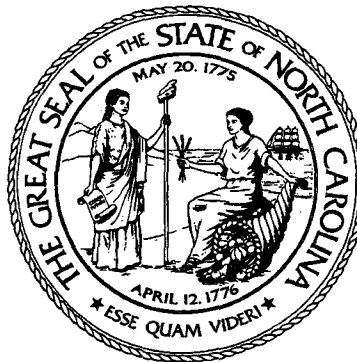


LEGISLATIVE RESEARCH COMMISSION

Personnel Issues Committee



REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA
1996 REGULAR SESSION

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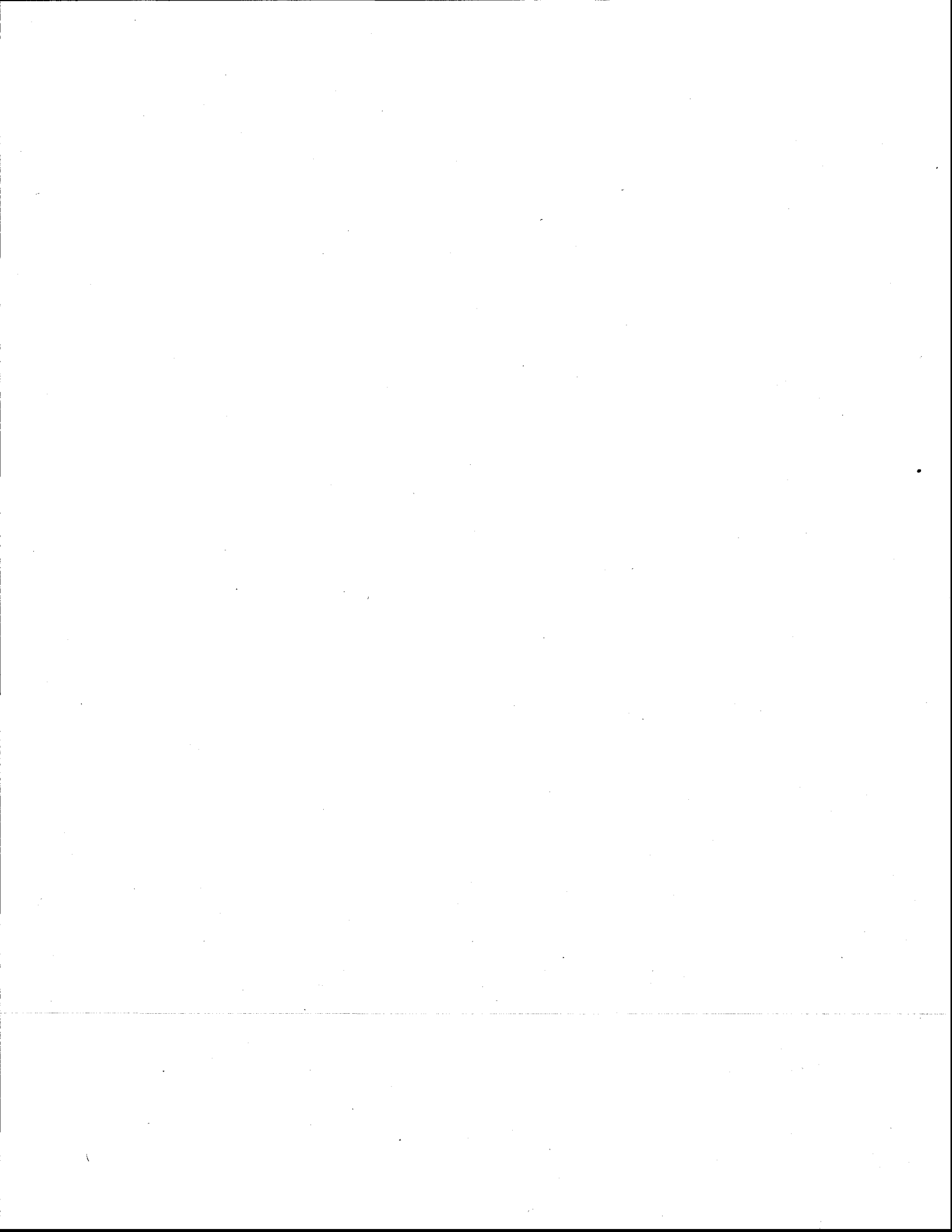
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096



May 1, 1996

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its report on state personnel issues. The report was prepared by the Legislative Research Commission's Committee on Personnel Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold J. Brubaker".

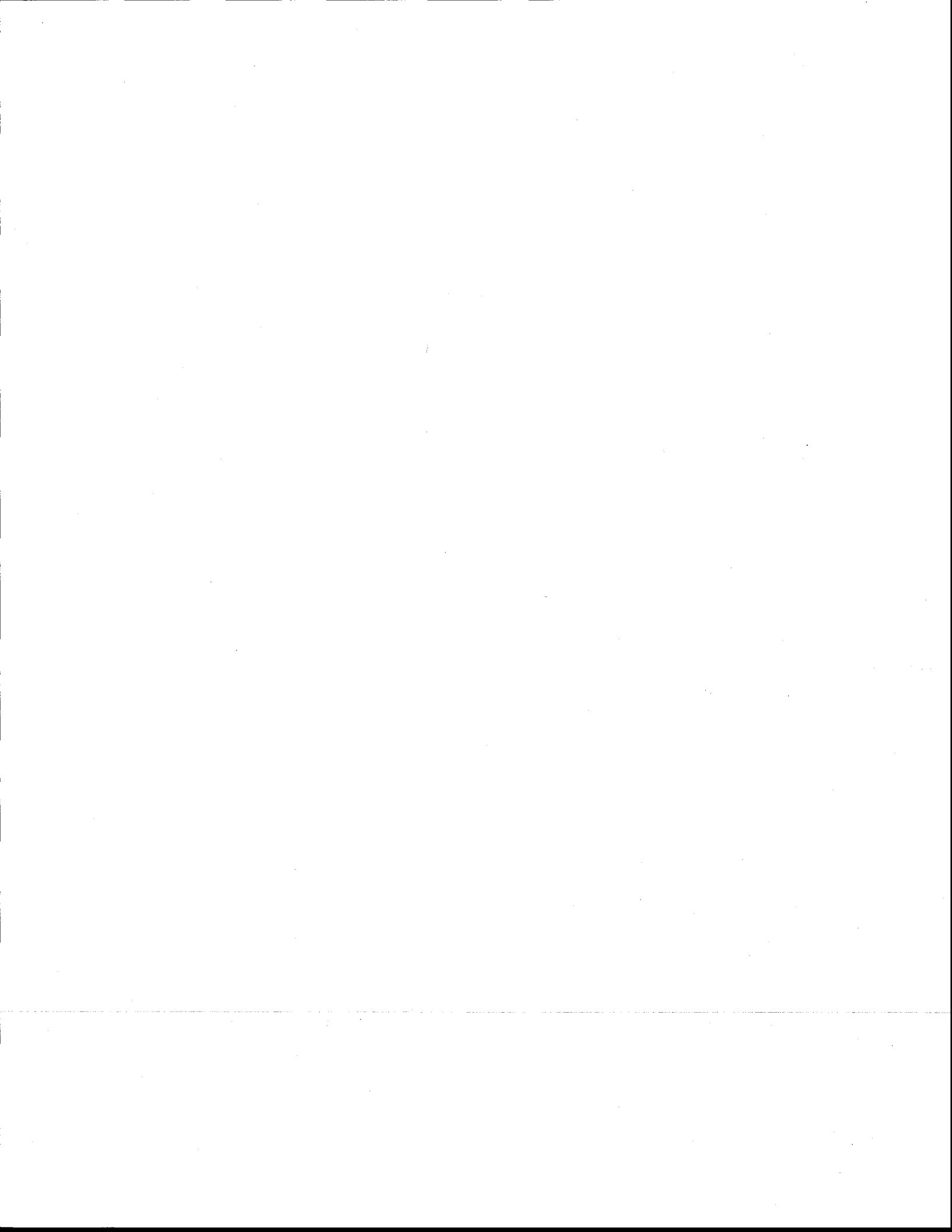
Harold J. Brubaker
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight".

Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission





1995-1996

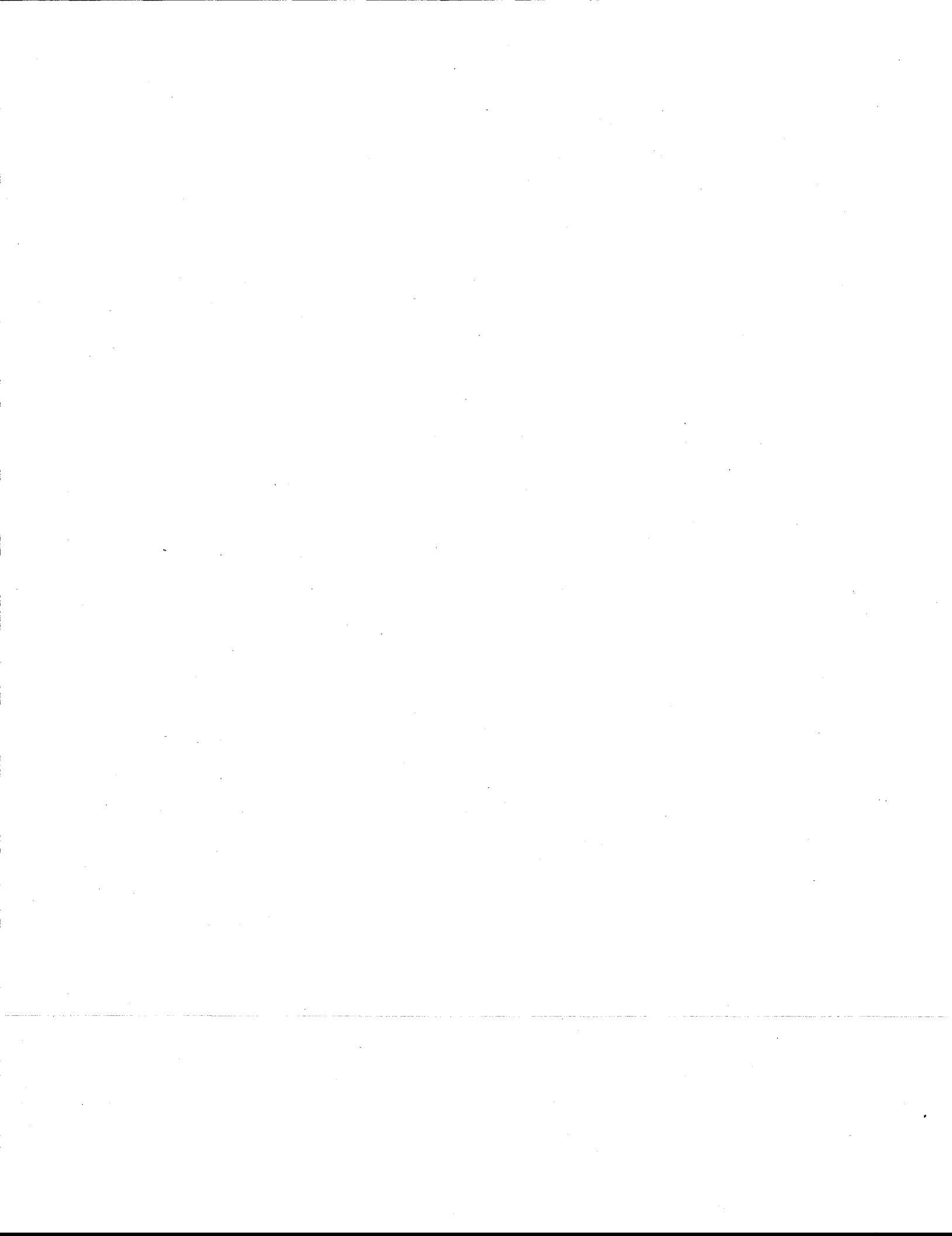
LEGISLATIVE RESEARCH COMMISSION
MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

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Harold J. Brubaker, Cochair

Rep. Jerry C. Dockham
Rep. Larry Linney
Rep. Edd Nye
Rep. Gregory J. Thompson
Rep. Constance K. Wilson



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. 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)).

The Legislative Research Commission, prompted by actions during the 1995 Session, 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 State personnel issues, including needed revisions to the State Personnel Act was authorized by Section 2.1(20) of Chapter 542 of the 1995 Session Laws. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its labor and personnel area under the direction of Representative Gregory J. Thompson. The Committee was chaired by Senator R.C. Soles and Representative Wilma Sherrill. The full membership of the Committee is listed in Appendix B 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 Committee on Personnel Issues held four meetings as a full committee. The Personnel Issues Subcommittee convened for five meetings: February 19, February 28, March 19, April 2, and April 17, 1996. The group's primary effort and focus during this series of meetings has been to:

- (1) Identify specific issues and areas of concern;
- (2) Assign priorities; and
- (3) Develop alternatives and possible solutions to address the identified concern(s).

February 19, 1996 Meeting

The initial meeting of the Subcommittee began with an overview of organizational matters and reporting requirements. Attention then turned to collecting subject matter information to assist the group in identifying and defining specific issues. Mr. Ronald Penny, State Personnel Director, presented an overview of certain aspects of the personnel system. He cited several general issues, then pointed out specific resulting problems, and presented suggested courses of action which would provide agencies with some flexibility in dealing with the issues and possibly give a modicum of relief. He indicated problems in the areas of:

Compensation. Agencies are prohibited from giving performance increases and from using lapsed salaries to pay performance bonuses despite the fact that State employees have been awarded fewer than three performance-related raises in the personnel system in the last ten years. As a result, 78 percent of employees are concentrated between the minimum and the midpoint of the salary range; consequently, newly hired employees may come in making more than current employees with three to five years of state service.

Employee relations, specifically as it relates to the time frames for handling grievances and the seven different processes currently in place to handle the various types of grievances; and

The credentials of agency personnel directors and the lack of a reporting relationship between those directors and the State Personnel Director.

Judge Julian Mann, Director and Chief Administrative Law Judge with the Office of Administrative Hearings (OAH), presented an overview of that office. He explained the purpose for which the agency was created and the theory by which it operates, reviewed the types and numbers of petitions filed, outlined the process, addressed the issue of lengthiness in processing cases, and discussed the overall disposal and disposition of contested cases.

The subcommittee then identified the following issues and areas for potential review:

1. Question of duplication between the Office of Administrative Hearings and the State Personnel Commission in the contested case hearings process;
2. Changes to the State Personnel Commission;
3. Question of the level of duplication of work between the Office of State Personnel and agency personnel offices, particularly in the records processing, classification, equal opportunity, and routine salary administration functions;
4. Delegation of authority from the Office of State Personnel to agency personnel offices;
5. McDaniel Organizational Study of the Office of State Personnel;
6. Ernst and Young Study of the State's classification system;
7. Current grievance procedure;
8. Changes to the State Personnel Act, Chapter 126 of the General Statutes;
9. Review of the Comprehensive Compensation System;
10. Structure and use of the Employee Assistance Program;
11. Discrepancies in salaries and use of the newly established in-range increase policy;

12. Use of lapsed salary fund; and
13. Establishing credentials requirements for agency personnel directors.

Subcommittee members selected three areas for further investigation: streamlining and simplifying the grievance procedure, establishing qualifications requirements for personnel directors, and the examining the establishment and use of the in-range policy.

February 28, 1996 Meeting

The second meeting of the Personnel Issues Subcommittee was spent as a general working session. The group discussed, in some detail, the delegation of authority to agency personnel offices and the level of work being duplicated between the Office of State Personnel and the personnel departments within the agencies. Mr. Don Huffman, Director of the Position Management Division at the Office of State Personnel, discussed the classification and compensation process and the involvement of agency personnel staffs. He also explained the background and evolution of agency decentralization agreements.

Representative Wilma Sherrill spoke briefly on in-range adjustments and the need to review the matter further.

Representative Carolyn Russell and Mr. Huffman presented additional information and several possible options to address the concerns regarding the need of uniform credentials for agency personnel directors.

Mr. Ronald Penny, State Personnel Director, presented possible ways to incorporate changes into the grievance process that had been requested by Representative Arlene Pulley. Mr. John Hunter, a Raleigh attorney who handles State employee grievance cases, and Mr. Alan Pugh, General Counsel to the Speaker of the

House, both shared their experiences and perspectives in working through the State's grievance process.

It was the strong consensus of the Subcommittee that some adjustment to the grievance process was desperately needed. To that end, the Subcommittee settled on the use of mediation as a means to reduce the time involved, eliminate the need for and expense of an attorney, and provide a more level playing field for the employee. A two-track procedure was designed to provide for an expedited process alongside the existing contested case process. (See Appendix F)

March 19, 1996 Meeting

At its third meeting, the Subcommittee continued its exploration and discussion of its three priority issues--streamlining the State employee grievance process, establishing some minimum level of credentials for both the State Personnel Director and agency personnel directors, and eliminating the duplication of work between the Office of State Personnel and agency personnel departments.

In this regard, Mr. George Givens, legislative staff attorney, presented and reviewed the draft entitled State Personnel System Amendments and reflecting the subcommittee's effort to streamline the review of grievances filed by State employees. Subcommittee cochair, Ms. Jeanne Horton, and Mr. Don Huffman from the Office of State Personnel distributed information which outlined the duplicated functions between agencies and OSP and the cost-wise solution.

Subcommittee members agreed to some modifications and suggested that representatives of concerned parties work out any other issues prior to the group's next meeting.

April 2, 1996 Meeting

The Subcommittee's fourth meeting was devoted to reviewing drafts of the three potential legislative proposals: State Personnel Grievance Procedure, Personnel Director Qualifications, and Decentralize Some OSP Functions.

Following an explanation of and substantial discussion on each, the Subcommittee voted to recommend them to the full committee for its consideration and review, with the hope and intent of reporting them to the 1996 Short Session of the General Assembly.

April 17, 1996 Meeting

At its last meeting prior to the convening of the 1996 Regular Session of the General Assembly, the Personnel Issues Subcommittee reviewed, discussed, and fine-tuned the three draft legislative proposals submitted to and scheduled for consideration by the full committee at its April 23, 1996 meeting.

FINDINGS AND RECOMMENDATIONS

The Personnel Issues Subcommittee findings and recommendations are included in its proposed legislation found in this report and were based upon presentations, information, and its review of issues involving State employees and the State Personnel Act.

APPENDIX A

CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- ...
- (20) State Personnel Issues, including needed revisions to the State Personnel Act (Morgan)

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. 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 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. 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. 2.11. 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 XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.

APPENDIX B

PERSONNEL ISSUES COMMITTEE MEMBERSHIP 1995 - 1996

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(919) 733-5601

APPENDIX C

LEGISLATIVE PROPOSAL I State Personnel Grievance Procedure

Section 1 amends the catchline of Article 8 of Chapter 126 of the General Statutes.

Section 2 adds short title and definitions sections and further clarifies that time is computed according to Rule 6 of the Rules of Civil Procedure.

Section 3 repeals G.S. 126-34, the current provisions of grievance appeal for State employees.

Section 4 specifies and defines the issues that may be raised in a grievance by a State employee or former State employee, an applicant for State employment, and an applicant for initial State employment with veterans' status.

Section 5 of the legislative proposal explains its applicability to certain employees of units of local government, outlines the issues for which such employees may raise a grievance, and references the contested case procedure as the vehicle for filing petitions.

Section 6 adds six new sections to Chapter 126 of the General Statutes. They address and outline procedures for the following situations:

- Initiation of a grievance and the procedure for resolving a grievance within an agency;

- Procedure for resolving a grievance when the grievance is not resolved within an agency;

- Expedited resolution of a grievance by a qualified neutral party;

- Grounds for contested cases and time requirements in the administrative hearings process;

- Agency limitations on and rights of judicial review;

- Submission of reports from the Office of State Personnel and Office of Administrative Hearings to the General Assembly.

Section 7 authorizes the State Personnel Commission to issue final orders and supplemental orders concerning employment actions or personnel actions concerning issues that may be raised in a grievance.

Section 8 clarifies that Article 3 of Chapter 6 of the General Statutes does not apply to the Commission's award of costs, witness fees, and attorney fees.

Section 9 allows that disputes as to an employee's coverage under the Chapter's provisions are to be resolved under the procedures outlined in Section 4 of this proposal.

Section 10 authorizes the State Personnel Commission to adopt rules specifying minimum procedures for resolving employee grievances concerning performance appraisals or bonus award amounts. It further states that these issues may not be raised in a contested case under Chapter 150B of the General Statutes.

Section 11 repeals the current provisions covering time limits for appeals of applicants and non-career State employees.

Sections 12 and 13 make conforming changes to several current statutory references.

Section 14 amends G.S. 126-25 to make gender neutral modifications to the current statute.

Sections 15 and 16 make technical changes to G.S. 126-35 and 126-36.

In sections 17 and 18, the existing provisions addressing appeals to the Commission by applicants and a specific group of State employees are repealed.

Section 19 clarifies that the State Personnel Commission renders the final agency decision in a contested case. Situations for final and advisory Commission decisions to county boards and local or area authorities are also outlined.

Sections 20 and 21 repeal affected and no longer applicable provisions concerning appeals time frames and scope of the article.

Section 22 makes technical changes and clarifies that the reviewing court shall award costs and attorney fees to a grievant who obtains a reversal or modification to such an award made by the State Personnel Commission.

Section 23 amends G.S. 126-82(d) to provide that an eligible veteran who did not receive a veteran's preference may file a grievance in accordance with sections 4 and 6 of this proposal.

Section 24 allows persons who are certified mediators by the Administrative Office of the Courts and who successfully complete the required training course may serve as qualified neutral parties without meeting other requirements in section 6 until July 1, 1998.

Section 25 instructs the State Personnel Commission to adopt rules to implement the provisions of this act; such rules shall become effective July 1, 1997 unless a later date is required by law. The Commission is also directed to prepare, by July 1, 1997, a list of persons who may serve as qualified neutral parties.

Sections 1 through 23 become effective on July 1, 1997 and apply to grievance filed on or after that date, with the exception of G.S. 126-34.7 in section 6 which becomes effective upon ratification and applies to any final agency decision of the Commission for which a petition for judicial review has not been filed. Sections 24 through 26 of this proposal are effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

PER96-RTZ-001.09
24-APR-96 EZT / 10:37:17

ATTENTION: This is a draft and is not ready for introduction.

Short Title: State Personnel Grievance Procedure. (Public)

Sponsors:

DRAFT

DRAFT

Referred to: **FOR REVIEW ONLY**

FOR REVIEW ONLY

1 A BILL TO BE ENTITLED
2 AN ACT TO STREAMLINE THE REVIEW OF GRIEVANCES FILED BY STATE
3 EMPLOYEES AND APPLICANTS FOR STATE EMPLOYMENT.
4 The General Assembly of North Carolina enacts:
5 Section 1. The catchline to Article 8 of Chapter 126 of
6 the General Statutes reads as rewritten:
7 "Article 8.
8 ~~Employee Appeals of Grievances and Disciplinary Actions.~~
9 Resolution of Employment Grievances."
10 Sec. 2. Article 8 of Chapter 126 of the General
11 Statutes is amended by adding two new sections to read:
12 "§ 126-32. Short title.
13 This Article shall be known and may be cited as the State
14 Personnel Act.
15 § 126-33. Definitions; time.
16 (a) Unless a different meaning is required by the context, as
17 used in this Article:
18 (1) 'Agency' means all authorities, boards, bureaus,
19 commissions, councils, departments, divisions, and
20 offices, of the State government; The University of
21 North Carolina; and units of local government, but
22 only insofar as the unit of local government

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- 1 employs persons in a county or area social
 2 services; public health; mental health,
 3 developmental disabilities, or substance abuse
 4 department or authority; or a local emergency
 5 management agency that receives federal
 6 grant-in-aid funds.
- 7 (2) 'Applicant' means a person who does not hold a
 8 probationary or permanent position appointment as a
 9 State employee at the time the person makes
 10 application for State employment.
- 11 (3) 'Career State employee' means a State employee who
 12 has been continuously employed by an agency for 12
 13 or more months prior to the date of a personnel
 14 action or issue giving rise to a grievance under
 15 G.S. 126-34.1. The provisions of G.S. 126-1.1 do
 16 not apply to this Article.
- 17 (4) 'Commission' means the State Personnel Commission.
- 18 (5) 'File', when used in connection with a grievance,
 19 means the delivery of a written complaint regarding
 20 a personnel action or issue to the personnel
 21 officer of an agency.
- 22 (6) 'Final agency decision' has the same meaning as in
 23 G.S. 150B-36.
- 24 (7) 'Personnel officer' means the person within an
 25 agency who is designated by the chief executive
 26 officer of the agency as the personnel officer with
 27 whom a grievance is to be filed or, if no person is
 28 so designated, the chief executive officer of the
 29 agency.
- 30 (b) Time shall be computed as provided by Rule 6 of the Rules
 31 of Civil Procedure, G.S. 1A-1."
- 32 Sec. 3. G.S. 126-34 is repealed.
- 33 Sec. 4. G.S. 126-34.1 reads as rewritten:
- 34 "§ 126-34.1. ~~Grounds for contested case under the State~~
 35 ~~Personnel Act~~ ~~Issues that may be raised in a grievance~~ defined.
- 36 (a) A State employee or former State employee may file in the
 37 Office of Administrative Hearings a contested case under Article
 38 3 of Chapter 150B of the General Statutes a grievance only as to
 39 the following personnel actions or issues: issues and those
 40 listed in subsections (c) and (d) of this section:
- 41 (1) ~~Dismissal, demotion, or suspension without pay~~
 42 Dismissal based upon an alleged violation of G.S.
 43 126-35, if the employee is a career State employee.

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FOR REVIEW ONLY**

- 1 (2) An alleged unlawful State employment practice
2 constituting discrimination, as proscribed by G.S.
3 126-36, including:
4 a. Denial of promotion, transfer, or training, on
5 account of the employee's age, sex, race,
6 color, national origin, religion, creed,
7 political affiliation, disability, or
8 handicapping condition as defined by Chapter
9 168A of the General Statutes.
10 b. Demotion, reduction in force, or termination
11 of an employee in retaliation for the
12 employee's opposition to alleged
13 discrimination on account of the employee's
14 age, sex, race, color, national origin,
15 religion, creed, political affiliation,
16 disability, or handicapping condition as
17 defined by Chapter 168A of the General
18 Statutes.
- 19 (3) Retaliation against an employee, as proscribed by
20 G.S. 126-17, for protesting an alleged violation of
21 G.S. 126-16.
- 22 ~~(4) Denial of the veteran's preference granted in
23 accordance with Article 13 of this Chapter in
24 initial State employment or in connection with a
25 reduction in force, for an eligible veteran as
26 defined by G.S. 126-81.~~
- 27 (5) Denial of promotion ~~for~~ as a result of a failure to
28 post or failure to give priority consideration for
29 promotion ~~or reemployment~~, to a career State
30 employee as required by ~~G.S. 126-7.1 and G.S.~~
31 ~~126-36.2.~~ G.S. 126-7.1(c) by an agency other than
32 the agency that employs the career State employee.
- 33 ~~(6) Denial of an employee's request for removal of
34 allegedly inaccurate or misleading information from
35 the employee's personnel file as provided by G.S.~~
36 ~~126-25.~~
- 37 (7) Denial of reemployment priority as required by
38 G.S. 126-5(e)(1), G.S. 126-5(e)(2), G.S.
39 126-7.1(c1), or G.S. 126-7.1(c2) to a former career
40 State employee by an agency other than the agency
41 that separated the career State employee as a
42 result of a reduction in force.
- 43 (b) An applicant for ~~initial~~ State employment may file ~~in the~~
44 ~~Office of Administrative Hearings a contested case under Article~~

~~3 of Chapter 150B of the General Statutes based upon: a grievance
only as to the following personnel actions or issues and those
listed in subsection (b1) of this section:~~

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- ~~(1) Alleged denial of employment in violation of G.S. 126-16.~~
- ~~(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.~~
- (3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, disability, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.
- ~~(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.~~
- (5) A false accusation regarding, or disciplinary action relating to, a State employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(b1) An applicant for initial State employment may file a grievance as to the denial of the veteran's preference provided in Article 13 of this Chapter.

~~(c) In the case of a dispute A State employee or former State employee may file a grievance as to whether a State employee's position is properly exempted as a policymaking position, as defined in G.S. 126-5(b), from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes. G.S. 126-5(d).~~

~~(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1. former State employee may file a grievance as to the following personnel actions or issues:~~

- (1) Demotion or suspension without pay based on an alleged violation of G.S. 126-35, if the employee is a career State employee.

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- 1 (2) Denial of the veteran's preference provided in
 2 Article 13 of this Chapter in connection with a
 3 reduction in force, if the employee is a career
 4 State employee.
- 5 (3) Denial of promotion as a result of a failure to
 6 post or failure to give priority consideration for
 7 promotion to a career State employee as required by
 8 G.S. 126-7.1(c) by the agency that employs the
 9 career State employee.
- 10 (4) Denial of reemployment priority as required by G.S.
 11 126-7.1(c1) or G.S. 126-7.1(c2) to a career State
 12 employee by the agency that separated the career
 13 State employee as a result of a reduction in force.
- 14 (5) Denial of an employee's request for removal of
 15 allegedly inaccurate or misleading information from
 16 the employee's personnel file as provided by G.S.
 17 126-25.
- 18 (6) Separation of a career State employee resulting
 19 from a reduction in force where the employee
 20 alleges that the separation was arbitrary or
 21 capricious because the agency failed to follow a
 22 plan for reduction in force approved by the Office
 23 of State Personnel.
- 24 ~~(e) Any issue for which appeal to the State Personnel~~
 25 ~~Commission through the filing of a contested case under Article 3~~
 26 ~~of Chapter 150B of the General Statutes has not been specifically~~
 27 ~~authorized by this section shall not be grounds for a contested~~
 28 ~~case under Chapter 126."~~
- 29 Sec. 5. G.S. 126-34.2 reads as rewritten:
- 30 "§ 126-34.2. Alternative dispute resolution. Applicability;
 31 procedure for certain employees of units of local government.
- 32 (a) Only the following provisions of this Article, as modified
 33 by this section, apply to employees of a county or area social
 34 services; public health; mental health, developmental
 35 disabilities, or substance abuse department or authority; or a
 36 local emergency management agency that receives federal
 37 grant-in-aid funds: G.S. 126-33, 126-34.1, 126-34.2,
 38 126-34.6(a), 126-34.6(b), 126-34.6(c), 126-34.6(d), 126-34.7,
 39 126-35, and 126-37. An employee of a county or area social
 40 services; public health; mental health, developmental
 41 disabilities, or substance abuse department or authority; or a
 42 local emergency management agency that receives federal
 43 grant-in-aid funds may raise only the personnel actions or issues
 44 set out in the following provisions of G.S. 126-34.1 as a

1 grievance: subdivisions (1), (2), and (3) of subsection (a);
2 subdivisions (1) and (2) of subsection (b); and subdivisions (1)
3 and (5) of subsection (d). An employee of a county or area
4 social services; public health; mental health, developmental
5 disabilities, or substance abuse department or authority; or a
6 local emergency management agency that receives federal
7 grant-in-aid funds may raise a grievance as to the personnel
8 actions and issues listed in this section by filing a petition
9 for Notwithstanding the provisions of Articles 6 and 7 of this
10 Chapter, or the other provisions of this Article, with the
11 consent of the parties, a matter for which a State employee, a
12 former State employee, or an applicant for State employment has
13 filed a contested case under Article 3 of Chapter 150B of the
14 General Statutes may be handled in accordance with alternative
15 dispute resolution procedures adopted by the State Personnel
16 Commission. Statutes. An employee of a county or area social
17 services; public health; mental health, developmental
18 disabilities, or substance abuse department or authority; or a
19 local emergency management agency that receives federal
20 grant-in-aid funds shall file a grievance within 30 days after
21 notice of the decision or action giving rise to the grievance or,
22 in the case of a grievance arising under G.S. 126-34.1(d)(5),
23 within 30 days after the employee discovers the allegedly
24 inaccurate or misleading information.

25 (b) In its discretion, the State Personnel Commission may
26 adopt alternative dispute resolution procedures for the
27 resolution of matters not constituting grounds for a contested
28 case under G.S. 126-34.1. As used in this section and in G.S.
29 126-37(b1), the phrase 'employee of a county or area social
30 services; public health; mental health, developmental
31 disabilities, or substance abuse department or authority; or a
32 local emergency management agency that receives federal
33 grant-in-aid funds' includes, with respect to a grievance that
34 may be raised by an employee, a former employee of any of the
35 listed departments and authorities and, with respect to a
36 grievance that may be raised by an applicant, an applicant for
37 employment with any of the listed departments or authorities.

38 (c) Nothing in this section shall be construed to limit the
39 right of any person to file in the Office of Administrative
40 Hearings a contested case under Article 3 of Chapter 150B of the
41 General Statutes."

42 Sec. 6. Article 8 of Chapter 126 of the General
43 Statutes is amended by adding six new sections to read:

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1 "§ 126-34.3. Initiation of a grievance; procedure for resolution
2 of a grievance within an agency.

3 (a) An applicant, State employee, or former State employee may
4 initiate a grievance as to any of the personnel actions or issues
5 set out in G.S. 126-34.1 by filing a written complaint with the
6 personnel officer of the appropriate agency. An applicant, State
7 employee, or former State employee shall file a grievance within
8 30 days after notice of the decision or action giving rise to the
9 grievance or, in the case of a grievance arising under G.S.
10 126-34.1(d)(5), within 30 days after the State employee or former
11 State employee discovers the allegedly inaccurate or misleading
12 information. The appropriate agency for a grievance by an
13 applicant is the agency with which the grievant sought
14 employment. The appropriate agency for a grievance by a State
15 employee is the agency with which the grievant is employed except
16 that, if the grievance concerns an application for employment by
17 another agency, the appropriate agency is the agency with which
18 the grievant sought employment. The appropriate agency for a
19 grievance by a former State employee is the agency with which the
20 grievant was formerly employed except that, if the grievance
21 concerns reemployment by another agency, the appropriate agency
22 is the agency with which the grievant sought reemployment.

23 (b) The agency shall have 30 days from the date the grievance
24 was filed to resolve the grievance within the agency. The
25 Commission shall adopt rules specifying minimum procedures for
26 agency informal internal resolution of grievances. Each agency
27 shall adopt written procedures for the informal internal
28 resolution of grievances that are consistent with rules adopted
29 by the Commission. No agency procedure for the informal internal
30 resolution of grievances shall be applicable to any grievant
31 until the Commission has approved the procedure. Neither the
32 agency nor the grievant shall be represented by an attorney or
33 third party during any meeting between any representative of the
34 agency and the grievant held in connection with the agency
35 internal informal grievance resolution procedure. The Commission
36 shall not award and an agency shall not pay attorney fees in
37 connection with the agency internal informal grievance resolution
38 procedure.

39 (c) If the agency and the grievant resolve the grievance
40 within 30 days of the date on which the grievance was filed, the
41 agency shall reduce the resolution of the grievance to writing in
42 a memorandum of agreement. The memorandum of agreement shall set
43 out all the terms and conditions of the resolution of the
44 grievance and shall specify when the terms and conditions become

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1 effective. The agency head or personnel officer and the grievant
2 shall sign the memorandum of agreement, and the agency shall
3 submit the memorandum to the Office of State Personnel for
4 approval in accordance with rules adopted by the Commission.

5 (d) If the agency and the grievant do not resolve the
6 grievance within 30 days, the grievant may proceed as provided in
7 G.S. 126-34.4.

8 § 126-34.4. Procedure for resolution of a grievance when the
9 grievance is not resolved within an agency.

10 (a) If the agency and the grievant do not resolve the
11 grievance within the 30-day period provided for the informal
12 internal resolution of the grievance by the agency under G.S.
13 126-34.3, a grievant who is:

14 (1) An applicant for State employment whose grievance
15 arises under G.S. 126-34.1(b) or G.S. 126-34.1(b1)
16 may file a petition for a contested case with the
17 Office of Administrative Hearings under Article 3
18 of Chapter 150B of the General Statutes.

19 (2) A State employee or former State employee whose
20 grievance arises under G.S. 126-34.1(a) or G.S.
21 126-34.1(c) may file a petition for a contested
22 case with the Office of Administrative Hearings
23 under Article 3 of Chapter 150B of the General
24 Statutes.

25 (3) A State employee or former State employee whose
26 grievance involves personnel actions or issues
27 arising under G.S. 126-34.1(d) may proceed only as
28 provided in G.S. 126-34.5.

29 (4) A State employee or former State employee whose
30 grievance involves personnel actions or issues
31 included under both subdivisions (2) and (3) of
32 this section may proceed only by filing a petition
33 for a contested case with the Office of
34 Administrative Hearings under Article 3 of Chapter
35 150B of the General Statutes.

36 (b) A grievant must file a petition for a contested case under
37 subdivisions (1), (2), or (4) of subsection (a) of this section
38 with the Office of Administrative Hearings as provided in G.S.
39 150B-23(a) no later than 30 days after the last day of the 30-day
40 period provided for the informal internal resolution of the
41 grievance by the agency under G.S. 126-34.3. If the grievant
42 fails to file a petition for a contested case within 30 days
43 after the last day of the 30-day period provided for the informal

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1 internal resolution of the grievance by the agency, the agency
2 shall dismiss the grievance.

3 (c) A grievant must notify the personnel officer in writing if
4 the grievant wishes to proceed under G.S. 126-34.4(a)(3) and G.S.
5 126-34.5 no later than 15 days after the last day of the 30-day
6 period provided for the informal internal resolution of the
7 grievance by the agency under G.S. 126-34.3. If the grievant
8 fails to notify the personnel officer that the grievant wished to
9 proceed under G.S. 126-34.4(a)(3) and G.S. 126-34.5 within 15
10 days after the last day of the 30-day period provided for the
11 informal internal resolution of the grievance by the agency, the
12 agency shall dismiss the grievance.

13 § 126-34.5. Expedited resolution of a grievance by a qualified
14 neutral party.

15 (a) If the agency and the grievant do not resolve a grievance
16 arising under G.S. 126-34.1(d) within the 30-day period provided
17 for the informal internal resolution of the grievance by the
18 agency under G.S. 126-34.3 and the grievant has notified the
19 agency that the grievant wishes to proceed with the grievance,
20 the agency and the grievant shall have five days in which to
21 select a qualified neutral party by mutual agreement. Within
22 five days after the agency and the grievant mutually agree on a
23 qualified neutral party, the agency shall notify the Office of
24 State Personnel of the grievance. The agency shall include the
25 name of the qualified neutral party in the notice. If the agency
26 and the grievant are unable to agree on a qualified neutral
27 party, the agency shall notify the Office of State Personnel of
28 the grievance and shall include in the notice a request that the
29 Office of State Personnel select a qualified neutral party. The
30 Office of State Personnel shall select a qualified neutral party
31 within five days after it receives the request from the agency.

32 (b) The Office of State Personnel shall maintain a list of all
33 persons who currently meet the requirements for service as a
34 qualified neutral party. An agency and a grievant may select by
35 mutual agreement any qualified neutral party whose name appears
36 on the list. In selecting a qualified neutral party by mutual
37 agreement, the agency and the grievant may choose any person who
38 currently meets the requirements for service as a qualified
39 neutral party. In selecting a qualified neutral party when the
40 agency and the grievant cannot agree on a qualified neutral
41 party, the Office of State Personnel shall choose a person who
42 currently meets the requirements for service as a qualified
43 neutral party and who has not served a qualified neutral party

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1 for the resolution of a grievance involving the agency within the
2 preceding six months.

3 (c) In order to serve as a qualified neutral party in the
4 grievance resolution process, a person shall:

5 (1) Not be a State employee or an agent of any State
6 agency.

7 (2) Not have been a State employee or an agent of any
8 State agency within the preceding 12 months.

9 (3) Other than service as a qualified neutral party for
10 the resolution of another grievance, have no
11 personal, financial, or business interest in, or
12 relationship with, the agency, the grievant, any
13 other State agency, State employee, or other person
14 involved with the grievance; or any aspect of the
15 grievance.

16 (4) Not have prior knowledge of the grievance or of any
17 fact that bears on the merits of the grievance.

18 (5) Successfully complete 40 hours of training in basic
19 mediation or other alternative dispute resolution
20 methods.

21 (6) Successfully complete a training course provided by
22 the Office of State Personnel on policy and
23 procedure under this Chapter and rules adopted
24 under this Chapter as they relate to the discipline
25 and dismissal of State employees and the resolution
26 of grievances.

27 (7) Meet any other qualifications that the Commission
28 shall establish by rule.

29 (d) The Commission shall adopt rules specifying minimum
30 procedures for the expedited resolution of a grievance by a
31 qualified neutral party. In the conduct of the grievance
32 resolution process, the qualified neutral party shall:

33 (1) Control the grievance resolution process.

34 (2) Maintain impartiality.

35 (3) Schedule meetings with designated agency
36 representatives and the grievant to mediate the
37 grievance.

38 (4) Explain the procedures to be followed in, and the
39 requirements of, the grievance resolution process.

40 (5) Maintain the confidentiality of all communications
41 that occur as a part of the grievance resolution
42 process.

43 (e) Any costs associated with the use of a qualified neutral
44 party in the resolution of a grievance shall be borne by the

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1 agency. The Commission shall establish a schedule of rates to be
2 paid to neutral parties in the resolution of grievances.

3 (f) Neither the agency nor the grievant shall be represented
4 by an attorney or third party during any proceeding conducted by
5 the qualified neutral party. The Commission shall not award and
6 an agency shall not pay attorney fees in connection with
7 proceedings conducted by a qualified neutral party.

8 (g) If the agency and the grievant are able to resolve the
9 grievance within 45 days of the date on which the qualified
10 neutral party is selected, the qualified neutral party shall
11 reduce the resolution of the grievance to writing in a memorandum
12 of agreement. The memorandum of agreement shall set out all the
13 terms and conditions of the resolution of the grievance and shall
14 specify when the terms and conditions become effective. The
15 agency head or personnel officer and the grievant shall sign the
16 memorandum of agreement, and the agency shall submit the
17 memorandum to the Office of State Personnel for approval in
18 accordance with rules adopted by the Commission. Upon approval
19 by the Office of State Personnel or the Commission, the agreement
20 becomes a final order of the Commission binding upon both the
21 agency and the grievant.

22 (h) If the agency and the grievant are unable to resolve the
23 grievance within 45 days of the date on which the qualified
24 neutral party is selected, the agency and the grievant may
25 mutually agree to extend the time during which the qualified
26 neutral party may attempt to resolve the grievance.

27 (i) If the agency and the grievant are unable to resolve the
28 grievance within 45 days of the date on which the qualified
29 neutral party is selected or within the mutually agreed extension
30 period, the qualified neutral party shall prepare a written
31 report on the status of the grievance. The report shall include
32 a statement of the facts involved in the grievance as determined
33 by the qualified neutral party; identify any law, rule, or policy
34 that the qualified neutral party determines to be relevant to the
35 resolution of the grievance; and state the qualified neutral
36 party's recommended resolution of the grievance. The qualified
37 neutral party shall provide the agency and the grievant with a
38 copy of the report within five days after the date on which the
39 45-day expedited grievance resolution period ends. The agency
40 and the grievant shall have ten days to review the report and
41 decide whether to accept the recommended resolution of the
42 grievance. If the agency and the grievant accept the recommended
43 resolution of the grievance, the qualified neutral party shall
44 reduce the resolution of the grievance to writing in a memorandum

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1 of agreement. The memorandum of agreement shall set out all the
2 terms and conditions of the resolution of the grievance and shall
3 specify when the terms and conditions become effective. The
4 agency head or personnel officer and the grievant shall sign the
5 memorandum of agreement, and the agency shall submit the
6 memorandum to the Office of State Personnel for approval in
7 accordance with rules adopted by the Commission. Upon approval
8 by the Office of State Personnel or the Commission, the agreement
9 becomes a final order of Commission binding upon both the agency
10 and the grievant.

11 (j) Any dispute between the agency and the grievant regarding
12 implementation of a final order of the Commission resolving a
13 grievance under this section shall be referred to the Commission.
14 The Commission shall attempt to resolve any dispute regarding
15 implementation of the order, shall determine whether the agency
16 and the grievant have substantially complied with the terms of
17 the final order, and shall issue any supplemental order it
18 determines to be necessary to the implementation of the final
19 order. In the event that either the agency or the grievant
20 fails to comply with a supplemental order of the Commission, the
21 agency or the grievant may file an action in the superior court
22 of Wake County to enforce the order.

23 (k) If the agency and the grievant do not accept the
24 recommended resolution of the grievance as provided in subsection
25 (i) of this section, the grievant may file a petition for a
26 contested case under Article 3 of Chapter 150B of the General
27 Statutes within 30 days after the date on which the 45-day
28 expedited grievance resolution period ends.

29 (l) If the Office of State Personnel and the Commission
30 disapprove a memorandum of agreement submitted for approval under
31 this section or under G.S. 126-34.3(d), the Office of State
32 Personnel shall return the memorandum of settlement to the agency
33 with a written statement of objections. The agency and the
34 grievant may amend the memorandum of agreement and resubmit it to
35 the Office of State Personnel for approval. If the agency and
36 the grievant do not agree on amendments to the memorandum of
37 agreement, the memorandum of agreement is void and the agency and
38 the grievant may proceed as provided in this Article.

39 § 126-34.6. Administrative hearings.

40 (a) No issue other than those specifically set out in G.S.
41 126-34.1 shall be grounds under this Chapter for a contested case
42 under Article 3 of Chapter 150B of the General Statutes. No
43 person may file a petition for a contested case with the Office

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1 of Administrative Hearings unless the person has complied with
2 the procedure set out in this Article.

3 (b) In assigning an administrative law judge to preside over
4 contested cases under this Article, the Chief Administrative Law
5 Judge shall give priority to contested cases that involve a
6 grievance under G.S. 126-34.1(a)(1) and G.S. 126-34.1(c). G.S.
7 150B-23.1 shall not apply to a contested case filed under this
8 Article.

9 (c) The administrative law judge shall file a recommended
10 decision in a contested case under this Article within 180 days
11 from the date on which the petition for a contested case is
12 filed. The Office of Administrative Hearings shall forward a
13 copy of the official record to the Commission and shall forward a
14 copy of the recommended decision to the agency and the grievant
15 within 30 days of the date the administrative law judge files the
16 recommended decision.

17 (d) Notwithstanding G.S. 150B-44, the Commission has 90 days
18 from the day it receives the official record in a contested case
19 from the Office of Administrative Hearings or 90 days after its
20 next regularly scheduled meeting that occurs at least 30 days
21 after the day it receives the official record, whichever is
22 longer, to make a final decision in the case. This time limit
23 may be extended by agreement between the parties or, for good
24 cause shown, by the Commission for an additional period of up to
25 90 days.

26 (e) The report of the qualified neutral party is not
27 admissible in any contested case or subsequent judicial
28 proceeding regarding the grievance, and the qualified neutral
29 party shall not be a witness in any contested case or subsequent
30 judicial proceeding regarding the grievance.

31 § 126-34.7. Judicial review.

32 Article 4 of Chapter 150B of the General Statutes governs
33 judicial review of final agency decisions under this Article.
34 Notwithstanding G.S. 150B-43, an agency may not seek judicial
35 review of a final order of the Commission. This section shall
36 not be construed to limit the right of an agency to raise any
37 issue within the scope of review set out in G.S. 150B-51 in a
38 response to a petition for judicial review, as provided in G.S.
39 150B-46.

40 § 126-34.8. Reports.

41 On or before 1 December of each year, the Office of State
42 Personnel shall report to the Joint Legislative Commission on
43 Governmental Operations on the administration of the grievance
44 resolution procedure under this Article during the previous

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1 fiscal year. The report shall include statistical information on
2 the number of grievances filed, the nature of the grievances, the
3 disposition of the grievances, the time required to dispose of
4 grievances, the costs associated with the disposition of
5 grievances, and the cost associated with each grievance that is
6 resolved by settlement. Every agency shall furnish to the Office
7 of State Personnel the information required to complete this
8 report not later than 1 September of each year. The Office of
9 Administrative Hearings shall furnish the Office of State
10 Personnel with statistical information to be included in the
11 report on the number of contested cases filed, the nature of the
12 contested cases, the disposition of the contested cases, and the
13 time required to dispose of contested cases by 1 September of
14 each year."

15 Sec. 7. G.S. 126-4(9) reads as rewritten:

16 "~~(9) The investigation of complaints and the issuing of~~
17 ~~such binding corrective orders or such other~~
18 ~~appropriate action~~ The issuance of final orders
19 and supplemental orders concerning employment,
20 promotion, demotion, transfer, discharge,
21 reinstatement, and any other personnel action or
22 issue defined as a contested case issue by this
23 Chapter in all cases as the Commission shall find
24 justified, set in G.S. 126-34.1."

25 Sec. 8. G.S. 126-4(11) reads as rewritten:

26 "~~(11) In cases where the Commission finds discrimination~~
27 ~~or orders reinstatement or back pay whether (i)~~
28 ~~heard by the Commission or (ii) appealed for~~
29 ~~limited review after settlement or (iii) resolved~~
30 ~~at the agency level, the assessment of reasonable~~
31 ~~attorneys' fees and witnesses' fees against the~~
32 ~~State agency involved. The award of costs, witness~~
33 ~~fees, and attorney fees under Article 8 of this~~
34 ~~Chapter. Article 3 of Chapter 6 of the General~~
35 ~~Statutes shall not apply to the award of costs,~~
36 ~~witness fees, or attorney fees under Article 8 of~~
37 ~~this Chapter."~~
38 this Chapter."

39 Sec. 9. G.S. 126-5(h) reads as rewritten:

40 "(h) In case of dispute as to whether an employee is subject
41 to the provisions of this Chapter, the dispute shall be resolved
42 as provided in Article 3 of Chapter 150B. G.S. 126-34.1(c) and
43 G.S. 126-34.3."

44 Sec. 10. G.S. 126-7(c) reads as rewritten:

1 "(c) Career growth recognition awards, cost-of-living
2 adjustments, and performance bonuses shall be based on annual
3 performance appraisals of all employees conducted by each
4 department, agency, and institution. The State Personnel
5 Commission, under the authority of G.S. 126-4(8), shall adopt
6 ~~policy and regulations~~ rules for performance appraisal. The
7 ~~policy and regulations~~ rules shall include the following:

- 8 (1) The performance appraisal system of each
9 department, agency, or institution shall be
10 designed and administered to ensure that career
11 growth recognition awards, cost-of-living
12 adjustments, and performance bonuses are
13 distributed fairly.
- 14 (2) To be eligible to distribute career growth
15 recognition awards, cost-of-living adjustments,
16 and performance bonuses, a department, agency, or
17 institution shall have an operative performance
18 appraisal system ~~which~~ that has been approved by
19 the Commission. The performance appraisal system
20 adopted shall use a rating scale of five levels,
21 with level four or better qualifying for
22 performance bonuses, level three or better
23 qualifying for career growth recognition awards,
24 and level two or better qualifying for
25 cost-of-living adjustments. The performance
26 appraisal system adopted shall adhere to modern
27 personnel management techniques and practices in
28 common use in the public and private sectors.
- 29 (3) The State Personnel Director shall help
30 departments, agencies, and institutions to
31 establish and administer their performance
32 appraisal systems and shall provide initial and
33 ongoing training in performance appraisal and
34 performance system administration.
- 35 (4) An employee whose performance is rated at or above
36 level four of the rating scale shall be eligible
37 to receive, subject to the rules ~~and regulations~~
38 of the Commission, a performance bonus unless the
39 employee's supervisor justifies in writing to the
40 employee the decision not to award the performance
41 bonus. Other than the Commission, no department,
42 agency, or institution shall set limits so as to
43 preclude an employee whose performance exceeds
44 management's expectations and performance

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- 1 requirements from consideration for a performance
2 bonus.
- 3 (4a) An employee whose performance is rated at or above
4 level three of the rating scale shall receive a
5 career growth recognition award unless the
6 employee's supervisor justifies in writing to the
7 employee the decision not to give the career
8 growth recognition award. The career growth
9 recognition award shall represent a two percent
10 (2%) increase within the employee's assigned pay
11 grade. In no event shall any award increase an
12 employee's compensation above the maximum of the
13 range. Other than the Commission, no agency,
14 department, or institution shall set limits so as
15 to preclude an employee whose performance meets or
16 exceeds management's expectations and performance
17 requirements from receiving a career growth
18 recognition award.
- 19 (4b) An employee whose performance is rated at or above
20 level two of the rating scale and who is not
21 involved in the final written stage of the
22 disciplinary procedure shall receive a
23 cost-of-living increase. Other than the
24 Commission, no agency, department, or institution
25 shall set limits or initiate written disciplinary
26 procedures for the purpose of precluding an
27 eligible employee from receiving a cost-of-living
28 adjustment.
- 29 (5) Repealed by Session Laws 1993, c. 388, s. 1.
- 30 (5a) Repealed by Session Laws 1993, c. 388, s. 1.
- 31 (6) The State Personnel Director may rescind any
32 career growth recognition award or performance
33 bonus that does not appear to meet the intent of
34 the provisions of the performance appraisal system
35 and require the originating department, agency, or
36 institution to reconsider or justify the increase.
- 37 (7) An employee who disputes the fairness of his or
38 her performance appraisal or the amount of a
39 performance bonus awarded or who believes that he
40 or she was unfairly denied a career growth
41 recognition award or performance bonus shall first
42 discuss the problem with his or her supervisor.
43 ~~Appeals of~~ A grievance as to the supervisor's
44 ~~decision shall be made~~ may be initiated only to

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~~the grievance committee or by filing a written complaint with the personnel officer of the agency with which the grievant is employed. The personnel officer shall refer the grievance to the internal performance review board of the department, agency, or institution or referee. which The internal performance review board or referee shall make a recommendation to the head of the department, agency, or institution agency for a final decision, or when consented to by both the agency and the employee, the supervisor's decision may be appealed by following the alternative dispute resolution process adopted by the State Personnel Commission. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. decision. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, A grievance as to a performance pay disputes, appraisal or a including disputes about individual the amount awarded as a performance appraisals, shall bonus is not be considered contested case issues. a grievance under G.S 126-34.1 and may not be raised in a petition for a contested case under Chapter 150B of the General Statutes. The State Personnel Commission shall adopt rules specifying minimum procedures for the resolution within an agency of a grievance as to a performance appraisal or the amount awarded as a performance bonus.~~

- (7a) Each department, agency, and institution shall establish a performance management and pay advisory committee as part of the performance appraisal system. The purpose of the committee is to ensure that salary increases and awards are made in an equitable manner. The committee shall be responsible for reviewing:
 - a. Agency salary increase and award policies to determine whether this section and any guidelines promulgated by the State Personnel Commission have been adhered to;

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- b. Agency training and education programs to determine whether all employees receive appropriate information; and
- c. Performance appraisal ratings within the department, agency, or institution to determine whether an equitable distribution has been made.

The committee must have a minimum of five members. The head of each department, agency, and institution shall appoint the members of the committee with equal representation of nonsupervisory, supervisory, and management employees. The committee shall elect its own chair.

The performance management and pay advisory committee shall meet at least two times each year. The committee shall submit a written report following each meeting to the head of the department, agency, or institution. The report shall include recommendations for changes and corrections in the administration of the performance management system. The recommendations of the committee shall be advisory only. The head of the department, agency, or institution shall respond to the committee within three months. Copies of the report shall be included in the report to the Office of State Personnel that is required of that agency, department, or institution. Summaries of the report shall be included in the annual reports that are mandated by this subsection.

(8) The State Personnel Director shall monitor the performance appraisal system and the distribution of salary increases and awards within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports ~~which~~ that shall include data on the demographics of performance ratings, the frequency of evaluations, the distribution of salary increases and awards, and the implementation schedule for salary increases and awards. The Director shall analyze the data to ensure that salary increases and awards are distributed fairly within each department, agency,

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- 1 and institution and across all departments,
2 agencies, and institutions of State government and
3 shall report back to each department, agency, and
4 institution on its appraisal and distribution
5 performance.
- 6 (9) The State Personnel Director shall report annually
7 on the Comprehensive Compensation System to the
8 Commission. The report shall evaluate the
9 performance of each department, agency, and
10 institution in the administration of its appraisal
11 system and the distribution of salary increases
12 and awards within each department, agency, and
13 institution and across State government. The
14 report shall include recommendations for improving
15 the performance appraisal system and alleviating
16 inequities. Copies of the report, as adopted by
17 the State Personnel Commission, shall be sent to
18 the Governor, Lieutenant Governor, President Pro
19 Tempore of the Senate, Speaker of the House of
20 Representatives, the standing personnel committees
21 of the House of Representatives and the Senate,
22 and the State Auditor. The State Personnel
23 Director shall recommend to the General Assembly
24 for its approval sanctions to be levied against
25 departments, agencies, and institutions that have
26 deficient performance appraisal systems or that do
27 not link salary increases and awards to employee
28 job performance. These sanctions may include
29 withholding salary increases and awards from the
30 managers and supervisors of individual employing
31 units of departments, agencies, and institutions
32 in which discrepancies exist.
- 33 (10) Repealed by Session Laws 1993, c. 388, s. 1."
34 Sec. 11. G.S. 126-7.2 is repealed.
35 Sec. 12. G.S. 126-14(c) reads as rewritten:
- 36 "(c) A State employee subject to the Personnel Act,
37 probationary State employee, or temporary State employee who
38 without probable cause falsely accuses a State employee or a
39 person appointed to State office of violating this section shall
40 be subject to discipline or change in employment status in
41 accordance with the provisions of G.S. ~~126-35, 126-37, and 126-38~~
42 126-35 and G.S. 126-37 and may, as otherwise provided by law, be
43 subject to criminal penalties for perjury or civil liability for
44 libel, slander, or malicious prosecution."

1 Sec. 13. G.S. 126-14.1(c) reads as rewritten:
2 "(c) A State employee subject to the Personnel Act,
3 probationary State employee, or temporary State employee, who
4 without probable cause falsely accuses a person of violating this
5 section shall be subject to discipline or change in employment
6 status in accordance with the provisions of G.S. ~~126-35, 126-37,~~
7 ~~and 126-38~~ 126-35 and G.S. 126-37 and may, as otherwise provided
8 by law, be subject to criminal penalties for perjury or civil
9 liability for libel, slander, or malicious prosecution."

10 Sec. 14. G.S. 126-25 reads as rewritten:
11 "§ 126-25. Remedies of employee objecting to material in file.
12 An ~~employee, employee or former employee or applicant for~~
13 ~~employment~~ who objects to material in his the employee's file may
14 place in ~~his the~~ file a statement relating to the material he the
15 employee considers to be inaccurate or misleading. An ~~employee,~~
16 ~~employee or former employee or applicant for employment~~ who
17 objects to material in his the employee's file because he the
18 employee or former employee considers it inaccurate or misleading
19 may seek the removal of such the material from his the file in
20 ~~accordance with the grievance procedure of that department,~~
21 ~~including appeal to the State Personnel Commission, by filing a~~
22 grievance as provided in G.S. 126-34.1(d)(5) and G.S. 126-34.3.
23 When a ~~department, division, bureau, commission, or other an~~
24 agency agrees or is ordered by the State Personnel Commission or
25 by the General Court of Justice ~~of this State~~ to remove
26 inaccurate or misleading material from an employee's file, which
27 ~~information was placed in the file by the supervisor or other~~
28 ~~agent of management, file,~~ it shall destroy the original and all
29 copies of the material removed and may not retain any inaccurate
30 or misleading information derived from the material removed."

31 Sec. 15. G.S. 126-35 reads as rewritten:
32 "§ 126-35. Just cause; disciplinary actions for State employees.
33 (a) No career State employee subject to the State Personnel
34 Act shall be discharged, suspended, or demoted for disciplinary
35 reasons, except for just cause. In cases of ~~such~~ disciplinary
36 action, the employee shall, before the action is taken, be
37 furnished with a statement in writing setting forth ~~in numerical~~
38 ~~order~~ the specific acts or omissions that are the reasons for the
39 disciplinary action and the employee's ~~appeal rights.~~ The
40 ~~employee shall be permitted 15 days from the date the statement~~
41 ~~is delivered to appeal to the head of the department, grievance~~
42 rights under this Article. However, an employee may be suspended
43 without warning for causes relating to personal conduct
44 detrimental to State service, pending the giving of written

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1 reasons, in order to avoid undue disruption of work or to protect
2 the safety of persons or property or for other serious reasons.
3 ~~The employee, if he is not satisfied with the final decision of~~
4 ~~the head of the department, or if he is unable, within a~~
5 ~~reasonable period of time, to obtain a final decision by the head~~
6 ~~of the department, may appeal to the State Personnel Commission.~~
7 ~~Such appeal shall be filed not later than 30 days after receipt~~
8 ~~of notice of the department head's decision. The State Personnel~~
9 Commission may adopt, subject to the approval of the Governor,
10 rules that define just cause.

11 (b) Notwithstanding any other provision of this Chapter, a
12 reduction in pay or position ~~which~~ that is not imposed for
13 disciplinary reasons shall not be considered a disciplinary
14 action within the meaning of this Article. Disciplinary actions,
15 for the purpose of this Article, are those actions taken in
16 accordance with the disciplinary procedures adopted by the State
17 Personnel Commission and specifically based on unsatisfactory job
18 performance, unacceptable personal conduct or a combination of
19 the two.

20 ~~(c) For the purposes of contested case hearings under Chapter~~
21 ~~150B, an involuntary separation (such as a separation due to a~~
22 ~~reduction in force) shall be treated in the same fashion as if it~~
23 ~~were a disciplinary action."~~

24 Sec. 16. G.S. 126-36 reads as rewritten:

25 "§ 126-36. Appeal of unlawful State employment practice.

26 Any State employee or former State employee who has reason to
27 believe that employment, promotion, training, or transfer was
28 denied him or her, or that demotion, ~~layoff~~ layoff, or
29 termination of employment was forced upon him or her in
30 retaliation for opposition to alleged discrimination or because
31 of his or her age, sex, race, color, national origin, religion,
32 creed, political affiliation, disability, or handicapped
33 ~~[handicapping]~~ handicapping condition as defined by G.S. 168A-3
34 168A-3, except where specific age, ~~sex~~ sex, or physical
35 requirements constitute a bona fide occupational qualification
36 necessary to proper and efficient administration, ~~shall have the~~
37 right to appeal directly to the State Personnel Commission. may
38 file a grievance as provided in G.S. 126-34.3."

39 Sec. 17. G.S. 126-36.1 is repealed.

40 Sec. 18. G.S. 126.36.2 is repealed.

41 Sec. 19. G.S. 126-37 reads as rewritten:

42 "§ 126-37. Personnel Commission to review Administrative Law
43 Judge's recommended decision and make final agency decision.

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1 (a) ~~Appeals involving a disciplinary action, alleged~~
2 ~~discrimination, and any other contested case arising under this~~
3 ~~Chapter shall be conducted in the Office of Administrative~~
4 ~~Hearings as provided in Article 3 of Chapter 150B; provided that~~
5 ~~no grievance may be appealed unless the employee has complied~~
6 ~~with G.S. 126-34. The State Personnel Commission shall make a~~
7 ~~final decision in these cases~~ The Commission shall make the final
8 agency decision in a contested case brought under subdivisions
9 (1), (2), and (4) of G.S. 126-34.4(a) and G.S. 126-34.5(k), as
10 provided in G.S. 150B-36, except as provided in subsection (b1)
11 of this section. The State Personnel Commission is hereby
12 authorized to may ~~reinstate any employee to the position from~~
13 ~~which he the employee has been removed, to order the employment,~~
14 ~~promotion, transfer, or salary adjustment of any individual to~~
15 ~~whom it has been wrongfully denied~~ denied, ~~to direct other~~
16 ~~suitable action to correct the abuse~~ remedy the grievance, ~~which~~
17 ~~may include the requirement of payment for any loss of salary~~
18 ~~which that has resulted from the improperly discriminatory~~
19 improper ~~action of the appointing authority.~~

20 (b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 572,
21 s. 1.

22 (b1) ~~In appeals involving local government employees subject~~
23 ~~to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals~~
24 ~~in which discrimination prohibited by Article 6 of this Chapter~~
25 ~~is found or in any case where a binding decision is required by~~
26 ~~applicable federal standards, the decision of the State Personnel~~
27 ~~Commission shall be advisory to the local appointing authority.~~
28 The decision of the Commission in a contested case involving a
29 grievance filed by an employee of a county or area social
30 services; public health; mental health, developmental
31 disabilities, or substance abuse department or authority; or a
32 local emergency management agency that receives federal
33 grant-in-aid funds shall be advisory to the board of county
34 commissioners or other local or area authority except that a
35 decision in a contested case involving discrimination in
36 violation of Article 6 of this Chapter or involving an issue
37 where a binding decision is required by applicable federal
38 standards shall be the final agency decision. The State
39 Personnel Commission shall comply with all requirements of G.S.
40 150B-44 in making an advisory decision. The local or area
41 appointing authority shall, within 90 days of receipt of the
42 advisory decision of the State Personnel Commission, issue a
43 written, written final agency decision either accepting,
44 rejecting, or modifying the decision of the State Personnel

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1 Commission. If the local or area appointing authority rejects or
2 modifies the advisory decision, the local or area appointing
3 authority must state in writing the specific reasons why it did
4 not adopt the advisory decision. A copy of the final agency
5 decision of the local or area appointing authority shall be
6 served on each party personally or by certified mail, and on each
7 party's attorney of record.

8 ~~(b2) The final decision is subject to judicial review pursuant~~
9 ~~to Article 4 of Chapter 150B of the General Statutes. Appeals in~~
10 ~~which it is found that~~ The decision of the Commission in a
11 contested case involving discrimination prohibited by Article 6
12 of this Chapter has occurred or in any case where a binding
13 decision is required by applicable federal standards shall be
14 heard as all other appeals, except that the decision of the State
15 Personnel Commission shall be final. the final agency decision.

16 (b3) A final agency decision by the Commission or a local or
17 area appointing authority is subject to judicial review pursuant
18 to Article 4 of Chapter 150B of the General Statutes.

19 (c) If the local or area appointing authority is other than a
20 board of county commissioners, the local or area appointing
21 authority ~~must give the county notice of the appeal taken~~
22 ~~pursuant to subsection (a) of this section. Notice must be given~~
23 ~~to the county manager or the chairman of the board of county~~
24 ~~commissioners by certified mail within 15 days of the receipt of~~
25 ~~the notice of appeal. shall notify the board of county~~
26 ~~commissioners that a petition for a contested case involving a~~
27 ~~grievance has been filed by mailing a copy of the petition to the~~
28 ~~clerk of the board of county commissioners within 15 days of the~~
29 ~~date the petition is served on the local or area appointing~~
30 ~~authority. The county may intervene in the appeal contested case~~
31 ~~as provided in G.S. 150B-23(d) within 30 days of receipt of the~~
32 ~~notice. If the action final agency decision is appealed to~~
33 ~~superior court court, the county may intervene in the superior~~
34 ~~court proceeding as provided in G.S. 150B-46 even if it has did~~
35 ~~not intervened intervene in the administrative proceeding. The~~
36 ~~decision of the superior court shall be binding on bind the~~
37 ~~county even if the county does not intervene."~~

38 Sec. 20. G.S. 126-38 is repealed.

39 Sec. 21. G.S. 126-39 is repealed.

40 Sec. 22. G.S. 126-41 reads as rewritten:

41 "§ 126-41. Attorney and witness fees. Costs, witness fees, and
42 attorney fees.

43 The decision of the Commission assessing or refusing to assess
44 costs, reasonable witness fees fees, or a reasonable attorney's

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1 ~~fee attorney fees~~ as provided in G.S. 126-4(11) is a final agency
2 decision appealable under Article 4 of Chapter 150B of the
3 General Statutes. The reviewing court may reverse or modify the
4 decision of the Commission if the decision is unreasonable or the
5 award is inadequate. The reviewing court shall award ~~court costs~~
6 and ~~a reasonable attorney's fee for representation~~ attorney fees
7 to a grievant in connection with the appeal to an employee who
8 obtains a reversal or modification of the Commission's decision
9 in an appeal an award of costs, witness fees, or attorney fees by
10 the Commission under this section."

11 Sec. 23. G.S. 126-82(d) reads as rewritten:

12 "(d) Any eligible veteran who has reason to believe that he or
13 she did not receive a veteran's preference in accordance with the
14 provisions of this Article or rules adopted under ~~it may appeal~~
15 ~~directly to the State Personnel Commission.~~ this Article may file
16 a grievance as provided in G.S. 126-34.1 and G.S. 126-34.3."

17 Sec. 24. Upon application to the Office of State
18 Personnel, persons who are certified as mediators by the
19 Administrative Office of the Courts under G.S. 7A-38.2 and who
20 successfully complete the training course required by G.S.
21 126-34.5(c)(6), as enacted by section 6 of this act, may serve as
22 qualified neutral parties without meeting other requirements of
23 G.S. 126-34.5(c) from 1 July 1997 until 1 July 1998.

24 Sec. 25. The State Personnel Commission shall adopt
25 rules to implement the provisions of this act as provided in G.S.
26 126-34.3(b), 126-34.5(c)(7), 126-34.5(d), and 126-34.5(e), as
27 enacted in section 6 of this act. Rules adopted pursuant to this
28 section shall become effective 1 July 1997 unless a later
29 effective date is required by law. The State Personnel
30 Commission shall prepare a list of persons who may serve as
31 qualified neutral parties as provided by this act by 1 July 1997.

32 Sec. 26. Sections 1 through 23 of this act become
33 effective 1 July 1997 and apply to grievances filed on or after
34 that date, except that G.S. 126-34.7, as enacted by section 6 of
35 this act, becomes effective upon ratification and applies to any
36 final agency decision of the State Personnel Commission under
37 G.S. 126-37 for which a petition for judicial review has not been
38 filed as provided in G.S. 150B-45. Sections 24, 25, and 26 of
39 this act are effective upon ratification.

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APPENDIX D

LEGISLATIVE PROPOSAL II Decentralize Some OSP Functions

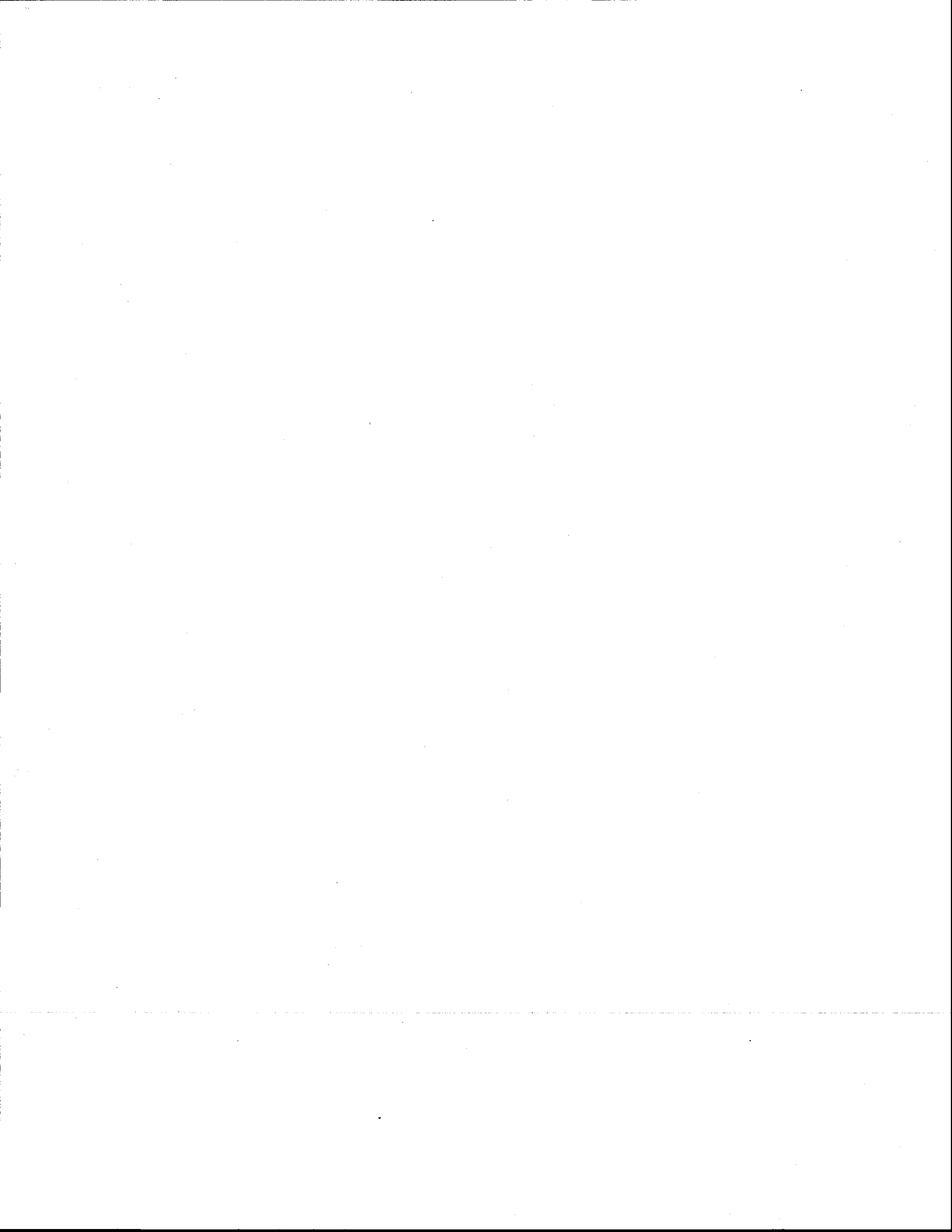
Section 1 expresses the additional intent of Chapter 126 of the North Carolina General Statutes to make provisions for a decentralized system of personnel administration, where such is appropriate, and to do so without additional cost to the State. The particular roles of each group--the State Personnel Commission, Office of State Personnel, and the heads of agencies, departments, and institutions--are specified.

Section 2 lists a number of activities for which the Office of State Personnel is to be responsible. They include:

1. Providing policy and rule development for the State Personnel Commission;
2. Providing training in personnel management to agencies, departments, and institutions;
3. Providing technical assistance in the management of personnel programs and activities to agencies, departments and institutions;
4. Negotiating decentralization agreements with agencies, departments, and institutions;
5. Administering centralized programs and providing services which have not been transferred to agencies;
6. Providing approval authority of classification and compensation personnel actions where such authority has not been transferred or has been rescinded;
7. Maintaining a computer data base on employees and positions in the agencies;
8. Developing criteria and standards to measure the agencies' levels of compliance or non-compliance with established Commission policies, rules, and procedures; and
9. Implementing corrective actions in cases of agency non-compliance.

Section 3 authorizes the State Personnel Commission to establish policies and rules governing the decentralization of certain functions from the Office of State Personnel to state agencies, departments and institutions, where appropriate. It further authorizes the Office of State Budget and Management to allow agencies, departments, and institutions to use lapsed salaries and salary reserves for the purpose of reimbursing the Office of State Personnel for performing the agency's personnel work if its decentralization agreement has been rescinded.

The proposed act becomes effective October 1, 1996.



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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RPZ-008.2

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION.

17-APR-96 12:23:21

Short Title: Decentralize Some OSP Functions. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE DUPLICATION OF WORK BETWEEN THE OFFICE OF STATE
3 PERSONNEL AND OTHER AGENCIES, DEPARTMENTS, AND INSTITUTIONS BY
4 THE DECENTRALIZATION OF CERTAIN FUNCTIONS FROM THE OFFICE OF
5 STATE PERSONNEL TO THOSE AGENCIES, DEPARTMENTS, AND
6 INSTITUTIONS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 126-1 reads as rewritten:
9 ARTICLE 1.
10 State Personnel System Established.
11 **§ 126-1. Purpose of Chapter; application to local employees.**
12 It is the intent and purpose of this Chapter to establish for
13 the government of the State a system of personnel administration
14 under the Governor, based on accepted principles of personnel
15 administration and applying the best methods as evolved in
16 government and industry. It is also the intent of this Chapter
17 that this system of personnel administration shall apply to local
18 employees paid entirely or in part from federal funds, except to
19 the extent that local governing boards are authorized by this
20 Chapter to establish local rules, local pay plans, and local

1 personnel systems. It is also the intent of this Chapter to make
2 provisions for a decentralized system of personnel
3 administration, where appropriate, and without additional cost to
4 the State, with the State Personnel Commission as the policy and
5 rule-making body. The Office of State Personnel shall make
6 recommendations for policies and rules to the Commission based on
7 research and study in the field of personnel management, develop
8 and administer statewide standards and criteria for good
9 personnel management, provide training and technical assistance
10 to all agencies, departments and institutions, provide oversight,
11 which includes conducting audits to monitor compliance with
12 established State Personnel Commission policies and rules,
13 administer a system for implementing necessary corrective actions
14 when the rule, standards or criteria are not met, and serve as
15 the central repository for State Personnel System data. The
16 agency, department and institution heads shall be responsible and
17 accountable for execution of Commission policies and rules for
18 their employees."

19 Sec. 2. G.S. 126-3 reads as rewritten:
20 "§126-3. Office of State Personnel established and
21 responsibilities outlined; administration and supervision;
22 appointment, compensation and tenure of Director.

23 (a) There is hereby established the Office of State Personnel
24 (hereinafter referred to as "the Office") which shall be placed
25 for organizational purposes within the Department of
26 Administration. Notwithstanding the provisions of North Carolina
27 State government reorganization as of January 1, 1975, and
28 specifically notwithstanding the provisions of Chapter 864 of the
29 1971 North Carolina Session Laws [Chapter 143A], the Office of
30 State Personnel shall exercise all of its statutory powers in
31 this Chapter independent of control by the Secretary of
32 Administration and shall be under the administration and
33 supervision of a State Personnel Director (hereinafter referred
34 to as "the Director") appointed by the Governor and subject to
35 the supervision of the Commission for purposes of this Chapter.
36 The salary of the Director shall be fixed by the General Assembly
37 in the Current Operations Appropriations Act. The Director shall
38 serve at the pleasure of the Governor.

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1 (b) The Office shall be responsible for the following
2 activities, and such other activities as specified in this
3 Chapter:

- 4 (1) Providing policy and rule development for the
5 Commission and implementing and administering all
6 policies, rules and procedures established by the
7 Commission;
- 8 (2) Providing training in personnel management to
9 agencies, departments and institutions including
10 train-the-trainer programs for those agencies,
11 departments and institutions who request such
12 training and where sufficient staff and expertise
13 exist to provide the training within their
14 respective agencies, departments and institutions;
- 15 (3) Providing technical assistance in the management of
16 personnel programs and activities to agencies,
17 departments and institutions;
- 18 (4) Negotiating decentralization agreements with all
19 agencies, departments and institutions, where it is
20 cost effective to include delegation of authority
21 for certain classification and corresponding salary
22 administration actions and other personnel programs
23 to be specified in the agreements;
- 24 (5) Administering such centralized programs and
25 providing services as approved by the Commission
26 which have not been transferred to agencies,
27 departments and institutions or where this
28 authority has been rescinded for noncompliance;
- 29 (6) Providing approval authority of personnel actions
30 involving classification and compensation where
31 such approval authority has not been transferred by
32 the Commission to agencies departments and
33 institutions or where such authority has been
34 rescinded for noncompliance;
- 35 (7) Maintaining a computer database of all relevant and
36 necessary information on employees and positions
37 within agencies, departments and institutions in
38 the State's personnel system;
- 39 (8) Developing criteria and standards to measure the
40 level of compliance or noncompliance with

1 established Commission policies, rules, procedures,
2 criteria and standards in agencies, departments and
3 institutions to which authority has been delegated
4 for classification, salary administration and other
5 decentralized programs, and determining, through
6 routine monitoring and periodic review process,
7 that agencies, departments and institutions are in
8 compliance or noncompliance with established
9 Commission policies, rules, procedures, criteria
10 and standards;

11 (9) Implementing corrective actions in cases of
12 noncompliance."

13 Sec. 3. G.S. 126-4 reads as rewritten:

14 § 126-4. Powers and duties of State Personnel Commission.

15 Subject to the approval of the Governor, the State Personnel
16 Commission shall establish policies and rules governing each of
17 the following:

- 18 (1) Position classification plans which shall provide
19 for the classification and reclassification of all
20 positions subject to this Chapter according to the
21 duties and responsibilities of the positions.
- 22 (2) Compensation plans which shall provide for minimum,
23 maximum, and intermediate rates of pay for all
24 employees subject to the provisions of this
25 Chapter.
- 26 (3) For each class of positions, reasonable
27 qualifications as to education, experience,
28 specialized training, licenses, certifications, and
29 other job-related requirements pertinent to the
30 work to be performed.
- 31 (4) Recruitment programs designed to promote public
32 employment, communicate current hiring activities
33 within State government, and attract a sufficient
34 flow of internal and external applicants; and
35 determine the relative fitness of applicants for
36 the respective positions.
- 37 (5) Hours and days of work, holidays, vacation, sick
38 leave, and other matters pertaining to the
39 conditions of employment. The legal public holidays
40 established by the Commission as paid holidays for

1 State employees shall include Martin Luther King,
2 Jr.'s Birthday and Veterans Day. The Commission
3 shall not provide for more than 11 paid holidays
4 per year except that in those years in which
5 Christmas Day falls on a Tuesday, Wednesday, or
6 Thursday, the Commission shall not provide for more
7 than 12 paid holidays.

8 (5a) In years in which New Year's Day falls on Saturday,
9 the Commission may designate December 31 of the
10 previous calendar year as the New Year's holiday,
11 provided that the number of holidays for the
12 previous calendar year does not exceed 12 and the
13 number of holidays for the current year does not
14 exceed 10. When New Year's Day falls on either
15 Saturday or Sunday, the constituent institutions of
16 The University of North Carolina that adopt
17 alternative dates to recognize the legal public
18 holidays set forth in subdivision (5) of this
19 section and established by the Commission may
20 designate, in accordance with the rules of the
21 Commission and the requirements of this
22 subdivision, December 31 of the previous calendar
23 year as the New Year's holiday.

24 (6) The appointment, promotion, transfer, demotion and
25 suspension of employees.

26 (7) Cooperation with the State Board of Education, the
27 Department of Public Instruction, the University of
28 North Carolina, and the Community Colleges of the
29 State and other appropriate resources in developing
30 programs in, including but not limited to,
31 management and supervisory skills, performance
32 evaluation, specialized employee skills, accident
33 prevention, equal employment opportunity awareness,
34 and customer service; and to maintain an accredited
35 Certified Public Manager program.

36 (7a) The separation of employees.

37 (8) A program of meritorious service awards.

38 (9) The investigation of complaints and the issuing of
39 such binding corrective orders or such other
40 appropriate action concerning employment,

