

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH10756-LBf-190B (3/2)

Short Title: Open Government Act.

(Public)

Sponsors: Representatives Ross, Wainwright, Wilkins, and Dickson (Primary Sponsors).

Referred to:

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



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

2           **SECTION 2.** During the 2009-2010 fiscal year, the Department of Justice Open  
3 Government Unit shall receive and attempt to informally resolve disputes between the public  
4 and more than 430 State and local government agencies, along with educating and raising  
5 awareness among the public and governmental agency representatives about the rights and  
6 responsibilities under the public records and open meetings laws.

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

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

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

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

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

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

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