

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1135

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Senate State Government, Local Government, and Personnel Committee Substitute
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Short Title: State Employee Incentive Bonus/State Employees Emp. (Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING CHAPTER 143 OF THE GENERAL STATUTES TO PROVIDE
3 FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD
4 THE COST-SAVING AND REVENUE-INCREASING INITIATIVES AND
5 INNOVATIONS OF STATE EMPLOYEES; AMENDING CHAPTER 126 OF THE
6 GENERAL STATUTES TO PROVIDE FOR THE OPEN, FAIR, AND
7 NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR
8 STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS;
9 RELATING TO THE DESIGNATION OF POLICYMAKING POSITIONS BY THE
10 GOVERNOR AND OTHER MEMBERS OF THE COUNCIL OF STATE;
11 LIMITING THE POLITICAL INVOLVEMENT OF MEMBERS OF THE
12 GENERAL ASSEMBLY IN STATE GOVERNMENT PERSONNEL DECISIONS;
13 EXTENDING BROADER PROTECTIONS TO STATE EMPLOYEES WHO
14 REPORT GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT
15 ACTIVITIES; AND REQUIRING THE REPORTING OF MONETARY

1 SETTLEMENTS OF STATE GOVERNMENT PERSONNEL MATTERS AND
2 CERTAIN PERSONNEL PRACTICES TO THE STATE PERSONNEL
3 COMMISSION AND TO THE JOINT LEGISLATIVE COMMISSION ON
4 GOVERNMENTAL OPERATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 143 of the General Statutes is amended by adding a new
7 Article to read:

8 "ARTICLE 36A.

9 "State Employee Incentive Bonus Program.

10 **"§ 143-345.10. Definitions.**

11 The following definitions apply in this Article:

12 (1) Baseline reversion. – The two-year historical average of reversions by a
13 State department, agency, or institution.

14 (2) Employing unit. – Any of the following:

15 a. The principal Council of State office or department enumerated
16 in G.S. 143A-11 for which a State employee works.

17 b. The principal State department enumerated in G.S. 143B-6 for
18 which a State employee works.

19 c. The constituent institution of The University of North Carolina or
20 the General Administration of The University of North Carolina
21 for which a State employee works.

22 d. The local school administrative unit for which a State employee
23 works.

24 e. The board, commission, or agency and its staff for which a State
25 employee works, if that agency is not organizationally housed in
26 any of the other offices, departments, or institutions listed in this
27 subdivision.

28 (3) State employee. – Any of the following:

29 a. A person who is a contributing member of the Teachers' and
30 State Employees' Retirement System of North Carolina, the
31 Consolidated Judicial Retirement System of North Carolina, or
32 the Optional Program.

33 b. A person who receives wages from the State as a part-time or
34 temporary worker, but is not otherwise a contributing member of
35 one of the retirement programs listed in sub-subdivision a. of this
36 subdivision.

37 **"§ 143-345.11. State employee incentive bonus.**

38 (a) A State employee or team of State employees may receive an incentive bonus
39 or bonuses in reward for suggestions or innovations resulting in monetary savings to the
40 State, increased revenues to the State, or improved quality of services delivered to the
41 public.

42 (b) In addition to any bonuses paid directly to individual State employees, a
43 portion of the cost-savings associated with any savings realized from permanent

1 efficiencies implemented pursuant to this Article may be contributed to a reserve fund for
2 State employee performance bonuses. Funds for State employee incentive bonuses shall
3 only come from savings including reversions above the baseline reversion of the
4 employing State department, agency, or institution.

5 (c) Savings generated by suggestions and innovations shall be determined at the
6 end of the fiscal year in which the suggestion or innovation is implemented. Any savings
7 are to be calculated using the actual expenditures for a program, activity, or service
8 compared to the budgeted amount for the same, if an amount has been budgeted for the
9 program, activity, or service. The savings calculation shall include the amount of any
10 reversions in excess of the baseline reversion. The savings or revenue increases realized
11 from any suggestion or innovation implemented for less than one full fiscal year shall be
12 annualized. Any savings realized through the State Employee Incentive Bonus Program
13 shall be weighed against continued service to the public.

14 (d) If a suggestion or innovation affects a program, activity, or service for which
15 no separate budgeted amount has been made, the State Coordinator, in conjunction with
16 the agency evaluator for that suggestion or innovation, shall determine the budgetary
17 impact of the suggestion or innovation.

18 **"§ 143-345.12. Allocation of incentive bonus funds; nonmonetary recognition.**

19 (a) If a State employee's suggestion or innovation results in a monetary savings or
20 increased revenue to the State, the funds saved or increased shall be distributed according
21 to the following scale:

22 (1) Twenty percent (20%) of the annualized savings or increased revenues,
23 up to a maximum of twenty thousand dollars (\$20,000) for any one
24 State employee, to constitute gainsharing. If a team of State employees
25 is the suggester, the bonus provided in this subdivision shall be divided
26 equally among the team members, except that no team member may
27 receive in excess of twenty thousand dollars (\$20,000), nor may the
28 team receive an aggregate amount in excess of one hundred thousand
29 dollars (\$100,000).

30 (2) Thirty percent (30%) to a performance bonus reserve for all current
31 employees of the employing unit of the suggester, to be distributed
32 according to G.S. 126-7, the Comprehensive Compensation System for
33 State employees or according to the performance bonus compensation
34 system in which the suggester's employing unit participates.

35 (3) The remainder to the General Fund for nonrecurring budget items.

36 (b) The budget of a State agency shall not be reduced in the following fiscal year
37 by an amount similar to the monetary savings or increased revenues realized by the State
38 Employee Incentive Bonus Program. The agency budget shall be reduced in subsequent
39 years only if structural or organizational changes are made that warrant the reductions,
40 including the transfer of responsibility for an activity or service to another agency or the
41 elimination of some function of State government.

42 (c) If a suggestion or innovation results in improved quality of services to the
43 public or to other State agencies, departments, and institutions, but not in monetary

1 savings to the State, the suggester shall receive a nonmonetary award in the form of a
2 certificate, leave with pay, or other similar recognition.

3 **"§ 143-345.13. Suggestion and review process; role of agency coordinator and**
4 **agency evaluator.**

5 (a) The process for a State employee or team of State employees to submit a cost-
6 saving or revenue-increasing proposal shall begin by the employee or team of employees
7 submitting the suggestion or innovation to an agency coordinator designated by the State
8 department, agency, or institution impacted by the suggestion or innovation. The agency
9 coordinator, in conjunction with an agency evaluator, shall review the suggestion or
10 innovation for submission to the Review Committee established in G.S. 143-345.14.

11 (b) The duties of the agency coordinator shall include:

12 (1) Serving as an information source and maintaining sufficient forms
13 necessary to submit suggestions.

14 (2) Responsibility for presenting, in conjunction with the agency evaluator,
15 the plan of implementation for a suggestion or innovation to the Review
16 Committee.

17 (3) Working in conjunction with the agency evaluator designated by the
18 State Coordinator for a particular suggestion or innovation.

19 An agency may have more than one coordinator if required to provide sufficient
20 services to State employees.

21 (c) The duties of an agency evaluator shall include:

22 (1) Reviewing the feasibility and effectiveness of cost-saving or revenue-
23 increasing measures suggested by State employees.

24 (2) Being knowledgeable of the subject program, activity, or service.

25 (3) Determining, in conjunction with the agency fiscal officer, the
26 budgetary impact of a suggestion or innovation.

27 (4) Judging impartially both the positive and negative effects of a
28 suggestion or innovation on the current functions of the subject
29 program, activity, or service.

30 The specific assignments of the agency evaluator shall be determined by the agency
31 coordinator.

32 (d) The State Coordinator shall be responsible for general oversight and
33 coordination of the State Employee Incentive Bonus Program. The State Coordinator
34 shall be a State employee working in the Department of Administration.

35 **"§ 143-345.14. Incentive Bonus Review Committee.**

36 (a) The Incentive Bonus Review Committee, hereinafter 'Review Committee',
37 shall consist of nine members, as follows:

38 (1) The State Coordinator.

39 (2) A representative of the Office of State Budget and Management.

40 (3) A representative of the Office of State Personnel.

41 (4) A representative of The University of North Carolina.

42 (5) A representative of the Department of Justice.

43 (6) A representative of the Department of Labor.

1 (7) One State employee appointed by the Speaker of the House of
2 Representatives.

3 (8) One State employee appointed by the President Pro Tempore of the
4 Senate.

5 (9) One State employee appointed by the Governor upon the
6 recommendation of the State Employees Association of North Carolina,
7 Inc.

8 (b) The duties of the Review Committee shall include:

9 (1) Responsibility for receiving from the various agency coordinators
10 recommendations on suggestion and innovation implementation plans.

11 (2) Determining the impact of a suggestion or innovation on State
12 government services by judging the monetary savings, increased
13 revenues, or improved quality of services generated by a suggestion or
14 innovation.

15 (3) Ensuring that the State employee incentive bonus process does not
16 result in a negative impact on services provided to taxpayers by State
17 government.

