as the salary grade increases. Ms. Riley suggested nine recommendations to make strides toward improving the situation.

Several agency representatives from the Department of Human Resources were recognized to provide information on that department's equal employment record and to address allegations aired during the public hearing. The Committee heard comments from: Mr. George Jones, Assistant Secretary of the department; Ms. Mary Deyampert, Director of the Division of Social Services; and Mr. Herman Gruber, Director of the Division of Social Services for the Blind.

Finally, Mr. R. Edison Elkins, Executive Director of the International Association of Official Human Rights Agencies, spoke to discrimination in employment concerns as a nationwide concern and from a national perspective. Mr. Elkins explained how member agencies enforce state and local civil rights laws in their respective jurisdictions, the usual funding sources, and the extent of their legislation to prohibit discrimination.

Mr. Elkins addressed the restriction in EEOC funding over the past several years. He expressed his concern with a growing backlog of uninvestigated cases and the resulting greater potential liability for employers. In closing, he urged the passage of a comprehensive fair employment law in the State of North Carolina and a more shared responsibility in protecting the public from illegal discrimination.

December 18, 1992 Meeting

At its final meeting, the Committee closely considered the draft fair employment practices legislation presented at the October 7 meeting. In regard to the draft legislation, Mr. Danny Addison spoke about private sector employment discrimination and the strong need for North Carolina to take the responsibility for dealing with this issue for that segment of the State's work force.

Mr. Jim Stowe, Executive Director of the North Carolina Human Relations Commission, gave some history and background information on the discussions of this issue, from 1976 to the present. He explained why the Commission feels the pressing need for this legislation and pointed out that 46 other states (including the District of Columbia) offer protection to their privately employed citizens.

He proceeded to detail the anticipated structure that the Commission would utilize to process the expanded case-load, enumerate the benefits from having such work conducted in-house at the state level, and explain the value as a front-end resource and how that would benefit businesses and companies in the State. Mr. Stowe outlined the anticipated contractual arrangement with the Equal Employment Opportunity Commission (EEOC) which would assist in funding the additional work. He estimated that, initially, an additional State appropriation of \$100,000 would be adequate, with the final cost to the State expected to be minimal.

The Committee concluded that the issue of instituting a fair employment practices law and expanding the scope of the Human Relations Commission needed further study and deliberation.

Information concerning problems with the promotional procedures within the Highway Patrol and its potential, if not apparent, disparate impact upon minorities was presented. At issue is the fact that, in addition to a satisfactory performance evaluation, a satisfactory promotional potential rating of "ten traits" must be completed by the first sergeant before a trooper is eligible to advance in the promotion process.



The Committee approved a recommendation to call for review and revision of the promotional rules and procedures to the end that they reflect a less subjective and more equitable process. (See Appendix F)

The pieces of draft legislation to be incorporated into the Committee's report were reviewed, various courses of action were discussed and final recommendations and proposals to be made to the General Assembly were approved.



## RECOMMENDATIONS

The study Committee on Alternative Approaches to Deal with Discrimination in Employment recommends to the 1993 General Assembly:

**Recommendation #1:**

That legislation be enacted to amend the State Personnel Act to require that all state departments and agencies provide express notice to their employees of the right to file an employment discrimination action and include information as to when, where, and how such filings must be made. (See Legislative Proposal I)

**Recommendation #2:**

That legislation be enacted to amend the State Personnel Act to provide that aggrieved persons may file a grievance within 180 days from the date of the last alleged discriminatory action which would conform North Carolina's state law with the current federal requirements. (See Legislative Proposal I)

**Recommendation #3:**

That legislation be enacted to amend the State Personnel Act to designate that any employee, former employee or applicant of all state departments and agencies and all local political subdivisions

subject to Chapter 126 may grieve any employment action arising out of unlawful discrimination. (See Legislative Proposal I)

**Recommendation #4:**

That legislation be enacted to amend the State Personnel Act to permit those State employees designated as policy-making exempt to grieve alleged discriminatory actions under the provisions of Chapter 126. (See Legislative Proposal I)

**Recommendation #5:**

That legislation be enacted to amend the State Personnel Act to provide that prevailing aggrieved persons be entitled to seek injunctive relief, damages, reinstatement, payment of back wages, reasonable attorney fees, or any combination of remedies. (See Legislative Proposal I)

**Recommendation #6:**

That legislation be enacted to amend the statutes to authorize the Civil Rights Division of the Office of Administrative Hearings to issue subpoenas, if required as a part of their investigation of discrimination charges. (See Legislative Proposal I)

**Recommendation #7:**

That legislation be enacted to amend the statutes to authorize that the Office of Attorney General seek injunctive relief on behalf of the

Civil Rights Division of the Office of Administrative Hearings. (See Legislative Proposal I)

**Recommendation #8:**

That the State Personnel Act be amended to provide that discrimination grievances be heard first by the State Personnel Commission with the appeal of the Commission's decision to be heard by an Administrative Law Judge in the Office of Administrative Hearings. (See Legislative Proposal I)

**Recommendation #9:**

That the General Assembly continue to study the issue of alternative approaches to deal with discrimination in employment that it may be more closely and thoroughly examined with an eye to developing sound, viable recommendations to address this complex issue. (See Legislative Proposal II)

**Recommendation #10:**

That the Secretary for Crime Control and Public Safety take appropriate steps to review and revise the rules governing recruitment and promotion within the North Carolina State Highway Patrol and ensure that the revised rules provide for fairer and more equitable procedures that are consistent with and reflective of the spirit of those recommendations found in Appendix F of this report.



APPENDIX A

CHAPTER 754  
SENATE BILL 917

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES, AND TO MAKE OTHER AMENDMENTS TO THE LAW.

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1991."

. . . . .

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1991 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (13) Alternative Approaches to Deal with Discrimination in Employment (H.B. 555 - Kennedy),

. . . . .

Sec. 2.7. Committee Membership. For each Legislative Research Commission Committee created during the 1991-93 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.8. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1992 Regular Session of the 1991 General Assembly or the 1993 General Assembly, or both.

Sec. 2.9. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

sec. 2.10. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

. . . . .

PART XXI.-----EFFECTIVE DATE

Sec. 21.1. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.





APPENDIX B

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 555  
Committee Substitute Favorable 6/12/91

Short Title: Employment Discrimination Study.

(Public)

---

Sponsors:

---

Referred to:

---

April 1, 1991

A BILL TO BE ENTITLED

1 AN ACT TO CREATE AN INDEPENDENT STUDY COMMISSION TO STUDY  
2 THE DIRECTION STATE LAW SHOULD TAKE IN DEALING WITH  
3 DISCRIMINATION IN EMPLOYMENT BASED ON RACE, COLOR,  
4 RELIGION, SEX, NATIONAL ORIGIN, AGE, OR DISABILITY.  
5

6 Whereas, it is the policy of the State of North Carolina, as stated in  
7 G.S. 143-422.2, to "protect and safeguard the right and opportunity of all  
8 persons to seek, obtain and hold employment without discrimination and  
9 abridgement on account of race, religion, color, national origin, age, sex or  
10 handicap by employers which regularly employ 15 or more employees"; and

11 Whereas, the Human Relations Commission in the Department of  
12 Administration is now empowered to receive certain discrimination charges  
13 under federal law from the U.S. Equal Employment Opportunity Commission  
14 and to investigate and conciliate those charges; and

15 Whereas, it has been proposed that the General Assembly enact for  
16 the State the contents of the Civil Rights Act of 1964 as amended, the Age  
17 Discrimination in Employment Act of 1967 as amended, and the Americans  
18 With Disabilities Act of 1990, and empower the Human Relations Commission  
19 to enforce those acts through an arrangement with the Equal Employment  
20 Opportunity Commission, as is done in some other states; and

21 Whereas, the question has arisen whether such an arrangement  
22 would limit the remedies available to plaintiffs in the developing body of

1 antidiscrimination precedents under the common law in North Carolina; Now,  
2 therefore,

3 The General Assembly of North Carolina enacts:

4           Section 1. There is established the North Carolina Commission on  
5 Employment Discrimination Law (hereinafter "the Study Commission").

6           Sec. 2. The Study Commission shall be composed of 14 members:  
7 seven to be appointed by the Speaker of the House of Representatives and  
8 seven to be appointed by the President Pro Tempore of the Senate.  
9 Appointments to the Study Commission shall be made within 30 days  
10 subsequent to the adjournment of the General Assembly in 1991. The Speaker  
11 of the House and the President Pro Tempore of the Senate shall each designate  
12 a cochair from among their appointees. Either cochair may call the first  
13 meeting of the Study Commission. Vacancies shall be filled in the same  
14 manner as the original appointments were made.

15           Sec. 3. The Study Commission may study the desirability of various  
16 alternative approaches that might be taken in State law to deal with  
17 discrimination in employment, including but not limited to enacting the  
18 contents of federal antidiscrimination legislation and empowering the Human  
19 Relations Commission to enforce those provisions.

20           Sec. 4. At the request of the Study Commission, the Legislative  
21 Services Commission may assign professional and clerical staff to assist in the  
22 work of the Study Commission. The Study Commission may also employ any  
23 professional and clerical staff it deems necessary to the performance of its  
24 duties. With the approval of the Legislative Services Commission, the Study  
25 Commission may meet in the State Legislative Building or the Legislative  
26 Office Building.

27           Sec. 5. Members of the Study Commission who are members of the  
28 General Assembly shall receive subsistence and travel allowances as provided  
29 by G.S. 120-3.1. Members who are State officers or employees shall receive  
30 subsistence and travel allowances as provided by G.S. 138-6. All other  
31 members shall receive per diem, subsistence, and travel allowances as provided  
32 by G.S. 138-5.

33           Sec. 6. The Study Commission may report its findings, together  
34 with any recommended legislation, to the 1992 Session of the 1991 General  
35 Assembly, to the 1993 General Assembly, or to both.

36           Sec. 7. Of the funds appropriated to the General Assembly there is  
37 allocated the sum of \$50,000 for the 1991-92 fiscal year and the sum of  
38 \$50,000 for the 1992-93 fiscal year to fund the work of the Study Commission  
39 created by this act.

40           Sec. 8. This act is effective upon ratification.

## APPENDIX C

### MEMBERSHIP OF LRC COMMITTEE ON ALTERNATIVE APPROACHES TO DEAL WITH DISCRIMINATION IN EMPLOYMENT

**LRC Member:** Representative W. Pete Cunningham  
3121 Valleywood Pl.  
Charlotte, NC 28216  
(704) 394-0919

#### Members:

##### President Pro Tempore's Appointments

Sen. Helen R. Marvin, Cochair  
119 Ridge Lane  
Gastonia, NC 28054  
(704) 864-2757

Sen. Austin M. Allran  
Box 2907  
Hickory, NC 28603  
(704) 324-5200

Mr. Stephen B. Hill  
P.O. Box 190  
Hookerton, NC 28538

Sen. David R. Parnell  
P.O. Box 100  
Parkton, NC 28371  
(919) 858-3521

Sen. James F. Richardson  
1739 Northbrook Drive  
Charlotte, NC 28216  
(704) 399-1555

Sen. A. P. Sands, III  
P.O. Box 449  
Reidsville, NC 27323-0449  
(919) 349-7041

Mr. Edward T. Smith  
Office of Administrative Hearings  
1203 Front Street  
Building 2B, Second Floor  
Raleigh, NC 27612  
(919) 733-0431

##### Speaker's Appointments

Rep. Annie B. Kennedy, Cochair  
3727 Spaulding Drive  
Winston-Salem, NC 27105  
(919) 723-0007

Mr. Danny Addison  
Elks Building  
121 W. Jones Street  
Raleigh, NC 27603-1368  
(919) 733-7996

Rep. Joanne W. Bowie  
106 Nut Bush Drive E.  
Greensboro, NC 27410  
(919) 294-2587

Rep. Donald M. Dawkins  
P.O. Box 757  
Rockingham, NC 28379  
(919) 895-6331

Rep. Bertha M. Holt  
P.O. Box 1111  
Burlington, NC 27215  
(919) 227-7333

Rep. Henry M. Michaux, Jr.  
P.O. Box 2152  
Durham, NC 27702  
(919) 596-8181

Mr. J. W. Parker  
P.O. Box 43  
Winston-Salem, NC 27104

Rep. William L. Wainwright  
P.O. Box 996  
New Bern, NC 28563  
(919) 633-2422

**Staff:**

Ms. Carolyn Johnson  
Ms. Sandra Timmons  
(919) 733-2578

**Clerk:**

Ms. Judy Robey

APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

D

93-DRK-2.2

THIS IS A DRAFT FOR COMMITTEE DISCUSSION ONLY

Short Title: Discrimination/State Personnel.

(Public)

---

Sponsors: Rep. Kennedy

---

Referred to:

---

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE STATE PERSONNEL SYSTEM LAWS  
2 CONCERNING EMPLOYMENT DISCRIMINATION, AUTHORIZE THE  
3 CIVIL RIGHTS DIVISION OF THE OFFICE OF ADMINISTRATIVE  
4 HEARINGS TO ISSUE SUBPOENAS, AND AUTHORIZE THE  
5 ATTORNEY GENERAL TO SEEK INJUNCTIVE RELIEF ON BEHALF  
6 OF THE CIVIL RIGHTS DIVISION OF THE OFFICE OF  
7 ADMINISTRATIVE HEARINGS

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 126-16 reads as rewritten:

10 **"§126-16. Equal opportunity for employment and compensation by**  
11 **State departments and agencies and local political subdivisions.**

12 (a) All state departments and agencies and all local political  
13 subdivisions of North Carolina shall give equal opportunity for employment  
14 and compensation, without regard to race, religion, color, creed, national  
15 origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all  
16 persons otherwise qualified, except where specific age, sex, or physical  
17 requirements constitute bona fide occupational qualifications necessary to  
18 proper and efficient administration. This section with respect to equal  
19 opportunity as to age shall be limited to individuals who are at least 40 years  
20 of age.

21 (b) Any employee, former employee or applicant of all state  
22 departments and agencies and all local political subdivisions of North Carolina  
23

1 may grieve any action arising out of the denial of any term, condition or  
2 benefit of employment on the basis of unlawful discrimination.

3 (c) Aggrieved employees, former employees or applicants may file a  
4 grievance action not later than 180 days from the date of the last alleged  
5 discriminatory action.

6 (d) Notwithstanding any other provisions of this Chapter, the  
7 employment discrimination provisions of this Article shall be applicable to  
8 exempt policy-making employees as defined in G.S. 126-5(d).

9 (e) Notwithstanding any other provisions of this Chapter or any rules or  
10 policies established by the State Personnel Commission pursuant to G.S. 126-  
11 4(9), all grievance actions alleging unlawful employment discrimination  
12 pursuant to this Article shall be first heard before the State Personnel  
13 Commission. Any decision of the Commission which is appealed shall be  
14 heard by an Administrative Law Judge in the Office of Administrative  
15 Hearings. Any decision of an Administrative Law Judge which is appealed  
16 shall be heard by the North Carolina Court of Appeals.

17 (f) Aggrieved employees, former employees or applicants injured in  
18 violation of this Article may seek injunctive relief, damages, reinstatement,  
19 payment of back wages, full reinstatement of benefits and seniority, costs,  
20 reasonable attorney's fees or any combination of these remedies."

21 Sec. 2. Article 7 of Chapter 126 of the General Statutes is  
22 amended by adding a new section to read:

23 "**§126-16.2. Notice of right to file discrimination action.**

24 All State departments and agencies and all local political subdivisions of  
25 North Carolina shall notify all employees of their right to file an employment  
26 discrimination action. The notice shall include information concerning when,  
27 where and how such filing should be made."

28 Sec. 3. G.S. 7A-759(c) is rewritten to read:

29 "(c) In investigating charges an employee of the Civil Rights Division of the  
30 Office of Administrative Hearings specifically designated by an order of the  
31 Chief Administrative Law Judge filed in the pending case may administer oaths  
32 and affirmations, affirmations and issue subpoenas. Upon request by the Civil  
33 Rights Division, the Attorney General may institute a civil action in the  
34 General Court of Justice to seek injunctive relief to restrain further  
35 discriminatory action and for such other relief that the court may deem  
36 proper."

37 Sec. 4. This act is effective upon ratification.

## **Explanation of Legislative Proposal I Discrimination/State Personnel**

This legislative proposal will amend G.S. 126-16 to designate a subdivision (b) to provide that any employee, former employee or applicant of all state departments and agencies and all local political subdivisions subject to Chapter 126 may grieve adverse employment actions arising out of unlawful discrimination. The current language, which is redesignated as subdivision (a), is a equal opportunity statement and not an express declaration that discrimination is unlawful.

Subdivision (c) provides that aggrieved persons may file a grievance not later than 180 from the date of the last alleged discriminatory action. This provision makes the filing period consistent with the federal law.

Subdivision (d) provides that exempt policy-making employees may grieve alleged discriminatory actions. Generally, these employees are not subject to the State Personnel Act.

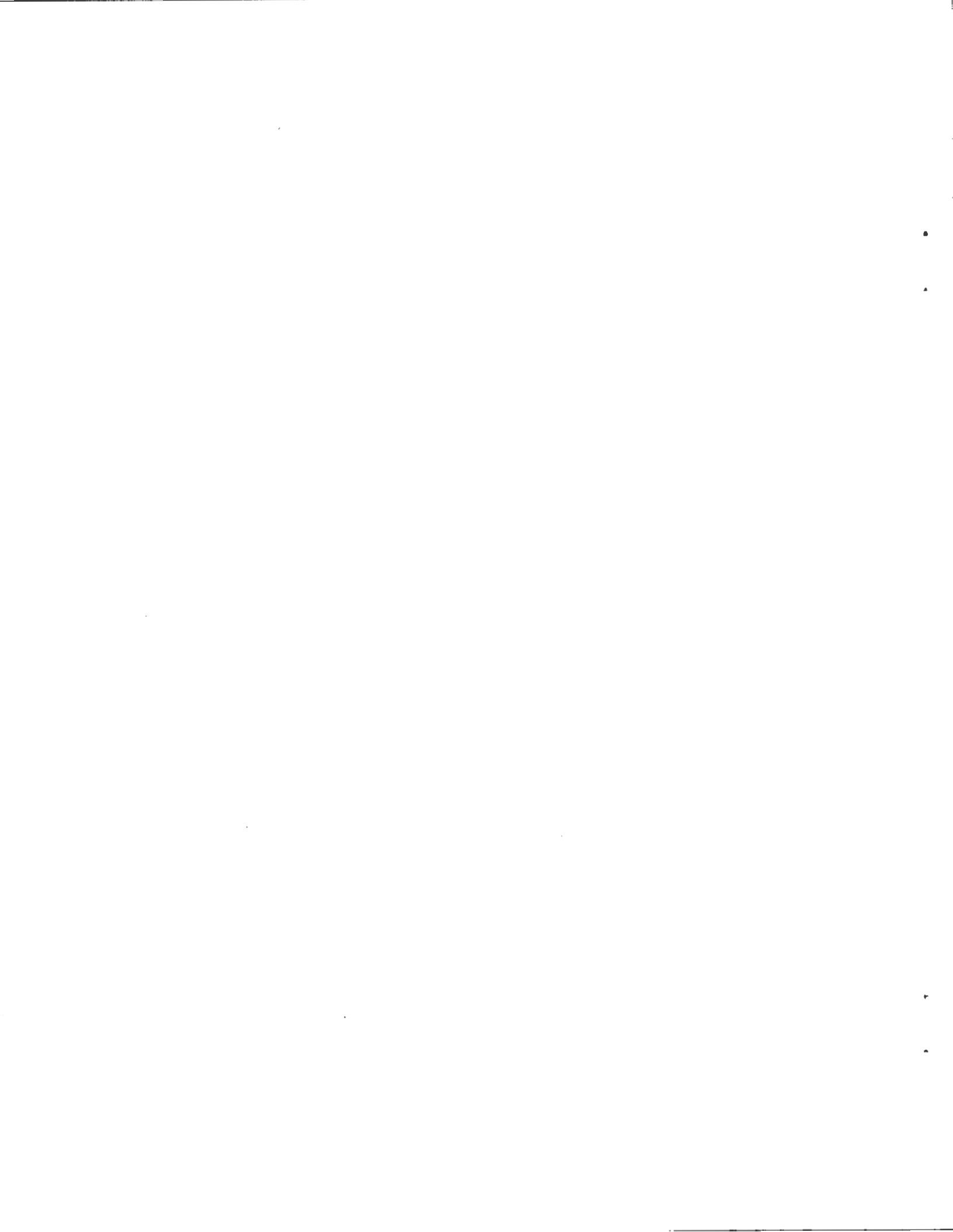
Subdivision (e) provides that discrimination grievances shall be first heard by the State Personnel Commission. An appeal of the Commission's decision shall be heard by an Administrative Law Judge in the Office of Administrative Hearings. An appeal of the Administrative Law Judge shall be heard by the North Carolina Court of Appeals. Currently, the State Personnel Commission is authorized to issue rules and policies governing the investigation and resolution of employment-related issues.

Subdivision (f) provides that prevailing aggrieved persons are entitled to seek injunctive relief, damages, reinstatement, payment of back wages, reinstatement of benefits and seniority, costs, reasonable attorney's fees or any combination of these remedies.

Section 2 of the bill amends Article 7 of Chapter 126 to require that all state departments and agencies provide express notice to their employees of the right to file an employment discrimination action. The notice must include information concerning when, where and how such filings must be made.

Section 3 of the bill amends G.S. 7A-759(c) to authorize the Civil Rights Division to issue subpoenas if required as a part of their investigation of discrimination charges. This section also authorizes the Attorney General to seek injunctive relief on behalf of the Civil Rights Division.

The bill would become effective upon ratification.





APPENDIX E

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

D

93-DRK-3

THIS IS A DRAFT NOT READY FOR INTRODUCTION

Short Title: Employment Discrimination Study.

(Public)

---

Sponsors: Rep. Kennedy

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION  
3 TO CONTINUE A STUDY OF ALTERNATIVE APPROACHES TO  
4 DEAL WITH DISCRIMINATION IN EMPLOYMENT  
5       Whereas, the Legislative Research Commission created a Committee  
6 on Alternative Approaches to Deal with Discrimination in Employment in Part  
7 II, Section 2.1(13), of Chapter 754 of the 1991 Session Laws; and  
8       Whereas, the Legislative Research Commission authorized the  
9 Committee to study the desirability of various approaches that might be taken  
10 in State law to deal with discrimination in employment, including but not  
11 limited to enacting the contents of federal antidiscrimination legislation and  
12 empowering the Human Relations Commission to enforce those provisions; and  
13       Whereas, the Committee on Alternative Approaches to Deal with  
14 Discrimination in Employment has determined the issues involved are too  
15 complex to fully analyze and make informed recommendations to the 1993  
16 General Assembly and that additional study and review is necessary; Now,  
17 therefore,  
18 The General Assembly of North Carolina enacts:  
19       Section 1. The Legislative Research Commission is authorized to  
20 appoint a Committee to continue a study of Alternative Approaches to Deal  
21 with Discrimination in Employment.  
22       Sec. 2. The Committee shall be composed of 14 members: seven to  
23 be appointed by the Speaker of the House of Representatives and seven to be

1 appointed by the President Pro Tempore of the Senate. The Speaker of the  
2 House and the President Pro Tempore of the Senate shall each designate a  
3 cochair from among their appointees. Either cochair may call the first meeting  
4 of the Committee. Vacancies shall be filled in the same manner as the original  
5 appointments were made.

6       Sec. 3. The Committee shall study the desirability of various  
7 alternative approaches that might be taken in State law to deal with  
8 discrimination in employment, including but not limited to enacting the  
9 contents of federal antidiscrimination legislation and empowering the Human  
10 Relations Commission to enforce those provisions.

11       Sec. 4. With the approval of the Legislative Services Commission,  
12 professional and clerical staff of the Legislative Services Office shall be  
13 available to the Committee and the Committee may meet in the State  
14 Legislative Building or the Legislative Office Building.

15       Sec. 5. Members of the Committee who are members of the  
16 General Assembly shall receive subsistence and travel allowances as provided  
17 by G.S. 120-3.1. Members who are State officers or employees shall receive  
18 subsistence and travel allowances as provided by G.S. 138-6. All other  
19 members shall receive per diem, subsistence, and travel allowances as provided  
20 by G.S. 138-5.

21       Sec. 6. Upon the request of the Committee, any State department,  
22 agency, institution or officer shall provide any information available to them  
23 and cooperate to the fullest extent.

24       Sec. 7. The Committee may report its findings, together with any  
25 recommended legislation, to the 1994 Session of the 1993 General Assembly,  
26 to the 1995 General Assembly, or to both.

27       Sec. 8. This act is effective upon ratification.



# North Carolina Legislative Black Caucus

Post Office Box 25629

Raleigh, North Carolina 27611-5629

Senator James F. Richardson, Chairman  
33rd District  
Rep. Howard C. Barnhill, Vice Chairman  
60th District  
Rep. Mary E. McAllister, Secretary  
17th District  
Rep. Herman C. Gist, Treasurer  
28th District

Daniel T. Blue, Jr., Speaker of the House  
21st District

## APPENDIX F

### NORTH CAROLINA LEGISLATIVE BLACK CAUCUS APPOINTED CAUCUS MEMBERS MEETING WITH COLONEL JENNINGS SUMMARY NOVEMBER 22, 1992

Senator Frank W. Ballance, Jr.  
2nd District  
Rep. W. Pete Cunningham  
59th District  
Rep. Milton F. Fitch, Jr.  
70th District  
Rep. James Green  
22nd District  
Rep. Thomas C. Hardaway  
7th District  
Senator Ralph A. Hunt  
13th District  
Rep. Howard Hunter, Jr.  
5th District  
Rep. Nick Jeraids  
17th District  
Rep. Annie B. Kennedy  
66th District  
Senator Howard N. Lee  
18th District  
Senator William N. Martin  
31st District  
Rep. H.M. Michaux, Jr.  
23rd District  
Rep. Warren C. Oldham  
67th District  
Rep. William L. Wainwright  
3rd District

THE APPOINTED COMMITTEE OF REPRESENTATIVE PETE CUNNINGHAM, CHAIR, SENATOR FRANK BALLANCE, REPRESENTATIVE WILLIAM WAINWRIGHT AND REPRESENTATIVE HOWARD HUNTER MET WITH COLONEL S.L. JENNINGS OF THE HIGHWAY PATROL ON NOVEMBER 22, 1992.

THE COMMITTEE MET WITH COLONEL JENNINGS ON BEHALF OF THE NORTH CAROLINA LEGISLATIVE BLACK CAUCUS TO ASK QUESTIONS ABOUT MINORITY PROMOTION PROCEDURES AND OPPORTUNITIES AT ALL LEVELS OF THE HIGHWAY PATROL. THIS MEETING WAS TO CREATE A DIALOGUE TO PROMOTE AN EXCHANGE OF SUGGESTIONS TO IMPROVING MINORITY PROMOTION WITHIN THE HIGHWAY PATROL.

AFTER INDEPTH DISCUSSION THE COMMITTEE EXPRESSED CONCERN ABOUT THE FIRST SERGEANT'S APPARENT POWER IN DECIDING WHO WILL BE RECOMMENDED FOR AN INTERVIEW FOR PROMOTION TO THE NEXT LEVEL AND THE LACK OF A SUITABLE APPEAR PROCESS. THE COMMITTEE ALSO NOTED THAT DEFINITELY A CERTAIN BIAS SUCH AS RACE OR PARTY AFFILIATION COULD BE REFLECTED IN A FIRST SERGEANT'S RECOMMENDATION.

THE FOLLOWING RECOMMENDATION(S) WERE FORTHCOMING FROM THE APPOINTED COMMITTEE:

1. THE RECOMMENDATION REQUIREMENT SHOULD BE ELIMINATED AND ALL CANDIDATES FOR PROMOTION WHO HAVE SUCCESSFULLY PASSED THE OTHER REQUIREMENTS SHOULD MOVE ON TO THE ORAL SCREENING BOARD. THIS WOULD ELIMINATE THE POWER OF SUPERVISORS TO FAVOR SOME INDIVIDUALS AT THE EXPENSE OF OTHERS. 9G.0302, SATISFACTORY PERFORMANCE ENSURES THAT ONLY THOSE WHO ARE FIT FOR PROMOTION ENTER THE SYSTEM.



## North Carolina Legislative Black Caucus

Post Office Box 25629

Raleigh, North Carolina 27611-5629

ator James F. Richardson, Chairman  
3rd District  
1. Howard C. Barnhill, Vice Chairman  
6th District  
2. Mary E. McAllister, Secretary  
7th District  
3. Herman C. Gist, Treasurer  
8th District

ator T. Blue, Jr., Speaker of the House  
1st District

ator Frank W. Bellance, Jr.  
nd District

3. W. Pete Cunningham  
9th District  
4. Milton F. Fitch, Jr.  
0th District  
5. James Green  
2nd District

6. Thomas C. Hardaway  
th District

ator Ralph A. Hunt  
3th District

7. Howard Hunter, Jr.  
th District

8. Nick Jeralds  
7th District

9. Annie B. Kennedy  
5th District

ator Howard N. Lee  
5th District

ator William N. Martin  
1st District

10. H.M. Michaux, Jr.  
3rd District

11. Warren C. Oldham  
7th District

12. William L. Wainwright  
nd District

2. BOTH .0306 AND .0307 HAVE PROVEN TO BE BARRIERS TO MINORITY ADVANCEMENT. THIS IS PROBABLY DUE LESS TO RACISM THAN CRONYISM, BUT THE EFFECT IS STILL THE SAME; BLACKS DO NOT FARE AS WELL. THERE SHOULD BE LITTLE OPPOSITION TO PERMITTING MORE QUALIFIED CANDIDATES TO BE CONSIDERED FOR PROMOTION AND, IT SHOULD BOOST MORALE.
3. THE LAST REQUIREMENT 9G.0308, FINAL INTERVIEW AND SELECTION SHOULD BE MODIFIED TO REMOVE THE SECRETARY FROM THE INTERVIEW PROCESS.
4. FINALLY, SINCE IT REQUIRES NEITHER SPECIAL INSIGHT OR EXPERTISE TO EVALUATE THE EFFECT OF THE PROCESS ON MINORITIES OR ITS INTRINSIC FAIRNESS, NO JUDGEMENT IS MADE ON THIS ISSUE. ATTACHED IS STATISTICAL INFORMATION WHICH YOU MIGHT FIND INTERESTING.

TOTAL BLACK HIGHWAY PATROLMEN 183  
 CAPT (1) LT (2) 1 SGT. (1) LINE SGT. (14)

INDIANS 15  
 FEMALES 9

## NORTH CAROLINA STATE HIGHWAY PATROL POSITION DISTRIBUTION

*2 September 1991*

RANK	Head- quarters	Training	Governor's Security	Troop "A"	Troop "B"	Troop "C"	Troop "D"	Troop "E"	Troop "F"	Troop "G"	Troop "H"	Troop "I"	TOTALS
Colonel	1												1
Lieutenant Colonel	1												1
Major	5	1											6
Captain	1	1		1	1	1	1	1	1	1	1		10
Lieutenant	9	2		2	2	2	2	2	2	2	2	1	28
First Sergeant	8	4	1	8	8	7	6	6	5	6	5	3	67
Sergeant	5	4	2	19	20	19	18	15	13	16	15	6	152
Trooper	1	5	14	123	145	131	126	109	92	108	100	40	995
<b>TOTALS</b>	<b>31</b>	<b>17</b>	<b>17</b>	<b>153</b>	<b>176</b>	<b>160</b>	<b>153</b>	<b>133</b>	<b>113</b>	<b>133</b>	<b>123</b>	<b>50</b>	<b>1260</b>

LEGISLATIVE LIBRARY