

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

**Legislative Incarceration Fiscal Note
(G.S. 120-36.7)**

BILL NUMBER: House Bill 432 (Third Edition)
SHORT TITLE: Swine in Transport/Regulate Feral Swine.
SPONSOR(S): Representatives West, Bell, Dixon, and LaRoque

	FISCAL IMPACT				
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUE					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	\$0	\$0	\$0	\$0	\$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
EXPENDITURES:					
Fine & Forfeitures Fund		Exact amount cannot be determined			
DACS		Exact amount cannot be determined			
WRC	\$0	\$0	\$0	\$0	\$0
Correction		No significant impact			
Probation		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
POSITIONS:					
DACS	0	0	0	0	0
WRC	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture & Consumer Services (DACs), Wildlife Resources Commission (WRC), Department of Correction, Judicial Branch.					
EFFECTIVE DATE: October 1, 2011 except for G.S. 106-798A and G.S. 106-798B which are effective October 1, 2012.					
<i>*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.</i>					

BILL SUMMARY:

House Bill 432, Swine in Transport/ Regulate Feral Swine, changes existing and adds new General Statutes relevant to the Department of Agriculture and Consumer Services (DACs) and the Wildlife Resources Commission (WRC). First, HB 432 creates Article 66A (beginning with G.S. 106-798), Transportation of Swine, which requires an official form of identification approved by the State Veterinarian for all swine transported on public roads. Swine transported without identification is presumed to be feral swine and is subject to regulation by WRC pursuant to G.S. Chapter 113. Swine that do not leave the premises of the swine owner are exempt from the identification requirement. The Board of Agriculture is directed to adopt rules to charge a fee, not to exceed DACs' cost of providing the program, to swine owners for the identification required under this Article. Anyone transporting swine without proper identification is subject to a civil penalty of up to \$5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of \$1,000 for each occurrence. The civil penalty provisions are effective October 1, 2012.

HB 432 also makes changes to the G.S. related to WRC. These changes:

- (1) Remove wild boar from the definition for Big Game, removing the definition for wild boar, and adding a definition for feral swine. Feral swine are any free-ranging mammals of the species *Sus scrofa* (G.S. 113-129);
- (2) Delete the provision in G.S. 113-291.1 that permitted the taking of crows and coyotes with the aid of electronic calling device and, instead, provides that WRC may adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls;
- (3) Substitute the term "pistol" for the existing language that defines type of pistol that may be used for hunting certain species during open season (a .22 caliber with a barrel not less than five and one-half inches in length);
- (4) Add feral swine hunters to those who must wear a cap or outer garment made of hunter orange material (G.S. 113-291.8(a)); and
- (5) Makes it unlawful to either remove feral swine from a trap while the swine is still alive or to transport the live swine after it is removed (G.S. 113-291.12). Committing either of these acts constitutes a Class 2 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:**Department of Agriculture & Consumer Services (DACs)**

HB 432 adds two new requirements for DACs, including (1) providing an official form of identification approved by the State Veterinarian for all swine transported on public roads and (2) adopting rules to charge a fee, not to exceed DACs' cost of providing the program, to swine owners for the identification. Anyone transporting swine without proper identification is subject to a civil penalty of up to \$5,000 for each violation; each swine without identification is considered a separate violation. Anyone who misuses the identification required by HB 432 is subject to a civil penalty of \$1,000 for each occurrence. The increase in civil penalties will come into effect in October 1, 2012

Expected Revenue

HB 432 creates two new possible sources of revenue: (1) new civil penalties and (2) a new fee on swine owners for official identification.

Civil Penalties

In FY 2011-12, the State, through DACS, will receive no new revenue from the civil penalties outlined in HB 432; these civil penalties are not in place until October 1, 2011. However, in future years, due to the new civil penalties, it is possible that the Fine and Forfeiture Fund will receive additional funds. DACS is allowed to retain a portion of these funds to cover administration. Neither the Department nor the Fiscal Research Division has an accurate estimate of the number of violations that will be expected in any given year; thus, an estimate of revenue from civil penalties is not available. The Department has indicated that rather than strict enforcement from the outset, both DACS and WRC plan to provide educational information and warnings as HB 432 is phased-in to ensure that producers understand the requirements of HB 432.

