

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1972*
Committee Substitute Favorable 6/15/94

Short Title: Protect Trade Secret Env. Data.

(Public)

Sponsors:

Referred to:

June 1, 1994

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ALL DATA EXCEPT EFFLUENT OR EMISSION DATA IS ENTITLED TO PROTECTION AS A TRADE SECRET PURSUANT TO G.S. 132-1.2, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.3(a)(2) reads as rewritten:

"(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this ~~Article~~ Article, Article 21A, or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A ~~and or~~ 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except

1 that upon a showing satisfactory to the Commission by any person that
2 records, reports or information or particular part thereof (other than
3 effluent or emission data ~~or information necessary to determine~~
4 ~~compliance with standards adopted pursuant to Article 21B of this Chapter~~)
5 as defined in Title 40, Code of Federal Regulations, Part 2) to which
6 the Commission has access under these Articles, if made public would
7 divulge methods or processes entitled to protection as trade secrets
8 pursuant to G.S. 132-1.2, the Commission shall consider such record,
9 report or information, or particular portion thereof confidential, except
10 that such record or information may be disclosed to any officer,
11 employee, or authorized representative of any federal or state agency if
12 disclosure is necessary to carry out a proper function of the
13 Department or other agency, or when relevant in any proceeding under
14 this Article or Article 21A or Article 21B of this Chapter. The
15 Commission shall provide for adequate notice to the party submitting
16 the information of any decision that such information is not entitled to
17 confidential treatment and of any decision to release information
18 which the submitting party contends is entitled to confidential
19 treatment. Any person requesting the information or any party
20 submitting the information, who is dissatisfied with a decision of the
21 Commission is entitled to request a declaratory ruling from the
22 Commission under G.S. 150B-4 within 10 days after the Commission
23 notifies the person of its decision. The information may not be
24 released by the Commission until the Commission issues its
25 declaratory ruling or, if judicial review of the final agency decision is
26 sought by either party, the information may not be released by the
27 Commission until a final judicial determination has been made. No
28 person shall refuse entry or access to any authorized representative of
29 the Commission or Department who requests entry for purposes of
30 inspection, and who presents appropriate credentials, nor shall any
31 person obstruct, hamper or interfere with any such representative while
32 in the process of carrying out his official duties."
33 Sec. 2. This act is effective upon ratification.