18 (c) All administrative, management, clerical, and other functions and services
19 required by the Review Committee shall be supplied by the Department of
20 Administration. The Department of Administration and the Review Committee shall
21 report annually to the Joint Legislative Commission on Governmental Operations on the
22 administration of the State Employee Incentive Bonus Program.

23 **"§ 143-345.15. Effect of decisions regarding bonuses.**

24 All suggestions or innovations submitted by State employees pursuant to this Article
25 are the property of the State. Decisions regarding the award of bonuses by the agency
26 coordinator and the Review Committee are final and are not subject to review under the
27 contested case procedures of Chapter 150B of the General Statutes."

28 Section 2. G.S. 143-340(1) reads as rewritten:

29 "(1) To establish a meritorious service award system for State employee
30 suggestions which may include cash awards to be paid from savings
31 resulting from the adoption of employee suggestions, but in no case
32 shall the cash award exceed twenty five percent (25%) of the savings
33 resulting during the first year following adoption or a maximum of five
34 thousand dollars (\$5,000). the State Employee Incentive Bonus Program
35 pursuant to Article 36A of this Chapter, with the authority to adopt all
36 rules necessary to implement the program."

37 Section 3. Chapter 126 of the General Statutes is amended by adding the
38 following new sections to read:

39 **"§ 126-14.2. Political hirings limited.**

40 (a) It is the policy of this State that State departments, agencies, and institutions
41 select from among the most qualified persons for State government employment based
42 upon job-related qualifications of applicants for employment using fair and valid
43 selection criteria.

1 (b) All State departments, agencies, and institutions shall select from among the
2 most qualified persons for State government employment without regard to political
3 affiliation or political influence. For the purposes of this section, the 'most qualified
4 persons' shall mean each of the State employees or applicants for initial State
5 employment who:

6 (1) Have timely applied for a position in State government;

7 (2) Have the essential qualifications for that position; and

8 (3) Are determined to be substantially more qualified as compared to other
9 applicants for the position, after applying fair and valid job selection
10 criteria, in accordance with G.S. 126-7.1, Articles 6 and 13 of this
11 Chapter, and State personnel policies approved by the State Personnel
12 Commission.

13 (c) It is a violation of this section giving rise to the remedies set forth in G.S. 126-
14 14.4 if:

15 (1) The complaining State employee or applicant for initial State
16 employment timely applied for the State government position in
17 question.

18 (2) The complaining State employee or applicant for initial State
19 employment was not hired into the position.

20 (3) The complaining State employee or applicant for initial State
21 employment was among the most qualified persons applying for the
22 position as defined in this Chapter.

23 (4) The successful applicant for the position was not among the most
24 qualified persons applying for the position.

25 (5) The hiring decision was based upon political affiliation or political
26 influence.

27 (d) The provisions of this section shall not apply to positions exempt from this
28 Chapter, except that this section does apply to exempt nonpolicymaking positions as
29 defined by G.S. 126-5(b)(2).

30 **"§ 126-14.3. Open and fair competition.**

31 The State Personnel Commission shall adopt rules or policies to:

32 (1) Assure recruitment, selection, and hiring procedures that encourage
33 open and fair competition for positions in State government
34 employment and that encourage the hiring of a diverse State
35 government workforce.

36 (2) Assure the proper and thorough advertisement of job openings in State
37 government employment and lengthen, as appropriate, the period for
38 submitting applications for State government employment.

39 (3) Require that a closing date shall be posted for each job opening, unless
40 an exception has been approved by the State Personnel Commission.

41 (4) Assure that State departments, agencies, and institutions follow similar
42 selection processes when hiring State employees in accordance with this
43 Chapter.

- 1 (5) Assure that State supervisory personnel receive adequate training and
2 continuing education to carry out the State's policy of hiring from
3 among the most qualified persons.
- 4 (6) Establish a monitoring system to measure the effectiveness of State
5 agency personnel procedures to promote fairness and reduce adverse
6 impact on all demographic groups in the State government workforce.
- 7 (7) Otherwise implement the State's policy of nonpolitical hiring practices
8 in accordance with this Chapter."

9 Section 4. Chapter 126 of the General Statutes is amended by adding a new
10 section to read:

11 **"§ 126-14.4. Remedies.**

12 (a) A State employee or applicant for initial State employment who has reason to
13 believe that he or she was among the most qualified persons for a position in State
14 government employment and was denied employment or promotion in violation of G.S.
15 126-14.2 because of political affiliation or political influence may complain directly
16 through the Civil Rights Division of the Office of Administrative Hearings, which shall
17 be responsible for making an initial determination of whether there is probable cause to
18 believe that there has been a violation of G.S. 126-14.2.

