



HOUSE BILL 259: 2023 Appropriations Act, Sec. 27.7: Legislative Confidentiality Modification

2023-2024 General Assembly

Committee:		Date:	January 18, 2024
Introduced by:		Prepared by:	Erika Churchill Staff Attorney
Analysis of:	Sec. 27.7 of S.L. 2023-134		

OVERVIEW: Section 27.7 of S.L. 2023-134 codifies that each legislator is the custodian of that legislator's documents as well as the custodian of the legislative confidentiality, if any, associated with that document and makes other conforming changes. This section became effective October 3, 2023.

CURRENT LAW: Article 17 of Chapter 120, Confidentiality of Legislative Communications, provides that drafting and information requests made by legislators to legislative employees are confidential, as are all supporting documents the legislator submits or causes to be submitted to a legislative employee in connection with the drafting or information request. Documents submitted to a legislator from another person are confidential and are not public records. Drafting and information requests, including supporting documents, are not public records. Requests by the Fiscal Research Division for assistance on the preparation of fiscal notes are confidential and the employees in another agency cannot disclose the existence of the request or any documents created in response to the request unless and until the fiscal note is released.

Legislative employees cannot even acknowledge the existence of a request to any person who is not another legislative employee without the consent of the legislator.

Documents produced by a legislative employee in response to drafting and information requests are confidential. Those documents become available to the public in only the following instances:

- When the document is introduced as a bill or resolution.
- When the document is an amendment or committee substitute offered on the floor of a chamber or in a committee meeting.
- When the document is offered as a conference report at a joint meeting of the conference committee.
- When the document has been distributed on the floor of a chamber or at a committee or commission meeting not held in closed session.
- When the document is a drafting and information request to a legislative employee, or a document prepared by a legislative employee, concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the relevant district plan becoming law.

No present or former legislative employee can be required to disclose any information obtained in a legislative committee or commission meeting, on the floor of either chamber, in any office of a legislator, or as a result of communications that are confidential. A present or former legislative employee can disclose information that would be reflected in the official public record or was otherwise publicly disseminated. Subject to statutory constraints, legislative privilege and legislative immunity, a presiding judge can compel disclosure of information acquired by present or former legislative employees, if in the judge's opinion, the disclosure is necessary to a proper administration of justice. Additionally, present and

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former legislative employees can be required to disclose information concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.

A violation of the Article "shall be grounds for disciplinary action in the case of employees" and removal from office in the case of public officers, but there are no criminal penalties.

The common law doctrine of legislative immunity protects legislators from being compelled to testify as to their legislative acts. This doctrine is reflected in G.S. 120-9 which provides that: "[t]he members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken." Nothing in Chapter 120 (General Assembly) or Chapter 132 (Public Records) is to be construed as a waiver of the attorney-client privilege or of the common law work product doctrine with respect to legislators.

BILL ANALYSIS: Section 27.7 of S.L. 2023-134 modifies the current law by establishing the following:

- Legislative confidentiality applies to all drafting and information requests to a legislative employee, and documents prepared by a legislative employee, concerning redistricting the North Carolina General Assembly or the Congressional Districts regardless of whether the relevant district plan has become law or not.
- A legislator, while in office or after leaving office, cannot be required to reveal or to consent to reveal any document, supporting document, drafting request, or information request made or received by that legislator while a legislator.
- Nothing in Chapters 120 and 132 is to be construed as a waiver of the common law of legislative privilege or legislative immunity by a legislator or former legislator. A legislator or former legislator can assert the common law of legislative privilege or the common law of legislative immunity in all instances.
- For confidential communications between public agencies, like local governments and State boards, and their attorneys, those attorney-client communications do not automatically become public record three years after the communication is received by the public agency.

Section 27.7 of S.L. 2023-134 clarifies the following:

- Each legislator, while in office and after leaving office, is the custodian of all documents, supporting documents, drafting requests, and information requests made or received by that legislator while a legislator.
- Letters or other written communications appointing an individual to serve on a board, commission, or other position prepared by legislative employees are a public record.
- Administrative documents prepared by legislative employees must become available to the public, and subject to retention schedules thereof, in accordance with policies adopted by the Legislative Services Commission.
- Article 17 of Chapter 120 governs all records and information of the legislative branch.

EFFECTIVE DATE: This section became effective October 3, 2023.