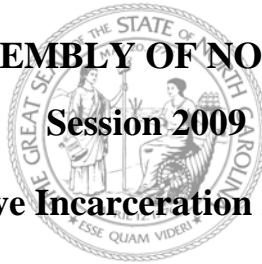


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 961 (Sixth Edition)

SHORT TITLE: Gov't Ethics and Campaign Reform Act of 2010.

SPONSOR(S): Representatives Glazier, Stam, Ross, and Goodwin

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
REVENUE	None Anticipated				
EXPENDITURES:					
<u>General Fund</u>					
State Board of Elections	\$101,636	\$0	\$0	\$0	\$0
State Ethics Commission	\$537,013	\$326,943	\$349,469	\$369,013	\$383,889
Correction	Exact amount cannot be determined*				
Judicial	Exact amount cannot be determined*				
POSITIONS:					
(cumulative)					
State Ethics Commission	4	4	4	4	4
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; State Ethics Commission, State Board of Elections, Governor and Office of State and Budget Management.					
EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.					
<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:

House Bill 961 would make various changes to the public records laws, ethics laws, and lobbying laws. Except as otherwise provided, this bill is effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY:

Administrative Costs

State Board of Elections

According to the State Board of Elections (SBOE), HB 961 will require the contractual services of one Special Investigator position at a rate of \$50 per hour in order to investigate complaints. Fiscal Research calculates that 1,800 hours of annual work at the minimum rate of \$50 per hour, plus associated operating costs, would total \$101,636:

Contractual Services	\$90,000
Travel	\$1,500
Email & Calendaring	\$156
Registration & Ed Expenses	\$300
Supplies	\$2,000
Telephone	\$1,500
PC/Printer	\$1,680
Office Furniture	\$2,000
Office Equipment	\$2,000
PC Software	\$500
TOTAL	\$101,636

Section 7 of HB 961 requires SBOE to create a searchable database to provide any member of the public with access to information sorted by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time. However, due to time constraints, SBOE is unable at this time to estimate the cost of this software development.

Office of State Budget and Management and the Governor

Section 8 of the bill codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of \$10,000.

There are no new costs associated with requiring the use of NC OpenBook. Executive Order Number 4 established the requirement for NC OpenBook, so funding for the project has already been identified, and the system is already being implemented. Total cost of ownership for the system, which includes operations and maintenance costs through 2015, is expected to be \$1,684,409.

Section 13 of the bill authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. The Office of State Budget and Management estimates that the bill will have no fiscal impact on the Office of the Governor.

State Ethics Commission

The State Ethics Commission estimates that Sections 3, 12, 13 and 14 would require a minimum of \$537,013 in additional funding for FY 10-11 and subsequent fiscal years, which includes the following:

- Salary, fringes, and associated costs for one Attorney II and one Paralegal III for compliance and enforcement, as well as two Paralegal IIs for customer service regarding compliance and any additional rules or standards implemented by the Governor: \$277,505
- Contractual legal services: \$100,000
- Online/electronic filing of Statements of Economic Interest (SEIs): \$110,000
- Legal research tool: \$6,000
- Online education: \$20,000
- Other associated IT costs: \$23,508

Furthermore, Section 3(c) would apply a “cooling off” period for lobbyist registration to *all* State agency employees, which in turn would likely generate a large amount of information requests for the State Ethics Commission regarding how to comply with this provision. Although the Commission cannot predict the total number of requests that would be generated, it is possible that additional staff members would be required in order to process these requests.

Section 13 would give the Governor the power to adopt additional ethics standards for appointees and State employees. The scope of these additional standards and associated workload could vary widely, and could potentially require future additional positions in the State Ethics Commission; however, at this time it is not possible to estimate the exact fiscal impact of this section of the bill.

Section 14 would change the indirect gift ban analysis for the State Ethics Commission, and would likely result in an increased number of information requests to the Commission. This in turn would increase the workload of existing staff members, although at this time it is impossible to estimate whether this would exceed existing capacity.

