

## MINUTES

### **STATE HUMAN RESOURCES COMMISSION MEETING LEARNING DEVELOPMENT CENTER 101 WEST PEACE STREET RALEIGH, NORTH CAROLINA**

**October 17, 2013**

The State Human Resources Commission (SHRC) met on October 17, 2013. Acting Chair Phillip Strach called the meeting to order. Members present were Acting Chair Phillip Strach, Commissioner Virgie DeVane Hayes, Commissioner Mel Asbury, Commissioner Mark Hamberlin, Commissioner John Eller, and Commissioner Gloria Evans. Pursuant to North Carolina General Statutes §138A, the North Carolina Ethics Act, Acting Chair Strach asked all Commissioners if there were any conflicts of interest or potential conflicts of interests with respect to any matters coming before the Commission. Chair Strach asked that if the Commission becomes aware of any conflicts of interest or potential conflicts of interest to identify the conflict and refrain from any participation in the matter involved. There being no conflict of interest or potential conflict of interest, Chair Strach asked for a motion to enter into executive session. A motion was made by Commissioner DeVane Hayes to enter into executive session. The motion was seconded by Commissioner Asbury. The motion was carried and the Commission proceeded to start executive session.

### Executive Session

**The State Human Resources Commission voted and rendered decisions in the following cases:**

1. **Gwendoly Bellamy v. Brunswick County Department of Social Services**
2. **Valerie Small v. North Carolina Agricultural and Technical State University**

Next the Commission returned to the opening session. Chair Strach called the meeting to order. Mr. C. Neal Alexander, Office of State Human Resources Director introduced the new State Human Resources Commission: Commissioner Phillip Strach (new), Commissioner John K. Eller (new), Commissioner Gloria Evans (new), Commissioner Virgie DeVane Hayes (returning), Commissioner Mel Asbury (returning) and Commissioner Mark Hamberlin (returning). There were two new Commission members not available to attend the meeting: Commissioner Susan Manning and Commissioner Martin Falls.

Pursuant to North Carolina General Statutes §138A, the North Carolina Ethics Act, Acting Chair Strach asked all Commissioners if there were any conflicts of interest or potential conflicts of interests with respect to any matters coming before the Commission. Chair Strach asked that if the Commission became aware of any conflicts of interest or potential conflicts of interest to identify the conflict and refrain from any participation in the matter involved.

Next on the agenda was the oral argument component. The following cases were scheduled and heard for oral argument:

1. **Anthony Moss v. North Carolina Department of Crime Control and Public Safety**  
Attorney for the Petitioner Mr. Alan McSurely  
Attorney for the Respondent Ms. Tamara S. Zmuda
  
2. **Jacob Scott v. North Carolina Department of Crime Control and Public Safety**  
Attorney for the Petitioner Mr. J. Michael McGuinness  
Attorney for the Respondent Ms. Tamara S. Zmuda
  
3. **Cherron Wooten v. North Carolina Department of Health and Human Resources**  
Petitioner appeared Pro Se Mr. Cherron Wooten  
Attorney for the Respondent Ms. Charlene Richardson

Next on the agenda was the business session. Chair Strach asked if anyone had signed up to speak during the public hearing session. The comment period was for three minutes for each individual. Mr. Tom Harris, General Counsel, State Employees Association of North Carolina (SEANC) made a presentation to the Commission regarding the various proposed policies changes related to the recent statutory amendments to the State Human Resources Act. Mr. Harris stated that his purpose for speaking was “to alert you that the process by which you are being asked to adopt the policies is legally deficient and, as a consequence, any policies you attempt to adopt will have no legal effect. Mr. Harris gave points related to the purpose of his agenda. Mr. Harris also stated that SEANC wanted to have an opportunity to review the proposed policies and offer comments. Mr. Harris asked that the Commission withhold their approval of the proposed policies since they had no force or effect, but instead approve only the proposals to initiate the Administrative Procedures Act rulemaking procedures, as temporary rules where appropriate.

The next item on the business session agenda was the approval of the minutes. Chair Strach explained that the minutes of the June 20, 2013 Commission meeting were approved by the previous Commission on August 26, 2013.

The next item on the agenda was the State Human Resources Director’s Report. Mr. C. Neal Alexander, Jr., Director of the Office of State Human Resources (OSHR) stated that since the last meeting the House Bill 834 Modernization of the State Human Resources Act was passed and signed into law August 21, 2013 by Governor McCrory. Director Alexander explained that there is still much more to do and that the Office of State Human Resources (OSHR) has already begun working on that. The changes made in H.B. 834 align with the Governor’s goals for human resources. Director Alexander explained that the Governor’s charge to him was: (1) to develop market based practices for human resources decisions and policy processes; (2) attract, develop, motivate and retain talent to strengthen the state’s operations and to help North Carolina reach its potential; (3) create an environment where employees can be

successful; and (4) create a culture of customer service in state government. OSHR is charged with bringing recommendations to the Commission: (1) that are well thought out; (2) that meet the business needs of the organization; (3) that are legally sound and meets the requirements of established law; (4) that represent good human resources practices that OSHR wants to implement within the state and (5) that are also balanced from the prospective of the employees and the prospective of the state.

