

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2011**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 828 (Fourth Edition)

**SHORT TITLE:** Unemployment Insurance Changes.

**SPONSOR(S):** Senators Rucho and Hartsell

<b>FISCAL IMPACT</b>					
	<b>Yes (x)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>	<b><u>FY 2014-15</u></b>	<b><u>FY 2015-16</u></b>	<b><u>FY 2016-17</u></b>
<b>REVENUES:</b>					
<b>Unemployment Trust Fund</b>					
	*Up to \$2.7 million. See Assumptions and Methodology.				
<b>EXPENDITURES:</b>					
<b>Prisons</b>	0	0	0	0	0
<b>Community Corr.</b>	\$93,085	\$95,394	\$98,208	\$100,682	\$102,908
<b>Judicial Branch</b>	\$739,882	\$758,231	\$780,599	\$800,270	\$817,956
<b>TOTAL</b>	\$832,967	\$853,625	\$878,807	\$900,953	\$920,864
<b>POSITIONS (cumulative):</b>	0	0	0	0	0
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Division of Employment Security, Department of Commerce; Department of Public Safety; Judicial Branch					
<b>EFFECTIVE DATE:</b> Subsections 2.(b), 2.(c), 2.(d) – November 1, 2012; Subsection 3.(c), 3.(d), and 3.(e) – October 1, 2013; Subsection 4.(a) – December 1, 2012; Subsection 4.(b) and 4.(c) – October 1, 2012; All other sections - when the bill becomes law					

**BILL SUMMARY:**

Senate Bill 828 includes several changes to the unemployment laws that fall within these three categories:

- The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.
- The resolution of outstanding issues associated with S. L. 2011-401, Senate Bill 532.
- The statutory change required to comply with the federal Trade Adjustment Assistance Extension Act of 2011 this year.

The bill is a recommendation of the Revenue Laws Study Committee. The proposed House committee substitute incorporates the recommendations of the House Unemployment Fraud Task Force and a couple of administrative changes requested by the Division of Employment Security.

Source: Research Division

## **ASSUMPTIONS AND METHODOLOGY:**

### Part I: Change the Law to Continue the Three-Year Look-Back Trigger for Extended Benefits

This section is not anticipated to have a State fiscal impact as it simply conforms State law to existing Executive Orders and practice by DES. Additionally, any extended benefits paid for as a result of this section would be funded by the federal government and would not affect North Carolina's Unemployment Trust Fund or debt owed to the Federal government for benefits.

### Part II: Resolution of Outstanding Issues from S.L. 2011-401

This section is not anticipated to have a fiscal impact.

### Part III: Compliance with the Trade Adjustment Assistance Extension Act of 2011

Subsections (a) and (b) are not anticipated to have a fiscal impact.

Subsection (c) deals with the non-charging of employers accounts and changes the statute such that employers will be charged if an overpayment occurs because of the employer's failure to respond in a timely or adequate manner. In recent years, about \$1.6 billion in total benefits has been paid out per year with \$195 million that was non-charged to employers. At this time, DES cannot determine how much of that \$195 million was due to employer inaction, so it cannot be estimated what the impact might be. The long-term impact might result in changes to an employer's experience rating which might then result in additional revenue into the Trust Fund.

Subsection (d) provides for a mandatory 15% penalty on the amount of any erroneous payment due to payment of benefits for which the person is not entitled. DES provided that in 2011, there were \$18,008,681 in fraudulent benefits paid. A 15% penalty on that \$18 million would result in \$2.7 million in additional revenue for the Trust Fund.

For both of these sections, an estimate as to increased staff time needed to implement the changes is not available. Almost all administrative expenses for the State's unemployment insurance program are paid for by the federal government, so an impact to the State Trust Fund or Reserve Fund is not anticipated.

### Part IV: Enhance Unemployment Compensation Fraud Detection and Recovery, as Recommended by the House Unemployment Fraud Task Force

Section 1(a) of the proposed legislation elevates the criminal penalty for unemployment compensation fraud from a Class 1 misdemeanor to a Class I felony compensation if the amount of benefits obtained exceeds \$400. This change will affect courts, prison populations, and Community Corrections.

## **Judicial Branch**

The Administrative Office of the Courts 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.

In calendar year 2011, approximately 3,634 defendants were charged for fraudulently obtaining unemployment benefits. Although AOC is not able to estimate the number of charges that may be elevated under this bill, the Department of Commerce Division of Employment Security has indicated that most current charges are for cases exceeding \$400 in overpayments. Overall, the cost of the average workload for the disposition of a Class I felony case is \$365. The average cost of a Class 1 misdemeanor case is \$165. The proposed legislation would thus impose an increased cost of \$200 per case ( $\$365 - \$165 = \$200$ ). Accordingly, additional cost to AOC would be \$726,800 ( $\$200$  per case x 3,634 cases).

## **Department of Public Safety – Prison Section**

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), makes changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also creates a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are subject to nine months of post-release supervision (PRS). B1-E felony PRS is increased from nine months to twelve months.

There were 138 Class 1 misdemeanor convictions under G.S. 96-18(a) during FY 2010-11. Additional prison beds may be needed if any of the 138 misdemeanor convictions under G.S. 96-18(a) met the elements of the proposed Class I felony. It is unknown how many of these 138 convictions involved amounts exceeding \$400. However, the NC Department of Commerce Division of Employment Security has indicated that most of the current charges are for cases exceeding \$400 in overpayments. Based on FY 2010-11 data and changes under the JRA, it is estimated that 18 percent of Class I convictions will result in active sentences, with an average estimated time served of seven months. As shown below, if all 138 Class 1 misdemeanor convictions were elevated to Class I felony convictions under the proposed legislation, active sentences would result in the need for 25 additional prison beds per year.

Based on the most recent population projections and estimated bed capacity, there are 1,791 surplus prison beds available through 2017. Taken in isolation, the impact of the proposed legislation is not expected to exceed current prison bed vacancies. To the extent that further legislation increases prison populations beyond the projected vacancies, additional beds would be needed.

Since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary).

It is unknown how many of the 138 Class 1 misdemeanor convictions involved multiple-count convictions under G.S. 96-18(a) which resulted in consecutive sentences. Therefore, it cannot be determined how the bill's potential reduction of multiple-count prosecutions (by deletion of the provision that each material false statement, representation, or non-disclosure is a separate offense) would impact sentencing for the extant Class 1 misdemeanors under G.S. 96-18(a). The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

### **Department of Public Safety – Community Correction Section**

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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>1</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.57 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2010-11, 18 percent of Class I offenders received active sentences; 37 percent received intermediate sentences; and 45 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 27 and 22 months, respectively. Average sentence length for community and intermediate punishments under Class 1 misdemeanors in FY 2010-11 were 19 and 15 months, respectively. Cost to CCS comes from seven additional months of community punishment and eight additional months of intermediate punishment due to longer punishments for the proposed elevation to Class I felonies. Accordingly, cost to CCS under the proposed legislation is \$91,439.<sup>2</sup>

### **Part V: Technical Changes Requested by the Division of Employment Security**

This section makes conforming changes as necessitated by the transfer of the Employment Security Commission to the Department of Commerce. There is no anticipated fiscal impact from these changes.

### **Part VI: NC Facts Program**

This section is not anticipated to have a fiscal impact.

**SOURCES OF DATA:** Division of Employment Security, Department of Commerce

**TECHNICAL CONSIDERATIONS:** None

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<sup>1</sup> DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>2</sup> [45% x 138 x \$760 (cost of 7 additional months)] + [37% x 138 x \$868 (cost of additional 8 months)] = \$91,439.

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