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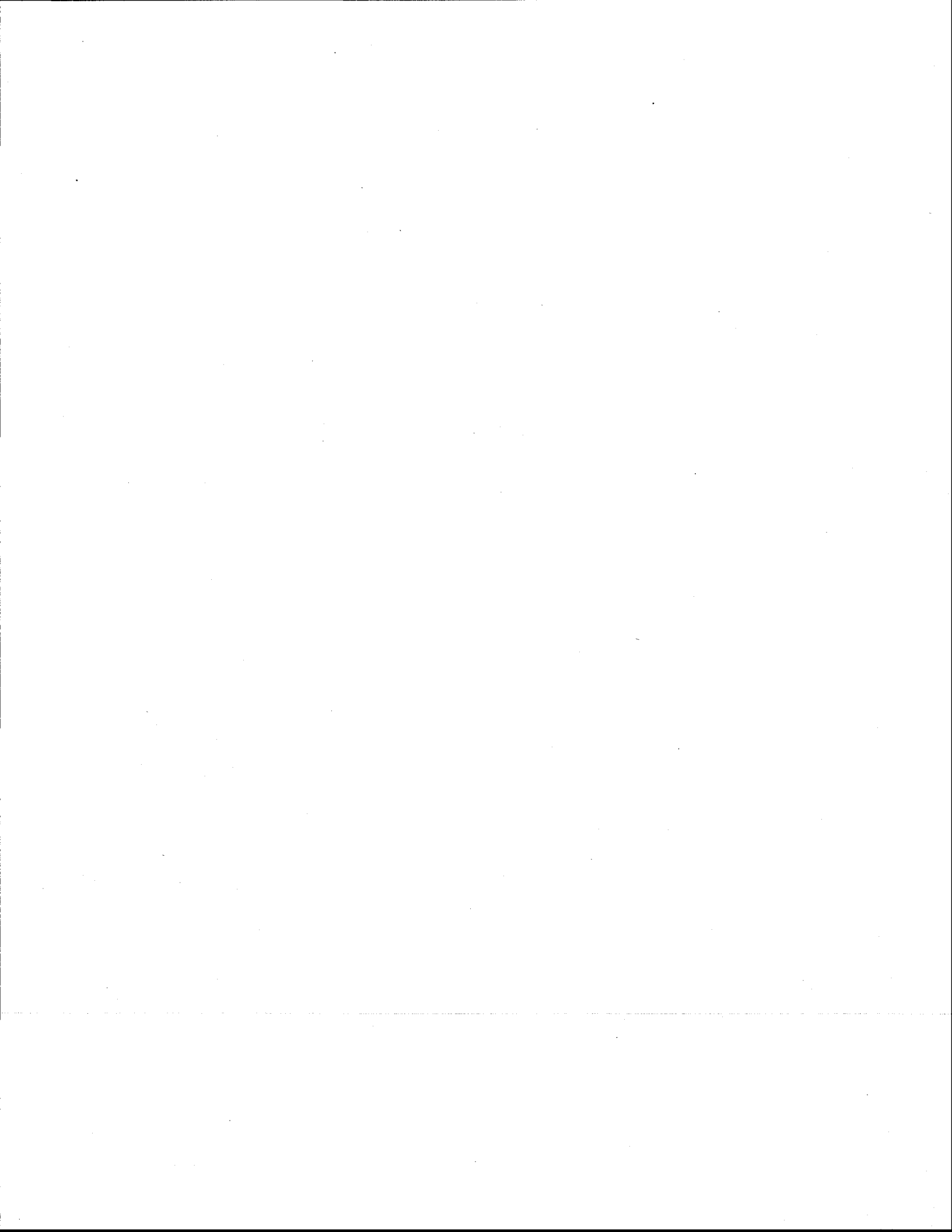
- 1 promotion, demotion, transfer, discharge,
2 reinstatement, and any other issue defined as a
3 contested case issue by this Chapter in all cases
4 as the Commission shall find justified.
- 5 (10) Programs of employee assistance, productivity
6 incentives, equal opportunity, safety and health as
7 required by Part 1 of Article 63 of Chapter 143 of
8 the General Statutes, and such other programs and
9 procedures as may be necessary to promote
10 efficiency of administration and provide for a fair
11 and modern system of personnel administration. This
12 subdivision may not be construed to authorize the
13 establishment of an incentive pay program.
- 14 (11) In cases where the Commission finds discrimination
15 or orders reinstatement or back pay whether (i)
16 heard by the Commission or (ii) appealed for
17 limited review after settlement or (iii) resolved
18 at the agency level, the assessment of reasonable
19 attorneys' fees and witnesses' fees against the
20 State agency involved.
- 21 (12) Repealed by Session Laws 1987, c. 320, s. 2.
- 22 (13) Repealed by Session Laws 1987, c. 320, s. 3.
- 23 (14) The implementation of G.S. 126-5(e).
- 24 (15) Recognition of State employees, public personnel
25 management, and management excellence.
- 26 (16) The implementation of G.S. 126-7.
- 27 (17) An alternative dispute resolution procedure.
- 28 (18) The decentralization process, where appropriate,
29 for state agencies, departments and institutions,
30 and enforcement of corrective actions including
31 reducing employee salaries and changing employee
32 classifications that do not comply with the policy,
33 criteria, or standards; also includes, but is not
34 limited to, suspension of decentralization
35 agreements in cases of noncompliance; and in cases
36 of suspension of decentralization agreements for
37 noncompliance, the assessment and reimbursement to
38 the Office of State Personnel for resulting
39 operational and personnel costs associated with the
40 period of modification of the agreement. The

1 Office of State Budget and Management is authorized
2 to allow agencies, departments, and institutions to
3 use lapsed salaries and salary reserves for this
4 purpose and shall direct use of such funds for this
5 purpose upon being notified by the State Personnel
6 Commission."

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

13 Sec. 4. This act becomes effective October 1, 1996.

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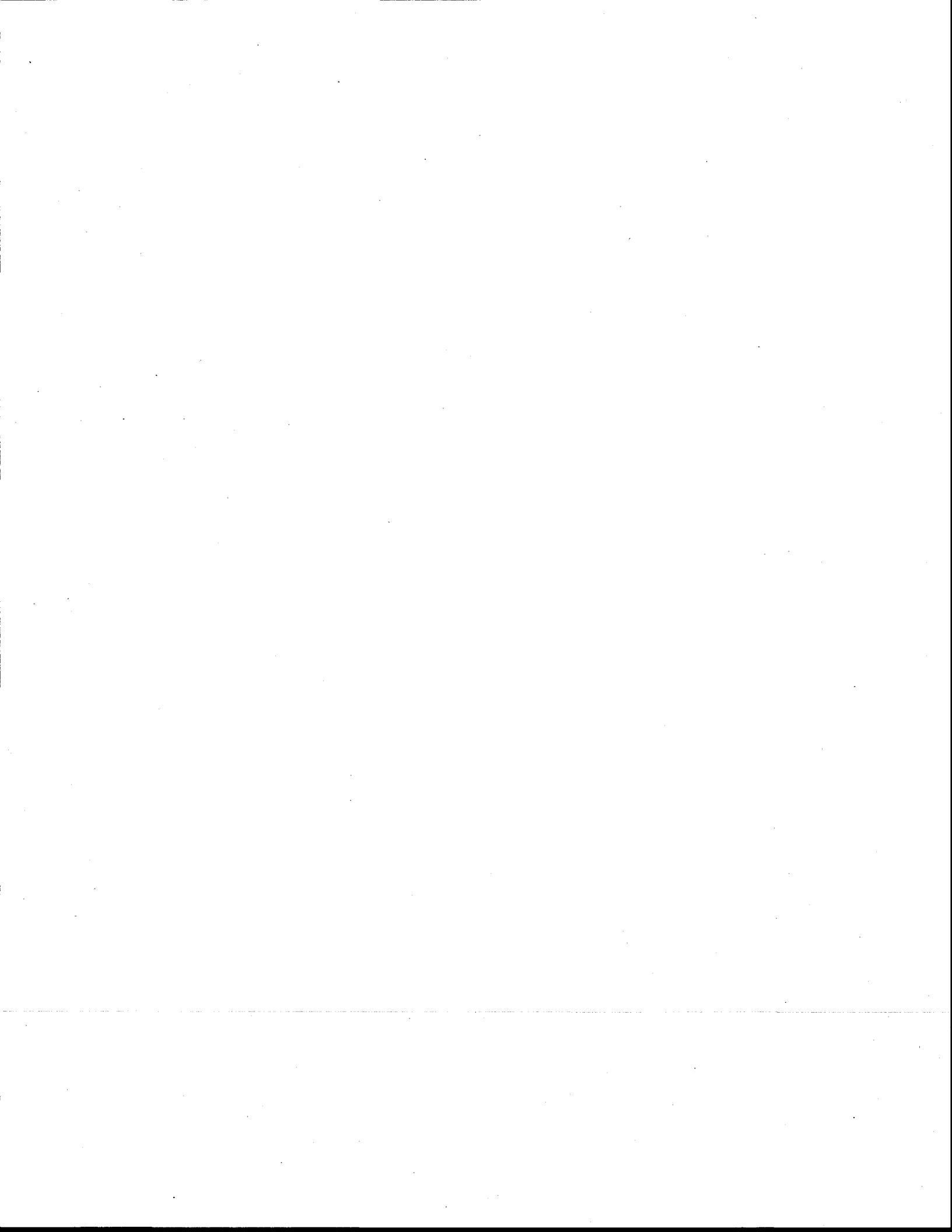
APPENDIX E

LEGISLATIVE PROPOSAL III Personnel Director Qualifications

Section 1 establishes general qualifications for the State Personnel Director position. It requires that the individual appointed possess sufficient business experience, or experience in human resources and public administration, or education to have a thorough knowledge of human resources, personnel management programs and administrative practices in order to operate a comprehensive array of personnel management services.

Section 2 adds a new section to G.S. 126-3 which addresses qualifications for agency human resources directors. It requires that individuals selected as directors or chief operating officers of agency, institution, or university human resources personnel offices must meet the position requirements, as approved by the State Personnel Commission, for the assigned classification. Such requirements would include knowledges, skills and abilities, and training and experience requirements.

The proposed act is effective upon ratification and applies to appointments made on or after that date.



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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RPZ-001.5

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION.
17-APR-96 17:16:55

Short Title: Personnel Director Qualifications. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH QUALIFICATIONS FOR THE POSITIONS OF STATE
3 PERSONNEL DIRECTOR AND HUMAN RESOURCES DIRECTORS OF STATE
4 AGENCIES, DEPARTMENTS, AND INSTITUTIONS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 126-3 is rewritten to read:
7 "§ 126-3. Office of State Personnel established; administration
8 and supervision; appointment, qualifications, compensation and
9 tenure of Director.
10 There is hereby established the Office of State Personnel
11 (hereinafter referred to as 'the Office') which shall be placed
12 for organizational purposes within the Department of
13 Administration. Notwithstanding the provisions of North Carolina
14 State government reorganization as of January 1, 1975, and
15 specifically notwithstanding the provisions of Chapter 864 of the
16 1971 North Carolina Session Laws [Chapter 143A], the Office of
17 State Personnel shall exercise all of its statutory powers in
18 this Chapter independent of control by the Secretary of
19 Administration and shall be under the administration and
20 supervision of a State Personnel Director (hereinafter referred

1 to as 'the Director') appointed by the Governor and subject to
2 the supervision of the Commission for purposes of this Chapter.
3 The Director shall have business management experience or
4 experience in human resources, personnel management, and public
5 administration and education sufficient to provide a thorough
6 knowledge of human resources, personnel management programs or
7 administrative practices necessary to operate a comprehensive
8 array of human resources, personnel management services. The
9 salary of the Director shall be fixed by the General Assembly in
10 the Current Operations Appropriations Act. The Director shall
11 serve at the pleasure of the Governor."

12 Sec. 2. G.S. 126-3 is amended by adding a new section
13 to read:

14 "§ G.S. 126-3.1 Qualifications of Agency Human Resources
15 Directors.

16 Individuals selected for directors or chief operating officers
17 of agency or university human resources personnel offices, or of
18 personnel offices of divisions or institutions of agencies and
19 universities, shall meet the position requirements, as approved
20 and required by the State Personnel Commission, including
21 knowledges, skills and abilities, and training and experience
22 requirements for the classification to which assigned."

23 Sec. 3. This act becomes effective upon ratification
24 and applies to appointments made on or after that date.

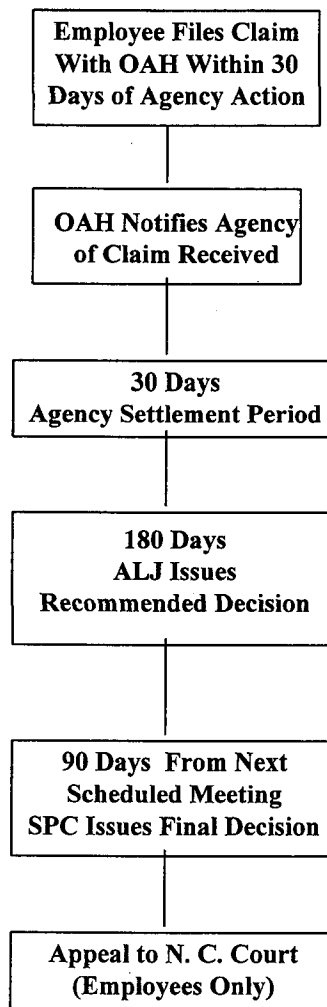
**DRAFT
FOR REVIEW ONLY**

APPENDIX F

TRACK ONE

GREIVABLE ISSUES: (1) Dismissal; (2) Denial of Promotion, Transfer, or Training due to alleged discrimination; (3) Demotion, Reduction in Force, or Termination in Retaliation of an employee's opposition to alleged discrimination; (4) Applicant's denial of employment due to alleged discrimination; (5) Applicant's denial of veteran's preference; (6) Whether a State Employee's or former State Employee's position is properly designated from the State Personnel Act as policy-making exempt.

TOTAL TIME: 10 MONTHS



TRACK TWO

GREIVABLE ISSUES: (1) Demotion or suspension without pay on an alleged violation of G. S. 126-35, if the employee is a career State employee; (2) Denial of veteran's preference provided in Article 13 of this Chapter in connection with a reduction in force, if the employee is a career State employee; (3) Denial of promotion as a result of a failure to post or failure to give priority consideration for promotion to a career State employee as required by G. S. 126-7.1(c1) or G.S. 126-7.1 (c2); (4) Denial of reemployment priority as required by G.S. 126; (5) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25; (6) Separation of a career State employee resulting from a reduction in force where the employee alleges that the separation was arbitrary or capricious because the agency failed to follow a plan for reduction in force approved by the Office of State Personnel.

TOTAL TIME: 100-105 Days

