

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 223 (Fifth Edition)

SHORT TITLE: Public Confidence in Elections.

SPONSOR(S): Senator Kinnaird

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
COUNTIES					
Equip. Replacement	Amount cannot be determined; see assumptions and methodology				
Alt. 1 –All O/S	\$45,957,546	\$8,037,333	\$8,037,333	\$8,037,333	\$8,037,333
Alt. 2 -All DRE	\$135,130,995	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Alt. 3 –O/S & DRE	\$87,831,031	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Hand/Eye Recounts	Estimated to range from \$3,106 to \$8,824 per 1% of the ballots cast.				
ELECTIONS FUND					
Grants to Counties	\$40,893,808				
STATE BOARD					
Developing RFP	Estimated to cost \$400,000 to \$600,000 of HAVA Funding				
Source Code Rev.	Estimated to range from \$1,200,000 to \$1,800,000 for initial reviews				
Board Meetings	Estimated to range from \$9,000 to \$12,000 annually				
Training/Support	\$945,320	\$705,320	\$705,320	\$705,320	\$705,320
POSITIONS (cumulative)	8	8	8	8	8
CORRECTION	Exact amount cannot be determined; no substantial impact anticipated.				
JUDICIAL	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
EFFECTIVE DATE: Varies.					

BILL SUMMARY¹:

This bill would require the State Board of Elections to certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The bill would also require that the State Board of Elections, through a Request For Proposal (RFP) process, only certify any additional voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes and that otherwise complies with the requirements of the RFP. Any voting system purchased or upgraded beginning August 1, 2005 would be subject to this RFP process, and any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the RFP process if the system is to be used in the 2006 elections. The bill makes specific requirements of any voting equipment vendor who does business in NC. The bill shifts from counties to the State Board of Elections the duty to produce an RFP for voting systems. It also requires that beginning in 2006 the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill makes changes to the HAVA Election Fund statute and it mandates that counties receive grants from the Election Fund for equipment and tabulation software. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup. Further analysis of pertinent sections of the bill follows.

Section 1 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning August 1, 2005 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC.
- A statewide price for each unit of the equipment.
- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county

¹ Adopted from Bill Analysis Prepared by Senate J1 Committee Counsel

for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system. The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

No voting system that was not certified through the RFP process could be acquired after August 1, 2005 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.

Section 2 -- Requirements for Voting Systems Vendors. Effective with any upgrade or new voting system purchased beginning August 1, 2005, vendors of voting systems in NC must escrow their relevant source code, keep the escrowed source code up to date and swear that it is the code used in operating voting systems, maintain an active office in NC, and notify the State Board of any known defect in a voting system used in NC. This section also provides that a willful violation of any of the requirements is a Class G felony and that substitution of software into a voting system without notifying the State Board is a Class I felony. Other violations are punishable by civil penalties of up to \$100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective August 1, 2005, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective August 1, 2005, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. The county board of elections would be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective January 1, 2006, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races.

Section 6 -- Expansion of Right to Hand-to-Eye Recount. Effective January 1, 2006, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the

result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money that the State received to implement the requirements of the Help America Vote Act (HAVA). The change clarifies that the money in the fund may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 7.1 -- County Grants. This section mandates that each county receive a grant of up to \$12,000 per polling place and one-stop site (plus two backup units per county) from the Election Fund for voting equipment that complies with the requirements of HAVA and this act. It also mandates that each county receive a grant for central administrative software for tabulation. That grant would be equivalent to \$1 per voter in the 2004 presidential election, but would be no less than \$10,000 and no more than \$100,000.

Section 8 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 9 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup.

ASSUMPTIONS AND METHODOLOGY:

As noted above, this bill, in pertinent part, makes changes to the requirements for the voting systems that can be used in elections in North Carolina beginning with the 2006 elections. It makes changes to the requirements for conducting hand-to-eye recounts. It requires the State Board of Elections (State Board or SBE) to recommend a code of ethics for members and employees of boards of elections at the county and State level. And, it allows the State Board to conduct a pilot program that experiments with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. This bill also establishes new criminal penalties for violations of the bill.

Fiscal Research believes that this bill has a fiscal impact. However, because of various factors, we cannot provide a *reasonable* estimate of the bill's total fiscal impact. Our analysis of the bill's fiscal impact and the reasons why we cannot estimate its total fiscal impact are discussed below in five broad categories: Voting System Requirements, Hand-to-Eye Recounts, Criminal Penalties, Code of Ethics Recommendation, and Voting System Pilot Program.

Voting System Requirements:

Section 1 provides that only systems that have been certified by the State Board may be used in North Carolina beginning with the 2006 election year. It provides that the use of paper ballots counted by hand is a certified voting system. It requires the State Board to certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. It requires the State Board to certify additional voting systems through an RFP process that addresses what is required of the vendors (as prescribed in Section 2) as well as the requirements for the systems and the mandatory terms of the voting system contract. The State Board can only certify voting systems that provide paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Section 3 allows a board of county commissioners to only adopt and acquire a voting system that has been certified by the State Board. Section 1 also gives the State Board duties of monitoring the voting system contracts and facilitating training and support. Section 4 requires the county boards of elections to abide by the State Board rules regarding training and support.

Fiscal Research believes that completion of the RFP process is necessary to providing the most reasonable estimate of the cost resulting from the implementation of the changes in the voting system requirements. The RFP process is likely to result in the certification of both DRE and optical scan systems from multiple vendors. The unit cost will be dependent upon the minimum system requirements that are reflected in the RFP and the vendors that are selected. The extent of the training and support requirements is somewhat dependent upon the number of systems that are certified. Finally, the total cost will also depend upon the extent to which counties must replace or can upgrade equipment to comply with the requirement of the bill as well as each county's choice of voting system and vendor from those certified by the State Board of Elections. Further, it has been reported that approximately 80-90 counties would have to replace their equipment even in the absence of this bill either because the equipment is outdated or to comply with the 2002 Federal Elections Commission (FEC) standards. Further, the Elections Assistance Commission (EAC) is also developing standards as required by HAVA. The EAC has indicated that the states will have two years from the adoption of the standards to comply, except that there are certain HAVA requirements for which there must be compliance by January 1, 2006. Considering this, it is reasonable to assume that several counties have budgeted for equipment replacement or will receive HAVA funding for equipment replacement and will not necessarily have to incur an unforeseen expense as a result of this bill as the requirements of this bill can be incorporated into the counties' existing plans to replace equipment. Taking those caveats into consideration, the discussion below addresses the estimated costs related to developing an RFP, equipment replacement, source code review, and training and support.

Request for Proposal Cost

The State Board of Elections did not provide an estimate of its cost to develop the RFP that is required by Section 1 of the bill. It reported that funds received from HAVA Title I grants are available to support the cost of developing the RFP. It also reported that it plans to use RFPs that have been developed by other states as the starting point for North Carolina's RFP. Fiscal Research believes, therefore, that the State Board can absorb the cost of developing the RFP with its existing resources. We will note, however, that the study and development of the RFP for the \$28 million information technology infrastructure project for the State's Retirement Systems was approximately \$400,000 and the study and development of the RFP for the State Controller's

business infrastructure project that replaces the State's payroll and human resources systems was approximately \$600,000. We, therefore, estimate that developing the RFP could require an expenditure of \$400,000 to \$600,000 of the State Board's existing resources.

Equipment Cost

Based on information provided by the State Board, forty-eight (48) counties are using optical scan systems, forty (40) are using DRE systems, three (3) are using paper ballots, three (3) are using lever machines, and six (6) are using punch card systems. Existing law phases out the use of lever machines and punch cards and the nine (9) counties that are using lever machines and punch card systems are in the process of replacing those machines. The State's HAVA Budget Plan includes an allocation of the HAVA Title 1 grants to replace the lever machine and punch card systems in those 9 counties. Because the replacement of those systems is pending and because the bill specifies that paper ballot systems are certified voting systems, this fiscal analysis will focus on the 88 counties that are currently using DRE and optical scan systems.

