

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Fiscal Note**

**REVISED**

**BILL NUMBER:** House Bill 716 (Second Edition)

**SHORT TITLE:** Mediate State Employee Grievance/Time Frame.

**SPONSOR(S):** Representative Coleman

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ()</b>	<b>No Estimate Available ()</b>		
	<u><b>FY 2005-06</b></u>	<u><b>FY 2006-07</b></u>	<u><b>FY 2007-08</b></u>	<u><b>FY 2008-09</b></u>	<u><b>FY 2009-10</b></u>
<b>REVENUES</b>	\$0	\$0	\$0	\$0	\$0
<b>EXPENDITURES</b>					
<b>Office of State Personnel</b>	\$0	\$0	\$0	\$0	\$0
<b>Office of Administrative Hearings</b>	[For explanation of the RANGE, refer to Assumptions & Methodology]				
<b>Recurring</b>	\$148,692 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400
<b>Non-Recurring</b>	\$13,600	\$0	\$0	\$0	\$0
<b>TOTAL</b>	----- \$162,292 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400	\$148,692 – \$230,400
<b>POSITIONS (cumulative):</b>	[Refer to Assumptions and Methodology]				
	2 FTE	2 FTE	2 FTE	2 FTE	2 FTE
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Office of State Personnel (OSP) and Office of Administrative Hearings (OAH)				
<b>EFFECTIVE DATE:</b>	When it becomes law and applies to State employee grievances that arise on or after that date.				

**BILL SUMMARY:** The first edition of the bill, introduced on March 17, 2005, amended GS 126-34 to provide that the internal grievance procedure of each State agency, department, institution,

and UNC shall include mediation as the first step of the procedure. It added a new section, GS 126-34.1(f) to indicate the Office of Administrative Hearings must conduct a contested case hearing and render a decision on cases filed under that section no later than 210 days from the date the case was filed. If the Office fails to complete the contested case hearing process in 210 days, the petitioner who filed the case may petition the Superior Court of Wake County for a hearing de novo. On June 1, 2005 a House committee substitute changed the first edition as follows: 1) amends GS 126-34 to require that an independent third party who is not employed by the same agency as the employee filing the grievance conduct the mediation of the grievance; and 2) modifies proposed GS 126-34.1(f) to provide that if the Office of Administrative Hearings fails to complete a contested case hearing within 210 days, a party may petition the State Personnel Commission Chair to appoint an experienced personnel law attorney to complete the administrative hearing process and certify an official record within 60 days, expenses to be paid by the Office of Administrative Hearings (was, party may petition the Wake County Superior Court for a hearing de novo).

*Source: Bill Digest H.B. 716 (03/17/0200) and (06/01/0200).*

## **ASSUMPTIONS AND METHODOLOGY:**

### **Office of State Personnel (OSP)**

Section 1 of the bill amends G.S. 126-34 to institute two additional requirements in regard to employee grievances. First, it supports an internal grievance procedure for all State agencies, departments, institutions and the University of North Carolina that requires mediation as the first step of the procedure. The Office of State Personnel (OSP) fully supports mediation and funding was appropriated in the 2002 Session for OSP to provide mediation training. Additionally, the Senate and proposed House versions of SB622 – 2005 Appropriations Act – includes \$21,600 that would train 27 new mediators. As a result of the training initiative, there are currently 124 State employees. Of that number, 28 are employed by OSP and the balance serves as mediators within State agencies. Therefore, requiring mediation as a first step in the grievance procedure would not require additional resources. To date 19 cases have been mediated in the following grievance/issue categories: 6 or 31.5% - discrimination; 5 or 26.3% - dismissal; 4 or 21% - suspensions without pay; 3 or 15.8% - supervisory conflict (work-relationships); and 1 or 5.2% - demotion.

Additionally, Section 1 stipulates that an independent third party, who is not employed by the same agency of the aggrieved employee, should conduct the mediation. According to OSP, mediation is the responsibility of the group of State employees, who have been trained for this purpose. Thus, the only cost associated with independent third party mediation would be the loss of productivity of the mediator from their primary job function. If productivity appears to present a problem in handling cases, OSP can assign the case to one of its 28 mediators. Another option is for OSP to incorporate mediation responsibility into the duties of the HR Partner, who is assigned to handle other Human Resources needs of the aggrieved employee's agency.

There is no anticipated cost to OSP to meet the requirements of the legislation.

### **Office of Administrative Hearings (OAH)**

Section 2 requires that the Office of Administrative Hearings (OAH) dispose of contested personnel cases filed under G.S. 126 within 210 days of being filed. OAH's average personnel case disposal time is 300 days for cases closed in 2005. That is in contrast to OAH's current

average disposal time of 194 days for all administrative law cases it closed in 2005. OAH reports that personnel cases require additional disposal time because many of the cases result in the discharge of state employees and such cases rarely settle by mediation. After the conclusion of hearing a case, additional time is needed for the hearing transcript to be prepared, for the attorneys representing the parties of the case to submit their proposals for decision, and for the administrative law judge to review the proposal submissions and issue a decision.

OAH projects that it would reduce the personnel case disposition time from an average of 300 to the required 210 days with the addition of two (2) positions (an Administrative Law Judge and an Administrative Officer II). OAH states that the additional administrative law judge, increasing the current 8 to 9 judges, would permit the Chief Administrative Law Judge to assume greater managerial oversight of case management. Furthermore, OAH projects that the addition of an Administrative Officer II, acting as a trial court administrator, would permit daily monitoring and intervention in the docketing of contested cases to ensure the 210-day time period is met. OAH estimates that these positions, including fringe and operating expenses, would cost \$162,292 in FY 2005-06 and would annually cost \$148,692 for fiscal years 2006-07 through 2009-10.

**Estimated OAH recurring expense**

Salaries for 2 positions	\$117,726
Total fringe benefits	\$22,716
Operating costs (travel, telephone, office supplies, employee education)	\$8,250
<i>Subtotal</i>	<b>\$148,692</b>

**Estimated OAH non-recurring expense**

Office furniture and equipment	\$4,200
Computer equipment	\$9,400
<i>Subtotal</i>	<b>\$13,600</b>

<b>TOTAL OAH Expense for FY 2005-06</b>	<b>\$162,292</b>
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Section 2 also directs that if OAH does not complete the contested case hearing process within the 210-day disposition timeframe, then one of the parties to the case may petition the State Personnel Commission Chair to appoint an experienced personnel law attorney to complete the hearing process within 60 days. The bill directs OAH to pay the costs for the appointed attorney to complete the hearing process. *OAH estimates that without the authorization and funding of the additional two staff outlined above, OAH will not be able to close approximately 24 (11% or the difference between the distribution of the caseload among 8 instead of 9 judges) of the average 214 personnel case petitions filed annually within the 210-day required time frame.* **If OAH fails to close the contested personnel cases in 210 days, OAH estimates that the cost for the appointed attorneys to handle 24 cases would be \$230,400 per year.** OAH estimates that each of the 24 cases would require 48 billable attorney hours at \$200 per hour. The estimate of 48 hours includes an average of three (3) days to hear a case and an average of three (3) days after the hearing to render a decision. This estimate does not include travel, per diem, facility costs, or overhead costs.

**SOURCES OF DATA:** Office of State Personnel and Office of Administrative Hearings

**TECHNICAL CONSIDERATIONS:** It appears that for OAH to be able to dispose of personnel cases within the 210-day time period as required by the bill, statutory changes may be required to drastically reduce or eliminate pre-trial procedures such as discovery, motions, and the provision for permitting continuances.

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**DATE:** June 13, 2005

**Signed Copy Located in the NCGA Principal Clerk's Offices**