

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 676 (Third Edition as Amended )

**SHORT TITLE:** Revise the Banking Laws of North Carolina

**SPONSOR(S):** Senator Hoyle

**FISCAL IMPACT**

**Yes (X)      No ( )      No Estimate Available ( )**

**FY 2003-04   FY 2004-05   FY 2005-06   FY 2006-07   FY 2007-08**

**REVENUES**

General Fund	0	(5.6)	(5.6)	(5.6)	(5.6)
Local Governments	0	(3.1)	(3.1)	(3.1)	(3.1)
Banking Commission Acct	No Fiscal Impact				

**EXPENDITURES**

Agency Receipts (SBI)      See Assumptions & Methodology

**POSITIONS:**

SBI      See Assumptions & Methodology

**PRINCIPAL DEPARTMENT(S) &**

**PROGRAM(S) AFFECTED:** State Banking Commission, Office of the Commissioner of Banks,  
Department of Justice - State Bureau of Investigation  
NC Department of Revenue and Local Governments

**EFFECTIVE DATE:** Section 30 (LRC study) is effective when it becomes law. The remaining banking provisions become effective October 1, 2003, and applies to acts occurring and transactions or agreements entered into on or after that date. The sales tax portions of the bill become effective July 1, 2004.

**BILL SUMMARY:** This act makes statutory changes recommended by the Office of the Commissioner of Banks and directs the Legislative Research Commission (LRC) to study banking laws in the interim. It also exempts from the state and local sales and use tax the paper, ink, and other ingredients used to produce free circulation publications published on a periodic basis monthly or more frequently and distributed in a manner other than mail.

**ASSUMPTIONS AND METHODOLOGY:** The analysis is broken into two parts, those sections of the bill that relate to banking, and those that relate to sales taxes.

## **Banking Issues:**

- The application fees mentioned in sections 7, 23, and 27 are authorized in existing law.
- Section 12 increases the annual license fee for a bank or trust company from \$200 to an amount not to exceed \$500. The Commission reported revenue of \$6,200 in FY 2001-02 and \$7,000 in FY 2002-03 from this license. The current statute states that any surplus must be given to the General Fund, but the proposed bill removes this language. This is a moot point since the current \$200 fee does not cover the Banking Commission's actual expenditures and, thus, there is no excess for the General Fund. Despite the gap between revenues and expenditures from this license, the Commission does not anticipate increasing the fee for banks or trust companies. However, if the Commission were to increase the license fee to the maximum \$500, it would gain approximately \$10,500 per year.
- Sections 15 and 21 deal with criminal record background checks. Since the applicant or licensee pays for the criminal record check, there is no fiscal impact on the Banking Commission. However, there could be an impact on the State Bureau of Investigation (SBI), the agency that does the record checks. The Banking Commission reports that it currently receives approximately 80 applications per week, or 4,160 applications per year. If only one background check per application was required, and these checks were shifted from state-only record checks to state and national checks, the SBI would require an additional 78 hours to process the work. Sections 15 and 21 also expand the number of people for whom the Banking Commission can request a record check. Since more than one criminal record check may be required for corporations, partnerships, and limited liability companies, associations or trusts, there is no estimate for the number of criminal record checks per application. The SBI is able to accommodate some increase in background checks within its existing staffing level, and it may be able to shift some positions from other support services units to the unit that processes criminal record checks. If the increase in workload due to new record checks and the addition of national record checks were greater than the unit's capacity, the SBI would need authorization for at least one additional position supported by the receipts collected from the applicants/licensees.

**Sales Tax Issues:** Prior law granted a sales tax exemption for sales of paper, ink, and other tangible personal property to commercial printers and publishers for use as component parts in free circulation publications that contained advertising of a general nature. The exemption applied to general shoppers guides but not to more specialized publications such as real estate guides. The First Amendment of the United States Constitution does not allow a state to discriminate between publications based on their content. The prior law exemption clearly violated this rule by exempting guides with general content but not those with narrower content. Section 10 of Senate Bill 1112 (S.L. 1999-438) repealed the exemption, effective October 1, 1999, so that supplies sold for all free publications are subject to tax on a uniform basis.

Before the 2000 Session of the General Assembly, Department of Revenue field auditors were asked to collect free publications from their regions and forward them by courier mail to the central office in Raleigh. These documents were used to estimate the annual statewide sales

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volumes of free publications. The Tax Research Division of the Department of Revenue used the estimated sales data for free publications, as well as sales and use tax collections data and information from the North Carolina Press Association to estimate the fiscal impact of a proposed tax exemption. The Department has studied a free publication court case in Florida and determined that periodic free publications also includes telephone books and items distributed by mail such as packages of coupons, business newsletters, manuals, catalogues, and other advertising. In an October 3, 2001, memo to the General Assembly's Fiscal Research Division, the Tax Research Division estimated the following General Fund revenue loss from exempting all free circulation publications based on the 4.5% state sales tax:

	State Sales Tax (millions)
Items not distributed by mail	\$ 5.6
Items distributed by mail	12.8
Telephone books	<u>1.0</u>
Total	\$19.4

Since this bill does not include items distributed by mail or items published less frequently than monthly, like phone books, then the fiscal impact is reduced to \$5.6 million General Fund loss at a 4.5% tax rate. The bill also has a local government impact. By July 1, 2003, all 100 counties will have adopted an additional half-cent sales tax, thus, a 2.5% local sales tax rate is used. No growth rate was assumed for future years due to the lack of market information for free publications.

**SOURCES OF DATA:** Office of the Commissioner of Banks, Office of State Budget and Management, and the NC Department of Revenue.

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