

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2064

Short Title: Open Government Act. (Public)

Sponsors: Senators Hoyle; and Bingham.

Referred to: Appropriations/Base Budget.

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE, TO APPROPRIATE FUNDS FOR THAT PURPOSE, AND TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEY'S FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Open Government Unit.

"§ 114-51. Open Government Unit.

(a) To further the goals of government transparency and that public records compiled by agencies of North Carolina government or its subdivisions are the property of the people, there is created within the Department of Justice the Open Government Unit.

(b) The Open Government Unit shall:

- (1) Develop and implement education and awareness programs designed to educate the public and government agencies of their rights and responsibilities under the public records and open meetings laws;
- (2) Serve as a moderator/mediator in resolving public record and open meeting issues between parties, including adopting procedures and guidelines for assisting in the informal resolution of open government disputes and issuing advisory opinions;
- (3) Assemble and maintain a collection of relevant State laws, opinions, rules, and regulations related to public records and open meetings laws, which shall be made available electronically as a resource;
- (4) Report annually to the General Assembly on its activities generally on the subject of open government as appropriate; and

1 (5) Adopt and develop policies and procedures as may be necessary to
2 accomplish these functions."

3 **SECTION 2.(a)** There is appropriated from the General Fund to the
4 Department of Justice the sum of four hundred twelve thousand five hundred
5 twenty-one dollars (\$412,521) for fiscal year 2008-2009 to establish and fund the Open
6 Government Unit. These funds shall be utilized to support two Attorney III positions,
7 one Attorney II position and one Paralegal II position to carry out the functions of this
8 Unit.

9 **SECTION 2.(b)** During the 2008-2009 fiscal year the Department of Justice
10 Open Government Unit shall receive and attempt to informally resolve disputes between
11 the public and 430 plus State and local government agencies, along with educating and
12 raising awareness among the public and governmental agency representatives about the
13 rights and responsibilities under the public records and open meetings laws.

14 **SECTION 3.** G.S. 132-9(c) reads as rewritten:

15 "(c) In any action brought pursuant to this section in which a party successfully
16 compels the disclosure of public records, the court shall allow the prevailing party to
17 recover its reasonable attorneys' fees if attributed to those public records, ~~unless the~~
18 ~~court finds the agency acted with substantial justification in denying access to the public~~
19 ~~records or the court finds circumstances that would make the award of attorneys' fees~~
20 ~~unjust.~~ Records.

21 Any attorneys' fees assessed against a public agency under this section shall be
22 charged against the operating expenses of the agency; provided, however, that the court
23 may order that all or any portion of any attorneys' fees so assessed be paid personally by
24 any public employee or public official found by the court to have knowingly or
25 intentionally committed, caused, permitted, suborned, or participated in a violation of
26 this Article. No order against any public employee or public official shall issue in any
27 case where the public employee or public official seeks the advice of an attorney and
28 such advice is followed."

29 **SECTION 4.** This act becomes effective July 1, 2008, but Section 3 only
30 applies to actions brought on or after that date.