

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1413 (Second Edition)

SHORT TITLE: Enhance Local Govt. Adm. of Env. Prgms.

SPONSOR(S): Representatives Hackney, Weiss, Justice, and L. Allen

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES:					
Sedimentation Account		No estimate available. See Assumptions and Methodology			
Local Governments		No estimate available. See Assumptions and Methodology			
EXPENDITURES:					
Sedimentation Account		No estimate available. See Assumptions and Methodology			
Local Governments		No estimate available. See Assumptions and Methodology			
Correction		Exact amount cannot be determined			
Judicial Branch		Exact amount cannot be determined			
ADDITIONAL PRISON BEDS*		No impact anticipated			
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Environment and Natural Resources, Sedimentation Control Commission, Department of Correction; Judicial Branch					
EFFECTIVE DATE: September 1, 2005					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The second edition of House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission ("the Commission") over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control

program that is limited to the inspection of land-disturbing activities within the jurisdiction; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs. The penalties in this case are paid to the local government. As such, it has no impact on state revenues.

ASSUMPTIONS AND METHODOLOGY:

Revenues: This bill allows a local government to submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission would still be responsible for the administration and enforcement of all other components of the program, including review and approval of the plans. Local governments operating a limited local program shall charge a fee made up of two components: 1) an amount equal to 80% of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus 2) any amount that the local government requires to cover the cost of inspection and administration activities by the local government. The total fee shall not exceed \$100/acre.

The bill directs the local government operating a limited local program to pay the first component of the fee to the Commission for the administration and enforcement of other components of the program. These payments shall be deposited into the Sedimentation Account established by G.S. 113A-54.2(b). ***Under this bill, the Sedimentation Account will receive 20% less in fee revenue for each sedimentation and erosion control plan submitted under a limited local program.*** Currently, the sedimentation fee is set at \$50/acre; therefore under a limited local program, the Sedimentation Account would receive only 80% of that or \$40/acre. Currently, there is no estimate of how many plans would be submitted under a limited local program. Consequently, no estimate is available regarding the exact impact on the Sedimentation Account.

The second component of the fee will result in a revenue gain by local governments operating limited local programs. At this time, there is no estimate available regarding the number of local governments that would choose this option. Also the amount of this component of the fee will likely vary by local government. For these reasons, a specific estimate of the impact on local government revenues is not available.

Expenditures: Under a limited local program, inspection of land-disturbing activities is delegated to the participating local government. ***Consequently, the expenditures related to these inspections will be shifted from the Department of Environment and Natural Resources (DENR) to the participating local government.*** Because the extent to which local governments will choose the limited local program option is unknown, no estimate is available regarding the resources saved by DENR and expended by the local governments. Note that inspections conducted by local rather than state inspectors, especially in rural areas, will likely require less in travel expenditures.

Criminal Penalties: General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitate effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

This second edition makes various changes to Article 4 (Sedimentation Pollution Control Act of 1973), Chapter 113A of the General Statutes, including self-inspections by landowners and authorization for local governments to establish and administer their own permit program. Current G.S. 113A-64(b) states that any person who knowingly or willfully violates any provision of Article 4 or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000). Because this second edition would expand an existing offense, the number of charges and convictions cannot be projected.

Department of Correction & County Jails

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences and the average active sentence length was 23 days. Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Correction (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor is \$2,314 per trial and \$271 per guilty plea. The trial cost includes an estimated \$1,365 in jury fees, costs of time in court, and attorney costs

and an additional \$949 in indigent defense. Based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by plea.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission, Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

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DATE: August 23, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices