

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 407

Short Title: State Hires Most Qualified.

(Public)

---

Sponsors: Senators Blust; Clark, Cochrane, Foxx, Horton, Ledbetter, and Shaw of Guilford.

---

Referred to: State Government, Local Government, and Personnel.

---

March 17, 1997

A BILL TO BE ENTITLED

1  
2 AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR THE  
3 OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED  
4 PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING  
5 POLITICAL HIRINGS, TO PROVIDE FOR BROADER PROTECTIONS FOR  
6 STATE EMPLOYEES REPORTING MISMANAGEMENT AND IMPROPER  
7 GOVERNMENT ACTIVITIES, AND TO PROVIDE FOR THE REPORTING OF  
8 CERTAIN HIRINGS AND OTHER MATTERS TO THE JOINT LEGISLATIVE  
9 COMMISSION ON GOVERNMENTAL OPERATIONS.

10 The General Assembly of North Carolina enacts:

11 Section 1. Chapter 126 of the General Statutes is amended by adding a new  
12 section to read:

13 **"§ 126-14.2. Political hirings limited; open and fair competition; rules.**

14 (a) It is the policy of this State that State departments, agencies, and institutions  
15 select the most qualified persons for State government employment based upon job-  
16 related qualifications of applicants for employment and not based upon political  
17 affiliation, except that certain policy-making positions in State government employment  
18 may be filled on bases including political affiliation where the General Assembly has  
19 expressly authorized such hirings.

1       (b) The personnel policies and procedures of the executive, legislative, and judicial  
2 branches shall be updated to implement nonpolitical hirings in accordance with  
3 subsection (a) of this section.

4       (c) The State Personnel Commission shall adopt rules to:

5           (1) Encourage open and fair competition for positions in State government  
6 employment.

7           (2) Broaden the advertisement of job openings in State government  
8 employment and lengthen the period for submitting applications for  
9 State government employment.

10          (3) Assure that State departments, agencies, and institutions follow similar  
11 selection processes when hiring State employees.

12          (4) Assure that State supervisory personnel receive adequate training to  
13 carry out the State's policy of hiring the most qualified persons.

14          (5) Require that State supervisory personnel responsible for hiring State  
15 employees must execute for each initial hire or promotion a certification  
16 indicating that the hiring decision was made in accordance with State  
17 personnel policies and was not made on the basis of patronage."

18       Section 2. G.S. 126-34.1 reads as rewritten:

19 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

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

23           (1) Dismissal, demotion, or suspension without pay based upon an alleged  
24 violation of G.S. 126-35, if the employee is a career State employee.

25           (2) An alleged unlawful State employment practice constituting  
26 discrimination, as proscribed by G.S. 126-36, including:

27           a. Denial of promotion, transfer, or training, on account of the  
28 employee's age, sex, race, color, national origin, religion, creed,  
29 political affiliation, or handicapping condition as defined by  
30 Chapter 168A of the General Statutes.

31           b. Demotion, reduction in force, or termination of an employee in  
32 retaliation for the employee's opposition to alleged  
33 discrimination on account of the employee's age, sex, race, color,  
34 national origin, religion, creed, political affiliation, or  
35 handicapping condition as defined by Chapter 168A of the  
36 General Statutes.

37           (3) Retaliation against an employee, as proscribed by G.S. 126-17, for  
38 protesting an alleged violation of G.S. 126-16.

39           (4) Denial of the veteran's preference granted in accordance with Article 13  
40 of this Chapter in initial State employment or in connection with a  
41 reduction in force, for an eligible veteran as defined by G.S. 126-81.

1 (5) Denial of promotion for failure to post or failure to give priority  
2 consideration for promotion or reemployment, to a career State  
3 employee as required by G.S. 126-7.1 and G.S. 126-36.2.

4 (6) Denial of an employee's request for removal of allegedly inaccurate or  
5 misleading information from the employee's personnel file as provided  
6 by G.S. 126-25.

7 (7) Any retaliatory personnel action that violates G.S. 126-85.

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

11 (1) Alleged denial of employment in violation of G.S. 126-16.

12 (2) Denial of the applicant's request for removal of allegedly inaccurate or  
13 misleading information from the employee's personnel file as provided  
14 by G.S. 126-25.

15 (3) Denial of equal opportunity for employment and compensation on  
16 account of the employee's age, sex, race, color, national origin, religion,  
17 creed, or handicapping condition as defined by Chapter 168A of the  
18 General Statutes. This subsection with respect to equal opportunity as to  
19 age shall be limited to persons who are at least 40 years of age.

20 (4) Denial of the veteran's preference in initial State employment provided  
21 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.  
22 126-81.

23 (5) Denial of employment based upon political affiliation, except when the  
24 applicant's political affiliation was the basis for denial of employment in  
25 an exempt policy-making position.

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

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

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

38 Section 3. G.S. 126-84 reads as rewritten:

39 "**§ 126-84. Statement of policy.**

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

43 (1) A violation of State or federal law, rule or regulation;

- 1 (2) Fraud;
- 2 (3) Misappropriation of State Resources; or
- 3 (4) Substantial and specific danger to the public health and ~~safety~~; safety; or
- 4 (5) Mismanagement, a gross waste of monies, or an abuse of authority.

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

9 Section 4. G.S. 126-85 reads as rewritten:

10 "**§ 126-85. Protection from retaliation.**

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

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

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

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

31 (c) The protections of this Article shall include State employees who report any  
32 activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-  
33 64.6(c)(16)."

34 Section 5. Beginning July 1, 1997, and quarterly thereafter, the head of each  
35 State agency, department, or institution employing State employees subject to the State  
36 Personnel Act shall report to the Joint Legislative Commission on Governmental  
37 Operations on the following:

- 38 (1) The costs associated with the defense or settlement of administrative  
39 grievances and lawsuits filed by current or former State employees and  
40 applicants for State employment, including the costs of settlements,  
41 attorneys' fees, litigation expenses, damages, or awards incurred by the  
42 respective State agencies, departments, and institutions. The report

1                   shall include an explanation of the fiscal impact of these costs upon the  
2                   operations of the State agency, department, or institution.  
3           (2)       The use of position qualification equivalencies in the hiring of State  
4                   employees where an applicant for State employment or a candidate for a  
5                   promotion satisfies specific educational or experience qualifications for  
6                   a position by use of an equivalency relating to those specific  
7                   qualifications. The report shall include an explanation of the bases for  
8                   each use of an equivalency resulting in the hiring of an applicant for  
9                   State employment or the promotion of a State employee.  
10           Section 6. This act is effective when it becomes law.