

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-513
SENATE BILL 725

AN ACT PERTAINING TO THE FILING OF A DEFERRED CHARGE WITH THE EEOC OR THE OFFICE OF ADMINISTRATIVE HEARINGS BY STATE OR LOCAL GOVERNMENT EMPLOYEES AND AMENDING CHAPTER 143 OF THE GENERAL STATUTES TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING AND REVENUE-INCREASING INITIATIVES AND INNOVATIONS OF STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-759 reads as rewritten:

"§ 7A-759. Role as deferral agency.

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

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

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

The date a deferred charge is filed with either agency is considered to be a commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d). The filing of a deferred charge automatically tolls the time limit under G.S. 126-7.2, 126-35, 126-38, and 150B-23(f) and any other State law that sets a time limit for

filing a contested case under Article 3 of Chapter 150B of the General Statutes alleging an unlawful employment practice. These time limits are tolled until the completion of the investigation and of any informal methods of resolution pursued pursuant to subsection (d) of this section.

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

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

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion shallmay be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations.regulations or State statutes or rules.

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

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

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

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

Section 2. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36A.

"State Employee Incentive Bonus Program.

§ 143-345.10. Definitions.

The following definitions apply in this Article:

- (1) Baseline reversion. -- The two-year historical average of reversions by a State department, agency, or institution.
- (2) Employing unit. -- Any of the following:

- a. The principal Council of State office or department enumerated in G.S. 143A-11 for which a State employee works.
- b. The principal State department enumerated in G.S. 143B-6 for which a State employee works.
- c. The constituent institution of The University of North Carolina or the General Administration of The University of North Carolina for which a State employee works.
- d. The local school administrative unit for which a State employee works.
- e. The board, commission, or agency and its staff for which a State employee works, if that agency is not organizationally housed in any of the other offices, departments, or institutions listed in this subdivision.

(3) State employee. -- Any of the following:

- a. A person who is a contributing member of the Teachers' and State Employees' Retirement System of North Carolina, the Consolidated Judicial Retirement System of North Carolina, or the Optional Program.
- b. A person who receives wages from the State as a part-time or temporary worker, but is not otherwise a contributing member of one of the retirement programs listed in sub-subdivision a. of this subdivision.

"§ 143-345.11. State employee incentive bonus.

(a) A State employee or team of State employees may receive an incentive bonus or bonuses in reward for suggestions or innovations resulting in monetary savings to the State, increased revenues to the State, or improved quality of services delivered to the public.

(b) In addition to any bonuses paid directly to individual State employees, a portion of the cost-savings associated with any savings realized from permanent efficiencies implemented pursuant to this Article may be contributed to a reserve fund for State employee performance bonuses. Funds for State employee incentive bonuses shall only come from savings including reversions above the baseline reversion of the employing State department, agency, or institution.

(c) Savings generated by suggestions and innovations shall be determined at the end of the fiscal year in which the suggestion or innovation is implemented. Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same, if an amount has been budgeted for the program, activity, or service. The savings calculation shall include the amount of any reversions in excess of the baseline reversion. The savings or revenue increases realized from any suggestion or innovation implemented for less than one full fiscal year shall be annualized. Any savings realized through the State Employee Incentive Bonus Program shall be weighed against continued service to the public.

(d) If a suggestion or innovation affects a program, activity, or service for which no separate budgeted amount has been made, the State Coordinator, in conjunction with the agency evaluator for that suggestion or innovation, shall determine the budgetary impact of the suggestion or innovation.

"§ 143-345.12. Allocation of incentive bonus funds; nonmonetary recognition.

(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased shall be distributed according to the following scale:

- (1) Twenty percent (20%) of the annualized savings or increased revenues, up to a maximum of twenty thousand dollars (\$20,000) for any one State employee, to constitute gainsharing. If a team of State employees is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member may receive in excess of twenty thousand dollars (\$20,000), nor may the team receive an aggregate amount in excess of one hundred thousand dollars (\$100,000).
- (2) Thirty percent (30%) to a performance bonus reserve for all current employees of the employing unit of the suggester, to be distributed according to G.S. 126-7, the Comprehensive Compensation System for State employees, or according to the performance bonus compensation system in which the suggester's employing unit participates.
- (3) The remainder to the General Fund for nonrecurring budget items.

(b) The budget of a State agency shall not be reduced in the following fiscal year by an amount similar to the monetary savings or increased revenues realized by the State Employee Incentive Bonus Program. The agency budget shall be reduced in subsequent years only if structural or organizational changes are made that warrant the reductions, including the transfer of responsibility for an activity or service to another agency or the elimination of some function of State government.

(c) If a suggestion or innovation results in improved quality of services to the public or to other State agencies, departments, and institutions, but not in monetary savings to the State, the suggester shall receive a nonmonetary award in the form of a certificate, leave with pay, or other similar recognition.

"§ 143-345.13. Suggestion and review process; role of agency coordinator and agency evaluator.

(a) The process for a State employee or team of State employees to submit a cost-saving or revenue-increasing proposal shall begin by the employee or team of employees submitting the suggestion or innovation to an agency coordinator designated by the State department, agency, or institution impacted by the suggestion or innovation. The agency coordinator, in conjunction with an agency evaluator, shall review the suggestion or innovation for submission to the Review Committee established in G.S. 143-345.14.

(b) The duties of the agency coordinator shall include:

- (1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.
- (2) Responsibility for presenting, in conjunction with the agency evaluator, the plan of implementation for a suggestion or innovation to the Review Committee.
- (3) Working in conjunction with the agency evaluator designated by the State Coordinator for a particular suggestion or innovation.

An agency may have more than one coordinator if required to provide sufficient services to State employees.

- (c) The duties of an agency evaluator shall include:
- (1) Reviewing the feasibility and effectiveness of cost-saving or revenue-increasing measures suggested by State employees.
 - (2) Being knowledgeable of the subject program, activity, or service.
 - (3) Determining, in conjunction with the agency fiscal officer, the budgetary impact of a suggestion or innovation.
 - (4) Judging impartially both the positive and negative effects of a suggestion or innovation on the current functions of the subject program, activity, or service.

The specific assignments of the agency evaluator shall be determined by the agency coordinator.

(d) The State Coordinator shall be responsible for general oversight and coordination of the State Employee Incentive Bonus Program. The State Coordinator shall be a State employee working in the Department of Administration.

"§ 143-345.14. Incentive Bonus Review Committee.

(a) The Incentive Bonus Review Committee, hereinafter 'Review Committee', shall consist of nine members, as follows:

- (1) The State Coordinator.
- (2) A representative of the Office of State Budget and Management.
- (3) A representative of the Office of State Personnel.
- (4) A representative of The University of North Carolina.
- (5) A representative of the Department of Justice.
- (6) A representative of the Department of Labor.
- (7) One State employee appointed by the Speaker of the House of Representatives.
- (8) One State employee appointed by the President Pro Tempore of the Senate.
- (9) One State employee appointed by the Governor upon the recommendation of the State Employees Association of North Carolina, Inc.

(b) The duties of the Review Committee shall include:

- (1) Responsibility for receiving from the various agency coordinators recommendations on suggestion and innovation implementation plans.

- (2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.
- (3) Ensuring that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) All administrative, management, clerical, and other functions and services required by the Review Committee shall be supplied by the Department of Administration. The Department of Administration and the Review Committee shall report annually to the Joint Legislative Commission on Governmental Operations on the administration of the State Employee Incentive Bonus Program.

"§ 143-345.15. Effect of decisions regarding bonuses.

All suggestions or innovations submitted by State employees pursuant to this Article are the property of the State. Decisions regarding the award of bonuses by the agency coordinator and the Review Committee are final and are not subject to review under the contested case procedures of Chapter 150B of the General Statutes."

Section 3. G.S. 143-340(1) reads as rewritten:

"(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars (\$5,000). the State Employee Incentive Bonus Program pursuant to Article 36A of this Chapter, with the authority to adopt all rules necessary to implement the program."

Section 4. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that State agency.

Section 5. Section 1 of this act is effective when it becomes law, applies to charges pending or filed on and after that date, and expires December 31, 1998. The remainder of this act becomes effective July 1, 1997, and applies to all suggestions and innovations pending on that date that were submitted under the former State Employee Suggestion Program as authorized by G.S. 143-340(1) on or before June 30, 1997.

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:29 a.m. this 17th day of September, 1997