

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 514 (Second Edition)
SHORT TITLE: Uniform Military and Overseas Voters Act.
SPONSOR(S): Representatives Glazier, Lewis, Martin, and Killian

Table with fiscal impact data. Columns: Yes (X), No (), No Estimate Available (), FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16. Rows: REVENUE, EXPENDITURES (Correction, Probation, Judicial), PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED, EFFECTIVE DATE.

BILL SUMMARY:

The proposed legislation amends proposed G.S. 163-258.6(b) to delete the provision requiring that declarations be received by the deadline to register to vote in G.S. 163.82.6(c), when a covered voter applies to register to vote simultaneously with the submission of a federal write-in absentee ballot. The act creates new subsection (d) to G.S. 163-258.6 providing that the deadline for receipt of voter registrations is 5:00 p.m. the day before an election. In addition, the act amends proposed G.S. 163-258.8 to clarify that an application is considered a valid absentee ballot request for any election covered under G.S. 163-258.3 held during the calendar year in which the application was received, and that an application for a military-overseas ballot is timely if received by 5:00 p.m. the day before the election.

The proposed legislation amends proposed G.S. 163-258.9(a) to require absentee ballots for municipal elections be available no later than 30 days before an election. The act clarifies that for second primaries that include candidates for federal office, the county board of elections must transmit ballots to specified covered voters no later than 45 days before the second primary. The act provides that for second primaries that do not include a candidate for federal office, the transmission of ballots must be as soon as practicable, and must be transmitted electronically no later than three business days, and by mail no later than 15 days from the date the board of elections orders a second primary.

The act also amends proposed G.S. 163-258.10 to clarify that a military-overseas ballot is valid if it is received by the appropriate county board of elections no later than the close of the polls, or if the voter submits the ballot for mailing, electronic transmission, or other authorized means of delivery, not later than 12:01 a.m. at the place the voter completes the ballot on election day.

The act amends proposed G.S. 163-258.16 by directing, for a second primary required by G.S. 163-111, the county board of elections to prepare, no later than the day following the date the appropriate board of elections orders that a second primary be held, an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot.

The proposed legislation adds new section to amend G.S. 163-111(e) to require that a second primary required under the statute must be held ten weeks after the first primary if any of the offices for which a second primary is required are for a candidate for the U.S. Senate or the U.S. House of Representatives. Otherwise, the second primary must be held seven weeks after the first primary.

The act adds new section to amend G.S. 163-234(2) to authorize the county board of elections to begin counting absentee ballots issued under Article 21A of G.S. Chapter 163 between 9:00 a.m. and 5:00 p.m. (previously could not do so before 2:00 p.m.) on election day.

The proposed legislation becomes effective January 1, 2012.

SOURCE: BILL DIGEST H.B. 514 (03/29/0201)

ASSUMPTIONS AND METHODOLOGY:

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.

Department of Correction – Division of Prisons

The bill repeals or recodifies the provisions of G.S. Chapter 163, Article 21 (Military Absentee Registration and Voting in Primary and General Elections) and enacts the Uniform Military and Overseas Voting Act as new G.S. Chapter 163, Article 21A. Both Articles provide for voter registration and casting of absentee ballots by absent uniformed-service voters and overseas voters.

Both current Article 21 and proposed Article 21A require a signed statement by the prospective voter regarding the person's identity and other pertinent information in order to register to vote and/or to submit an absentee ballot.¹ Accordingly, both articles subject the prospective voter to the Class I felony offense in G.S. 163-275.² Certain acts declared felonies, which makes it unlawful for any person, "fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter[.]" "knowingly to swear falsely with respect to any matter pertaining to any primary or election[.]" "with intent to commit a fraud to register or vote at more than one precinct or more than one time . . . in the same primary or election, or to vote illegally at any primary or election[.]" "falsely to make the certificate provided by G.S. 163-229(b)(2) or G.S. 163-250(a)[.]" or "falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting[.]"

