

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 418*

Short Title: Public Records Law Changes.

(Public)

Sponsors: Senators Cooper; and Soles.

Referred to: Judiciary II.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-6 reads as rewritten:

"§ 132-6. **Inspection and examination of records.**

(a) Every ~~person having custody~~ custodian of public records shall permit ~~them to be~~ any record in his or her custody to be inspected and examined at reasonable times and under ~~his reasonable~~ promptly supervision by any person, and ~~he shall~~ promptly furnish ~~certified~~ copies thereof ~~on~~ upon payment of any fees as may be prescribed by law. As used herein, 'custodian' does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that the public records requested are commingled with nonpublic records. If it is necessary to separate public and nonpublic records in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation.

(d) Notwithstanding the foregoing, provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the

1 withholding of public records relating to general economic development policies or
2 activities."

3 Sec. 2. Chapter 132 of the General Statutes is amended by adding two new
4 sections to read:

5 **"§ 132-6A. Electronic data-processing records.**

6 (a) In order to facilitate public access to and copying of public records
7 maintained in electronic form, every public agency that maintains records in electronic
8 form shall also maintain a register that describes each computer database in which the
9 agency maintains any information that is a matter of public record. The register's
10 description of each computer database shall include, at a minimum, a list of the data
11 fields; a description of the format or record layout; information as to the frequency with
12 which the database is updated; a list of any data fields to which public access is
13 restricted; and a description of each form in which the database can be copied or
14 reproduced using the public agency's existing computer programs. The register shall be
15 written in language designed to be comprehensible to persons lacking detailed
16 knowledge or computer language or formats.

17 (b) No public agency shall purchase, lease, create, or otherwise acquire any
18 electronic data-processing system for the storage, manipulation, or retrieval of public
19 records unless it first determines that the system will not impair or impede the agency's
20 ability to permit the public inspection and examination, and to provide electronic copies
21 of such records. As used herein, 'electronic data-processing system' means computer
22 hardware, computer software, or computer programs or any combination thereof,
23 regardless of kind or origin.

24 (c) As used herein, 'computer hardware' means any tangible machine or device
25 utilized for the electronic storage, manipulation, or retrieval of data. 'Computer
26 program' means a series of instructions or statements that permit the storage,
27 manipulation, and retrieval of data within an electronic data-processing system, together
28 with any associated documentation. 'Computer software' means any set or combination
29 of computer programs. Neither 'computer program' nor 'computer software' includes the
30 original data, or any analysis, compilation, or manipulated form of the original data
31 produced by the use of the program or software.

32 **"§ 132-6B. Provision of copies of public records; fees.**

33 (a) Persons requesting copies of public records may elect to obtain them in any
34 and all forms in which the public agency is capable of providing them. No request for
35 copies of public records in a particular form shall be denied on the grounds that the
36 custodian has made or prefers to make the public records available in another form.

37 (b) Persons requesting copies of public records may request that the copies be
38 certified or uncertified. Except as otherwise provided by law, no public agency shall
39 charge a fee for an uncertified copy of a public record that exceeds the actual cost to the
40 public agency of making the copy. In determining the cost of making the copy, the
41 public agency shall not include the salaries or wages of public employees; rent, utilities,
42 or other components of the public agency's usual overhead; the cost of any equipment or
43 system used for the storage, maintenance, or retrieval of the public record; or the cost of

1 separating commingled public and nonpublic records. The fees for certifying copies of
2 public records shall be as provided by law.

3 (c) Persons requesting copies of public records may make or submit such
4 requests orally or in writing. Custodians of public records shall respond to all such
5 requests promptly. If the request is granted, the copies shall be provided as soon as
6 reasonably possible. If the request is denied, the denial shall be accompanied by an
7 explanation of the basis for the denial. If asked to do so, the person denying the request
8 shall promptly reduce the explanation for the denial to writing.

9 (d) Nothing herein shall be construed to require a public agency to respond to
10 requests for copies of public records outside of its usual business hours."

11 Sec. 3. G.S. 132-9 reads as rewritten:

12 "**§ 132-9. Access to records.**

13 (a) Any person who is denied access to public records for purposes of ~~inspection,~~
14 ~~examination or copying~~ inspection and examination, or who is denied copies of public
15 records, may apply to the appropriate division of the General Court of Justice for an
16 order compelling ~~disclosure,~~ disclosure or copying, and the court shall have jurisdiction
17 to issue such orders. Actions brought pursuant to this section shall be set down for
18 immediate hearing, and subsequent proceedings in such actions shall be accorded
19 priority by the trial and appellate courts.

20 (b) In an action to compel disclosure of public records which have been withheld
21 pursuant to the provisions of G.S. 132-6 concerning public records relating to the
22 proposed expansion or location of particular businesses and industrial projects, the
23 burden shall be on the custodian withholding the records to show that disclosure would
24 frustrate the purpose of attracting that particular business or industrial project.

25 (c) In any action brought pursuant to this section in which a party successfully
26 compels the disclosure of public records, the court may, in its discretion, allow the
27 prevailing party to recover reasonable attorneys' fees to be taxed as court costs against
28 the appropriate public agency if:

29 (1) The court finds that the agency acted without substantial justification
30 in denying access to the public records; and

31 (2) The court finds that there are no special circumstances that would
32 make the award of attorneys' fees unjust.

33 Any attorneys' fees assessed against a public agency under this section shall be
34 charged against the operating expenses of the agency and shall not be reimbursed from
35 any other source; provided, however, that the court may order that all or any portion of
36 any attorneys' fees so assessed be paid personally by any public employee or public
37 official found by the court to have knowingly or intentionally committed, caused,
38 permitted, suborned, or participated in a violation of this Article.

39 (d) If the court determines that an action brought pursuant to this section was
40 filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable
41 attorney's fee against the person or persons instituting the action and award it to the
42 defendants as part of the costs."

43 Sec. 4. G.S. 6-19.2 is repealed.

44 Sec. 5. This act is effective upon ratification.