

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: SB 1455 6th Edition
SHORT TITLE: Securities Fraud Protections and Study
SPONSOR(S): Senator Rand

		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						
REVENUE						
Recurring		\$271,000	\$271,000	\$271,000	\$271,000	\$271,000
EXPENDITURES						
Correction	Exact amount cannot be determined; no substantial impact anticipated					
Judicial	Exact amount cannot be determined; no substantial impact anticipated					
Secretary of State						
Recurring		\$ 151,125	\$ 233,862	\$ 241,349	\$ 248,581	\$ 256,038
Nonrecurring		\$ 15,990				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated					
POSITIONS:	3 positions in Secretary of State's office					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Department of the Secretary of State; State Treasurer					
EFFECTIVE DATE:	Sections 2, 3, 4, and 8 become effective November 1, 2002. Sections 5 and 6 become effective December 1, 2002. The remainder of the act becomes 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>						

BILL SUMMARY: (Provided in part by the Research Division of the NC General Assembly.) Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions, whether or not the company is chartered in North Carolina, and whether or not the security is registered in North Carolina. Criminal violations of the securities fraud laws are punished as Class H felonies, regardless of the amount involved. In civil actions, the statute of limitations for securities fraud is two years and punitive damages are not allowed to be imposed. The fourth edition of this bill included provisions to strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, and strengthening administrative and criminal powers of securities administrators. The sixth edition of this bill directs the General Statutes Commission to study those provisions. The sixth edition also increases several securities-related registration and renewal fees and funds three additional investigative positions in the Securities Division of the Office of the Secretary of State.

Additionally, the sixth edition prohibits the State from contracting with businesses that have any officers or directors who have been convicted of securities fraud within the past 10 years and prohibits the State from contracting with vendors that are incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of their corporations stock. Finally, it directs the State Treasurer, in consultation with the Secretary of State, to study the best methods for creating, funding, and paying claims from a "Pension Assurance Fund" designed to protect the retirement savings and investments of the citizens of North Carolina and report their recommendations to the 2003 General Assembly. It also authorizes the Legislative Research Commission to study this issue.

ASSUMPTIONS AND METHODOLOGY:

Secretary of State

General Fund Revenue. Sections 2, 3 and 4 of this bill would increase certain fees that are now charged by the Securities Division of the Secretary of State. The estimated additional revenue is \$271,000 annually.

Specifically, Sections 2 and 3 would amend G.S. 78C-17(b) and G.S. 78C-17(b1) to increase the annual registration and notice filing fees for investment and adviser firms from \$200 to \$300. This will affect approximately 1,100 firms, which equates to \$110,000 in additional revenue annually.

Section 4 would amend G.S. 78A-31(a)(4) to increase the annual renewal fee for mutual company notice filings from \$200 to \$250. This will impact 3,220 mutual funds and is expected to generate an additional \$161,000 annually.

General Fund Operating Budget. The Department estimates that the Securities Division would need three additional unsworn securities investigators at a pay grade of 71 with annual salary of \$33,284 to investigate complaints and to significantly enhance the enforcement of the securities fraud provisions. The positions are effective November 1, 2002, with a cost the first year per investigator as follows:

Cost per Securities Investigator (Unsworn)

Recurring		Nonrecurring	
Salary	\$22,189	Furniture/Equipment	\$2,130
Benefits	\$4,762	Computers	\$3,200
Travel	\$19,090		
Communication	\$867		
Education/Other Expenses	\$3,467		
Total Recurring	\$50,375	Total Nonrecurring	\$5,330

The total recurring cost for the three investigators is expected to be \$151,125. The nonrecurring cost is expected to be \$15,990. For the front-page box, recurring costs are adjusted for annual inflation. Recurring costs in the first year reflect the November 1, 2002 effective date.

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. The AOC relies on offense code data to project the court costs of a bill; the lack of data for these offenses prevents the AOC from estimating the court impact.

Sections 5 and 6 prohibit certain vendors from contracting with the State, and make false certification by unauthorized vendors a Class I felony. AOC staff reports that neither the Securities Unit in the Office of the Secretary of State nor the Purchasing and Contract Division of the Department of Administration (DOA) are aware of the number of vendors doing business with the State that have an officer, director, or owner of an unincorporated business entity, who within 10 years immediately prior to the date of the bid solicitation, has been convicted of securities violations under Chapter 78A or the Securities Act of 1933 or the Securities Exchange Act of 1934. Under Section 5 of the bill, these vendors are not authorized to do business with the State. The bill does not explicitly impose a duty on State entities to investigate the vendor's information, and it is possible that the DOA may not investigate the information supplied by vendors. AOC also reports that the provisions in these sections would prevent DOA from contracting with some of the suppliers with whom they currently do business. To the extent that vendors are charged with providing false certification under Section 5 or 6 of the bill, the courts will be impacted.

Correction

To project the impact of a bill on the prison population, the Sentencing Commission uses data based on offense codes from the Administrative Office of the Courts (AOC). This bill would create two new Class I felonies. Without historical data from the AOC, the Sentencing Commission cannot project the impact of these new offenses on prison beds. However, if there were five convictions each year under this bill, there would be the need for one additional prison

bed in the first year and one additional bed in the second year. In FY 2000-01, only nine percent of Class I felons served active sentences. Approximately 37 percent of Class I felons received intermediate punishments, and approximately 54 percent received community punishments. Also in FY 2000-01, the average daily operating cost of a prison bed was \$65.29, the average daily cost of an intermediate punishment was \$12.69/offender, and the average daily cost of a community punishment was \$1.87/offender.

Office of the State Treasurer

Section 7 directs the State Treasurer, in consultation with the Secretary of State, to study the best methods for creating, funding and paying claims from a "Pension Assurance Fund" including damages awarded as a result of securities fraud brought by the State or private individuals. The State Treasurer and the Secretary of State shall develop legislative recommendations and report them to the General Assembly by March 1, 2003.

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

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

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