

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1766 (Third Edition)

SHORT TITLE: Amend Environmental Laws 2010.

SPONSOR(S): Representative Gibson

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 2010-11 FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15

REVENUES: ****Minimal Fiscal Impact – See Assumptions & Methodology****

EXPENDITURES: ****Minimal Fiscal Impact – See Assumptions & Methodology****

**POSITIONS
(cumulative):**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Environmental Management Commission, Department of Transportation, Department of Agriculture, Department of Administration, Department of Health & Human Services, Department of Crime Control & Public Safety, Department of Insurance.

EFFECTIVE DATE: When the act becomes law, except: Section 6 becomes effective 10/1/2010, Section 9 becomes effective 10/1/2010, Section 11 becomes effective 2/1/2011 and Section 15 becomes effective 12/1/2010.

BILL SUMMARY: H1766 amends various environmental and natural resource laws.

Section 1 moves the horizontal control monument files for plat and subdivision mapping requirements from the Office of State Budget and Management to the Geodetic Survey Section in the Division of Land Resources of the Department of Environment and Natural Resources (DENR).

Section 2 allows the Senate President Pro Tempore and the Speaker of the House to designate multiple members as co-chairs of the Environmental Review Commission.

Section 3 changes public availability requirements for inactive hazardous waste site remedial action plans such that (1) they no longer must be available in the register of deeds office; and (2)

they only need to be available in the public library closest to the hazardous waste site, instead of in every public library in the county or counties in which the site is located.

Section 4.(a) reestablishes the Surface Water Identification Training and Certification Program within the Riparian Buffer Protection Program in the DENR Division of Water Quality (DWQ). The program existed previously but expired in 2004. Section 4.(b) directs DWQ to give priority to training and certifying the most highly qualified and experienced personnel in each agency. Section 4.(c) clarifies that the General Assembly will appropriate no new funds for this program, and that agencies must implement it using funds available to the agency.

Section 5 removes reporting requirements for wastewater systems with average annual flows under 200,000 gallons per day.

Section 6 increases the maximum civil penalty for violations of local air quality laws from \$10,000/day to \$25,000/day to conform to S.L. 2007-296, which made the same increase for violations of other air quality laws.

Section 7 changes the name of the North Carolina National Park, Parkway and Forests Development Council to the Western North Carolina Public Lands Council, and changes the Council membership requirements. Currently, there are three members that are effectively at-large. This section would reduce the at-large allocation to two, and require that one member be a resident of Cherokee County.

Section 8 makes clarifying changes to the criteria for a carwash to receive certification for water conservation and efficiency. It provides that implementation of voluntary programs would be considered in determining compliance with a local government water shortage response plan such that approved programs achieve year-round reductions in water use and reduce water use per vehicle by 20% or more.

Section 9 clarifies DENR's enforcement powers under the Drought Management Preparedness and Response Act.

Section 10 allows the public utility company representative on the Sedimentation Control Commission to be any representative of the company. Current law requires the representative to be the president, vice president, or general counsel of the company.

Section 11 changes the notice requirements for cities, counties, sanitary districts, and water and sewer authorities when they are raising fees or creating new fees. It requires that the entities provide notice using at least two of the following means of communication:

- 1) Notice in a prominent location on a website managed or maintained by the entity.
- 2) Notice in a prominent physical location.
- 3) Notice by e-mail to a list of interested parties.
- 4) Notice by fax to a list of interested parties.

Section 12 provides that the prohibition on new or increased nutrient loading allocation in S.L. 2005-190 only applies to impaired drinking water supply reservoirs.

Section 13 establishes the Wood and Crop Biomass Strategic Working Group to identify, study and recommend a package of appropriate and targeted policies and financial incentives in order to (1) ensure a reliable supply of sustainably managed wood and crop biomass for energy purposes and other sectors; (2) develop economic opportunities for rural communities; (3) enhance natural resources and promote farm and forestland retention; and (4) integrate wood and crop biomass into the State's comprehensive energy plan. The Group would be convened jointly by the Biofuels Center, Commerce, DENR, and the NC Solar Center at NCSU, and would consist of 20 members.

Section 14 directs the Departments of Administration, Agriculture and Consumer Services, Commerce, Crime Control and Public Safety, Environment and Natural Resources, Health and Human Services, Insurance, and Transportation to review their planning and regulatory programs to determine if they should consider the impacts of global climate change, including adaptation and sea level rise.

Section 15.(a) requires all state agencies and political subdivisions of the State to establish a program in cooperation with the DENR and the Department of Administration for the collection and recycling of all used, mercury-containing fluorescent lights and thermostats from State buildings, and requires the departments to report to the Environmental Review Commission on the program by December 1, 2011. It also requires the removal of all mercury-containing light bulbs and thermostats from buildings prior to demolition. Section 15.(b) bans the disposal of mercury-containing light bulbs and thermostats in unlined landfills. Section 15.(c) permits the DENR Secretary to impose an administrative penalty on a person who violates the landfill ban, and Section 15.(d) classifies such a violation as a Class 3 misdemeanor.

Section 16 allows the ERC to study the penalties applicable to violations of G.S. 130A-309.10 (Prohibited acts related to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited)

Section 17 provides that local governments and large community water systems only require separate meters for new in-ground irrigation systems for lots platted after July 1, 2009 and that are connected to their systems.

Section 18 adds a new section to Chapter 136 of the General Statutes (Roads and Highways) to prohibit the use of high content arsenic glass beads in paint that is used for pavement marking. This Section would apply to any contracts for road projects entered into, or any pavement re-marking that takes place on or after the effective date.

Section 19 exempts traditional country stores that sell uncooked sandwiches or similar food items from regulations for food and lodging facilities. Traditional country stores are defined as "for-profit establishments that sell an assortment of goods, including prepackaged food and beverages, and have been in continuous operation for at least 75 years."

Section 20 establishes a limited exemption for the city of Greensboro from the requirement that beavers taken under a depredation permit must be euthanized or released on the property where

they are captured. Greensboro would be authorized to instead relocate captured beavers to a suitable alternative habitat.

Section 21 provides effective dates for the previous sections.

ASSUMPTIONS AND METHODOLOGY:

Section 1

This section moves the horizontal control monument files for plat and subdivision mapping requirements from the Office of State Budget and Management to the Geodetic Survey Section in the Division of Land Resources within DENR. Fiscal Research projects that this move will have no fiscal impact.

Section 2

The Senate President Pro Tempore and the Speaker of the House are currently allowed to designate one chair each for the Environmental Review Commission. Section 2 allows them to designate multiple co-chairs. This change will have no fiscal impact.

Section 3

This section changes public availability requirements for inactive hazardous waste site remedial action plans such that (1) they no longer must be available in the register of deeds office; and (2) they only need to be available in the public library closest to the hazardous waste site, instead of in every public library in the county or counties in which the site is located. There may be a minimal reduction in DENR's printing expenditures due to the fact that they will need to provide the remedial action plans to fewer libraries, and not at all to the Register of Deeds. Fiscal Research does not project that this potential reduction will be significant.

Section 4

The Surface Water Identification Training and Certification Program existed previously but the statute mandating it sunset in 2004. However, DWQ continued to provide the program. Because DWQ already administers the program, Fiscal Research projects that this section will have no fiscal impact. The program is open to public officials as well as to private consultants, and has a \$410 registration fee. For public officials, the fee is covered by a grant from the EPA through December 2012. If EPA does not provide another such grant in future years, public officials will have to pay the registration cost. Thus, there may be minimal fiscal impact in FY 2012-13 and later years for those public agencies and officials who have not yet completed certification.

Section 5

All wastewater systems in the state currently must report to their customers and to DENR annually. This section drops that requirement for systems that have an average annual flow of less than 200,000 gallons per day. DENR does not incur costs for receiving these reports, so there will be no fiscal impact on DENR from this section. There could be a reduction in expenditures for those local government wastewater systems that will no longer be required to submit annual reports, but Fiscal Research cannot estimate that figure at this time.

Section 6

This section increases the maximum civil penalty for violations of local air quality laws from \$10,000/day to \$25,000/day. The proceeds of civil penalties are remitted to the Civil Penalty and Forfeiture Fund. However, the DENR Division of Air Quality does not expect civil penalties to increase as a result of this bill. None of the Local Air Pollution Control Programs have ever assessed even the current maximum penalty. Therefore, there is projected to be no new revenue to the Civil Penalty and Forfeiture Fund. Also, the number of cases processed by the Office of Administrative Hearings is not expected to increase as a result of this change.

Section 7

This section changes the name of the North Carolina National Park, Parkway and Forests Development Council to the Western North Carolina Public Lands Council, and reallocates membership on that Council. Members receive travel expenses and per diem, but this bill does not change the number of members, so Fiscal Research projects that this section will have no fiscal impact.

Section 8

This section makes clarifying changes to the criteria for a carwash to receive certification for water conservation and efficiency. DENR is already administering this certification, and this section will not make that administration process any more burdensome. Therefore, Fiscal Research projects that this section will have no fiscal impact.

Section 9

This section clarifies DENR's enforcement procedures under the Drought Management Preparedness and Response Act. Fiscal Research projects that this section will have no fiscal impact.

Section 10

This section allows public utilities more flexibility in who they appoint as their representative on the Sedimentation Control Commission. Fiscal Research projects that this section will have no fiscal impact on the Commission.

Section 11

This section changes the notice requirements for cities, counties, sanitary districts, and water and sewer authorities when they are raising fees or creating new fees. Those entities currently must post a notice on their website, but this bill would require them to choose two notice methods of the following four:

- 1) Notice in a prominent location on a website managed or maintained by the entity.
- 2) Notice in a prominent physical location.
- 3) Notice by e-mail to a list of interested parties.
- 4) Notice by fax to a list of interested parties.

This is an expansion of notice requirements, and may require a minimal amount of additional staff time to handle. Fiscal Research anticipates that these notice requirements will be folded into the workloads of existing staff, and will not require any new expenditures.

Section 12

This section provides that the prohibition on new or increased nutrient loading allocations in water supply watersheds only applies to impaired drinking water supply reservoirs. This will not change the staff time or resources required, so Fiscal Research projects that this section will have no fiscal impact.

Section 13

This section establishes the Wood and Crop Biomass Strategic Working Group. However, members of that working group are not entitled to receive salaries, per diem, or travel expenses. Therefore, Fiscal Research projects that this section will have no fiscal impact.

Section 14

This section requires the Departments of Administration, Agriculture and Consumer Services, Commerce, Crime Control and Public Safety, Environment and Natural Resources, Health and Human Services, Insurance, and Transportation to review their planning and regulatory programs to determine if they should consider the impacts of global climate change, including adaptation and sea level rise. Fiscal Research anticipates that this requirement will be fulfilled by existing staff, and will be folded into existing workloads. Therefore, Fiscal Research projects that this section will have no fiscal impact.

Section 15

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 December 1, 2011 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 ensure 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 believes 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

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

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.

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 December 1, 2011, 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.

Section 15 also 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 class 3 misdemeanor. Because Class 3 misdemeanors do not serve time in the State prison system, there is no anticipated impact from this section.

Section 16

This section allows the ERC to study the penalties applicable to violations of G.S. 130A-309.10. If the ERC chooses to study those penalties, Fiscal Research anticipates that the ERC members and staff will incorporate that responsibility into their existing workloads, and therefore that there will be no fiscal impact.

Section 17

This section provides that local governments and large community water systems require separate meters for new in-ground irrigation systems only for lots platted after July 1, 2009 and that are connected to their systems. This requirement was already in place, and this section simply clarifies that it only applies to those lots platted after July 1, 2009. The responsibility to install separate meters falls to the private sector, so Fiscal Research projects that this section will have no fiscal impact on the public sector.

Section 18

This section could impact the Department of Transportation (DOT) - State Highway System as well as municipal street systems and public vehicular areas. DOT does not currently use high content arsenic glass beads in paint used for pavement markings. However, DOT does suggest the possibility that forbidding this product could reduce the number of bids that DOT receives and possibly lead to higher costs. No information is available on the extent to which high content arsenic glass beads are used for municipal street systems or by governmental units for public vehicular areas; therefore, Fiscal Research cannot determine the fiscal impact of this change on these entities.

Section 19

Section 19 exempts traditional country stores that sell uncooked sandwiches or similar food items from regulations for food and lodging facilities. The DENR Department of Environmental Health would no longer need to monitor these stores. However, there are very few qualifying stores in the State, so the fiscal impact would be minimal.

Section 20

Section 20 establishes a limited exemption for the city of Greensboro from the requirement that beavers taken under a depredation permit must be euthanized or released on the property where they are captured. Greensboro would be authorized to instead relocate captured beavers to a suitable alternative habitat. Fiscal Research projects that this exception will have no fiscal impact.

SOURCES OF DATA: Department of Environment and Natural Resources, Department of Transportation, Department of Crime Control & Public Safety.

TECHNICAL CONSIDERATIONS: None

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