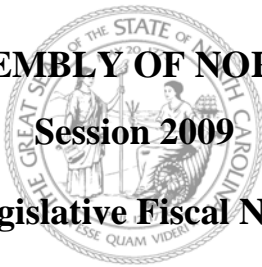


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 887 (Third Edition)

SHORT TITLE: Amend Electronics Recycling Law.

SPONSOR(S): Senator Vaughan

| FISCAL IMPACT | | | | | |
|---|--------------------------|---|----------------------------------|--------------------------|--------------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2010-11</u> | <u>FY 2011-12</u> | <u>FY 2012-13</u> | <u>FY 2013-14</u> | <u>FY 2014-15</u> |
| REVENUES: | | | | | |
| Electronics | | | | | |
| Management Fund | \$215,000 | \$312,000 | \$312,000 | \$312,000 | \$312,000 |
| Local Governments | | | | | |
| (Total Amt. Available) | \$580,500 | \$319,500 | \$319,500 | \$319,500 | \$319,500 |
| EXPENDITURES: | | | | | |
| Electronics | | | | | |
| Management Fund | \$580,500 | \$319,500 | \$319,500 | \$319,500 | \$319,500 |
| Local Governments | | Exact amount cannot be determined* | | | |
| Correction | | Exact amount cannot be determined* | | | |
| Probation | | Exact amount cannot be determined* | | | |
| Judicial | | Exact amount cannot be determined; potential for substantial impact* | | | |
| <i>*See Assumptions and Methodology</i> | | | | | |
| POSITIONS (cumulative): | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Environment and Natural Resources | | | | | |
| EFFECTIVE DATE: Unless otherwise indicated, effective when the act becomes law. | | | | | |
| <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: S887 repeals and replaces current electronics recycling law. It bans televisions and computer equipment from being discarded in landfills or incinerated. It then assigns shared responsibility for recycling televisions and computer equipment to manufacturers and those that operate electronics recycling programs. The landfill ban and recycling responsibilities only apply to electronic devices used by individuals for personal or home business or by nonprofits with fewer than 10 employees. Specific provisions are summarized below:

Requirements of Manufacturers

S887 requires any computer equipment or television manufacturer who wishes to sell its products in North Carolina to do the following (effective August 1, 2010):

- 1.) Register with the Department of Environment and Natural Resources (DENR).
- 2.) Pay an initial registration fee, and a subsequent annual renewal fee.
- 3.) Develop and implement an electronics recycling program (this can be done by a designee).
- 4.) Submit an annual report to DENR on its electronics recycling program.

The amount of a manufacturer’s registration fee depends upon whether it manufactures computer equipment or televisions, and for computer equipment manufacturers, on the type of electronics recycling program it implements. Computer electronics manufacturers are required to choose from one of three “levels” of recycling programs. The table below summarizes the fee structure and program requirements for each level:

Table 1: Manufacturer Registration Fee Structure and Recycling Program Requirements

| | Level | Program Requirements | Initial Fee | Renewal Fee |
|---|--------------|--|--------------------|--------------------|
| Computer Equipment Manufacturers | I | Mail-back option, at least one physical collection site, <u>or</u> one annual collection event. | \$ 15,000 | \$ 15,000 |
| | II | Physical collection sites in the State's 10 most populous cities <u>and</u> two annual collection events | \$ 10,000 | \$ 7,500 |
| | III | Physical collection sites in 50 of the State's 100 counties, 10 of which are the most populous <u>and</u> two annual collection events | \$ 10,000 | \$ 2,500 |
| Television Manufacturers | N/A | Each manufacturer is obligated to recycle in proportion to its market share. There is no recycling program design specified. | \$ 2,500 | \$ 2,500 |

DENR is authorized to require a manufacturer to update or revise its recycling plan if it is inadequate or out of date. Manufacturers are prohibited from charging consumers a fee to participate in the recycling program. Manufacturers are allowed to participate in joint recycling plans with other manufacturers if they choose.

Requirements of DENR

S887 requires DENR to (1) maintain a publicly available list of compliant manufacturers; (2) develop and implement a public education program on electronics recycling laws; (3) provide technical assistance to manufacturers and local governments for electronics recycling; and (4) determine each television manufacturer’s recycling responsibility based on market share.

The Electronics Management Fund

S887 creates a special fund within DENR called the Electronics Management Fund. It will consist of revenues from the fees imposed on computer equipment and television manufacturers in the bill.

DENR is authorized to retain all of the proceeds of the fee on television manufacturers and up to 10% of the proceeds of the fee on computer equipment manufacturers for administration. The remainder of the funds are to be distributed to local governments to fund electronic waste recycling programs. In order to be eligible to receive those funds, a local government must (1) include information on electronics recycling programs in its solid waste management plan; (2) establish a separate local budget account for the funds; and (3) contract with a certified responsible electronics recycler.

Prohibition on Sale of Electronics from Noncompliant Manufacturers

S887 prohibits the sale of computer equipment or televisions from manufacturers that are not in compliance with the requirements of the bill (effective July 1, 2011). Violation of this prohibition would be a misdemeanor. DENR is not allowed to enforce the prohibition until one year after the effective date.

Prohibition on State Agencies' Purchase of Electronics from Noncompliant Manufacturers

S887 prohibits state agencies from purchasing computer equipment or televisions from manufacturers that are not in compliance with the requirements of the bill (effective August 1, 2010).

Landfill and Incineration Ban

S887 bans the disposal of discarded computer equipment and televisions in landfills and by incineration (effective July 11, 2010).

Other Provisions

S887 creates various reporting requirements related to electronics waste recycling. It also directs the Environmental Review Commission to study the feasibility of requiring other types of electronic waste to be recycled and to monitor other states' electronics recycling programs.

ASSUMPTIONS AND METHODOLOGY:

Department of Environment and Natural Resources

The significant differences that will create a fiscal impact on DENR between the current law and S887 are (1) changes in the computer equipment manufacturer registration fee structure; and (2) the addition of aid to local governments for electronics recycling programs. S887 will not cause DENR to spend significantly more on administration than under current law.

Changes in the Computer Equipment Manufacturer Fee Structure

DENR anticipates that 43 computer equipment manufacturers will register to sell their products in North Carolina. DENR anticipates that all 43, with possibly one exception, will register at Level I in FY 2010-2011. In subsequent years, DENR anticipates that 5 manufacturers will register at Level I, 37 will register at Level II, and 1 will register at Level III. Based on those figures, S887 would result in an increase of \$215,000 in revenue to the Electronics Management Fund from

computer equipment manufacturer registration fees in FY 2010-2011, and an increase of \$312,000 in subsequent fiscal years (See Table 2 below).

Table 2: Revenue from Computer Equipment Manufacturer Registration Fee

| CURRENT LAW | | | FY 2010-2011 | | Subsequent Fiscal Years | |
|----------------------------|-------------|-------------|---------------|-------------------|-------------------------|-------------------|
| Program Level | Initial Fee | Renewal Fee | Manufacturers | Revenue | Manufacturers | Revenue |
| N/A | \$ 10,000 | \$ 1,000 | 43 | \$ 430,000 | 43 | \$ 43,000 |
| S887 PROPOSED LAW | | | | | | |
| Program Level | Initial Fee | Renewal Fee | Manufacturers | Revenue | Manufacturers | Revenue |
| I | \$ 15,000 | \$ 15,000 | 43 | \$ 645,000 | 5 | \$ 75,000 |
| II | \$ 10,000 | \$ 7,500 | 0 | \$ - | 37 | \$ 277,500 |
| III | \$ 10,000 | \$ 2,500 | 0 | \$ - | 1 | \$ 2,500 |
| Total | N/A | N/A | 43 | \$ 645,000 | 43 | \$ 355,000 |
| S887 Fiscal Impact: | | | | \$ 215,000 | | \$ 312,000 |

Also, note that S887 does not change the fee structure for television manufacturers. Therefore, there is no change in projected revenue to the Electronics Management Fund from that fee (See Table 3 below).

Table 3: Revenue from Television Manufacturer Registration Fee

| CURRENT LAW | | | |
|----------------------------|-------------|---------------|-------------|
| Initial Fee | Renewal Fee | Manufacturers | Revenue |
| \$ 2,500 | \$ 2,500 | 20 | \$ 50,000 |
| S887 PROPOSED LAW | | | |
| Initial Fee | Renewal Fee | Manufacturers | Revenue |
| \$ 2,500 | \$ 2,500 | 20 | \$ 50,000 |
| S887 Fiscal Impact: | | | \$ - |

Inclusion of Aid to Local Governments for Electronics Recycling Programs

S887 limits the portion of the Electronics Management Fund that DENR can use for administration, and directs DENR to allocate the remaining portion of the funds to eligible local governments on a pro rata basis. DENR anticipates that between 50 and 75 local governments will be eligible for funding in FY 2010-2011, and that 100 will be eligible by FY 2012-2013. For the purpose of this analysis, Fiscal Research assumes that 75 will be eligible in FY 2010-2011, 85 will be eligible in 2011-2012, and 100 will be eligible in 2012-2013.

Based on those figures and on the revenue projections above, S887 would result in a reduction of \$365,000 in funds available to DENR for administration in FY 2010-2011, and a reduction of \$7,500 in subsequent fiscal years. It would also create a new revenue source of \$7,740 for all eligible local governments in FY 2010-2011, \$3,759 in 2011-2012, and \$3,195 in subsequent fiscal years (See Table 4 below).

Table 4: Uses of the Electronics Management Fund

| CURRENT LAW | | | | | |
|--------------------------------|--------------------------|----------------------------|-----------------------------|------------------------------|-----------------------------|
| | Total Fee Revenue | Amt. for DENR Admin | Amt. to be Allocated | Eligible Local Gov'ts | Amt. Per Local Gov't |
| FY 2010-2011 | \$ 480,000 | \$ 480,000 | N/A | N/A | N/A |
| Subsequent Fiscal Years | \$ 93,000 | \$ 93,000 | N/A | N/A | N/A |
| S887 PROPOSED LAW | | | | | |
| | Total Fee Revenue | Amt. for DENR Admin | Amt. to be Allocated | Eligible Local Gov'ts | Amt. Per Local Gov't |
| FY 2010-2011 | \$ 695,000 | \$ 114,500 | \$ 580,500 | 75 | \$ 7,740 |
| FY 2011-2012 | \$ 405,000 | \$ 85,500 | \$ 319,500 | 85 | \$ 3,759 |
| Subsequent Fiscal Years | \$ 405,000 | \$ 85,500 | \$ 319,500 | 100 | \$ 3,195 |
| S887 FISCAL IMPACT | | | | | |
| | Total Fee Revenue | Amt. for DENR Admin | Amt. to be Allocated | Eligible Local Gov'ts | Amt. Per Local Gov't |
| FY 2010-2011 | \$ 215,000 | \$ (365,500) | \$ 580,500 | 75 | \$ 7,740 |
| FY 2011-2012 | \$ 312,000 | \$ (7,500) | \$ 319,500 | 85 | \$ 3,759 |
| Subsequent Fiscal Years | \$ 312,000 | \$ (7,500) | \$ 319,500 | 100 | \$ 3,195 |

DENR Expenditures on Administration

Under either current law or S887, DENR expects to need 1.0 FTE at an expense of \$71,887 for salary and benefits, as well as \$15,000-\$20,000 in associated funds, for a total of \$86,887 - \$91,887 for administration of electronics recycling programs. The position and associated funds will be used to maintain a registry of compliant manufacturers, provide technical assistance to local governments and manufacturers, implement a public education program about electronics recycling laws, and purchase and analyze television market-share data. Under current law, there will be a surplus of funds in the Electronics Management Account for DENR's administration requirements. Under S887, funds in the Electronics Management Account should be sufficient for DENR's administration requirements in FY 2010-2011, but may be slightly short of DENR's administration requirements in subsequent years.

Local Governments

As described above, if S887 passes, there is projected to be \$580,500 available to be allocated to local governments from DENR's Electronics Management Fund in FY 2010-2011, and \$319,500 available in subsequent fiscal years. That translates into \$7,740 per eligible local government in FY 2010-2011, \$3,759 per eligible local government in FY 2011-2012, and \$3,195 per eligible local government in subsequent fiscal years. However, it is likely that a significant portion of the

electronics recycling burden will fall on local governments, and that these funds will not be enough to cover the associated costs. Fiscal Research is not able to provide an estimate of new expenditures by local governments due to S887 at this time.

Office of Information Technology Services

The Office of Information Technology Services does not anticipate any significant fiscal impact. Contracts with vendors will need to include language that ensures compliance with the provisions of the bill.

Department of Correction – Division of Prisons

General

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.

The proposed legislation repeals existing offenses and replaces them with new, but substantially similar, offenses related to computer and television manufacturers and recycling their products. The proposed legislation does not contain any punishment provisions. For purposes of this analysis, the following assumptions were followed: G.S. 130A-309.139, Enforcement, makes Part 2H enforceable as provided by Part 2 of Article 1 of Chapter 130A. Part 2 contains G.S. 130A-25, Misdemeanor, which makes a violation of a provision of Chapter 130A an unclassified misdemeanor. G.S. 14-3 makes a misdemeanor for which no specific classification and no specific punishment is prescribed by statute punishable as either a Class 1 misdemeanor or, if it is infamous, done in secrecy and malice, or with deceit and intent to defraud, a Class H felony.

An analysis of selected sections of S887 affecting the Department of Correction follows:

Section 1: (a)-(d)

These sections repeal Part 2E, Discarded Computer Equipment and Television Management, of Article 9 of Chapter 130A of the General Statutes. The repeal is effective July 1, 2010. Part 2E is currently not in effect and is scheduled to become effective July 1, 2010. The repeal of this section is not expected to have an impact on the prison population, because this section is being repealed before it takes effect.

SECTION 2:

This section creates Part 2H, Discarded Computer Equipment and Television Management, in Article 9 of Chapter 130A of the General Statutes.

G.S. 130A-309.134(a), Requirements for computer equipment manufacturers, requires a computer equipment manufacturer to register with the Department of Environment and Natural Resources

before selling or offering for sale computer equipment in North Carolina. Failure to register before selling computer equipment would be a violation; violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) of this bill repeal G.S. 130A-93, Requirements for computer manufacturers. Subsection (a) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.134(b), Requirements for computer equipment manufacturers, prohibits a computer equipment manufacturer from selling or offering to sell computer equipment in North Carolina unless a visible, permanent label clearly identifying the manufacturer of that equipment is affixed to the equipment. Violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93, Requirements for computer manufacturers. Subsection (b) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.134(c), Requirements for computer equipment manufacturers, requires a computer equipment manufacturer to develop, submit to the Department, and implement one of three possible recycling plans. Failure to do so would be a violation; a violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93, Requirements for computer manufacturers. Subsection (c) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.134(d), Requirements for computer equipment manufacturers, requires a computer equipment manufacturer to pay an annual registration fee to the Department. Failure to do so would be a violation; a violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93, Requirements for computer manufacturers. Subsection (a) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.135(a), Requirements for television manufacturers, requires a television manufacturer to register with the Department of Environment and Natural Resources before selling or offering for sale televisions in North Carolina. It also requires a television manufacturer to pay an annual registration fee to the Department. Failure to register before selling televisions or to pay the annual fee would be a violation; violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93A, Requirements for television manufacturers. Subsection (a) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.135(b), Requirements for television manufacturers, prohibits a television manufacturer from selling or offering to sell televisions in North Carolina unless a visible, permanent label clearly identifying the manufacturer of that equipment is affixed to the equipment. Violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93A, Requirements for television manufacturers. Subsection (b) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.135(c), Requirements for television manufacturers, requires a television manufacturer to annually recycle or arrange for the recycling of its market share of televisions. Failure to do so would be a violation; violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93A, Requirements for television manufacturers. Subsection (c) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

G.S. 130A-309.136(b), Requirements applicable to retailers, would hold a retailer responsible for an unlawful sale under G.S. 130A-309.136(a) if certain conditions were not met. Violation would be a Class 1 misdemeanor, or a Class H felony if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced for the Class 1 misdemeanor offense or the Class H felony offense under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Sections 1.(a)-(d) repeal G.S. 130A-93B, Requirements applicable to retailers. Subsection (c) contained a substantially similar requirement which would not have taken effect until July 1, 2010.

Note: G.S. 130A-26.2, Penalty for false reporting under Article 9, makes it a Class 2 misdemeanor for any person to knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 of Chapter 130A. This bill creates filing requirements for manufacturers under Article 9 of Chapter 130A. It is possible that manufacturers could violate G.S. 130A-26.2 while trying to fulfill the requirements of this new Article.

Judicial Branch

The Administrative Office of the Courts 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.

An analysis of selected sections of S887 affecting the Judicial Branch follows:

Section 1 repeals the existing statutes regarding computer and television recycling, which are not yet in effect (effective date is July 1, 2010). Because those statutes were not yet in effect, the impact of the proposed legislation is considered to be the full impact, rather than the net impact of any differences between this legislation and existing law. Overall, the proposed legislation creates several new criminal penalties and has the potential to impose substantial workload on the Administrative Office of the Courts (AOC):

Criminal penalties: Violations of Article 9 of Chapter 130A are punishable as unclassified misdemeanors; therefore, the offenses would be considered Class 1 misdemeanors, or Class H felonies, if the offense was infamous, done in secrecy and malice, or with deceit and intent to defraud. Offenses include:

Both types of manufacturers (G.S. 130A-309.134, 130A-309.135) – effective August 1, 2010:

- Failure to register and/or failure to label.
- Sell or offer for sale or deliver to retailers for sale new covered equipment in violation of the labeling and registration requirements.

Both types of manufacturers, sales exceed 1,000 items annually (G.S. 130A-309.134, 130A-309.135) – effective August 1, 2010:

- Failure to pay initial and annual registration fees and/or failure to submit an annual report.

Computer manufacturers (G.S. 130A-309.134) – effective August 1, 2010: Failure to provide a recycling plan.

Television manufacturers (G.S. 130A-309.135) – effective August 1, 2010: Failure to recycle or arrange for recycling of the manufacturer’s market share, failure to conduct and document due diligence assessments of recyclers under contract, and/or failure to provide contact information.

Retailers (G.S. 130A-309.136) – effective July 1, 2011: Unlawful sale of covered equipment except under certain specified circumstances.

Individuals (G.S. 130A-309.10(f) and G.S. 130A-309.10(f1) – effective July 1, 2011): Disposal of discarded computer equipment or televisions including disposal by incineration – limited to those generated by a consumer for personal or home business use or by a nonprofit with fewer than 10 employees.

AOC cannot project the number of offenses that would occur under the proposed legislation. Costs per charge would range as follows:

| Penalty | Cost per Trial | Cost per Plea | Indigent Defense* |
|---------------------|-----------------------|----------------------|--------------------------|
| Class 1 Misdemeanor | \$296 | \$141 | \$225 |
| Class H Felony | \$7,794 | \$559 | \$540 |

The National Center for State Courts has developed workload standards for North Carolina’s court personnel after extensive studies. For FY 2010-11, based on workload formulas, the court system has the following shortages statewide:

| | |
|-------------------------------------|-----|
| District Court Judges: | 67 |
| Deputy Clerks: | 524 |
| Assistant District Attorneys: | 79 |
| DA Victim Witness Legal Assistants: | 54 |
| Judicial support staff: | 49 |
| Magistrates: | 160 |

Therefore, any increase in workload could not be absorbed by existing staff. In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. A typical misdemeanor case took approximately 88 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: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Environment and Natural Resources.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

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DATE: June 22, 2010



Signed Copy Located in the NCGA Principal Clerk's Offices