NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 1455 5th Edition

SHORT TITLE: Strengthen Securities Fraud Enforcement Laws

SPONSOR(S): Senator Rand

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2002-03	**FY 2003-04**	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
GENERAL FUND					
REVENUE					
Recurring	$271,000	$271,000	$271,000	$271,000	$271,000
EXPENDITURES					
Correction	Exact amount cannot be determined; no substantial impact anticipated				
Judicial	Exact amount cannot be determined; no substantial impact anticipated				
Secretary of State					
Recurring	$ 151,125	$ 233,862	$ 241,349	$ 248,581	$ 256,038
Nonrecurring	$ 15,990				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated				
POSITIONS:	3 positions in Secretary of State's office				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of the Secretary of State; State Treasurer

EFFECTIVE DATE: Sections 2 through 6 become effective November 1, 2002. The remainder of the act becomes effective when it becomes a law.

**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.*

BILL SUMMARY: (Provided in part by the Research Division of the NC General Assembly.) Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions, whether or not the company is chartered in North Carolina, and whether or not the security is registered in North Carolina. Criminal violations of the securities fraud laws are punished as Class H felonies, regardless of the amount involved. In civil actions, the statute of limitations for securities fraud is two years and punitive damages are not allowed to be imposed. The fourth edition of this bill included provisions to strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, and strengthening administrative and criminal powers of securities administrators. The fifth edition of this bill directs the General Statutes Commission to study those provisions. The fifth edition also increases several securities-related registration and renewal fees and funds three additional investigative positions in the Securities Division of the Office of the Secretary of State.

Additionally, the fifth edition prohibits the State from contracting with businesses that have any officers or directors who have been convicted of securities fraud within the past 10 years, prohibits the State from contracting with vendors that are incorporated in a tax haven country after December 31, 2002, but the United States is the principal market for the public trading of their corporations stock, and creates a pension assurance fund to protect some of the retirement savings and investments of the citizens of North Carolina.

ASSUMPTIONS AND METHODOLOGY:

Secretary of State

General Fund Revenue. Sections 2, 3 and 4 of this bill would increase certain fees that are now charged by the Securities Division of the Secretary of State. The estimated additional revenue is $271,000 annually.

Specifically, Sections 2 and 3 would amend G.S. 78C-17(b) and G.S. 78C-17(b1) to increase the annual registration and notice filing fees for investment and adviser firms from $200 to $300. This will affect approximately 1,100 firms, which equates to $110,000 in additional revenue annually.

Section 4 would amend G.S. 78A-31(a)(4) to increase the annual renewal fee for mutual company notice filings from $200 to $250. This will impact 3,220 mutual funds and is expected to generate an additional $161,000 annually.

General Fund Operating Budget. The Department estimates that the Securities Division would need three additional unsworn securities investigators at a pay grade of 71 with annual salary of $33,284 to investigate complaints and to significantly enhance the enforcement of the securities fraud provisions. The positions are effective November 1, 2002, with a cost the first year per investigator as follows:

Cost per Securities Investigator (Unsworn)

Recurring		**Nonrecurring**	
Salary	$22,189	Furniture/Equipment	$2,130
Benefits	$4,762	Computers	$3,200
Travel	$19,090		
Communication	$867		
Education/Other Expenses	$3,467		
Total Recurring	**$50,375**	**Total Nonrecurring**	**$5,330**

The total recurring cost for the three investigators is expected to be $151,125. The nonrecurring cost is expected to be $15,990. For the front-page box, recurring costs are adjusted for annual inflation.

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. The AOC relies on offense code data to project the court costs of a bill; the lack of data for these offenses prevents the AOC from estimating the court impact.

Sections 5 and 6 prohibit certain vendors from contracting with the State, and make false certification by unauthorized vendors a Class I felony. AOC staff reports that neither the Securities Unit in the Office of the Secretary of State nor the Purchasing and Contract Division of the Department of Administration (DOA) are aware of the number of vendors doing business with the State that have an officer, director, or owner of an unincorporated business entity, who within 10 years immediately prior to the date of the bid solicitation, has been convicted of securities violations under Chapter 78A or the Securities Act of 1933 or the Securities Exchange Act of 1934. Under Section 5 of the bill, these vendors are not authorized to do business with the State. However, the bill does not impose a duty on State entities to investigate the vendor's information. While the DOA plans to make vendors aware of the new law, it does not intend to investigate the information supplied by vendors. AOC also reports that the provisions in these sections would prevent DOA from contracting with some of the suppliers with whom they currently do business. To the extent that vendors are charged with providing false certification under Section 5 or 6 of the bill, the courts will be impacted.

Correction

To project the impact of a bill on the prison population, the Sentencing Commission uses data based on offense codes from the Administrative Office of the Courts (AOC). This bill would create two new Class I felonies. Without historical data from the AOC, the Sentencing Commission cannot project the impact of these new offenses on prison beds. As mentioned above, the bill does not impose a duty on State entities to investigate the vendor's information. As a result, it is unlikely that there will be a large number of convictions resulting from this bill.

However, if there were five convictions each year under this bill, there would be the need for one additional prison bed in the first year and one additional bed in the second year. In FY 2000-01, approximately 37 percent of Class I felons received intermediate punishments, and approximately 54 percent received community punishments. Also in FY 2000-01, the average daily operating cost of a prison bed was $65.29, the average daily cost of an intermediate punishment was $12.69/offender, and the average daily cost of a community punishment was $1.87/offender.

Office of the State Treasurer

This act creates the Pension Assurance Fund in the Office of the State Treasurer to protect the retirement savings and investments by citizens of North Carolina. The purpose of the Fund is to compensate private citizens who lose a significant portion of their retirement saving that were invested in 401(k) plans or other pension plans that were funded in whole or in part with employer stock. The State Treasurer and the Secretary of State are to develop recommendations for funding; including the use of punitive damages and treble damages involving settlements of suits involving securities fraud brought by the State or by private individuals. The State Treasurer and the Secretary of State are to make their recommendations to the General Assembly by March 1, 2003.

Several questions relating to this Fund are:

- Role of the Attorney General's office?
- How will citizens receive settlement funds?
- Why not include public employees?
- Are IRAs covered?
- Will payment be made to plan members or to plan sponsors?
- Staff to take claims and determine loss of citizens?

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of the Secretary of State.

TECHNICAL CONSIDERATIONS: Sections 5 and 6, which contain criminal penalties, become effective November 1, 2002. Generally, provisions with criminal penalties are written to become effective December 1, 2002, to give the court system time to prepare.

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DATE: October 2, 2002

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices