

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 701*

Short Title: State IT/IP Assets. (Public)

Sponsors: Senators Brock, Hise, Tarte (Primary Sponsors); and Newton.

Referred to: State and Local Government.

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO STATE INFORMATION TECHNOLOGY AND INTELLECTUAL
3 PROPERTY ASSETS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 66 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 11C.

8 "State Intellectual Property and Information Technology Assets.

9 **"§ 66-58.21. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Advanced medical and technological research. – Includes research and
12 development in the fields of nanotechnology, medicine, medical technology,
13 genetics, bioengineering, and biotechnology.
14 (2) Computer program. – A set of instructions, statements, or related data that in
15 actual or modified form is capable of causing a computer or computer
16 system to perform specified functions.
17 (3) Copyrighted materials. – Includes any of the following literary or artistic
18 works:
19 a. Books, journal articles, texts, glossaries, bibliographies, study guides,
20 laboratory manuals, syllabi, tests, and proposals.
21 b. Lectures, musical or dramatic compositions, and unpublished scripts.
22 c. Video and audio tapes or cassettes.
23 d. Films, film strips, charts, transparencies, and other visual aids.
24 e. Live video and audio broadcasts.
25 f. Podcasts over the Internet.
26 g. Programmed instructional materials.
27 h. Other materials or works that qualify for protection under the patent
28 laws of the United States or other protective statutes, whether or not
29 registered under those laws or statutes.
30 (4) Industrial property. – Includes (i) inventions and patents, (ii) trademarks,
31 (iii) industrial designs, and (iv) geographic indications of source.
32 (5) Intellectual property. – Creations of the mind, including, but not limited to,
33 inventions, literary and artistic works, and symbols, names, images, and
34 designs used in commerce. The term includes (i) patentable materials and
35 copyrighted materials, whether or not formal protection is sought; (ii) a



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1 patentable plant and a novel plant variety; (iii) industrial property; and (iv)
2 advanced medical and technological research.

3 (6) Inventor. – Any person who conceives a new concept that may result in a
4 proprietary product.

5 (7) Novel plant variety. – A novel variety of sexually reproduced plant.

6 (8) Patentable materials. – Items other than software which reasonably appear to
7 qualify for patent protection under the patent laws of the United States.

8 (9) Patentable plant. – An asexually reproduced distinct and new variety of
9 plant.

10 (10) Royalties. – All things of value received by an inventor in connection with
11 the licensing, assignment, or sale of intellectual property.

12 (11) Software. – One or more computer programs existing in any form or
13 associated operational procedures, manuals, or other documentation, whether
14 or not protectable or protected by copyright or patent laws of the United
15 States.

16 **"§ 66-58.22. State technology and intellectual property assets.**

17 (a) Intellectual property developed by a State employee during work hours, within the
18 scope of the employee's employment, or when using State-controlled facilities is the property of
19 the State.

20 (b) Intellectual property developed by a local government employee, including public
21 school personnel, during work hours, within the scope of the employee's employment or when
22 using facilities that are either State-owned or owned or controlled by the local employing
23 entity, is the joint property of the State and the local employing entity.

24 (c) The State shall hold a security interest in royalties from any intellectual property or
25 information technology capabilities developed by any person, organization, or vendor, as
26 provided by the express terms of a contract conveying the security interest, where the person,
27 organization, or vendor uses State or local funds, facilities, or other resources to develop the
28 intellectual property or information technology capability. Specific terms defining the State's
29 interest shall be included in all State contracts and amendments where the potential exists for a
30 vendor to subsequently use all or part of the intellectual property, information technology
31 project, or software in projects for other customers. State contracts and amendments shall
32 specify the State's compensation for any use of intellectual property or information technology
33 capabilities developed using State or local funds, facilities, or other resources. Compensation
34 specified in the State contracts shall be based on current market surveys and analysis, and this
35 analysis must be documented fully.

36 (d) The Governor shall set policies that he or she deems necessary to implement the
37 provisions of this section.

38 (e) The University of North Carolina and its constituent institutions and the North
39 Carolina Community Colleges System shall adopt and from time to time revise intellectual
40 property, inventor, and information technology development guidelines for their respective
41 State-supported institutions of higher education. The provisions of subsection (a) of this section
42 apply to The University of North Carolina and its constituent institutions, to the North Carolina
43 Community Colleges System, and to employees of these respective institutions except to the
44 extent that the employees are subject to the intellectual property and inventor policies of the
45 institutions employing them.

46 (f) The Department of Public Instruction shall adopt and from time to time revise
47 intellectual property, inventor, and information technology development guidelines applicable
48 to local school administrative units.

49 (g) The governing board of each unit of local government and each local board of
50 education shall adopt and from time to time revise intellectual property, inventor, and

1 information technology development guidelines applicable to their respective employees and
2 contractors.

3 **"§ 66-58.23. Confidentiality.**

4 All data, information, and records in any form created by or on behalf of the State to protect
5 its intellectual property and information technology assets shall be held as confidential and is
6 not subject to public disclosure under Chapter 132 of the General Statutes unless the Governor
7 in his or her discretion specifically directs the release of such information to serve the public
8 interest."

9 **SECTION 2.** This act is effective when it becomes law and applies to contracts
10 executed on or after that date.