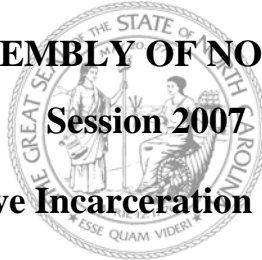


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1737 (Fifth Edition)

SHORT TITLE: Legal Expense Funds.

SPONSOR(S): Representative Goodwin

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Board of Elections	\$0	\$29,556	\$59,113	\$59,113	\$59,113
Correction	No significant impact anticipated. Exact amount cannot be determined.				
Judicial	See pp. 3-5 for Assumptions and Methodology.				
TOTAL					
EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL					
PRISON BEDS:		Amount cannot be determined.			
(cumulative)*					
POSITIONS:					
(cumulative)	0	.5	1	1	1
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Government; and State Board of Elections.					
EFFECTIVE DATE: January 1, 2008.					
<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: Enacts new Article 22M of GS Chapter 163 requiring an elected official, or another person on the elected official’s behalf, to create a legal expense fund (fund) if given a contribution to fund an existing or potential legal action taken by or against the elected official in his or her official capacity. Money remaining in the fund upon completion of the action must be distributed to the Indigent Person’s Attorney Fee Fund or to the North Carolina State Bar for civil legal services for indigents. Provides for the appointment and removal of a treasurer and for the treasurer’s training. The treasurer must keep detailed accounts and file an organizational report and quarterly reports with

the State Board of Elections, each of which must include specified information. Requires the treasurer to electronically file each report that shows a cumulative total for the quarter exceeding \$5,000 in contributions or expenditures. The treasurer does not have to report the name of individuals making a total contribution of \$50 or less in a quarter. Prohibits contributions in excess of \$50 unless the contribution is in a form that is subject to written verification and provides that non-cash contributions may not be made unless they contain a specific designation of the intended contribution chosen by the contributor. Violation of the new Article is a Class 2 misdemeanor. Makes conforming changes to G.S. 163-278.22(7) and G.S. 163-278.22(8). Effective January 1, 2008. Repeals G.S. 163-278.36 (Elected officials to report funds).

House committee substitute makes the following changes to the first edition:

- Modifies proposed G.S. 163-278.300 (definitions) as follows: (1) expands the definition of elected officer to include an individual seeking an elected office in NC (was, individual serving in an elected office) and defines what constitutes seeking elected office, (2) adds the term expenditure as defined in GS 163-278.6(9), and (3) specifies that the term person does not include the state of NC or any of its political subdivisions.
- Modifies proposed G.S. 163-278.301 by (1) providing that the section (creation of legal expense funds) does not apply to any contribution to the state or any of its political subdivisions, and (2) providing that a violation of G.S. Chapter 163, Article 22M, is a Class 1 misdemeanor (was, Class 2).
- Makes technical changes.
- Makes the act effective January 1, 2008 [was, section 1 (definitions), section 2 (regarding investigations of alleged violations), and section 3 (reporting of apparent violations to district attorney) become effective January 1, 2008, and the remainder becomes effective when it becomes law].

Third edition (House amendments) makes the following changes to the second edition:

- Amendment #1 modifies proposed G.S. 163-278.320 to allow money remaining in the legal expense fund to be distributed to any of the seven listed funds or organizations (was, either to the Indigent Person's Attorney Fee Fund or to the North Carolina State Bar for the provision of civil legal services for indigents).
- Amendment #2 modifies proposed G.S. 163-278.300 to change the definition of *person* to an individual (removing firm, partnership, committee, association, corporation, business, or other organization or group of persons acting together, excluding the state or any of its political subdivisions).
- Modifies proposed G.S. 163-278.316 to prohibit a legal expense fund or its treasurer from accepting contributions from any corporation, labor, union, insurance company, professional association, or other business entity regardless of whether the entity does business in North Carolina. Also limits contributions to \$4,000 per person per year.
- Modifies the title to read *AN ACT TO REGULATE LEGAL EXPENSE FUNDS OF ELECTED OFFICERS TO PROVIDE FOR DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES AND TO LIMIT CONTRIBUTIONS.*

Fourth edition (Senate committee substitute) makes the following changes to the third edition:

- Modifies proposed G.S. 163-278.300 to exclude the following from the definition of *contribution*: (1) the provision of legal services to an elected officer by the state or any of its political subdivisions when those services are required by law and (2) the provision of free legal advice or services, except that any costs incurred or expenses advanced for which clients are liable under other provisions of law are contributions.

- Modifies the definition of *elected officer* to include an individual seeking or serving in a public office (was, elected office) and provides that an individual continues to be an elected officer as long as a legal action that was commenced while the individual was an elected officer continues. If a legal action is commenced after an individual is no longer serving or seeking public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, the individual is considered an elected officer as long as that legal action continues.
- Defines *legal action* as a formal dispute in a judicial, legislative, or administrative forum, and investigations made or conducted before the commencement of any formal proceedings.
- Defines *official capacity* and *public office*.
- Modifies proposed G.S. 163-278.301 to exclude contributions from an elected officer or the officer's spouse, parents, or siblings from those contributions for which a legal expense fund must be created. If a legal expense fund accepts contributions, the fund must report the officer's contributions and those from family members along with the other contributions. Excludes contractual arrangements from contributions, but if a legal expense fund has been created, then contractual arrangements must be reported as expenditures. Provides that the statute does not prohibit an elected officer from funding a legal action or potential legal action from a candidate campaign account as long as the funds are permitted under G.S. 163-278.16B (use of contributions for certain purposes).
- Modifies proposed G.S. 163-278.308 to provide for the certification of the accuracy of filed statements. Makes it a Class I felony to make a certification knowing that the information is false.
- Modifies proposed G.S. 163-278.316 to prohibit a contribution to a legal expense fund that would be a violation of GS 163-278.13B or GS 120-302 if made to a candidate or political committee. Deletes the \$4,000 contribution limit.
- Modifies proposed G.S. 163-278.320 to provide for the distribution of money remaining in a legal expense fund upon the closure of a legal expense account (was, upon completion of the legal action or potential legal action).
- Amends G.S. 163-278.5 (scope of article; severability) and G.S. 163-278.23 (duties of executive director of board) to include references to Articles 22G (candidate-specific communications), 22H (mass mailings and telephone banks: candidate-specific communications), and 22M (legal expense funds).
- Makes technical changes and conforms the title.

Fifth edition (Senate amendment) makes the following changes to the fourth:

- Modifies proposed G.S. 163-278.300 to exclude the election itself or the campaign for election from the definition of *legal action*.
- Modifies proposed G.S. 163-278.301 to delete the provision provide that the statute does not prohibit an elected officer from funding a legal action or potential legal action from a candidate campaign committee or other campaign account or from a combination of those funds as long as the fund is permitted in G.S. 163-278.16B.
- Makes conforming technical changes.
- Modifies proposed G.S. 163-278.320 to prohibit an elected officer's campaign from being funded from a legal expense fund.

Source: *Bill Digest H.B. 1737 (04/18/0200)*.

ASSUMPTIONS AND METHODOLOGY:

State Board of Elections

In 2006, the General Assembly authorized three time-limited staff to audit campaign finance reports. S.L. 2007-323 maintained this staffing through December 2008. Based on the additional responsibilities for auditing campaign reports in the bill, it will be necessary for the Board of Elections to convert one of the temporary staff to permanent. The costs for a permanent Audit Specialist (\$48,139 annual salary), including benefits and administrative costs, are \$29,556 for FY 2009 and \$59,113 in future fiscal years.

Criminal Offense: H.B. 1737 creates a new Class 1 misdemeanor offense for violation of proposed Article 22M of Chapter 163, and a new Class I felony offense for a knowing, false certification under the Article. Because these are *new* offenses, there is no historical data from which to estimate their potential impact. However, based on current resource levels, Fiscal Research expects that any new charge and/or conviction will generate some additional cost to the Courts and Corrections. However, *the nature of the offenses and proposed penalty levels (Class 1 misdemeanor and Class I felony) do not suggest a significant fiscal impact.*

Department of Correction: Division of Prisons

It is not known how many additional violations and convictions might result. However, since Class 1 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence will not impact the state prison population.¹ The potential impact on local jail populations is unknown.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Thus, if future convictions result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. But, based on the average sentence length for Class 1 misdemeanors, DOC reimbursements should not increase significantly.

Conversely, because there are no surplus prison beds, any resultant Class I felony active sentence (G.S. 90-18) will necessitate the construction of an additional bed. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustration, if *twelve* Class I convictions occur annually, *the combination of active sentences and probation revocations will require one additional prison bed in the first applicable year; four additional beds in the second year; and two new employees in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State approximately \$272,160 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$168,480.²

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

² New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). "Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the

These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.³

Department of Correction: Division of Community Corrections

In FY 2005-06, 80% of Class 1 and 85% of Class I convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Included below is a brief discussion of DCC supervision costs, per offender:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Although it is not known how many additional charges might occur for these offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and workloads for district attorneys, superior and district court judges, clerks, court reporters, juries, and indigent defense counsel. The estimated single trial/plea costs for Class 1 misdemeanor and Class I felony cases are shown below. Actual costs may vary from these general estimates, which include indigent defense.

Table 1. AOC Cost Estimates Per Trial and Plea: FY 2007-08		
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243
Class I Felony	\$ 6,980	\$ 298

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

TECHNICAL CONSIDERATIONS: None

same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

³ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball, Brian Reynolds, and Anna Cameron

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: August 1, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices