

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 142 (Second Edition)

**SHORT TITLE:** Economic Development & Finance Changes.

**SPONSOR(S):** Representatives T. Moore, Hager, and Hastings

	FISCAL IMPACT (\$ In Millions)				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
<b>REVENUES:</b>					
<b>Sec. I: Motor Fuel Cap</b>					
Highway Fund	-\$46.65				
Highway Trust Fund	-\$15.55				
Wildlife Resources Fund	-\$0.08				
<b>Sec. II. Ferry Tolls</b>					
Highway Fund	-\$2.5				
<b>Sec. III. Civil Filing</b>					
	-\$0.3				
<b>Sec. V. Tax Refund</b>					
Local Gov.	-\$2.7				
<b>Sec. IV. Filing Fee</b>					
			See Assumptions and Methodology		
<b>Sec. VI. Industrial Fnd.</b>					
			No Fiscal Impact		
<b>EXPENDITURES:</b>					
<b>Part IV. Filing Fee</b>					
			See Assumptions and Methodology		
<b>POSITIONS:</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> NC Dept. of Revenue, NC Department of Transportation, NC Dept. of Wildlife Resources					
<b>EFFECTIVE DATE:</b> Unless otherwise noted, when the bill becomes law.					

**BILL SUMMARY:** The second edition of House Bill 142 makes the following changes related to economic development and the finance laws:

- One-year cap of 37 ½¢ on the gas tax.
- One-year delay of increased ferry tolls.
- Exempt from \$20 filing fee motions to withdraw as attorney.
- Clarify and extend time to apply for sales tax refund of aviation fuel.
- Industrial Development Fund changes related only to sewer infrastructure projects.
- Lower investment threshold from \$150 million to \$100 million in order to be eligible for 20-year carryforward period under Article 3J.
- Waive filing fee for articles of organization by an unemployed individual.
- Port enhancement zone technical correction.

**ASSUMPTIONS AND METHODOLOGY:**

**SECTION I: One-year Cap on Motor Fuel Excise Tax Rate.**

*Consensus Revenue Forecast:*

The motor fuels excise tax rate consists of a flat rate of 17.5 cents per gallon plus a variable rate that is 7% of the national weighted average wholesale price of gasoline and diesel for a six-month base period. For January through June 2012, the variable rate is 21.4 cents per gallon. Based on the April 2012 consensus revenue forecast, the variable rate will decrease to an average of 21.3 cents per gallon in FY 2013. Capping the tax at 37.5 cents per gallon sets a maximum variable rate at no more than 20.0 cents per gallon for FY 2013. Based on existing statutes, the variable rate will automatically readjust on July 1, 2013. Capping this automatic adjustment generates this fiscal impact.

*Distribution of Motor Fuels Excise Tax:*

Wildlife Resources Fund receives 1/6 of one percent of Motor Fuels Excise Tax attributed only to the Highway Fund. A cap impacts the Highway Fund, Highway Trust Fund, and Wildlife Resources Fund. The total cut to Wildlife Resources is \$77,750.

**SECTION II: Delay Ferry Toll Collection.**

Delays the collection of increased tolls required per S.L. 2011-145, Sec. 31.30, for the 2012-13 fiscal year. S.L. 2011-145 directed that the Board of Transportation toll all ferry routes, except the Currituck/Knotts Island and Hatteras/Ocracoke routes, to achieve a net recurring reduction in operating funding of \$2.5 million.

Fares will be collected in accordance with the schedule in effect prior to the submitted amendments to 19A NCAC 02D .0531 and 19A NCAC 02D .0532. Modify 2011 Appropriations Act (H.B. 950) appropriates \$2.5 million on a non-recurring basis to offset the loss of tolling revenue resulting from this delay.

**SECTION III: Exempt Motions to Withdraw from Civil Motions Filing.**

The Administrative Office of the Courts estimates that motions to withdraw as counsel account for approximately \$290,000 of the total funds collected for the civil motions fee. Therefore, Section III of this bill will result in a loss in General Fund availability of \$290,000. H.B. 950, Modify 2011 Appropriations Act, includes reductions in the Justice and Public Safety area to account for the loss.

**SECTION IV: Waive the Filing Fee for Filing Articles of Organization with the Secretary of State for Unemployed Individuals.**

This section would waive the \$125 filing fee for Articles of Organization for limited liability corporations. Currently funds collected from this fee are deposited into the State's General Fund. It is unknown how much revenue the State will fail to collect as a result of this fee waiver. According to recent data, there were 34,365 new LLC filings in FY 2011. The table below reflects data for the most recent completed Fiscal Year, as well as historic trends. It is unknown how many of those filing were unemployed at the time of filing. It is unknown how many additional individuals will file given the fee waiver.

<b>Number of Articles of Organization filed with the NC Secretary of State, by Fiscal Year</b>		
<b>FY</b>	<b>Active LLC</b>	<b>New LLC</b>
<b>2010-11</b>	198,793	34,365
<b>2009-10</b>	236,718	29,974
<b>2008-09</b>	218,649	29,594
<b>2007-08</b>	197,193	30,351
<b>2006-07</b>	166,182	30,351

It is also unknown how such a fee waiver will impact the current operation of the Corporations Division within the Secretary of State. Currently, the annual appropriation to the Division is \$3,004,428 for each year of the current biennium which supports 59 FTE. If such a program greatly increases LLC filings, additional resources may be required within the Division. The Secretary of State is responsible for creating a form, which should not require additional resources. While it is the responsibility of the filing organizer to attest, under penalty of perjury that they are unemployed, the Secretary of State may require additional resources for enforcement.

**SECTION V:** Clarify and Extend the Period of Time to Apply for a Sales Tax Refund of Aviation Fuel Purchased by an Interstate Passenger Air Carrier between January 1, 2010 and June 30, 2011. An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of \$2,500,000. A request for a refund is due within six months after the end of the State's fiscal year. This proposal extends the period in which interstate passenger air carriers can apply for a sales tax refund. According to the Department of Revenue, outstanding sales tax refunds for interstate passenger air carriers in excess of \$1,250,000 between January 1, 2010, and June 30, 2011 equal \$6.34 million in State sales tax and \$2.71 million in local sales tax. The request for a refund is due before July 1, 2012.

**SECTION VI:** Permit the Use of Moneys from the Industrial Development Fund to be used for Sewer Improvements in Adjoining Counties. Section VI of the bill allows for the Industrial Development Fund (IDF) to fund sewer infrastructure projects in any county as long as the site that the sewer infrastructure is servicing is in an eligible county. This Section of the bill is not estimated to have a fiscal impact as it is not known which projects would have applied before this change versus after this change. IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around \$50,000 annually. As of May 25, 2012, IDF had a cash balance of \$1,102,793.

**SOURCES OF DATA:** U.S. Airways representatives; NC Dept. of Revenue; Consensus Revenue Forecast, April 2012, between the Office of State Budget and Management and the North Carolina General Assembly's Fiscal Research Division;

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 11, 2012



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