

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: Senate Bill 2064 (Second Edition)

SHORT TITLE: Open Government Act.

SPONSOR(S): Senator Hoyle

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
REVENUES:					
DOJ	\$412,521	\$412,521	\$412,521	\$412,521	\$412,521
EXPENDITURES:					
DOJ	\$412,521	\$412,521	\$412,521	\$412,521	\$412,521
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice					
EFFECTIVE DATE: Section 3 is effective October 1, 2008 and the rest is effective when it becomes law.					

BILL SUMMARY:

1ST EDITION

Appropriates \$412,521 for 2008-09 from the General Fund to the Department of Justice (DOJ) to as the title indicates.

Enacts new GS 114-51 establishing the Open Government Unit (Unit) within the DOJ. Directs the Unit to (1) develop and implement education and awareness programs on rights and responsibilities under the public records and open meetings laws for the public and government agencies, (2) serve as a moderator/mediator in resolving public record and open meeting disputes between parties, (3) adopt procedures and guidelines for assisting in the informal resolution of disputes and issuing advisory opinions, (4) assemble and maintain an electronic collection of relevant legal materials related to public records and open meetings law, (5) make annual reports to the General Assembly as appropriate, and (6) adopt and develop policies for implementation as necessary.

Requires the Unit to receive and attempt to informally resolve disputes between the public and state and local government agencies along with educating and raising public awareness about rights and responsibilities under the public records and open meetings laws.

Amends GS 132-9(c) to delete the exception that allowed the denial of attorneys' fees to a prevailing party upon finding that an agency acted with substantial justification in denying access to the public records. Applies only to actions brought on or after the effective date of July 1, 2008.

2nd Edition

S 2064. OPEN GOVERNMENT ACT. Filed 5/27/08. Senate committee substitute makes the following changes to 1st edition.

Clarifies that GS 132-1 provides the applicable definition for *public records* as used in proposed new GS 114-51. Additionally clarifies that the newly created Open Government Unit is responsible for engaging in *all* the tasks and responsibilities listed in the statute. Authorizes charging a fee for moderation and mediation services by the Open Government Unit. Provides that the provisions establishing the Open Government Unit do not apply to the General Assembly or the Judicial Department. Deletes the appropriation of \$412,521 for fiscal year 2008-09. Changes the effective date of Section 3 (regarding the recovery of attorneys' fees by a party who successfully compels disclosure of public records) to October 1, 2008, and makes the remainder of the act effective when it becomes law (was, act is effective July 1, 2008). Makes additional technical corrections. Makes a conforming title change.

Source: Bill Digest

ASSUMPTIONS AND METHODOLOGY:

The original analysis by the Department of Justice called for \$412,521 for the establishment of two Attorney III positions, one Attorney I position, and one Paralegal II position. These costs are based on the needs associated with mediation/moderation pursuant to new GS 114-51(a)(2). The newest edition of the bill deletes the prior appropriation and adds language stating the DOJ may charge a reasonable fee for services of moderation and mediation in resolving public record and open meeting issues.

DOJ's estimates were based on the assumption that roughly 430 State and local agencies average one open record dispute per year submitted to DOJ. On average, these disputes require 16 hours of attorney time to process. Four hundred thirty (430) claims would therefore produce 6,880 hours of annual work for DOJ to mediate and moderate these cases totaling \$412,521 in needed funds. FRD has calculated the "reasonable fee" associated with mediating and moderating these cases by dividing the needed funds (\$412,521) by the number of claims (430) and the average number of hours per claim (16) to yield a cost per hour, based on average time and costs, of \$60 per hour.

The fee only covers costs associated with mediation and moderation of cases. Therefore, it is assumed that DOJ will absorb the cost of all other duties in Section 1 subsection (b).

SOURCES OF DATA: Department of Justice

TECHNICAL CONSIDERATIONS: New GS 114-51(c) says a “reasonable fee shall be charged for services...” but does not indicate to whom that fee will be charged. It does not specify whether the government agency, the private entity, or a combination of the two will be held responsible to DOJ for fees incurred.

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