

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 757 (Fourth Edition)

SHORT TITLE: ESC Omnibus Act.

SPONSOR(S): Senator Nesbitt

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments					
EFFECTIVE DATE: Sections 2 and 3 effective July 1, 2005. Section 6 effective December 1, 2005. The remainder of the act effective upon ratification.					
<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: This bill makes an array of changes to the employment security laws of North Carolina. The fourth edition is summarized by section as follows.

Section 1 of the bill (1) amends G.S. 96-13(a)(3) to provide that an individual will not be disqualified from unemployment benefits solely on the grounds of school attendance; and, (2) deletes the current requirement under G.S. 96-13(a)(1) that an individual receiving unemployment

benefits report to an employment office at regular intervals and instead requires such reporting as directed by the Employment Security Commission (ESC).

Sections 2 and 3 of the bill amend G.S. 96-9(b)(3)d3 and G.S. 96-9(b)(3)d5 to reduce employers' unemployment insurance contribution rate by 50 percent when the fund ratio is less than 5 percent and by 60 percent when the fund ratio is 5 percent or more in any year in which the Unemployment Insurance Fund on the computation date is at least 1.95 percent of the gross taxable wages reported to the Commission in the previous calendar year.

Section 4 enacts new G.S. 96-8(28) defining the term "willfully" as having the same meaning as "knowingly" for purposes of Chapter 96.

Section 5 amends G.S. 96-9(c)(4)a to provide that (i) an employer's account does not transfer when an employer's business or part of the business is acquired by another individual who is not an employer at the time of the acquisition or when the individual acquired the business for the purpose of getting a reduced contribution rate, and (ii) whenever part of a business is transferred between entities with substantially common ownership, the tax account will be transferred in accordance with regulations, except that employing units transferring entities with common ownership will not be entitled to separate employer status.

Section 6 of the bill creates a new Class 1 misdemeanor for evading or attempting to evade unemployment insurance contributions under certain circumstances. Under current G.S. 96-18(b1) it is a Class H felony to evade or attempt to evade employment insurance contributions if (1) the employing unit employs more than ten employees; (2) the contribution exceeds \$2,000 or more; or, (3) an experience rating account balance is more than \$5,000 overdrawn. Section 6 of this bill would make such unemployment contribution evasion a Class 1 misdemeanor if none of these three circumstances were present. This section additionally provides that any person who violates G.S. 105-236(9a) (assisting in preparation of fraudulent tax information) and is not subject to a fraud penalty must pay a civil penalty of \$500 per violation for each day the violations continue.

ASSUMPTIONS AND METHODOLOGY:

Summary

As this bill creates a new Class 1 misdemeanor, it would be expected to result in some additional charges and convictions and would consequently incur a fiscal impact. Because the offense is new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. As such, the specific costs to the Courts to settle additional charges and to the Department of Correction and local governments to administer sanctions to convicted offenders cannot be determined.

In FY 2003-04, there were two convictions under G.S. 105-236(7) for the existing Class H felony for income tax evasion or unemployment insurance contribution evasion when (1) the employing unit employs more than ten employees; (2) the contribution exceeds \$2,000 or more; or, (3) an experience rating account balance is more than \$5,000 overdrawn. The Administrative Office of the Courts data does not identify whether these convictions were for income tax evasion or unemployment insurance contribution evasion. Although the number of Class 1 misdemeanor

violations that would occur under this bill is unknown, the small number of convictions for the existing Class H felony may be some indication that unemployment insurance contribution evasion occurs infrequently irrespective of whether the employer has more than ten employees, the contribution exceeds \$2,000, or an experience rating account balance is more than \$5,000 overdrawn. As such, the numbers of additional Class 1 misdemeanor charges and convictions under this bill are not expected to be significant, and the associated fiscal impact is not expected to be substantial.

General

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.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Active Sentences: As the offense created by this bill would be new, the Sentencing Commission has no historical data from which to project the impact on prison population.

- In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, and the average estimated time served was 31 days.
- DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.

Non-Active Sentences: In FY 2003-04, 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

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 the specific bill. For these 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.

As the offense created by this bill would be new, AOC has no historical data from which to estimate the number of additional charges that would occur. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 1 misdemeanor charge via trial is \$3,213. This cost includes an estimated \$1,880 for attorney preparation and court time and an additional \$1,333 in indigent defense. However, based on prior-year data, the majority of any new Class 1 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$284 per plea.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Jim Mills

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: August 5, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices