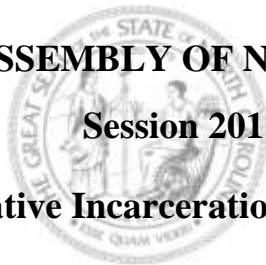


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 476 (Third Edition)

SHORT TITLE: Protect Galax & Venus Flytrap/WRC Rule Fines.

SPONSOR(S): Representative Gillespie

	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:					
Fines & Forfeiture Fund	\$6,750	\$6,750	\$6,750	\$6,750	\$6,750
EXPENDITURES:					
NCDA&CS	\$0	\$0	\$0	\$0	\$0
WRC	\$0	\$0	\$0	\$0	\$0
Corrections		No significant impact anticipated			
Probations		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Agriculture & Consumer Services (NCDA&CS)					
Wildlife Resources Commission (WRC)					
EFFECTIVE DATE: October 1, 2011					

BILL SUMMARY:

The PCS on HB 476v2, Protect Galax and Venus Flytrap/ WRC Rule Fines, makes changes to the General Statutes for the Department of Agriculture & Consumer Services and the Wildlife Resources Commission. In Section 1, the bill amends G.S. 106-202.19(a) to add five instances of unlawful conduct related to galax and Venus flytrap under the Plant Protection and Conservation Act. HB 476 will make the following illegal:

- (1) To uproot, dig, take, or otherwise disturb or remove from another person's land galax or Venus flytrap without a written permit from the owner that is dated and valid for no more than 180 days.
- (2) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (3) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.

- (4) To buy more than five pounds of galax for the purpose of resale or trade without a copy of the landowner’s written permission and confirmation of the collection date.
- (5) To buy more than 50 Venus flytrap plants for the purpose of resale or trade unless fully compliant with applicable regulations.

Section 2 amends G.S. 113-135.1(a) to increase the fine from \$10 to \$25 for a violation of WRC rules. Section 3 makes this provision apply to violations and offenses committed on or after October 1, 2011, and clarifies that prosecutions for offenses committed before October 1, 2011 are not abated or affected, and statutes that would be applicable but for this act remain applicable.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture & Consumer Services (NCDA&CS)

The requirements added by HB 476 will not change NCDA&CS expenditures. The additions to unlawful conduct in G.S. 106-202.19(a) do not require changes to NCDA&CS’ current programs. In addition, the Department will derive no additional revenue from the changes made in HB 476.

Wildlife Resources Commission (WRC)

WRC is responsible for enforcing rules created by the Wildlife Resources Commission. HB 476 will not increase the operating costs of the agency since it is already enforcing these rules. However, HB 476 increases the penalty for an offense that is solely a violation of the rules of the WRC from \$10 to \$25. Over the last three years, WRC has issued less than 500 penalties per year (See Table 1).

Table 1. Violations Pursuant to G.S. 113-135.1(a)

	Number of Offenses	Revenue
FY 2008-09	491	\$4,910
FY 2009-10	398	\$3,980
FY 2010-11 expected ¹	450	\$4,500

All revenue collected from these penalties is deposited into the Fines & Forfeiture Fund, which is distributed to local school districts; WRC does not receive a percentage of these funds for the collection of these revenues. WRC does not expect a significant change in the number of offenses due to the increase in the fine. Thus, assuming approximately 450 fines per year (the average over the last 3 years is expected to be 446 offenses) the new expected revenue is \$6,750, all of which would go to the Fines & Forfeiture Fund.

Justice & Public Safety -- General

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

¹ There have been 201 offenses resolved through May 25, 2011 but there are many unresolved cases. WRC expects the total number of violations to be between 400 and 500.

The bill amends the Plant Protection and Conservation Act (G.S. Chapter 106, Article 19B) to regulate commerce in galax and Venus flytrap.

Section 1: Expands the list of unlawful activities in subsection (a) of G.S. 106-202.19, Unlawful acts; penalties; enforcement, to include the following:

- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land, galax or Venus flytrap, without a written permit from the owner that is dated and valid for no more than 180 days.
- (6b) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (6c) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (6d) To buy more than five pounds of galax for the purpose of resale or trade without a copy of the landowner's written permission and confirmation of the collection date.
- (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade unless fully compliant with applicable regulations.

Subsection G.S. 106-202.19(a1) makes any violation of Article 19B a Class 2 misdemeanor (absent a specific provision for greater punishment).

Because the proposed section creates new offenses, 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.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-202.19(a1). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute.

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 the proposed broadening of the current statute 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

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

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.

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.

Since the proposed legislation creates new offenses, AOC is not able to estimate the number of charges that may arise. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. In addition, 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.

SOURCES OF DATA: Bill Summary adapted from Bill Digest H.B. 476 (03/24/0201); Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Wildlife Resources Commission; Department of Agriculture & Consumer Services

TECHNICAL CONSIDERATIONS: None

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