

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** House Bill 1590 (= Senate Bill 1323)

**SHORT TITLE:** Implement Recommendations of the Indigent Fund Study Commission

**SPONSOR(S):** Rep. Hackney (Senator Ballance)

**FISCAL IMPACT**

	<b>Yes (x)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2000-01</u></b>	<b><u>FY 2001-02</u></b>	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>
<b>REVENUES</b>	-	--	----	--	---
<b>EXPENDITURES</b>	\$585,124	\$590,371	\$602,065	\$613,819	\$648,525
<b>POSITIONS:</b>	7	6	6	6	6

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Administrative Office of the Courts

**EFFECTIVE DATE:** Establishment of Commission and Office of Indigent Defense Services is effective when Bill is enacted. Implementation of rules and powers of the Commission are effective July 1, 2001. AOC maintains responsibility for indigent defense until July 1, 2001.

**NOTE:** HB 1590 proposes to fund these 7 positions from the Indigent Defense Fund, currently in AOC. However, since the Fund is projected to have a shortfall already in 2000-2001, this analysis assumes additional General Fund appropriation will be necessary to cover this additional program. If not, the shortfall in the Indigent Fund will be greater by the above amounts. In past years, shortfalls in the Indigent Fund have been covered by AOC lapsed salaries.

**BILL SUMMARY:** Adds Art. 39B to GS Chapter 7A entitled Indigent Defense Services Act of 2000. Establishes Office of Indigent Defense Services as an independent Office placed

administratively within the Judicial Department. The Office will be responsible for establishing, supervising, and maintaining a system for providing legal representation to indigent persons entitled by law to legal representation, replacing the current system of Indigent Person's Attorney Fee Fund, Capital Case Program, Public Defender Program, and Special Counsel to the Mentally Ill within the AOC. Creates a 13 member Commission (appointments by the General Assembly, Governor, Chief Justice, and several constituent organizations) on Indigent Defense Services. Office and Commission are required to develop rules, policies and procedures for determining indigency, appointment of counsel, determination of compensation, and appointment of experts as well as the best method for delivering services. Commission must consult with local bar and judges of district and adopt procedures to significantly involve local bars. Authorizes Commission to establish and operate regional and district public defender offices. Commission must appoint public defender from list of 2 to 3 persons nominated by attorneys residing in the area. Modifies definition of years of service for Public Defenders and Assistant Public Defenders, for purposes of calculating longevity. Sets out procedure for suspension or removal of public defender by 2/3 of the Commission for cause. Appropriates \$535,644 from General Fund for fiscal year 2000-2001 to Indigent Persons' Attorney Fund for staff and operational expenses. Makes conforming amendments to various sections of the General Statutes that reference indigent defense.

**ASSUMPTIONS AND METHODOLOGY:** The Fiscal Impact of HB 1590 has 4 aspects:

1) Cost of Operating the new Office of Indigent Services:

The Office of Indigent Services would require staff and certain operational expenses. During deliberations of the Study Committee, a staffing plan was developed that includes 7 staff—an Executive Director (base salary of \$97,000), Associate Director (base salary of \$80,000), Chief Financial Officer (\$65,000), Information Systems Manager (\$65,000), Research Analyst (\$55,000) and Administrative Assistant (\$38,809) and a Secretary (\$27,491). The total recurring cost for these positions, including associated operating costs, is \$556,726. Operating Costs for the Commission itself (meeting costs) and rent add \$72,610 for a total \$629,336. The first year also involves \$95,176 in nonrecurring equipment costs.

Fiscal Research believes that these staff functions are appropriate and that these salary estimates are reasonable, relative to others in the Judicial Branch. Both the Executive and Associate Director will almost certainly be attorneys. The Executive Director will in effect supervise Public Defenders so that salary is set slightly higher than the base salary of a Public Defender. The Associate Director's salary is between the Executive Director's and the other professional staff and is set slightly below the Assistant Director of the AOC. The Information Systems Manager and Chief Financial Officer's positions are projected to be the same and are comparable to a high level position within AOC's Court Management Information Systems Division. Because current information systems do not effectively track costs per case and other key information, the Information Systems Manager will need to be able to design and maintain a new system as well as implement links with the existing AOC system. The Financial Officer is expected to be a Certified Public Accountant. The Research Analyst is comparable to a research/statistical analyst in AOC administration. The Administrative Assistant is comparable

to an Admin Assist II in a Public Defender's office and the Secretary's salary is comparable to an AOC Secretary II.

Because the Commission will not be appointed until later in the summer, the positions can be phased in; these costs assume the Executive Director position is effective October 1 and the remaining positions November 1. This lowers the operating costs in 2000-2001.

The 1999 budget funded a permanent Administrative Assistant at AOC to help manage the Indigent Fund. The \$59,253 in the Continuation Budget for this position is subtracted from the cost of the 7 positions above at the point AOC no longer has responsibility for the Indigent Fund (July 1, 2001).

For 2001-2002 and later years, salaries are assumed to increase an average of 3.7%/year and other expenses to increase an average of 2.52%/year, based on FRD inflation rate estimates.

AOC would continue to provide certain administrative services to the Office such as processing the checks to attorneys and payroll for public defenders' offices. We assume this is a continuation of existing work and would not pose any new costs for AOC. However, the Office may in the future need funds for contractual services in areas where the AOC workload becomes significant, particularly in the information systems or financial services areas.

Based on these assumptions, the operating costs of the Office of Indigent Services would be as follows:

<u>2000-2001</u>	<u>2001-2002</u>	<u>2002-2003</u>	<u>2003-2004</u>	<u>2004-2005</u>
\$535,644	\$588,191	\$606,616	\$626,719	\$649,139

2) Cost of Modifying the definition of Years of Service for purposes of calculating longevity for Public Defenders and Assistant Public Defenders:

The AOC identified 14 individuals whose longevity pay would be affected by the change in definition. Under current law, years of service for a Public Defender is years spent as a Public Defender, Assistant Public Defender, Judge or Clerk of Courts. This Bill adds years worked as a District Attorney or Assistant DA. Currently, years of service for an Assistant Public Defender are defined only as years in that current job. This bill defines years of service to include work in a DA of Appellate Defender's office or as a Judge of Clerk of Court.

Longevity pay grants a 4.8% increase after 5 years of service, 9.6% after 10 years, 14.4% after 15 and 19.6% after 20. For the 14 individuals whose longevity calculation will change, the cost each year will be as follows, relative to what they were already scheduled to receive in longevity:

<u>2000-2001</u>	<u>2001-2002</u>	<u>2002-2003</u>	<u>2003-2004</u>	<u>2004-2005</u>
------------------	------------------	------------------	------------------	------------------

\$49,480	\$2,180	(\$4,551)	(\$12,900)	(\$614)
----------	---------	-----------	------------	---------

Adding these costs to the salary costs above gives the totals in the box on page 1.

**3) Impact on Budgeting Requirements for Indigent Defense Costs**

In recent years, the Continuation Budget amount for Indigent Defense Costs has not fully covered the year's expenses. In 1998-99, AOC used \$4.3 Million of lapsed salary to cover the shortfall; \$3.9 Million in 1997-8. In 1999-2000, a shortfall of \$1.6 Million is anticipated. AOC generates about \$9 Million in lapsed salary per year and most years (this year the exception because of Hurricane Floyd) has been able to find the funds to cover this. The Office of Indigent Services, however, will not have access to that level of lapsed salary. (About \$800,000 in lapsed is projected to be generated by Public Defenders this year). This will mean budgeted amounts will have to be higher than they have historically been. However, since this is more a case of budget process than requirements, this fiscal note does not include any estimate of this impact.

4) Impact on the Cost of Indigent Defense in the long term. Much of the impetus for HB 1590 was the realization that there was little if any management of the \$65 Million paid each year for indigent defense and the belief that better management would result in some cost savings. The extent of these savings and the speed with which they may be realized is difficult to predict. Because these issues were discussed extensively during the Study Committee deliberations, they are not addressed in this fiscal note.

**TECHNICAL CONSIDERATIONS:** none

**FISCAL RESEARCH DIVISION 733-4910**

**PREPARED BY:** Elisa Wolper

**APPROVED BY:** James D. Johnson

**DATE:** May 24, 2000



**Signed Copy Located in the NCGA Principal Clerk's Offices**