

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE DRS55165-LR-95 (3/11)

Short Title: Various State Personnel Law Changes. (Public)

---

Sponsors: Senator Rand.

---

Referred to:

---

A BILL TO BE ENTITLED

AN ACT MAKING VARIOUS AMENDMENTS TO STATE PERSONNEL LAWS.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 126-4(10) reads as rewritten:

"(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and ~~procedures~~ procedures, including demonstration projects, as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program."

**SECTION 1.(b)** G.S. 126-4 is amended by adding a new subdivision to

read:

"(19) The Office of State Personnel, subject to the approval of the Commission, shall adopt policies and procedures concerning the conduct of demonstration projects."

**SECTION 1.(c)** Article 1 of Chapter 126 of the General Statutes is amended

by adding a new section to read:

**"§ 126-4.2. Funding for demonstration projects.**

State agencies, departments, and institutions, and The University of North Carolina shall have, with the concurrence of the Office of State Budget and Management, the flexibility to use any allowable and available funds to operate demonstration projects."

**SECTION 2.** G.S. 126-7.1 reads as rewritten:

**"§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force rights; Work First hiring.**

1 (a) All vacancies for which any State agency, department, or institution openly  
2 recruit shall be posted within at least the following:

3 (1) The personnel office of the agency, department, or institution having  
4 the vacancy; and

5 (2) The particular work unit of the agency, department, or institution  
6 having the vacancy

7 in a location readily accessible to employees. If the decision is made, initially or at any  
8 time while the vacancy remains open, to receive applicants from outside the recruiting  
9 agency, department, or institution, the vacancy shall be listed with the Office of State  
10 Personnel for the purpose of informing current State employees of such vacancy. The  
11 State agency, department, or institution may not receive approval from the Office of  
12 State Personnel to fill a job vacancy if the agency, department, or institution cannot  
13 prove to the satisfaction of the Office of State Personnel that it complied with these  
14 posting requirements. The agency, department, or institution which hires any person in  
15 violation of these posting requirements shall pay such person when employment is  
16 discontinued as a result of such violation for the work performed during the period of  
17 time between his initial employment and separation.

18 (a1) State employees to be affected by a reduction in force shall be notified of the  
19 reduction in force as soon as practicable, and in any event, no less than 30 days prior to  
20 the effective date of the reduction in force.

21 ~~(a2) The State Personnel Commission shall adopt rules to provide that priority  
22 consideration for State employees separated from State employment as the result of  
23 reductions in force is to enable a State employee's return to career service at a salary  
24 grade and salary rate equal to that held in the most recent position. The State Personnel  
25 Commission shall provide that a State employee who:~~

26 ~~(1) Accepts a position at the same salary grade shall be paid at the same  
27 salary rate as the employee's previous position.~~

28 ~~(2) Accepts a position at a lower salary grade than the employee's  
29 previous position shall be paid at the same rate as the previous position  
30 unless the salary rate exceeds the maximum of the new salary grade.  
31 When the salary rate exceeds the maximum of the salary grade, the  
32 employee's new salary rate shall be reduced to the maximum of the  
33 new salary grade.~~

34 (b) Subsection (a) of this section does not apply to vacancies which must be  
35 filled immediately to prevent work stoppage or the protection of the public health,  
36 safety, or security.

37 (c) If a State employee subject to this section:

38 (1) Applies for another position of State employment that would constitute  
39 a promotion and;

40 (2) Has substantially equal qualifications as an applicant who is not a State  
41 employee

42 then the State employee shall receive priority consideration over the applicant who is  
43 not a State employee. This priority consideration shall not apply when the only  
44 applicants considered for the vacancy are current State employees.

1       ~~(e1) If a State employee who has been separated due to reduction in force or who~~  
2 ~~has been given notice of imminent separation due to reduction in force:~~

3           ~~(1) Applies for another position of State employment equal to or lower in~~  
4           ~~salary grade than the position held by the employee at the time of~~  
5           ~~notification or separation; and~~

6           ~~(2) Is determined qualified for that position~~  
7 ~~then within all State agencies, the State employee shall receive priority consideration~~  
8 ~~over all other applicants but shall receive equal consideration with other applicants who~~  
9 ~~are current State employees not affected by the reduction in force. This priority shall~~  
10 ~~remain in effect for a period of 12 months from the date the employee receives~~  
11 ~~notification of separation by reduction in force. State employees separated due to~~  
12 ~~reduction in force shall receive higher priority than other applicants with employment or~~  
13 ~~reemployment priorities, except that the reemployment priority created by~~  
14 ~~G.S. 126-5(e)(1) shall be considered as equal. The reduction in force priority created by~~  
15 ~~this subsection shall be administered in accordance with rules promulgated by the State~~  
16 ~~Personnel Commission.~~

17       (c2) If the applicants for reemployment for a position include current State  
18 employees, a State employee with more than 10 years of service shall receive priority  
19 consideration over a State employee having less than 10 years of service in the same or  
20 related position classification. This reemployment priority shall be given by all State  
21 departments, agencies, and institutions with regard to positions subject to this Chapter.

22       (d) "Qualifications" within the meaning of subsection (c) of this section shall  
23 consist of:

24           (1) Training or education;

25           (2) Years of experience; and

26           (3) Other skills, knowledge, and abilities that bear a reasonable functional  
27 relationship to the abilities and skills required in the job vacancy  
28 applied for.

29       (e) Each State agency, department, and institution is encouraged to hire into State  
30 government employment qualified applicants who are current or former Work First  
31 Program participants.

32       (f) Employees with career status as defined by this Chapter who are separated  
33 through a reduction in force shall be eligible for severance pay based on rules adopted  
34 by the State Personnel Commission."

35       **SECTION 3.** Article 2 of Chapter 126 of the General Statutes is amended by  
36 adding a new section to read:

37 **"§ 126-7.3. Flexible benefits program centralized under Office of State Personnel.**

38       (a) Consistent with G.S. 143-34.1 and G.S. 116-17.2, the Office of State  
39 Personnel shall provide eligible officers and employees of State agencies, departments,  
40 and institutions, and The University of North Carolina with a program of dependent care  
41 assistance, as available under section 129 and related sections of the Internal Revenue  
42 Code of 1986, as amended. The Office of State Personnel shall coordinate the annual  
43 agreements entered into between State agencies, departments, and institutions, and The  
44 University of North Carolina, and the employees who elect to participate in the program

1 to provide for a reduction in salary. With the approval of the Director of the Budget,  
2 savings in the employer's share of contributions under the Federal Insurance  
3 Contributions Act on account of the reduction in salary may be used to pay some or all  
4 of the administrative expenses of the program. The Office of State Personnel may  
5 contract with a third party to administer the terms and conditions of a program of  
6 dependent care assistance. If the Office of State Personnel selects a contractor, it may do  
7 so only after a thorough and competitive procurement process.

8 (b) Consistent with G.S. 143-34.1 and G.S. 116-17.2, and notwithstanding any  
9 other provisions of law relating to the salaries of officers and employees of State  
10 agencies, departments, and institutions, and The University of North Carolina, the  
11 Office of State Personnel shall provide a plan of flexible compensation to eligible  
12 officers and employees for benefits available under section 125 and related sections of  
13 the Internal Revenue Code of 1986, as amended. In providing a plan of flexible  
14 compensation, the Office of State Personnel shall coordinate the annual agreements  
15 entered into between employees and State agencies, departments, and institutions, and  
16 The University of North Carolina. With the approval of the Director of the Budget,  
17 savings in the employer's share of contributions under the Federal Insurance  
18 Contributions Act on account of the reduction in salary may be used to pay some or all  
19 of the administrative expenses of the program. The Office of State Personnel may  
20 contract with a third party to administer the terms and conditions of a plan of flexible  
21 compensation as provided by this section. If the Office of State Personnel selects a  
22 contractor, it may do so only after a thorough and competitive procurement process.

23 (c) The Office of State Personnel shall coordinate the establishment of a  
24 centralized supplemental benefits committee to offer benefit options on a statewide  
25 basis to State agencies, departments, and institutions, and The University of North  
26 Carolina. The committee shall review plan options, prepare requests for proposals, and  
27 select plan providers only upon a thorough and completely competitive procurement  
28 process. Terms of contracts shall follow Purchase and Contract guidelines in Article 23  
29 of Chapter 143 of the General Statutes. State agencies, departments, and institutions and  
30 The University of North Carolina may elect to offer certain benefit options as provided  
31 under G.S. 58-31-60.

32 The Centralized Supplemental Benefits Committee shall be composed of  
33 representatives from State agencies, departments, and institutions, and The University  
34 of North Carolina. The Director of the Office of State Personnel shall appoint  
35 committee members. Members shall serve three-year terms on a rotating basis as  
36 established by the initial appointment."

37 **SECTION 4.(a)** Article 36A of the General Statutes is repealed.

38 **SECTION 4.(b)** Article 2 of Chapter 126 of the General Statutes is amended  
39 by adding a new section to read:

40 **"§ 126-7.3. State Employee Incentive Bonus Program.**

41 (a) It is the policy of the State to promote employee suggestion programs through  
42 the State Employee Incentive Bonus Program (SEIBP) so that employees and groups of  
43 employees may be recognized and rewarded for adopted ideas, suggestions,  
44 innovations, and the achievement of individual or group goals that improve their

1 agencies and State governmental operations. The Office of State Personnel shall  
2 administer the State's program and is authorized, with the approval of the State  
3 Personnel Commission (Commission), to adopt and implement policies in order to  
4 administer a State Employee Incentive Bonus Program.

5 (b) All State agencies, departments, and institutions and The University of North  
6 Carolina shall implement a State Employee Incentive Bonus Program that is not  
7 inconsistent with the policy approved by the Commission.

8 (c) A State Review Committee to evaluate suggestions and innovations shall  
9 consist of 11 members as follows:

10 (1) The State SEIBP Coordinator.

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

12 (3) A representative of the Department of Administration.

13 (4) A representative of the Department of Information and Technology  
14 Services.

15 (5) A representative of the Office of State Personnel.

16 (6) A representative of The University of North Carolina appointed by the  
17 Office of the President.

18 (7) A representative of the Department of Justice.

19 (8) A representative of the Department of Labor.

20 (9) One current State employee appointed by the Speaker of the House of  
21 Representatives.

22 (10) One current State employee appointed by the President Pro Tempore  
23 of the Senate.

24 (11) One current State employee appointed by the Governor.

25 (d) The State Review Committee shall have the final authority to approve and  
26 recommend any bonus consistent with the State Employee Incentive Bonus Program  
27 policy. First-year suggestion savings from the General Fund appropriations shall be  
28 distributed as follows:

29 (1) Twenty percent (20%) to the suggester or group or both, with an  
30 individual limit of twenty thousand dollars (\$20,000), and an aggregate  
31 team limit of one hundred thousand dollars (\$100,000).

32 (2) Thirty percent (30%) to the General Fund.

33 (3) Thirty percent (30%) to the implementing agency.

34 (4) Ten percent (10%) to the State Employee Incentive Bonus Program for  
35 administrative and operation expenses.

36 (5) Ten percent (10%) to the Office of State Personnel to be used for  
37 employee training.

38 (e) The State Review Committee shall review and approve any alternative  
39 distribution formulas, consistent with SEIBP policy, for suggestions approved in  
40 programs that are not funded in part or whole through the General Fund.

41 (f) All suggestions or innovations submitted by State employees pursuant to this  
42 section are the property of the State, and all related intellectual property rights shall be  
43 assigned to the State. By January 1, 2006, the Office of State Personnel shall establish a  
44 policy regarding intellectual property rights that arise from the SEIBP.

1 (g) Decisions regarding the award of bonuses are final and are not subject to  
2 review under the contested case procedures of Chapter 150B of the General Statutes."

