

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1134 (Second Edition)

SHORT TITLE: Open Government Act.

SPONSOR(S): Representatives Wainwright, Ross, Dickson, and Wilkins

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES:</b>	<b>DOJ does not anticipate significant fiscal impact</b>				
<b>EXPENDITURES:</b>					
<b>POSITIONS (cumulative):</b>	<b>Any additional position costs may be recovered by DOJ by charging government units for resolution services</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice					
<b>EFFECTIVE DATE:</b> January 1, 2010					

**BILL SUMMARY:**

This bill is 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.

This bill seeks to perform the following:

- 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) assemble and maintain an electronic collection of relevant legal materials related to public records and open meetings law, and (4) adopt and develop policies for implementation as necessary.
- Provides that a reasonable fee may be charged for moderation or mediation services in resolving public records and open meetings issues by the Unit.
- Provides that this section does not apply to the Judicial Department.
- Requires the Unit, during the 2009-10 fiscal year, to receive and attempt to informally resolve disputes between the public and state and local government agencies along with educating and

raising public and agency 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 a finding that an agency acted with substantial justification in denying access to the public records.
- Provides that the court may not assess attorneys' fees against the governmental unit or body if the court finds that it acted in reasonable reliance on (1) a judgment or a court order applicable to the governmental unit or body, (2) the published opinion of an appellate court, or (3) a written opinion, decision, or letter of the Attorney General. Makes technical changes.

Applies to actions brought on or after the effective date of January 1, 2010.

Source: *Bill Digest H.B. 1134 (04/06/0200)*.

#### **ASSUMPTIONS AND METHODOLOGY:**

##### **Department of Justice**

The Department of Justice (DOJ) reported that they are not able to precisely estimate the fiscal impact of this bill, due to uncertainty as to the volume and scope of the mediation requests and education programs that will result from the passage of this bill. The bill allows for the assessment of a reasonable fee to cover the cost of these activities. Because of this, *DOJ anticipates that any fiscal impact associated with these activities will not be significant.*

Using the per case figures provided by DOJ, Fiscal Research prepared the following scenario: there are approximately 430 State and local government units in North Carolina. If each of these entities asks the Open Government Unit to resolve one case per year, at four hours of attorney time per case at a cost of \$65 per hour (the average rate of an Attorney III engaged in mediation work), the total cost of resolving these disputes will be \$111,800 per year. The proposed bill contains language allowing DOJ to seek to recover these costs against the governmental body or unit, therefore, it is assumed that the requirements of this bill will be revenue neutral for DOJ.

**SOURCES OF DATA:** Department of Justice

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 26, 2009



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