

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 500

SHORT TITLE: Law Enf. Off. Discipline

SPONSOR(S): Representative Hensley

FISCAL IMPACT:           Expenditures:    Increase ( )        Decrease ( )  
                          Revenues:            Increase ( )        Decrease ( )  
                          No Impact (X)  
                          No Estimate Available ( )

FUND AFFECTED:    General Fund ( )    Highway Fund ( )    Local Fund ( )  
                          Other Fund ( )

**BILL SUMMARY:** "TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW" Provides that if investigation by law enforcement agency involves matters that could reasonably lead to any disciplinary action against a law enforcement officer, it is required, among other provisions, that: (1) before being questioned, the officer must be informed of name and rank of investigating officer and of any person present during questioning, and nature of investigation; (2) if investigation is criminal, officer must be informed, before questioning, of names of all complainants and witnesses, must be permitted to review all statements of complainants and witnesses, and must be informed of constitutional and statutory rights in same manner as given to crime suspect; (3) questioning must be recorded, and there must be no unrecorded statements or questions; and (4) upon request, officer must have right to be represented by counsel or other representative who must be allowed to be present during all questioning. Specifies officer's procedural rights authorizes appeal to superior court within 30 days after final agency decision. Provides that officers may be suspended, but only if pay and benefits continue. If officer commits severe offense, officer may be suspended and then terminated summarily according to provisions of local policy. If agency fails to comply with act, officer may apply for injunction from superior court to restrain violation and to compel performance of act's duties; if court finds that agency has violated act, agency must pay officer's reasonable attorney's fees. Court may award exemplary damages up to three times actual loss by officer.

**EFFECTIVE DATE:** October 1, 1993

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Judicial Department

FISCAL IMPACT

<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES	0	0	0	0

<b>RECURRING</b>					
<b>NON-RECURRING</b>					
<b>REVENUES/RECEIPTS</b>	0	0	0	0	0
<b>RECURRING</b>					
<b>NON-RECURRING</b>					

**POSITIONS:** No new positions

**ASSUMPTIONS AND METHODOLOGY:** It is not anticipated that this bill would have a substantial fiscal impact on the Judicial Branch. The Administrative Office Of the Courts (AOC) estimates that there would be very few new case filings in superior court as a result of the proposed legislation. Although no specific data is available to confidently estimate the number of new superior court cases that may occur upon ratification of this bill, the AOC provides the following analysis upon which this "no impact" estimate is based.

"In a telephone interview, the senior agency legal specialist for the North Carolina Justice Academy estimated that of the approximately 17,000 currently certified law enforcement officers in the state, fewer than 2,000 have an express right of appeal at present.

"Highway patrol and alcohol enforcement officers are currently covered by the North Carolina Administrative Procedure Act, which includes a right to appeal to superior court. As of April 1, 1993, there were nine cases pending that had arisen from disciplinary actions and had progressed to superior court or to the Court of Appeals.

"Two identified municipalities with such a right of appeal are Raleigh and Charlotte. The attorney for the Raleigh Police Department stated that in the last twelve years, there have been no more than three cases arising from disciplinary actions that have progressed to superior court. A police attorney for the city of Charlotte reports that in their jurisdiction in 1992, there was one case that progressed to superior court, and no more than three cases in the past five years.

"Deputy sheriffs, who are considered employees at will, are not currently covered by a procedure that includes a right to appeal in superior court; hence, there is a lack of data in that area. It should be noted, however, that in 1992, 718 reports of separation were filed with the Sheriffs' Standards Commission, and an assumption can be made that some of these might have been appealed had such a remedy been available.

"Additionally, all law enforcement officers are subject to the North Carolina Criminal Justice Education and Training Standards Commission, which is responsible for revocation of a law enforcement officer's certification upon a finding of a violation of the commission rules. Within the last five years it has revoked approximately 48 certifications of law enforcement officers, excluding sworn deputies, and only six of these

revocations were appealed to superior court. Sworn deputies accounted for an additional fourteen contested revocations in 1992, of which four were appealed to the superior court level.

"Given the small numbers of cases currently appealed to superior court by officers who have such a right to appeal, we feel that this bill will not have a substantial impact on superior court filings."

Although the AOC does not estimate a substantial fiscal impact on the Judicial Branch due to this individual bill, representatives of the AOC note that "at some point, the cumulative additional workload from bills that impact on the courts cannot simply be absorbed, and additional resources will be required."

**SOURCES OF DATA:** Administrative Office of the Courts

**TECHNICAL CONSIDERATIONS:** The following technical considerations were noted by the AOC:

"Section 4 (a), which addresses the right to appeal, does not indicate if this review would be a trial de novo or a review on the record. Some of those interviewed noted that small municipal law enforcement agencies may not complete sufficient documentation to suffice as an adequate record on review."

"Section 4 (b), which refers to Chapter 150A of the N.C. General Statutes, should refer to Chapter 150B."

**FISCAL RESEARCH DIVISION**

**733-4910**

**PREPARED BY:** Brenda S. Beerman  
Carolyn H. Wyland

**APPROVED BY:** Tom Covington **TomC**

**DATE:** 10-MAY-93

**[FRD#003]**



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