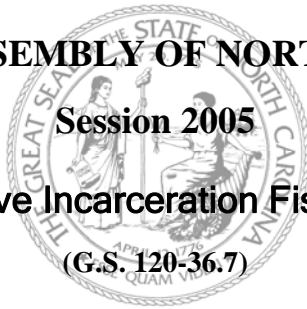


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 2200 (Second Edition)
SHORT TITLE: Enhance Embargo Auth/Protect Food Supply.
SPONSOR(S): Representatives Cunningham and Glazier

Table with fiscal impact data for FY 2006-07, FY 2007-08, FY 2008-09, FY 2009-10, and FY 2010-11. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS*, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY: Under current G.S. 130A-21, the Department of Environment and Natural Resources (DENR) and local health directors are authorized to exercise embargo authority when that authority is delegated by the Commissioner of Agriculture. This bill would amend G.S. 130A-21 to authorize the Secretary of Environment and Natural Resources or a local health director to

exercise embargo authority over food or drink in an establishment that is subject to regulation by DENR (restaurants and hotels), or subject to an investigation by the local health director in the case of communicable diseases. In addition, the bill requires that the Department of Agriculture and Consumer Services be notified when such action is taken, and states that it is unlawful to remove or dispose of the food or drink by sale, or otherwise, without proper authority.

H.B. 2200 would also enact G.S. 130A-481 to require the Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services to jointly develop a plan to protect the food supply from intentional contamination. The bill was recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

ASSUMPTIONS AND METHODOLOGY:

General

A violation of Chapter 130A is a Class 1 misdemeanor offense under G.S. 130A-25 and G.S.14-3(a). Under G.S. 14-3(b), if no specific punishment is prescribed and the offense is infamous, done in secrecy and malice, or with deceit and intent to defraud, the offense is a Class H felony. The amended provision of this bill could expand the number of persons subject to the act and the duties that apply, thereby increasing the opportunity for violation.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For such bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

In calendar year 2005, there were a total of 16 charges for the Class 1 misdemeanor offense of public health violation. Though this data does not reflect the number of charges pertaining to food or drink in an establishment subject to regulation by DENR or investigation by a local health director, it does suggest that the court system could experience some new charges.

However, the AOC does not currently have an offense code for any felony offenses under Chapter 130A or G.S. 14-3(b), implying that few felony charges occur. *Thus, given the relatively small number of charges for the similar offense of public health violation and the present lack of an offense code, Fiscal Research does not anticipate a significant number of new charges as a result of this bill.* For a Class H felony, the AOC estimates court-time costs of \$6,364 per trial and \$298 per plea; Class 1 misdemeanor court-time cost estimates are \$3,153 per trial and \$224 per plea.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

Due to a lack of data, the Sentencing and Policy Advisory Commission cannot project the number of new Class 1 misdemeanor and Class H felony convictions that might result from this bill. However, *Fiscal Research assumes that any resulting convictions would be for Class 1 misdemeanor offenses, and that Class H convictions are unlikely. Accordingly, there is no anticipated impact on the State's prison population.*

Class 1 misdemeanor: In FY 2004/05, 19% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated term served of 30.7 days; 79% of convictions resulted in community sentences and 2% resulted in intermediate sentences. *Because offenders serving active sentences of 90 days or less are housed in local jails, additional convictions resulting from this bill would not have an impact on the prison population. The impact on local jail populations is not known.*

Class H felony: In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. *If there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional beds the second year. Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State \$65,340 the first year, and \$141,134 the second year; operating costs could be \$26,680 the first year, and \$54,960 the second.*

Department of Correction – Division of Community Corrections

Assuming additional convictions and some unknown amount of intermediate and community sentencing, additional costs for probation supervision could also be incurred. Presently, general supervision from a probation officer costs the Division of Community Corrections \$1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly utilized intermediate sanction, costs \$12.95 per offender per day and is for an average of six months; electronic house arrest costs \$6.71. Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a \$30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time \$90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

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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DATE: June 21, 2006



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