

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 908

SHORT TITLE: Suits and Appeals by Indigents

SPONSOR(S): Representative Michaux

FISCAL IMPACT: Expenditures: Increase () Decrease ()
 Revenues: Increase () Decrease (X)
 No Impact ()
 No Estimate Available ()

FUND AFFECTED: General Fund (X) Highway Fund () Local Fund (X)
 Other Fund ()

BILL SUMMARY: Amends G.S. 1-110 to specify that a person is presumed to be and may sue as a pauper under certain enumerated conditions, such as the receipt of certain public benefits (food stamps, AFDC, etc.) or representation by a legal services organization that has as its primary purpose the representation of indigents. Also allows a superior or district court judge to authorize a person who does not meet one of the enumerated conditions to sue as a pauper when unable to pay costs of action. Also deletes requirement that to sue as a pauper the person must prove he or she has a good cause of action, but adds provision allowing court to dismiss case and charge costs to the person suing as a pauper if the court finds that the action is frivolous or malicious or that the person's affidavit claiming pauper status is untrue. Makes similar changes to G.S. 7A-228(b1) (appeal from magistrate's order) and to G.S. 1-288 (appeal from superior or district court to appellate division).

COMMITTEE SUBSTITUTE - Apr. 30, 1993

House committee substitute (1) replaces the term "pauper" with "indigent" throughout the bill; (2) requires an affidavit that the person is unable to give security for costs as required by G.S. 1-109; (3) deletes receipt of Medicaid as a ground for determination of indigency; and (4) provides that a person is "deemed" indigent (original bill, "presumed") if the bill's conditions are met.

EFFECTIVE DATE: October 1, 1993; applicable to all suits or appeals prosecuted on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department
FISCAL IMPACT

FY 93-94 FY 94-95 FY 95-96 FY 96-97 FY 97-98

EXPENDITURES	0	0	0	0	0	R
NON-RECURRING						
REV./RECEIPTS	(\$104,882)	(\$139,843)	(\$139,843)	(\$139,843)	(\$139,843)	
GENERAL FUND	(75,957)	(101,276)	(101,276)	(101,276)	(101,276)	
COUNTY/MUNCIP.	(28,925)	(38,567)	(38,567)	(38,567)	(38,567)	

POSITIONS: No new positions.

ASSUMPTIONS AND METHODOLOGY: The above estimated reductions in receipts are based on an analysis performed by the Administrative Office of the Courts (AOC). The following narrative, provided by the AOC, has been edited by the Fiscal Research Division and explains said analysis.

"The effect of the proposed bill would be to simplify the practice by which civil litigants may sue or appeal as paupers. Although the specific criteria in the bill are probably similar and in some cases the same as factors that are considered under present law, the bill would make any one such factor conclusive. It is expected that more persons will make requests to proceed as paupers, and fewer requests will be denied. The fiscal impact will result from an increase in cases for which court costs are not collected.

"Superior court is the "proper" division for civil actions in which the amount in controversy exceeds \$10,000. For such litigation, the number of additional cases as a result of this bill is expected to be relatively small. The same assumption is made for estates and special proceedings cases.

"Most of the fiscal impact from this bill is expected to arise from district court. District Court is the property division for civil cases involving \$10,000 or less, including all small claims and domestic relations cases. Based on information from Clerks of Superior Court and others, substantial impact may arise from domestic violence cases in which the victim is seeking to proceed as an "indigent." The fiscal impact, a reduction in receipts, will be the number of additional "indigent" cases times the following costs:

	<u>General CT. of Justice Fee</u>	<u>Facility Fee</u>	<u>Service Fee</u>
General civil and domestic (incl. magistrate appeals):	\$40	\$10	\$5
Civil magistrate cases (small claims):	\$28	\$6	\$5

"The AOC does not maintain data on the specific numbers of suits in which a party proceeds as a pauper under present law. Since under the proposed committee substitute, all persons represented by legal services organizations would be deemed "indigent," we contacted Carolina Legal Services (CLS). It was reported that practices differ in various areas of the states, both with regard to review of requests by the court, and among CLS organizations

with regard to whether pauper status is routinely sought for every client. CLS estimates ranges from very few additional clients who would proceed as indigents under the bill, to a significant number of clients. Actual data were not available.

"CLS estimates would account only for their clients. It was estimated that due to limited staff resources, legal services organizations are able to represent only some 10% to 20% of the persons who need legal assistance and who would qualify for CLS' services. Substantial impact from this bill may be from cases not directly involving legal services representation. Direct representation by a legal services attorney is only one of five criteria set out in the bill. Another criterion is receipt of food stamps. According to the Department of Human Resources, Social Services Division, as of March 1992, 641,113 people in North Carolina were receiving food stamps. One Clerk of Superior Court observed that many people who are eligible to proceed as indigents probably do not know that they may make such a request. Enactment of this bill, if publicized, could increase the number of people who proceed as indigents even aside from the substantive changes in the law.

"Based on estimates from clerks, it is currently estimated that some 3% of domestic relations cases, 1% of other district court civil non-magistrate cases (including magistrate appeals), and 1% of civil magistrate cases (small claims) proceed as pauper suits. In light of the proposed legislation, it is estimated that there would be an increase of 50% in the number of such suits. Hence, 4.5% of the domestic cases, 1.5% of other district court civil cases, and 1.5% of the civil magistrate cases would proceed as pauper suits."

"Based on projected year-end filings for fiscal 1992-93, the estimated number of additional district court cases (for which costs would not be collected) total 1,462 domestic cases (an increase of .015 in pauper cases x 97,482 projected filings in 1992-93); 246 other district court civil non-magistrate cases (.005 x 49,230); and, 1,177 civil magistrate cases (.005 x 235,452). Multiplied by the court costs listed above, the annual reduction in General Court of Justice Fees would total \$101,276 (\$58,480 for domestic cases, \$9,840 for general civil, and \$32,956 for civil magistrate). The annual reductions in facility fees would total \$24,142 (\$14,620 for domestic cases, \$2,460 for general civil, and \$7,062 for civil magistrate). The annual reductions in service fees (assuming only one service fee in each case) would total \$14,425 (\$7,310 for domestic cases, \$1,230 for general civil, and \$5,885 for civil magistrate). Since nearly all service fees and facility fees in civil cases are paid to counties, these figures are combined in the totals shown on page 1 of this fiscal note.

"It is assumed that this bill would not result in a substantial amount of additional work for judicial officials and clerks. Although the additional requests for pauper status will involve some additional work, the disposition of the requests may be

simplified by the existence of conclusive criteria and the elimination of the requirements to show by one or more witnesses that there is a good cause of action."

SOURCES OF DATA: Administrative office of the Courts

TECHNICAL CONSIDERATIONS: The following technical considerations have been noted by the AOC:

"I. At present, the term "indigent" is generally used to refer to indigent persons who have a right to court-appointed counsel in criminal and certain other cases, pursuant to G.S. 7A-450 et. seq.; determination of "indigency" is governed by provisions in Chapter 7A and constitutional considerations. The term "pauper" is generally used for civil cases and the qualifications to proceed as a pauper, although also related to poverty, are not necessarily the same as the considerations in criminal cases. The bill would replace the term "pauper" with the term "indigent". If the term "indigent" is to be used for civil cases as well, consideration should be given to amending other provisions of law that currently use the term "pauper," including G.S. 1-109(3) (plaintiff's prosecution bond for costs), G.S. 6-24 (no fees required of person suing as pauper), and G.S. 111-22 (blind person not deemed pauper by reason of receiving benefits under article).

"II. At lines 4 and 35 on page 2, and line 27 on page 3, the proposed committee substitute refers to subdivisions (1) through (6), but the bill only contains subdivisions (1) through (5)."

FISCAL RESEARCH DIVISION

733-4910

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