Office of State Personnel

Section 17 of the bill expands the amount of personnel information that can be made public to include the date and amount of each salary change or each position change (i.e., promotion, demotion, transfer, suspension, separation, or classification). The Office of State Personnel (OSP) estimates that, although this legislation would create additional work for all personnel staff in all State agencies, the additional work required is similar enough to the work that is currently performed that it can be absorbed into the current workforce. Therefore, OSP anticipates no additional cost associated with Section 18 of the bill.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

An analysis of selected sections of H961 affecting the Department of Correction follows:

Section 1. This section creates a new Class 2 misdemeanor by adding subsection (a1) to G.S. 126-14, Promise or threat to obtain political contribution or support. Subsection (a1) makes it unlawful for a Constitutional officer of the State or an individual elected or appointed as a constitutional officer of the State prior to taking office (hereafter, “individual”), while knowing or having reason to know that a person (1) is doing or is seeking to do business of any kind with the individual’s employing entity, (2) is engaged in activities that are regulated or controlled by the individual’s employing entity, or (3) has financial interests that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the individual’s official duties, to coerce the person to support or contribute to a political candidate, a political committee, or a political party by threatening discipline or promising preferential treatment with regard to that person’s business with the individual’s State office or that person’s activities regulated by the individual’s State office. Effective December 1, 2010, and applicable to offenses committed on or after that date.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2008/09, 23% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 11 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under the existing offense of bribery in G.S. 14-217, it is a Class F felony for a State officeholder to receive or consent to receive directly or indirectly anything of value or personal advantage, or the promise thereof, for performing or omitting to perform an official act within the scope of his official authority, or with the express or implied understanding that his official act or omission is to be influenced thereby. A subset of the acts covered by the new offense would already be covered by G.S. 14-217, insofar as (1) the person’s support or contribution to a political candidate, committee, or party would amount to a receipt of something of value or personal advantage to the individual under new G.S. 126-14(a1), and (2) the individual coerces the support or contribution through preferential performance (or nonperformance) of official duties *vis a vis* the person’s business or financial interests related to (or regulated by) the individual’s office. There was 1 conviction under G.S. 14-217 in FY 2008/09. Because the AOC’s Automated Criminal/Infractions System does not contain data on specific elements of conduct, it is not known if this conviction was for conduct covered under the proposed offense.

Section 2(a). This section may enlarge the scope of an existing Class 1 misdemeanor in G.S. 14-234, Public officers or employees benefitting from public contracts; exceptions, by amending subpart (a)(3). Currently G.S. 14-234(a)(3) forbids a public officer or employee from soliciting or receiving “any gift, reward, or promise of reward,” in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. Section 4(a) would expand the list of forbidden benefits to include any “favor” or “service” and would explicitly include the “promise of future employment” within the current prohibition on any “reward.” Given the existing bar against any form of “reward,” it is unclear whether the proposed amendment to (a)(3) would actually increase the range of forbidden acts. Effective December 1, 2010, and applicable to offenses committed on or after that date.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-234(a)(3). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 2(b). This section amends subsection (a) of G.S. 14-217, Bribery of officials, to make the offense applicable to a person “who has filed a notice of candidacy for or been nominated for such office” in addition to actual office holders. The amendment would make it a Class F felony for a candidate or nominee for office (except in payment of legal salary, fees, or perquisites) to receive or consent to receive directly or indirectly anything of value or personal advantage, or the promise thereof, for performing or omitting to perform an official act within the scope of his official authority, or with the express or implied understanding that his official act or omission is to be influenced thereby. **Section 2(b)** also adds subsection (d) to G.S. 14-217, to specify that a “thing of value or personal advantage” includes a campaign contribution made or received under General Statutes Chapter 163, Article 22A (Regulating Contributions and Expenditures in Political Campaigns). While it is unclear whether subsection (d) expands the reach of the statute’s broad coverage of the direct or indirect receipt of “anything of value or personal advantage,” **Section 2(b)** significantly increases the pool of potential offenders by including candidates and nominees for public office.

In FY 2008/09, there was one conviction under G.S. 14-217. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 55% of Class F convictions resulted in active sentences, with an average estimated time served of 19 months. If, for example, there were two additional Class F convictions for this offense per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for two additional prison beds the first year and three additional prison beds the second year.

Section 3(c) amends G.S. 120C-304(c) to provide that an employee of a State agency may not lobby the State agency that previously employed the former employee within six months after voluntary separation from employment with the State agency. Currently, subsection (c) applies only to the heads of all principal State departments who are appointed by the Governor, as set forth in G.S. 143B-6, Principal departments, and forbids them from registering as lobbyists under Chapter 120C within six months after separation from their employment as public servants. The proposed amendment would thus greatly expand the range of covered employees (albeit excluding those involuntarily separated from employment).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 120C-304(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 3(d). This section creates a new offense by adding to the registration requirements for a lobbyist who is a former state employee. It is currently a Class 1 misdemeanor under G.S. 120C-602(a) to willfully violate any provision of Article 2 (Registration) of General Statutes Chapter 120C (Lobbying). Under G.S. 120C-200, Lobbying Registration Procedure, it is unlawful to lobby without registering within one business day of engaging in any lobbying. Subsection (b) of G.S. 120C-200 lists the information required in a registration. **Section 3(d)** adds subsection (f) to G.S. 120C-200, which would further require a former state agency employee who registers as a lobbyist within six months after voluntary separation from employment with the agency to disclose the agency with whom he or she was employed. A registrant's willful failure to disclose the state agency with whom he or she was employed would constitute a violation of Article 2 punishable as a Class 1 misdemeanor under G.S. 120C-602(a). Effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 120C-602(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 6(a) creates a new Class I felony by adding subsection (a2) to G.S. 163-278.27, Criminal penalties; duty to report and prosecute. Subsection (a2) makes it unlawful for a person or

individual to intentionally violate G.S. 163-278.14(a) (making a contribution anonymously or in another's name, or knowingly accepting same) or G.S. 163-278.19(a) (political contribution by corporation, union, or other entity), and the unlawful contributions total more than ten thousand dollars (\$10,000). This conduct is currently punished under subsection (a) of G.S. 163-278.27 as a Class 2 misdemeanor. Effective December 1, 2010, and applies to offenses committed on or after that date.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-278.27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many convictions under the current subsection (a) would meet the \$10,000 threshold for the proposed Class I felony in subsection (a2). In FY 2008/09, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, 11 Class 2 misdemeanor convictions per year were to become Class I felony convictions under the proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

Section 9 amends the definition of "Public servants" in G.S. 138A-3(30), Definitions, to include members of the State Ethics Commission, the executive director, and the assistant executive director of the Commission; individuals under contract with the State working in or against a position included under this subdivision; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority. "Public servants" as defined in statute are covered by the State Government Ethics Act in Chapter 138A of the General Statutes. Every covered person subject to the Act who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, must file a statement of economic interest with the State Ethics Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter. By expanding the definition of "public servants," this section is expanding the pool of potential violators of the offenses contained in Chapter 138A. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in

county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H 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.

Section 10 amends G.S. 143B-478, Governor's Crime Commission – creation; composition; terms; meetings, etc., by adding subsection (f) which states that the Governor's Crime Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes. As a result, its members will be considered public servants under the State Government Ethics Act. Every covered person subject to the Act who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, must file a statement of economic interest with the State Ethics Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter. By expanding the definition of "public servants," this section is expanding the pool of potential violators of the offenses contained in Chapter 138A. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense

is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H 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.

Section 11 amends G.S. 138A-22, Statement of economic interest; filing required, by adding subsection (d1). This subsection requires a covered person who is holding elected office or a former covered person who held elective office to file a statement of economic interest on or before April 15 of the year following the year the covered person elects not to continue in the position or resigns from the position. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H 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.

Section 14 expands the gift ban in G.S. 120C-303(a) and G.S. 138A-32 to include gifts that are intended for multiple recipients. Although **SECTION 14(d)** refers to offenses committed on or after December 1, 2010, there does not appear to be any criminal offense directly resulting from violation of G.S. 138-32. Effective December 1, 2010, and applies to offenses committed on or after that date.

Section 14(a) amends G.S. 120C-303(a) to forbid a lobbyist or lobbyist principal from knowingly giving a gift with the intent that a designated individual be an ultimate recipient thereof. Currently the provision requires knowledge that the designated individual will be the ultimate recipient thereof. The amendment would thus reach gifts intended for more than one recipient. Under G.S. 120C-602(a), violation of this provision is a Class 1 misdemeanor.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 120C-602(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 16 amends the definitions in G.S. 120C-100(a) to specify that a “lobbyist” is an individual who engages in lobbying “for payment” (rather than one who receives “payment for services”), that a lobbyist includes one who contracts for “payment” (rather than “economic consideration”) for lobbying, and that the “lobbyist principal” is a person or governmental unit who makes payment for the lobbying.

SECTION 16(f) makes a technical amendment to G.S.120C-300(a) to prohibit an individual from acting as a lobbyist “and receiv[ing] payment for lobbying” that is dependent upon a result or outcome of any legislative or executive action. Currently, the provision bars an individual from acting as a lobbyist “for payment for services” that is dependent upon a result or outcome. As amended, the offense would not require that the contingent fee be for “services” rendered by the lobbyist. Violation of G.S. 120C-300 is a Class 1 misdemeanor under G.S. 120C-602(a).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 120C-300(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Assuming this technical amendment expands the reach of the statute, it is not known how many additional convictions would result. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 16(g) makes a technical amendment to G.S. 120C-305 to forbid a lobbyist, or person acting on the lobbyist’s behalf, to “lobby by permitting” a designated individual or the individual’s immediate family member to use the lobbyist’s cash or credit unless the lobbyist is present at the time of the reportable expenditure. Currently, the statute forbids the lobbyist or person acting on his or her behalf to “permit” a designated individual or the individual’s immediate family member to use the lobbyist’s cash or credit “for the purpose of lobbying” unless the lobbyist is present for

the reportable expenditure. The amendment would further specify that G.S. 120C-303, Gifts by lobbyists and lobbyist principals prohibited, applies to G.S. 120C-305. Violation of G.S. 120C-305 is a Class 1 misdemeanor under G.S. 120C-602(a).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 120C-305. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Assuming this technical amendment expands the reach of the current statute, it is not known how many additional convictions would result. In FY 2008/09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 16(k) expands the quarterly and annual reporting requirements for a lobbyist principal under G.S. 120C-403, Lobbyist principles reports. Section 120C-403 requires each lobbyist principal to file quarterly reports under oath with the Secretary of State. **Section 16(k)** would add subpart (b)(6), requiring the lobbyist principal to report, for each registered lobbyist, the name of any person or governmental unit not otherwise registered as a lobbyist principle for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for payment or not. **Section 16(k)** also adds subsections (d) and (e) to G.S. 120C-403. These subsections would require the lobbyist principle to annually report the total payments to any lobbyist (1) for lobbying, or (2) for communications and activities used to lobby during the registration period. 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. Effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

There were 3 convictions under G.S. 14-209 in FY 2008/09. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008/09, 55% of Class F convictions resulted in active sentences, with an average estimated time served of 19 months. If, for example, there were 2 additional Class F convictions for the offense per year, the combination of active sentences and probation revocations would result in the need for two additional prison beds the first year and three additional prison beds the second year.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

An analysis of selected sections of H961 affecting the Judicial Branch follows:

NOTE: Under the current time constraints, only a general analysis is possible. Nothing omitted from this analysis should be construed to have no impact on the Judicial Branch.

1. Various sections of the bill increase the number of individuals who could be charged with misdemeanors or felonies under G.S. 14, 120C, 126, 138A, and 163, as well as broadening the prohibited actions. There is the potential for an increase in felony and misdemeanor charges. Costs for charges disposed in the courts are as follows:

Penalty	Cost per Trial	Cost per Plea	Indigent Defense*
Class F Felony	\$11,303	\$1,144	\$885
Class H Felony	\$7,794	\$559	\$540
Class I Felony	\$6,809	\$447	\$480
Class 1 Misdemeanor	\$296	\$141	\$225
Class 2 Misdemeanor	\$170	\$85	\$225
Class 3 Misdemeanor	\$140	\$77	\$225

2. Section 19(a) enacts new 7A-38.3E, which creates a new mediation program. There will be initial costs for establishing new rules and developing new forms to implement the program. In addition to those one-time costs, there will be ongoing case-related costs. These include new appointment and notice requirements for the clerks, and new caseloads for mediation. AOC cannot project the number of cases that will require mediation under the new program, nor can AOC project the amount of time required per case. Sections 19(a) and 19(b) also expand workload for the Supreme Court to adopt standards regulating the new program and procedures for enforcing those standards. The amount of time required is not known at this time.

Section 19(c) amends the statutes regarding access to records to require that the person has complied with the new mediation program. However, the fifth edition of the bill added GS 7A-38.3E(h) to provide that nothing in GS 7A-38.3E is to be construed to prohibit a party who is seeking production of public records from seeking injunctive or other relief, including seeking the production of public records before any scheduled mediation. Therefore, there would not necessarily be a significant reduction of workload under GS 132-9 (Access to records) to offset the new filings under GS 7A-38.3E.

In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. A typical misdemeanor case took approximately 88 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch; State Board of Elections; Office of State Budget and Management; and the State Ethics Commission.

TECHNICAL CONSIDERATIONS:

None

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