

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1287 (Third Edition)

SHORT TITLE: Recycle Products Containing Mercury.

SPONSOR(S): Representatives Harrison and Burris-Floyd

FISCAL IMPACT

Yes (x) No () No Estimate Available ()

FY 2009-10 FY 2010-11 FY 2011-12 FY 2012-13 FY 2013-14

REVENUES

EXPENDITURES

State Agencies &

Political Subdivisions ****Minimal Fiscal Impact. See Assumptions and Methodologies.****

POSITIONS (cumulative): none required

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: All State agencies and political subdivisions of the State

EFFECTIVE DATE: When the bill becomes law except the recycling program as required by G.S. 130A-310.60 is effective December 1, 2009 and section 2 is effective for offenses on or after December 1, 2009.

BILL SUMMARY:

H.B. 1287 enacts new GS 130A-310.60, which requires each state agency and political subdivisions of the State to establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all used fluorescent lights and thermostats that contain mercury from State buildings. The bill requires the departments to report to the Environmental Review Commission by May 1, 2010. The bill also enacts new GS 130A-31.61, which requires the contractor responsible for the demolition of any building or structure in the State to first remove all fluorescent lights and thermostats containing mercury from the building or structure. GS 130A-309.10 is amended by adding a new subsection (m), which prohibits the disposal of fluorescent lights and thermostats that contain mercury in any landfill that is unlined.

ASSUMPTIONS AND METHODOLOGY:

Section 1

New G.S. 130A-310.60 requires that all State agencies develop a program for collecting and recycling spent fluorescent lights and thermostats containing mercury and to then report by February 1, 2010 on the agency's compliance. Products containing mercury are classified as "universal waste." Currently, federal law (40 CFR 273) regulates the disposal of universal waste, and State rules (15A NCAC 13A .0119) incorporate these regulations by reference. Thus, State agencies and political subdivisions should not currently be disposing of these products improperly. This bill attempts to clarify and streamline these requirements, as well as insure that agencies are in compliance by requiring that they report on their activities.

To determine what *new* impact this bill would have, Fiscal Research would need to know how many agencies and political subdivisions are already complying with existing regulations and how many are not. This information is not known. Neither Facility Management nor State Construction staff believe there is a fiscal impact from the perspective of the Department of Administration (DOA). Currently, Facility Management recycles all fluorescent bulbs and has very few, if any, mercury thermostats within buildings.

Fluorescent Lights

The State currently has a State contract (926B) for recycling of these materials.¹ The prices for recycling of fluorescent lamps ranges from \$0.04 per foot for straight fluorescent lamps to \$0.94 per pound for crushed or broken fluorescent lamps. The Department of Environment and Natural Resources (DENR) reports that state agencies bought 127,000 fluorescent lights in FY 2007-08. Some of these lights were most likely purchased for new fixtures and the rest were purchased to replace existing lamps that had burned out and would then need to be recycled. While the division of new and replacement is not known, it could be assumed that the maximum number of bulbs that would need to be recycled each year from State agencies would be 127,000. Assuming an average length of 4 feet, each light would cost \$0.16 to recycle for a total maximum cost of \$20,320. Some of the 127,000 bulbs might be Compact Fluorescent Lights (CFLs); the cost to recycle CFLs on the State contract is \$0.24 each. If 127,000 bulbs needed to be recycled and they were all CFLs, the cost would be \$40,640.

Thermostats

For thermostats, the cost per the State Contract is \$3.50 each. State agencies and political subdivisions could also use the Thermostat Recycling Corporation's program whereby they would pay a one-time \$25 fee to recycle all mercury thermostats. Additionally, agencies can go to participating Thermostat Recycling Corporation wholesalers and recycle thermostats for free. As stated earlier, it is not known how many mercury thermostats are in State buildings, but DOA feels there are very few. Fiscal Research does not have an estimate as to how many mercury thermostats are in buildings owned by political subdivisions of the State. The costs to recycle thermostats containing mercury should be minimal, particularly given the possibility that they can be recycled for free at wholesalers.

¹ Available online at <http://www.doa.state.nc.us/PandC/926b.pdf>.

Reporting Requirement

Neither DOA nor DENR feel that additional positions or costs will be incurred to comply with the reporting requirements of the bill. The Department of Correction notes that a person (including an individual, unit of local government, or State agency, *see* G.S. 130A-290(22)), who knowingly makes any false statement, representation, or certification in a report or document filed or required to be maintained under Article 9 is guilty of a Class 2 misdemeanor (per G.S. 130A-26.2, Penalty for false reporting under Article 9). Under G.S. 130A-310.60, agencies are required to report only once, by February 1, 2010, limiting the potential impact of this provision.

Removal of Products Prior to Demolition of Buildings

Section 130A-310.61 requires the contractor responsible for the demolition of a building or structure or the owner of the building or structure to be demolished to remove all mercury-containing fluorescent lights and thermostats prior to the demolition. DOA anticipates that there would be minimal impact or cost to the State associated with this section. The Department would include the specification that all fluorescent lights and thermostats containing mercury be removed as one of their general conditions. Moreover, most demolition contractors are already aware of the federal requirements and are in compliance with proper disposal. The Department of Correction notes that violation of any provision of Chapter 130A is a Class 1 misdemeanor pursuant to G.S. 130A-25(a) (and G.S. 14-3(a)). In FY 2007-08, there were nine convictions under G.S. 130A-25.

Section 2

Section 2 adds new subsection (m) to G.S. 130-309.10 and states that fluorescent lights and thermostats that contain mercury cannot be disposed of in unlined landfills. Violation of this section constitutes a misdemeanor.

Department of Correction – Division of Prisons

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.

Violation of subsection (m) is a Class 1 misdemeanor pursuant to G.S. 130A-25(a) and 14-3(a). In FY 2007-08, there were nine convictions under G.S. 130A-25. Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2007-08, 20% of Class 2 misdemeanor convictions and 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days and 30 days for Class 1 misdemeanor convictions. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population*. The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 2 and Class 1 misdemeanors are less

than 31 days, the State would incur no costs for convictions under the proposed bill. 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

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 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.

The bill has the effect of expanding the scope of an existing Class 1 misdemeanor offense, G.S. 130A-25(a). In 2008, there were 24 defendants charged with this Class 1 misdemeanor. AOC cannot project the number of additional charges that would result from this bill. In FY 2007-08, a typical misdemeanor case took approximately 87 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: Department of Environment and Natural Resources; Department of Administration; Department of Correction; Judicial Branch

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.

TECHNICAL CONSIDERATIONS: None

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