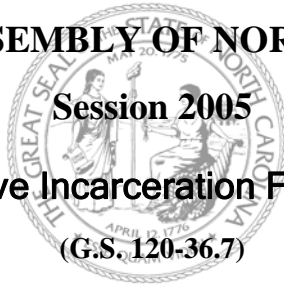# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1844 (Second Edition)

SHORT TITLE: Executive Branch Ethics Act - 1.

SPONSOR(S):   Representatives Brubaker, Hackney, Howard, and Luebke

FISCAL IMPACT

Yes ( )   No ( )   No Estimate Available (x)

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
Judicial					
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS*					
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: October 1, 2006

*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: House Bill 1844 codifies Executive Order Number One that governs ethics in the executive branch as GS 138A. The act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the House Select Committee on Ethics and Governmental Reform. The bill includes several new criminal offenses, which trigger the need for an incarceration note.

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

GS 138A-25 (h) and 138A-35 allow the State Ethics Commission to hold hearings and receive oral evidence under oath or affirmation and require that certain public servants complete statements of economic interest for the Commission, respectively. Willfully making a statement that is false and material while under oath is perjury. Perjury is a Class F felony under G.S. 14-209. In FY 2004/05, there were seven convictions under G.S. 14-209.

It is not known how many additional perjury convictions may occur as a result of this proposed bill. If, for example, there were two additional Class F convictions for this 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 two additional prison beds the second year.

GS 138A-40 creates a new Class 2 misdemeanor if a public servant knowingly conceals or fails to disclose information required by the Commission on a statement of economic interest. There is no historical data by which to estimate the impact of this proposal. Only 16% of Class 2 misdemeanor convictions resulted in active sentences in 2004-05, for an average term of 11.8 days. Since sentences less than 90 days are served in local jails, this section would not be expected to have any impact on the State's prison system.

GS 138A-41 creates a new Class H felony for a public servant knowingly to provide false or misleading information on a required statement of economic interest. For purposes of analysis, the Sentencing Commission assumes that this offense covers statements that are not material, since false information in a material statement is perjury, covered under 138A-25 (h) and 138A-35.

There is no historical data by which to estimate the impact of this proposal, since it is a new offense. In 2004-05, 35% of Class H felonies resulted in active sentences, with an estimated time served of ten months. Thus, to need one additional prison bed in the first year, there would need to be three convictions during the year.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts 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.

The Administrative Office of the Courts has no data with which to analyze this bill, but suspects there would be few cases filed, although these cases might be considered high-profile and time-consuming. The AOC also notes other areas of the bill which might affect court workload:

- Proposed G.S. 138A-25(p) authorizes the Commission to petition the superior court of Wake County for approval to issue subpoenas.
- Proposed G.S. 138A-39 includes fines for failure to file a statement of economic interest; the bill does not specify enforcement actions for fines, but there would be court workload to the extent that court orders would be sought.
- Disciplinary actions, including dismissal, apply to numerous requirements of the Act; the Act does not expressly provide for court review, but it is possible for a person to seek court relief, for example, alleging action by the Commission that is arbitrary, capricious and contrary to law, and general provisions of law for review of agency decisions could apply.

The AOC is not able to forecast the impact of any of these considerations.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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