

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 393
SENATE BILL 15

AN ACT TO FURTHER STREAMLINE THE STATUTES SO AS TO CLARIFY
THE CONSTITUTIONAL ROLE OF THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5(d) reads as rewritten:

- "(d) (1) General. – The Governor may designate as exempt policymaking positions, as provided below, in each of the following departments:
- a. Department of Administration;
 - b. Department of Commerce;
 - c. Department of Correction;
 - d. Department of Crime Control and Public Safety;
 - e. Department of Cultural Resources;
 - f. Department of Human Resources;
 - g. Department of Environment, Health, and Natural Resources;
 - h. Department of Revenue; and
 - i. Department of Transportation.
- The Secretary of State, the Auditor, the Treasurer, the Attorney General, ~~the Superintendent of Public Instruction~~, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt policymaking positions, as provided below, in their respective offices. The State Board of Education may designate as exempt policymaking positions, as provided below, in the Department of Public Instruction.
- (2) Number. – The number of policymaking positions designated as exempt in each department or office listed in subsection (d)(1), except the Department of Commerce, shall be limited to one and two-tenths percent (1.2%) of the number of full-time positions in the department or office, or 30 positions, whichever is greater. The Governor may designate 85 policymaking positions as exempt in the Department of Economic and Community Development. Provided, however, that the ~~Governor or Governor~~, elected department head-head, or State Board of Education may request that additional policymaking positions be designated as exempt. The request shall be made by sending a list of policymaking positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A

copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional policymaking positions to be designated as exempt. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the policymaking positions shall be designated as exempt. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt; the policymaking positions shall not be designated as exempt during the interim.

- (3) Letter. – These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.
- (4) Vacancies. – In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.
- (5) Creation, Transfer, or Reorganization. – ~~The Governor or Governor,~~ electd department head-head, or State Board of Education may designate as exempt a policymaking position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.
- (6) Reversal. – Subsequent to the designation of a policymaking position as exempt as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the ~~Governor or Governor,~~ by an electd department head-head, or by the State Board of Education in a letter to the State Personnel Director, the

Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

- (7) Hearing Officers. – Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

Sec. 2. Notwithstanding the provisions of G.S. 126-5(d), the State Board of Education may designate as exempt a policymaking position that is located in the Department of Public Instruction on or after the effective date of this act. The designation must be made in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the effective date of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives