

March 23, 2005

**S 856. ACCESS TO PUBLIC TRIAL PREPARATION RECORDS. REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO A TRIAL PREPARATION RECORD.** Enacts new GS 132-1.9 as title indicates. If record is both public record and trial preparation record (as defined by rules of civil procedure), new section governs access. Allows legal custodians of trial preparation records to deny access to these records. Allows person denied access to seek court review of that decision in most instances; if record is covered by GS 1A-1, Rule 26(b)(3) or its federal counterpart and litigation is currently pending, review of a decision to deny access must be pursuant to the rules of civil procedure. Allows access to these records after litigation is concluded. Effective October 1, 2005.

**Intro. by Clodfelter.**

Ref. to Judiciary I

GS 132

May 31, 2005

**S 856. ACCESS TO PUBLIC TRIAL PREPARATION MATERIAL.** Intro. 3/23/05. Senate committee substitute makes the following changes to 1st edition. Modifies proposed GS 132-1.9 to clarify that a party to a pending legal proceeding may seek access to trial preparation materials by motion made in the pending legal proceeding and may not commence a separate proceeding seeking release of those records under GS 132-9 (establishing procedure to compel access to public records) and that as used in section, "legal proceeding" refers to civil, not criminal, proceedings. Amends GS 132-9(c) to delete provision authorizing court to award a party that successfully compels disclosure of records reasonable attorneys' fees if the agency denied access without substantial justification and there are no circumstances that would make award unjust, and to replace it with provision requiring that court assess costs of compelling disclosure of records, including reasonable attorneys' fees, against an agency that unlawfully refused to release records. Enacts new GS 132-9(c1) to authorize an award of the costs of appeal, including reasonable attorney's fees, against an agency that appeals an order requiring release of records, which is affirmed. Amends GS 132-9(d) to require (was, authorize) court to award attorney's fees if an action to compel release of public records was filed in bad faith or was frivolous. Makes technical changes.

August 11, 2005

**S 856. ACCESS TO PUBLIC TRIAL PREPARATION MATERIAL.** Intro. 3/23/05. House committee substitute makes the following changes to 2nd edition. Restores GS 132-9(c) with following changes. In action in which party successfully compels public records, court must allow prevailing party to recover reasonable attorneys' fees attributable to those records unless court finds agency acted with substantial justification in denying access to records or court finds that award of attorneys' fees would be unjust. In case of a frivolous or bad faith action, court must (was, may) assess attorneys' fees. Deletes proposed GS 132-9(c1), which would have required appellate court to assess costs and reasonable attorneys' fees against governmental body if body appealed order permitting access to records and order was affirmed.

August 29, 2005

**SL 2005-332 (S 856). ACCESS TO PUBLIC TRIAL PREPARATION MATERIAL. AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.** Summarized in *Daily Bulletin* 3/23/05, 5/31/05, and 8/11/05. Enacted August 26, 2005. Effective October 1, 2005.