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-275. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

If additional Class I felony convictions were to result from the proposed bill, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months in FY 2009-10. If, for example, there were ten Class I felony convictions for this proposed 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 three additional prison beds the second year.

¹Registration procedures are set forth in proposed G.S. 163-285.6, Methods of registering to vote. The voter declaration requirement for military-overseas ballots are found in G.S. 163-258.13, Declaration. These provisions are comparable to those currently codified in G.S. 163-246, Provisions of Article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations, and in subsection (c) of G.S. 163-248. Register, ballots, container-return envelopes, and instruction sheets.

² It appears that certain criminal offenses which are incorporated by reference from Article 20 (Absentee Ballot) into current Article 21 are not expressly incorporated by reference into proposed Article 21A. *See* G.S. 163-226.3, 163-237, 163-246. However, these offenses are Class 2 misdemeanors or Class I felonies which address conduct that is also covered by the Class I felony offense in G.S. 163-275, insofar as they involve voting-related misconduct by a prospective overseas voter. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-226.3, 163-237, or 163-246. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Department of Correction – Division of Community Corrections

For felony offense 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 the Division of Community Corrections (DCC); DCC also oversees community service.³

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

G.S. 163-275 in Section 1 of the bill subjects the prospective voter to a Class I felony offense. AOC is not able to estimate how many new charges might arise due to the passage of this bill.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class F felonies in this bill will represent new charges in superior court, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the

³ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

average indigent defense cost for a Class H felony case was \$540 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

Section 1 also creates new 163-258.18 that allows a court to issue an injunction or grant other equitable relief appropriate relief to ensure substantial compliance with, or enforce, this Article. AOC is not able to estimate how many additional civil filings may result from the passage of this bill. It is not clear if these filings will take place in District or Superior Court.

If they are heard in Superior Court there will be workload impact for Deputy Clerk and Superior Court judge time, for an estimated average cost of \$353 per case. Each petition for an injunction would be accompanied with a \$160 civil superior court filing fee. From this fee, the General Fund receives \$125.40 per case. The table below contains detail on this fee.

Superior Court Civil Filing Fee			
Fee:	Revenue to:	Filing Fee per case:	Amount to General Fund:
General Court of Justice	General Fund	\$122	\$122.00
	State Bar*	\$3	\$0.30
Phone	Court System	\$4	--
Facilities	Local Government*	\$16	\$1.60
Service of Civil Process	Local Government*	\$15	\$1.50
Collection Assistance Fee	General Fund*	*	
TOTAL		\$160	\$125.40

*Ten percent (10%) of the State Bar, Facilities, and Process Served fee is remitted to the General Fund as a collection assistance fee.

If they are heard in District Court there will be workload impact for Deputy Clerk and District Court judge time, for an estimated average cost of \$149 per case. Each petition for an injunction would be accompanied with a \$115 civil district court filing fee. From this fee, the General Fund receives \$80.40 per case. The table below contains detail on this fee.

District Court Civil Filing Fee			
Fee:	Revenue to:	Filing Fee per case:	Amount to General Fund:
General Court of Justice	General Fund	\$77	\$77.00
	State Bar*	\$3	\$0.30
Phone	Court System	\$4	--
Facilities	Local Government*	\$16	\$1.60
Service of Civil Process	Local Government*	\$15	\$1.50
Collection Assistance Fee	General Fund*	*	
TOTAL		\$115	\$80.40

*Ten percent (10%) of the State Bar, Facilities, and Process Served fee is remitted to the General Fund as a collection assistance fee.

Overall, In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

State Board of Elections:

The State Board of Elections estimates that there will be no fiscal impact as a result of this Bill. Fiscal Research concurs with this estimate. The State Board of Elections has already undertaken, or is in the process of undertaking, changes to military and oversees voting that would result from this bill becoming law. Many of the mandates established in this bill are already contained in Article 21 of G.S. 163.

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

TECHNICAL CONSIDERATIONS: None

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