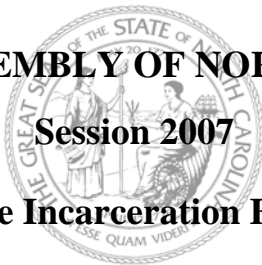


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 598 (First Edition)
SHORT TITLE: Tax on Illegal Immigrant Wire Transfers.
SPONSOR(S): Representative Cleveland

FISCAL IMPACT table with columns for Yes (X), No ( ), and No Estimate Available ( ) across fiscal years 2007-08 to 2011-12. Rows include REVENUES, EXPENDITURES (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

HB 598 enacts a new Article 5G in Chapter 105 of the General Statutes to impose a tax of 5% of the amount of the transfer on all transfers of money by wire originating in the state if the transferor is an unauthorized alien [as defined in 8 U.S.C. 1324a(h)(3)]. The bill exempts the transfer of

money by wire through a person exempt from licensure under Article 16A (Money Transmitters Act) of GS Chapter 53. Retailers would be required under the act to collect the tax unless the transferor provides adequate evidence that the transferor is not an unauthorized alien. The bill makes it a Class 1 misdemeanor for any person to transfer money by wire on behalf of another person in order to avoid the tax.

**ASSUMPTIONS AND METHODOLOGY:**

**PART I. EXCISE TAX**

To estimate the potential revenue impact of the bill, it is necessary to know the amount of money that is wired outside the state by illegal residents. Because the bill exempts transfers made by banks, savings and loan associations and other institutions exempt from licensure under Article 16A of Chapter 53, it is also necessary to estimate the volume of transfers that are made through exempt versus non-exempt financial institutions.

According to the Pew Hispanic Center, there were approximately 395,000 illegal immigrants in North Carolina in 2004. The Pew Center further estimates that 80 percent of illegal immigrants are from Mexico and other Latin American countries. Because a large percentage of illegal immigrants are from Latin America, Fiscal Research used available data on remittances to Latin America to estimate the impact of the bill.

In a 2004 report, the Inter-American Development Bank estimated that 84% of Hispanic immigrants wire an average of \$240 14.2 times per year. Assuming that the statistics for Hispanic immigrants can be applied to the general population of illegal immigrants in the state, the number of illegal immigrants who send money home is estimated by multiplying 395,000 (the total number of illegal immigrants) by 84% (the percentage who send money home). The result (331,800) is multiplied by the average payment and the number of remittances per year to determine the total amount sent, which is approximately \$1.1 billion.

The next step is to determine how much of the money is remitted through a transaction that would be taxable under the bill. A Federal Reserve report published in Economic Review estimated that in 2000, 66% of money transfers from Mexican migrants were made through non-bank money transfer firms. The remainder were made through banks or informal methods. Although the report suggests that the banks may be gaining a larger share of the remittance market, it notes that non-bank firms are generally preferred because of less onerous documentation requirements. For purposes of this analysis, the portion of remittances made via institutions subject to the tax is estimated by multiplying the total amount of remittances by 66%. The result is \$746.3 million, which is then multiplied by the tax rate of 5% to determine the total amount of potential revenue, which is \$37.3 million.

The table below projects this amount for the next five years. The projections assume that the illegal immigrant population in NC increases at a rate of 5% per year and that the average amount of money per transaction increases at the rate of the general consumer price index.

<b>Estimate Potential Revenue from HB 598 (\$millions)</b>					
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
\$ millions	\$49.1	\$52.6	\$56.4	\$60.6	\$65.0

The accuracy of these estimates may be affected by tax collection issues and tax avoidance behaviors. The bill requires that the tax be collected on any transfers for which the transferor is

unable to provide documentation of legal status. As a result, the tax could be imposed on some customers who have legal status, but do not have adequate documentation. Revenue collections could also be impacted if some customers decide to switch to banks or other financial institutions that would be exempt from the tax.

## **PART II. CRIMINAL OFFENSES**

H.B. 598 creates a new misdemeanor offense, making it a Class 1 misdemeanor for any person to transfer money by wire on behalf of another person in order to avoid the proposed tax. In addition, by imposing this new tax, the bill expands the pool of offenders subject to the criminal and civil penalties within Article 9 of Chapter 105, specifically those in G.S. 105-236 (civil penalties are not detailed):

G.S. 105-236(a)(7): Attempt to evade or defeat Tax. – Class H felony to willfully attempt, or aid or abet any person to attempt, in any manner to evade or defeat a tax or its payment.

G.S. 105-236(a)(8): Willful failure to collect, withhold, or pay over tax. – Class 1 misdemeanor for any person so required to fail to collect, truthfully account for, and/or pay over the tax.

G.S. 105-236(a)(9): Willful failure to file return, supply information, or pay tax. – Class 1 misdemeanor for any person so required to fail to pay a tax, make a return, keep records, or supply information at the time or times required by law, or rules issued pursuant thereto.

G.S. 105-236(a)(9a): Aid or assistance. – Makes it unlawful for any person to willfully aid, assist in, procure, counsel, or advise the preparation, presentation or filing of a return, affidavit, claim or any other document known to be fraudulent or false. The following penalties apply:

- a. Class C felony if the person is an income tax preparer, and the amount of all taxes fraudulently evaded on returns filed in one taxable year is \$100,000 or more.
- b. Class F felony if the person is an income tax preparer, and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than \$100,000.
- c. Class H felony if the offense is not otherwise covered under sub-subdivisions a. or b.

G.S. 105-236(a)(10b): Misrepresentation concerning payment. – Class F felony to fail to remit money that has been received from a taxpayer with the understanding that the money is to be remitted to the Secretary of Revenue.

Consequently, given the high frequency of wire transfers and potentially large pool of offenders, Fiscal Research anticipates that some additional charges and convictions for the proposed and expanded offenses will result. However, it is not known how many additional violations will occur for each offense. Nevertheless, based on current Courts and Corrections resources, any additional criminal charge, conviction, or civil penalty will generate some fiscal impact (any civil penalties would be remitted to the Civil Penalty and Forfeiture Fund).

### **Department of Correction: Division of Prisons**

Because Class 1 misdemeanants serve their designated terms of incarceration within local jails, resultant misdemeanor convictions will not directly impact the state's prison population.<sup>1</sup> However, the potential impact on local jail populations is unknown.

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Thus, to the extent that future convictions for the proposed offense result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, the typical length for Class 1 active sentences suggests a minimal increase in reimbursements.

Conversely, because there are no surplus prison beds available over the immediate five-year horizon or beyond, any resultant felony conviction will increase the demand for additional prison beds. Table I provides a brief overview of prior year felony active sentencing rates and average terms served, including the minimum number of convictions required to generate the need for an additional prison bed. This FY 2005-06 statistical data represents the averages for all offenses and prior record levels, within a given offense class (data is not offense-specific).

Class	Active %	Avg. Term	Convictions	FY 08-09 Bed Needs	FY 09-10 Bed Needs
H	34%	11 mo.	3	1	2
F	47%	20 mo.	2	1	3
C	100%	95 mo.	1	1	2
1 (misd)	20%	31 days	-	N/A	N/A

Presently, the construction of a medium custody prison bed within a new, stand alone facility costs the State an estimated \$68,040 (FY 2007-08); conversely, bed construction within an add-on facility costs approximately \$42,120.<sup>2</sup> The cost of additional bed construction is attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. The current annual operating cost for a medium custody bed is an estimated \$27,427 (FY 2007-08).<sup>3</sup>

**Department of Correction: Division of Community Corrections**

If additional non-active sentences occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision. However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Included below is a brief discussion of DCC supervision costs, per offender:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.

<sup>2</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>3</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**Judicial Branch**

Though it is not known how many additional charges might occur for the relevant offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and workloads for district attorneys, superior and district court judges, clerks, court reporters, juries, and indigent defense counsel. The estimated single trial/plea costs for Class misdemeanors, as well as Classes H, F, and C felony cases, are shown below. Actual costs may vary from these general estimates, which include indigent defense.

<b>Table II. AOC Cost Estimates Per Trial and Plea: FY 2007-08</b>		
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243
Class H Felony	\$ 7,345	\$ 325
Class F Felony	\$ 9,902	\$ 539
Class C Felony	\$ 13,049	\$ 657

In addition, those subject to the tax could file a civil action to contest the legality of the tax, and obtain a refund pursuant to G.S. 105-267. Consequently, superior court workload could increase, depending on the number and complexity of resultant civil actions.

**SOURCES OF DATA:** Federal Reserve Bank of Atlanta, Inter-American Development Bank, Pew Hispanic Center; Moody’s Economy.com; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** According to legal staff, the authority to regulate interstate and international commerce is reserved for the Federal government and, consequently, this bill would violate the Commerce Clause of the U.S. Constitution.

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**DATE:** June 11, 2007



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