Fees for Identification Tags/ Program

HB 432 allows DACS to adopt fees to cover the cost of the identification program. Currently, the United States Department of Agriculture (USDA) provides the identification tags that would be used in this program free of charge to states, and funds for program operations such as mileage, travel expenses, and compliance inspections will be funded through a federal cooperative agreement, resulting in little cost to the DACS. The Board of Agriculture would establish a fee to offset any incidental expenses incurred by the Department and increase the fee if the USDA funding declines or program costs exceed currently expected levels. At this point, DACS does not expect any substantial cost to the State, meaning any fee would be minimal. In addition, DACS does not have an estimate of the number of producers who would be subject to the fee. Therefore, neither DACS nor the Fiscal Research Division can estimate the potential revenue from a fee. All future revenue from the fee would be used to offset program costs and not provide additional availability to the General Fund.

Expected Expenditures

Identification Tags and Tag Tracking

The Fiscal Research Division expects that HB 432 will increase DACS' expenditures; the Department will have to develop, distribute, and track identification tags. At present, DACS does not have an estimate of the cost of providing tags and no estimate of the cost of this program is available. The USDA provides the identification tags and many of the incidental costs associated with HB 432 can be covered with federal funds through existing cooperative agreements. In addition, the Department is building a system that will track tags as part of the NCFarmID and national animal disease traceability system. While the final distribution system for identification tag has not been finalized, DACS anticipates existing field staff to be heavily involved in the logistics and implementation of providing tags to producers. These responsibilities will be added to existing field staff duties. The Department's NCFarmID website will provide access for producers to not only get information but request needed tags. At this time, due to the availability of federal funds, the State will not have to bear the costs associated with HB 432.

Enforcement

Enforcement of the HB 432 identification tag requirements will be through existing law enforcement personnel and protocols (i.e., routine enforcement of state rules and regulations). Law enforcement officials will be provided basic educational information regarding the new statute and their role in its enforcement, which would involve reporting of un-tagged swine when enforcing normal transportation and other livestock/wildlife-related laws. If a transporter is stopped and does not have the necessary animal identification, law enforcement will contact DACS Veterinary Division personnel, who will

begin compliance actions. Such actions fall within the existing responsibilities of field staff and existing protocols of civil actions within the Veterinary Division. Veterinary field staff currently have the authority and responsibility of enforcing identification compliance in a variety of setting and species and office staff currently assumes the duties of initiating communications, collections, and follow-up in working with the Attorney General's office in civil actions that result from the enforcement of existing regulations under DACS' authority; HB 432 would not require additional personnel or training of office staff for the Department.

Wildlife Resources Commission (WRC)

HB 432 makes changes to existing General Statutes enforced by the Wildlife Management Section of WRC. These changes are described in the Bill Summary at the beginning of this Fiscal Note. According to the Wildlife Management Section Chief, the bill will bring no additional revenue to WRC nor should it increase the total cost in the operation of the agency. The enforcement of the bill will be performed with existing resources and will not require any additional resources.

Justice and Public Safety Issues

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.

Department of Correction – Division of Prisons

The proposed legislation enacts G.S. 113-291.12, Unlawful to remove live feral swine from traps, making it unlawful to remove a live feral swine¹ from a trap or transport the live swine after removal. Section 6 also adds subsection (s) to G.S. 113-294, Specific Violations, to make violation of G.S. 113-291.12 a Class 2 misdemeanor.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Department of Correction – Division of Community Corrections

¹The bill, *inter alia*, amends G.S. 113-129, Definitions relating to resources, for purposes of G.S. Chapter 113, Article 22 (Regulation of Wildlife), by (1) removing "wild boar" from the categories of "big game" and "game animals" in G.S. 113-129(1b) and (7c); (2) deleting the term "wild boar" in G.S. 113-129(15b) and substituting the term "feral swine" in new G.S. 113-129(5c) ; and (3) adding "feral swine" to the category of "wild animals" in G.S. 113-129(15). The terms "wild boar" and "feral swine" both denote "free-ranging mammals of the species *Sus scrofa*" under the current and proposed versions of G.S. 113-129.

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

The proposed legislation would create a new Class 2 misdemeanor criminal offense for removing feral swine from a trap while the swine is still alive or to transport the live swine after the removal. The bill allows for a defendant to be charged with two offenses, if one were to both remove the feral swine from the trap while the swine was still alive, and to transport the live swine after the removal. Because this is a new offense, AOC cannot project the number of charges that would result. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals.

On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

² DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission;

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee and Sarah Stone

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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