

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 290 (Second Edition)

SHORT TITLE: Securities Transfer on Death.

SPONSOR(S): Senator Hoyle

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>	
REVENUES:	Losses in General Fund revenues may range from \$4.3 to \$5.5 million					
EXPENDITURES:						
POSITIONS (cumulative):						
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Administrative Office of the Courts.					
EFFECTIVE DATE:	October 1, 2005					

BILL SUMMARY:

Enacts new GS Ch. 41, Art. 4. Provides for registration of securities in "beneficiary form" to transfer on death or be paid on death. Defines registration as issuance of a certificate showing ownership of a certificated security, or in the case of an uncertificated security, initiation or transfer of an account showing ownership of securities. Beneficiary form is defined as registration that indicates the present owner of the security and his or her intention regarding the person to become the owner when the present owner dies. Upon death of a sole owner or last to die of multiple owners, ownership of securities registered in beneficiary form passes to the beneficiaries who survive all owners. Provides that transfer resulting from registration in beneficiary form is effective by reason of the contract for registration and is not testamentary. The law does not affect estate tax laws and has no effect on ownership of the securities until the owner's death. Registration is allowed only for securities held by a sole owner or by joint tenants with right of survivorship, not for securities owned by tenants in common. Registration may be made when authorized by this law or by a similar statute in the state of the registering entity or owner at the time of registration. Contains protections for registering entities and sets out acceptable language for registration. Clarifies that act does not repeal GS 41-2.2, which applies in making right of survivorship determinations. Amends GS 41-2.2 (joint ownership of corporate stock and

investment securities) to provide that term “securities” used in that statute has same meaning as in GS 41-40(9) and includes “security account” as defined in GS 41-40(10). Makes conforming changes. Effective October 1, 2005.

ASSUMPTIONS AND METHODOLOGY: A change in the handling of securities transfers upon death could affect General Fund revenues either through its impact on estate taxes or through its impact on court fees collected related to estates.

According to the Department of Revenue, the addition of a new article to Chapter 41 to allow a change in ownership of a security resulting from a “transfer on death” will **not** affect inheritance or estate taxes. The provisions of G. S. 105-2 (taxation of assets) and G. S. 105-24 (tax waiver requirements) are clear, and the new section G. S. 41-48 (c) preserves the requirements of the two provisions.

However, this legislation would change the way some securities and security accounts are handled during the administration of estates. Specifically, it would allow the owner of a security or account to pass the security or account directly to the named beneficiary without passing under the owner’s will or under the laws of intestacy. As a result, the value of the securities or accounts would not be included as part of the estate for probate.

This would result in some cases in a reduction in revenues to the General Fund from the General Court of Justice Fees dealing with estates [G. S. 7A-307(a)(2)]. Currently, the clerk collects a flat \$30 fee, other fees pursuant to G. S. 7A-307, and forty cents per \$100 of the gross value of personal property in the estate (referred to as ad valorem fee), up to \$3,000. To the extent that securities currently owned by a single individual are subsequently registered in accordance with this bill, they would not be included in the value of the estate, and the forty cents per \$100 in value that is collected under current law would not be collected. If the security is already owned by multiple individuals with rights of survivorship, their value is already excluded from the ad valorem fee.

There are several reasons why it is difficult to precisely estimate the fiscal impact of the bill. Fiscal Year 2001-2002 data shows that a total of 59,136 estate cases were filed statewide and \$12.34 million was collected in estate costs. However, it is not known how much of this is from the ad valorem fee.

Data is not collected on the amount derived from each type of property in the estate so it cannot be determined how much of the \$10.14 million is fees paid on securities. Because the ad valorem fee is capped at \$3,000, if other assets exceed \$750,000, the removal of securities from the base would have no impact on the fees due. Thus, estimating the impact of the bill requires detailed information on each estate.

Even if it were possible to estimate the amount in court costs being collected from the ad valorem fee on securities, it would be difficult to estimate the extent to which the owners of the securities would take advantage of the provisions of the bill and avoid those costs. Since these court fees are only one factor in the many issues involved in estate planning, it is not possible to project how many people will choose this option.

Study of Estate Fees; the Sample

The Administrative Office of the Courts (AOC) conducted a study in July 2001 to estimate the impact of the bill. They sampled 400 estates settled throughout Calendar Year 1999 in five counties (200 cases in Wake and 50 each in Guilford, Polk, Wayne and Johnston). These counties together represent 12.5% of estate files docketed that year and 16.2% of the state's population but 19.3% of intangible wealth (based on reimbursement amounts), so this sample was somewhat biased towards higher wealth populations. The total value of property itemized in these files included \$59.9 million subject to the ad valorem levy. A total of \$160,413 was collected from the ad valorem fee.

The sample included \$41.6 million in securities with 10.4% of those jointly owned and not subject to the ad valorem fee. In addition, there was \$22.6 million of property other than securities (e.g. bank accounts, personal property) subject to the 40 cents/\$100.

Of the 400 cases in the sample, there were 93 estates including solely owned securities totaling \$37,325,091. The total value of property subject to the ad valorem fee in these 93 cases was \$47,331,088; securities represented 79% of the assets.

If the bill had been law, and securities owners in each case had taken advantage of the securities transfer on death option, court fees collected on these 400 cases would have been decreased by \$71,850. Of the sample, 23.25% of the cases would be potentially affected. The amount of lost fees per estate varied from \$1 to \$2,947.

The sample also indicated a substantial impact from the \$3,000 cap on the ad valorem fee. In 16 of the cases, the total value of property subject to probate exceeded \$750,000 so that the \$3,000 cap was effective, lowering ad valorem fees by \$78,091. In Polk County alone, 7 of the 50 cases sampled had estates exceeding \$750,000, reducing the ad valorem fee by \$29,189.

Projecting Annualized Loss Statewide

In Calendar Year 1999, there were 59,290 estate files docketed. However, not all of these files involved settling of an estate or payment of probate fees. (e.g. this number includes appointments of guardian, inventory of lock boxes, etc). In that same year, AOC data indicates 23,904 cases where there was an itemization of assets for the purpose of assessing fees. Using this number as a base, the sample of 400 cases represents 1.67% (400/23904) of the annual number of estates potentially paying ad valorem fees. Extrapolating from the \$71,850 loss found in the sample, the estimated annual loss statewide would be \$4,328,313. *This is a conservative estimate (e.g. higher potential revenue loss) because it assumes all affected individuals would choose to register their securities to allow security transfer on death. It is not possible to project the percentage of people who will choose to do this.*

An alternative method to estimate the impact is to note that in the sample, the potential loss in court fees (\$71,850) was 44.8% of fees collected (\$160,431) in those 400 estates. Applying this 44.8% figure to the estimated \$12,332,647 in ad valorem fees in 2003-04, the potential loss is \$5,525,026. This is the higher estimate in the box on page 1.

Because of the difficulty of extrapolating from this sample and of predicting how many people would take advantage of securities transfer on death, Fiscal Research cannot assign a specific dollar amount to the fiscal impact of this bill. However, based on the analysis above, there will be a significant fiscal impact because of lost court fees.

SOURCES OF DATA: Department of Revenue; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: Senate Bill 622, the 2005 Appropriations Act, raises the cap on probate fees from \$3,000 to \$6,000. This change generates \$1.6 million in additional revenues, which can offset some of the revenues lost due to allowing the transfer of securities.

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