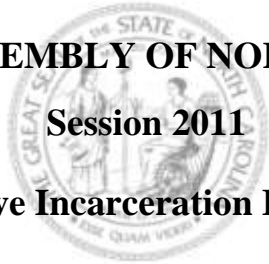


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 351 (Fifth Edition)

SHORT TITLE: Restore Confidence in Government.

SPONSOR(S): Representatives Lewis, T. Moore, and Killian

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<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>
REVENUES*					
Allows use of Surcharge Of Attorney Filing Fee:	\$1,210,850	\$1,246,449	\$1,283,095	\$1,320,818	\$1,359,650
EXPENDITURES*					
<u>General Fund</u>					
Correction	<i>Costs Cannot Be Determined: See Assumptions and Methodology</i>				
Probation	<i>Costs Cannot Be Determined: See Assumptions and Methodology</i>				
Prisons	<i>Costs Cannot Be Determined: See Assumptions and Methodology</i>				
Special Reserve	\$600,000**				
State Board of Elections:					
-Voter ID Card***	\$660,892	\$39,128	\$40,298	\$41,294	\$42,322
General Assembly:	(231,437)	(39,128)			
<u>Special Funds:</u>					
Voter Owned Elections:	(\$429,455)				
<u>Highway Fund</u>					
DMV***	\$0 - \$1,394,083	\$0 - \$100,438	\$0 - \$100,438	\$0 - \$100,438	\$0 - \$100,438
DOT-IT	\$73,950				
Highway Fund Appropriation****	(\$1,468,033)	(\$100,438)			
<u>County</u>					

POSITIONS (cumulative):

* Surcharge may be used for education requirements, but is an existing fee. See Assumptions and Methodology.

** Of the funds appropriated in Section 1.10 of this bill, \$600,000 will be placed in the Special Reserve.

***The maximum amount of eligible voters is assumed to access the State Board of Elections and DMV services. Thus, totaling expenditures would not be accurate. See Assumptions and Methodology.

**** Section 1.10(e) authorizes the Department of Transportation to use up to \$1,468,033 of the funds appropriated from the Highway Fund for FY 2011-12 and up to \$100,438 of the funds appropriated for FY 2012-13 to support implementation costs.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: State Board of Elections, County Boards of Elections, Division of Motor Vehicles, Department of Corrections, Judicial Branch.

EFFECTIVE DATE:

Sections 1.8 through 1.10 are effective July 1, 2011.

Effective for elections and primaries on or after January 1, 2012.

Remaining sections are effective when the bill becomes law.

BILL SUMMARY: Section 1: G.S. 163-166.13 is added to require every individual seeking to vote in person to present photo identification to a local election official before voting at the voting place. Photo identification is defined as one of the following items, provided it contains a photograph of the registered voter: (1) a NC driver's license issued under G.S. Chapter 20; (2) a special identification card for non-operators issued under G.S. 20-37.7; (3) a valid identification card issued by any state or federal entity authorized to issue personal identification; (4) a valid U.S. passport; (5) a valid employee identification card issued by any state, local government, or federal entity; (6) a valid U.S. military identification card; (7) a valid tribal identification card; or (8) a valid NC voter identification card issued under proposed G.S. 163-166.14.

Section 1.2: G.S. 163-166.14 is added to require each county board of elections to accept applications for and issue North Carolina voter identification cards to registered State voters. The cards are valid only for voter identification purposes. County boards of elections are prohibited from charging or collecting any fee associated with the voter identification card. The NC voter identification card is available only to those persons that are without a valid driver's license or

special identification card for non-operators. The card is required to be captioned “NORTH CAROLINA VOTER IDENTIFICATION CARD” and to contain a prominent statement that the card is valid only as identification for voting purposes. The card must be laminated, contain a digital color photograph of the applicant, and include the applicant’s full legal name, address of residence, birth date, date of card issuance, sex, height, weight, eye color, county where card was issued, and any other information required by the State Board of Elections (SBE). The application for a NC voter identification card must elicit the information for inclusion on the card, and the applicant must sign the document. The county board of election is required to verify the following before issuing a voter identification card: (1) a photo identity document or a non-photo identity document if it includes the person’s name; (2) evidence that the person is registered to vote in NC; and (3) documentation of the person’s name and residence address. Voters that are eligible for the identification card who move may receive a new card, free of charge. Voters are required to surrender identification cards upon moving. The State Board of Elections is required to provide each county with all necessary equipment, supplies, and training for the production of the voter identification cards and is responsible for their maintenance.

Section 1.3: G.S. 163-82.6A(b) is amended to require a voter to present valid photo identification, as defined, in order to register in person and then vote at one-stop voting sites. The photo identification requirement is separate from the requirement to provide proof of residence during in-person registration. A person may vote a provisional ballot if the person fails to present the required identification. Conforming changes are made to relevant General Statutes.

Section 1.4 and 1.5: Additional conforming changes are made to G.S. 163-166.7(a) (requiring a person to state current name and address and to present valid photo identification upon entering the voting site) and 163-227.2(b) (requiring a person to state current name and address and to present valid photo identification upon entering an early voting site).

Section 1.6: G.S. 163-182.1A is added to allow a voter who casts a provisional ballot as a result of the voter’s inability or refusal to provide proof of identification to personally appear at the county board of elections office before the conclusion of the election canvass in that county in order to request the provisional ballot be counted. The county board of elections is required to count the provisional ballot, unless disqualified for some other reason, if the voter both: (1) provides valid photo identification and (2) executes an affidavit affirming, under penalty of perjury, that the individual personally appeared to vote and cast the provisional ballot on that date. Voters with a sincerely held religious objection to being photographed are required to submit an affidavit affirming the objection and may vote without photo identification. The county board of elections is required to note on the provisional ballot envelope that the voter has provided valid photo identification. The county board of elections is required to determine any other reason for the cast provisional ballot before ruling on the ballot’s validity in a situation where the county board of elections determines that a voter cast a provisional ballot for a cause other than the voter’s inability or declination to provide photo identification.

Section 1.7: G.S. 163-87 is amended to also allow any registered voter of the precinct to challenge a voter who does not present proof of identification. An observer appointed under G.S. 163-45 may also enter challenges against voters in the precinct regardless of the observer’s place of residence.

Section 1.8: G.S. 20-37.7(d) is amended to clarify that the special identification card issued under the statute by the Division of Motor Vehicles does not include a fee if the state resident is eligible to vote in NC but does not have valid photo identification. Technical changes are also made.

Section 1.9: Provides for public education about the photo identification requirement by counties and the State Board of Elections, as indicated. Appropriates \$600,000 from the fund appropriated in Section 1.10 of the Bill in Fiscal Year 2011-12 to a special reserve to fund the public education campaign and the issuance of NC voter identification cards, allocated as follows: (1) \$100,000 to the State Board of Elections; (2) \$100,000 allocated equally to each county board of elections; (3) \$200,000 to county boards of election in proportion to the number of the county's registered voters; and (4) \$200,000 to county boards of election in counties covered by Section 5 of the Voting Rights Act of 1965, in proportion to the number of the county's registered voters. The Judicial Voter Guide is also required to include information regarding the new photo identification requirement.

Sections 1.10(a), 1.10(b), 1.10(c), and 1.10(d): The unexpended balance of the Voter-Owned Elections Funds are appropriated to implement the bill. The surcharge for attorney membership fees is appropriated to fund requirements of this bill as it relates to judicial guide. Funds from the General Assembly are transferred to the State Board of Elections to implement aspects of this bill. Of funds available to the Department of Transportation, Division of Motor Vehicles' Inspections Telecommunication Account and State Automated Driver's License Program are appropriated to provide for the implementation of this bill.

Section 2: If any provision of the bill or its application are found invalid, such a finding will not impact other provisions or applications of the bill.

Section 3: Section's 1.8, 1.9, and 1.10 are effective July 1, 2011. The bill is effective when it becomes law and applies to all elections conducted on or after January 1, 2012.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction – Division of Prisons

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.

Section 1.6. This section enacts G.S. 163-182.1A, Counting of provisional official ballots cast because of failure to provide documentary identification at the polls. Subsection (a) authorizes a voter who casts a provisional official ballot wholly or partly as a result of the voter's inability or declination to provide documentary identification to personally appear at an office of the county board of elections to seek counting of the provisional official ballot.

Subsection (b) requires the county board of elections to find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and counted if the voter both:

1. Provides documentary identification; and
2. Executes an affidavit affirming under the penalties of perjury that the voter is the same individual who:
 - a. Personally appeared to vote on the day of election or at an early voting site; and
 - b. Cast the provisional ballot on that day.

Providing false information in an affidavit is perjury, punishable as a Class F felony under G.S. 14-209.

In the case where documentary identification was provided but two election officials did not agree that the signature provided at the time of voting did match the signature on record, subsection (c) requires the county board of elections to find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and counted if the voter both:

1. Provides photo documentary identification or makes a signature that the director of elections or employee of the board of elections finds matches the signature on record; and
2. Executes an affidavit affirming under the penalties of perjury that the voter is the same individual who:
 - c. Personally appeared to vote on the day of election or at an early voting site; and
 - d. Cast the provisional ballot on that day.

Providing false information in an affidavit is perjury, punishable as a Class F felony under G.S. 14-209.

In FY 2009-10, there were four convictions under G.S. 14-209. It is not known how many additional convictions for perjury may result from the enactment of the proposed section. In FY 2009-10, 54 percent of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two additional Class F convictions per year as a result of the enactment of the proposed section, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Department of Correction – Division of Community Corrections

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.¹

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 (AOC) 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.

Section 1.6 of the proposed legislation creates the potential for new perjury offenses. Under G.S. 14-209, perjury is a Class F felony. In calendar year 2010, AOC data reveals 22 defendants charged with perjury. AOC cannot project the number of perjury charges that would occur due to this legislation.

Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class F felony case was \$885 per indigent defendant.

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.

¹ 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.

Costs Associated with Voter Identification Requirements

Using estimates provided from the State Board of Elections (SBE) and the Divisions of Motor Vehicles (DMV), an estimate of registered voters without a driver's license or special non-operator's identification has been obtained. The DMV issues drivers licenses under G.S. 20, Article 2 and issues special non-operator's identification cards under G.S. 20, Article 2b. In February, DMV compared information provided from the State Board of Elections regarding the registered voters in the State. DMV and State Board of Elections analyzed the data for matches on name, birth date, and Social Security number (SSN) records. Based on this analysis, there are 556,520 registered voters in the state without a DMV issued form of identification.

No estimate is available regarding the number of voters without DMV-issued identification but who possess an alternative form of identification allowed under Section 1.1 of the bill. Furthermore, absentee voters were also not considered in this analysis. Thus, the figure presented above should be considered a high estimate of potential registered voters who are eligible for a voter identification card. It is assumed that all eligible voters would obtain a voter identification card each year.

Furthermore, the bill allows for a free voter identification card should they move. As individuals move into the State or register for the first time, they could be eligible for a voter identification card or special non-operators identification card. Thus, after FY 2012, an additional pool of voters would be eligible for either a NC voter identification card. Under the bill, newly registered voters may also be eligible for a free special non-operator's identification card. Table 1 shows the number of new registrations and address changes for the past seven calendar years. Based on the population of current voters without a DMV-issued identification card, it is expected that approximately 9.12% of these new voters would not have recognized form of photo identification (556,520 divided by 6,104,976).² Using these figures, 75,653 voters may request a NC voter identification card and 38,779 may request a DMV issued identification card after FY 2012.

Table 1: Voters Requesting a New Registration or Change of Address

Year	Total Voters with a New or Address Changes	At 9.12% of Total	Newly Registered Voters	At 9.12% of Total
2004	913,007	83,228	493,789	45,013
2005	490,891	44,749	246,954	22,512
2006	594,112	54,158	311,127	28,362
2007	626,775	57,136	356,237	32,474
2008	1,971,218	179,692	1,022,820	93,238
2009	508,960	46,396	240,268	21,902
2010	704,424	64,214	306,648	27,953
Average	829,912	75,653	425,406	38,779

² The State Board of Elections assumed that 25 percent of voters would require a new free identification card due to the student population in the State and allowing for geographical differences ID requests. Fiscal Research did not concur. Under the Bill, a student identification card from a public institution would be valid.

Voters without a form of photo identification allowed in Section 1.1 of the bill are allowed the option of obtaining a free State Board of Elections funded NC voter identification card or a free DMV-issued special non-operator’s identification card. However, it is unknown at this time what option voters will choose. When reviewing the costs to the State Board of Elections and DMV, it is assumed that the maximum number of voters allowable uses each service. As such, each method is mutually exclusive and should not be totaled.

State Board of Elections: Voter Identification Card

The State Board of Elections is required to provide each county board of elections with the equipment, supplies, training, and maintenance required to provide the NC voter identification card. The State Board of Elections provided a cost estimate from Alpha Card Systems. The cost information is provided below:

Table 2: Cost Information for NC Voter Identification Card

Item	Cost
Two Sided ID Card Printer for 100 Counties	\$179,500
AlphaCard Enterprise ID Software Package for 100 Counties	\$95,000
6 Panel Dye Film	\$110.50 per 250 Cards
ID Cards	\$39.95 per 500 Cards
Logitech Webcam for 100 Counties	\$4,900
Cleaning Kit for 100 Counties	\$2,175

Additionally, the State Board of Elections reports that additional software would have to be purchased for the Statewide Elections Information Management System (SEIMS) at \$100,000. Additional costs to SEIMS would result from the additional information, such as photographs, required for the issuance of the NC voter identification card.

The total estimated cost of the NC voter identification card is presented below. Figures were inflated based on inflation guidelines in the 2011 Legislative Fiscal Note Manual. No additional costs for training were assumed. However, the quote provided by Alpha Card Systems included one hour of free training per system and free customer support.

Table 3: Total Cost for NC Voter Identification Card

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Equipment	\$186,575				
Software	\$195,000				
Badge Cost	\$279,317	\$39,128	\$40,298	\$41,294	\$42,322
Total	\$660,892	\$39,128	\$40,298	\$41,294	\$42,322

The State Board of Elections finds that additional personnel may be required at county offices to issue identification cards. However, the additional costs cannot be determined at this time.

Division of Motor Vehicles: Special Identification Card for Non-Operators

Section 1.8 allows an eligible voter without valid photo identification to obtain a special identification card for non-operators from the Division of Motor Vehicles (DMV), and waives the \$10 fee set by G.S. 20-14 provided that the voter signs an affidavit stating that he or she does not have an alternate form of identification authorized by G.S. 163-166.13. Accordingly, this analysis assumes that registered voters seeking DMV-issued identification are prompted solely by the photo identification requirement for voting, and therefore will not seek identification cards in lieu of regular ID issuance.

Unlike the voter identification card under the State Board of Elections, voters would not be eligible to receive a free special identification card should they move within the State. However, voters who move into the State or who become eligible to vote by achieving the requisite age requirement would be eligible for the free special identification card.

Assuming that approximately 9.12% of new registrants would not have a recognized form of photo identification, Fiscal Research estimates that an additional 38,779 eligible voters could request special identification cards annually. This total is in addition to the current pool of voters (556,520) without DMV-issued forms of identification.

Vendor compensation for license/identification card production in FY 2011-12 will range from \$1.95 to \$2.12 per issued card, per the migration in the second half of FY 2011-12 from the current license production vendor to a new vendor for the Secure Driver License System. Accordingly, this analysis assumes an average vendor compensation rate of \$2.04 (rounded). In addition, DMV estimates per card postage and delivery costs of \$0.47 for the central issuance of cards. Since voter behavior and the potential use of alternate forms of identification are indeterminate at this time, the scenario included below represents the potential range of license production and delivery costs for DMV-issued identification. Given the alternate authorized forms of identification, Fiscal Research does not expect DMV to incur costs approaching the maximum level included for illustration in Table 4.

Furthermore, Fiscal Research expects that existing central issuance and driver license field office staff will accommodate the requisite identity and residency document verification. However, per the potential influx in identification card requests, longer wait times at DMV field offices and central issuance backlogs may be experienced.

Table 4: DMV Special Non-Operator's Identification Card Costs

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Identification Card and Delivery	\$0 - \$1,394,083	\$0 - \$100,438	\$0 - \$100,438	\$0 - \$100,438	\$0 - \$100,438

To verify the issuance of a valid unexpired driver license, learner's permit, provisional license, or special identification card, as proposed by Section 1.2 (G.S. 163-166.14(b)), county boards of elections will require access to a real-time, external interface with the State Automated Driver License System (SADLS) to query records. The Department of Transportation – Information Technology section could not provide development and implementation timelines for interfaces for

both SADLS and the New Generation Driver License System (NGDLS) which is now being implemented. Per the January 1, 2012 effective date, interfaces must be developed for each platform. However, a “code freeze” will be imposed for NGDLS implementation during FY 2011-12, which may restrict the number of changes that can be implemented. Consequently, development of the external interfaces may extend beyond the January 2012 timeframe.

DOT-IT estimates a total of 1,760 hours of contractual labor for SADLS modifications at an estimated cost of \$131,800. However, it is assumed that current contractual services can accommodate up to 890 hours of development, or roughly \$57,850 of this estimated cost. Accordingly, DOT-IT expects to incur approximately \$73,950 in new costs for SADLS modifications, representing 870 hours of contractual labor at an estimated rate of \$85.00 per hour. DOT-IT also anticipates that existing resources can accommodate the estimated 250 additional development hours for NGDLS modifications.

Section 1.10(e) authorizes the Department of Transportation to use up to \$1,468,033 of the funds appropriated from the Highway Fund, including unexpended balances within the Inspections Program Account and Telecommunications Account, to cover implementation costs in FY 2011-12. In addition, DOT may use up to \$100,438 from the same sources to support implementation costs in FY 2012-13.

Voter Education and Sources of Funding:

Section 1.9, subsections 1-7 are not assumed to create additional costs for the State or county governments. Communications described under these sections are undertaken currently by the State and county governments, thus additional costs should be nominal, if any. Under current law (G.S. 163-82.8), county boards of elections may issue voter registration cards with the approval of the board of county commissioners. This bill requires all county boards of elections to issue voter registration cards. According to the State Board of Elections, all county boards of elections currently issue voter registration cards; therefore no additional costs are anticipated as a result of this new requirement. Only counties that maintain a board of elections website are required to post additional information. Should any costs occur, there is an additional appropriation in this bill.

Section 1.9 also appropriates \$600,000 for FY 2011-12 to cover the cost of advertisements defined in the subsection. Under this bill, \$500,000 is allocated to the county board of elections for the purposes of voter education. No additional funding for advertising was assumed to be required by the State Board of Elections or Fiscal Research. \$100,000 is appropriated to State Board of Elections that could be used for Voter Identification Cards or to help educate voters.

Section 1.10(a) of this bill allows available funds from the North Carolina Voter-Owned Elections Fund to be used to fund Section 9 of this bill and to issue voter identification cards. The current cash balance of this fund is \$429,455.

Section 1.10(b) allows the use of the \$50 annual attorney membership fee authorized in G.S. 84-34 that funds a portion of the North Carolina Candidate Fund to fund education and publicity requirements of this Bill. As this is an existing fee, no new revenues are generated. According to

the North Carolina State Bar, there are 24,217 active North Carolina licensed attorneys. Over the last ten years, according to data provided by the State Bar, there has been an annual growth rate of 2.94% of new North Carolina licensed attorneys. Thus, expected revenues are as follows for the fund:

Table 5: \$50 Annual Attorney Membership Fee Revenues

Fiscal Year	Revenue
FY 2012	\$1,210,850
FY 2013	\$1,246,449
FY 2014	\$1,283,095
FY 2015	\$1,320,818
FY 2016	\$1,359,650

Voting Procedures:

Section 1.3 of the bill is not believed to add any additional cost as additional information is required to the existing process for voting and registering at the one-stop voting sites set out in G.S. 163-82.6A.

Fiscal Research does not believe that any additional costs will be associated with Sections 1.4 and 1.5 of the bill. Voters will be required to provide valid photo identification as well as provide the existing requirement of stating their name and residence per G.S. 163-166.7(a) and G.S. 163-227.2(b).

Section 1.6 of this bill adds an additional section to the General Statutes pertaining to the counting of provisional ballots. No estimate of costs associated with this section is available; however there may be additional time for the county board of elections as a result of reviewing the provisional ballots. However, county boards of elections are only compensated per meeting as stated in G.S. 163-32. It is unknown if an additional meetings would be required to handle additional provisional ballots.

Cost information is not available for Section 1.7 of the bill. However, additional costs related to increased challenges during elections as a result of photo identification requirements may occur. The compensation of election officials are set in G.S. 163-46.

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

TECHNICAL CONSIDERATIONS: Section 1.2 prohibits a voter from receiving a NC Voter Identification Card if they possess a “valid unexpired driver’s license, learner’s permit, provisional license, or special non-operator’s card.” However, in the newly created G.S. 163-166.13(c), a valid and unexpired DMV-issued identification is not a requirement for valid voter photo identification. For consistency, “valid unexpired” may be added to Section 1.1 for acceptable forms of DMV-issued identification or deleted from Section 1.2.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Bondo, Sarah Stone, Bryce Ball

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 14, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices