

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1568 (Second Edition)

**SHORT TITLE:** Sedimentation Act Amendments

**SPONSOR(S):** Representatives Weiss and Hackney

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b>(in millions)</b>				
	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>
<b>REVENUES</b>					
Sedimentation Acct.	\$2.87	\$3.06	\$3.00	\$2.94	\$2.88
Local Governments	**No Estimate Available – See Assumptions and Methodology**				
<b>EXPENDITURES</b>					
Division of Land Resources	\$2.87	\$3.06	\$3.00	\$2.94	\$2.88
Local Governments	**No Estimate Available – See Assumptions and Methodology**				
<b>POSITIONS</b>	20	20	17		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Environment and Natural Resource’s Division of Land Resources and local governments.					
<b>EFFECTIVE DATE:</b> August 1, 2002					

**BILL SUMMARY:** The Committee Substitute for HB 1568 amends the Sedimentation Pollution Control Act of 1973. The bill requires the self-inspection of an area covered by an approved erosion and sedimentation control plan; raises the fee for the review of an erosion and sedimentation control plan to \$150 per acre from a maximum of \$50 per acre; allows a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by the local government; requires exposed slopes to be planted or provided with ground cover within 10 working days or 21 calendar days, whichever is shorter, of completion of any phase of grading; authorizes a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing within the jurisdiction; requires local governments with an approved limited local program to submit an amount equal to \$120 per acre of land disturbed to the Department of Environment and Natural Resources (DENR) for the costs associated with the review of the erosion and sedimentation control plans and related compliance activities; provides that a civil penalty of \$10,000 may be assessed for the first day of a violation; and requires DENR to report on the implementation of the Sedimentation Pollution Control Act of 1973.<sup>1</sup>

<sup>1</sup> Summary by Rick Zechini, Counsel to the House Environment and Natural Resources Committee, June 25, 2001.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Revenues:**

All revenues generated by the fee increase will be placed in the Division of Land Resources (DLR) Sedimentation Account, thus the bill will have no fiscal impact on the General Fund. As required by statute (G.S. 113 A-54.2(b)) all funds would be applied to the costs of administering the Sedimentation Act.

According to data from DLR, the number of acres associated with sedimentation and erosion control plans reviewed annually has decreased approximately 8% in recent years. This reduction is due in part to the turndown of the construction industry, the reduction of good acreage in the state to develop, and the reality of more local governments taking responsibility for their own plans and inspections. Data from the two most recent years indicate that the number of acres covered by the sedimentation plans have stabilized at approximately 29,000 acres per year.

Forty-five (45) local governments presently have an erosion and sedimentation control ordinance. Two or three local government programs have been approved per year on average for the past several years. Fiscal Research and DLR estimate that the legislation will generate a small increase in the number of local government erosion and sedimentation control program requests, for a total of 1-2 local government programs per year with limited authority and 3-4 per year with full authority. It is estimated that the total acreage inspected by DLR annually will be reduced by 2% as a result from more local governments taking ownership of their own programs.

	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>
Estimated number of plans reviewed:	2,988	2,928	2,870	2,812	2,756
Estimated number of acres:	28,456	27,887	27,329	26,783	26,247
Total revenue generated at \$40/acre	\$1,138,240	\$1,115,475	\$1,093,165	\$1,071,302	\$1,049,876
Total revenue generated at \$150/acre	\$4,007,552	\$4,183,031	\$4,099,370	\$4,017,383	\$3,937,035
Difference (or additional revenue generated by the bill)	\$2,869,313	\$3,067,556	\$3,006,205	\$2,946,081	\$2,887,159

The fiscal impact is estimated based on the total number of acres inspected by DLR. The bill sets the per acre fee at \$150, an increase of \$110 over the current rate of \$40 per acre. The additional revenue by this bill is the difference in revenue generated between the current \$40 fee and the proposed \$150 fee. Fiscal year 2002-03 is adjusted for the August 1 implementation date. One month's fees will be collected at the \$40 rate, while the remainder of the year will use the new \$150 rate.

### **Expenditures**

As required by statute (G.S.113A-54.2(b)), sedimentation and erosion control fees collected by the Department are deposited in a special fund, the Sedimentation Account, and must be spent for the costs of administering the Sedimentation Act. Since the bill does not impose new requirements on the Department, the increased revenue will be used to expand program resources. According to the Department, most of the additional revenue would be used to create field office positions for technicians, environmental specialists and environmental engineers in the seven regional offices and an Assistant Sedimentation Specialist position in the central office.

These new positions would be used for the following purposes:

- Promote additional local government erosion and sedimentation control programs,
- Provide performance audits of local erosion and sedimentation control programs to insure local programs meet State standards for implementation,
- Train both State and local program staff,
- Provide additional technical assistance and training for the regulated community, and
- Provide for consistent enforcement across the State by increasing the frequency of state compliance inspections from once every 4.5 months on average to once every 2.3 months on average.

In addition to the technical staff, the Department proposes to hire additional administrative staff in the regional offices and the central office. The Department also anticipates an increase in enforcement efforts resulting from the increase in the frequency of the inspections. As a result, they plan to use some of the revenue to support additional positions in the Attorney General's Office.

The actual number of new staff hired depends on the amount of new revenue generated. Using an average cost of \$50,000 per position including salary, benefits and operating support, the Department could hire up to 57 new positions in FY 2002-03. Logistically, only a limited number of qualified staff could be recruited, hired and trained within a year. Consequently, this fiscal note assumes that approximately 20 new employees would be hired in each of the next three fiscal years. During this hiring process, revenues will continue to be deposited to the Sedimentation Account, where they remain in the cash balance. The size of the cash balance depends on how quickly the Department hires the additional employees.

**Alternatively**, the General Assembly could choose to cut \$2.47 million from the Division of Land Resource's General Fund appropriation for the Sedimentation and Erosion Control Program and direct the Department to fund shift all the General Fund positions and operating support to the new revenues. This action would help reduce the size of the cash balance in the Sedimentation Account as well as limit the number of new employees the Division could hire.

### **Local Government Impact**

This bill does not place any new requirements on local governments. It does allow a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by that local government. It also authorizes local governments to establish a "limited" erosion and sedimentation control program that is limited to the *inspection* of the land-disturbing activities. The Division of Land Resources still retains the responsibility for approval of plans and enforcement. If local government chooses to establish a limited program, the bill requires the local government to establish a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The local government in turn is required to pay an amount equal to \$120 per acre of land disturbed to the Department for costs associated with the review of the plan and related compliance activities.

The Department estimates that 1 to 2 local governments will establish limited programs. Those programs will be required to establish a fee that must be at least \$120 to cover the Department's costs; however, the bill does allow the local government to set the fee at a higher rate to cover the cost of their inspection activities as well. Due to the wide variance in the fees for existing

local government programs and the variance in the number of acres subject to local government regulation, Fiscal Research was unable to determine a reasonable way to estimate the amount of revenue generated by limited local programs or what their expenses might be.

**SOURCES OF DATA:** Department of Environment and Natural Resource's Division of Land Resources

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** July 2, 2002



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