

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 4

SHORT TITLE: Repeal Prison Cap

SPONSOR(S): Representative Brawley

FISCAL IMPACT: **Expenditures:** **Increase (X)** **Decrease ()**
 Revenues: **Increase ()** **Decrease ()**
 No Impact ()
 No Estimate Available ()

FUNDS AFFECTED: **General Fund (X)** **Highway Fund ()** **Local Fund ()**
 Other Fund ()

BILL SUMMARY: TO REPEAL THE PRISON POPULATION CAP. Repeals various subsections of GS 148-4.1 and amends GS 148-32.1(b) for purpose indicated in title. States that nothing in act to be construed to require State to violate settlement agreement in Small v. Martin as modified, and intent of General Assembly is that Department of Correction shall take steps within its lawful authority to comply with settlement agreement entered in that case, as modified. Effective October 1, 1995.

EFFECTIVE DATE: October 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Correction

FISCAL IMPACT

See Next Page

If the cap is removed October 1, 1995, up to 3,892 additional beds will be needed in FY 1995-96. The costs shown on Page 2 are for short-term leasing of bed space in out-of-state facilities and local jails, 656 beds by double-bunking inmates in single cells, and contracting or leasing beds on a long-term basis.

	FISCAL IMPACT				
	95-96	96-97	97-98	98-99	99-2000
EXPENDITURES					
RECURRING					
Short-Term, Currently Leased Out-of- State and Local Jail Beds (1,285 beds);	\$27,938,173	\$27,938,173 plus	\$0	\$0	\$0

inflation

Double- bunks in single (656 beds)	\$1,000,000	\$6,440,000	\$6,440,000	\$6,440,000	\$6,440,000
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Long- Term Leased Beds*	\$25,854,800	\$30,255,950	\$38,525,750	\$16,242,500	\$12,775,000
(Up to 3,892 beds)	to \$27,117,200	to \$70,056,000	to \$70,056,000	to \$70,056,000	to \$70,056,000
			plus inflation	plus inflation	plus

inflation

Additional Out-of- State Beds** (500 beds)	\$7,000,000 (If long- term beds not available)	\$14 000,000 (If long-term beds not utilized)
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**NON-RECURRING
REVENUES/RECEIPTS
RECURRING
NON-RECURRING**

* The lower cost shown for long-term leased beds is dependent upon leasing the number of beds actually needed (See Appendix A) each month as compared to the higher cost which is based on having to absorb the total lease cost at the peak rate of 3,892 beds which occurs in May, 1996.

** If the additional 500 beds out-of-state are utilized, the long-term beds can be reduced by 500 beds. The cost for long-term beds would then be:

	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99	<u>FY</u> 99-2000
	\$20,622,800	\$22,185,100	\$29,400,750	\$7,117,500	\$3,650,000
	to	to	to	to	to
	\$21,910,200	\$61,056,000	\$61,056,000	\$61,056,000	
\$61,056,000		plus inflation	plus inflation	plus inflation	plus

inflation

POSITIONS: None. Additional beds needed would be made available through contract or lease.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

With present beds, beds that have been funded but not completed, and future funding needed for renovations at the existing Polk Youth Center, enough beds are projected to be available at 125% capacity of 50 square feet per inmate until June 30, 2000, for inmates incarcerated under the Structured Sentencing Act effective October 1, 1994.

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The following chart shows the above-noted projected beds to be available, the number of inmates projected under Structured Sentencing effective October 1, 1994, the deficit of beds, and the number of additional inmates projected to be incarcerated under **Repeal Prison Cap (HB 4)**.

	<u>June 30</u> <u>1996</u>	<u>June 30</u> <u>1997</u>	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>
No. of Inmates Under Structured Sentencing Effective 10/1/94	25,822	25,936	26,143	26,738	27,694
Projected Beds Available at 125% Capacity of 50 Sq. Ft./Inmate	28,281	30,241	30,241	30,241	30,241
No. of Beds Over/Under No. of Inmates Due to Structured Sentencing*	+2,459	+4,305	+4,098	+3,503	+2,547
No. of Projected Additional Inmates Due to this Bill	7,352	6,796	5,830	4,864	3,898
No. of Additional Beds Needed Due to this Bill	4,893	2,491	1,732	1,361	1,351

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* These excess beds are presently intended to be used to keep inmates sentenced under the Fair Sentencing Act for longer percentages of their sentences rather than continuing to parole them at the 1993-94 rate.

