

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 457 (First Edition)

SHORT TITLE: Taxpayer Standing Act.

SPONSOR(S): Representatives Blackwell, McGrady, Schaffer, and Stam

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts, Department of Justice					
EFFECTIVE DATE Section 1 effective October 1, 2013; Sections 2 and 3 effective when the bill becomes law.					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact; however, given there is no historical data upon which to estimate the number of filings that may occur annually, the Fiscal Research Division cannot reasonably estimate the total costs that may be incurred. The following costs may be incurred:

- Administrative Office of the Courts: \$324 per case
- Department of Justice: Approximately \$300,000 annually
- Department of Revenue: Unable to estimate

In addition, the proposed legislation may generate General Fund Revenue of approximately \$180 per case.

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of the proposed legislation creates a new Article 53, Taxpayer Standing Act, in Chapter 1 of the General Statutes, providing standing to sue a taxing jurisdiction on the grounds that provision of the constitution or statute has been violated by misusing or misappropriating public funds or authorizing an unlawful tax exemption, deduction, or credit, and lists allowable remedies.

Sections 2 and 3 of this bill amends G.S. 105-241.17 and G.S.105-241.19 by replacing the term “tax statute” with the phrase “statute imposing a tax.”

Section 1 of this bill has an effective date of October 1, 2013, and applies to actions filed on or after that date. Sections 2 and 3 become effective when the bill becomes law.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

The proposed legislation eliminates the requirement found in current law that a taxpayer must demonstrate an actual injury or that the taxpayer belong to the class that is discriminated against. The proposed legislation would confer standing to challenge economic development incentives (whether through grants or tax credits) and would also confer standing to challenge other statutory provisions or expenditures. Since this is a new type of civil action, the Department of Justice (DOJ) does not have any historical data upon which to estimate the number of filings that may occur annually.

For purposes of this analysis, the DOJ adopted an estimate of six new civil actions per year. This type of litigation typically requires between 400 and 1,000 hours a year for each case, for a total of 2,400 to 6,000 additional hours. The median estimate of the total hours litigated was used to determine the additional number of attorneys needed. At 2,000 hours per year per attorney, this legislation may require an additional two attorneys. Because of the complexity of the litigation, Attorney IV’s are required to defend these types of actions. DOJ estimates that in FY 2013-14, the total salary and benefits for both attorneys would be \$278,520 and the total operating costs would be \$18,242. The chart below shows the total cost to the DOJ over the next five years, adjusted for inflation.

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Total Salary and Benefits	\$278,520	\$281,978	\$285,743	\$289,353	\$292,468
Total Operating Costs	\$18,242	\$10,441	\$10,705	\$10,962	\$11,216
Total Costs	\$296,762	\$292,419	\$296,448	\$300,315	\$303,684

To the extent that the number of cases filed each year is incorrect, this estimate may be over or understated.

Administrative Office of the Courts

The provisions contained in Section 1 of this bill allow an individual to bring a civil suit seeking, among other things, injunctive or declaratory relief and the return of any misused or misappropriated monies to the taxing jurisdiction. These new filings will likely be handled by Superior Court in the county in which the plaintiff resides. Since this is a new type of civil action, AOC does not have any historical data upon which to estimate the number of filings that may occur annually.

If these cases are heard in superior court there will be workload impact for deputy clerk, superior court judge, and court reporter time, for an estimated average cost of \$324 per case. If there were six cases annually, the cost to AOC would be \$1,944.

Department of Revenue

The Department of Revenue (DOR) states that, depending on the size and complexity of each case, it could cost between zero and \$1 million per case in litigation expenses. Expenses to the department include staff time, travel, depositions, and expert witnesses. DOR would not litigate any of the cases but would provide assistance to the Attorney General’s office by providing depositions, staff research, and expert witnesses to aid in the litigation.

The \$1 million figure is based on previous expenses paid by DOR for litigation costs and is the high end of the range expected by the department. The complexity of the case brought before the court will impact the expenses incurred by DOR. More complex cases will require greater resources. Similarly, cases litigated outside of Wake County, where DOR has its headquarters, will increase travel expenses on the department. Simple cases may not require any expense by DOR. Fiscal Research is unable to predict the content or complexity of any litigation brought to court as a result of this bill.

General Fund Revenue

The bill may result in an increase to General Fund revenue. Each petition would be accompanied by a \$200 civil superior court filing fee. From this fee, the General Fund receives \$179.40 per case. The table below contains details on this fee.

Superior Court Civil Filing Fee (Eff. January 1, 2012)			
Fee:	Revenue to:	Filing Fee per case:	Amount to General Fund:
General Court of Justice	General Fund	\$177.55	\$177.55
	State Bar*	\$2.45	\$0.25
Phone	Court System	\$4	--
Facilities	Local Government*	\$16	\$1.60
Collection Assistance Fee	General Fund*	*	
TOTAL		\$200	\$179.40

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

In addition, there is a \$30.00 service fee for each item of civil process served by the sheriff. Ten percent (\$3.00) of this fee is remitted to the General Fund as part of the collection assistance fee. This fee as well as the filing fee of \$200 must be paid by the plaintiff. If there were six cases annually, \$1,380 in revenue would be generated for the State; \$1,094 of that would go to the General Fund.

SOURCES OF DATA: Department of Justice, Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

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DATE: April 23, 2013



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