Director Alexander thanked the Human Resources Directors and staff from various agencies, as well as the OSHR staff in attendance, for their commitment to doing their work, being concerned about the management and treatment of employees, their concern for the development of employees, and for doing good human resources work within the State of North Carolina.

Director Alexander explained that the agenda for this meeting would be longer than usual because there was not a meeting in August, there were some contested cases that had to be continued and there are several compensation plans and several reports. Director Alexander explained that a main part of the meeting would be changes of rules and policies due to the passage of House Bill 834. Director Alexander explained that there has to be a way to implement what was approved in House Bill 834. In order to implement, OSHR/SHRC has to go through the rulemaking process. Director Alexander explained to the Commission that the OSHR staff would take as many questions as needed in order for the Commission to have the information that they need in order to feel comfortable in making decisions. Director Alexander thanked the Commission for their time, commitment and dedication to the State of North Carolina.

Next, Mrs. Pam Bowling, Human Resources Managing Partner, presented to the Commission for consideration and approval, four state classification and pay items. Mrs. Bowling presented the first two classifications as follows: (1) to request the establishment of a new classification of SBI Agent Associate and (2) to request the establishment of a new classification of Forensic Scientist Associate. Both of these new classifications will be with the Department of Justice working with the State Bureau of Investigation (SBI) and the crime lab area there. These classifications are being set up so that the agency can better recruit new college graduates. For the SBI Agent Associate classification, this eliminates the need for the SBI Agent Trainee classification and it will be abolished at a future Commission meeting. As for the Forensic Scientist Associate, this eliminates the need for the Forensic Scientist Trainee classification and it is, therefore being abolished. These classes will function as a trainee; therefore the classes will have incremental rates for increases at appropriate milestones leading to the full SBI Agent and Forensic Scientist classifications. The Office of State Human Resources and the Department of Justice requested an effective date of November 1, 2013 to begin using the new class for recruitment. The next two classification items are revising some existing classifications. The study for the Forensic Pathologist classification which is used in the North Carolina Department of Health and Human Services was conducted due to the recruitment and retention problems. OSHR recommended the implementation of this range revision to be effective October 1, 2013. The Office of State Human Resources and the Department of Public Safety studied the Juvenile Court Counselor classification and determined that it needed to receive a range revision from grade 68 to grade 69. Mrs. Bowling explained that this was based

on the close comparison of the role to the Probation/Parole Officer at grade 69. After implementation of the new class, the classifications of Juvenile Court Counselor I and the trainee progression will be abolished as they are no longer needed. The recommended effective date for these actions was December 1, 2013; however, implementation was contingent on the availability of funds. **[See Attachments]**

Chair Strach asked if there were any questions. Commissioner Eller asked if the minimum education and experience requirements for the Juvenile Court Counselor were congruent with the other classifications. Mrs. Bowling explained that they are somewhat similar. Commissioner Eller asked if that were the same agency to agency. Ms. Bowling stated that they were the same in all agencies. Commissioner Hamberlin asked in the SBI Agent, Associate and Trainee, if there was a pretty robust supply and demand market for that type of role or was this a broader kind of job creation effort. Mrs. Bowling explained that the Office of State Human Resources (OSHR) is trying to move into making more effort to assist in college recruitment. Commissioner Hamberlin stated that when you have college graduates coming out of college it is necessary to make sure that there is a market for what they are interested in.

Chair Strach asked if there were any more questions. There being no more questions, Chair Strach asked for a motion to approve the above-mentioned state classification actions presented by Mrs. Bowling. A motion was made by Commissioner Eller to approve the classification actions. The motion was seconded by Commissioner Asbury. The motion was made and carried.

Next, Mrs. Pam Bowling, Human Resources Managing Partner, presented to the Commission, for informational purposes, a report regarding education and experience requirements revisions made to various classifications. **[See Attachment]**

Next, Mr. Dusty Wall, Human Resources Managing Partner, presented to the Commission, for consideration and approval, proposed policy revisions to the Reduction In Force Policy/Rule revisions. Mr. Wall explained that the Reduction In Force (RIF) policy describes the reemployment priority for career state employees who have been notified of separation due to reduction in force. The reason for the policy/rule changes was due to legislation passed (HB 834) resulting in changes to North Carolina General Statutes §126, the State Human Resources Act. A portion of the legislation changed some of the conditions under which an employee with RIF Priority has the priority satisfied or terminated. Mr. Wall explained that the proposed changes to the rules were the same rationale as the policy changes. Mr. Wall stated that the primary impact of the policy change was that employees accepting positions for which they have applied that are at a lower level and lower salary rate than the position previously held would continue priority for the 12 month period to positions up to the position level or salary rate held at the time of separation. The Office of State Human Resources request an effective date of November 1, 2013. Mr. Wall requested approval of the policy revisions and also the associated rules to begin the rulemaking process. **[See Attachment]**

Chair Strach asked if there were any questions. There being no questions, Chair Strach asked for a motion to approve the Reduction In Force Policy revisions/rules presented by Mr. Wall. Commissioner Evans asked if this would go into the rulemaking process or was this

actually dealing with the policy change. Commissioner Strach stated that the first motion would be to adopt the policy and the second motion would be to initiate the rulemaking process. Commissioner Strach asked for a motion to approve the revisions to the Reduction In Force Policy. Commissioner Hayes made a motion to approve the revisions. The motion was seconded by Commissioner Eller. The motion was made and carried.

