

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 426 (Proposed Committee Substitute)

SHORT TITLE: Strengthen Public Records Law

SPONSOR(S): Senator Cooper

FISCAL IMPACT: **Expenditures:** Increase () Decrease ()
 Revenues: Increase () Decrease ()
 No Impact ()
 No Reliable Estimate Available (X)
 (for either state agencies or local governments)

FUND AFFECTED: General Fund () Highway Fund () Local Govt. ()
Other Funds ()

BILL SUMMARY: S 426. STRENGTHEN PUBLIC RECORDS LAW. AN ACT TO AMEND THE PUBLIC RECORDS LAW. Amends GS 132-1 to designate current law as subsection (a) and adding a new subsection to establish that records and information compiled by state agencies or subdivisions are the property of the people, and that people may obtain copies of them free or at minimal cost, defined to mean actual cost of reproducing the record or information. Amends GS 132-6 to provide that custodians of public records must allow inspection or examination of those records at "reasonable" times and under "reasonable" supervision and must promptly furnish copies upon payment of fees. Excludes from definition of custodian an agency that holds records of other agencies solely for storage or safekeeping or to provide data processing. Specifies that those requesting to inspect or examine records cannot be required to disclose the purpose or motive of the request. Provides that requests cannot be denied on the grounds that the information sought is commingled with confidential information and that the public agency must bear the cost of separating information to allow inspection. Creates a new GS 132-6.1 to require that prior to the purchase, lease or creation or other acquisition of any electronic data-processing system, the agency must first determine that the system will not impair or impede the ability to permit public inspection and examination and provision of electronic copies of records, but this provision is not to be construed as requiring retention of "obsolete hardware or software." Defines "electronic data-processing system", "computer hardware", "computer program" and "computer software" as used in the section, and provides that neither of the latter two terms include the original data or any analysis, compilation, or manipulated form of that data produced by the use of the program or software.

Proposed committee substitute of 5/5/95 requires [1] separation of confidential and nonconfidential records and the [2] creation of indices for every database compiled or created by a public agency, according to the following schedule:

State agencies - 7/1/96

Municipalities with 10,000+ and counties with 25,000+ population, according to the 1990 Census - 7/1/97

Municipalities with less than 10,000 and counties with less than 25,000 population, according to the 1990 Census - 7/1/1998

The index is a public record and must include at a minimum a list of the data fields, a description of the format or record layout, information as to the frequency with which the database is updated, a list of any data fields to which public access is restricted, a description of each form in which the database can be copied or reproduced using the agency's computer facilities, and a schedule of fees. This indexing requirement is optional prior to July 1, 1996.

Provides that people requesting records can obtain them in any form in which they are available and that requests cannot be denied because the custodian prefers to provide them in a form other than that requested. Certified copies may be requested. PROPOSED COMMITTEE SUBSTITUTE of 5/5/95 defines "actual cost" as..."limited to direct, chargeable costs related to the reproduction of a public record....Actual cost does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made...." However a "special service charge" is allowed where a request requires "extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved," and this fee must be based on the actual cost of these services. Allows a requester to ask the Information Resource Management Commission to mediate if the requester believes the fee is unfair or unreasonable. Allows agency to require requests to be in writing and requires custodian to respond promptly and to provide an explanation of the basis for any denial.

Amends GS 132-9 to include in remedy a claim by someone denied copies of public records and to require actions to be heard immediately and to accord subsequent proceedings priority in the courts. Repeals GS 6-19.2 (providing for award of attorney's fees in actions to compel public records) and incorporates into 132-9 and adds provision allowing court to order that fees be paid personally by any public employee or official found to have knowingly or intentionally committed, caused, permitted, suborned, or participated in the violation. Court may also award attorney's fees to defendant if an action is filed in bad faith or is frivolous. Amends Chapter 132 of the General Statutes by adding a new section: ..."Qualified exception of Geographical Information Systems...." and requires, as a condition of furnishing copies of information from the county or city's GIS, that the requestor ..."agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes....[and]..."For purposes of this section, publication or broadcast by the news media shall not constitute a resale of use of the data for trade or commercial purposes...."

EFFECTIVE DATE: October 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: State agencies, local units of government

FISCAL IMPACT

	<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>	
REVENUES:						
GENERAL FUND						Additional costs or revenues may be realized form the enactment of this legislation, at both state and local government levels, but no reliable estimate is available.
HIGHWAY FUND						
HIGHWAY TRUST FUND						
LOCAL						
EXPENDITURES						

POSITIONS:

ASSUMPTIONS AND METHODOLOGY:

1. Proposed committee substitute requires separation of confidential and nonconfidential records by specific dates; (state agencies, 7/1/96; (counties and cities, 7/1/97 or 7/1/98, depending upon population) - the estimated additional costs of this activity cannot be determined at this time.
2. Proposed committee substitute affects only indexes created for state agency indexes after July 1, 1996; the size and numbers of indexes required by that date cannot be determined at this time; likewise, indexes for cities and counties are required only after July 1, 1997, or July 1, 1998, depending upon size of local governmental unit; the numbers and sizes of indexes required to be maintained by local governments by those dates cannot be determined at this time.
3. Proposed committee substitute allows for recovery of direct costs of producing public records not covered by specific fees; the numbers of requests that might be made cannot be forecast, thus the resulting revenues from allowable charges or fees cannot be determined

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DATE: May 4, 1995
[FRD#001]



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