

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 295 (First Edition)

**SHORT TITLE:** Public Agency Computer Code Not Public Record.

**SPONSOR(S):** Senators Brunstetter and Parmon

**FISCAL IMPACT**

(\$ in millions)

Yes       No       No Estimate Available

|                            | FY 2013-14  | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 |
|----------------------------|---|------------|------------|------------|------------|
| <b>State Impact</b>        |   |            |            |            |            |
| General Fund Revenues:     | Revenue cannot be determined. See Assumptions and Methodology.          |            |            |            |            |
| General Fund Expenditures: | Cost cannot be determined. See Assumptions and Methodology.             |            |            |            |            |
| Special Fund Revenues:     | Revenue cannot be determined. See Assumptions and Methodology.          |            |            |            |            |
| Special Fund Expenditures: | Cost cannot be determined. See Assumptions and Methodology.             |            |            |            |            |
| State Positions:           |   |            |            |            |            |
| <b>NET STATE IMPACT</b>    | Net State impact cannot be determined. See Assumptions and Methodology. |            |            |            |            |

|                         |   |  |  |  |  |
|-------------------------|---|--|--|--|--|
| <b>Local Impact</b>     |   |  |  |  |  |
| Revenues:               | Revenue cannot be determined. See Assumptions and Methodology.          |  |  |  |  |
| Expenditures:           | Cost cannot be determined. See Assumptions and Methodology.             |  |  |  |  |
| <b>NET LOCAL IMPACT</b> | Net local impact cannot be determined. See Assumptions and Methodology. |  |  |  |  |

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** State and local agencies.

**EFFECTIVE DATE** This act is effective when it becomes law and applies to public records existing before, on, or after that date.

**TECHNICAL CONSIDERATIONS:**

Yes - See Technical Considerations Section

**BILL SUMMARY:** This bill specifies that proprietary computer code written by and for use by an agency of North Carolina government or its subdivisions is not a public record as defined in G.S. 132-1. That statute defines a public record as follows:

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic dataprocessing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include 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.

The statute goes on to say that the public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

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

Costs associated with this bill would most likely be minimal. The use of the term proprietary implies that the software would be copyrighted. (See Technical Considerations.) If agencies choose to copyright software that they have developed, there is a \$35.00 fee for copyright registration with the United States Copyright Office. It also requires minimal time on the part of the filing attorney.

There is also a potential for revenue from agency-developed software. As an example, the New York City Police Department (NYPD) has recently developed a domain awareness system in partnership with Microsoft. Microsoft has agreed to pay New York City 30 percent of its gross revenues on the sale of the system to other customers worldwide. Additionally, Microsoft will provide access to any innovation derived from the sale of the system to new customers. In return, the NYPD has agreed to describe accurately the project to prospective licensees of the base technology platform. Revenue generated for the City from the sale of this technology will be used to support innovative and cutting-edge counter-terrorism and crime-prevention programs.

**SOURCES OF DATA:** Office of the State Chief Information Officer, Department of Justice, Gartner, New York City Police Department

#### **TECHNICAL CONSIDERATIONS:**

By definition, proprietary software is computer software licensed under exclusive legal right of the copyright holder with the intent that the licensee is given the right to use the software only under certain conditions, and restricted from other uses, such as modification, sharing, studying, redistribution, or reverse engineering. It is owned by an organization or an individual, as opposed to "public-domain software," which is freely distributed. The owner of proprietary software exercises certain exclusive rights over the software. These include restrictions on its use, inspection of the source code, and any modification of the source code.

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**DATE:** March 19, 2013



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