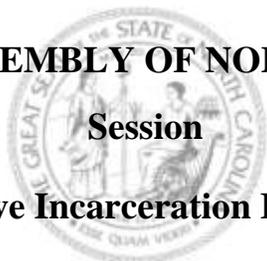


GENERAL ASSEMBLY OF NORTH CAROLINA



Session

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 36 (First Edition)

SHORT TITLE: Public Contracts/Illegal Immigrants.

SPONSOR(S): Representatives H. Warren, Cleveland, and Folwell

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
GENERAL FUND					
Correction					Exact amount cannot be determined*
Probation					Exact amount cannot be determined*
Judicial					Exact amount cannot be determined*
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to all bids submitted and all contracts entered into on or after that date.					
<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:

The proposed legislation enacts new G.S. 143-129.1A to prohibit any state agent or employee, any board or governing body of the state or of any state government institution, or any local government agent, employee, or governing body, from awarding a contract for construction or repair work or a purchase contract for apparatus, supplies, materials, or equipment to any contractor or subcontractor who knowingly employs or contracts with an illegal immigrant to perform work under the contract. The act defines *contractor* as any person, firm, association, or corporation that desires to submit a bid or contract with any state department, institution, or agency, or the board or governing body of any local government, to perform construction or repair work or to supply any materials or equipment.

The proposed legislation requires a contractor to verify the legal status or authorization to work in the United States of each individual employed by the contractor to perform work under the contract, following the E-Verify Program administered by the U.S. Department of Homeland Security, before submitting a bid or contracting with any of the listed entities. The proposed legislation also requires the contractor to certify, on a form approved by the Secretary of Administration, that the contractor has verified the legal status or work authorization of each employed individual. In addition, the act makes it a Class I felony to submit a knowingly false certification.

The act requires each contract entered into under Article 8 of G.S. Chapter 143 to include the following provisions: (1) state that the contractor will not knowingly employ or contract with an illegal immigrant to perform work under the contract and will not contract with a subcontractor who fails to certify that the subcontractor will not knowingly employ or contract with an illegal immigrant for the work and (2) indicate that the contractor has verified the legal status or work authorization of each individual employed to work under the contract through the E-Verify Program.

The proposed legislation provides that a violation of the statute renders the contract void. Also, the act allows a void contract, under the statute, to continue until an alternative is arranged when: (1) immediate termination would harm the public health or welfare and (2) the Secretary of Administration grants approval.

The act prohibits a contractor from submitting a bid or entering into a contract with a state department, institution, agency or local government for one year following a discovery that the contractor knowingly used the services of an illegal immigrant to perform contract work.

The proposed legislation becomes effective October 1, 2011, and applies to all bids submitted and all contracts entered into on or after that date.

Source: Bill Digest H.B. 36 (02/03/2011).

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

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

In FY 2009-10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I 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.

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.

Impact on AOC and Civil Superior Court:

The proposed legislation could potentially result in a higher number of challenged bids based upon alleged false certifications. Challenged bids increase the average workload involved in the procurement process and require the submission of evidence by all parties involved and a hearing on the challenge. All challenges can be appealed to Superior Court, which could increase civil cases filed in Superior Court and increase the workload of Superior Court Judges and deputy clerks. Such cases would require agency time to respond and appearances in court.

Impact on Criminal Court:

AOC cannot project the number of Class I felony charges that would result from this legislation. The cost per case will vary considerably depending on the method of disposition – trials, for example, require more time and are more costly than pleas or dismissals. Overall, the monetary value of the average workload of a Class I 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 \$862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was \$480 per indigent defendant.

In FY 2009-10, a typical felony case took approximately 206 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.

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

TECHNICAL CONSIDERATIONS:

The effective date of this legislation is October 1, 2011. Generally, bills impacting criminal penalties are grouped together with an effective date of December 1, in order to allow the courts, law enforcement, and other entities adequate time for preparation and training and to streamline implementation of all criminal penalty bills.

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DATE: February 16, 2011



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