19 The complaining State employee or applicant shall file a complaint with the Civil
20 Rights Division of the Office of Administrative Hearings within 30 days after the
21 complainant receives notice that the position in question has been filled.

22 The Civil Rights Division of the Office of Administrative Hearings shall promptly
23 make appropriate formal and informal inquiries in its investigatory, fact-finding role and
24 may consider any matter, document, or statement deemed pertinent to the initial
25 determination, including telephone conversations, in determining if there is probable
26 cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division
27 may apply to an administrative law judge in the Office of Administrative Hearings for the
28 issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding
29 phase of the complaint shall be completed by the Civil Rights Division within 30 days.

30 (b) The Civil Rights Division of the Office of Administrative Hearings shall notify
31 the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the
32 person may present any information to the Civil Rights Division that is pertinent to the
33 initial determination of probable cause. The person alleged to have been hired in
34 violation of G.S. 126-14.2 shall be notified of the results of the initial determination and
35 shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-
36 23(d).

37 (c) Upon an initial determination that there is probable cause to believe there has
38 been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for
39 a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General
40 Statutes.

41 (d) An initial determination by the Civil Rights Division that there is not probable
42 cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any

1 rights under that section, but shall not be admissible or binding in any separate or
2 subsequent civil action or proceeding.

3 (e) Within 90 days after the filing of a contested case petition, the administrative
4 law judge shall issue a recommended decision to the State Personnel Commission which
5 shall include findings of fact and conclusions of law and, if the administrative law judge
6 has found a violation of G.S. 126-14.2, an appropriate recommended remedy.

7 (f) Within 60 days of receipt of the official record by the Office of Administrative
8 Hearings, the State Personnel Commission shall make a final written decision as to
9 whether there has been a violation of G.S. 126-14.2. In any case where a violation is
10 found, the State Personnel Commission shall take suitable action to correct the violation,
11 which may include:

12 (1) Directing the State agency, department, or institution to declare the
13 position vacant, and to hire from among the most qualified State
14 employees or applicants for initial State employment who had applied
15 for the position, or

16 (2) Requiring that the vacancy be posted pursuant to this Chapter."

17 Section 5. G.S. 126-5 reads as rewritten:

18 **"§ 126-5. Employees subject to Chapter; exemptions.**

19 (a) The provisions of this Chapter shall apply to:

20 (1) All State employees not herein exempt, and

21 (2) To all employees of the following local entities:

22 a. Area mental health, developmental disabilities, and substance
23 abuse authorities.

24 b. Local social services departments.

25 c. Local public health departments.

26 d. Local emergency management agencies that receive federal
27 grant-in-aid funds.

28 An employee of a consolidated county human services agency created
29 pursuant to G.S. 153A-77(b) is not considered an employee of an entity
30 listed in this subdivision.

31 (3) County employees not included under subdivision (2) of this subsection
32 as the several boards of county commissioners may from time to time
33 determine.

34 (b) As used in this section, ~~'policymaking position'~~ section:

35 (1) 'Exempt position' means an exempt nonpolicymaking position or an
36 exempt policymaking position.

37 (2) 'Exempt nonpolicymaking position' means a position delegated with
38 significant managerial or programmatic responsibility that is essential to
39 the successful operation of a State department, agency, or division, so
40 that the application of G.S. 126-35 to an employee in the position would
41 cause undue disruption to the operations of the agency, department,
42 institution, or division.

1 (3) 'Exempt policymaking position' means a position delegated with the
2 authority to impose the final decision as to a settled course of action to
3 be followed within a department, agency, or ~~division~~ division, so that a
4 loyalty to the Governor or other elected department head in their
5 respective offices is reasonably necessary to implement the policies of
6 their offices.

7 (c) Except as to the policies, rules, and plans established by the Commission
8 pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7,
9 and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
10 Chapter shall not apply to:

- 11 (1) A State employee who is not a career State employee as defined by this
12 Chapter.
- 13 (2) One confidential assistant and two confidential secretaries for each
14 elected or appointed department head and one confidential secretary for
15 each chief deputy or chief administrative assistant.
- 16 (3) Employees in exempt policymaking positions designated as ~~exempt~~
17 pursuant to G.S. 126-5(d).
- 18 (4) The chief deputy or chief administrative assistant to the head of each
19 State department who is designated either by statute or by the
20 department head to act for and perform all of the duties of such
21 department head during his absence or incapacity.

