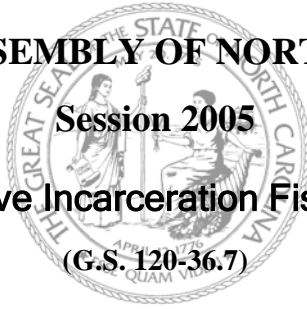


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1025 (First Edition)

SHORT TITLE: Winemaking on Premises Permit.

SPONSOR(S): Representative Luebke

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
GENERAL FUND					
REVENUES:	See "Assumptions and Methodology" p.2				
EXPENDITURES:	Possible fiscal impact, but is not assumed significant.				
Correction	No significant impact anticipated.				
Recurring					
Nonrecurring					
Judicial	Possible fiscal impact, but is not assumed significant.				
Recurring	See "Assumptions and Methodology" p.3.				
Nonrecurring					
ADDITIONAL PRISON BEDS*	None anticipated. Possible, small impact on local jails.				
POSITIONS: (cumulative)	None anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Alcoholic Beverage Control Commission; Department of Correction; Judicial Branch; Local Governments.				
EFFECTIVE DATE:	When it becomes law.				
<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: Amends G.S. 18B-1001 to allow the Alcoholic Beverage Control Commission to issue permits to winemaking-on-premises businesses, thereby authorizing such businesses to sell the ingredients and rent the equipment, time, and space for the production of unfortified wine by individual consumers who are at least 21 years old, and only in jurisdictions where unfortified wine sales are permitted. Also prohibits the manufacture of unfortified wine by a permit holder, with the exclusion of samples for testing recipes or equipment, and requires that any wine produced must be for the personal use of the customer only.

Rewrites G.S. 18B-307 to create the following new criminal offenses:

- The sale or possession of equipment or ingredients intended for use in manufacturing an alcoholic beverage, except that allowed under a Winemaking on Premises permit.
- Knowingly allowing another person to use one's real or personal property for the manufacture of an alcoholic beverage, except that allowed under a Winemaking on Premises permit.
- Manufacture of an alcohol beverage without the applicable ABC permit and revenue licenses, except for an establishment with a Winemaking on Premises permit.

Amends G.S. 18B-902(d) to establish a Winemaking on Premises permit fee of \$400.

ASSUMPTIONS AND METHODOLOGY

General Fund Revenue

While it is unknown how many businesses would apply for a Winemaking on Premises permit, there are currently no permit holders of the similar permit for brewing beer on premises. Accordingly, it is assumed that any revenue generated from the Winemaking on Premises permit fee will likely be an insignificant amount.

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.*

In accordance with G.S. 18B-102(b), any first offense under this bill is a Class 1 misdemeanor. A second or subsequent manufacturing offense is a Class I felony under G.S. 18B-307(b). Because the proposal creates new offenses, there is no historical data from which to estimate its impact on the State's prison population. Thus, it is not known how many offenders might be convicted for these manufacturing offenses, or how many offenders could be repeat offenders. *However, Fiscal Research does not anticipate a significant amount of new charges, convictions, and sentences as a result of this proposal.*

Class 1 misdemeanor: In FY 2004/05, 19% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 30.7 days. *Because offenders serving active*

sentences of 90 days or less are housed in county jails, first offenses under this proposal would not have a significant impact on the prison population. The impact on local jail populations is not known.

Class I felony: In FY 2004/05, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months; 85% of convictions resulted in either community or intermediate sentences, predominantly special, intensive, or general supervision probation. *Though presumed unlikely, if twelve new Class I convictions were to occur for the new repeat offense per year, the combination of active sentences and probation revocations would necessitate one additional prison bed the first year, and four additional prison beds the second. Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State \$65,340 the first year, and \$282,269 the second year; operating costs could be \$26,680 the first year, and \$109,922 the second.*

Department of Correction – Division of Community Corrections

Assuming some additional intermediate or community sentencing, additional costs for probation supervision could also be incurred. 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 (including probation officer cost) per offender per day and is for an average of six months. Electronic house arrest costs \$8.64 (including probation officer cost). 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%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of a 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.

Currently, the AOC has only one offense code for existing manufacturing offenses under G.S. 18B-307: "Manufacture Liquor No Permit," which is coded as a Class 1 misdemeanor. There is no offense code associated with the Class I felony for second or subsequent conviction of a manufacturing offense.

In FY 2004/05, there was 1 conviction under G.S. 18B-307(b), "Manufacture Liquor No Permit." The lack of an offense code suggests that few charges and convictions occur for existing manufacturing offenses; however, it is unclear whether the reference to "liquor" in the offense

description for this offense code is an error, or simply reflects a lack of prior charges/convictions for the unlawful manufacture of an alcoholic beverage.

Nevertheless, any additional charges resulting from the proposed offenses could increase workload and generate additional costs to the court system. The AOC estimates Class 1 misdemeanor court-time costs of \$3,153 per trial, and \$224 per plea; Class I felony costs are \$6,028 and \$274, respectively.

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

TECHNICAL CONSIDERATIONS: The subdivision number of the new permit appears to be an error (G.S. 18B-1001(16)). The bill adds the new permit provision as a “new subdivision,” but subdivision (16) already exists as the “Wine Shop Permit.” The bill makes no reference to repealing or replacing the existing subdivision.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell, Bryce Ball, and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 11, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices