

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 862 (First Edition)
SHORT TITLE: Amend Plant Protection and Conservation Act.-AB
SPONSOR(S): Representative Hill

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available () across fiscal years FY 2007-08 to FY 2011-12. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY: Amends GS 106-202.15 to include in the duties of the North Carolina Plant Conservation Board maintaining a list of protected plant species that includes each plant’s status. Also includes the duty of establishing permit fees. Removes reference to 1980 publishing duties and to entering cross references in the species list. Amends GS 106-202.17 to require that the

Scientific Committee (Committee) include a member of a conservation organization, instead of a member of specifically listed organizations. Amends GS 106-202.18 to give the Committee authority to review and comment on, but not veto, state agency projects that have the potential to affect protected plants (was, review and comment on botanical aspects of environmental impact statements). Amends GS 106-202.19 to increase the penalty for violations of the Plant Protection and Conservation Act (Act) from a Class 3 misdemeanor with a fine only to a Class 2 misdemeanor. Amends GS 106-202.19 to allow an agent of the Department of Agriculture and Consumer Services to inspect papers and records related to the Act. Make technical changes. Effective October 1, 2007.

ASSUMPTIONS AND METHODOLOGY:

General

G.S. 106-202.19, Unlawful acts; penalties; enforcement, makes it a Class 3 misdemeanor (punished by a fine only) for a person to violate any of the provisions of Article 19B of Chapter 106 of the General Statutes, or any rule of the North Carolina Plant Conservation Board adopted pursuant to Article 19B. Accordingly, because this bill reclassifies violation to a Class 2 misdemeanor offense, any additional charge would be expected to generate some additional fiscal impact.

The Administrative Office of the Courts presently does not maintain an offense code for G.S. 106-202.19, indicating that such offense is infrequently charged and/or infrequently results in conviction. *Thus, given the nature of offense and proposed penalty level, Fiscal Research does not anticipate a significant impact due to this proposed legislation.*

Department of Correction: Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Because Class 2 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence due to this proposal should not impact the state's prison population.¹ The potential impact on local jail populations is unknown.

In FY 2005-06, 17% of Class 2 misdemeanor convictions resulted in active sentences, with an average estimated time served of 13 days. To the extent that future convictions for the proposed offense were to result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, given the typical length for Class 2 misdemeanor active sentences, Fiscal Research does not anticipate a significant increase in reimbursements due to this proposal.

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.

Department of Correction: Division of Community Corrections

For felony offenses classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by Division of Community Corrections (DCC); DCC also oversees community service.

In FY 2005-06, 83% of Class 2 misdemeanor convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, if future convictions under G.S. 106-202.19 were to occur, the Division of Community Corrections (DCC) could assume 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.

Presently, 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. However, 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

Under current law, violations are subject only to fines, in the amounts specified by the statute. As amended, violations would be subject to incarceration (depending on prior conviction level, from one to 60 days, G.S.15A-1340.23) as well as a fine. In addition, this bill could also increase the amount of fine a person would be subject to. Fines now range from \$100 to \$500 for a first offense, and from \$500 to \$1,000 for subsequent offenses. As amended, the amount of fine imposed could reach \$1,000 for all offenses (the maximum fine amount for Class 2 misdemeanors in G.S. 15A-1340.23). These penalties are credited to the Civil Penalty and Forfeiture Fund.

The AOC presently does not have an offense code in its automated system for G.S. 106-202, which is some indication that there are relatively few charges. Nevertheless, the proposed penalty enhancement is expected to be accompanied by more vigorous defense and prosecution, resulting in increased court time and the costs of case disposal. Moreover, all indigent costs assumed would constitute additional costs, since these would not have been incurred under current law (no chance of incarceration).

Presently, the estimated cost per Class 2 misdemeanor trial is \$2,770; the estimated cost per plea is \$230. Actual costs may vary from this general estimate, which includes indigent defense costs.

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

TECHNICAL CONSIDERATIONS: None

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