

## State Human Resources Commission Policy

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**§ 1. Purpose**

The State Human Resources Commission (the "Commission") was established in July 1965. It is created under the North Carolina Human Resources Act, Chapter 126 of the General Statutes. The purpose of the State Human Resources Act is "to establish "for the Government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry." N.C.G.S. § 126-1.

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## State Human Resources Commission Policy (cont.)

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### § 2. **Duties of State Human Resources Commission**

The Commission, with the approval of the Governor, establishes policies and rules governing the areas outlined in N.C.G.S. § 126-4.

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### § 3. **Membership**

The nine members of the Commission are appointed for four-year terms by the Governor and the General Assembly. The composition of the Commission is as follows:

- (1) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be an attorney licensed to practice law in North Carolina.
- (2) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be an attorney licensed to practice law in North Carolina.
- (3) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be from private business or industry and who shall have a working knowledge of, or practical experience in human resources management.
- (4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be from private business or industry and who shall have a working knowledge of, or practical experience in, human resources management.
- (5) One member who is a veteran of the Armed Forces of the United States appointed by the Governor upon the nomination of the Veterans' Affairs Commission and who is a State employee subject to the State Human Resources Act serving in a nonexempt supervisory position. The member may not be a human resources professional.
- (6) One member appointed by the Governor who is a State employee subject to the State Human Resources Act serving in a nonexempt nonsupervisory position. The member may not be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina.
- (7) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee

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- subject to the State Human Resources Act serving in a supervisory position. The member may not be a human resources professional.
- (8) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee subject to the State Human Resources Act serving in a nonsupervisory position. The member may not be a human resources professional.
- (9) One member of the public at large appointed by the Governor.

These requirements are stated in N.C.G.S. § 126-2. A list of current Commission members can be found at <https://oshr.nc.gov/about-oshr/state-hr-commission/list-commissioners> .

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### § 4. Mail to Commission

Mail addressed to the Commission may be sent to the Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331.

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### § 5. Process Agent for Commission

The General Counsel of the Office of State Human Resources (“OSHR”), is the agent for service of legal process on the Commission. Legal process may be served by directing mail to the General Counsel at 1331 Mail Service Center, Raleigh, N.C. 27699-1331 or by delivery addressed to the OSHR General Counsel at 116 West Jones Street, Raleigh, NC 27603.

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### Notice of Meetings

In accordance with N.C.G.S. Chapter 143, Article 33C (the Open Meetings Law) and Chapter 150B (the Administrative Procedure Act), the Administrator shall be responsible for the timely issuance of any applicable notices to those parties who, pursuant to the Act, must be given legal notice of Commission meetings, hearings, decisions and official actions.

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### § 6. When Meetings are Held

Pursuant to N.C.G.S. § 126-2(h), the Commission meets quarterly, and at other times at the call of the chair. The dates are generally set in advance of the coming calendar year, but may be changed as the year progresses. A copy of the Commission’s scheduled

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meetings may be obtained by contacting the Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331. Any person or organization wishing to be given advanced notice of any Commission meeting may request such notification by writing to: Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331. The request must include the name, address, and telephone number of a contact person.

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### § 7. **Where Meetings are Held**

Meetings of the Commission are held at 101 West Peace Street, Raleigh, N. C., unless otherwise specified. Meetings may be held entirely by remote means. Unless otherwise specified, a meeting of the Commission consists of public hearings, reading of minutes, and business session. If a contested case is heard by the Commission, the meeting will also include oral presentations by contested case parties and an executive session.

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### § 8. **Meetings are Public**

Meetings of the Commission, except for any executive sessions, are open to the public. Except for the public comment period, only Commissioners, staff of OSHR, and other persons specifically invited to participate by the Chair may take part in the business session portion of the meeting. At the beginning of the business session, public comments may be taken from individuals who have signed up in advance.

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### § 9. **Public Comments or Public Hearings**

Persons wishing to speak at the public comment (or, if applicable, public hearing) portion of the Commission meeting should sign up in advance by notifying the State Human Resources Commission Administrator, either in writing or by telephone at (919) 807-4800. Persons may also sign up on the day of the meeting. Presentations to the Commission shall be limited to no more than 3 minutes per speaker, unless extended by a vote of the Commission.

Any person wishing to present written material to the Commission should submit fifteen (15) copies to be distributed by the Commission Administrator.

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### § 10. Decisions of the Commission

All decisions of the Commission, except those relating to employee grievances, are rendered in open session. Decisions of the Commission involving employee grievances are reached in executive session and communicated in writing. Information relating to such decisions will not be released publicly until the Administrator to the Commission has received notice that each party has received a copy of the Commission's decision.

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### § 11. Motions

Motions may be made by any member of the Commission, including the Chair. For further action to be taken, the motion made must be seconded by at least one other Commissioner other than the member who made the motion. A motion which is not seconded after two calls for seconds by the Chair shall die and not be acted upon. A motion which was properly seconded shall be discussed to the extent the Commission desires before any vote is taken. A vote may be taken only after all discussion has been concluded. The Chair may close discussion, at his or her discretion, and call for a vote. Minutes of the Commission will reflect the name of the commissioner making the motion and the name(s) of the commissioner(s) seconding the motion.

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### § 12. Voting and Quorum

At the appropriate time a properly seconded motion shall be voted on by the members of the Commission present. All members present, including the Chair, must either vote or abstain. All votes shall be voice votes, unless otherwise decided by the Commission, with AYE signifying agreement with the motion and NAY signifying disagreement with the motion. If the meeting is held remotely by electronic means, votes should be held by roll call, and Commissioners should identify themselves by name when making a motion (for example, by saying "Commissioner Doe seconds"). If the meeting is held in-person and not by electronic means, any member, including the Chair, may ask that a vote be taken by raising hands, so that a definite count of the vote may be taken. Minutes of the Commission will reflect the vote taken on each motion and the outcome of the vote. The minutes will also reflect the names of each Commissioner with his vote if voting is done by hand. Any Commissioner abstaining from a vote will be so indicated in the minutes. A quorum of the nine-member Commission shall be five members. A majority of the quorum approves a motion. If there is a tie vote, the motion fails.

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### § 13. Minutes of Meeting

Minutes and other records of all Commission meetings shall be kept under the direction of the Commission Administrator. Minutes shall be maintained in the Office of the State Human Resources Commission permanently.

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### § 14. Conflict of Interest

A Commissioner who has any conflict of interest, either actual or potential as defined in Chapter 138A-1, the State Government Ethics Act, shall voluntarily abstain from taking any part in any action before the Commission. This abstention shall include, but is not limited to, refraining from discussion in the public or business session, making of or seconding of motions, and voting. A Commissioner who is abstaining from an action the Commission is considering should announce such abstention at the earliest possible time in the public or business session — ideally at the time of the Ethics Statement that begins each meeting — and prior to any discussion or vote on the action.

All members of the Commission will provide statements of economic interest to the State Ethics Commission in the time and fashion required by that Board.

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### § 15. Duties of the Chair

The Chair shall be authorized to perform at least the following duties and responsibilities at each meeting of the Commission:

- Call the meeting to order,
- Make opening remarks as deemed necessary,
- Introduce each portion of the meeting and make whatever remarks deemed necessary as part of the introduction,
- May extend or limit, on his own or upon the vote of the Commission, the time allotted for a speaker making a presentation to the Commission,
- Call for motions, seconds, discussion and votes as appropriate,
- Call for a recess or meal period as appropriate,
- Call for the adjournment of the opening portion of the meeting and to begin the executive portion of the meeting,
- Call for the adjournment of each meeting, and

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- The Chair may direct the removal of individuals from Commission meetings for disruptive conduct or failure to comply with Commission rules.

The Chair shall have the authority to exercise such other responsibilities not enumerated above which are necessary to the performance of the business of the Commission.

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### § 16. **Types of Policies**

Unless the policy text indicates otherwise, a Commission policy is permanent and applies to all State agency employees who are subject to the portions of the State Human Resources Act that are on the topic of that policy. Some Commission policies may be labeled in special ways. Specifically:

#### § 16.1. **Opt-In Policies.**

These policies apply automatically to Cabinet agencies, but apply to non-Cabinet agencies only if those non-Cabinet agencies choose to join the policy. OSHR will mark these as “Opt-In Policies” on the Commission policies webpage and in the State Human Resources Manual. OSHR will identify these policies in a way that highlights that the policy may not apply to employees of non-Cabinet agencies.

#### § 16.2. **Pilot Program Policies.**

The term “pilot” will refer to Commission policies that are intended to be initial efforts to develop a policy on a new topic, with the expectation that the policy will return to the Commission in the future for revisions once lessons are learned. These policies may sometimes be applicable only to certain types of employees or types of agencies. Pilot policies do not automatically expire unless the policy text states otherwise.

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### § 17. **Procedures for Presenting Employee Grievances to the Commission**

OSHR is responsible for the administrative management of contested cases coming before the Commission for its review and decision.

#### § 17.1. **Record Submission to the Commission.**

The Commission Administrator, on behalf of the Commission, shall receive the record in the contested cases and the Commission shall make a final decision in the case based on the submitted record of the grievance, including the grievance hearing. The Commission shall have 90 days from the date of the first regularly scheduled meeting after the Administration has received the record. If a record of an employee grievance is received

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by the Administrator on the day of a Commission meeting, the record is deemed to have been received after the Commission meeting and the time in which the Commission has to review and decide the case shall run from the Commission meeting.

§ 17.2. **Oral Argument.**

Either party to a contested case may request the opportunity to appear before the Commission and make oral argument in all cases. Such arguments shall be based solely on the information contained in the record submitted to the Commission. Oral arguments shall be requested or waived in writing no more than 10 calendar days after the filing date of the recommended decision and the parties shall attach a copy of the decision to the request or waiver. After the Commission has received either a request or waiver of oral argument from the parties, the Commission shall send a notice of review which shall contain the date, time and place of the Commission meeting at which the case will be reviewed. If a party has failed to request or waive oral argument in a timely fashion, that party will not be allowed to present oral argument to the Commission. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission. Time may be extended by the Commission if the Commission determines that additional time for oral argument is necessary for the Commission to have a sufficient understanding of the issues before the Commission. All requests to speak for more than 10 minutes shall be made in writing in the same document that requests the opportunity to make oral argument. The party that did not prevail in the recommended decision is entitled to make the first oral argument and to present a rebuttal. If both parties are seeking changes in the Administrative Law Judge's decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal.

§ 17.3. **Briefs and Memoranda with Written Exceptions and Proposed Alternative Decisions.**

All briefs or memoranda, with written exceptions and proposed alternative findings of fact and conclusions of law, shall be received by OSHR no later than 30 calendar days after the date of the recommended decision. The document shall also be served upon the opposing party and a copy of the recommended decision shall be attached to the document. Documents received after the deadline shall be presented to the Commission only with the permission of the Commission. Each proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the



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Commission should not adopt the finding of fact or conclusion of law, and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the recommended decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts or objects to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made.

§ 17.4. **Service on Opposing Parties.**

Copies of all documents permitted or required by this policy shall be served on the opposing party. If a document is filed electronically with the Commission as permitted by this policy, the document must also be served electronically on the opposing party if the opposing party has an electronic address. Electronic service must be followed by service of printed copies of any document filed electronically within 24 hours of electronic filing. Any documents that are required or permitted to be filed under this policy, may be filed electronically by midnight of the filing date with the Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be served on the Administrator within 24 hours of electronic filing.

§ 17.5. **Attorney's Fees Requests.**

Attorney's fees requests must be presented to the Commission by the prevailing party to a Commission Decision and Order at least one month before the meeting at which the matter is to be considered. Such requests must also be served upon the opposing party. The Commission shall notify the parties upon receipt of a request for attorney's fees and provide an opportunity for the opposing party to file objections to the fees requested. If the parties wish to make oral argument on an attorney's fees request, a request for oral argument must be received by OSHR within two weeks after the filing of the attorney's fees request and at least one month prior to the meeting at which such oral argument is requested.

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### § 17.6. **Notification of the Commission's Decision.**

The parties or the legal representative of record for a party, shall be notified by electronic mail and by regular mail of the Commission's decision. The Commission's decision shall be prepared and sent out by the Administrator to the Commission.

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### § 18. **Settlement Agreements**

Any settlement agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies or universities with employees subject to the State Human Resources Act, and which arises solely under Chapter 126, must be approved by the Office of State Human Resources for compliance with the Commission's rules and policies before the agency or university enters the data.

Data is required to be entered into the human resources and payroll information system by an agency when it determines that an action must be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, with the exceptions noted below.

Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or the Director's designee in an appropriate place on the settlement or consent agreement or otherwise.

The controller of the human resources and payroll information system of each agency and university shall not process any agreement required to be approved under the Policy that has not been approved.

### § 18.1. **Exception to OSHR Approval Process.**

This provision shall not be construed to require Office of State Human Resources approval of the following:

- a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Human Resources Commission.
- a settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.
- a settlement in which federal claims or State claims other than those arising under Chapter 126 (the State Human Resources Act) arise.

**State Human Resources Commission Policy (cont.)****§ 18.2. Exception to Rules or Policies.**

The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the policies or rules approved by the Commission. Settlement agreements that require an exception or a variance shall be reported to the Commission in accordance with the above rule.

**§ 19. History of This Policy**

Date	Version
December, 1998	First version in records. Quorum set at six of the nine State Personnel Commission members.
February, 2002	List of Commissioners updated.
October, 2005	List of Commissioners updated.
October, 2006	Update to Commission membership, meeting schedule, and registered agent.
July, 2007	Update to Commission membership.
June, 2008	List of Commissioners updated.
February, 2010	List of Commissioners updated.
May, 2015	Quorum set at five of the nine Commission members. Updates to Commission membership, meeting schedule, and registered agent. Added references to State Ethics Act and Ethics Commission. Added procedures for presenting to the Commission contested cases arising out of employee grievances. Added procedures for reviewing settlement agreements. Name of policy revised to reflect the Commission's new name: the "State Human Resources Commission."
July 14, 2022	New text on "opt-in" and "pilot" types of Commission policies. Clarified that a majority vote of the Commission is a majority of the quorum. Updates to meeting schedule and process agent. Minor updates to text throughout the document.