22 (c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions
23 of this Chapter shall not apply to:

- 24 (1) Constitutional officers of the State.
- 25 (2) Officers and employees of the Judicial Department.
- 26 (3) Officers and employees of the General Assembly.
- 27 (4) Members of boards, committees, commissions, councils, and advisory
28 councils compensated on a per diem basis.
- 29 (5) Officials or employees whose salaries are fixed by the General
30 Assembly, or by the Governor, or by the Governor and Council of State,
31 or by the Governor subject to the approval of the Council of State.
- 32 (6) Employees of the Office of the Governor that the Governor, at any time,
33 in his discretion, exempts from the application of the provisions of this
34 Chapter by means of a letter to the State Personnel Director designating
35 these employees.
- 36 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant
37 Governor, at any time, in his discretion, exempts from the application of
38 the provisions of this Chapter by means of a letter to the State Personnel
39 Director designating these employees.
- 40 (8) Instructional and research staff, physicians, and dentists of The
41 University of North Carolina.

- 1 (9) Employees whose salaries are fixed under the authority vested in the
2 Board of Governors of The University of North Carolina by the
3 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 4 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 5 (11) North Carolina School of Science and Mathematics' employees whose
6 salaries are fixed in accordance with the provisions of G.S. 116-
7 235(c)(1) and G.S. 116-235(c)(2).
- 8 (12) Employees of the North Carolina Low-Level Radioactive Waste
9 Management Authority whose salaries are fixed pursuant to G.S. 104G-
10 5(g)(1) and G.S. 104G-5(g)(2).
- 11 (13) Employees of the North Carolina Hazardous Waste Management
12 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and
13 G.S. 130B-6(g)(2).
- 14 (14) Employees of the North Carolina State Ports Authority.
- 15 (15) Employees of the North Carolina Global TransPark Authority.
- 16 (16) The executive director and one associate director of the North Carolina
17 Center for Nursing established under Article 9F of Chapter 90 of the
18 General Statutes.
- 19 (c2) The provisions of this Chapter shall not apply to:
- 20 (1) Public school superintendents, principals, teachers, and other public
21 school employees.
- 22 (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session,
23 1986), c. 1014, s. 41.
- 24 (3) Employees of community colleges whose salaries are fixed in
25 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and
26 employees of the Department of Community Colleges whose salaries
27 are fixed by the State Board of Community Colleges in accordance with
28 the provisions of G.S. 115D-3.
- 29 (c3) Except as to the policies, rules, and plans established by the Commission
30 pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions
31 of this Chapter shall not apply to: Teaching and related educational classes of employees
32 of the Department of Correction, the Department of Human Resources, and any other
33 State department, agency or institution, whose salaries shall be set in the same manner as
34 set for corresponding public school employees in accordance with Chapter 115C of the
35 General Statutes.
- 36 (c4) Repealed by Session Laws 1993, c. 321, s. 145(b).
- 37 (c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter
38 shall apply to all State employees, public school employees, and community college
39 employees.
- 40 (c6) Except as to the policies, rules, and plans established by the Commission
41 pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-
42 14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles

1 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt
2 nonpolicymaking positions.

3 (d) (1) ~~General Exempt Positions in Cabinet Departments.~~ – The Governor may
4 designate as 100 exempt policymaking positions, as provided below, in
5 each of the following departments:

- 6 a. Department of Administration;
7 b. Department of Commerce;
8 c. Department of Correction;
9 d. Department of Crime Control and Public Safety;
10 e. Department of Cultural Resources;
11 f. Department of Human Resources;
12 g. Department of Environment, Health, and Natural Resources;
13 h. Department of Revenue; and
14 i. Department of Transportation.

15 ~~The positions in cabinet departments and may designate exempt~~
16 nonpolicymaking positions in a number up to one percent (1%) of the
17 total number of full-time positions in each cabinet department, not to
18 exceed 30 positions in each cabinet department. The Secretary of State,
19 the Auditor, the Treasurer, the Attorney General, the Commissioner of
20 Agriculture, the Commissioner of Insurance, and the Labor
21 Commissioner may designate as exempt policymaking positions, as
22 provided below, in their respective offices. The State Board of
23 Education may designate as exempt policymaking positions, as
24 provided below, in the Department of Public Instruction.

25 (2) ~~Number Exempt Positions in Council of State Department and Offices.~~ –
26 The number of exempt policymaking positions designated as exempt in
27 each department or office listed in subsection (d)(1), except the Department
28 of Commerce, shall be limited to one and two tenths percent (1.2%) of the
29 number of full-time positions in the department or office, or 30 positions,
30 whichever is greater. The Governor may designate 85 policymaking positions
31 as exempt in the Department of Economic and Community Development.
32 Provided, however, that the headed by an elected department head shall be
33 limited to 20 exempt policymaking positions or one percent (1%) of the
34 total number of full-time positions in the department or office,
35 whichever is greater. The number of exempt nonpolicymaking positions
36 shall be limited to 20 exempt nonpolicymaking positions or one percent
37 (1%) of the total number of full-time positions in the department or
38 office, whichever is greater.

39 (2a) Designation of Additional Positions. – The Governor, elected
40 department head, or State Board of Education may request that
41 additional policymaking exempt positions be designated as exempt
42 designated. The request shall be made by sending a list of policymaking
43 exempt positions that exceed the limit imposed by this subsection to the

1 Speaker of the North Carolina House of Representatives and the
2 President of the North Carolina Senate. A copy of the list also shall be
3 sent to the State Personnel Director. The General Assembly may
4 authorize all, or part of, the additional ~~polycymaking~~ positions to be
5 designated as ~~exempt~~ exempt positions. If the General Assembly is in
6 session when the list is submitted and does not act within 30 days after
7 the list is submitted, the list shall be deemed approved by the General
8 Assembly, and the ~~polycymaking~~ positions shall be designated as ~~exempt~~
9 exempt positions. If the General Assembly is not in session when the
10 list is submitted, the 30-day period shall not begin to run until the next
11 date that the General Assembly convenes or reconvenes, other than for a
12 special session called for a specific purpose not involving the approval
13 of the list of additional positions to be designated as ~~exempt~~ exempt
14 positions; the ~~polycymaking~~ positions shall not be designated as exempt
15 during the interim.

16 (3) Letter. – These positions shall be designated in a letter to the State
17 Personnel Director, the Speaker of the House of Representatives, and
18 the President of the Senate by May 1 of the year in which the oath of
19 office is administered to each Governor unless the provisions of
20 subsection (d)(4) apply.

21 (4) Vacancies. – In the event of a vacancy in the Office of Governor or in
22 the office of a member of the Council of State, the person who succeeds
23 to or is appointed or elected to fill the unexpired term shall make such
24 designations in a letter to the State Personnel Director, the Speaker of
25 the House of Representatives, and the President of the Senate within
26 120 days after the oath of office is administered to that person. In the
27 event of a vacancy in the Office of Governor, the State Board of
28 Education shall make these designations in a letter to the State
29 Personnel Director, the Speaker of the House of Representatives, and
30 the President of the Senate within 120 days after the oath of office is
31 administered to the Governor.

32 (5) Creation, Transfer, or Reorganization. – The Governor, elected
33 department head, or State Board of Education may designate as exempt
34 a polycymaking position that is created or transferred to a different
35 department, or is located in a department in which reorganization has
36 occurred, after May 1 of the year in which the oath of office is
37 administered to the Governor. The designation must be made in a letter
38 to the State Personnel Director, the Speaker of the North Carolina
39 House of Representatives, and the President of the North Carolina
40 Senate within 120 days after such position is created, transferred, or in
41 which reorganization has occurred.

42 (6) Reversal. – Subsequent to the designation of a ~~polycymaking~~ position as
43 an exempt position as hereinabove provided, the status of the position

1 may be reversed and made subject to the provisions of this Chapter by
2 the Governor, by an elected department head, or by the State Board of
3 Education in a letter to the State Personnel Director, the Speaker of the
4 North Carolina House of Representatives, and the President of the North
5 Carolina Senate.

6 (7) Hearing Officers. – Except as otherwise specifically provided by this
7 section, no employee, by whatever title, whose primary duties include
8 the power to conduct hearings, take evidence, and enter a decision based
9 on findings of fact and conclusions of law based on statutes and legal
10 precedents shall be designated as exempt. This subdivision shall apply
11 beginning July 1, 1985, and no list submitted after that date shall
12 designate as exempt any employee described in this subdivision.

13 (e) An exempt employee may be transferred, demoted, or separated from his or her
14 position by the department head authorized to designate the exempt position except:

15 (1) When an employee who has the minimum service requirements
16 described in subsection (c)(1) above but less than 10 years of
17 cumulative service in subject positions prior to placement in an exempt
18 position is removed from an exempt position, for reasons other than just
19 cause, the employee shall have priority to any position that becomes
20 available for which the employee is qualified, according to rules and
21 regulations regulating and defining priority as promulgated by the State
22 Personnel Commission; or

23 (2) When an employee who has 10 years or more cumulative service,
24 including the immediately preceding 12 months, in subject positions
25 prior to placement in an exempt position is removed from an exempt
26 position, for reasons other than just cause, the employee shall be
27 reassigned to a subject position within the same department or agency,
28 or if necessary within another agency, and within a 35 mile radius of the
29 exempt position, at the same grade and salary, including all across-the-
30 board increases since placement in the position designated as exempt, as
31 his most recent subject position.

32 (f) A department head is authorized to use existing budgeted positions within his
33 department in order to carry out the provisions of subsection (e) of this section. If it is
34 necessary to meet the requirements of subsection (e) of this section, a department head
35 may use salary reserve funds authorized for his department.

36 (g) No employee shall be placed in an exempt position without 10 working days
37 prior written notification that such position is so designated. A person applying for a
38 position that is designated as exempt must be notified in writing at the time he makes the
39 application that the position is designated as exempt.

40 (h) In case of dispute as to whether an employee is subject to the provisions of this
41 Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B."

42 Section 6. G.S. 126-34.1 reads as rewritten:

43 "**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

1 (a) A State employee or former State employee may file in the Office of
2 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
3 Statutes only as to the following personnel actions or issues:

- 4 (1) Dismissal, demotion, or suspension without pay based upon an alleged
5 violation of G.S. 126-35, if the employee is a career State employee.
- 6 (2) An alleged unlawful State employment practice constituting
7 discrimination, as proscribed by G.S. 126-36, including:
- 8 a. Denial of promotion, transfer, or training, on account of the
9 employee's age, sex, race, color, national origin, religion, creed,
10 political affiliation, or handicapping condition as defined by
11 Chapter 168A of the General Statutes.
- 12 b. Demotion, reduction in force, or termination of an employee in
13 retaliation for the employee's opposition to alleged
14 discrimination on account of the employee's age, sex, race, color,
15 national origin, religion, creed, political affiliation, or
16 handicapping condition as defined by Chapter 168A of the
17 General Statutes.
- 18 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for
19 protesting an alleged violation of G.S. 126-16.
- 20 (4) Denial of the veteran's preference granted in accordance with Article 13
21 of this Chapter in initial State employment or in connection with a
22 reduction in force, for an eligible veteran as defined by G.S. 126-81.
- 23 (5) Denial of promotion for failure to post or failure to give priority
24 consideration for promotion or reemployment, to a career State
25 employee as required by G.S. 126-7.1 and G.S. 126-36.2.
- 26 (6) Denial of an employee's request for removal of allegedly inaccurate or
27 misleading information from the employee's personnel file as provided
28 by G.S. 126-25.
- 29 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 30 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
31 determination found probable cause to believe there has been a violation
32 of G.S. 126-14.2.
- 33 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
34 determination found probable cause to believe that there has been a
35 violation of G.S. 126-14.2.

36 (b) An applicant for initial State employment may file in the Office of
37 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
38 Statutes based upon:

- 39 (1) Alleged denial of employment in violation of G.S. 126-16.
- 40 (2) Denial of the applicant's request for removal of allegedly inaccurate or
41 misleading information from the ~~employee's~~ personnel file as provided
42 by G.S. 126-25.

- 1 (3) Denial of equal opportunity for employment and compensation on
2 account of the employee's age, sex, race, color, national origin, religion,
3 creed, political affiliation, or handicapping condition as defined by
4 Chapter 168A of the General Statutes. This subsection with respect to
5 equal opportunity as to age shall be limited to persons who are at least
6 40 years of age. An applicant may not, however, file a contested case
7 where political affiliation was the reason for the person's nonselection
8 for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3)
9 or (ii) a confidential assistant or confidential secretary position under
10 G.S. 125-5(c)(2).
- 11 (4) Denial of the veteran's preference in initial State employment provided
12 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.
13 126-81.
- 14 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
15 determination found probable cause to believe that there has been a
16 violation of G.S. 126-14.2.

17 (c) In the case of a dispute as to whether a State employee's position is properly
18 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the
19 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of
20 the General Statutes.

21 (d) A State employee or applicant for State employment may file in the Office of
22 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
23 Statutes based upon a false accusation regarding, or disciplinary action relating to, the
24 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

25 (e) Any issue for which appeal to the State Personnel Commission through the
26 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not
27 been specifically authorized by this section shall not be grounds for a contested case
28 under Chapter 126."

29 Section 7. G.S. 126-84 reads as rewritten:

30 **"§ 126-84. Statement of policy.**

31 (a) It is the policy of this State that State employees shall be encouraged to report
32 verbally or in writing to their supervisor, department head, or other appropriate authority,
33 evidence of activity by a State agency or State employee constituting:

- 34 (1) A violation of State or federal law, rule or regulation;
35 (2) Fraud;
36 (3) Misappropriation of State Resources; ~~or~~
37 (4) Substantial and specific danger to the public health and ~~safety~~-safety; or
38 (5) Gross mismanagement, a gross waste of monies, or gross abuse of
39 authority.

