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HOUSE DRH70289-LR-79 (03/05)

Short Title: Civil Rights Division to Human Relations Comm. (Public)

Sponsors: Representative Floyd.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO TRANSFER THE CIVIL RIGHTS DIVISION FROM THE OFFICE OF
3 ADMINISTRATIVE HEARINGS TO THE NORTH CAROLINA HUMAN RELATIONS
4 COMMISSION.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. The Civil Rights Division (Division) is transferred from the Office of
7 Administrative Hearings to the North Carolina Human Relations Commission (Commission) in
8 the same manner as a Type II transfer pursuant to G.S. 143A-6. The Division shall be
9 administered under the direction and supervision of the Commission but shall exercise all its
10 prescribed statutory powers independently.
11 SECTION 2. G.S. 143B-391 reads as rewritten:
12 "§ 143B-391. North Carolina Human Relations Commission – Creation; ~~powers and~~
13 ~~duties.~~powers, duties, and organization.
14 (a) There is hereby created the North Carolina Human Relations Commission of the
15 Department of Administration. The North Carolina Human Relations Commission
16 (Commission) shall have the following functions and duties:
17 (1) To study problems concerning human ~~relations;~~relations.
18 (2) To promote equality of opportunity for all ~~citizens;~~citizens.
19 (3) To promote understanding, respect, and goodwill among all ~~citizens;~~citizens.
20 (4) To provide channels of communication among the ~~raees;~~raees.
21 (5) To encourage the employment of qualified people without regard to
22 ~~race;~~race.
23 (6) To encourage youths to become better trained and qualified for
24 ~~employment;~~employment.
25 (7) To receive on behalf of the Department of Administration and to recommend
26 expenditure of gifts and grants from public and private ~~donors;~~donors.
27 (8) To enlist the cooperation and assistance of all State and local government
28 officials in the attainment of the objectives of the ~~Commission;~~Commission.
29 (9) To assist local good neighborhood councils and biracial human relations
30 committees in promoting activities related to the functions of the
31 Commission enumerated ~~above;~~in this subsection.
32 (10) To advise the Secretary of Administration upon any matter the Secretary
33 may refer to ~~it;~~it.
34 (11) To administer the provisions of the State Fair Housing Act as outlined in
35 Chapter 41A of the General ~~Statutes;~~Statutes.
36 (12) To administer the provisions of Chapter 99D of the General Statutes.



1 (13) To direct and supervise the Civil Rights Division.

2 (b) The Civil Rights Division (Division) is established as a unit within the Commission.
3 The Division shall be administered under the direction and supervision of the Commission but
4 shall exercise all its prescribed statutory powers independently."

5 **SECTION 3.** G.S. 7A-759, which shall be recodified by the Revisor of Statutes as
6 G.S. 143B-391.1, reads as rewritten:

7 **"§ 143B-391.1. Civil Rights Division as deferral agency.**

8 (a) ~~The Office of Administrative Hearings~~ Civil Rights Division of the North Carolina
9 Human Relations Commission (Human Relations Commission) is designated to serve as the
10 State's deferral agency for cases deferred by the Equal Employment Opportunity Commission
11 to the ~~Office of Administrative Hearings~~ Human Relations Commission as provided in Section
12 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in
13 Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. §
14 12101 et seq. for charges filed by State or local government employees covered under Chapter
15 126 of the General Statutes and shall have all of the powers and authority necessary to function
16 as a deferral agency.

17 (b) ~~The Chief Administrative Law Judge~~ Human Relations Commission is authorized
18 and directed to contract with the Equal Employment Opportunity Commission for the ~~Office of~~
19 ~~Administrative Hearings~~ Civil Rights Division of the Human Relations Commission to serve as
20 a deferral agency and to establish and maintain a Civil Rights Division ~~in the Office of~~
21 ~~Administrative Hearings~~ under the Human Relations Commission to carry out the functions of
22 a deferral agency.

23 (b1) As provided in the contract between the ~~Office of Administrative Hearings~~ Human
24 Relations Commission and the Equal Employment Opportunity Commission, a deferred charge
25 for purposes of 42 U.S.C. § 2000e-5(c) or (d) is a charge that is filed by a State or local
26 government employee covered under Chapter 126 of the General Statutes and alleges an
27 unlawful employment practice prohibited under that Chapter or any other State law. A deferred
28 charge may be filed with either agency.

29 The date a deferred charge is filed with either agency is considered to be a commencement
30 of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d). The filing of a
31 deferred charge automatically tolls the time limit under G.S. 126-7.2, 126-35, 126-38, and
32 150B-23(f) and any other State law that sets a time limit for filing a contested case under
33 Article 3 of Chapter 150B of the General Statutes alleging an unlawful employment practice.
34 These time limits are tolled until the completion of the investigation and of any informal
35 methods of resolution pursued pursuant to subsection (d) of this section.

36 (c) In investigating charges an employee of the Civil Rights Division of the ~~Office of~~
37 ~~Administrative Hearings~~ Human Relations Commission specifically designated by the
38 Commission ~~an order of the Chief Administrative Law Judge filed in the pending case~~ may
39 administer oaths and affirmations.

40 (c1) In investigating charges, an employee of the Civil Rights Division shall have access
41 at reasonable times to State premises, records, and documents relevant to the charge and shall
42 have the right to examine, photograph, and copy evidence. Any challenge to the Civil Rights
43 Division to investigate the deferred charge shall not constitute grounds for denial or refusal to
44 produce or allow access to the investigative evidence.

45 (d) Any charge not resolved by the Civil Rights Division by informal methods of
46 conference, conciliation or persuasion may be heard by the Human Relations Commission or as
47 a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

48 (e) An order entered by an administrative law judge after a contested case hearing on
49 the merits of a deferred charge is a final agency decision and is binding on the parties. The
50 administrative law judge may order whatever remedial action is appropriate to give full relief
51 consistent with the requirements of federal statutes or regulations or State statutes or rules.

1 (f) ~~In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an~~
2 ~~administrative law judge~~ The Civil Rights Division may monitor compliance with any
3 negotiated settlement, conciliation agreement or order entered in a deferred case.

4 (g) The standards of confidentiality established by federal statute or regulation for
5 discrimination charges shall apply to deferred cases investigated or heard by the ~~Office of~~
6 ~~Administrative Hearings~~ Human Relations Commission.

7 (h) Nothing in this section shall be construed as limiting the authority or right of any
8 federal agency to act under any federal statute or regulation.

9 (i) This section shall be broadly construed to further the general purposes stated in this
10 section and the specific purposes of the particular provisions involved."

11 **SECTION 4.** G.S. 126-14.4 reads as rewritten:

12 **"§ 126-14.4. Remedies.**

13 (a) A State employee or applicant for initial State employment who has reason to
14 believe that he or she was among the pool of the most qualified persons for a position in State
15 government employment and was denied employment or promotion in violation of
16 G.S. 126-14.2 because of political affiliation or political influence may complain directly
17 through the Civil Rights Division of the ~~Office of Administrative Hearings, North Carolina~~
18 Human Relations Commission, which shall be responsible for making an initial determination
19 of whether there is probable cause to believe that there has been a violation of G.S. 126-14.2.

20 The complaining State employee or applicant shall file a complaint with the Civil Rights
21 Division ~~of the Office of Administrative Hearings~~ within 30 days after the complainant
22 receives written notice that the position in question has been filled.

23 The Civil Rights Division ~~of the Office of Administrative Hearings~~ shall promptly make
24 appropriate formal and informal inquiries in its investigatory, fact-finding role and may
25 consider any matter, document, or statement deemed pertinent to the initial determination,
26 including telephone conversations, in determining if there is probable cause to believe there has
27 been a violation of G.S. 126-14.2. The Civil Rights Division may apply to an administrative
28 law judge in the Office of Administrative Hearings for the issuance of oaths and subpoenas
29 under G.S. 7A-756. The investigation and fact-finding phase of the complaint shall be
30 completed by the Civil Rights Division within 30 days.

31 (b) The Civil Rights Division ~~of the Office of Administrative Hearings~~ shall notify the
32 person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the person
33 may present any information to the Civil Rights Division that is pertinent to the initial
34 determination of probable cause. The person alleged to have been hired in violation of
35 G.S. 126-14.2 shall be notified of the results of the initial determination and shall have a right
36 to intervene in any administrative proceedings pursuant to G.S. 150B-23(d).

37 (c) Upon an initial determination that there is probable cause to believe there has been a
38 violation of G.S. 126-14.2, the complainant may file within 15 days a petition for a contested
39 case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General Statutes.

40 (d) An initial determination by the Civil Rights Division that there is not probable cause
41 to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any rights under
42 that section but shall not be admissible or binding in any separate or subsequent civil action or
43 proceeding.

44 (e) Within 90 days after the filing of a contested case petition, the administrative law
45 judge shall issue a final decision to the State Personnel Commission which shall include
46 findings of fact and conclusions of law and, if the administrative law judge has found a
47 violation of G.S. 126-14.2, an appropriate remedy, which may include:

- 48 (1) Directing the State agency, department, or institution to declare the position
49 vacant and to hire from among the most qualified State employees or
50 applicants for initial State employment who had applied for the position, or
- 51 (2) Requiring that the vacancy be posted pursuant to this Chapter.

1 (f) Repealed by Session Laws 2011-398, s. 43, effective January 1, 2012, and
2 applicable to contested cases commenced on or after that date.

3 (g) A career State employee with:

4 (1) Less than 10 years of service who was placed in an exempt managerial
5 position, as defined by G.S. 126-5(b)(2), shall be given priority
6 consideration for a position at the same salary grade equal to that held in the
7 most recent position before being placed in the exempt managerial position
8 if he or she has to vacate because of violation of G.S. 126-14.2.

9 (2) 10 or more years of service who was placed in an exempt managerial
10 position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable
11 position at the same grade and salary equal to that held in the most recent
12 position before being placed in the exempt managerial position if he or she
13 had to vacate because of violation of G.S. 126-14.2."

14 **SECTION 5.** No action or proceeding pending on July 1, 2013, brought by or
15 against the Civil Rights Division when it was under the Office of Administrative Hearings shall
16 be affected by any provision of this act, but the same may be prosecuted or defended as the
17 Civil Rights Division of the North Carolina Human Relations Commission, which shall be
18 substituted as a party upon proper application to the courts or other public bodies. Any business
19 or other matter undertaken or commanded by the Civil Rights Division regarding any State
20 program, office, or contract or pertaining to or connected with their respective functions,
21 powers, obligations, and duties that are pending on the date this act becomes effective, may be
22 conducted and completed in the same manner and under the same terms and conditions and
23 with the same effect after that effective date.

24 **SECTION 6.** This act becomes effective July 1, 2013.