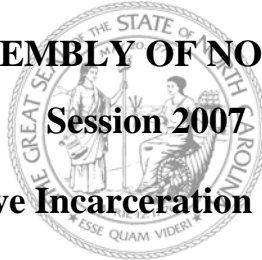


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1492 (Third Edition)

SHORT TITLE: Solid Waste Management Act of 2007.

SPONSOR(S): Senator Clodfelter

	FISCAL IMPACT				
	(in millions)				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
REVENUES:					
Civil Penalty & Forfeiture Fund	\$0.16	\$0.16	\$0.16	\$0.16	\$0.16
Solid Waste Mgmt. Account	\$1.1	\$1.1	\$1.1	\$1.1	\$1.1
Inactive Hazardous Sites Cleanup Fund	\$0	\$12.65	\$12.98	\$13.31	\$13.65
Solid Waste Mgmt. Trust Fund	\$0	\$6.22	\$6.39	\$6.56	\$6.72
Computer Equip. Mgmt. Account	\$0.82 - \$0.9	\$0.11 - \$0.15	\$0.11 - \$0.15	\$0.11 - \$0.15	\$0.11 - \$0.15
EXPENDITURES:					
DENR	See Assumptions & Methodology				
DOR		\$0.225	\$0.225	\$0.225	\$0.225
Local Governments	No estimate available – See Assumptions & Methodology				
Corrections	See Assumptions & Methodology				
Judicial	See Assumptions & Methodology				
Justice	See Assumptions & Methodology				
Info. Tech. Svcs.	See Assumptions & Methodology				
POSITIONS					
(cumulative):					
DENR	16.5	34.0	33.0	32.0	32.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment & Natural Resources, Division of Waste Management; Local Governments; Department of Revenue; Office of Information Technology Services					
EFFECTIVE DATE: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 effective August 1, 2007; Section 15 effective July 1, 2008; Section 17.6 effective numerous dates; All others when the bill becomes law					

**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.*

BILL SUMMARY:

Senate Bill 1492 would:

- Clarify the circumstances under which an application for a solid waste management permit may be denied.
- Provide that solid waste management permits are not transferable.
- Increase the penalties that may be imposed for solid waste violations.
- Amend financial responsibility requirements for applicants and permit holders for solid waste management facilities.
- Clarify and expand the scope of environmental compliance review requirements.
- Clarify that a parent, subsidiary, or other affiliate of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant is subject to financial responsibility and environmental compliance review.
- Provide for siting of combustion products landfills in areas that have been formerly used for the storage or disposal of combustion products from coal-fired generating units at the same facility that generated the combustion products, and technical requirements for these landfills.
- Specify additional technical requirements for solid waste management facilities.
- Require that permit applicants for certain solid waste facilities conduct environmental impact studies and traffic studies of the impacts of the proposed facility.
- Clarify the circumstances under which a unit of local government may collect a solid waste availability fee.
- Authorize certain units of local government to hire landfill liaisons.
- Establish fees applicable to permits for solid waste management facilities to support the solid waste management program; and require the Department to issue a draft permit decision on an application for a permit subject to a fee within one year after the Department determines the application is complete.
- Establish a solid waste disposal tax of \$1.50 per ton of waste to be imposed on the disposal of municipal solid waste in landfills in the State and on the transfer of municipal solid waste for disposal outside the State.
- Enact provisions related to the recycling of discarded computer equipment.

ASSUMPTIONS AND METHODOLOGY:

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Revenues

Section 3 – Administrative Penalties

Over the past five years, the Division of Waste Management (DWM) has collected an average of \$52,474 annually in administrative penalties. DWM estimates that as the number of inspections increases, the number of penalties most likely will decrease due to improved compliance. However, DWM also anticipates that as inspections increase, the number of illegal or non-permitted facilities with violations will increase. Thus, DWM anticipates a steady state in the overall number of penalties assessed and anticipates collecting \$157,423 annually in administrative penalties once the penalty increase is enacted. This penalty money goes to the Civil Penalty and Forfeiture Fund.

Section 14 – Landfill Permit Fees

Section 14 creates landfill permit fees for new permits, amendments, and modifications. The following table provides an estimate of anticipated yearly revenue from these fees.

New Permits, Amendments, & Modifications

Type	Total Number	Fee	Annual Number	Revenue
MSW (<99,999 tons/year)	20			
New Permit		\$ 25,000	1.25	\$ 31,250
Amendment		\$ 15,000	4.00	\$ 60,000
Modification		\$ 1,500	10.00	\$ 15,000
MSW (>100,000 tons/year)	20			
New Permit		\$ 50,000	-	\$ -
Amendment		\$ 30,000	4.00	\$ 120,000
Modification		\$ 3,000	5.00	\$ 15,000
C&D & Industrials (<99,999 tons/year)	61			
New Permit		\$ 15,000	2.00	\$ 30,000
Amendment		\$ 9,000	14.20	\$ 127,800
Modification		\$ 1,500	10.00	\$ 15,000
C&D & Industrials (>100,000 tons/yr)	13			
New Permit		\$ 30,000	-	\$ -
Amendment		\$ 18,500	2.60	\$ 48,100
Modification		\$ 2,500	5.00	\$ 12,500
Tire Monofills	2			
New		\$ 1,750	-	\$ -
Amendment		\$ 1,250	0.40	\$ 500
Modification		\$ 500	1.00	\$ 500
Treatment & Processing	39			
New		\$ 1,750	5.00	\$ 8,750
Amendment		\$ 1,250	7.80	\$ 9,750
Modification		\$ 500	10.00	\$ 5,000
Transfer Stations	85			
New		\$ 5,000	0.25	\$ 1,250

	Amendment		\$ 3,000	17.20	\$ 51,600
	Modification		\$ 500	5.00	\$ 2,500
Incinerators		5			
	New		\$ 1,750	-	\$ -
	Amendment		\$ 1,250	1.00	\$ 1,250
	Modification		\$ 500	1.00	\$ 500
Large Compost		10			
	New		\$ 1,750	1.00	\$ 1,750
	Amendment		\$ 1,250	2.00	\$ 2,500
	Modification		\$ 500	1.00	\$ 500
LCID		139			
	New		\$ 1,000	10.00	\$ 10,000
	Amendment		\$ 500	27.80	\$ 13,900
	Modification		\$ 250	10.00	\$ 2,500
	Subtotal Permit Fees	394		158.50	\$ 587,400

Section 14 also establishes annual permit fees and post-closure fees. The following table provides an estimate of anticipated yearly revenue from these fees.

Annual Fees				
Type	Total Number	Fee	Annual Number	Revenue
MSW	55			
Annual		\$ 3,500	40	\$ 140,000
Post-Closure		\$ 1,000	15	\$ 15,000
C&D	69			
Annual		\$ 2,750	65	\$ 178,750
Post-Closure		\$ 500	4	\$ 2,000
Industrials	13			
Annual		\$ 2,750	9	\$ 24,750
Post-Closure		\$ 500	4	\$ 2,000
Transfer Stations	85	\$ 750	85	\$ 63,750
Treatment and Processing	39	\$ 500	39	\$ 19,500
Tire Monofills	2	\$ 500	2	\$ 1,000
Incinerators	5	\$ 500	5	\$ 2,500
Large Compost	10	\$ 500	10	\$ 5,000
LCID	139	\$ 500	139	\$ 69,500
Subtotal Annual Fees	417		417	\$ 523,750

Together these fees would generate \$1,111,150 annually.

Section 15 – Solid Waste Disposal Tax

Section 15 of the bill imposes a tax on the disposal of municipal solid waste (MSW) and construction and demolition (C&D) debris of \$1.50 per ton of waste.

The following table shows the projection for the amount of revenue collected under this tax:

Solid Waste Disposal Tax Revenue Projection					
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Tons of Instate Waste Projection		12,431,131	12,764,270	13,097,408	13,430,547
Out of State Average*		125,482	125,482	125,482	125,482
Total Tons of Waste		12,556,613	12,889,752	13,222,890	13,556,029
Per ton fee		\$1.50	\$1.50	\$1.50	\$1.50
Revenue Generated		\$18,646,697	\$19,146,405	\$19,646,112	\$20,145,821
Less DOR Cost of Collection		(\$225,000)	(\$225,000)	(\$225,000)	(\$225,000)
Available Revenue		\$18,871,697	\$19,371,405	\$19,871,112	\$20,370,821

*a steady average is used for out-of-state waste because there is no discernible trend in collection

The revenue from this tax would be distributed as follows:

- 67% to the Inactive Hazardous Sites Cleanup Fund for assessment and remediation of pre-1983 landfills. Up to 7% of this amount may be used for administrative costs.
- 33% to the Solid Waste Management Trust Fund for grants for recycling programs. Up to 7% of this amount may be used for administrative costs.

The following table demonstrates the revenue distribution for each of these Funds:

Solid Waste Disposal Tax Revenue Distribution					
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Available Revenue	\$0	\$18,871,697	\$19,371,405	\$19,871,112	\$20,370,821
67% Inactive Hazardous Sites	\$0	\$12,644,037	\$12,978,841	\$13,313,645	\$13,648,450
7% Admin. Allowance	\$0	\$885,083	\$908,519	\$931,955	\$955,391
33% Solid Waste Mgmt. Trust Fund	\$0	\$6,227,660	\$6,392,564	\$6,557,467	\$6,722,371
7% Admin. Allowance	\$0	\$435,936	\$447,479	\$459,023	\$470,566

Section 17 – Discarded Computer Equipment Management

Section 17 requires each manufacturer of computer equipment to pay an initial registration fee of \$10,000 and an annual renewal registration fee of \$1,000. These fees would be credited to the Computer Equipment Management Account.

Based on experiences in other states, DENR estimates that there might be 75-80 registered manufacturers in North Carolina. Revenue from the first year would be between \$750,000 and \$800,000 and \$75,000 to \$80,000 in annual renewals thereafter.

Section 17 also requires computer equipment recycling facilities to pay an initial registration fee of \$5,000 and an annual renewal fee of \$2,500. These fees would also be credited to the Computer Equipment Management Account.

DENR estimates that there would be between 15 and 20 registered computer equipment recycling facilities. Revenue in the first year would be between \$75,000 and \$100,000 with \$37,500 to \$50,000 in annual renewals thereafter.

Expenditures

Revenue collected under the Solid Waste Disposal Tax for the Inactive Hazardous Sites Cleanup Fund and the Solid Waste Management Trust Fund would be expended by DENR as directed in the bill. The other costs for DENR would be for administrative expenses to administer these programs. DENR estimates that a total of 32 permanent positions would be needed and 2 time-limited positions. The following chart breaks out the number of positions by Division:

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Division of Waste Management					
Pre-1983 Landfills		7.0	7.0	7.0	7.0
Permitting Branch	14.0	14.0	14.0	14.0	14.0
Electronics Recycling	2.5	5.0	4.0	3.0	3.0
Division of Pollution Prevention & Environmental Assistance					
Recycling Grants		8.0	8.0	8.0	8.0
TOTAL	16.5	34.0	33.0	32.0	32.0

The following table details these positions by source of funding and by cost:

	Source of Funding	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Division of Waste Management						
Pre-1983 Landfills	Disposal Tax	\$0	\$560,000	\$593,040	\$628,029	\$663,827
Permitting Branch	Permit Fees	\$1,026,942	\$1,183,037	\$1,252,836	\$1,326,753	\$1,402,378
Elec. Recycling	Manuf. Reg. Fees	\$193,706	\$409,107	\$350,623	\$283,815	\$299,992
Division of Pollution Prevention & Environmental Assistance						
Recycling Grants	Disposal Tax	\$0	\$540,378	\$572,260	\$606,024	\$640,567
TOTAL		\$1,220,648	\$2,692,522	\$2,768,760	\$2,844,621	\$3,006,765

LOCAL GOVERNMENTS

Revenues

Section 10 – Availability Fee

An estimate is not available as to how much revenue local governments might generate from the availability fee described in Section 10.

Expenditures

Section 9 - Landfill Construction Costs

If local governments construct a new landfill, they will have to conform to the landfill requirements as specified in Section 9.

The following table illustrates the five-year costs for a new MSW landfill to conform to these requirements. The table is based on an average-sized 76-acre landfill with 19 acres constructed in the first 5 years.

New MSW Landfill						
Category	Item	Year 1	Year 2	Year 3	Year 4	Year 5
Capital Costs	Geomembrane CQA Leak Testing	\$57,935	\$0	\$0	\$0	\$0
	Increased Horizontal Separation	\$0	\$0	\$0	\$0	\$0
	100-Year Floodplain	\$0	\$0	\$0	\$0	\$0
	Leachate System Design Improvement	\$0	\$0	\$0	\$0	\$0
	Dual Containment of LCS Pipe	\$11,020	\$0	\$0	\$0	\$0
O&M Cost	Annual LCS Cleaning & Inspection	\$9,500	\$9,500	\$9,500	\$9,500	\$9,500
Studies	Traffic Study	\$15,000	\$0	\$0	\$0	\$0
	Environmental Impact Study	\$50,000	\$0	\$0	\$0	\$0
TOTAL		\$143,455	\$9,500	\$9,500	\$9,500	\$9,500

The following table illustrates the five-year costs for a new C&D landfill to conform to these requirements. The table is based on an average-sized 76-acre landfill with 19 acres constructed in the first 5 years.

New C&D Landfill						
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Category	Item	Year 1	Year 2	Year 3	Year 4	Year 5
Capital Costs	C&D Liner w/ Leachate Collection	\$1,970,933	\$0	\$0	\$0	\$0
	Geomembrane CQA Leak Testing	\$57,935	\$0	\$0	\$0	\$0
	Increased Horizontal Separation	\$0	\$0	\$0	\$0	\$0
	100-Year Floodplain	\$0	\$0	\$0	\$0	\$0
O&M Costs	Annual LCS Cleaning & Inspection	\$9,500	\$9,500	\$9,500	\$9,500	\$9,500
	C&D Leachate Management	\$208,050	\$208,050	\$208,050	\$208,050	\$208,050
Studies	Traffic Study	\$15,000	\$0	\$0	\$0	\$0
	Environmental Impact Study	\$50,000	\$0	\$0	\$0	\$0
TOTAL		\$2,311,418	\$217,550	\$217,550	\$217,550	\$217,550

Section 14 - Landfill Permit Fees

Local governments that operate their own landfills will have to pay the annual permit fees. If they modify or amend an existing landfill or build a new landfill, they will have to pay the corresponding permit fees. Of the estimated \$1,111,150 in permit fees that DENR will collect annually, **\$742,622 will be paid by publicly-owned facilities.**

Section 15 – Solid Waste Disposal Tax

Due to insufficient data related to local government waste collection, an estimate is not available as to how much local governments will pay of the approximately \$19 million collected from the Solid Waste Disposal Tax.

INFORMATION TECHNOLOGY SERVICES

Revenues

The Office of Information Technology Services (ITS) does not receive any revenue. The proceeds of fees collected from manufacturers are credited to the Computer Equipment Management Account maintained by the Department of Environment and Natural Resources.

Expenditures

ITS makes bulk purchases of computers on a quarterly basis. State agencies provide ITS with information on their desktop and laptop requirements, standard configurations are advertised, and the lowest bidder is awarded a contract. From November 2004 through May 2007, desktop and laptop bulk purchases saved State agencies \$18,928,441.78. Restricting the number of manufacturers eligible to compete for these contracts could reduce the State’s ability to continue to realize the same level of savings. However, until DENR develops a list of eligible manufacturers, it is not possible to determine how significant this reduction might be.

JUSTICE SYSTEM

Expenditures

General expansion of the solid waste management permitting requirements, financial responsibility requirements, and other rules and restrictions may increase the potential for violation of the provisions of Chapter 130A or rules adopted by the Commission for Health Services – a Class 1 misdemeanor offense per G.S. 130A-25. In addition, the Sentencing and Policy Advisory Commission identifies the following new Class 1 misdemeanor offenses (per G.S. 130A-25(a) and 14-3(a)):

G.S. 130A-309.93., Requirements for manufacturers: Subsection (b) makes it a criminal offense for a manufacturer (as defined by statute) to offer for sale in North Carolina computer equipment without a visible, permanent label affixed that clearly identifies the manufacturer. Effective January 1, 2008, and would apply to sales that occur on or after that date.

G.S. 130A-309.94., Requirements for discarded computer equipment collectors: Makes it a criminal offense for a collector to fail to ensure that received equipment is consolidated at central locations, properly stored, and either held for pickup by a certified computer equipment recycling facility, or delivered to a certified computer equipment recycling facility. Effective January 1, 2009.

G.S. 130A-309.96., Requirements for certified computer equipment recycling facilities: This section makes it a criminal offense for a certified computer equipment recycling facility to do any of the following:

- a. fail to maintain an accounting and itemized inventory of discarded computer equipment delivered to its facility.
- b. fail to “work cooperatively” with manufacturers and to enter into contractual agreements providing for the reuse and recycling of discarded equipment, under which the recycler appropriately invoices manufacturers and manufacturers make timely payments; or
- c. fail to submit annual reports as provided.

Subsection (a) is effective January 1, 2009; subsection (b) is effective January 1, 2008; and subsection (c) is effective January 1, 2010.

SECTION 17.3: Amends G.S. 130A-309.10., Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited, to add subdivision (f)(14) which makes it a criminal offense for a person to knowingly dispose of discarded computer equipment in a landfill. Effective January 1, 2011, and would apply to offenses that occur on or after that date.

SECTION 17.4: Amends G.S. 130A-309.10., Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited, to add subdivision (f1) (7) which makes it a criminal offense for a person to knowingly dispose of discarded computer equipment by incineration in an incinerator for which a permit is required under Chapter 130A, Article 9. Effective January 1, 2011, and would apply to offenses that occur on or after that date.

Although the Division of Waste Management anticipates an increase in violations among illegal or non-permitted facilities as inspections increase, it is not known how many additional criminal charges or convictions might result from this proposed legislation. Nor is it known how many

administrative penalty appeals or injunctive relief actions will be commenced. Consequently, the potential impact on the justice system is indeterminate.

Department of Correction

Because Class 1 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence due to this proposal should not impact the state's prison population.¹ The potential impact on local jail populations is unknown.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Accordingly, to the extent that future convictions for the proposed offense were to result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, given the typical length for Class 1 active sentences, Fiscal Research does not anticipate a significant increase in reimbursements due to this proposal.

The remaining 80% of Class 1 misdemeanants in FY 2005-06 received non-active, intermediate or community punishments. Thus, if new convictions were to occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision. Included below is a brief overview of DCC sanction costs, per offender:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Though the number of number of resultant Class 1 misdemeanor charges is indeterminate, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. Presently the estimated costs per Class 1 misdemeanor trial and plea are \$3,702 and \$243, respectively.²

Court-time requirements could also increase, depending on the number of resultant administrative penalty appeals and injunctive relief actions.

Department of Justice

Where authorized, the Attorney General may commence actions for injunctive relief of believed violations of the Chapter. Accordingly, some additional workload could be assumed, contingent upon the number of petitions for relief. The degree of such impact is indeterminate.

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

² Cost estimates account for indigent defense; however, actual costs may vary with time requirements and disposition.

SOURCES OF DATA: Department of Environment & Natural Resources; Moody's economy.com; Office of Information Technology Services; N.C. Sentencing and Policy Advisory Commission; Administrative Office of the Courts.

TECHNICAL CONSIDERATIONS:

Section 15 allows the Department of Revenue (DOR) to retain up to \$225,000 of the Solid Waste Disposal Tax for the costs of collection. However, HB 1473, 5th edition and 8th edition contain provisions increasing this amount up to \$425,000 for two other similar taxes - the White Goods Tax and the Scrap Tire Tax.

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DATE: July 26, 2007



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