

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1115 (Second Edition)

SHORT TITLE: Election Administration Amendments.

SPONSOR(S): Representatives Ross and Moore

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>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Judicial</b>					
<b>LOCAL GOVERNMENTS</b>					
<b>COUNTY BOARDS OF ELECTION</b>					
<b>ADDITIONAL PRISON BEDS*</b>					
<b>POSITIONS: (cumulative)</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments, and County Boards of Election					
<b>EFFECTIVE DATE:</b> Sections 1, 3, 4, 5, 7, 11: January 1, 2006; All other sections: Upon Ratification.					
*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:<sup>1</sup>**

This bill would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections. There are three sections that could have a fiscal impact: sections 5 and 7, which have criminal penalties, and section 10, which makes a clarification to the filing fee requirements. These three sections are summarized below.

**Section 5:** Current law provides that on election day a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from an immediate family member. Those provisions reflect federal law regarding assistance at federal elections. Current law also provides that at a one-stop site a voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Section 5 of this bill would amend the one-stop law on voter assistance to be the same as that at the polls on election day.

**Section 7:** Current law does not regulate how voter registration drives may pay persons conducting the drives. This section of the bill would prohibit anyone from paying someone to register voters per voter registration application completed. A violation would be a Class 2 misdemeanor.

**Section 10:** Currently, candidate's filing fees are set at 1% of the annual salary of the office sought, except for an office "compensated entirely by fees," which is a flat dollar amount. No offices "compensated entirely by fees" exist today. The bill would remove the references to offices compensated entirely by fees. The bill would also specify that the salary used in calculating the filing fee is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for calculating the filing fee is the incumbent's salary as of January 1<sup>ST</sup> of the election year.

## **ASSUMPTIONS AND METHODOLOGY:**

### ***Election Administration Changes***

The bill provides compliance and/or clarifying legislation to existing statutes. As noted in the bill summary, only sections 5, 7, and 10 could have a fiscal impact. The fiscal impact of sections 5 & 7 are discussed below in the *Modification of Criminal Offenses* subsection.

Section 10 clarifies the filing fee requirement. The bill would remove the statutory references to the filing fees for offices that are compensated entirely by fees. Because no offices compensated entirely by fees exist today, removing these statutory references would not have a fiscal impact. Section 10 also clarifies that the salary to be used in calculating the filing fee, which is a percentage of the annual salary of the office sought, is the starting salary for the office, rather than the incumbent's salary. The State Board of Elections estimates that the clarification of which salary to use in calculating the filing fees could result in a slight reduction in filing fee receipts by boards of elections, assuming that (1) the starting salary is lower than the incumbent's salary and (2) the counties have been using the incumbent's salary. The Board estimates, however, that the reduction would not be significant.

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<sup>1</sup> Adopted from May 6, 2005 Bill Analysis prepared by House Finance Committee Counsel

## ***Modification of Criminal Offenses***

### **General**

Section 5 of this bill would modify the specified list of individuals authorized to provide assistance to voters at a one-stop voting site and would, thus, alter the types of individuals eligible to commit a Class I felony for illegally providing such assistance. Section 7 of the bill would create a new Class 2 misdemeanor for paying or accepting payment for registering voters on a per voter basis. As these provisions modify criminal offenses, they would be expected to lead to changes in adjudication and incarceration rates and an associated fiscal impact to the Department of Correction and the Judicial Branch. However, as the provisions of both sections would not be expected to lead to a significant number of new felony or misdemeanor charges or convictions, the fiscal impact is not anticipated to be substantial.

Current G.S. 163-274(1) and G.S. 163-274(10) provide that it is a Class 2 misdemeanor for specified officials to fail to perform certain duties related to the administration of elections. As several provisions of the bill would expand the set of duties prescribed for some of these officials, additional Class 2 misdemeanor charges and convictions could result under G.S. 163-274(1) or G.S. 163-274(10) for failure in the performance of those duties as required by law. However, given that the class of eligible offenders is small and the scope of behavior encompassed by these offenses is not expanded significantly, the number of new Class 2 misdemeanor charges and convictions under G.S. 163-274 as a result of this bill is not expected to be substantial.

### **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.*

**Section 5:** It is unknown whether altering the specified list of individuals allowed to assist voters at the polls under G.S. 163-226.3 would lead to a decrease, no change, or an increase in the number of offenders sentenced as Class I felons for illegally assisting voters. As such, no estimate of the fiscal impact associated with this provision is available. The Administrative Office of the Courts does not maintain an offense code for violations of present G.S. 163-226.3, which is some indication that the current offense is infrequently charged and rarely results in convictions.

**Section 7:** Because this section would provide for a new Class 2 misdemeanor, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations. As noted in the “General” section, additional Class 2 misdemeanor convictions could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with a maximum length of 60 days and an average length of 23 days. Offenders with active sentences less than thirty days are housed in county jails at county expense, and the Department of Correction (DOC) reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per

offender per day. Because Class 2 misdemeanants serving active time as a result of this offense would be housed in county jails, this provision would not impact prison population.

The remaining 85 percent of Class 2 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 offender 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.

**Section 5:** It is unknown whether the modification to the list of individuals authorized to assist at the polls provided by Section 5 of the bill would lead to a decrease, no change, or an increase in the number of individuals charged with a Class I felony for illegally assisting voters. As such, no estimate is available with respect to the fiscal impact of this provision. As noted in the DOC section, the lack of an offense code for current violations of G.S. 163-226.3 may be some indication that the offense is presently infrequently charged.

**Section 7:** As this section provides for a new criminal offense, no data is available with which to estimate the number of additional Class 2 misdemeanor charges the Courts would process as a result of this bill. However, AOC anticipates that the majority of voter registration campaigns would comply with the requirements of this legislation and would thus expect relatively few new charges to result from this bill.

As noted in the “General” section, additional Class 2 misdemeanor charges could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. The number of additional charges, however, is not expected to be substantial as the bill would only refine current law and not greatly expand the scope of behavior encompassed by this offense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 2 misdemeanor charge via trial is \$2,322. This cost includes an estimated \$1,373 in jury fees, costs of time in court, and attorney costs and an additional \$949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$272 per plea.

**SOURCES OF DATA:** State Board of Elections, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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