

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H

D

HOUSE BILL 223  
Committee Substitute Favorable 3/23/23  
PROPOSED COMMITTEE SUBSTITUTE H223-PCS10301-RN-10

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.~~



\* H 2 2 3 - P C S 1 0 3 0 1 - R N - 1 0 \*

- 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.

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

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

...."

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

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

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

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

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

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