

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: —SB 326 —2nd Edition

SHORT TITLE: Deterring SUTA Dumping

SPONSOR(S): Senators Clodfelter and Hoyle

	FISCAL IMPACT				
	Yes (<u>X</u> -)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
TOTAL REVENUES					
	<u>No estimate available</u>				
<u>Employment</u>	<u>It cannot be determined how many companies may be fraudulently engaging in SUTA Dumping and thus will be investigated and required to pay funds to the Unemployment State Trust Fund.</u>				
<u>Securities</u>					
<u>Commission</u>					
GENERAL FUND					
<u>Correction</u>					
<u>(Recurring)</u>					
<u>Judicial</u>					
<u>(Recurring)</u>					
<u>Employment</u>					
<u>Securities</u>					
<u>Commission</u>					
TOTAL					
					<u>Unable to determine exact amount.0</u>
EXPENDITURES:					0
					0
					0
					0
ADDITIONAL PRISON BEDS*					
					<u>Unable to determine exact amount.</u>
POSITIONS:					
(cumulative)					<u>Unable to determine exact amount.</u>
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction (<u>DOC</u>); Judicial Branch; Employment Securities Commission				
EFFECTIVE DATE:	<u>Definitions become effective when the act becomes law. Penalties and fines become effective on December 1, 2003.</u>				

**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: The proposed legislation attempts to deter the practice of state employment tax avoidance (SUTA Dumping) by clarifying two statutes. The law makes it clearer that an employer cannot avoid an unemployment insurance tax rate based on its history in the system by creating a dummy company and shifting employees there. The bill adds a new subsection (b1) to current G.S. 96-18, and extends certain current taxation penalties to unemployment insurance contributions.

SB 326 makes it a Class H felony for anyone who willfully attempts, or aids and abets an attempt to defeat or evade an unemployment insurance tax if the employing unit has more than 10 employees, a tax of more than \$2,000 has not been paid, and an experience rating account balance has been overdrawn by more than \$5,000. The bill also adds graded felony penalties for willful assistance in filing false or fraudulent returns (whether or not the employer or chief financial officers knows it is false). It is a Class C felony if the defendant is a contribution tax return preparer and the amount of the tax evaded is \$100,000 or more. It is a Class F felony if the defendant is a contribution tax return preparer and the amount evaded is less than \$100,000. It is a Class H felony if the defendant is not a contribution tax return preparer. _____

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Employment Securities Commission

The Employment Securities Commission (Commission) already considers SUTA Dumping illegal, and the proposed legislation strengthens their ability to research compliance issues. All research and prosecution costs are covered by federal Unemployment Insurance integrity funds, thus there is no State General Fund impact to implementing this legislation.

The State will realize some additional revenues as a result of this legislation. Any recovered tax payments will flow into the Unemployment Insurance State Trust Fund to pay unemployment benefits. Currently, the Commission is researching potential violations of the SUTA Dumping statutes. One possible example would include payment to the State in back unemployment insurance taxes of approximately \$21,000. However, the amounts from the companies being researched vary with each example. **It cannot be determined how many companies may be fraudulently engaging in SUTA Dumping and thus will be investigated and required to pay funds to the Unemployment Insurance State Trust Fund.**

General

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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.

AOC data for calendar year 2002 indicate that 105 defendants were charged under G.S. 96-18(b) for making a misrepresentation to prevent the payment of ESC benefits, a Class 1 misdemeanor under current law. To the extent that a defendant satisfies one of the three criteria listed in new G.S. 96-18(b1) (see bill summary) and is charged under this bill instead of current G.S. 96-18(b) for evading or defeating a tax, the defendant would be guilty of a Class H felony rather than a Class 1 misdemeanor. An enhancement in penalty would be accompanied by a more rigorous defense and prosecution, and would result in increased court time and costs to dispose cases. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is \$5,012. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$283. For those offenses that were previously charged as Class 1 misdemeanors, and would now be charged as Class H felonies, the cost per trial would increase by \$1,868 and the cost per plea by \$4. The difference between the cost for Class 1 misdemeanor trials and pleas, and the higher felony penalties in the bill (Class F and C) would be greater.

The AOC has no data from which to estimate the number of charges that would be subject to the penalty enhancement. AOC data for calendar year 2002 indicate that 93 defendants were charged under current G.S. 105-236(7) for attempting to evade or defeat a tax. However, the AOC cannot determine from these data how many charges, if any, involved unemployment insurance contributions. Furthermore, AOC data reveal that 18 defendants were charged under current G.S. 105-236(9a) for assisting in the filing of a fraudulent tax return. Again, the AOC cannot determine if any of these charges involved fraud by a contribution tax return preparer.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, 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. The number of beds needed will always be equal to the projected number of inmates due to a bill.

As previously mentioned, to the extent that a defendant satisfies one of the three criteria listed in new G.S. 96-18(b1) and is charged under this bill instead of current G.S. 96-18(b) for evading or defeating a tax, the defendant would be guilty of a felony rather than a Class 1 misdemeanor. In FY 2001-02, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days. It is likely that misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Convictions ~~that increase for~~ Class C, H, and F felonies rather than Class 1 misdemeanors to ~~Class C, H, and F felonies~~ will result in more frequent and longer active sentences served in state prisons rather than local jails.

Attempt to Evade or Defeat Tax

Since SB 326 creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. If, for example, there were three Class H convictions under this proposed statute per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Aid or Assist in the Preparation of Fraudulent or False Tax Return

In FY 2001-2002, there were nine (9) convictions for Aid/Assist Fraudulent Tax Return (G.S. 105-236(7)), a similar offense that is punishable as a Class H felony. If a similar number of offenders could be charged under SB 326, the impact could be significant. However, since this proposed section creates several new offenses, the Sentencing Commission does not have any historical data from which to estimate the prison population.

Class C felony. The Sentencing Commission notes that under structured sentencing, all Class C offenders are required to receive an active sentence, with the exception of extraordinary mitigation. In FY 2001-2002, the average estimate time served for an offender convicted of a Class C offense was 101 months. If, for example, there was one Class C conviction under this proposed statute per year, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. ~~The impact of SB 326 on the prison population is slightly reduced in respect to Class F and Class H felony penalties.~~

Class H or F felony. In FY 2001-2002, 45 percent of Class F felons and 9 percent of Class H felons served active sentences. If, for example, there were two Class F convictions under this proposed statute per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. If there were three Class H convictions under this proposed statute per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,787/year. ~~In FY 2001-2002, 45 percent of Class F felons and 9 percent of Class H felons served active sentences. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,787/year.~~

Most Class 1 misdemeanants sentenced to active sentences under current law would be housed in local jails but paid for by the State at a cost of \$18/day (average sentence is 35 days). The increase to a felony would require offenders ~~sentenced to~~ with active sentences to serve those sentences in state prisons. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because the State already pays for many of ~~these~~ Class 1 offenders ~~to~~ who serve active sentences in local jails, there would be some savings in county jail payments to partially offset the costs of housing these offenders in the prison system.

SOURCES OF DATA: Employment Securities Commission, Judicial Branch, NC Sentencing and Policy Advisory Commission, Department of Correction

TECHNICAL CONSIDERATIONS: None.

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