Chair Strach asked for a motion to approve the associated rules of the Reduction In Force Policy as presented by Mr. Wall to begin the rulemaking process. Commissioner Eller made a motion to approve the rules to begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Wall presented to the Commission for consideration and approval, the Reduction In Force Priority Policy revisions (for employees notified prior to July 1, 2011). Mr. Wall explained that the Reduction In Force (RIF) Priority Policy describes the reemployment priority for career state employees who have been notified of separation due to reduction in force prior to July 1, 2011. In previous legislative session, legislation was passed which modified the RIF priority for state employees, effective July 1, 2011. Employees reduced in force prior to this date were provided priority under the previous law and those employees' priority has now expired; therefore this policy is no longer applicable and can be repealed. The Office of State Human Resources requested an effective date of November 1, 2013. **[See Attachment]**

Chair Strach asked for a motion to repeal the Reduction In Force Priority Policy as presented by Mr. Wall. Commissioner Hayes made a motion to repeal the policy. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Wall presented to the Commission for consideration and approval the Priority Reemployment for Exempt Policymaking and Managerial and Priority Consideration for Exempt Managerial Employees Removed for Violations of G.S. 126-14.2 with the associated rules. The Priority Reemployment for Exempt Policymaking and Managerial policy describes the reemployment priority for career state employees who have been removed from exempt positions for reasons other than cause. The Priority Consideration for Exempt Managerial Employees Removed for Violations of G.S. 126-14.2 describes the reemployment priority specifically included in G.S. 126-14.4. The legislature passed HB 834 resulting in changes to G.S. 126, the State Human Resources Act. A portion of this legislation changed some of the conditions under which an employee removed from an exempt position is eligible for priority reemployment when separated for reasons other than cause. Mr. Wall explained that there were parallel changes in the associated rules with the same rationale as the above-mentioned policy changes. The primary impact is that only employees hired on or before June 29, 2013 may receive priority reemployment if removed for reasons other than just cause from exempt positions. Also, employees with such priority do not have to explicitly indicate a desire to exercise their one-time priority when applying for vacant positions and their priority is satisfied if they are offered or accept a position at any level. OSHR requested an effective date of November 1, 2013. **[See Attachment]**

Commissioner Strach asked if there were any questions regarding the request to repeal the Priority Consideration for Exempt Managerial Employees Removed for Violations of G.S.

126-14.2. Commissioner Evans asked a question about the Administrative Procedures Act (APA). Commissioner Evans wanted to know if the Commission was going through the rules process first or adopting the policy and then going through the rules process. Chair Strach stated that it was his understanding that the Commission is repealing an existing policy. Mr. Wall stated that the policy is being repealed due to HB 834 but that the policy had been in existence for years. Chair Strach asked for a motion to repeal the Priority Consideration for Exempt Managerial Employees Removed for Violations of G.S. 126-14.2 as presented by Mr. Wall. Commissioner Hamberlin made a motion to approve the repeal of the policy. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Wall asked that the Commission approve the Priority Reemployment for Exempt Policymaking and Managerial Policy revisions with an effective date of November 1, 2013.

Chair Strach asked if there were any questions regarding the above-mentioned policy presented by Mr. Wall. Commissioner Hamberlin asked what policy or rules apply for those hired after June 29<sup>th</sup>. Mr. Wall stated that there would be no specific policies or rules for people in that scenario because the statute that granted that appeal was repealed. People in an exempt managerial position still would have priority if they are otherwise eligible. Mr. Alexander elaborated on the matter and stated that people who had a protected right for 10 years prior to June 29<sup>th</sup> retained that, anybody hired after that time was not moved into a priority right. They were moved into a policy making exempt or managerial exempt position. Director Alexander stated that OSHR is just aligning this with the statute.

Chair Strach asked for a motion to approve the Priority Reemployment for Exempt Policymaking and Managerial Policy revisions as presented by Mr. Wall. Commissioner Asbury made a motion to approve the policy revisions. Commissioner Hayes seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to approve the associated rules to begin the rulemaking. Commissioner Asbury made a motion to approve the rules to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Mr. Wall presented to the Commission for consideration and approval of the repeal of the Priority Referral System Policy. The Priority Referral System policy describes a former referral system approach that is no longer utilized. The policy is being repealed for the above-mentioned reason. Applicable portions of the policy are now in other appropriate policies. There is no impact of the policy change because the Priority Referral System no longer exists. Mr. Wall asked that the effective date of the repeal of this policy be November 1, 2013. **[See Attachment]**

Chair Strach asked if there were any questions regarding the above-mentioned policy action. There being no questions, Chair Strach asked for a motion to approve the repeal of the Priority Referral System Policy as presented by Mr. Wall. Commissioner Asbury made a motion to repeal the policy. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Mr. Gerry Fisher, Human Resources Managing Partner, presented to the Commissioner for consideration and approval the Probationary/Trainee/Permanent Appointment and Career Status Policy/Rule revisions. Mr. Fisher gave a brief outline of the policy as follows: (1) the length of the probationary period; (2) covered types of appointments; (3) the supervisor's responsibility during the probationary period; (4) local government transfer provisions; and (5) other associated topics defining the fulfillment of the probationary period in order to achieve career status. The ratification of HB 834 mandated a twenty-four month probationary period replacing the previous three to nine month probationary period. The policy change clearly defines that the employee is probationary for twenty-four months until achievement of career status. The proposed changes to the associated rules are to parallel the changes to the policy. The Office of State Human Resources requested an effective date of November 1, 2013. Mr. Fisher requested approval of the policy and approval of the associated rules to begin the rulemaking process. **[See Attachment]**

Chair Strach asked if there were any questions regarding the above-mentioned policy/rule revisions. Commissioner Hamberlin asked why different groups establish different probationary periods when the overall statute said twenty-four months. Commissioner Hamberlin asked if there were any reasoning behind that. Commissioner Hamberlin asked if it was tied to the nature of the job or at the time it would take for a person to understand if someone could accomplish it. Mr. Fisher explained that the reason for the variations was because of the appearance of flexibility. Mr. Fisher explained further that the twenty-four months was not really in the law defining the probationary period. It only stated that you obtain career status at twenty-four months, but did not define the other status after three to nine months. Commissioner Hamberlin stated that it is now clearly stating that it is a probationary period. Mr. Fisher confirmed Commissioner Hamberlin's statement. Director Alexander elaborated that the OSHR is putting into place a process to evaluate performance over that twenty-four month period. Director Alexander stated that his biggest concern is not getting to month twenty-three and the person has been doing fine and then all of a sudden the agency wants to get rid of the person. OSHR wants to do the performance management coaching because we want that person to be the best. Twenty-three months has already been invested in the employee. Commissioner Hamberlin asked if there was a difference in how an employee was treated under this new provision and how they might have been treated under the three-month, six-month or nine-month probationary period. Mr. Fisher stated that before there was probably a bit of variation in how it was handled because there was no specification in the policy for a more stringent requirement for the supervisor to manage performance. Mr. Fisher stated that there was a feature in it, but quite frankly it was rather nebulous. Now it is spelled out about what has to be done at certain intervals. Chair Strach asked if there were any more questions. Commissioner Eller asked if this applied to local government. Mr. Fisher explained that at this point the practices on local government regarding this policy remain intact. There being no further questions, Chair Strach asked for a motion to approve the Probationary/Trainee/Permanent Appointment and Career Status Policy revisions. Commissioner Eller made a motion to approve the above-mentioned policy revisions. Commissioner Asbury seconded the motion. The motion was made and carried. Next, Chair Strach asked for a motion to approve the associated rules to begin the rulemaking process. Commissioner Hayes made a motion to approve the associated rules to

begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Fisher presented to the Commission for consideration and approval the Employment Offers Policy/Rule revisions. Mr. Fisher explained that the policy defined the conditions under which an employment offer can be made. The policy defines a position vacancy, the probationary requirements for appointment and the procedure for determining initial salaries. The policy is proposed to be amended to reflect the changes mandated by ratification of HB 834. The policy change impacts all employment types that have an associated probationary period. Instead of a range of probationary periods from three to nine months, there is now a consistent twenty-four month probationary period. OSHR requested an effective date of November 1, 2013. Mr. Fisher explained that the revision to the rule reflects the twenty-four month probationary period. Mr. Fisher requested the approval of the policy revisions and the approval of the rule to begin the rulemaking process. **[See Attachment]**

Chair Strach asked if there were any questions regarding this action. Chair Strach asked for a motion to approve the amendment of the Employment Offers Policy. Commissioner Asbury made a motion to approve the amendment to the Policy. Commissioner Hamberlin seconded the motion. The motion was made and carried.

Next, Chair Strach asked for a motion to approve the associated rule to begin the rulemaking process. Commissioner Asbury made a motion to approve the rule to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Mr. Fisher presented to the Commission for consideration and approval the New Appointments Policy/Rule. This policy defines: (1) types of appointments and associated qualifications; (2) determination of salary rates for new hires; (3) salary exceptions; and (4) trainee appointments. The policy was modified in order to reflect changes mandated by HB 834 to change the probationary period to twenty-four months. The policy change impacts all new appointments that have an associated probationary period. Instead of the three-to-nine-month probationary period, there is now a consistent twenty-four month probationary period. The associated rule parallels the changes made to the policy to reflect changes mandated by HB 834. **[See Attachment]**

Chair Strach asked if this was being changed in order to conform to HB 834. Mr. Fisher stated that was correct. Commissioner Hamberlin asked what the difference was between new appointments and new hires. Commissioner Hamberlin asked if that was when someone changes from one job to another. Mr. Fisher explained that appointment is a term that is used in state government. In private industry it would be new hire. Commissioner Hamberlin stated that this is not someone who has been in a position for a while and then changes. Mr. Fisher said that was correct. For the record, Delores Joyner, pointed out a correction to the agenda. The associated rule cited is 25 NCAC 01D .0201 instead of 25 NCAC 01D .1204 which was listed on the agenda. Chair Strach asked if there were any other questions. There being no further questions, Chair Strach asked for a motion to approve the revisions to the New Appointments Policy as

presented by Mr. Fisher. Commissioner Asbury made a motion to approve the policy revision. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Chair Strach asked for a motion to approve the associated rule to begin the rulemaking process. Commissioner Hayes made a motion to approve the rule to begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Fisher presented to the Commission for consideration and approval the Personnel Records Policy/Rule. Mr. Fisher explained that the policy defines what records can be requested by the public. The policy has been modified to reflect change in HB 834 regarding remedies employees have for objecting to material in their files. The policy change along with the changes to the Grievance Policy allow for earlier and less litigious resolution of these types of cases. Because the Office of State Human Resources will be reviewing the Final Agency Decisions in these matters, it is expected that the agency and OSHR can work with employees to craft equitable resolutions without additional litigation. The associated rule parallels the changes to the policy. Mr. Fisher requested that the Commission approve the policy revisions and approve the rule to begin the rulemaking process. **[See Attachment]**

Chair Strach asked if there were any questions regarding the Personnel Records Policy. Mr. Fisher explained that the final agency decision is the final decision. Chair Strach asked if there was any way for that decision to be reviewed. Mr. Fisher explained that OSHR will be reviewing the final agency decisions and propose either approval or modification back to the agency before it is finally issued. Chair Strach asked if that were any further questions. Chair Strach asked if there was a motion to approve the revisions to the policy. Commissioner Asbury made a motion to approve the revisions to the Personnel Records Policy. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Chair Strach asked for a motion to approve the associated rule to begin the rulemaking process. Commissioner Asbury made a motion to approve the rule to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Mrs. Lynn Freeman, Human Resources Partner, presented for consideration and approval the Reorganization through Reduction Policy. This is a new policy designed to permit cabinet agencies the flexibility to allow employees to volunteer to exit the organization. Unlike the existing reduction-in-force (RIF) policy, this policy allows the agency to retain the position being vacated by the employee's separation. The expectation is that the retained position be repurposed to align the duties and responsibilities with needed skill sets and the agency's strategic direction. This policy is unique because it ends June 30, 2014. Therefore, there are no rules associated with this policy. It is similar to reduction in force because the employee will be given severance. **[See Attachment]**

Chair Strach asked if there were any questions regarding the Reorganization Through Reduction Policy. Commissioner Hamberlin asked if this is effectively saying that there is a number of resources that you want to retain through the organization versus a specific position.

You want to retain the head count but you want that head count to be doing a different position as different skills. Ms. Freeman said yes, that was correct. Director Alexander elaborated by saying that this program allows people the opportunity to volunteer to leave. Once the employee leaves the position can be repurposed. Under a RIF, you lose the position, you lose the money. Chair Strach asked if this was something that was specifically authorized by HB 834. Commissioner Asbury asked if this was something that would be done across state government. Mrs. Freeman explained that currently it is being done only in the cabinet agencies. It is a goal to see how the program works. Mrs. Freeman explained that there are hopes that the program will be extended. Chair Strach asked for a motion to approve the Reorganization Through Reduction Policy. Commissioner Evans said that she would like for the Commission to follow the process of going through the rulemaking process. Mrs. Valerie Bateman, Legal Counsel explained that because this program ends June 30, 2014 there is not enough time to go through the rulemaking process with this policy. Chair Strach asked if it was required to go into rulemaking for this policy. Mrs. Bateman said that it did not require it. Chair Strach asked if there were any further discuss on this policy. There being no further discussion, Chair Strach asked for a motion to approve the Reorganization Through Reduction Policy. Commission Hayes made a motion to approve the Reorganization Through Reduction Policy. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mr. Gerry Fisher presented to the Commission for consideration and approval the Reinstatement Policy revisions for local government. This policy covers reinstatement to employment after a break in service related to reduction in force, military leave or transfer to an exempt managerial or policy making position. The policy was changed to reflect the new probationary period and those employees earn credit toward their probationary period during periods of leave. The policy change allows the employee to receive credit toward the twenty-four month probationary period even during periods of leave with or without pay. The associated rule parallels the changes to the policy. Mr. Fisher requested approval of the policy revision and approval of the rule to begin the rulemaking process. **[See Attachment]**

Chair Strach asked if there were any questions regarding the Reinstatement Policy. There being no questions, Chair Strach asked for a motion to approve the Reinstatement Policy revisions. Commissioner Asbury made a motion to approve the policy revisions. Commissioner Eller seconded the motion. The motion was made and carried.

Next, Chair Strach asked for a motion to approve the associated rule to begin the rulemaking process. Commissioner Hayes made a motion to approve the rule to begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Chair Strach asked for a motion to adjourn into Executive Session to discuss contested cases during the lunch period. Commissioner Hayes made a motion to adjourn to Executive Session. Commissioner Evans seconded the motion. The motion was made and carried.

