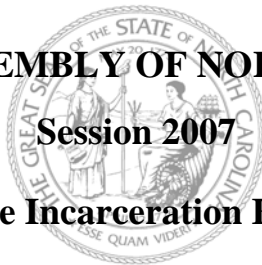


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1751 (Second Edition)

SHORT TITLE: Allowing Consumption by Employee or Agent.

SPONSOR(S): Representative Avila

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	No significant impact anticipated. See Assumptions and Methodology, p. 2-3				
Judicial	No significant impact anticipated. See Assumptions and Methodology, p. 3				
Crime Control	No significant impact anticipated. See Assumptions and Methodology, p. 3				
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS*	None anticipated. Possible, small impact on local jails.				
POSITIONS: (cumulative)	None anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Local Governments; Department of Crime Control and Public Safety – Alcohol Law Enforcement Division.				
EFFECTIVE DATE:	December 1, 2007.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY: H.B. 1751 amends G.S. 18B-300(b) to include employees or agents of an ABC permittee in that statute’s prohibition against the allowance of another to consume alcoholic beverages on a permittee’s premises, when the permit only authorizes the sale of beverages to be consumed off a permittee’s premises (now, statute applies only to the permittee). Effective December 1, 2007, for offenses committed on and after that date.

* House committee substitute makes the following changes to 1st edition. Rewrites title. Also amends G.S. 18B-1006 (d) to add a permittee's agent or employee to the persons for whom it is unlawful to possess or consume alcoholic beverages not authorized by permits for the premises. Makes conforming changes.

Source: Bill Digest H.B. 1751 (04/18/0200).

ASSUMPTIONS AND METHODOLOGY:

General

Current G.S. 18B-1005 now provides that it is unlawful for a permittee, his agent, or employee to *knowingly* allow any violation of Chapter 18B to occur on his licensed premises. It is assumed that such violation includes the acts currently proscribed by G.S. 18B-300(b) and G.S. 18B-1006(d), as well as other acts pertaining to the unlawful consumption or possession of alcoholic beverages. *Accordingly, to the extent that persons are now prosecuted for willful violation, this proposal will have no effect.*

However, the language contained in G.S. 18B-300(b) and G.S. 18B-1006(d) *does not explicitly state that violation is contingent upon one knowingly allowing the unlawful possession or consumption of alcoholic beverages, or knowingly engaging in unlawful possession or consumption.* Consequently, this difference in language and explicit inclusion of permittees' agents and employees in the aforementioned statutes may increase the number of persons subject to criminal liability for violation of either G.S. 18B-300(b) and/or G.S. 18B-1006(d); and thereby, increase the opportunity for offense. Current G.S. 18B-102 provides that any person who violates any provision of Chapter 18B is guilty of a Class 1 misdemeanor offense. *Thus, FRD assumes that the proposed inclusion of permittees' agents and employees, and potential additional prosecution of alleged violation, could result in additional charges and convictions for violation of G.S. 18B-300(b) and/or G.S. 18B-1006(d).*

It is not known how enforcement or prosecution tactics will change in response to this legislation, or how many additional charges and/or convictions might occur. The relatively high charge frequency (985 in CY 2006) for the offense of unlawful consumption under G.S. 18B-300(b) provides some indication that permittees' agents and employees may be unlawfully allowing consumption on their premises, or unlawfully possessing/consuming themselves; however, the actual incidence of such violation cannot be determined at this time.

In sum, the nature of the offense, possible applicability of current law, and applicable penalty level (Class 1) do not indicate that this legislation will produce a substantial fiscal impact for the Courts and Corrections. However, the exact degree of fiscal impact cannot be determined. In addition, FRD does not anticipate a significant increase in enforcement activity/workload for the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

Department of Correction: Division of Prisons

Because Class 1 misdemeanants serve their designated terms of incarceration within local jails, the proposed offense is not expected to impact the state's prison population.¹ The potential impact on local jail populations is unknown.

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Thus, to the extent that *additional* convictions for the proposed offenses were to result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, given the typical length for Class 1 active sentences, Fiscal Research does not anticipate a significant increase in reimbursements due to this proposal.

Department of Correction: Division of Community Corrections

In FY 2005-06, 80% of Class 1 misdemeanor convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, if additional convictions for the proposed offenses were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its jurisdiction.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

According to AOC data for CY 2006, there were 42 permittees charged with allowing consumption under G.S. 18B-300(b); 985 defendants were charged with unlawful consumption under this subsection. AOC maintains no specific offense code for violation of G.S. 18B-1006(d).

Although the relatively high charge frequency (985) for unlawful consumption (G.S. 18B-300(b)), compared to the number of permittees charged (42) for allowance, suggests that permittees' agents and employees may now be criminally culpable, it is not known how such actions might otherwise be enforced and prosecuted as a result of this legislation. Therefore, the number of resultant additional charges is indeterminate.

To the extent that additional cases result, the Administrative Office of the Courts expects increases in both court-time requirements and the associated costs of case disposal. Increased caseloads will, in turn, increase workloads for district attorneys, district court judges, clerks, court reporters, and indigent defense counsel. Presently, the estimated costs per Class 1 misdemeanor trial and plea are \$3,702 and \$243, respectively. These cost estimates account for indigent defense. Actual costs may vary with time requirements and case disposition.

Department of Crime Control and Public Safety – Alcohol Law Enforcement Division

Fiscal Research cannot estimate how enforcement practices – such as visits to permitted businesses – may change due to this proposal. However, it is assumed that any increase in workload will be initiated by the Division, and therefore assumed by current resources.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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