

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1855

Short Title: Clarify Legislative Confidentiality. (Public)

Sponsors: Representatives Glazier, Lucas, Stam, McGee (Primary Sponsors);  
M. Alexander, Hughes, Ingle, Insko, E. Warren, and Wiley.

Referred to: Ethics, if favorable, Judiciary I.

May 20, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY LEGISLATIVE CONFIDENTIALITY, AS RECOMMENDED BY  
3 THE LEGISLATIVE ETHICS COMMITTEE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The introductory language in Section 1 of S.L. 2009-129 reads as  
6 rewritten:

7 "**SECTION 1.** ~~G.S. 120-29(2)~~ G.S. 120-129(2) reads as rewritten:".

8 **SECTION 2.** Article 17 of Chapter 120 of the General Statutes, as amended by  
9 Section 1 of this act, reads as rewritten:

10 "Article 17.

11 "Confidentiality of Legislative Communications.

12 "**§ 120-129. Definitions.**

13 As used in this Article:

- 14 (1) "Document" means all records, papers, letters, maps, books, photographs,  
15 films, sound recordings, magnetic or other tapes, electronic data-processing  
16 records, artifacts, or other documentary material regardless of physical form  
17 or characteristics.
- 18 (1a) "Legislative commission" means any commission or committee which the  
19 Legislative Services Commission is directed or authorized to staff by law or  
20 resolution and which it does, in fact, staff.
- 21 (2) "Legislative employee" means employees and officers of the General  
22 Assembly, consultants and counsel to members and committees of either  
23 house of the General Assembly or of legislative commissions who are paid  
24 by State funds, students at an accredited law school while in an externship  
25 program at the General Assembly approved by the Legislative Services  
26 Commission, and employees of the School of Government at the University  
27 of North Carolina at Chapel Hill; but does not mean legislators and members  
28 of the Council of State.
- 29 (3) "Legislator" means a member-elect, member-designate, or member of the  
30 North Carolina Senate or House of Representatives.

31 "**§ 120-130. Drafting and information requests to legislative ~~employees~~employees;**  
32 **documents.**

33 (a) A drafting request made to a legislative employee from a legislator is confidential.  
34 Neither the identity of the legislator making the request nor, except to the extent necessary to  
35 answer the request, the existence of the request may be revealed to any person who is not a  
36 legislative employee without the consent of the legislator.



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1 (b) An information request made to a legislative employee from a legislator is  
2 confidential. Neither the identity of the legislator making the request nor, except to the extent  
3 necessary to answer the request, the existence of the request may be revealed to any person  
4 who is not a legislative employee without the consent of the legislator. Notwithstanding the  
5 preceding sentences of this subsection, the periodic publication by the Fiscal Research Division  
6 of the Legislative Services Office of a list of information requests is not prohibited, if the  
7 identity of the legislator making the request is not revealed.

8 (c) ~~Any Documents submitted to a legislator by another person or any supporting~~  
9 ~~documents submitted or caused to be submitted to a legislative employee by a legislator in~~  
10 ~~connection with a drafting or information request are confidential. Except to the extent~~  
11 ~~necessary to answer the request, neither the document nor copies of it, nor the identity of the~~  
12 ~~person, firm, or association producing it, may be provided to any person who is not a legislative~~  
13 ~~employee without the consent of the legislator.~~

14 (d) ~~Drafting requests, or information requests or requests, and supporting documents~~  
15 ~~submitted under subsection (c) of this section are not "public records" as defined by G.S. 132-1.~~  
16 ~~A document that is a public record shall continue to be treated as a public record,~~  
17 ~~notwithstanding its inclusion as a supporting document to a drafting or information request.~~

18 **"§ 120-131. Documents produced by legislative employees.**

19 (a) Documents prepared by legislative employees upon the request of legislators are  
20 confidential. Except as provided in subsection (b) of this section, the existence of the document  
21 may not be revealed nor may a copy of the document be provided to any person who is not a  
22 legislative employee without the consent of the legislator.

