

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE (Revised Version of July 16 Note)
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: SB 1218 Revised First Edition
SHORT TITLE: Revenue Laws Enforcement Enhancements
SPONSOR(S): Senators Clodfelter, Dalton, Hartsell, Hoyle, and Kerr

	FISCAL IMPACT				
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
GENERAL FUND					
Correction					
Recurring	0	\$78,123	\$187,754	\$276,260	\$369,915
Judicial					
Recurring	\$9,035	\$16,272	\$17,085	\$17,940	\$18,837
Dept. of Revenue	No	Estimate	Available.	Minor impact	Possible
TOTAL EXPENDITURES:	\$9,035	\$94,395	\$204,839	\$294,200	\$388,752
ADDITIONAL PRISON BEDS*	0	3	7	10	13
POSITIONS (DOC only):	0	1	3	4	5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Revenue					
EFFECTIVE DATE: December 1, 2002 (all provisions except disclosure, which is effective when it becomes law)					
<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>					
NOTE: This revised fiscal note lowers the estimated fiscal impact of SB 1218 due to a lower estimate of the number of possible Class C felony convictions.					

BILL SUMMARY:

SB 1218 provides for enhanced punishment when an “Income Tax Return Preparer” (as defined) willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or other document that the person knows is false or fraudulent. Specifically, the bill amends G.S. 105-236 (9a) to increase a penalty from a Class H felony to a Class C felony if the total amount of tax avoided exceeds \$100,000 and from a Class H to F felony if the amount is less than \$100,000. *(Current law makes the penalty a Class H regardless of total amount of tax avoided).*

SB 1218 also amends G.S. 105-236 by adding a new subdivision (10b) that makes it a Class F felony for a person to willfully retain money received from a taxpayer that was intended to be remitted in payment of tax liability.

The bill would also allow those persons who have legal access to a person’s tax information to disclose information discovered by the Department of Revenue (DOR) during a criminal investigation to the appropriate state or federal authorities. This disclosure provision is effective when it becomes law. All other provisions are effective December 1, 2002.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. 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.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific bill, SB 1218. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add 13 inmates to the prison system by the end of FY 2006-07.

	June 30 <u>2003</u>	June 30 <u>2004</u>	June 30 <u>2005</u>	June 30 <u>2006</u>	June 30 <u>2007</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	34,129	34,840	35,647	36,485	37,405
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	32,087	34,679	34,847	34,847	34,847
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-2,042	-161	-800	-1,638	-2,558
4. No. of Projected Additional Inmates <u>Due to this Bill</u> ³	0	3	7	10	13
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	0	3	7	10	13

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/13/01. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2002 Session to eliminate prison beds or close prisons.**

³ Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced.

POSITIONS: It is anticipated that approximately five (5) positions would be needed to supervise the additional inmates housed under this bill by the end of year 5. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by the Department of Correction (DOC) and the three new prisons under construction.

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

Close Custody: 19%
 Medium Custody 62%
 Minimum Custody 19%

OPERATING COSTS: Operating costs are based on actual 2000-01 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2001 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2000-01

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$54.02	\$67.43	\$84.21	\$65.29

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2003 and 2004; this is based on the assumption that DOC cannot build prisons quickly enough to house additional offenders before 2004-05 and/or (2) if the number of beds is anticipated to be less than 400 beds total, since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or establish temporary beds in the State system. For these circumstances, the Fiscal Research Division (FRD) will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost unless a bill generates a high proportion of close custody beds, beds that are the most expensive in the system and difficult to contract out. **For SB 1218, only the operating costs at the statewide average are included.**

SB 1218: Revenue Laws Enforcement Enhancements (DOC Operating Costs). SB 1218 sets the criminal penalties at Class C for tax preparer fraud greater than \$100,000 and at Class F for tax preparer fraud less than \$100,000. The Department of Revenue indicates that 10 cases were prosecuted against tax preparers under current G.S. 105-236 (9a) in 2001 and there are 20 cases in various stages in 2002. Additional information provided by DOR since completion of the original

fiscal note indicates that one of the 10 cases in 2001 would have clearly exceeded the \$100,000 limit and several other cases may have been charged as Class C, had the proposed Class C penalty been in effect. Therefore, it is assumed that at least 40% of the cases would result in Class C convictions if SB 1218 were ratified. DOR indicates the rate of Class C convictions could be lower, but given the intent of the bill to prosecute egregious offenders at the Class C level, FRD assumes at least a rate of 40%. This percentage could increase or decrease depending on actions by DOR and district attorneys on future cases. *(Note: Original fiscal note assumed 100% at Class C.)*

According to the Sentencing and Policy Advisory Commission, if all potential offenders were convicted of Class F felonies, nine prison beds would be needed by the end of FY 2007. However, given the potential for more cases to be prosecuted at the Class C level, FRD assumes that at least 40% of cases will exceed \$100,000 and offenders will be convicted of Class C felonies. The Sentencing Commission projected several scenarios in determining the impact of SB 1218 on prison beds. FRD used the option that assumes approximately 40% of convictions would be at Class C and the remainder at Class F. Under this scenario, 13 new prison beds will be needed by 2007 and approximately three beds annually after 2007. *(Note: Cases and conviction data are not the same number. The DOR cases that are investigated and prosecuted may not result in convictions. The Sentencing Commission model is based on historical conviction rates with a general growth rate applied; the model does not include anticipated investigations. For SB 1218, the Sentencing Commission used 7 Class H convictions in 2001 as the starting point for projections).*

The estimated cost for these prison beds, including inflation, is presented below.

	FY 2003	2004	2005	2006	2007
Prison Beds Per Year	0	3	7	10	13
Cost for New Beds	\$0	\$78,123	\$187,754	276,260	\$369,915

SB 1218 also adds a new criminal penalty, a Class F felony, for any person to misrepresent to another that monies received would be applied against the other person's tax liability. The cost for this new felony cannot be determined. There could be some fiscal impact but since there are several cases a year already covered under current embezzlement statutes, the impact should be minimal.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

General

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of a 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.

SB 1218 Revenue Laws Enforcement Enhancements

AOC generally assumes that increasing the criminal penalty to Class C for tax preparer fraud over \$100,000 will result in more vigorous defense and increase trial rates. Based on revised DOR data, AOC developed several possible scenarios including all cases handled as Class C under the proposed change in G.S.105-236 (9a), or a mix of Class C and Class F felonies. The Administrative Office of the Courts also assumed that given recent increases in DOR cases, the number of cases will be at least 20 per year and possibly more, of which 16 will be prosecuted.

Based on information provided by DOR balanced by the presumed intent of the bill to prosecute more cases at the Class C level, FRD believes it is more likely that cases will be a mix of Class C and F. Therefore, FRD has used the mixed scenario provided by AOC to estimate fiscal impact. This scenario assumes 50 % of cases at Class C and 50% at Class F (but final convictions could be lower percentage). *The cost and trial/plea rate could go up or down depending on nature of future cases and the actions by the involved agencies.*

2 Class C trials =	\$9,722
6 Class C pleas =	923
2 Class F trials	5,629
6 Class F pleas	585
TOTAL	16,859
Minus Cost of current Class H	1,362
TOTAL	\$15,497

Cost in FY 03 is 7/12 of \$15,497 or \$9035. FY 2004 is \$16,272.

It is also assumed that due to the nature of this offense and the anticipated solvency of the defendants, that there will be no indigent defendants; therefore costs for indigent defense are not included.

The bill also creates a new Class F felony for persons who willingly fail to remit funds intended to pay for tax liability. The fiscal impact for a new felony cannot be determined but AOC believes there will be minimal fiscal impact since many of these cases are currently prosecuted under embezzlement laws.

Department of Revenue

The Department of Revenue indicates the recent increase in cases of fraud by income tax preparers has substantially increased workload. DOR cases have increased from seven in 2000, to ten in 2001 and 20 in 2002. However, these workload increases have been handled with current staffing. Increasing and adding criminal penalties should not of themselves significantly increase fiscal impact since most of the cases DOR is currently handling are the complex cases affected by this bill. Further, there could be some deterrent effect by increasing criminal penalties.

There could be some fiscal impact due to increased trials for Class C cases but the amount cannot be determined.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Revenue, and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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