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SENATE BILL 1345
State Personnel Committee Substitute Adopted 6/28/90
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Short Title: Various Changes to State Personnel Act.

(Public)

Sponsors:

Referred to:

May 22, 1990

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7 reads as rewritten:

"§ 126-7. Compensation of State employees. (a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees.

(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st, of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.

1 (c) Performance increases shall be based on performance appraisals of all
2 employees conducted by each department, agency, and institution. The State Personnel
3 Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for
4 performance appraisal. The policy and regulations shall include the following:

5 (1) The performance appraisal system of each department, agency, or
6 institution shall be designed and administered to ensure that
7 performance increases are distributed fairly and reward only
8 performance that exceeds performance requirements.

9 (2) To be eligible to distribute its share of the performance increase
10 allocation, a department, agency, or institution shall have an operative
11 performance appraisal system which has been approved by the State
12 Personnel Director. The performance appraisal system adopted shall
13 use a rating scale ~~of at least five levels, with the top three levels qualifying~~
14 ~~for performance increases, and of:~~

15 a. Five levels, with the top two levels qualifying for performance
16 increases; or

17 b. Other than five levels, with the levels qualifying for
18 performance increases to be designated by the State Personnel
19 Commission, for those job classifications in those employing
20 units where a department, agency, or institution demonstrates to
21 the State Personnel Commission that some number of levels
22 other than five would be appropriate, and the State Personnel
23 Commission, after conducting a public hearing, determines that
24 a rating scale of other than five levels is more appropriate than
25 five levels for a particular job classification within a particular
26 employing unit.

27 There shall be a presumption that a five-level system is the most
28 appropriate system, and the department, agency, or institution must
29 demonstrate with clear and convincing evidence that a different system
30 is more appropriate. The performance appraisal system adopted shall
31 adhere to modern personnel management techniques and practices in
32 common use in the public and private sectors. Departments, agencies,
33 and institutions with existing performance appraisal systems which use
34 a rating scale which is not consistent with the ~~five-level~~ system
35 described above shall have until July 1, 1991, to bring their systems
36 into compliance with this subsection.

37 (3) The State Personnel Director shall help departments, agencies, and
38 institutions to establish and administer their performance appraisal
39 systems and shall provide initial and ongoing training in performance
40 appraisal and performance system administration.

41 (4) An employee whose performance exceeds performance requirements
42 shall receive a performance increase unless the employee's supervisor
43 justifies in writing to the employee the decision not to award the
44 performance increase. An employee whose performance does not

1 exceed performance requirements shall not receive a performance
2 increase. Standards for performance and standards for performance
3 pay increases may be established for each department, agency, or
4 institution. These standards may not set limits so as to preclude an
5 employee whose performance exceeds performance requirements from
6 consideration for an increase.

7 (5) The State Personnel Director shall set the performance increase ranges
8 allowable for levels of performance that exceed performance
9 requirements. ~~Absent the supervisor's written justification, an employee~~
10 ~~whose performance exceeds expectations shall receive a percentage increase~~
11 ~~equal to the midrange value for his rating level. With the supervisor's~~
12 ~~written justification, an individual employee's increase may vary above or~~
13 ~~below the midrange value within the allowable range. An employee whose~~
14 performance exceeds expectations shall receive a percentage increase
15 equal to the midrange value for his rating, unless the supervisor can
16 justify an increase above or below the midrange value within the
17 allowable range. The supervisor shall give an employee written
18 justification of his decision to award an increase above or below the
19 midrange value when the employee requests written justification. A
20 supervisor's performance appraisal plan, evaluation standards for each
21 employee, and individual employee ratings and recommended
22 performance increase amounts, with justification, shall be reviewed
23 and approved by that supervisor's next higher level supervisor.

24 (5a) If an employee is otherwise eligible for a performance increase and is
25 at the top of (but does not exceed) a pay scale, the employee shall
26 receive a performance increase in the form of a performance bonus.
27 This performance bonus shall be a one-time, lump-sum award paid
28 separately from any other payment to the employee for the year. Such
29 award shall not serve to increase the base pay of such employee. An
30 award of this bonus pursuant to this subdivision does not affect:

31 a. The value of the top of any pay scale; and

32 b. The employee's current salary, which will remain at the top of
33 the pay scale.

