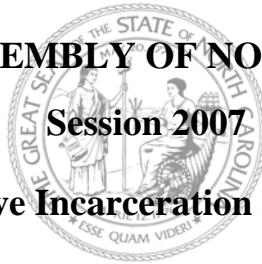


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 1743 (Fifth Edition)

**SHORT TITLE:** Election Amendments.

**SPONSOR(S):** Representative Goodwin

	<b>FISCAL IMPACT</b>				
	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>
<b>REVENUES:</b>					
Civil Penalty and Forfeiture Fund			Amount cannot be determined.		
<b>EXPENDITURES:</b>					
State Board of Elections Section 24:	\$300,000	\$0	\$300,000	\$0	\$300,000
Correction	No significant fiscal impact is anticipated for either Corrections or the Courts; however, the exact amount cannot be determined. See pp. 5-7.				
Judicial					
<b>TOTAL EXPENDITURES:</b>			Amount cannot be determined.		
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>			Amount cannot be determined.		
<b>POSITIONS: (cumulative)</b>			Amount cannot be determined.		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; State and County Boards of Elections; Local Government.					
<b>EFFECTIVE DATE:</b> 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.

Fourth edition (House amendment) makes the following changes to the third edition:

- Directs that the proposed amendments to the following provisions become effective only if any funds necessary to implement them are appropriated: G.S. 163-132.1B (participation in 2010 census redistricting data program of the US Bureau of the Census), G.S. 163-132.3 (alterations to approved precinct boundaries), G.S. 163-132.5G (voting data maintained by voting tabulation district), GS 163-165.7(a)(3) (regarding voting system capacity), G.S. 163-132.5F (US census data by voting tabulation district), and G.S. 163-165.3 (responsibilities for preparing official ballots).
- Makes conforming change.

***Fifth edition (Senate committee substitute) makes the following changes to the fourth edition.***

- Deletes Section 1 of the bill, which would have extended the deadline for absentee ballots by one day. Provides that proposed G.S. 163-278.27(a1) (Class I felony for making a certification knowing the information is false) is effective for offenses committed on or after December 1, 2007.
- Provides for a conforming change to G.S. 163-278.99E(a) extending the time period during which the voter guide must be distributed, if H1517 (voter-owned elections pilot) is enacted.
- Modifies proposed G.S. 163-132.1B to require the Executive Director of the State Board of Elections (SBOE) to report as the state's voting tabulation districts the voting precincts as of January 1, 2008 (was, 2009).
- Requires the Executive Director to consult with the Legislative Services Office concerning the accuracy of the voting precincts before reporting to the Bureau of Census and requires the report to the Bureau in time to comply with the deadlines for the 2010 Census Redistricting Data Program (was, by January 1, 2010). Also requires county boards of elections to report election returns by voting tabulation districts after January 1, 2008 (was, 2009). Also provides that voting tabulation districts are the precincts as of January 1, 2008.
- Modifies proposed amendments to G.S. 163-132.3 to allow the SBOE to set uniform standards for precinct boundaries that must be followed by the county boards of elections.
- Requires the county boards of elections to report every change in precinct boundary to the Executive Director.
- Modifies proposed amendments to G.S. 163-132.5G to provide that the 60-day deadline for reporting returns by voting tabulation district does not relieve the county board of the duty to report all returns as soon as practicable.
- Changes the effective date of changes to G.S. 163-132.3, G.S. 163-132.5G, G.S. 163-165.7(a)(3), and G.S. 163-132.5F, from January 1, 2009, to January 1, 2008.
- Modifies G.S. 163-39 to provide that nothing in the article prohibits a board member or board employee from advising other government entities as to technical matters related to election administration or revision of electoral district boundaries.
- Modifies proposed G.S. 163-166.12(b2) to provide that the procedure for voting when identification numbers do not match applies regardless of whether an individual has registered by mail or another method.
- Provides that if the individual registers and votes under G.S. 163-82.6A, the identification documents required by that statute apply. Amends G.S. 163-82.12 to require the SBOE's guidelines for the administration of the voter registration system to include a provision for notifying voter-registration applicants whose driver's license or last four social security number digits do not result in a validation, attempting to resolve the discrepancy, initiating investigations or challenges, and notifying any voters of the requirement to present identification when voting.
- Modifies proposed G.S. 163-166.3(b) to prohibit a person from photographing, videotaping, or recording the image of a voter within the voting enclosure (was, within, or entering or leaving the voting enclosure). Excludes from the prohibition cameras used as a regular part of the facility's security.
- Prohibits a person from photographing, videotaping, or recording the image of a voted official ballot for any purpose that is not otherwise permitted by law.

- Enacts new G.S. 163-82.20A requiring the SBOE, Department of Correction, and Administrative Office of the Courts to implement educational programs and procedures for persons to apply to register to vote when they are restored to citizenship and all required filings have been completed. Sets minimum steps that must be taken by the program. Effective October 1, 2007.
- Enacts new G.S. 128-7.2, to implement Section 8 of Article VI of the NC Constitution, requiring a person to have been qualified to vote for the office as of the date of appointment in order for a person to be eligible for appointment to fill a vacancy in any elected office. Makes the same change to GS 163-11.
- Effective January 1, 2008, amends G.S. 163-59 to require that a person be qualified by age (was, by age or residency) to vote in the general election in order to vote in the primary. Amends GS 163-226.3(a)(4) to allow the county board of elections to provide multi-partisan teams of board members, employees, or volunteers to assist voters with absentee ballots. The teams are allowed to go into nursing homes with training and authorization from the county board of elections.
- Amends G.S. 163-82.14 to require the county board of elections to complete its voter list maintenance mailing program by April 15 of every odd-numbered year unless the SBOE approves a different date for that county.
- Amends G.S. 163-213.4 to require the chair of each political party to submit a list of its presidential candidates to be placed on the presidential preference primary ballot by the first Tuesday in February of the year preceding the North Carolina presidential preference primary. Removes the requirement that presidential primary candidates be eligible to receive federal matching funds. Provides for candidates that must be included on the list. Requires the SBOE to publish a list of the names of the presidential candidates submitted.
- Effective January 1, 2008, amends GS 163-227.2(g) to require the SBOE to find that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage interests of that county before approving a one-stop voting site in a building that the county board of elections is not entitled to demand and use as an election-day voting place.
- Amends GS 163-278.11 to provide that a treasurer is not required to report the name, address, or occupation of *any* individual (was, resident of the state) contributing \$50 or less. Makes a conforming change to Section 2-8 of SL 1987-476, if S 488 (Carrboro campaign regulation) becomes law.
- Amends GS 163-278.13 to allow a candidate or political committee to accept a contribution knowing that the contribution is to be reimbursed if specified conditions are met. Any contribution that is not submitted for reimbursement or that is not reimbursed is treated as a contribution.
- Amends GS 163-278.34(b) to allow the SBOE to impose a penalty for making an illegal expenditure. Amends GS 163-285 to require all elections held under Article 23 (municipal election procedure) to be reported to the SBOE within 30 days of the certification of the election.
- Makes technical changes to GS 163-278.16B. Amends GS 163-278.110 to provide that the definitions in Article 22 apply.
- Conforms the title.

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 6: H.B. 1743 included \$1,500,000 in FY 2007-08 and \$500,000 in FY 2008-09 to rebuild SEIMS. No further costs are anticipated.

Section 12: Costs are limited by this change. The State Board has funds available this biennium to cover its costs. Local Boards will incur costs for ballot printing and administrative costs but it is not known how many precincts and voters would be affected.

Section 24: H.B. 1473 includes funds for ballot coding for all elections in which a federal election is on the ballot. The State Board may need additional funds for odd-numbered year elections or other elections without a federal race. This cost should not exceed \$300,000.

Section 25: The State Board is responsible for paying the cost of warranty and any repair costs to election equipment this biennium. This responsibility will return to the counties in the next biennium.

Section 29: Costs to Local Boards will vary from no costs to minimal costs depending on the volume of activity.

### **PART II: CRIMINAL OFFENSES**

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

Sections 1(a) and (b): Amends 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).

Sections 9(a) and 9(b): Amends G.S. 163-165.1(e) (Scope and general rules) and G.S. 163-274 (Certain acts declared misdemeanors) 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; also includes electronic records in prohibition.

Sections 16(a) and (b): Amends G.S. 163-82.6 to create 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. Amends G.S. 163-274 to add subsection (14), making it a Class 2 misdemeanor to violate G.S. 163-82.6(a1).

Section 17(a): Amends G.S. 163-275 to make it a Class I felony offense for any person to instruct or coerce a known non-citizen to register to vote, or to vote.

Section 23(a): Amends G.S. 163-166.3 to prohibit persons from photographing, videotaping, or otherwise recording the image of any voter within the voting enclosure, unless the voter and chief judge of the precinct permit. Also prohibits persons from photographing, videotaping, or otherwise

recording the image of any voted ballot for any non-permitted purpose. These prohibitions expand the scope of the Class 2 misdemeanor offense under G.S. 163-273(a) for interfering with a voter inside the voting enclosure.

Section 2(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. Effective when bill becomes law.

Section 37: Amends G.S. 163-278.34(b) to include illegal expenditures in violation of the Article as grounds for civil penalty assessment. SBOE 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 contribution or expenditure.

Because these are new or expanded offenses, 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.<sup>1</sup> However, it is not 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. 163-275) 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

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<sup>1</sup> 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.

\$168,480.<sup>2</sup> 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.<sup>3</sup>

**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.

**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.

<b>Table 1. AOC Cost Estimates Per Trial and Plea: FY 2007-08</b>		
<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

<sup>2</sup> 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).

<sup>3</sup> 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).

**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

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**DATE:** July 31, 2007



**Signed Copy Located in the NCGA Principal Clerk's Offices**