The costs of implementing this bill are associated with providing bed space and operating costs for the housing of 4,893 additional inmates by June 30, 1996, 2,491 inmates by June 30, 1997, 1,732 inmates by June 30, 1998, 1,361 inmates by June 30, 1999, and 1,351 inmates by June 30, 2000.

The Continuation Budget for the 1995-97 Biennium includes \$27,938,173 for 925 beds in out-of-state facilities and 360 local jail beds (Total = 1,285 beds by contract). The Department of Correction has also proposed adding 656 beds, by housing two inmates in single cells at certain locations, at a cost of \$1,000,000 for FY 1995-96 and \$6,440,000 for FY 1996-97. (These single-cell beds, however, are not scheduled to be occupied until July 1 to August 1, 1996. For purposes of this note, they are shown to be available June 30, 1996.) Thus, the number of additional beds needed due to HB 4 can be reduced as follows for the 1995-97 Biennium and ensuing years:

NET ADDITIONAL BEDS NEEDED

	June 30	June 30	June 30	June 30	June
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
No. of Additional Beds Needed Due to this Bill (See page 3)	4,893	2,491	1,732	1,361	1,351
Out-of-State Beds be moved into long-term leased beds.	-925	-925	Assume that inmates will		
Jail Beds	-360	-360			
Double Bunks - Single Cells	-656	-656	-656	-656	-656
Net Additional Beds Needed	2,952	550	1,076	705	695

IMPACT FOR FY 1995-96 AND FY 1996-97

Appendix A shows on a month-by-month basis for FY 1995-96 and FY 1996-97 The following data:

- 1) the projected inmate population under current Structured Sentencing;
- 2) the additional number of inmates to be incarcerated as a result of HB 4;
- 3) the total number of projected beds available, including prison beds at 125% capacity, 925 out-of-state beds, 360 jail beds and 656 beds from double-bunking in single cells; and,
- 4) the number of additional beds needed to incarcerate inmates under HB 4.

The effect of repealing the cap on October 1, 1995 is projected to increase the prison population substantially during FY 1995-96 culminating in a peak need for 3,892 additional beds by May 31, 1996.

COSTS FOR ADDITIONAL BEDS

Short-Term Leases and Double Bunking:

As previously stated (pages 2 and 3) the cost of providing 925 out-of-state beds and 360 local jail beds is \$27,938,173 for FY 1995-96 and \$27,938,173 in FY 1996-97. The cost of adding 656 beds by using double-bunks in single cells will be \$1,000,000 in FY 1995-96 and \$6,440,000 in FY 1996-97. No out-of-state beds or jail beds will be needed after October, 1996 if additional prison beds are leased on a long-term basis to meet the bed deficits in FY 1995-96 as shown in Appendix A. Thus the costs shown on page 1 for FY 1997-98, FY 1998-99, and FY 1999-2000 are for 656 beds by using double bunks. (There is no cost for short-term out-of-state or jail bed leases for these years assuming that these inmates will move into long-term leased beds).

Additional Short-Term Leases For Out-Of-State Beds:

The Department of Correction estimates that the bed deficit totals shown in Appendix A could be reduced by an additional 500 beds by contracting for them in out-of-state facilities at an average per diem cost of \$70/day/inmate. The FY 1995-96 cost for these beds has been calculated at \$7,000,000 assuming that the beds would be needed for one-half of the fiscal year. The FY 1996-97 cost would be approximately \$14,000,000 (\$70/day x 500 inmates x 365 days plus medical and transportation costs) if long-term leased space were not utilized.

Long-Term Leases:

Since it is projected that 3,892 beds will be needed by May 31, 1996, it will not be possible for the State to complete construction by that date. Construction of medium custody prison facilities has been expedited since 1987, but design and construction for new prisons takes longer than twelve to fifteen months under State laws, even when certain statutes are waived and construction is expedited. Thus, this

fiscal note is based on contracts or leases with outside providers for prison beds.

The Department of Correction has conducted discussions with some private companies about lease of prison beds to be constructed by the companies. An estimate has been made that these companies could have beds operational by ten to fourteen months after lease agreements are signed. If this method of housing inmates were chosen, the State would most likely be expected to enter into long-term leases of at least ten to twenty years. Estimated cost per inmate per day is \$50 plus inflationary increases and major medical costs. The cost for providing the additional 3,892 beds needed (at \$50/day during FY 1995-96) would be between \$25,854,800 to \$27,117,200 plus medical expenses. The estimated cost for FY 1996-97 would be between \$30,255,950 to \$70,056,000 plus major medical costs.

If the additional 500 beds out-of-state were utilized, the long-term leased beds could be reduced by 500 beds. The cost for long-term beds would then be:

	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99	<u>FY</u>
99-2000					
	\$20,622,800	\$22,185,100	\$29,400,750	\$7,117,500	\$3,650,000
	to	to	to	to	to
	\$21,910,200	\$61,056,000	\$61,056,000	\$61,056,000	\$61,056,000
		plus	plus	plus	plus
		inflation	inflation	inflation	
inflation					

SOURCES OF DATA: Department of Correction; North Carolina Sentencing and Policy Advisory Commission; Office of State Construction

TECHNICAL CONSIDERATIONS: None

NOTE: SEE ADDITIONAL INFORMATION IN FILE

**FISCAL RESEARCH DIVISION
733-4910**

PREPARED BY: Carolyn Wyland

APPROVED BY: Tom Covington

DATE: February 9, 1995

[FRD#003]

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COMMITTEE SUBSTITUTE

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

Fiscal note dated February 27, 1995 has been revised. Revision deletes amounts previously shown on Page 2, Number 4 for fiscal years 1997-98, 1998-99 and 1999-2000.

In addition, please note that Appendices A,B, and C are NOT included in the "electronic" version of this note, due to software limitations in the automated Bill Status System. Paper copies of this note DO CONTAIN APPENDICES and have been sent to the normal distribution list and ARE AVAILABLE in the Office of Printed Bills (1-919-733-5648, Room 1430 Legislative Bldg.)

BILL NUMBER: HB 4, Committee Substitute (February 23, 1995)

SHORT TITLE: Repeal Prison Cap

SPONSOR(S): Representative Brawley

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
Revenues: Increase () Decrease ()
No Impact ()
No Estimate Available ()

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund ()
TERM
 Other Fund ()

BILL SUMMARY: TO REPEAL THE PRISON POPULATION CAP. Repeals various subsections of GS 148-4.1 and amends GS 148-32.1(b) for purpose indicated in title. States that nothing in act to be construed to require State to violate settlement agreement in Small v. Martin as modified, and intent of General Assembly is that Department of Correction shall take steps within its lawful authority to comply with settlement agreement entered in that case, as modified. Effective January 1, 1996.

EFFECTIVE DATE: January 1, 1996

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Correction
FISCAL IMPACT

See Next Page

If the cap is removed January 1, 1996, up to 3,256 additional beds will be needed in FY 1995-96 than are projected to be needed under the Structured Sentencing Act which became effective October 1, 1994. The costs shown on Page 2 are for short-term leasing of bed space in out-of-state facilities and local jails, operating costs for 656 beds gained by double-bunking inmates in single cells, and leasing 1,471

beds on a long-term basis. All of these measures would be utilized to make up for the deficit 3,256 beds projected to occur by May, 1996.

FISCAL IMPACT

	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY
99-2000					
EXPENDITURES					
RECURRING					
1) 925 Short-Term, Currently-Leased Out-of-State Beds	\$24,348,060	\$15,909,269	\$-0-	\$-0-	\$-0-
2) Additional Out-of-State Beds (500 Beds)	5,784,055	3,524,060	-0-	-0-	-0-
3) Local Jail Beds (360 beds)	6,576,800	1,601,021	-0-	-0-	-0-
4) Double-bunks in single cells (656 beds)	1,000,000	6,469,800	-0-	-0-	-0-
5) Long-Term Leased Beds* (1,471 beds)	7,181,341	31,924,966	31,924,966 plus inflation	31,924,966 plus inflation	31,924,966 plus inflation
TOTAL	\$44,890,256	\$59,429,116	\$31,924,966 plus inflation	\$31,924,966 plus inflation	\$31,924,966 plus inflation

**NON-RECURRING
REVENUES/RECEIPTS
RECURRING
NON-RECURRING**

* The costs shown for long-term leased beds are based on having to absorb the total lease cost at the peak rate of 1,471 beds, which occurs in May, 1996 and continuing these leases at that level.

The total appropriations needed for this bill for FY 1995-96 and FY 1996-97 may be reduced by \$30,924,860 each year. This amount is included in the recommended Continuation Budget for FY 1995-96 and FY 1996-97 for leasing 360 jail beds and 925 out-of-state beds. Thus, the net additional appropriations needed total \$13,965,396 for FY 1995-96 and \$28,504,256 for FY 1996-97. It is anticipated that these continuation funds would have been deleted after FY 1996-97 as excess beds became available. Thus the additional appropriations needed for FY 1997-98, FY 1998-99, and FY 1999-2000 would not be reduced.

POSITIONS: 145 for double-bunking in single cells. Other beds needed would be made available through contract or lease.

ASSUMPTIONS AND METHODOLOGY:

With present beds, beds that have been funded but not completed, and beds retained by renovating the existing Polk Youth Center, enough beds are projected to be available at 125% capacity of 50 square feet per inmate until June 30, 2000, for inmates incarcerated under the Structured Sentencing Act which became effective October 1, 1994.

The following chart shows, for the end of each fiscal year, the above-noted projected beds to be available, the number of inmates projected under Structured Sentencing effective October 1, 1994, the surplus beds, the number of additional inmates projected to be incarcerated under **Repeal Prison Cap (HB 4 CS)**, and the additional beds needed as a result of this bill:

	<u>June 30</u> <u>1996</u>	<u>June 30</u> <u>1997</u>	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>
No. of Inmates Under Structured Sentencing Effective 10/1/94	25,822	25,936	26,143	26,738	27,694
Projected Beds Available at 125% Capacity of 50 Sq. Ft./Inmate	28,281	30,241	30,241	30,241	30,241
No. of Beds Over/Under No. of Inmates Due to Structured Sentencing*	+2,459	+4,305	+4,098	+3,503	+2,547
No. of Projected Additional Inmates Due to this Bill	5,553	6,093	5,244	4,395	3,547

No. of Additional Beds Needed Due to this Bill	3,094	1,788	1,146	892	1,000
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* These excess beds are presently intended to be used to keep inmates sentenced under the Fair Sentencing Act for longer percentages of their sentences rather than continuing to parole them at the 1993-94 rate.

IMPACT FOR FY 1995-96 AND FY 1996-97

Costs are based on the following assumptions clarified on February 9, 1995 by the House Judiciary II Subcommittee on HB 4, Repeal Prison Cap:

1. Assume continuing to lease 360 beds in local jails until no longer needed.
2. Assume continuing to lease 925 short-term beds in out-of-state facilities until no longer needed.
3. Assume new leases of 500 short-term beds in out-of-state facilities when needed.
4. Assume that after above-noted beds are made available, the State will lease needed beds on a long-term basis from private providers and that the leases will be continued at the peak number of 1,471 beds required from the providers.
5. Assume that as the population decreases from the peak and as excess long-term beds become available from private providers, that these excess long-term beds will be used for inmates otherwise housed in out-of-state or jail facilities.

Appendix A shows on a month-by-month basis for FY 1995-96 and FY 1996-97 the following data:

- 1) the projected inmate population under current Structured Sentencing (assumes parole practices similar to 1993 and 1994);
- 2) the additional number of inmates to be incarcerated as a result of HB 4;
- 3) the total number of projected prison beds available at 125% capacity;
- 4) projected additional beds available (925 out-of-state beds, 500 additional out-of-state beds when needed, 360 jail beds and 656 beds from double-bunking in single cells); and,
- 5) the number of additional beds needed to incarcerate inmates under HB 4.

