

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE  
(INCARCERATION NOTE G.S. 120-36.7)**

**BILL NUMBER:** SB 1420 1st Edition

**SHORT TITLE:** Shakedown Prevention

**SPONSOR(S):** Senator Gulley

<b>FISCAL IMPACT</b>					
	Yes ( )	No ( )	No Estimate Available (X)		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Judicial</b>					
<b>State Board of Elections</b>					
Cannot determine if complaints and/or violations will occur.					
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS*</b>					
<b>POSITIONS:</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; State Board of Elections					
<b>EFFECTIVE DATE:</b> January 1, 2003					
<p><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></p>					

**BILL SUMMARY:** The proposed legislation amends G.S. 126-13 to provide that *all* State employees are prohibited from campaign activities while on duty, or using their positions to support a candidate or issue. It amends G.S. 126-14 and G.S. 126.14-1 to provide that it is

unlawful for any person (State employee, appointee, or non-State employee) to coerce any State employee (or applicant) to support or contribute to a candidate, political committee or party, or to change voter registration. Increases the classification of the offense from a Class 2 misdemeanor to a Class H felony for a willful violation. Knowing acceptance of a coerced contribution is subject to a civil penalty of up to three times the amount of the contribution. (Summary Provided by the Research Division of the General Assembly.)

**ASSUMPTIONS AND METHODOLOGY:** As explained below, FRD cannot determine whether there will be violations of this statute. It is possible that the expanded scope of the proposed legislation would result in additional violations. If there are new complaints, the State Board of Elections will be impacted. If there are new violations that involve criminal penalties, the prison and court systems will be impacted. However, there is not data available to determine whether these complaints or violations will in fact occur.

### **Department of Correction**

To project the impact of a bill on the prison population, the Sentencing Commission uses data based on offense codes from the Administrative Office of the Courts (AOC). Offenses that are infrequently charged or infrequently result in convictions are not assigned offense codes. Violations of the statutes amended in this bill (G. S. 126-13, 126-14, 126-14.1, 126-15) are not assigned offense codes. This is an indication that violations are relatively rare. Without data from the AOC, the Sentencing Commission cannot provide an estimate of the impact of this bill.<sup>1</sup>

The proposed legislation would expand the offenses whose violation is a Class 1 misdemeanor to include all prohibited activity in G. S. 126-13 and expand the individuals covered under the section to “all State employees without exception” (including public school employees, community college employees, and employees of the University of North Carolina). Prohibited activities include political activities of any State employee within any period of time during which he receives compensation from the State and any State employee’s use of the authority of his position, State funds, supplies, or vehicles, to support or oppose a candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof. The AOC cannot estimate the number of charges that would result from the expanded scope, but does not anticipate a large number of charges. On average, for every seven convictions of a Class 1 misdemeanor, one offender receives an active sentence averaging 40 days to be served in a local jail. For 30-90 day sentences in local jails, the Department of Correction reimburses the county \$18/day. If sentencing practice for this offense is similar to that of other Class 1 misdemeanors, for every seven convictions on 1st offense, the cost to the state would average \$720 (=40\*18).

The bill would also make the willful violation of G. S. 126-14 and G. S. 126-14.1 a Class H felony, rather than imposing a Class 2 misdemeanor for any violation (willful or not) of those statutes. The AOC cannot determine the number of charges or convictions that would result from this

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<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

amendment, but it believes that current violations are infrequent. Using statewide averages for convictions and sentence lengths, the Sentencing Commission estimates that reclassifying three convictions each year from a Class 2 misdemeanor to a Class H felony would result in the need for one additional prison bed the first year and two additional prison beds the second year due to active sentences and probation revocations.

Based on the most recent population projections and estimated available prison bed capacity, there are no surplus prison beds available for the five year Fiscal Note horizon and beyond. This means that any increase in Class H felony convictions will impact the need for new prison beds. Due to the January 2003 effective date and time it would take for an offender to be convicted and begin serving a prison sentence, the prisons would not see an impact from this bill until FY 2003-04. For each additional prison bed needed in that year, the average statewide operating cost is estimated to be \$71.34/day.

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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 AOC relies on offense code data to project the court costs of a bill; the lack of data for these offenses prevents the AOC from estimating the court impact. However, the AOC believes that violations of these statutes are relatively infrequent.

### **State Board of Elections**

The State Board of Elections would be responsible for the enforcement of the provisions in SB 1420. The impact on the Campaign Reporting Office would be on staff to process complaints, investigate, and, if necessary, prepare for State Board Hearings or DA referrals. There may be travel and other expenditures for staff or investigators to gather information. The estimated cost would be dependent upon the number of complaints and locations for investigation. In addition, if State Board Hearings were necessary travel and subsistence for the five board members for each meeting would also be required. The estimated cost of these hearings would be approximately

\$1,500 per meeting. The Board responds to approximately 50-75 written complaints per year. Of these complaints, 5-15 are heard before the State Board each year.

The State Board of Elections has two election investigators, with only one having the primary responsibility to campaign reporting violations. Therefore, the number of complaints received would determine the specific impact on the investigator workload and associated costs. The Campaign Reporting Office responds to all campaign reporting/political advertising complaints filed with the State Board of Elections and all 100 county boards of elections. However, other than the potential impact on staff and the associated costs with possible hearings, the Board expects that there would likely be minimal fiscal impact on the Campaign Reporting Office.

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

**TECHNICAL CONSIDERATIONS:** None

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