23 (b) A document prepared by a legislative employee upon the request of a legislator  
24 becomes available to the public when the document is a:

- 25 (1) Bill or resolution and it has been introduced;
- 26 (2) Proposed amendment or committee substitute for a bill or resolution and it  
27 has been offered at a committee meeting or on the floor of a house;
- 28 (3) Proposed conference committee report and it has been offered at a joint  
29 meeting of the conference committees; or
- 30 (4) Bill, resolution, memorandum, written analysis, letter, or other document  
31 resulting from a drafting or information request and it has been distributed at  
32 a legislative commission or standing committee or subcommittee meeting  
33 not held in executive session, closed session, or on the floor of a house.

34 (b1) A document prepared by a legislative employee upon the request of any legislator,  
35 that pursuant to this Article does not become available to the public, is not a "public record," as  
36 defined by G.S. 132-1.

37 (c) This section does not prohibit the dissemination of information or language  
38 contained in any document which has been prepared by a legislative employee in response to a  
39 substantially similar request from another legislator, provided that the identity of the requesting  
40 legislator and the fact that ~~he~~ the legislator had made such a request not be divulged.

41 **"§ 120-131.1. Requests from legislative employees for assistance in the preparation of**  
42 **fiscal notes and evaluation reports.**

43 (a) A request, including any ~~accompanying supporting~~ documents, made to an agency  
44 employee by a legislative employee of the Fiscal Research Division for assistance in the  
45 preparation of a fiscal note is confidential. An agency employee who receives such a request or  
46 who learns of such a request made to another agency employee ~~of his or her agency~~ shall reveal  
47 the existence of the request only to other agency employees of the agency to the extent that it is  
48 necessary to respond to the request, and to the agency employee's supervisor and to the Office  
49 of State Budget and Management. All documents prepared by the agency employee in response  
50 to the request of the Fiscal Research Division are also confidential and shall be kept  
51 confidential in the same manner as the original request, except that documents submitted to the

1 Fiscal Research Division in response to the request cease to be confidential under this section  
2 when the Fiscal Research Division releases a fiscal note based on the documents.

3 (a1) A request, and any ~~accompanying~~ supporting documents, made to an agency  
4 employee by a legislative employee of the Program Evaluation Division for assistance in the  
5 preparation of an evaluation report is confidential. The request and any ~~accompanying~~  
6 supporting documents are not "public records" as defined by G.S. 132-1. An agency employee  
7 who receives a request under this subsection or who learns of such a request made to another  
8 agency employee ~~of his or her agency~~ may reveal the existence of the request to other agency  
9 employees to the extent that it is necessary to respond to the request and to the agency  
10 employee's supervisor. All documents prepared by the agency employee in response to the  
11 request of a legislative employee of the Program Evaluation Division are confidential, shall be  
12 kept confidential in the same manner as the original request, and are not "public records" as  
13 defined in G.S. 132-1.

14 (a2) A request, and any supporting documents, made to an agency employee by a  
15 legislative employee pursuant to G.S. 120-130 or G.S. 120-131 is confidential. An agency  
16 employee who receives a request or who learns of a request made to another agency employee  
17 under this subsection shall reveal the existence of the request only to other agency employees  
18 to the extent that it is necessary to respond to the request. An agency employee may reveal the  
19 request to an agency supervisor. All documents prepared by the agency employee in response  
20 to the request of a legislative employee under this subsection are also confidential and shall be  
21 kept confidential in the same manner as the original request. The request, any supporting  
22 documents to the request, and any documents prepared by the agency employee in response to a  
23 request under this subsection are not "public records" as defined by G.S. 132-1.

24 (a3) Requests and documents confidential under this section shall bear an indication on  
25 the face of the request or document that the request or document is confidential and not a public  
26 record pursuant to this section.

27 (b) As used in this section, "agency employee" means an employee or officer of every  
28 agency of North Carolina government or its subdivisions, including every public office, public  
29 officer or official (State or local, elected or appointed), institution, board, commission, bureau,  
30 council, department, authority, or other unit of government of the State or of any county, unit,  
31 special district, or other political subdivision of government.

32 (c) ~~Violation of this section may be grounds for disciplinary action.~~ shall be subject to  
33 penalties as set forth in G.S. 120-134.

34 **"§ 120-132. Testimony by legislative employees.**

35 (a) Except as provided in subsections (b) and (c) of this section, ~~No~~ no present or  
36 former legislative ~~employees~~ employee may be required to disclose any information that the  
37 individual, while employed or retained by the State, may have acquired:

- 38 (1) In a standing, select, or conference committee or subcommittee of either  
39 house of the General Assembly or a legislative commission;
- 40 (2) On the floor of either house of the General Assembly, ~~or~~ in any office of a  
41 ~~legislator;~~ legislator, or at any other location of the State legislative buildings  
42 and grounds as defined in G.S. 120-32.1(d);
- 43 (3) As a result of communications that are confidential under G.S. 120-130 and  
44 G.S. 120-131.

45 (b) A present or former legislative (b) employee may disclose information acquired under  
46 subsection (a) of this section that would be reflected in the official public record or was  
47 otherwise publicly disseminated.

48 (c) ~~Notwithstanding the provisions of the preceding sentence, Subject to G.S. 120-9,~~  
49 G.S. 120-133, and the common law of legislative privilege and legislative immunity, the  
50 presiding judge of a court of competent jurisdiction may compel that disclosure, disclosure of

1 information acquired under subsection (a) of this section if in his-the judge's opinion, the same  
2 disclosure is necessary to a proper administration of justice.

3 **"§ 120-133. Redistricting communications.**

4 Notwithstanding any other provision of law, all drafting and information requests to  
5 legislative employees and documents prepared by legislative employees for legislators  
6 concerning redistricting the North Carolina General Assembly or the Congressional Districts  
7 are no longer confidential and become public records upon the act establishing the relevant  
8 district plan becoming law. Present and former legislative employees may be required to  
9 disclose information otherwise protected by G.S. 120-132 concerning redistricting the North  
10 Carolina General Assembly or the Congressional Districts upon the act establishing the relevant  
11 district plan becoming law.

12 **"§ 120-134. Penalty.**

13 Violation of any provision of this Article shall be grounds for disciplinary action in the case  
14 of current legislative, executive, or judicial branch employees, for referral to the academic  
15 institution for appropriate discipline in the case of law student externs, and for removal from  
16 office in the case of public officers. Violation of any provisions of this Article by a legislative  
17 employee who is a law student extern at the time of the violation shall be referred to the  
18 academic institution for appropriate discipline, and the Legislative Services Commission may  
19 terminate the externship. No criminal penalty shall attach for any violation of this Article.

20 **"§ 120-135. Sharing confidential information amongst legislative employees.**

21 A legislative employee hired by, supervised by, or assigned to a member shall be treated as  
22 the member for purposes of legislative confidentiality."

23 **SECTION 3.** Effective December 1, 2010, G.S. 120-134, as amended by Section 2  
24 of this act, reads as rewritten:

25 "Violation of any provision of this Article shall be grounds for disciplinary action in the  
26 case of current legislative, executive or judicial branch employees, and for removal from office  
27 in the case of public officers. Violation of any provisions of this Article by a legislative  
28 employee who is a law student extern at the time of the violation shall be referred to the  
29 academic institution for appropriate discipline, and the Legislative Services Commission may  
30 terminate the externship. Any other person who willfully violates any provision of this Article  
31 shall be guilty of a Class 3 misdemeanor. No other criminal penalty shall attach for any  
32 violation of this Article."

33 **SECTION 4.** If House Bill 1134 of the 2009 General Assembly becomes law,  
34 G.S. 114-51(d), as enacted by House Bill 1134 of the 2009 General Assembly, reads as  
35 rewritten:

36 "(d) This section shall not apply to the Judicial ~~Department~~. Department or the General  
37 Assembly. A member of the General Assembly may request the assistance of the Open  
38 Government Unit to assist with mediating a public records request."

39 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
40 law. Section 3 of this act applies to offenses committed on or after December 1, 2010.