3 **SECTION 5.(a)** G.S. 126-34 reads as rewritten:

4 **"§ 126-34. Grievance appeal for career State employees.**

5 Unless otherwise provided in this Chapter, any career State employee having a  
6 grievance arising out of or due to the employee's employment and who does not allege  
7 unlawful harassment or discrimination because of the employee's age, sex, race, color,  
8 national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or  
9 political affiliation shall ~~first discuss the problem or grievance with the employee's~~  
10 ~~supervisor and~~ follow the grievance procedure established by the employee's department  
11 or agency. The internal grievance procedure of each State agency, department,  
12 institution, and The University of North Carolina shall include mediation as the first  
13 step of the procedure. Any State employee having a grievance arising out of or due to  
14 the employee's employment who alleges unlawful harassment because of the employee's  
15 age, sex, race, color, national origin, religion, creed, or handicapping condition as  
16 defined by G.S. 168A-3 shall submit a written complaint to the employee's department  
17 or agency. The department or agency shall have 60 days within which to take  
18 appropriate remedial action. If the employee is not satisfied with the department or  
19 agency's response to the complaint, the employee shall have the right to appeal directly  
20 to the State Personnel Commission."

21 **SECTION 5.(b)** G.S. 126-34.1 is amended by adding a new subsection to  
22 read:

23 "(f) The Office of Administrative Hearings must conduct a contested case hearing  
24 and render a decision on cases filed under this section no later than 210 days from the  
25 date the case was filed with the Office of Administrative Hearings. If the Office of  
26 Administrative Hearings fails to complete the contested case hearing process in 210  
27 days of the date filed, the petitioner who filed the case may petition the Superior Court  
28 of Wake County for a hearing de novo."

29 **SECTION 6.** G.S. 138.4 reads as rewritten:

30 **"§ 138-4. Governor to set salaries of administrative officers; exceptions; longevity**  
31 **pay.**

32 (a) The salaries of all State administrative officers not subject to the State  
33 Personnel Act shall be set by the Governor, unless a law provides otherwise.

34 Whenever by law it is provided that a salary shall be fixed or set by the General  
35 Assembly in the Current Operations Appropriations Act, and that office or position is  
36 filled by appointment of the Governor, or the appointment is subject to the approval of  
37 the Governor, or is made by a commission a majority of whose members are appointed  
38 by the Governor, then the Governor may, increase or decrease the salary of a new  
39 appointee by a maximum of ten percent (10%) over or under the salary of that position  
40 as provided in the Current Operations Appropriations Act, such increased or decreased  
41 salary to remain in effect until changed by the General Assembly or until the end of the  
42 fiscal year, whichever occurs first. The Governor under this paragraph may not increase  
43 the salary of any nonelected official above the level set in the Current Operations  
44 Appropriations Act for any member of the Council of State. This section does not apply

1 to any office filled by election by the people, and does not apply to any office in the  
2 legislative or judicial branches.

3 Prior to taking any action under this section, the Governor may consult with the  
4 Advisory Budget Commission.

5 ~~Officials~~ Except as provided in subsection (b) of this section, officials whose salaries  
6 are covered by the provisions of this section shall be eligible for longevity pay on the  
7 same basis as is provided to employees of the State who are subject to the State  
8 Personnel Act.

9 (b) Any State employee who is on duty on December 31, 2005, shall be eligible  
10 to receive, or as they become eligible, shall begin to receive longevity pay according to  
11 longevity pay schedules in effect on that date. State employees on duty on December  
12 31, 2005, will be eligible for any future increases in longevity pay according to the  
13 longevity pay schedules in effect on that date. Employees who are reduced-in-force and  
14 who are reemployed within 12 months remain eligible for the longevity program. Any  
15 State employee who is subject to the State Personnel Act and who is hired on or after  
16 January 1, 2006, shall not be eligible to participate in the State's longevity pay program.  
17 Any funds saved through the elimination of longevity pay for these employees shall be  
18 retained by State agencies, departments, and institutions, and The University of North  
19 Carolina to be used exclusively for pay improvements for State employees in those  
20 departments who are subject to the State Personnel Act, and these funds shall be in  
21 addition to funds available through the Salary Adjustment Fund allocation."

22 **SECTION 7.** Sections 3, 4, and 6 of this act become effective July 1, 2005.  
23 The remainder of this act is effective when it becomes law, with Section 5 applying to  
24 State employee grievances that arise on or after that date.