

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1134
Committee Substitute Favorable 5/4/09
PROPOSED COMMITTEE SUBSTITUTE H1134-PCS80487-SVf-45

Short Title: Open Government Act.

(Public)

Sponsors:

Referred to:

April 7, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF
3 JUSTICE, TO ESTABLISH A FEE FOR SERVICES OF MODERATION AND
4 MEDIATION BY THE OPEN GOVERNMENT UNIT, AND TO PROVIDE THAT THE
5 SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO
6 REASONABLE ATTORNEYS' FEES.

7 The General Assembly of North Carolina enacts:

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

10 "Article 8.

11 "Open Government Unit.

12 "§ 114-51. Open Government Unit.

13 (a) To further the goals of government transparency and that public records, as defined
14 by G.S. 132-1, compiled by agencies of North Carolina government or its subdivisions, are the
15 property of the people, there is created within the Department of Justice the Open Government
16 Unit.

17 (b) The Open Government Unit shall do all of the following:

18 (1) Develop and implement education and awareness programs designed to
19 educate the public and government agencies of their rights and
20 responsibilities under the public records and open meetings laws.

21 (2) Serve as a moderator or mediator in resolving public records and open
22 meetings issues between parties, including adopting procedures and
23 guidelines for assisting in the informal resolution of open government
24 disputes.

25 (3) Assemble and maintain a collection of relevant State laws, opinions, rules,
26 and regulations related to public records and open meetings laws, which
27 shall be made available electronically as a resource.

28 (4) Adopt and develop policies and procedures as may be necessary to
29 accomplish these functions.

30 (c) A reasonable fee shall be charged for services of moderation or mediation in
31 resolving public records and open meetings issues by the Open Government Unit of the
32 Department of Justice. The fee authorized by this section shall not exceed the actual cost of
33 preparing, researching, and conducting the moderation or mediation. The fee for moderation or



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1 mediation services is a departmental receipt of the Department and must be used to offset the
2 cost of the Open Government Unit.

3 (d) This section shall not apply to the Judicial Department."

4 **SECTION 2.** The Department of Justice Open Government Unit shall receive and
5 attempt to informally resolve disputes between the public and more than 1,500 State and local
6 government agencies, along with educating and raising awareness among the public and
7 governmental agency representatives about the rights and responsibilities under the public
8 records and open meetings laws.

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

10 "(c) In any action brought pursuant to this section in which a party successfully compels
11 the disclosure of public records, the court shall allow ~~the prevailing~~ a party who substantially
12 prevails to recover its reasonable attorneys' fees if attributed to those public records, ~~unless the~~
13 ~~court finds the agency acted with substantial justification in denying access to the public~~
14 ~~records or the court finds circumstances that would make the award of attorneys' fees~~
15 ~~unjust.~~ records. The court may not assess attorneys' fees against the governmental body or
16 governmental unit if the court finds that the governmental body or governmental unit acted in
17 reasonable reliance on:

18 (1) A judgment or an order of a court applicable to a governmental unit or
19 governmental body;

20 (2) The published opinion of an appellate court; or

21 (3) A written opinion, decision, or letter of the Attorney General.

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

29 **SECTION 4.** This act becomes effective January 1, 2010, and applies to actions
30 brought on or after that date.