As stated above, any system that is used in elections in 2006 and subsequent years would be subject to the RFP process. Acquisitions and upgrades occurring on or after August 1, 2005 must go through the RFP process. Any systems purchased prior to that date must be submitted for compliance with the RFP requirements. Considering these requirements, Fiscal Research believes this bill could require the 88 counties using DRE and optical scan systems to replace their equipment. For example, though the optical scan systems would be compliant with the paper record requirement, they may not have (1) the capacity to include in precinct returns the votes that were cast outside of the voters' precinct, (2) bonds or letters of credit from vendors to cover damages, or (3) agreements that cover a breach of contract by the vendor. The DRE systems, on the other hand, would not be in compliance with the paper record requirement.

Though, we believe that the 88 counties may have to replace their equipment, we do not yet know which counties will actually have to purchase new systems or which can upgrade their existing systems. We also do not yet know which type of system each county may choose to purchase. Therefore, our fiscal analysis will include estimates for equipment replacement cost that are based on 3 different alternatives. Alternative 1 assumes that the 88 counties will replace their systems with new optical scan systems. Alternative 2 assumes that the 88 counties will replace their systems with new DRE systems that generate paper records (DRE-PR). Alternative 3 assumes that the 88 counties will replace their equipment with the same type of equipment currently in use. The estimates are based on information provided by the State Board. Please note that in consideration of the caveats noted above, we relied on the information provided by the State Board and did not verify the reasonableness of the information that was provided.

The State Board provided information on the number of registered voters and voting places by county. The State Board also estimated that the unit cost of a DRE with a paper record is \$4,000 and that a reasonable ratio is one unit per 185 registered voters. It estimated that the unit cost of an optical scan tabulator is \$5,500 and that at least one is needed for each precinct. Optical scan systems also require voting booths and paper ballots. The estimated cost of a voting booth is \$160 per unit. One booth is recommended for every 150 voters. The paper ballot cost range from \$0.16/ballot to \$0.27/ballot for an average per ballot cost of \$0.22. The State Board also estimates additional statewide cost as noted in the table that follows.

Estimate of Statewide Cost Provided by State Board of Election

Nonrecurring

Software and hardware – modem election results statewide	\$3,600,000
35,000 voter initialization units	\$1,575,000
Programming Software for CBE	\$5,000,000
Hardware for CBE	\$1,500,000
Management stations	\$319,000
Project management & training	\$15,000,000
Nonrecurring	\$26,994,000

Recurring

Maintenance, subsequent training & software licenses	\$7,500,000
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Based on the information that was provided by the State Board, Fiscal Research estimates that the cost under Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment - would be \$45,420,213 nonrecurring and \$537,333 recurring for printing the ballots. The cost under Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR equipment - would be \$135,130,995 nonrecurring. Finally, the cost under Alternative 3 - 88 Counties Replace Existing Equipment with Same Type – would be \$87,831,031 nonrecurring. Additional recurring cost of \$7,500,000 would be required under either alternative. See the tables that follow.

Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment

	Reg. Voters	Polling Places	O/S Equipment @ \$5,500/Unit # Units	O/S Equipment Total	Voting Booth Cost @ \$160/Booth*	Printing @ \$0.22**	Total	
DRE Counties	2,442,423	1,228	1,417	\$7,793,077	16,283	\$2,605,251	\$537,333	\$10,935,661
O/S Counties	2,558,913	1,265	1,460	\$8,027,885	0	\$0	\$0	\$8,027,885
Total for Tabulators	5,001,336	2,493	2,877	\$15,820,962	16,283	\$2,605,251	\$537,333	\$18,963,546
Supporting Equipment/Hardware/Software								\$26,994,000
Total Cost to Counties								\$45,957,546

* No cost is estimated for existing O/S counties based on the assumption that they already have voting booths.
 ** No cost is estimated for existing O/S counties based on the assumption their existing printing costs will not increase.

Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR				
	Registered Voters	Polling Places	DRE-PR Equipment @ \$4,000/Unit # of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146
O/S Counties	2,558,913	1,265	13,832	\$55,327,849
Total for Tabulators	5,001,336	2,493	27,034	\$108,136,995
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$135,130,995

Alternative 3 - 88 Counties Replace Existing Equipment with Same Type				
	Registered Voters	Polling Places	# of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146 @ \$4,000/Unit
O/S Counties	2,558,913	1,265	1,460	\$8,027,885 @ \$5,500/Unit
Total for Units and Tabulators				\$60,837,031
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$87,831,031

Source of Funding for Equipment Replacement

Under current law, the county boards of commissioners are responsible for purchasing voting equipment. The bill does not change that responsibility. Thus, replacing voting systems to comply with this bill would be a cost to the counties. Please note, however, that the State received \$74,249,370 in federal funds that were appropriated by Congress to assist states in implementing the Help America Vote Act of 2002 (HAVA) and it appropriated \$3,444,133 as its required match for the federal funds. In part, Section 301 of HAVA requires states to have accessible voting equipment for the disabled as well as equipment that notifies a voter of an overvote and allows correction of the overvote. Therefore, the State Board has designated \$37,231,222 of the HAVA funds for replacement of voting systems to comply with HAVA. The State Board has also indicated that there is an additional \$16,000,000 of HAVA funds and State matching funds that are subject to being allocated to fund Section 301 voting system requirements. Thus, it appears that there is approximately \$53,000,000 in HAVA funds and related State matching funds that could be

used to offset the cost of replacing voting equipment. As noted earlier 80-90 counties would have to replace their equipment to comply with the 2002 FEC standards. It is, therefore, reasonable to assume that there would be substantial overlap between those counties and the 88 counties that might be required to replace their equipment to comply with this bill.

Section 7.1 of the bill specifies that each county is to receive a grant from the HAVA fund for voting equipment and for central administrative software for tabulation. The equipment grant would be up to \$12,000 per polling place and one-stop site plus two backup units per county. Currently, there are 2,753 polling places and approximately 204 one-stop sites in the State. The bill would also allow for two backup units for each county for a total of 200. The total of the polling places, one-stop sites, and backup units would be 3,157. Therefore, the total of the equipment grants would be \$37,884,000. The software grants would equal \$1 per voter in the 2004 presidential election, with a minimum of \$10,000 and a maximum of \$100,000. Based on the turnout of 3,552,449 voters in the 2004 General Election, the total cost of the software grants would be \$3,009,808. The total grants from the Election Fund, as required by this bill, would be \$40,893,808. This section does not preclude the State Board from granting more of the HAVA funds to the counties.

Source Code Review:

Section 1 of the bill requires the State Board of Elections to review, or designate an independent expert to review, all source code made available by the vendor pursuant to the requirement of the bill. This review must be done before a voting system is certified. The State Board of Elections estimates that the average cost for each source code review is \$100,000 to \$150,000. The State Board expects that separate source code reviews will be required for the software and firmware for each system that it certifies for a minimum of two reviews per vendor. The total cost of the source code reviews will be based on the number of systems and vendors that are certified by the State Board. Assuming there are a total of 6 vendors that can provide DRE or optical scan systems, the cost of the source code review could range from \$1.2 million (2 reviews * 6 vendors * \$100,000/review) to \$1.8 million (2 reviews * 6 vendors * \$150,000/review). Recurring updates would cost less.

Approval of Voting Systems and/or Updates

The five-member Board of the State Board of Elections would be required to certify voting systems. The Board would meet in public session to do so. The State Board reports that the minimum cost per meeting is \$1,500 and it estimates that six to eight additional meetings could be required to certify voting systems. The total cost of the additional meetings would be approximately \$9,000 to \$12,000.

The State Board also reported that it could possibly incur legal fees if a lawsuit is brought as a result of its certification decisions. There is no basis for determining whether any lawsuits would be brought against the State Board.

Training and Support

Section 1 of the bill requires the State Board to facilitate training and support of the voting systems utilized by the counties. Section 4 requires the county boards of elections to comply with any requirements of the State Board regarding training and support of the voting system. The State Board estimates that it would need 8 additional employees to provide voting equipment support

and training for the 100 county boards of elections. The total cost of the salary and fringe benefits for 8 positions as estimated by the State Board is \$528,000 (\$50,000 salary + \$16,000 benefits * 8 positions). Fiscal Research calculates benefits per position at \$3,432 for medical, 7.65% for Social Security, and 5.815% retirement. Based on those rates, the benefit cost for each position at a \$50,000 salary should be \$10,165, for a total of \$60,165 per position. Therefore, the adjusted estimate for salaries and benefits for the 8 positions would be \$481,320 (8 positions * \$60,165). In addition to the salary and benefits, the State Board estimates that it will need nonrecurring cost of \$240,000 for office furniture and computer equipment (\$40,000) and for training on specific voting equipment (\$200,000). It also estimates that it will need \$224,000 on a recurring basis for travel (\$24,000) and for continuing education (\$200,000).

Hand-to-Eye Recounts

Section 5 of the bill requires the State Board of Elections to develop rules that would provide for a hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The size of the sample is to be chosen to produce a statistically significant result and is to be chosen after consultation with a statistician. Section 6 expands a candidates right to a sample hand-to-eye recount and to a complete hand-to-eye recount.

The State Board provided information obtained from the Guilford County Board of Elections on the cost of recounting paper ballots by hand. The ballot counting time reflected in the information was based on time tests conducted by the Guilford County Board using a sample of test ballots from the 2002 General Election. Based on that information, it would take one-tenth (.10) of a minute to count one contest per ballot. By current law, ballots must be counted by four-person teams. The daily cost of a four-person team is \$420 (based on an 8-hour day at \$13.12/hour). The cost for counting one contest per ballot is \$0.088 ($\$420 / (8 \text{ hours} * 60 \text{ minutes per hour} / .1 \text{ minutes per ballot})$). Fiscal Research also has data that indicates that the cost of a recount in Washington State was \$0.25 per voter.

There are currently 5,514,863 registered voters. During the 2004 General Election, the voter turnout was approximately 64%. Assuming the voter turnout remains at that level, there would be approximately 3,529,512 ballots. For each 1% of those ballots, the cost could range from \$3,106 ($3,529,512 * .01 * \0.088) based on Guilford County data to \$8,824 ($3,529,512 * .01 * \0.25) based on Washington State data. Without knowing the size of the sample that will be chosen, Fiscal Research has no basis upon which to estimate the true cost of conducting a hand-to-eye count/recounts.

Code of Ethics Recommendation:

Section 8 of the bill requires the State Board to recommend a code of ethics for members and employees of boards of elections. The State Board considers this responsibility to be among its existing responsibilities and duties. Therefore, it does not anticipate that it would need any additional resources to comply with this section of the bill.

Voting System Pilot Program:

Section 9 of this bill authorizes the State Board of Elections to conduct programs in up to nine counties that would experiment with different types of voting systems. The State Board reported that it does not expect to incur any additional cost to conduct the pilot because voting system vendors are likely to supply the equipment that would be used in the experimental pilots.

Criminal Penalties:

As Section 2(a) of this bill would create a new Class I felony and several Class G felonies for failure to perform certain vendor duties, it would be expected to result in some additional charges and convictions and would, consequently, have a fiscal impact on the Courts and Department of Correction. Because the offenses would be new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as voting system vendors would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class G or I felony charges and convictions would occur. As such, a substantial fiscal impact due to the new criminal penalties is not anticipated.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As the Class G and I felonies created by this bill would be altogether new, the Sentencing Commission has no historical data from which to project the specific impact on prison population. In FY 2003-04, 11 percent of Class I and 44 percent of Class G convictions resulted in active sentences with average active sentence lengths of 7 to 9 months and 15 to 19 months, respectively. If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year. If, for example, there were two Class G felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

The remaining 89 and 56 percent of Class I and G convictions, respectively, resulted in non-active sentences. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediates sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

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.

For any new Class G or I felony charge due to this bill, there would be additional court and preparation time needed to dispose of the charge, thus increasing superior court workload. Based on the costs of attorney preparation time, time in court, and indigent defense AOC estimates the average cost per charge if settled via trial at \$5,835 for a Class I felony and \$7,657 for a Class G felony. If settled via guilty plea, AOC estimates the average cost at \$330 per plea for Class I and \$380 per plea for Class G.

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

TECHNICAL CONSIDERATIONS: None

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DATE: August 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices