GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 104
RATIFIED BILL

AN ACT TO CLARIFY LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 17 of Chapter 120, as amended by S.L. 2009-129, reads as rewritten:

"Article 17.
"Confidentiality of Legislative Communications.

"§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives.

"§ 120-130. Drafting and information requests to legislative ~~employees.~~employees; constituent inquiries.

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

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

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

(d) Drafting requests, ~~or~~ information ~~requests or~~ requests, and ~~supporting~~ documents submitted under subsection (c) of this section are not "public records" as defined by G.S. 132-1.

A document that is a public record shall continue to be treated as a public record, notwithstanding its inclusion as a supporting document to a drafting or information request.

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

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

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

(1) Bill or resolution and it has been introduced;

(2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;

(3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or

(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

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

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

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

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

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

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

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

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

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

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

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

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, ~~or~~ in any office of a ~~legislator;~~ legislator, or at any other location of the State legislative buildings and grounds as defined in G.S. 120-32.1(d);

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

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

(c) ~~Notwithstanding the provisions of the preceding sentence,~~ Subject to G.S. 120-9, G.S. 120-133, and the common law of legislative immunity, the presiding judge ~~of a court of competent jurisdiction~~ may compel ~~that disclosure,~~ disclosure of information acquired under subsection (a) of this section if in ~~his~~ the judge's opinion, the ~~same~~ disclosure is necessary to a proper administration of justice.

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

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

"**§ 120-134. Penalty.**

Violation of any provision of this Article shall be grounds for disciplinary action in the case of current legislative employees, ~~for referral to the academic institution for appropriate discipline in the case of law student externs,~~ and for removal from office in the case of public officers. Violation of any provisions of this Article by a current legislative employee who is a law student extern shall be referred to the academic institution for appropriate discipline, and the Legislative Services Commission may terminate the externship. Any other person who willfully violates any provision of this Article shall be guilty of a Class 3 misdemeanor. No other criminal penalty shall attach for any violation of this Article.

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

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

SECTION 2. If House Bill 1134 of the 2009 General Assembly becomes law, G.S. 114-51(d) as enacted by House Bill 1134 of the 2009 General Assembly reads as rewritten:

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

SECTION 3. This act is effective when it becomes law, except that the amendments to G.S. 120-134 in Section 1 of this act become effective December 1, 2009, and apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____.m. this _____ day of _____, 2009

VETO

Beverly Eaves Perdue 9-10-09

Beverly Eaves Perdue, Governor Date