

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 36 (Second Edition)

SHORT TITLE: Government Contractors Must Use E-Verify.

SPONSOR(S): Representatives H. Warren, Cleveland, and Folwell

FISCAL IMPACT				
Yes (X)	No ()	No Estimate Available ()		
<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:				
Correction		<i>*See Assumptions and Methodology*</i>		
Probation		<i>*See Assumptions and Methodology*</i>		
Judicial		<i>*See Assumptions and Methodology*</i>		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch				
EFFECTIVE DATE: October 1, 2011, for contractors that employ 500 or more employees as of that date; April 1, 2012, for contractors that employ 20 or more employees but fewer than 500 employees as of that date; and October 1, 2012, for all other contractors.				
<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:

The proposed legislation enacts new Article 1, Various Provisions Related to Aliens, to G.S. Chapter 64, and recodifies G.S. 64-1 through G.S. 64-5 as Article 1 of G.S. Chapter 64. The act also enacts new Article 2, Verification of Work Authorization by Entities that Contract with Government Agencies, to G.S. Chapter 64. New G.S. 64-11 prohibits a public entity from entering into a contract for construction or repair work, for the purchase of supplies or equipment, or for the purchase of any other services or products unless the contractor participates in E-Verify to verify the work authorization of new employees. The act requires the contractor to certify three specified issues to the public entity at the time the contract is entered into, and requires the contractor to

submit certain certifications to the public entity on a monthly basis, after completion of the contract.

The proposed legislation makes it a Class I felony to knowingly submit a false certification to a public entity under the statute. However, a contractor is not guilty for submitting a subcontractor's false certification, or for failing to verify a subcontractor's certification. New G.S. 64-12 requires a subcontractor to participate in E-Verify, and to certify to a contractor two specified issues within seven days of first furnishing certain construction or repair work. The act also makes it a Class I felony for a subcontractor to knowingly submit a false certification. The act specifies that the failure to provide required certification precludes the subcontractor from maintaining a civil action for amounts owed under or in connection with the subcontract.

The proposed legislation enacts new G.S. 153A-449(b) and G.S. 160A-20.1(b) to prohibit counties and cities from entering into contracts unless the contractor complies with proposed G.S. 64-11.

In addition, the bill enacts new G.S. 143-129(j) to prohibit any board, State governing body, institution of State government, or local government from awarding certain contracts unless the contractor complies with proposed G.S. 64-11. The bill enacts new G.S. 143-48.5 to provide that no contract subject to Article 3 of G.S. Chapter 143 may be entered into unless the contractor complies with proposed G.S. 64-11. Also, the bill enacts new subsection (g) to G.S. 147-33.95, providing that no contract subject to Part 4 (Procurement of Information Technology) of G.S. Chapter 147, Article 3D, may be entered into unless the contractor complies with proposed G.S. 64-11.

The proposed legislation enacts new G.S. 153A-99.1 to require counties to register and participate in E-Verify to verify the work authorization of new employees. The act defines E-Verify as the federal E-Verify program operated by the U.S. Department of Homeland Security and other federal agencies used to verify the work authorization of newly hired employees. Also, the bill enacts new G.S. 160A-169.1 to require cities to register and participate in E-Verify.

Unless otherwise indicated, the act becomes effective as follows, and applies to all bids submitted and all contracts entered into on or after that date: (1) October 1, 2011, for contractors that employ 500 or more employees as of that date; (2) April 1, 2012, for contractors that employ 20 or more employees but fewer than 500 employees as of that date; and (3) October 1, 2012, for all other contractors.

SOURCE: BILL DIGEST H.B. 36 (02/03/0201)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Since the proposed bill creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

§ 64-11. Contractors must use E-Verify; certification required

Subsection (a) requires a contractor who enters into a contract with a public entity to register and participate in E-Verify to verify the work authorization of new employees. Subsection (b) requires said contractor to certify to the public entity in writing that the contractor has verified the work authorization of new employees, that any subcontractor has also done so, and that the contractor has not been convicted of knowingly submitting a false certification within one year prior to making this certification. Subsection (d) makes it a Class I felony for a person to submit a certification to a public entity knowing that it is false.

In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

§ 64-12. Subcontractors must use E-Verify; certification required

Subsection (a) requires a subcontractor to register and participate in E-Verify to verify the work authorization of new employees. Subsection (b) requires said subcontractor to certify to a contractor or another subcontractor (under a contract between a contractor and a public entity) that the subcontractor has verified the work authorization of new employees and that the subcontractor has not been convicted of knowingly submitting a false certification within one year prior to making this certification. Subsection (c) makes it a Class I felony for a person to submit a certification to a public entity knowing that it is false.

In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC: The implementation of this requirement on future bids and contracts will be minimally burdensome. However, as existing contracts enter renewal periods, previous contractors may be unable to properly submit the required verification. In those cases, the Request for Proposals process would have to be re-opened for new contractors. Typically this process takes approximately 45-60 days. In addition, AOC would need to modify and change standard terms and conditions in contracts, and add an additional step to the RFP/contract process to ensure the certification required from the contractor or subcontractor is obtained.

Civil Superior Court: The legislation could potentially result in a higher number of challenged bids based upon alleged false certifications. Challenged bids increase the average workload involved in the procurement process and require the submission of evidence by all parties involved and a hearing on the challenge. All challenges can be appealed to Superior Court, which could increase civil cases filed in Superior Court and increase the workload of Superior Court Judges and deputy clerks. Such cases would require agency time to respond and appearances in court.

Criminal Court: AOC cannot project the number of Class I felony charges that would result from this legislation. The cost per case will vary considerably depending on the method of disposition – trials, for example, require more time and are more costly than pleas or dismissals. Overall, the monetary value of the average workload of a Class I felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was \$480 per indigent defendant.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

TECHNICAL CONSIDERATIONS:

Generally, bills impacting criminal penalties are grouped together with an effective date of December 1, in order to allow the courts, law enforcement, and other entities adequate time for preparation and training and to streamline implementation of all criminal penalty bills.

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