

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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**HOUSE BILL 223
Committee Substitute Favorable 3/23/23**

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.~~

34 (2a) A potential State or local government supervisor, during the interview
35 process, only with regard to performance management ~~documents;documents~~
36 or to prevent application fraud.



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

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

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

29 "**§ 126-10. Personnel services to local governmental units.**

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

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

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

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

51 "**§ 95-47.6. Prohibited acts.**

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

2 ...

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

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

7 **"§ 126-18. Compensation for assisting person in obtaining State employment barred;**
8 **exception.**

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

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

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

26 **"§ 96-29. Openings listed by State agencies.**

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

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

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

40 **"§ 126-4. Powers and duties of State Human Resources Commission.**

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

- 43 (1) Position classification plans which shall provide for the classification and
44 reclassification of all positions subject to this Chapter according to the duties
45 and responsibilities of the positions.
- 46 (2) Compensation plans which shall provide for minimum, maximum, and
47 intermediate rates of pay for all employees subject to the provisions of this
48 Chapter.
- 49 (3) For each class of positions, reasonable qualifications as to education,
50 experience, specialized training, licenses, certifications, and other job-related
51 requirements pertinent to the work to be performed. Classifications, class

1 qualifications, and classification specifications may be added, revised, and
2 deleted by the State Human Resources Commission, subject to the approval
3 of the Governor, or by the Director of the Office of State Human Resources
4 based on accepted labor market practices. All changes to classifications,
5 qualifications, and specifications by the Director of the Office of State Human
6 Resources shall be consistent with the classification plan structure approved
7 by the State Human Resources Commission and shall be reported to the State
8 Human Resources Commission at its next meeting that is more than five
9 business days from the date of the change.

10"

11 **SECTION 7.** The State Human Resources Commission shall adopt a temporary rule,
12 followed by permanent rulemaking, concerning the hiring and compensation of trainees for local
13 government positions that are subject to the State Human Resources Act. The Commission shall
14 submit the rule and notice of public hearing to the Codifier of Rules no later than 60 days from
15 the effective date of this act.

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

17 **"§ 126-34.02. Grievance appeal process; grounds.**

18 ...

19 (b) The following issues may be heard as contested cases after completion of the agency
20 grievance procedure and the Office of State Human Resources review:

21 ...

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

25"

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

27 **"§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State**
28 **employment; penalties.**

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

39 **SECTION 10.** This act is effective when it becomes law.