

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2064
Judiciary I (Civil) Committee Substitute Adopted 7/8/08

Short Title: Open Government Act.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE, TO ESTABLISH A FEE FOR SERVICES OF MODERATION AND MEDIATION BY THE OPEN GOVERNMENT UNIT, AND TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEYS' 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, as defined by G.S. 132-1, 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 do all of the following:

- (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 or 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.

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

3 (c) A reasonable fee shall be charged for services of moderation or mediation in
4 resolving public record and open meeting issues by the Open Government Unit of the
5 Department of Justice. The fee authorized by this section shall not exceed the actual
6 cost of preparing, researching, and conducting the moderation or mediation. The fee for
7 moderation or mediation services is a departmental receipt of the Department and must
8 be used to offset the cost of the Open Government Unit.

9 (d) This section shall not apply to the General Assembly or the Judicial
10 Department."

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

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

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

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

31 **SECTION 4.** Section 3 of this act becomes effective October 1, 2008, and
32 applies to actions brought on or after that date. The remainder of this act is effective
33 when it becomes law.