

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 2499 (Fourth Edition)

SHORT TITLE: Drought/Water Management Recommendations.

SPONSOR(S): Representatives Allen, Gibson, and Tucker

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
REVENUES					
Fines & Forfeitures			**Anticipate increased penalty payments. See Assumptions and Methodology.**		
EXPENDITURES					
Department of Agriculture and Consumer Services	\$51,500	\$53,069	\$54,567	\$56,245	\$57,983
Department of Correction		Minimal fiscal impact anticipated; see p. 4.			
Judicial Branch		Amount cannot be determined; see p. 4-5.			
ADDITIONAL PRISON BEDS					
		Minimal impact anticipated on state prison system.			
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources; Department of Agriculture and Consumer Services; Office of the Governor; local governments.					
EFFECTIVE DATE: Sections 1, 2, and 19 effective October 1, 2008. Section 11 effective December 1, 2008. Section 9 effective July 1, 2009. All other sections effective when the bill becomes law.					

BILL SUMMARY:

HB 2499 makes changes to how drought and water emergency situations are handled across the State. It provides for new water system efficiency requirements and creates new civil penalties. Highlights of the bill by section are as follows. Section 1 increases the penalties for failure to

register water withdrawals and transfers and would provide that continuing failure to register may be treated as separate violations and a separate penalty may be assessed for each separate violation. Section 2 directs the Department of Agriculture and Consumer Services to annually collect survey information on water use by persons who withdraw 10,000 gallons of water per day or more for agricultural activities. Section 5 provides that each unit of local government that provides public water service and each large community water system will develop and implement water conservation measures to respond to drought or other water shortage conditions. These measures will be set out in a water shortage response plan, which will be submitted to the Department of Environment and Natural Resources (DENR) for review and approval. Section 6 directs the Environmental Review Commission to study whether and to what extent private groundwater wells and the use of water produced by private groundwater wells should be regulated by the State or units of local government. Section 7 provides that in the event of extreme or exceptional drought or other water shortage, DENR may require water systems in the affected area to report the amount of water used, withdrawn, diverted, or obtained on a weekly basis and may require the reporting of additional information necessary to assess and manage the drought or water shortage. Section 8 provides requirements for the Governor to declare a water shortage emergency. This section also provides the Secretary of DENR with powers and duties in the event of such a declaration. Section 9 contains new requirements for water system efficiency. Section 9 also provides that to be eligible for State funding for extending waterlines or expanding water treatment capacity, a water system must demonstrate that it has met certain guidelines, including but not limited to, establishing adequate rate structures, implementing a leak detection and repair program, and metering all water use. Section 10 establishes that it is State policy that the reuse of treated wastewater or reclaimed water is a critical component of meeting the existing and future water supply needs of the State. Section 11 contains new enforcement provisions and new civil penalties and stipulates that the violation of emergency water conservation rules is a Class 1 misdemeanor. Section 13 defines gray water and directs the Commission for Health Services to adopt rules to authorize the use of gray water during periods of drought to hand water trees, shrubs, and inedible plants on single family residential property. Section 15 amends the criteria for water and wastewater funding so that priority is given to certain projects. Section 16 makes changes to the Drought Management Advisory Council, including adding the League of Municipalities, the Association of County Commissioners, and the Utilities Commission to the entities that are invited to send a representative to the Council. Section 17 directs the State Water Infrastructure Commission to develop guidelines for water rate structures that adequately address water system costs while considering the effect of water rates on water conservation. Section 18 directs DENR to develop recommendations for water efficiency standards for water-using fixtures in residential and commercial building and in-ground irrigation systems. Section 19 prohibits the enforcement of condominium or planned community covenants that require the irrigation of landscaping while an area is under a severe, extreme, or exceptional drought.

ASSUMPTIONS AND METHODOLOGY:

Revenues

Fines and Forfeitures

Section 1(e) of the bill changes the late registration fee for registering water transfers or withdrawal from \$5 per day with a maximum of \$500 to a fee of \$100. The fee for failing to

update a registration is similarly changed from \$5 per day with a maximum of \$500 to a fee of \$50. The Department is authorized to charge both of these fees for each violation and each day is considered a separate violation. Thus, the late registration fee is essentially increased 20 fold (from \$5 to \$100) and has no maximum. The update fee is increased 10 fold (from \$5 to \$50) and has no maximum. Historically, DENR has issued only one late payment violation; however, DENR anticipates issuing 10-20 late registration violations in the coming year. **Thus, violations should increase in the range of \$1,500 to \$2,000 annually.**

Section 11 creates a new civil penalty of \$100 - \$500 for persons who violate provisions of Article 38 of G.S. 143. A civil penalty of no more than \$10,000 per month is also created for local government units that fail to implement required water conservation measures. These are both new penalties, and DENR anticipates issuing no more than one per year.

Expenditures

Department of Environment and Natural Resources

Several sections of the bill (notably sections 5, 7, 8, 11, and 18) require DENR to take on various monitoring and reporting requirements. DENR does not anticipate that these requirements will necessitate any additional resources or positions.

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is mandated by the bill to conduct a survey of agricultural water usage across the State. The Agricultural Statistics Division within DACS will carry out the survey. **The Division estimated the total cost of conducting the survey to be \$51,500 based on experience developing and implementing agricultural surveys.** Based on previous survey data the Division estimates that they will survey between 6,000 and 7,000 entities about their water usage. Developing and testing the survey before it is conducted carries an estimated cost of \$2,500. Mailing and printing costs are estimated to be \$10,000. Based on previous survey experience the Division predicts 15-25% of respondents will respond via mail. Non-respondent farms will either be contacted phone interviews or personal visits to ensure statistical reliability at an estimated cost of \$23,500. The Division will use contract enumerators to execute the follow-up contacting. Processing and publishing the results will cost another \$1,500 each. Over the several months it will take to complete the survey process a Statistician I and two Statistician Research Assistants will work part-time on the project. The Division estimates the total staff time to cost \$12,500.

Table One: Costs of Agricultural Water Use Survey

Survey Creation and Testing	\$ 2,500
Printing, Postage, Supplies	\$10,000
Processing, IT Services	\$ 1,500
Staffing	\$12,500
Data Collection	\$23,500
<u>Report, Publication</u>	<u>\$ 1,500</u>
Total	\$51,500

The costs of the survey are projected over the next five years to include inflation. These inflationary costs are drawn from Moody's economy.com inflation rate estimates. The salary portion of the expenditures is projected to increase by 6.0% in FY 2009-10, 5.9% in FY 2010-11, 5.6% in FY 2011-12 and 5.3% in FY 2012-13. The remaining costs are inflated by the predicted rise in the consumer price index as estimated on Moody's economy.com: 2.1% in FY 2009-10, 1.8% in FY 2010-11, 2.2% in FY 2011-12, and 2.3% in FY 2012-13. The resulting inflated costs are displayed in the overview table of this note.

Office of the Governor

Section 8 provides the Governor with the authority to declare a water shortage emergency. Fiscal Research does not anticipate that this requirement will necessitate additional resources.

Local Governments

Section 5 creates new requirements for local governments that provide public water service to develop and implement water conservation measures. It is not anticipated that this requirement will result in significant increased costs.

Department of Corrections: Division of Prisons

This bill creates G.S. 43-355.6, Enforcement. Subsection (d) makes it a Class 1 misdemeanor for a person to violate emergency water conservation rules adopted by the Secretary of the Department of Environment and Natural Resources pursuant to G.S. 143-355.3(b). Currently, G.S. 143-350(c)(2) makes it a Class 1 misdemeanor for a person to violate such rules and regulations promulgated by the Environmental Management Commission. The proposed bill would repeal this section.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 143-350(c)(2). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Since the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population, it is not known how many offenders might be sentenced under the proposed bill.

In FY 2006/07, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, 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.

Department of Corrections: Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions

requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

Section 11 of the bill creates a Class 1 misdemeanor that would be established in new subsection G.S. 143-355.6(d), for violation of emergency water conservation rules that the Secretary is authorized to adopt under new G.S. 143-355.3 (in Section 8 of the bill). Once the Governor declares a water shortage emergency, the Secretary has broad powers relating to conservation rules and other matters.

In addition to the Class 1 misdemeanor, the bill includes various provisions that could also result in court workload, arising from various civil penalties, reporting or requirements that may be violated, or actions that could seek to challenge or enforce various rules or restrictions. AOC would have no way to estimate the number of new charges that would result from the new criminal offense, or of other court actions that may arise from other provisions of the bill. Court workload could rise significantly from the more comprehensive system of water restrictions and enforcement that this bill seems intended to accomplish.

SOURCES OF DATA: Department of Environment and Natural Resources; Department of Agriculture and Consumer Services; Moodys.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

PREPARED BY:

Kristin Walker, Scott Tesh, and Andrew Pennock

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

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