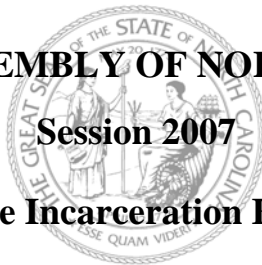


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1743 (Third Edition)

SHORT TITLE: Election Amendments.

SPONSOR(S): Representative Goodwin

	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>
REVENUES:					
Civil Penalty and Forfeiture Fund		Amount cannot be determined.			
EXPENDITURES:					
State Board of Elections Section 7:	\$50,000	\$0	\$0	\$0	\$0
State Board of Elections Section 25:	\$200,000- \$400,000	\$300,000	\$200,000- \$400,000	\$300,000	\$200,000- \$400,000
Correction Judicial	No significant fiscal impact is anticipated for either Corrections or the Courts; however, the exact amount cannot be determined. See pp. 2-4.				
TOTAL EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL PRISON BEDS: (cumulative)*		Amount cannot be determined.			
POSITIONS: (cumulative)		Amount cannot be determined.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; State and County Boards of Elections; Local Government.					
EFFECTIVE DATE: Unless otherwise provided, when it becomes law. Sections 10, 17, and 18 (criminal offenses) become effective December 1, 2007.					
*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.					

BILL SUMMARY: H.B. 1743 makes numerous changes to Chapter 163, governing elections and primaries. Among other things, the bill:

- Provides for the counting and challenging of absentee ballots returned by 5:00pm on the election day;
- Requires county boards to generate supplemental lists of absentee voters;
- ***Clarifies the felony penalty for making a false certification (reduces penalty from Class F to Class I);***
- ***Permits the State Board of Elections to assess additional civil penalties for certain late filings;***
- Amends the definition of “political committee;”
- Provides for earlier distribution of the Judicial Voter Guide;
- Authorizes county board of elections chairmen to administer certain oaths;
- Provides for the reporting of voting districts to the US Bureau of the Census;
- Subjects county precinct boundary changes to the approval of the State Board of Elections Executive Director;
- Requires each county board to maintain data by “voting tabulation district;”
- Permits the combining of ballot items;
- ***Provides that electronic records of individual voted ballots are confidential, and that disclosure known to be in violation is a Class 1 misdemeanor offense;***
- Provides no space for write-ins unless a candidate has qualified (or qualification is not required); permits the State Board of Elections to allow certain re-votes two weeks after canvass (was, two weeks after election);
- Requires limitations on campaign activity within a buffer zone around polling places, applicable to one-stop voting sites; expands the provisions of Article 4A (governing political activities by board members) to include board employees;
- ***Creates the Class 2 misdemeanor offenses of changing a person’s information on a voter registration form, coercing a person into making an undesired party affiliation, and pre-marking a registration form with a party affiliation, without the receiver’s request;***
- ***Makes it a Class I felony for any person to coerce or register a non-citizen to vote;***
- Provides for public disclosure of certain records and permits the correction of certain registration forms;
- Requires party chairs to provide lists of observers and runners;
- Prohibits the photographing or taping of voters within voting enclosures;
- Makes the State Board responsible for all ballot coding and equipment programming;
- And, authorizes county boards to contract with noncertified ballot printers that meet all specifications and quality assurance guidelines.

Source: Adapted from Bill Digest H.B. 1743 (04/18/0200); emphasis added.

ASSUMPTIONS AND METHODOLOGY:

PART I: ELECTIONS ADJUSTMENTS

State Board of Elections

Section 7: The State Board of Elections’ SEIMS currently does not have the capability to retrieve data in the format required by the US Bureau of the Census. The Board estimates the cost to implement a dual system within SEIMS to maintain voter data will be \$50,000.

Section 25: The State Board of Elections estimates the cost for ballot coding during even-numbered years in which a State or Federal election appears on the ballot will cost no more than \$200,000 for both the first and second primaries and no more than \$300,000 for the general election. If an election in an odd-numbered year includes a constitutional amendment or a bond referendum, the State Board will incur an additional cost of \$200,000. If an election in an odd-numbered year is limited to local offices, the State Board will not incur an additional cost.

PART II: CRIMINAL OFFENSES

H.B. 1743 creates five new criminal offenses, alters an existing offense, and provides for the assessment of additional civil penalties:

Sections 10(a) and 10(b): Amend G.S. 163-165.1(3) and 163-274 to make it a Class 1 misdemeanor offense for any person who has access to an official voted ballot or record to knowingly disclose how the individual has voted.

Section 17(a): Amends G.S. 163-82.6 to make the following Class 2 misdemeanor offenses – 1) To change a person’s information on a voter registration form prior to its delivery to a county board of elections; 2) To coerce a person into marking an undesired party affiliation; and 3) To offer a voter registration form that has a pre-marked party affiliation, unless the person receiving it has requested such pre-marking.

Section 18(a): Amends G.S. 163-275 to makes it a Class I felony offense for any person to instruct or coerce a known non-citizen to register to vote, or to vote.

Sections 2(a) and 2(b): Amend G.S. 163-278.32 and 163-278.27 to clarify that any certification under Article 22A (Regulating Contributions and Expenditures in Political Campaigns) constitutes an oath, and that any person who knowingly makes a false certification is guilty of a Class I felony. In effect, this clarification reduces the penalty for violation of the statute, since the offense may now be prosecuted as perjury under G.S. 14-209 (Class F felony).

Section 3(a): Amends G.S. 163-278.34(a) to provide that if the State Board of Elections determines a late filing constitutes a willful attempt to conceal contributions or expenditures, it may assess a civil penalty in an amount determinable by the Board, plus the costs of investigation, assessment, and collection. However, the penalty may not exceed three times the amount of the contributions and expenditures attempted to be concealed.

Because most of these offenses are new, there is no historical data from which to project the number of charges and convictions that might result. Moreover, the Administrative Office of the Courts currently does not maintain offense codes for some of the affected statutes (i.e. G.S. 163-278.32 (false certification) and G.S. 163-165.1(e) (unlawful disclosure), which may indicate that such offenses are infrequently charged and/or infrequently result in conviction. Therefore, while the number of resultant charges, convictions, and civil penalty assessments is indeterminate, the *current lack of offense data and applicable penalty levels do not suggest that these offense changes will produce significant fiscal impacts for the Courts or Corrections.*

Department of Correction – Division of Prisons

Because Classes 1 and 2 misdemeanants serve their designated terms of incarceration within local jails, resultant misdemeanor active sentences will not impact the State prison population.¹ However, it is not

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.

known how many additional convictions might occur; therefore, the potential impact on local jail populations is indeterminate.

In FY 2005-06, 20% of Class 1 and 17% of Class 2 misdemeanor convictions resulted in active sentences, with average estimated times served of 31 and 13 days, respectively. Thus, if future convictions result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. But, based on the average sentence lengths for Classes 1 and 2 misdemeanors, DOC reimbursements should not increase significantly.

Conversely, because there are no surplus prison beds, any resultant Class I felony active sentence (G.S. 90-113.23) will necessitate the construction of an additional bed. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustration, if *twelve* Class I convictions occur annually, *the combination of active sentences and probation revocations will require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State approximately \$272,160 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$168,480.² These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.³

Department of Correction: Division of Community Corrections

In FY 2005-06, 83% of Class 2, 80% of Class 1, and 85% of Class I convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Included below is a brief discussion of DCC supervision costs, per offender:

- 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.
- 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.

² New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

³ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

Judicial Branch

Although it is not known how many additional charges might occur for the affected offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and workloads for district attorneys, superior and district court judges, clerks, court reporters, juries, and indigent defense counsel. Furthermore, the additional assessment of civil penalties could result in additional appeals to Superior Court. Consequently, any increase in appeals, depending on the complexity of cases, could also increase superior court workload and court-time requirements. The estimated single trial/plea costs for Classes 1 and 2 misdemeanors cases, as well as Class I felony cases, are shown below. Actual costs may vary from these general estimates, which include indigent defense.

Table 1. AOC Cost Estimates Per Trial and Plea: FY 2007-08		
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
Class 2 Misdemeanor	\$ 2,770	\$ 230
Class 1 Misdemeanor	\$ 3,702	\$ 243
Class I Felony	\$ 6,980	\$ 298

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball, Brian Reynolds, and Anna Cameron

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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