40 (b) Further, it is the policy of this State that State employees be free of
41 intimidation or harassment when reporting to public bodies about matters of public
42 concern, including offering testimony to or testifying before appropriate legislative
43 panels."

1 Section 8. G.S. 126-85 reads as rewritten:

2 **"§ 126-85. Protection from retaliation.**

3 (a) No head of any State department, agency or institution or other State employee
4 exercising supervisory authority shall discharge, threaten or otherwise discriminate
5 against a State employee regarding the State employee's compensation, terms, conditions,
6 location, or privileges of employment because the State employee, or a person acting on
7 behalf of the employee, reports or is about to report, verbally or in writing, any activity
8 described in G.S. 126-84, unless the State employee knows or has reason to believe that
9 the report is inaccurate.

10 (a1) No State employee shall retaliate against another State employee because the
11 employee, or a person acting on behalf of the employee, reports or is about to report,
12 verbally or in writing, any activity described in G.S. 126-84.

13 (b) No head of any State department, agency or institution or other State employee
14 exercising supervisory authority shall discharge, threaten or otherwise discriminate
15 against a State employee regarding the employee's compensation, terms, conditions,
16 location or privileges of employment because the State employee has refused to carry out
17 a directive which in fact constitutes a violation of State or federal law, rule or regulation
18 or poses a substantial and specific danger to the public health and safety.

19 (b1) No State employee shall retaliate against another State employee because the
20 employee has refused to carry out a directive which may constitute a violation of State or
21 federal law, rule or regulation, or poses a substantial and specific danger to the public
22 health and safety.

23 (c) The protections of this Article shall include State employees who report any
24 activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-
25 64.6(c)(16)."

26 Section 9. Article 13B of Chapter 120 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 120-86.1. Personnel-related action unethical.**

29 It shall be unethical for a legislator to take, promise, or threaten any legislative action,
30 as defined in G.S. 120-47.1(4), for the purpose of influencing or in retaliation for any
31 action regarding State employee hirings, promotions, grievances, or disciplinary actions
32 subject to Chapter 126 of the General Statutes."

33 Section 10. (a) Beginning January 1, 1998, and quarterly thereafter, the head of each
34 State agency, department, or institution employing State employees subject to the State
35 Personnel Act shall report to the Office of State Personnel on the following:

- 36 (1) The costs associated with the defense or settlement of administrative
37 grievances and lawsuits filed by current or former State employees and
38 applicants for State employment, including the costs of settlements,
39 attorneys' fees, litigation expenses, damages, or awards incurred by the
40 respective State agencies, departments, and institutions. The report
41 shall include an explanation of the fiscal impact of these costs upon the
42 operations of the State agency, department, or institution.

1 (2) The modification of position descriptions resulting in changes in
2 position qualifications to allow the use of educational, experience, or
3 other equivalencies in the hiring or promotion of State employees where
4 such equivalencies were not previously used in the position
5 descriptions. The report shall include an explanation of the reasons for
6 the changes in the position descriptions and the bases for the use of the
7 equivalencies.

8 (b) Beginning May 1, 1998, and annually thereafter, the State Personnel
9 Commission shall report to the Joint Legislative Commission on Governmental
10 Operations on the costs associated with the defense or settlement of lawsuits and on the
11 use of position qualification equivalencies, as compiled in accordance with subsection (a)
12 of this section.

13 (c) Beginning May 1, 1998, and then annually thereafter, the State
14 Personnel Commission, through the Office of State Personnel, shall report to the
15 Governor and to the Joint Legislative Commission on Governmental Operations on
16 outcomes with respect to State employee hirings, promotions, disciplinary actions, and
17 compensation, based upon demographics.

18 (d) By December 1, 1997, the State Personnel Commission shall report to
19 the Joint Legislative Commission on Governmental Operations on its development of a
20 systematized approach to State employee recruitment utilizing standards and measures of
21 outcomes across agency lines.

22 Section 11. This act shall not be construed to obligate the General Assembly
23 to make any appropriation to implement the provisions of this act. Each State agency to
24 which this act applies shall implement the provisions of this act from funds otherwise
25 appropriated to that State agency.

26 Section 12. Sections 1 and 2 of this act become effective July 1, 1997, and
27 apply to all suggestions and innovations pending on that date that were submitted under
28 the former State Employee Suggestion Program as authorized by G.S. 143-340(1) on or
29 before June 30, 1997. The remainder of this act is effective when it becomes law.