

N.C. GENERAL ASSEMBLY LEGISLATIVE FISCAL NOTE

Fiscal Research  
733-4910

Prepared By: Louise Young	Date Prepared: 6/20/89	Bill No.: S 520	Edition: PCS 1724
Approved By: Tom Covington TOMC	6/21/89		Sponsor: Soles
Short Title: Securities Enforcement			

TYPE OF FISCAL IMPACT	COUNTY		FUNDS AFFECTED:		
	State Gov't	Local Gov't	(x) General	( ) Highway	( ) Other: Local
			State Fiscal Impact	FY	FY
				89-90	90-91
No Fiscal Impact	( )	(x)	State Total Req'ments (A)	\$46,500	\$46,500
			Receipts/Revenues (B)	0	0
Increase Expenditure	(x)	( )	Net State Expend./Rev. (A)	46,500	46,500
			No. of Positions		
Decrease Expenditure	( )	( )			
			Local Fiscal Impact	FY	FY
Increase Revenue	( )	( )		0	0
			Local Total Req'ments		
Decrease Revenue	( )	( )	Receipts/Revenues		
			Net Local Expend./Rev.		
No Estimate Avail.	( )	( )	No. of Positions		

Description of Legislation

1. Summary of Legislation

TO AMEND THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT BY ESTABLISHING AN INVESTOR SECURITY FUND AND BY ENHANCING THE ENFORCEMENT PROVISIONS OF THOSE ACTS."

Investor Security Fund. Adds GS 78A-51, establishing Investor Security Fund, under administration of Sec'y of State, funded by a portion of any fines or reimbursements collected pursuant to GS 78A-47(c) and GS 78C-28(c). Provides that Fund will reimburse investors for losses caused by wrongful conduct of securities dealers or salespeople or of investment advisers or investment adviser representatives. Provides that Fund subrogated in amount of reimbursement and may proceed against violator. Provides for administration of Fund.

Anti-Fraud Fund. Amends GS 78A-57 and 78C-39 to direct Sec'y of State to establish Anti-Fraud Fund, to be used to investigate and prosecute civil and criminal actions growing out of enforcement of GS Chs. 78A, 78C, and 78D. Amends GS 78A-47 and 78C-28, permitting Sec'y of State to assess civil penalties and reimbursement of investigative costs against persons violating those two chapters; provides that such penalties and reimbursements to be placed in Anti-Fraud Fund or the Investor Security Fund. Amends GS 78A-57 and 78C-39 to permit court to sentence person convicted of violating either chapter to pay, among other charges, costs of investigation and prosecution, with such payments to be placed in Anti-Fraud Fund.

Other Enforcement Changes. Adds new GS 78A-11, prohibiting operation of "telephone rooms" in violation of GS 78A-8 or 78A-12. Adds new GS 78A-12 prohibiting various actions that attempt to manipulate market in a security. Amends GS 78A-46 to authorize Sec'y of State to appoint securities law enforcement agents and sets out their jurisdiction, which includes the primary responsibility for enforcement of GS 78A and GS 78C, and the authority to arrest and take other investigatory and enforcement actions for any criminal offense. Amends GS 78A-47 and 78C-28 to permit Sec'y to seek orders of restitution from persons charged, in civil actions brought by Sec'y, with violating Chapters or rules or orders entered under Chapters. Amends GS 78A-56 and 78C-38 to modify standard of defendant's care under sections from "reckless disregard" to "exercise of reasonable care," and GS 78A-56 to permit treble damages under section, and to add additional sections to those enforceable under section. Amends GS 78A-57 and 78C-39, to permit fines in cases brought under those sections to be in amount three times of gross gain or loss because of violations and to permit attorneys in Secretary's office to be appointed Special Prosecutors in criminal actions brought under those two sections.

2. Effective Date - October 1, 1989

3. Fund or Tax Affected - General Fund

4. Principal Department/Program Affected - Secretary of State - Securities

Cost or Revenue Impact on State

	FY	FY	FY
	88-89	89-90	
1. Non-Recurring Costs (A)	\$10,500 to-		

	12,000	
2. Recurring Costs (A)	\$36,000 to 42,000	\$36,000 to 42,000
3. Fiscal/Revenue Assumptions (B)	\$100,000	\$100,000

(A) COST IMPACT ON STATE

The Department indicates that existing staff of 4 Securities Investigators and 2 Legal specialists can handle the responsibilities required under the provisions of this bill. However, the granting of law enforcement power and authority to securities investigators for purposes of enforcement of the securities laws and other investigatory and enforcement actions for any criminal offense will require additional operating funds of approximately \$36,000 to \$42,000 in 1989-90 and non-recurring costs of \$10,500 to \$12,000. The estimated operating costs include one position to operate a Police Information Network terminal, additional employer costs of LEOBRF for 4 Investigators, and increased travel charge of 4 cents per mile for pursuit vehicles. The estimated non-recurring costs consist of one Police Information network terminal, firearms, and special equipment for motor vehicles. Additional costs not included in the above estimates may be necessary for the use of the motor vehicles for commuting without charge to the employee, and law enforcement training necessary for certification.

(B) SPECIAL TRUST FUND

Staff of the department estimate that the penalties may result in collections of \$100,00 annually for deposit into the Anti-Fraud Trust Fund and the Investor Security Trust Fund. A reliable estimate of collections from reimbursements of investigative and prosecution costs cannot be determined from information currently available. Collections from these sources would also be deposited into the two trust funds. The bill authorizes the Anti-Fraud Trust funds to be used to investigate and prosecute civil and criminal actions but they would supplement funds appropriated for this purpose instead of reducing the amount.

Cost/Revenue Impact on County or Local Government - None

	FY	FY	FY
	88-89	89-90	
1. Non-Recurring Costs/Revenues			

2. Recurring Costs/Revenues

3. Fiscal/Revenue Assumptions

Sources of Data for Fiscal Note - Secretary of State staff and Fiscal Research Division.

Technical Considerations/Comments

The power and authority granted to securities law enforcement agents beginning on page 3 line 33 authorizes broad investigative and enforcement jurisdiction which overlaps and/or duplicates that of the State Bureau of Investigation, other State law enforcement officers, and local law enforcement authorities.

The prospective appointment of attorneys on the Secretary of State's staff as a Special Prosecutor for the District Attorney or the Attorney General would overlap with their prosecutorial authority and such prosecutorial authority is not granted to other attorneys in State government. (Page 13, Line 15.)

Investor Security Fund: The bill contains no cap on the amount of reimburseable loss that may be paid to a single claimant. (Page 7, Line 20.) The bill does not stipulate that the funds be deposited with the State Treasurer but authorizes the Administrator to place them in an interest bearing account. (Page 8, Line 29.)

The bill contains no provision setting out the intent for the settlement of pending violation cases.



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