

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 671 (Fourth Edition)

SHORT TITLE: Real Prop. Electronic Recording/Notary Act.

SPONSOR(S): Senator Hartsell

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES					
General Fund	No Impact to General Fund				
Secretary of State	No estimate available: see Assumptions and Methodology				
EXPENDITURES					
General Fund					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS					
	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*					
	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)					
	Exact amount cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Secretary of State: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2005					

BILL SUMMARY: Senate Bill 671 enacts the Uniform Real Property Electronic Recording Act as recommended by the General Statutes Commission and repeals the current laws related to the qualification and commissioning of notaries public and enacts a more extensive Chapter related to the same. It also includes new provisions related to electronic notarizations and includes a number of new criminal offenses.

The act would become effective December 1, 2005 and would apply to applications for commissions and recommissions made on or after that date. The criminal provisions would apply to offenses committed on or after December 1, 2005 regardless of whether the notary's commission was issued under Chapter 10A or 10B. Commissions granted under Chapter 10A would remain effective until they expire are provided under that law.

ASSUMPTIONS AND METHODOLOGY:

Fees

No estimate is available on Section 1 through 3 of the bill (Uniform Real Property Electronic Recording Act). Section 4 through 12 are concerned with notaries. This bill creates two new fees related to notaries. The notaries' fee up to \$10 in section 10B-48 bears no fiscal impact to the State because notaries' fees are retained by the notaries and not remitted to the State.

The \$50 application fee for electronic notaries in section 10B-41 must be paid in addition to the nonrefundable \$50 application fee required of all notaries. This increases the cost for certification of an electronic notary to a total of \$100. The Secretary of State does not know how many applications they will receive for electronic notaries and therefore an estimated fee revenue from this change is unavailable. There are currently 168,000 notaries in North Carolina.

Incarceration Note

PERTINENT BILL SUMMARY:

The following statutes are changed under the bill in Sections 4 through 12. Senate Bill 671 would replace and expand existing criminal penalties under Chapter 10A:

Class 1 Misdemeanors

G.S. 10B-35(b) expands the existing set of Class 1 misdemeanors under G.S. 10A-12(a), which prohibits the performance of notarial acts by individuals not commissioned as notaries. New G.S. 10B-35(b) would maintain this offense and add new offenses for performing notarial acts prior to the administration of the oath of office or after the commission has expired or been suspended.

G.S. 10B-35(c) raises the offense from a Class 2 to a Class 1 misdemeanor for acknowledging or performing a verification or proof without first verifying the signer's identity.

Class I Felonies

G.S. 10B-35(d) expands current G.S. 10A-12(c), which provides that it is a Class I felony for a notary to take an acknowledgement or perform a verification or proof while knowing that it is false or fraudulent. New G.S. 10B-37(d) adds that it would also be a Class I felony to take an acknowledgement, verification, proof, or jurat without the principal appearing before the notary.

G.S. 10B-35(e) provides that it is a Class I felony for a person who is *knowingly* not commissioned as a notary to perform notarial acts. Such conduct is currently punishable as a Class 1 misdemeanor irrespective of whether it is performed knowingly.

G.S. 10B-35(f) creates a new Class I felony for unlawfully obtaining, using, concealing, defacing, or destroying the records or seal of a notary public. As these offenses could presently be charged under current fraud statutes or present G.S. 14-398 (theft or destruction of property in a State office), substantial numbers of new charges or convictions would not be expected due to this provision.

G.S. 10B-57(b) creates a new Class I felony for unlawfully obtaining, concealing, damaging, or destroying the certificate, disk, card, file, software, or hardware that enables a notary to affix an electronic signature.

G.S. 10B-35(j) provides that any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct would be guilty as an aider and abettor and be subject to the same level of punishment as the notary. Under current *G.S. 10A-12(d)*, it is a Class 1 misdemeanor to solicit or coerce a notary to commit official misconduct. Thus, these offenses could be raised to Class I felonies, if the misconduct perpetrated by the notary was punishable as such.

Class G Felony

G.S. 10B-57(a) creates a new Class G felony for knowingly creating, manufacturing, or distributing software that permits a person who is not commissioned as a notary to act as an electronic notary.

ASSUMPTIONS AND METHODOLOGY:

Summary

The criminal penalties under new Chapter 10B would be substantially similar to those under existing Chapter 10A as they relate to traditional notarial duties for hard copy records. The Administrative Office of the Courts currently does not maintain a specific offense code for violations of the existing offenses under Chapter 10A, which is some indication that the offenses are infrequently charged and rarely result in convictions.¹ Although some additional court and prison impact could result from the expanded scope of and elevated penalty for some offenses, given that the numbers of charges and convictions under current law are likely small, any additional impact is not expected to be substantial.

The Electronic Notary Act under new Article 2 provides for two altogether new felonies, which could result in some additional charges and convictions and an associated impact to the Courts and Department of Correction. The relative infrequency of charges and convictions for the existing offenses relating to hard-copy notarial records and acts may be some indication that the numbers of new charges and convictions relating to electronic notaries would not be substantial.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and

¹ Some available data under a “free text” field for certain offenses indicates that there are relatively few charges for those offenses.

estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As AOC does not have a specific offense code for violations of present statutes regulating notaries public (some indication that convictions may be infrequent), the Sentencing Commission does not have any historical data from which to estimate the impact on prison population. AOC does have some data with respect to charges for these offenses (see “Judicial Branch”), which indicates that the number of charges for existing offenses is small.

Active Sentences

The table below outlines for the applicable offense classes the FY 2003-04 active sentence rate, average active sentence length, and the potential jail and prison impact. Because the number of convictions that would occur under this bill is unknown, the specific jail and prison impact cannot be determined, although it is not expected to be substantial. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Offense Class	Active Rate	Average Active Sentence Length	Potential Prison Bed / Jail Impact
Class 1 Misdemeanor	19%	43 days	DOC reimburses counties for housing offenders sentenced to 30 – 90 days at a rate of \$18 per day per offender. As most Class 1 misdemeanants would be housed in county jail, significant prison impact is not anticipated.
Class I Felony	11%	7 – 9 months	If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.
Class G Felony	44%	15 – 19 months	If, for example, there were two Class G felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.

Non-Active Sentences

The following table lists the non-active sentence rates in FY 2003-04 for convictions in the applicable offense classes.

	Class 1 Misdemeanor	Class I Felony	Class G Felony
<i>Intermediate Sentence Rate</i>	2%	40%	56%
<i>Community Sentence Rate</i>	79%	49%	-

Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediates sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

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.

Although AOC does not maintain an offense code for violations of Chapter 10A (some indication that charges may be infrequent), data entered into a free text field indicates the following numbers of charges for existing offenses:

Statute	Offense	Offense Class	Charges
§ 10A-12(a)	Performing notarial acts when not commissioned as a notary.	Class 1 Misdemeanor	2
§ 10A-12(b)	Acknowledging or performing a verification or proof without verifying the signer's identity.	Class 2 Misdemeanor	11
§ 10A-12(c)	Taking an acknowledgement or performing a verification or proof while knowing that it is false or fraudulent.	Class 1 Felony	8
§ 10A-12(d)	Soliciting or coercing a notary to commit official misconduct.	Class 1 Misdemeanor	1

As this bill would expand these existing criminal offenses and create several new offenses, no data is available to estimate the specific number of additional charges that might result from this bill, although the number is not expected to be substantial. For any new charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior and district court workload. AOC estimates the cost per charge based on offense class as shown in the table below.

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	-
<i>Class 1 Misdemeanor</i>	\$1,880	\$1,333	\$3,213	\$284
<i>Class 1 Felony</i>	\$3,904	\$1,931	\$5,835	\$330
<i>Class G Felony</i>	\$5,092	\$2,529	\$7,621	\$379

AOC notes that new Article 2 regulating electronic notarization could have some additional impact on the Courts, depending upon the extent of any necessary computer programming and other procedural change. However, as e-filing is in a preliminary stage of development, no data is available from which to estimate the potential impact on the court system.

SOURCES OF DATA: NC Secretary of State; Administrative Office of the Courts; Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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