

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 336*

Short Title: GPAC/Labor Recs.

(Public)

Sponsors: (by request) Representatives H. Hunter, Blue, Barnes, Diamont, Hackney, Hensley, G. Miller, Nesbitt, and Robinson.

Referred to: Business and Labor.

February 25, 1993

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT
2 PERFORMANCE AUDIT COMMITTEE TO TRANSFER TO THE
3 DEPARTMENT OF LABOR MAJOR WORKER TRAINING PROGRAMS AND
4 OTHER LABOR-RELATED FUNCTIONS CURRENTLY ESTABLISHED IN
5 OTHER STATE DEPARTMENTS OR AGENCIES.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Notwithstanding any other law or Executive Order, the
9 Employment Security Commission of North Carolina is hereby transferred to the
10 Department of Labor by a Type II transfer, as defined in G.S. 143A-6(b). Under this
11 transfer, the Commission shall have the authority to employ, direct, and supervise
12 professional and technical personnel, and shall not be accountable to the Commissioner
13 of Labor in its exercise of quasi-judicial powers authorized by statute.

14 Sec. 2. G.S. 96-4(a) reads as rewritten:

15 "(a) Duties and Powers of Commission. – It shall be the duty of the Commission
16 to administer this Chapter. The Commission shall meet at least once in each 60 days
17 and may hold special meetings at any time at the call of the chairman or any three
18 members of the Commission, and the Commission shall have power and authority to
19 adopt, amend, or rescind such rules and regulations, to employ such persons, make such
20 expenditures, require such reports, make such investigations, and take such other action
21 as it deems necessary or suitable in the administration of this Chapter. Such rules and
22 regulations shall be effective upon publication in the manner, not inconsistent with the
23 provisions of this Chapter, which the Commission shall prescribe. The Commission

1 shall determine its own organization and methods of procedure in accordance with the
2 provisions of this Chapter, and shall have an official seal which shall be judicially
3 noticed. The chairman of said Commission shall, except as otherwise provided by the
4 Commission, be vested with all authority of the Commission, including the authority to
5 conduct hearings and make decisions and determinations, when the Commission is not
6 in session and shall execute all orders, rules and regulations established by said
7 Commission. Not later than November 20 preceding the meeting of the General
8 Assembly, the Commission shall submit to the Governor and to the Commissioner of
9 Labor a report covering the administration and operation of this Chapter during the
10 preceding biennium, and shall make such recommendation for amendments to this
11 Chapter as the Commission deems proper. Such report shall include a balance sheet of
12 the moneys in the fund in which there shall be provided, if possible, a reserve against
13 the liability in future years to pay benefits in excess of the then current contributions,
14 which reserve shall be set up by the Commission in accordance with accepted actuarial
15 principles on the basis of statistics of employment, business activity, and other relevant
16 factors for the longest possible period. Whenever the Commission believes that a
17 change in contribution or benefit rates will become necessary to protect the solvency of
18 the fund, it shall promptly so inform the ~~Governor~~ Governor, the Commissioner of
19 Labor, and the legislature, and shall make recommendations to the Governor with
20 respect thereto."

21 Sec. 3. G.S. 96-5(b) reads as rewritten:

22 "(b) Replacement of Funds Lost or Improperly Expended. – If any moneys
23 received from the Secretary of Labor under Title III of the Social Security Act, or any
24 unencumbered balances in the Employment Security Administration Fund or any
25 moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or
26 any moneys made available by this State or its political subdivisions and matched by
27 such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act,
28 are found by the Secretary of Labor, because of any action or contingency, to have been
29 lost or expended for purposes other than, or in amounts in excess of those found
30 necessary by the Secretary of Labor for the proper administration of this Chapter, it is
31 the policy of this State that such moneys, not available from the Special Employment
32 Security Administration Fund established by subsection (c) of this section, shall be
33 replaced by moneys appropriated for such purpose from the general funds of this State
34 to the Employment Security Administration Fund for expenditure as provided in
35 subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary
36 of Labor, the Commission shall promptly pay from the Special Employment Security
37 Administration Fund such sum if available in such fund; if not available, it shall
38 promptly report the amount required for such replacement to the Commissioner of
39 Labor and the Governor and the Governor shall, at the earliest opportunity, submit to
40 the legislature a request for the appropriation of such amount."

41 Sec. 4. G.S. 96-19(b) reads as rewritten:

42 "(b) The Employment Security Commission may, upon receiving notification
43 from the U.S. Department of Labor that any provision of this Chapter is out of
44 conformity with the requirements of the federal law or of the U.S. Department of Labor,

1 suspend the enforcement of the contested section or provision until the North Carolina
 2 Legislature next has an opportunity to make changes in the North Carolina law. The
 3 Employment Security Commission shall, in order to implement the above suspension:

- 4 (1) Notify the Commissioner of Labor and the Governor's office and
 5 provide ~~that office~~ the Commissioner and the Governor with a copy of
 6 the determination or notification of the U.S. Department of Labor;
- 7 (2) Advise the Governor's ~~office~~ office, and inform the Commissioner of
 8 Labor, as to whether the contested portion or provision of the law
 9 would, if not enforced, so seriously hamper the operations of the
 10 agency as to make it advisable that a special session of the legislature
 11 be called;
- 12 (3) Take all reasonable steps available to obtain a reprieve from the
 13 implementation of any federal conformity failure sanctions until the
 14 State legislature has been afforded an opportunity to consider the
 15 existing conflict."

16 Sec. 5. G.S. 143B-428 reads as rewritten:

17 "**§ 143B-428. Department of ~~Economic and Community Development~~Commerce –**
 18 **declaration of policy.**

19 It is hereby declared to be the policy of the State of North Carolina to actively
 20 encourage the expansion of existing environmentally sound North Carolina industry; to
 21 actively encourage the recruitment of environmentally sound national and international
 22 industry into North Carolina through industrial recruitment efforts and through effective
 23 advertising, with an emphasis on high-wage-paying industry; ~~to promote the development~~
 24 ~~of North Carolina's labor force to meet the State's growing industrial needs; to cooperate with~~
 25 other State agencies in promoting the development of North Carolina's labor force to
 26 address the State's growing industrial needs; to promote the growth and development of
 27 our travel and tourist industries; to promote the development of our State ports; to
 28 promote the management of North Carolina's energy resources and the development of a
 29 State energy policy; and to assure throughout State government, the coordination of
 30 North Carolina's economic development efforts."

31 Sec. 6. G.S. 143B-431(a) reads as rewritten:

32 "(a) The functions of the Department of Commerce, except as otherwise expressly
 33 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall
 34 include:

- 35 (1) All of the executive functions of the State in relation to economic
 36 development including by way of enumeration and not of limitation,
 37 the expansion and recruitment of environmentally sound industry,
 38 ~~labor force development,~~ the promotion of and assistance in the orderly
 39 development of North Carolina counties and communities, the
 40 promotion and growth of the travel and tourism industries, the
 41 development of our State's ports, energy resource management and
 42 energy policy development;
- 43 (2) All functions, powers, duties and obligations heretofore vested in an
 44 agency enumerated in Article 15 of Chapter 143A, to wit:

- a. The State Board of Alcoholic Control,
 - b. The North Carolina Utilities Commission,
 - c. ~~The Employment Security Commission,~~
 - d. The North Carolina Industrial Commission,
 - e. State Banking Commission and the Commissioner of Banks,
 - f. Savings and Loan Association Division,
 - g. The State Savings Institutions Commission,
 - h. Credit Union Commission,
 - i. The North Carolina Milk Commission,
 - j. The North Carolina Mutual Burial Association Commission,
 - k. The North Carolina Rural Electrification Authority,
 - l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,
- (3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article."

Sec. 7. Notwithstanding any other law or Executive Order, the Employment and Training Division of the Department of Commerce is hereby transferred to the Department of Labor by a Type I transfer, as defined in G.S. 143A-6(a); however, under this transfer, the Governor shall retain authority over JTPA activities of the Division to the extent that such authority is required by Public Law 97-300, the Job Training Partnership Act.

Sec. 8. G.S. 143B-432 reads as rewritten:

"§ 143B-432. Transfers to Department of Commerce.

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following subunits of the Department of Natural Resources and Community

1 Development are hereby transferred to and vested in the Department of Commerce by a
2 Type I transfer as defined in G.S. 143A-6:

- 3 (1) Community Assistance Division.
4 ~~(2) Employment and Training Division.~~

5 (c) All functions, powers, duties, and obligations heretofore vested in the
6 following councils of the Department of Natural Resources and Community
7 Development are hereby transferred to and vested in the Department of Commerce by a
8 Type II transfer as defined in G.S. 143A-6:

- 9 (1) Community Development Council.
10 ~~(2) Job Training Coordinating Council."~~

11 Sec. 9. G.S. 143B-433 reads as rewritten:

12 **"§ 143B-433. Department of Commerce – organization.**

13 The Department of Commerce shall be organized to include:

- 14 (a) (1) The North Carolina Alcoholic Beverage Control
15 Commission,
16 (2) The North Carolina Utilities Commission,
17 ~~(3) The Employment Security Commission,~~
18 (4) The North Carolina Industrial Commission,
19 (5) State Banking Commission,
20 (6) Savings and Loan Association Division,
21 (7) The State Savings Institutions Commission,
22 (8) Credit Union Commission,
23 (9) The North Carolina Milk Commission,
24 (10) The North Carolina Mutual Burial Association Commission,
25 (11) North Carolina Cemetery Commission,
26 (12) The North Carolina Rural Electrification Authority,
27 (13) Repealed by Session Laws 1985, c. 757, s. 179(d),
28 (14) North Carolina Science and Technology Research Center,
29 (15) The North Carolina State Ports Authority,
30 (16) North Carolina National Park, Parkway and Forests Development
31 Council,
32 (17) Economic Development Board,
33 ~~(18) Labor Force Development Council,~~
34 (19) Energy Policy Council,
35 (20) Energy Division,
36 (21) Navigation and Pilotage Commissions established by Chapter 76 of
37 the General Statutes,
38 (22) The North Carolina Technological Development Authority.

39 (b) Those agencies which are transferred to the Department of Commerce,
40 including the:

- 41 (1) Community Assistance Division,
42 (2) Community Development Council, Council; and
43 ~~(3) Employment and Training Division, and~~
44 ~~(4) Job Training Coordinating Council; and~~

1 (c) Such divisions as may be established pursuant to Article 1 of this Chapter."
 2 Sec. 10. Notwithstanding any other law or Executive Order, Part 3A of
 3 Article 10 of Chapter 143B is recodified as Article 23 of Chapter 95 of the General
 4 Statutes and the sections of Part 3A are renumbered as follows:

6 Old Section Numbers	New Section Numbers
7 143B-438.1	95-260
8 143B-438.2	95-261
9 143B-438.3	95-262
10 143B-438.4	95-263
11 143B-438.5	95-264
12 143B-438.6	95-265.

13
 14 Sec. 11. G.S. 95-263, as recodified by Section 10 of this act, reads as
 15 rewritten:

16 "~~§ 143B~~-(a) ~~The Notwithstanding any other law or Executive Order, the State~~
 17 ~~Job Training Coordinating Council is established within the Department of Commerce.~~
 18 ~~transferred from the Department of Commerce to the Department of Labor. This~~
 19 ~~transfer shall have all the elements of a Type II transfer, as defined in G.S. 143A-6(b);~~
 20 ~~however, under this transfer the Governor shall retain authority over the Council to the~~
 21 ~~extent that such authority is required by Public Law 97-300, the Job Training~~
 22 ~~Partnership Act.~~

23 (b) Operating funds and staff for the Council shall be supported with funds
 24 from the Job Training Partnership Act.

25 (c) Adequate office space shall be provided by the Department of ~~Commerce.~~
 26 Labor.

27 (d) The ~~initial~~ staffing level of the Council and the level of funding support
 28 required shall be determined by the ~~Secretary of Commerce.~~ Commissioner of Labor.
 29 However, the staffing level shall not exceed 10 personnel as may be necessary to carry
 30 out its functions under this ~~Part Article~~ and the Job Training Partnership Act.

31 (e) Duties and responsibilities of the Council include but shall not be limited to the
 32 following:

- 33 (1) Overseeing the meeting of the State's goals for employment and
 34 training.
- 35 (2) Reviewing the plans and programs of agencies operating federally
 36 funded programs related to employment and training and of other
 37 agencies providing employment and training-related services in the
 38 State that may be funded with State funds.
- 39 (3) Conducting studies, preparing reports and analyses, including an
 40 annual published report to the Commissioner of Labor, Governor and
 41 General Assembly, and providing such advisory services as may be
 42 authorized or directed by the Governor.

- 1 (4) Recommending the allocation of Job Training Partnership Act funds
2 not subject to the seventy-eight percent (78%) that flows directly to
3 service delivery areas.
- 4 (5) Recommending program goals to insure job training for unskilled
5 youth and adults is a matter of the highest priority and encouraging
6 Service Delivery Areas (SDA's) to reflect these goals in their SDA
7 plans.
- 8 (6) Developing a long term tracking system to measure the effectiveness
9 of the Job Training Partnership Act with respect to permanent job
10 placements.
- 11 (7) Insuring compliance with the provisions of Sections 122(b)(7) A and B
12 and 122(b)(8) of the Job Training Partnership Act no later than May 30
13 of every year, requiring the following:
 - 14 a. The identification of, in coordination with the appropriate State
15 agencies, the employment, training, and vocation education
16 needs throughout the State;
 - 17 b. An assessment of the extent to which employment and training,
18 vocation education, rehabilitation services, public assistance,
19 economic development, and other federal, State, and local
20 programs and services represent a consistent, integrated, and
21 coordinated approach to meeting these needs;
 - 22 c. Comments on reports required by Sections 105(d)(3) of the
23 Vocational Education Act of 1963 and appropriate
24 recommendations to the Governor and General Assembly.
- 25 (8) Annually measuring, to the extent practicable, the increase in
26 employment and earnings and the reductions in welfare dependency by
27 SDA resulting from participating in the Job Training Partnership Act
28 program and reporting those findings to the Commissioner of Labor,
29 Governor and General Assembly.
- 30 (9) Annually reporting to the Commissioner of Labor, Governor and
31 General Assembly on funds expended by each SDA for job training
32 services.
- 33 (10) Providing management guidance and review of all State administered
34 employment and training programs and encouraging compliance by
35 the SDA's with the goals and purposes outlined by the General
36 Assembly, the Governor, and the State Council.
- 37 (11) Repealed by Session Laws 1989, c. 532, s. 2.
- 38 (12) Obtaining other information from recipients of Job Training
39 Partnership Act funds, as requested by the Commissioner of Labor,
40 ~~Governor~~ by the Governor, and by the General Assembly.
- 41 (13) Overseeing the responsibilities required in the Economic Dislocation
42 and Worker Adjustment Assistance Act (EDWAAA), including the
43 following:

- 1 a. Advising the Governor on designation of sub-State areas and
2 sub-State grantees and on the procedure for selecting Private
3 Industry Council (PIC) and Local Employment Organizations
4 (LEO) representatives within sub-State areas relative to grantee
5 designation;
- 6 b. Advising the Governor on developing formulas for distributing
7 funds among sub-State areas and formulas for reallocating
8 unexpended funds;
- 9 c. Reviewing and commenting to the Commissioner of Labor and
10 the Governor on State and sub-State EDWAAA programs;
- 11 d. Reviewing and submitting comments on the State plan prior to
12 submission to the Secretary and on each sub-State plan; and
- 13 e. Advising the Governor on the establishment and application of
14 performance standard.
- 15 (f) The State Job Training Coordinating Council:
- 16 (1) Shall be appointed by the Governor in a manner consistent with
17 Section 122 of Public Law 97-300.
- 18 (2) Shall meet at the call of the chairman. A majority of the Council shall
19 constitute a quorum for the transaction of business. Members shall
20 receive per diem and necessary travel and subsistence expenses in
21 accordance with the provisions of G.S. 138-5, 138-6 or 120-3.1, as the
22 case may be.
- 23 (3) Repealed by Session Laws 1989, c. 532, s. 2.
- 24 (4) May create such committees as may be necessary to the proper
25 conduct of its business. The Governor may establish such additional
26 advisory bodies, in accordance with existing law, related to
27 employment and training as may be necessary and appropriate to the
28 conduct of federally supported employment and training-related
29 programs.
- 30 (5) Keep the Commissioner of Labor apprised of all activities,
31 recommendations, and advice provided by the Council to the Governor
32 and the General Assembly."

33 Sec. 12. G.S. 95-265, as recodified by Section 10 of this act, reads as
34 rewritten:

35 "~~§ 143B-438.6.~~ **95-265. Employment and Training Grant Program.**

36 (a) There is established in the Department of ~~Commerce,~~ Labor, Employment and
37 Training Division, an Employment and Training Grant Program. The purpose of the
38 program is to make grants available to local agencies operating on behalf of the Private
39 Industry Council serving Job Training Partnership Act service delivery areas. Grant
40 funds shall be allocated for the purpose of enabling recipient agencies to implement
41 local employment and training programs in accordance with existing resources, local
42 needs, local goals, and selected training occupations. The Department shall adopt rules
43 in accordance with Chapter 150B of the General Statutes for administering the
44 Employment and Training Grant Program, which rules shall include procedures for

1 review and approval of grant applications by local agencies and for monitoring use of
2 grant funds by recipient agencies. A State-administered program of performance
3 standards shall be used to measure grant program outcomes.