The effect of repealing the cap on October 1, 1995 is projected to increase the prison population substantially during FY 1995-96 culminating in a peak need for 3,256 additional beds by May 31, 1996. (Total Projected Prison Population (30,891) less Projected Prison Beds (27,635).)

In order to incarcerate these 3,256 inmates, Appendix B shows, on a month-by-month basis, the number of in-state jail beds, out-of-state short-term leased beds, double bunks in single cells, and beds to be provided through contracts with private providers that will actually be needed to incarcerate the additional inmates under this bill. B May 1996, 1,471 beds would need to be leased from private providers.

COSTS FOR ADDITIONAL BEDS

Short-Term Leases and Double Bunking in Single Cells:

As noted on Page 3, the cost of providing 925 out-of-state beds and 360 local jail beds is \$30,924,860 for FY 1995-96 and \$30,924,860 in FY 1996-97. (See Appendix C for costs.) The cost of adding 656 beds by using double-bunks in single cells will be \$1,000,000 in FY 1995-96 and \$6,469,800 in FY 1996-97. As shown in Appendix B, no out-of-state beds, jail beds, or beds gained by double bunking in single cells will be needed after FY 1996-97 if 1,471 additional beds are leased on a long-term basis to meet the bed deficits in FY 1995-96. There is no cost for short-term out-of-state or jail bed leases or beds gained by double bunking in single cells for these years assuming that these inmates will move into the 1,471 long-term leased beds and other excess prison beds as they become available after the peak prison population is reached and begins to decline.

Additional Short-Term Leases For 500 Out-Of-State Beds:

The Department of Correction estimates that the total beds available, as shown in Appendix A, would be increased, when needed, by an additional 500 beds by contracting for them in out-of-state facilities at an average per diem cost of \$76.61/day/inmate. The FY 1995-96 cost for these beds has been calculated at \$5,784,055 and the FY 1996-97 cost would be \$3,524,060. These beds would be needed from February through September, 1996 as shown in Appendix A, and would then be reduced accordingly as long-term leased beds become available after the peak prison population is reached and begins to decline.

Long-Term Leases:

After utilizing the short-term out-of-state and jail bed leases and double bunking in single cells as noted above, 1,471 additional beds will be needed by May, 1996. It will not be possible for the State to complete construction by that date. Construction of medium custody prison facilities has been expedited since 1987, but design and construction for new prisons takes longer than twelve to fifteen months under State laws, even when certain statutes are waived and construction is expedited. Thus, this fiscal note is also based on long-term contracts or leases with outside providers for 145 prison beds in March, 1996, 885 beds in April, 1996, and 1,471 prison beds from May, 1996 through FY 1999-2000. (These beds will be needed to make up for the bed deficits shown in Appendix B.)

The Department of Correction has conducted discussions with some private companies concerning lease of prison beds to be constructed by the companies. An estimate has been made that these companies could have beds operational by ten to fourteen months after lease agreements are signed. If this method of housing inmates were chosen, the State would most likely be expected to enter into long-term leases of at

least ten to perhaps twenty years. Estimated cost per inmate per day is \$50 plus inflationary increases, major medical, and administrative costs. The cost for providing the additional 1,471 beds needed during FY 1995-96 would be \$7,181,341 and the estimated cost for FY 1996-97 would be \$31,924,966. It is assumed that these costs would be continued, together with inflationary increases, for the duration of the long-term contracts. (See Appendix C for cost basis).

SOURCES OF DATA: Department of Correction; North Carolina Sentencing and Policy Advisory Commission; Office of State Construction

TECHNICAL CONSIDERATIONS: None

NOTE: SEE ADDITIONAL INFORMATION IN FILE

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Carolyn Wyland

APPROVED BY: Tom Covington **TomC**

DATE: March 8, 1995

[FRD#003]



Signed Copy Located in the NCGA Principal Clerk's Offices