

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 223
Committee Substitute Favorable 3/23/23
Committee Substitute #2 Favorable 4/5/23
PROPOSED SENATE COMMITTEE SUBSTITUTE H223-PCS10569-RN-35

Short Title: OSHR/Various SHRA Changes.

(Public)

Sponsors:

Referred to:

March 1, 2023

1 A BILL TO BE ENTITLED
2 AN ACT MAKING VARIOUS CHANGES TO THE STATE HUMAN RESOURCES ACT
3 AND RELATED LAW.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 126-14.3 reads as rewritten:

6 "§ 126-14.3. **Open and fair competition.**

7 The State Human Resources Commission shall adopt rules or policies to:

8 ...

9 (3) Require that a closing date shall be posted for each job opening, unless an
10 exception for critical classifications has been approved by the State Human
11 Resources ~~Commission~~ Commission or as a special exception through the
12 Office of State Human Resources.

13 ...

14 (9) Allow an individual the option of having the individual's application
15 considered for future job postings if the individual has been identified as a
16 qualified applicant within the same or comparable classification.

17 (10) Authorize agencies to make job offers as soon as possible after the completion
18 of the interviews for a position. These rules or policies shall include, without
19 limitation, authorizing agencies to make job offers that are contingent upon
20 satisfactory reference checks and, if required, satisfactory background
21 checks."

22 SECTION 2. G.S. 126-24 reads as rewritten:

23 "§ 126-24. **Confidential information in personnel files; access to such information.**

24 All other information contained in a personnel file is confidential and shall not be open for
25 inspection and examination except to the following persons:

26 (1) The employee, applicant for employment, former employee, or his properly
27 authorized agent, who may examine his own personnel file in its entirety
28 except for (i) letters of reference solicited prior to employment, or (ii)
29 information concerning a medical disability, mental or physical, that a prudent
30 physician would not divulge to a patient. An employee's medical record may
31 be disclosed to a licensed physician designated in writing by the
32 ~~employee;employee.~~

33 (2) The supervisor of the ~~employee;employee.~~



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- 1 (2a) A potential State or local government supervisor, during the interview
2 process, only with regard to performance management ~~documents;~~documents
3 or to prevent application fraud.
- 4 (3) Members of the General Assembly who may inspect and examine personnel
5 records under the authority of ~~G.S. 120-19;~~G.S. 120-19.
- 6 (4) A party by authority of a proper court order may inspect and examine a
7 particular confidential portion of a State employee's personnel ~~file;~~and file.
- 8 (5) An official of an agency of the federal government, State government or any
9 political subdivision thereof. Such an official may inspect any personnel
10 records when such inspection is deemed by the department head of the
11 employee whose record is to be inspected or, in the case of an applicant for
12 employment or a former employee, by the department head of the agency in
13 which the record is maintained as necessary and essential to the pursuance of
14 a proper function of said agency; provided, however, that such information
15 shall not be divulged for purposes of assisting in a criminal prosecution, nor
16 for purposes of assisting in a tax investigation.

17 Notwithstanding any other provision of this Chapter, any department head may, in his
18 discretion, inform any person or corporation of any promotion, demotion, suspension,
19 reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant,
20 employee or former employee employed by or assigned to his department or whose personnel
21 file is maintained in his department and the reasons therefor and may allow the personnel file of
22 such person or any portion thereof to be inspected and examined by any person or corporation
23 when such department head shall determine that the release of such information or the inspection
24 and examination of such file or portion thereof is essential to maintaining the integrity of such
25 department or to maintaining the level or quality of services provided by such department;
26 provided that prior to releasing such information or making such file or portion thereof available
27 as provided herein, such department head shall prepare a memorandum setting forth the
28 circumstances which the department head deems to require such disclosure and the information
29 to be disclosed. The memorandum shall be retained in the files of said department head and shall
30 be a public record."

31 **SECTION 3.** G.S. 126-10 reads as rewritten:

32 "**§ 126-10. Personnel services to local governmental units.**

33 (a) The State Human Resources Commission may make the services and facilities of the
34 Office of State Human Resources available upon request to the political subdivisions of the State.
35 The State Human Resources Commission may establish reasonable charges for the service and
36 facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit
37 of the general fund.

38 (b) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity
39 indicates that it will permanently appoint a person who does not meet the class specification's
40 minimum qualifications for a position subject to the State Human Resources Act, except for
41 trainee and work-against appointments, the Office of State Human Resources may contact any
42 relevant members of the board supervising that local entity, the county manager and
43 commissioners, and the Department of Health and Human Services. The message may identify
44 the particular qualifications that the proposed appointee would need to meet to have the minimum
45 qualifications of the class specification.

46 (c) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity
47 requests that the Office of State Human Resources make the final determination as to whether
48 the employee or applicant meets the minimum qualifications, the Office of State Human
49 Resources may share the relevant portions of the personnel file of a specific employee or
50 applicant with the Deputy Director of the Public Health or Social Services Division of the

1 Department of Health and Human Services, or similar State departmental staff, to assist in
2 determining qualification status."

3 **SECTION 4.(a)** G.S. 95-47.6 reads as rewritten:

4 **"§ 95-47.6. Prohibited acts.**

5 A private personnel service shall not engage in any of the following activities or conduct:

6 ...

7 (13) Impose or attempt to collect any fee that is prohibited by G.S. 126-18 from
8 the State, or any of its agencies, for aiding or assisting any person in obtaining
9 employment with the State."

10 **SECTION 4.(b)** G.S. 126-18 reads as rewritten:

11 **"§ 126-18. Compensation for assisting person in obtaining State employment barred;**
12 **exception.**

13 It shall be unlawful for any person, firm or corporation to collect, accept or receive any
14 compensation, consideration or thing of value for obtaining on behalf of any other person, or
15 aiding or assisting any other person in obtaining employment with the State of North Carolina;
16 provided, however, any person, firm, or corporation that is duly licensed ~~and supervised~~ by the
17 North Carolina Department of Labor as a private ~~employment service acting in the normal course~~
18 ~~of business, personnel service pursuant to Article 5A of Chapter 95 of the General Statutes,~~ may
19 collect such regular and customary fees for services rendered pursuant to a written contract when
20 such fees are paid by someone other than the State of North Carolina; however, any person, firm,
21 or corporation collecting fees for this service must have been licensed by the North Carolina
22 Department of Labor as a private personnel service pursuant to Article 5A of Chapter 95 of the
23 General Statutes for a period of not less than one year.

24 Any person, firm or corporation collecting fees for this service must ~~make a monthly report~~
25 ~~to the Department of Labor listing the name of the person, firm or corporation collecting fees and~~
26 ~~the person for whom a job was found, the nature and purpose of the job obtained, and the fee~~
27 ~~collected by the person, firm or corporation collecting the fee. retain documents as required by~~
28 G.S. 95-47.5. Violation of this section shall constitute a Class 1 misdemeanor."

29 **SECTION 5.** G.S. 96-29 reads as rewritten:

30 **"§ 96-29. Openings listed by State agencies.**

31 Every State agency shall list with the Division of Employment Security every job opening
32 occurring within the agency which opening the agency wishes filled and which will not be filled
33 solely by promotion or transfer from within the existing State government work force. The listing
34 shall include a brief description of the duties and salary range and shall be filed with the Division
35 within 30 days after the occurrence of the opening. ~~The State agency may not fill the job opening~~
36 ~~for at least 21 days after the listing has been filed with the Division.~~ The listing agency shall
37 report to the Division the filling of any listed opening within 15 days after the opening has been
38 filled.

39 ~~The Division may act to waive the 21-day listing period for job openings in job classifications~~
40 ~~declared to be in short supply by the State Human Resources Commission, upon the request of a~~
41 ~~State agency, if the 21-day listing requirement for these classifications hinders the agency in~~
42 ~~providing essential services."~~

43 **SECTION 6.** G.S. 126-4 reads as rewritten:

44 **"§ 126-4. Powers and duties of State Human Resources Commission.**

45 Subject to the approval of the Governor, the State Human Resources Commission shall
46 establish policies and rules governing each of the following:

47 (1) Position classification plans which shall provide for the classification and
48 reclassification of all positions subject to this Chapter according to the duties
49 and responsibilities of the positions.

1 (2) Compensation plans which shall provide for minimum, maximum, and
2 intermediate rates of pay for all employees subject to the provisions of this
3 Chapter.

4 (3) For each class of positions, reasonable qualifications as to education,
5 experience, specialized training, licenses, certifications, and other job-related
6 requirements pertinent to the work to be performed. Classifications, class
7 qualifications, and classification specifications may be added, revised, and
8 deleted by the State Human Resources Commission, subject to the approval
9 of the Governor, or by the Director of the Office of State Human Resources
10 based on accepted labor market practices. All changes to classifications,
11 qualifications, and specifications by the Director of the Office of State Human
12 Resources shall be consistent with the classification plan structure approved
13 by the State Human Resources Commission and shall be reported to the State
14 Human Resources Commission at its next meeting that is more than five
15 business days from the date of the change.

16"

17 **SECTION 7.** The State Human Resources Commission shall adopt temporary rules,
18 followed by permanent rules, concerning the hiring and compensation of trainees for local
19 government positions that are subject to the State Human Resources Act. The Commission shall
20 submit the rules and notice of public hearing to the Codifier of Rules no later than 60 days from
21 the effective date of this act.

22 **SECTION 8.** G.S. 126-34.02(b)(4) reads as rewritten:

23 "(4) Veteran's and National Guard preference. – An applicant for State
24 employment or a State employee may allege that he or she was denied
25 veteran's preference or National Guard preference in violation of the law."

26 **SECTION 9.** G.S. 126-30(a) reads as rewritten:

27 "(a) Any employee who knowingly and willfully discloses false or misleading
28 information, or conceals dishonorable military service; or conceals prior employment history or
29 other requested information, either of which are significantly related to job responsibilities on an
30 application for State employment or any document attached to or supplementing an application
31 may be subjected to disciplinary action up to and including immediate dismissal from
32 employment. Dismissal shall be mandatory where the applicant discloses false or misleading
33 information in order to meet position qualifications. Application forms for State employment
34 shall include a statement informing applicants of the consequences of such fraudulent disclosure
35 or lack of disclosure. This statement shall also appear on any screen that allows an applicant to
36 attach materials to, or supplement, a State application."

37 **SECTION 10.** G.S. 126-6.3 reads as rewritten:

38 "**§ 126-6.3. Temporary employment needs of Cabinet and Council of State agencies; use of**
39 **the Temporary Solutions Program.**

40 ...

41 (a2) Prohibition. – The OSHR shall prohibit from acquiring new temporary employees any
42 agency or division, based on individual budget code, having an invoice owed to the OSHR that
43 is over 90 days overdue and a total overdue invoice amount exceeding two hundred thousand
44 dollars ~~(\$200,000) for any number of days. (\$200,000).~~ When an agency or division, based on
45 individual budget code, is restricted from acquiring a new temporary employee under this
46 subsection, the agency or division shall not be allowed to acquire new temporary employees
47 through the Temporary Solutions Program until the agency or division has paid all ~~overdue~~
48 ~~invoices. invoices that are over 90 days overdue.~~ The provisions of this subsection do not apply
49 to the North Carolina National Guard.

50 (a3) Exceptions. – The following exceptions apply:

- 1 (1) The Director of the OSHR may create exceptions to the requirements of
2 subsection (a) of this section only when the following conditions are met:
3 a. The Temporary Solutions Program cannot meet the agency's
4 employment needs for a class of temporary job assignments.
5 b. Failure to recruit for the class of temporary job assignments will cause
6 severe harm to the agency's ability to provide services to the public.
- 7 (2) A temporary employee who is a full-time student, a retired employee, an
8 inmate on a work-release program, an intern, or an extern is exempt from the
9 requirements of subsection (a1) of this section.
- 10 (3) The Director of the OSHR may create exceptions to the requirements of
11 subsection (a1) of this section only when all of the following conditions are
12 met:
13 a. The exception is in the best interests of the State because removing the
14 employee from the job assignment will cause severe harm to the
15 agency's ability to provide vital services to the public.
16 b. The exception will not result in extending the 11-month maximum
17 length of temporary employment beyond 22 months from the
18 employee's initial hire date.
- 19 (4) The Director of the OSHR may create exceptions to the requirements of
20 subsection (a2) of this section only when failure to acquire new temporary
21 employees will cause severe harm to the agency's ability to provide vital
22 services to the public.

23 All exceptions shall be in the sole discretion of the Director of the OSHR except that the
24 North Carolina National Guard is hereby granted preferred status for exceptions which shall not
25 be denied by the Director. All exceptions shall include a justification of why the exception is
26 necessary. An exception is invalid unless it is submitted in writing and on file in the Temporary
27 Solutions Program Office. To the extent possible, the Director of the OSHR or the Director's
28 designee shall advise agencies of alternative job classification options prior to approval of
29 exceptions to subsection (a1) of this section.

30"

31 **SECTION 11.(a)** Two-Year Pilot Program for Department of Health and Human
32 Services Temporary Employees. Notwithstanding any other provision of law, temporary
33 employees, as defined in G.S. 126-6.3, staffing positions for the Department of Health and
34 Human Services (Department), shall be granted priority consideration in obtaining a vacant,
35 permanent, probationary, or time-limited position, whether full-time or part-time, that is
36 equivalent or similar to the temporary position held by the employee. This priority consideration
37 will be lower than the priority under G.S. 126-7.1(e) for permanent State employees seeking a
38 promotion and the priority under Article 13 of Chapter 126 of the General Statutes and
39 G.S. 128-15 for eligible veterans and eligible members of the National Guard. The temporary
40 employee must be in good standing with the Department, meet the minimum qualifications for
41 the position, and have been continuously staffing a position for the Department for at least six
42 months prior to consideration, not including any mandatory breaks under G.S. 126-6.3. The
43 Office of State Human Resources (OSHR) may expedite the hiring process for those temporary
44 employees subject to the requirements in Article 6 of Chapter 126 of the General Statutes. Upon
45 request of the Department, OSHR shall grant an exemption from other procedural hiring
46 requirements, including interviewing applicants, selection procedures, selection criteria, and
47 posting procedure of the position for temporary employees granted priority under this section
48 and for permanent State employees who meet the minimum qualifications for the position and
49 would be eligible for promotional priority under G.S. 126-7.1(e). A position filled pursuant to
50 this section must be posted, but may be posted "Internal to Agency" as permitted by the State

1 Human Resources Commission Recruitment and Posting of Vacancies Policy in effect as of the
2 effective date of this section.
3 **SECTION 11.(b)** This section becomes effective July 1, 2024, and expires on June
4 30, 2026.
5 **SECTION 12.** Except as otherwise provided, this act is effective when it becomes
6 law.