34 Except as provided in this subdivision, all other provisions of this
35 subsection shall apply to an employee at the top of a pay scale.

36 (6) The State Personnel Director may suspend any performance increase
37 that does not appear to meet the intent of the provisions of the
38 performance pay system and require the originating department,
39 agency, or institution to reconsider or justify the increase.

40 (7) An employee who disputes the fairness of his performance evaluation
41 or the sufficiency of the increase awarded or who believes that he was
42 unfairly denied a performance increase shall first discuss the problem
43 with his supervisor. Appeals of the supervisor's decision shall be made
44 only to the grievance committee or internal performance review board

1 of the department, agency, or institution which shall make a
2 recommendation to the head of the department, agency, or institution
3 for final decision. The State Personnel Director shall help a
4 department, agency, or institution establish an internal performance
5 review board or, if it includes employee members, to use its existing
6 grievance committee to hear performance pay disputes.
7 Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-
8 34, performance pay disputes, including disputes about individual
9 performance appraisals, shall not be considered contested case issues.

10 (8) The State Personnel Director shall monitor the performance appraisal
11 system and performance increase distribution of each employing unit
12 within each department, agency, and institution. Each department,
13 agency, and institution shall submit to the Director annual reports
14 which shall include data on the demographics of performance ratings,
15 the frequency of evaluations, the performance pay increases awarded,
16 and the implementation schedule for performance pay increases. The
17 Director shall analyze the data to ensure that performance increases are
18 distributed fairly within each department, agency, and institution and
19 across all departments, agencies, and institutions of State government
20 and shall report back to each department, agency, and institution on its
21 appraisal and distribution performance.

22 (9) The State Personnel Director shall report annually on the performance
23 pay program to the Commission. The report shall evaluate the
24 performance of each department, agency, and institution in the
25 administration of its appraisal system and the distribution of
26 performance increases within each department, agency, and institution
27 and across State government. The report shall include
28 recommendations for improving the performance appraisal system and
29 alleviating inequities. Copies of the report shall be sent to the State
30 Auditor.

31 (10) The Commission shall report annually to the Governor, the Lieutenant
32 Governor, the President Pro Tempore of the Senate, the Speaker of the
33 House of Representatives, and the Standing Personnel Committees of
34 the House and the Senate. The Commission report shall include an
35 evaluation of the administration of the appraisal system and
36 distribution of performance increases by each department, agency, and
37 institution. The State Personnel Director shall recommend to the
38 General Assembly for its approval sanctions to be levied against
39 departments, agencies, and institutions that have deficient appraisal
40 systems or that do not link performance increases to performance.
41 These sanctions may include withholding performance increases from
42 the managers and supervisors of individual employing units of
43 departments, agencies, and institutions in which discrepancies exist.

1 (d) The provisions of subsections (a), (b), and (c) shall not affect the system of
2 longevity payments established by the State Personnel Commission.

3 (e) ~~Nothing in this section shall require or authorize any department, agency, or~~
4 ~~institution to establish a limitation on the number or percentage of employees who are~~
5 ~~eligible under this section to receive performance increases."~~

6 Sec. 2. G.S. 126-35 reads as rewritten:

7 "**§ 126-35. Written statement of reason for disciplinary action.**

8 (a) No permanent employee subject to the State Personnel Act shall be
9 discharged, suspended, or reduced in pay or position, except for just cause. In cases of
10 such disciplinary action, the employee shall, before the action is taken, be furnished
11 with a statement in writing setting forth in numerical order the specific acts or omissions
12 that are the reasons for the disciplinary action and the employee's appeal rights. The
13 employee shall be permitted 15 days from the date the statement is delivered to appeal
14 to the head of the department. A copy of the written statement given the employee and
15 the employee's appeal shall be filed by the department with the State Personnel Director
16 within five days of their delivery. However, an employee may be suspended without
17 warning for causes relating to personal conduct detrimental to State service, pending the
18 giving of written reasons, in order to avoid undue disruption of work or to protect the
19 safety of persons or property or for other serious reasons. The employee, if he is not
20 satisfied with the final decision of the head of the department, or if he is unable, within
21 a reasonable period of time, to obtain a final decision by the head of the department,
22 may appeal to the State Personnel Commission. Such appeal shall be filed not later than
23 30 days after receipt of notice of the department head's decision.

24 (b) Notwithstanding any other provision of this Chapter, a reduction in pay or
25 position which is not imposed for disciplinary reasons shall not be considered a
26 disciplinary action within the meaning of this Article. Disciplinary actions, for the
27 purpose of this Article, are those actions taken in accordance with the disciplinary
28 procedures adopted by the State Personnel Commission and specifically based on
29 unsatisfactory job performance, unacceptable personal conduct or a combination of the
30 two.

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

34 Sec. 3. G.S. 126-37 reads as rewritten:

35 "**§ 126-37. ~~Personnel Director to investigate, hear and recommend settlement;~~**
36 **~~Personnel Commission to hear or review findings and make binding review~~**
37 **Administrative Law Judge's recommended decision and make final**
38 **decision.**

39 (a) ~~The State Personnel Director or any other person or persons designated by the~~
40 ~~Commission shall investigate the disciplinary action or alleged discrimination which is~~
41 ~~appealed to the Commission.~~—Appeals involving a disciplinary action, alleged
42 discrimination, and any other contested case arising under this Chapter shall be
43 conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter
44 150B; provided that no grievance may be appealed unless the employee has complied

1 with G.S. 126-34. The State Personnel Commission shall make a final decision in these
2 cases as provided in G.S. 150B-36. The State Personnel Commission is hereby
3 authorized to reinstate any employee to the position from which he has been removed,
4 to order the employment, promotion, transfer, or salary adjustment of any individual to
5 whom it has been wrongfully denied or to direct other suitable action to correct the
6 abuse which may include the requirement of payment for any loss of salary which has
7 resulted from the improperly discriminatory action of the appointing authority. The
8 decisions of the State Personnel Commission shall be binding in appeals of local
9 employees subject to this Chapter if the Commission finds that the employee has been
10 subjected to discrimination prohibited by Article 6 of this Chapter or in any case where
11 a binding decision is required by applicable federal standards. However, in all other
12 local employee appeals, the decisions of the State Personnel Commission shall be
13 advisory to the local appointing authority.

14 (b) An action brought in superior court by an employee who is dissatisfied with
15 an advisory decision of the State Personnel Commission or with the action taken by the
16 local appointing authority pursuant to the decision shall be heard upon the record and
17 not as a trial **de novo**. In such an action brought by a local employee under this section,
18 the defendant shall be the local appointing authority. If superior court affirms the
19 decision of the Commission, the decision of superior court shall be binding on the local
20 appointing authority.

21 (c) If the local appointing authority is other than a board of county
22 commissioners, the employee must give the county notice of the appeal taken pursuant
23 to subsection (a) of this section. Notice must be given to the county manager or the
24 chairman of the board of county commissioners by certified mail within 15 days of the
25 filing of the notice of appeal. The county may intervene in the appeal within 30 days of
26 receipt of the notice. If the action is appealed to superior court the county may
27 intervene in the superior court proceeding even if it has not intervened in the
28 administrative proceeding. The decision of the superior court shall be binding on the
29 county even if the county does not intervene."

30 Sec. 4. G.S. 126-38 reads as rewritten:

31 **"§ 126-38. Time limit for appeals.**

32 Any employee appealing any decision or action ~~to the Commission~~ shall file a ~~written~~
33 ~~statement of appeal with the Commission or its designate~~ petition for a contested case with
34 the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later
35 than 30 days after receipt of notice of the decision or action which triggers the right of
36 appeal."

37 Sec. 5. Nothing in this act shall be construed to obligate the General
38 Assembly to appropriate funds to implement the provisions of this act and any funds
39 allocated under this act shall come from the performance pay previously appropriated.

40 Sec. 6. Section 2 of this act is effective upon ratification and shall apply to
41 affected personnel actions effective on or after the date of ratification. The remainder of
42 this act is effective upon ratification.