4 (b) Use of grant funds: Local agencies may use funds received under this section
5 only for the purpose of upgrading the foundation of basic skills of the adult population
6 and the existing work force in North Carolina. Services that may be provided include
7 participant programs currently available under the federal Job Training Partnership Act
8 that are appropriate for adults; on-the-job training; work experience; adult basic
9 education; skills training, upgrading, and retraining; counseling and screening for job
10 placement; service corps; and related support services. Local agencies may use grant
11 funds to provide services only to individuals who are 18 years of age or older and who
12 either (i) meet the current Federal Job Training Partnership Act definition of
13 'economically disadvantaged', or (ii) meet the current definition for eligibility under
14 Title III of the Federal Job Training Partnership Act.

15 (c) Allocation of grants: The Department may reserve and allocate up to five
16 percent (5%) of funds available to the Employment and Training Grant Program for
17 State and local administrative costs to implement the program. The Division of
18 Employment and Training shall allocate employment and training grants to local
19 agencies operating on behalf of the Private Industry Council serving Job Training
20 Partnership Act service delivery areas based on the following formula:

21 (1) One half of the funds shall be allocated on the basis of the relative
22 excess number of unemployed individuals residing in each county as
23 compared to the total excess number of unemployed individuals in all
24 counties in the State.

25 'Excess number of unemployed' is defined as the number of
26 unemployed individuals in excess of four and one-half percent (4.5%)
27 of the civilian labor force in each county or the number of unemployed
28 individuals in excess of four and one-half percent (4.5%) of the
29 civilian labor force in each census tract within the county. The
30 following methodology is used to determine the excess number of
31 unemployed:

32 a. For counties classified as having excess unemployment, the
33 excess number of unemployed is determined by subtracting four
34 and one-half percent (4.5%) of the civilian labor force from the
35 number of unemployed individuals within the county. The
36 difference equals the number of excess unemployed.

37 b. In situations where the entire county is not classified as having
38 excess unemployment, the excess number of unemployed is
39 determined by census tract unemployment within the county.
40 Census tract data is used to determine which subcounty areas
41 qualify as areas of excess unemployment. In those subcounty
42 areas classified as having excess unemployment (census tracts
43 with four and one-half percent (4.5%) or higher unemployment
44 rates), four and one-half percent (4.5%) of the census tract labor

1 force is subtracted from the number of unemployed individuals
2 within the area of excess unemployment. The subcounty
3 figures of excess number of unemployed within the county are
4 then added together to determine the total excess number of
5 unemployed within the county.

- 6 (2) One half of the funds shall be allocated on the basis of the relative
7 number of economically disadvantaged individuals within each county
8 compared to the total number of economically disadvantaged
9 individuals in the State. To determine the number of economically
10 disadvantaged individuals within each county, data from the State Data
11 Center in the Office of State Budget and Management, or from the
12 federal decennial census, whichever is most recent, shall be used.

13 (d) Reports, Coordination: The Department of ~~Commerce~~Labor shall report
14 quarterly to the Governor and to the Speaker of the House of Representatives and the
15 President Pro Tempore of the Senate on the North Carolina Employment and Training
16 Grant Program. The Department shall also provide a copy of these quarterly reports to
17 the State Job Training Coordinating Council. The Council shall advise the Department
18 on the merger of the funds provided to implement this section with other employment
19 and training funds to develop comprehensive work-force preparedness initiatives for the
20 State.

21 (e) Funds appropriated to the ~~Department of Commerce~~ for the Employment and
22 Training Grant Program that are not expended at the end of the fiscal year shall not
23 revert but shall remain available to the Department for the purposes established in this
24 section."

25 Sec. 13. All statutory authority, powers, duties, functions, records, personnel,
26 property, and unexpended balances of appropriations or other funds of any agency
27 which is transferred pursuant to this act shall be transferred in their entirety.

28 Sec. 14. This act shall not be construed to obligate the General Assembly to
29 make any appropriation to implement the provisions of this act. Each department and
30 agency to which this act applies shall implement the provisions of this act from funds
31 otherwise appropriated to that department or agency.

32 Sec. 15. This act becomes effective July 1, 1993.