

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 786 (Third Edition)

SHORT TITLE: Energy Modernization Act.

SPONSOR(S): Senators Rucho, Newton, and Brock

FISCAL IMPACT

(\$ in millions)

Yes

No

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; Indigent Defense Services; Department of Public

EFFECTIVE DATE Criminal penalties effective December 1, 2014

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

This Incarceration Note only addresses the changes to criminal penalties included in Sections 8 and 15 of the bill. A separate Fiscal Note has been completed addressing the potential fiscal impact of other sections of S.B. 786, Energy Modernization Act.

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$31 - \$165 per disposition
- Indigent Defense Services: \$182 in district court
 - \$359 in superior court without a trial
 - \$847 in superior court with a trial
- Prison Section: No cost.
- Community Corrections: Minimum of \$1,511 in the first full year of implementation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

S.B. 786 creates two new criminal penalties:

- Section 8 of the bill creates a new Class 1 misdemeanor for knowingly disclosing confidential information pursuant to the newly created G.S. 113-391A, Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.
- Section 15 of the bill creates a new Class 3 misdemeanor for conducting seismic or geophysical collection activities without the landowner's written consent.

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates two new misdemeanor offenses and misdemeanants receiving sentences of less than 180 days serve their sentences in local jails, there will be no impact from this bill on the prison population. There may be costs to the courts, Indigent Defense Services, and the Department of Public Safety, Community Corrections. Since these are new criminal offenses, there is no historical data from which to estimate the impact of this bill on those agencies. It is not known how many offenders might be charged, convicted, and sentenced under the new statutes.

Judicial Branch

The Administrative Office of the Courts 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.

Section 8 of the bill creates a new Class 1 misdemeanor offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$165.

Section 15 of the bill creates a new Class 3 misdemeanor offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 3 misdemeanor, the average cost to the court would be \$31.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of each new misdemeanor offense will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and \$847 if it does. IDS makes no distinction in cost for different levels of misdemeanors, so the amount is the same for both new misdemeanor offenses created by this bill.

Department of Public Safety –Prison Section

Section 8 of the bill creates a new Class 1 misdemeanor offense. Section 15 of the bill creates a new Class 3 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because misdemeanor offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections resulting from this new offense.

Department of Public Safety – Community Correction Section

Felony offenders in classes E through I and all misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$4.06 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations. The table below shows the per diem rate for each year of the five year projection, adjusted for inflation.

Daily Supervision Cost Adjusted for Inflation Five Year Projection					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Inflation Rate		1.96%	2.11%	2.52%	2.70%
Per Diem Cost	\$4.06	\$4.14	\$4.23	\$4.33	\$4.45

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Section 8 of the bill creates a new Class 1 misdemeanor offense. In FY 2012-13, 27 percent of Class 1 misdemeanor offenders received active sentences; 2 percent received intermediate sentences; and 71 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. Therefore, one conviction receiving an

intermediate or community punishment as a result of this bill will require at least 15 months of supervision in the first full year of implementation. The cost of 15 months of supervision is \$1,863 per offender (\$4.06 per day adjusted for inflation to \$4.14 for the first full year of implementation times 450 days).¹

Section 15 of the bill creates a new Class 3 misdemeanor offense. In FY 2012-13, 32 percent of Class 3 misdemeanor offenders received active sentences; less than one percent received intermediate sentences; and 68 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 14 and 12 months, respectively. Therefore, at a minimum, one conviction receiving an intermediate or community punishment as a result of this bill will require at least 12 months of supervision in the first full year of implementation. The cost of 12 months of supervision is \$1,511 per offender (\$4.06 per day adjusted for inflation to \$4.14 for the first full year of implementation times 365 days).²

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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DATE: May 23, 2014



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¹ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

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