Next, Chair Strach called the meeting to order to continue the meeting. Chair Strach asked for a motion and second to get the Employee Grievance Policy on the table for discussion.

Commissioner Eller made the motion. Commissioner Asbury seconded the motion. Mrs. Sharon Howard and Mr. Ken Litowsky presented to the Commission for consideration and approval Employee Grievance Policy Revisions. The Employee Grievance Policy provides for prompt, fair and orderly resolution of grievances arising out of employment. The objectives of the policy are to: (1) provide procedural consistency across agencies in North Carolina State Government; (2) ensure employees have access to grievance procedures to address grievable issues timely, fairly, and without fear of reprisal; and (3) resolve workplace issues efficiently and effectively. The Employee Grievance Policy was revised in order to adhere to HB 834. For the first time, all agencies will be required to adopt a uniform grievance policy which will provide procedural consistency across agencies. This will allow the State to administer a single grievance process more effectively and lessen the administrative process of having multiple policies and practices. The end goal is to ensure that employees have fair and equitable means to address workplace disputes arising out of employment. The associated rules parallel the revisions to the policy to adhere to HB 834. The Office of State Human Resources requested an effective date of December 1, 2013. Mrs. Howard requested the approval of the policy and the approval of the associated rules to begin the rulemaking process. **[See Attachment]**

Mrs. Valerie Bateman, General Counsel, explained that while the Employee Assistance Program Policy/Rules are not technically required by HB 834, they are being changed to make them uniform. It is not a formally a part of the grievance process, but it is a management tool when an employee is having a performance or conduct issue; it is used to try to get the employee help. Mrs. Howard explained that OSHR contracts with a vendor. All employees may use the services as well as family members. Mrs. Howard stated that many times the program can be used confidentially. Commissioner Asbury asked if management could still make management directed referrals. Mrs. Howard said that management could make referrals. **[See Attachment]**

Commissioner Hamberlin asked who conducted mediation. Mrs. Howard explained that state employees are trained to be mediator. There are approximately 280 mediators. They are trained through a 40-hour mediation program. There are volunteers, attorneys and retired judges. They are never from the same agency. Commissioner Hamberlin asked if employees were asked about their perspective about the grievance process. Mrs. Howard said that questionnaires are prepared for mediation. However, there is no data about step two. Mrs. Bateman stated that the Office of State Human Resources will gather feedback from others on the policy. With the rulemaking process, individuals are allowed to make comments and give feedback. Director Alexander collaborated by stating that by shortening the process, this makes the process much fairer to the employees. Commissioner Asbury asked who would be the hearing officers/hearing panels. Mr. Ken Litowsky stated that the agencies get to decide whether they will use a hearing officer or a hearing panel. Mrs. Bateman stated that there are always individuals trained to be hearing officers.

Chair Strach stated that there was already a motion and second on the table. The first motion was to approve the policy itself. The motion was made and carried.

Chair Strach asked for a motion to approve the associated rules to begin the rulemaking process. Commissioner Asbury made a motion to approve the rules to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Chair Strach informed everyone for the record that there had been some informal discussion regarding using a different process on voting by using consent agreements.

Next, Mr. Ken Litowsky, Human Resources Partner presented to the Commission for consideration and approval of the Separation, Types of Policy, and Separation Due to Unavailability Policy/Rule revisions. This policy describes the various types of non-disciplinary separations permitted under North Carolina General Statutes 126. Currently, the policy contemplates medically-related reasons for a separation due to unavailability. However, other types of unavailability may occur attributable to events beyond either the agency's or employee's control but which warrant separating the employee from the position, so that the agency may post the position and fill it. These reasons include incarceration or other similar events. The policy change will allow agencies to utilize the policy in additional situations where the employee is absent from the workplace or otherwise unable to perform essential job functions due to non-medical reasons. OSHR requested an effective date of November 1, 2013. Mr. Litowsky requested approval of the policy revisions and approval of the rule to begin the rulemaking process.

Chair Strach asked for a motion to approve the policy revisions as presented by Mr. Litowsky. Commissioner Hayes made a motion to approve the policy revisions. Commissioner Asbury seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to approve the rule to begin the rulemaking process. Commissioner Asbury made a motion to approve the rule to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Next, Mr. Litowsky presented to the Commission for consideration and approval the Disciplinary Actions, Suspension and Dismissal Policy/Rules revisions. This policy describes the various types of policies regarding disciplinary actions, grievances and appeals permitted under North Carolina General Statutes Chapter 126. The particular section of the policy being amended reflects changes which have resulted from HB 834. Changes made in HB 834 necessitate the changes to the appeal rights for written warnings. The name change for investigatory leave with pay is being made to reflect the name that is generally used to refer to this leave; the language in the policy is archaic. The policy change will allow modern and consistent nomenclature for "Investigatory Leave With Pay." In addition, the policy changes regarding appeal from written warnings will be standardized among agencies, consistent with the uniform agency grievance process. OSHR requested an effective date of December 1, 2013. Mr. Litowsky requested approval of the policy revisions and approval of the associated rules to begin the rulemaking process. The associated rules parallel the changes made to the policy as a result of HB 834.

Chair Strach asked for a motion to approve the policy revisions as presented by Mr. Litowsky. Commissioner Asbury made a motion to approve the policy revisions. Commissioner Hamberlin seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to approve the associated rules to begin the rulemaking process. Commissioner Hayes made a motion to approve the rules to begin the rulemaking process. Commissioner Eller seconded the motion. The motion was made and carried.

Next, Mrs. Shari Howard, Human Resources Partner, presented to the Commission for consideration and approval the Holidays Policy revisions. The Holidays Policy identifies the holidays that will be observed by State employees and provides information related to eligible employees, allowable exceptions to the holiday schedule, and how to administer holidays for employees with various work schedules. On August 21, 2013, G.S. 126-4(5) was rewritten as it relates to the Commission's authority to establish paid holidays for State employees. The associated rules are proposed to be repealed because it is no longer needed because the rule restates what the law authorizes. Employees will now receive the same number of holidays each year. OSHR requested an effective date of November 1, 2013. Mrs. Howard requested approval of the policy revisions and approval of the rule to begin the rulemaking process.

Chair Strach asked for a motion to approve the policy revisions. Commissioner Asbury made a motion to approve the policy revisions. Commissioner Hayes seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to approve the repeal of the rule to begin the rulemaking process. Commissioner Hayes made a motion to approve the rule to begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mrs. Valerie Bateman presented to the Commission for consideration and approval the State Human Resources Commission Contested Case Review of Contested Cases/Remedies Policy/ Rules revisions. The first two policies cover the contested case review remedies and procedures which apply to cases filed before January 1, 2012. The third policy is being adopted in response to the changes in HB 834 and will apply to grievances filed on or after August 21, 2013.

Chair Strach asked if there were any questions regarding Mrs. Bateman's presentation of the policy/rule revisions. Chair Strach asked for a motion to approve the policy revisions as presented by Mrs. Bateman. Commissioner Hayes made a motion to approve the policy revisions. Commissioner Asbury seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to approve the associated rules to begin the rulemaking process. Commissioner Eller made a motion to approve the rules to begin the rulemaking process. Commissioner Asbury seconded the motion. The motion was made and carried.

Next, Mrs. Nellie Riley, Human Resources Managing Partner presented to the Commission for consideration and approval the 2012 Equal Employment Opportunity (EEO) Status Report Executive Summary. This report or a similar one has been compiled since 1977. It is divided into three major components: (A) Executive Summary; (B) Department Summary and (C) University Summary. The report analyzes the progress that North Carolina State Government has made toward achieving a workforce that reflects the working population (age 18-64) of North Carolina. The Executive Summary has six sections: (1) General

Characteristics; (2) Agency and University Representation Analysis; (3) The total representation of Other Minorities; (4) Agency Occupational Overview and the University Occupational Overview; (5) New Hire and Promotion Analysis and (6) EEO Plan Components. The Department Summary and the University Summary includes 2012 specific data (representation information, EEO objectives and achievements) separately in summary form for each Cabinet and Council of State agencies and the 16 universities in the North Carolina University System as well as UNC General Administration and the School of Science and Math.

Chair Strach asked if there were any questions regarding the Equal Employment Opportunity (EEO) 2012 Status Report Executive Summary. Commissioner Eller asked how do you make sure that there is consistency across the agencies and universities. Mrs. Riley explained that there are EEO officers within each agency and university. Commissioner Asbury stated that he had an opportunity to provide training within the community college system in the last two weeks. Commissioner Asbury told Mrs. Riley that people were well receptive of the work that she does and they wanted more. Also, Commissioner Asbury stated that she should continue to do whatever it is she is doing. Chair Strach asked for a motion to approve the EEO 2012 Status Report Executive Summary. Commissioner Asbury made a motion to approve the EEO 2012 Status Report Executive Summary. Commissioner Hamberlin seconded the motion. The motion was made and carried.

Next, Mrs. Bobbi Brown, Human Resources Partner, presented to the Commission for consideration and approval the Equal Employment Opportunity Institute (EEOI) Semi-Annual Status Report. The EEOI was created to ensure that North Carolina's state government managers and supervisors understand the components of successful diversity management and EEO compliance and act in a fair and equitable manner to elicit high productivity from all its employees. The Institute instructs managers and supervisors on laws, policy and best practices for creating a fair and equitable workplace. The semi-annual report informs the Commission of status of the Institute to ensure that (1) agencies/universities are complying with the mandate; (2) OSHR is conducting the institute in manner that enables accessibility to all who are required to attend; and (3) participation represents a proportionate cross-section of state government managers and supervisors in a variety of categories. Attendance in the Institute is reported by (a) month; (b) total attendance for the reporting period; (c) adjunct agency participation; (d) session (sponsor, location, date, city and instructor); (f) region; (g) agency, department, or university; (h) race and gender; (i) salary grade; and (j) age. This report covers the period of January through June 2013. Mrs. Brown asked that the Commission approve the Report for distribution.

Chair Strach stated that he was not aware of the EEOI in state government and he commended Mrs. Brown on the great work that was being done. Chair Strach asked if there were any questions regarding the EEOI Semi-Annual Status Report. Chair Strach asked for a motion to approve the Report. Commissioner Asbury made a motion to approve the Report. Commissioner Hamberlin seconded the motion. The motion was made and carried.

Chair Strach asked for a motion to adjourn. Commissioner Eller made a motion to adjourn. Commissioner Asbury seconded the motion. The motion was made and carried. (Please see attached associated rules.)

## Associated Rules

### Subchapter B

- 01B .0350 Time Frame for Raising Allegation of Discrimination (Amendment)
- 01B .0413 Exercise of Commission Discretion (Amendment)
- 01B .0414 Situations In Which Attorney's Fees May Be Awarded (Amendment)
- 01B .0429 Recommendation of Disciplinary Action (Amendment)
- 01B .0430 Removal of Material From Personnel File (Amendment)

### Subchapter C

- 01C .0311 Remedies of Employees Objecting To Material In File (Adoption)
- 01C .0403 Trainee Appointments (Amendment)
- 01C .0404 Probationary Appointments (Amendment)
- 01C .0411 Types of Appointments Providing Probationary Period Credit (Amendment)
- 01C .0412 Personnel Changes Subject To/Not Subject To A Probationary Period (Repeal)

### Subchapter D

- 01D .0201 Initial Employment (Amendment)

### Subchapter E

- 01E .0901 Approved Holidays (Repeal)

### Subchapter H

- 01H .0901 Policy And Scope (Amendment)
- 01H .0902 Requirements for Reduction in Force Priority Consideration (Amendment)
- 01H .0904 Agency and Employee Responsibilities (Amendment)
- 01H .0905 Office of State Personnel Responsibilities (Amendment)
- 01H .1001 Exempt Priority Consideration – Policy and Scope (Amendment)
- 01H .1003 Agency Responsibilities (Repeal)
- 01H .1004 Office of State Personnel Responsibilities (Repeal)
- 01H .1005 Mandatory Right to A Position (Amendment)

### Subchapter I

- 01I .2002 Types of Appointments and Duration (Amendment)

### Subchapter J

**01J .0603 Appeals (Amendment)**  
**01J .0610 Written Warning (Amendment)**  
**01J .0615 Investigatory Leave (Amendment)**  
**01J .0616 Credentials (Adoption)**  
**01J .1101 Unlawful Workplace Harassment And Retaliation (Repeal)**  
**01J .1201 General Provisions (Repeal)**  
**01J .1202 Agency Responsibilities (Repeal)**  
**01J .1203 Agency Grievance Reports (Repeal)**  
**01J .1204 Discrimination And Retaliation/Special Provisions (Repeal)**  
**01J .1205 Unlawful Workplace Harassment (Repeal)**  
**01J .1206 Time Limits (Repeal)**  
**01J .1207 Final Agency Action (Repeal)**  
**01J .1208 Leave In Connection With Grievances (Repeal)**  
**01J .1301 Minimum Procedural Requirements (Repeal)**  
**01J .1302 General Agency Grievance Procedure Requirements (Adoption)**  
**01J .1303 Agency Grievance Reports and Data Entry (Amendment)**  
**01J .1304 Office of State Human Resources Review and Approval of Final Agency Decisions (FAD) (Adoption)**  
**01J .1305 Situations in Which Attorney's Fees may be Awarded (Adoption)**  
**01J .1306 Fees May Be Awarded As A Result Of A Settlement (Adoption)**  
**01J .1307 Back Pay (Adoption)**  
**01J .1308 Front Pay (Adoption)**  
**01J .1309 Certain Remedies Not Available (Adoption)**  
**01J .1310 Voluntary Program or Benefits (Adoption)**  
**01J .1311 Causes For Reinstatement (Adoption)**  
**01J .1312 Remedies for Procedural Violations (Adoption)**  
**01J .1313 Suspension without Pay (Adoption)**  
**01J .1314 Discrimination (Adoption)**  
**01J .1315 Remedies: Salary Adjustments (Adoption)**  
**01J .1316 Settlement/Consent Agreements in Grievances, Contested Cases (Adoption)**  
**01J .1317 Establishment of Reasonable Attorney Fees By The Commission (Adoption)**  
**01J .1401 Minimum Procedural Requirements (Repeal)**  
**01J .1402 Flexibility (Repeal)**  
**01J .1403 Informal Meeting with Supervisor (Repeal)**  
**01J .1404 Mediation Procedure (Repeal)**  
**01J .1405 Conclusion of Mediation (Repeal)**  
**01J .1406 Limitations on A Mediation Agreement (Repeal)**  
**01J .1407 Post Mediation (Repeal)**  
**01J .1408 Employee Responsibilities for Mediation (Repeal)**  
**01J .1409 Agency Responsibilities for Mediation (Repeal)**

- 01J .1410 Office of State Personnel Responsibilities (Repeal)**
- 01J .1411 Agency Procedural Requirements for Employee  
Mediation and Grievance Policy (Repeal)**
- 01J .1412 Office of State Personnel Responsibilities for Employee  
Mediation and Grievance Process (Repeal)**