

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 1136 (Seventh Edition)

SHORT TITLE: Mercury Switch Removal-2.

SPONSOR(S): Representatives Culpepper, Hackney, and Hunter

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES:					
DENR-Mercury Pollution Prevention Acct.	\$1,875,000	\$2,550,000	\$2,601,000	\$2,653,000	\$2,706,000
Highway Trust Fund	(\$1,875,000)	(\$2,550,000)	(\$2,601,000)	(\$2,653,000)	(\$2,706,000)
EXPENDITURES:					
Reimbursement to recyclers		\$701,895	\$664,675	\$615,065	\$568,030
DENR Administration	\$138,750	\$185,000	\$185,000	\$185,000	\$185,000
DENR Disposal	No Estimate Available – See Assumptions and Methodology				
Correction, Judicial, Local Jails	No Substantial Impact Anticipated – See Assumptions and Methodology				
POSITIONS (cumulative):	3.5	3.5	3.5	3.5	3.5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: DENR, Highway Trust Fund					
EFFECTIVE DATE: Sections 1, 3, and 4 are effective when the bill becomes law, except that GS 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2006. Section 2 becomes effective October 1, 2005. Vehicle manufacturers must submit required information by January 1, 2006. The act expires on July 1, 2006.					

BILL SUMMARY:

House Bill 1136, Seventh Edition, would require the Department of Environment and Natural Resources (DENR) to develop and administer a mercury minimization plan (plan) that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury that is released into the environment. The bill would also require:

(i) vehicle recyclers and scrap metal recycling facilities subject to an approved plan to remove all accessible mercury switches from end-of-life vehicles and specifies procedures for inaccessible switches; (ii) maintenance of certain records and annual reporting by manufacturers, vehicle recyclers, and scrap metal recycling facilities; and (iii) that mercury switches be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%. The bill would make it unlawful for anyone to: knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed; willfully fail to remove switches if required to do so; knowingly make a false report that a switch has been removed from an end-of-life vehicle; or obtain a switch from another source and falsely report that it was removed from a vehicle processed for recycling. The bill would create various reporting requirements. The bill would create the Mercury Pollution Prevention Account (Account), the revenue from which would be used to reimburse DENR, vehicle recyclers, and scrap metal recycling facilities for costs incurred in implementing the plan. The bill would credit one dollar of the fee from a motor vehicle certificate of title to the Account, reducing the amount going to the Highway Trust Fund by that amount.

Under the bill "mercury switch" is defined as a mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

SOURCE: Bill Summary, Research Division, August 18, 2005 (revised)

ASSUMPTIONS AND METHODOLOGY:

Revenues:

The bill creates a new Mercury Pollution Prevention Account in the Department of Environment and Natural Resources and provides that one dollar of the fee for each application for a certificate of title paid under G.S. 20-85(a)(1) shall be deposited in the Account instead of in the Highway Trust Fund. In fiscal year 2004-2005 DMV processed 2,471,903 applications for certificates of title and that number has been growing at about 2% per year. It is assumed that the number of applications will be 2,500,000 in fiscal year 2005-2006 and will grow at 2% per year in the future. (The amount in 2005-2006 will be three-quarters of this amount, or \$1,875,000, as a result of the October 1 effective date.)

Revenues to the Highway Trust Fund will be reduced by an equivalent amount.

Expenditures:

Because mercury switches are not currently removed from end-of-life vehicles, there is no historical data that would indicate the number of switches removed each year. U.S. automobile manufacturers voluntarily discontinued the domestic use of mercury switches in new automobiles in 2003. Some companies, mainly in Japan, have never used mercury switches. Consequently, the number of mercury switches in the nation's motor fleet will diminish over time.

The Clean Car Campaign has estimated the number of mercury switches that will be retired each year. Assuming that a 90% capture rate is achieved, Table 1 estimates the number of mercury lighting switches removed each year and the corresponding \$5 reimbursement to vehicle recyclers and scrap metal recycling facilities under the bill. This section of the bill is effective July 1, 2006 and payments are shown starting in 2007.

Table 1: Estimated Cost to Reimburse Recyclers

Year	Mercury Lighting Switches Retired*	Mercury Switches Recovered (90%)	Reimbursement to Recyclers/Scrap Metal Dealers (\$5/switch)
2007	155,977	140,379	\$701,895
2008	147,705	132,935	\$664,675
2009	136,681	123,013	\$615,065
2010	126,229	113,606	\$568,030

*Based on Clean Car Campaign estimates.

Based on the experience of other states, DENR estimates that 3.5 FTEs - 1.0 Waste Management Specialist, 2.0 Environmental Engineer II, 0.5 Processing Assistant IV - would be needed to complete the following tasks: writing program rules, review and approval of mercury minimization plans, inspection of recycling facilities to ensure compliance, review of annual reports of manufacturers, and preparation of annual reports to the legislature. Each position would also need approximately \$6,000 per year for various operating expenses. The total estimated cost per year is approximately \$185,000 (assumed at \$138,750 in the first year due to the late start). DENR considers the language of the bill ambiguous relative to the Department's responsibility to collect, store, transport, and dispose of the switches and has not calculated the cost of carrying out these requirements.

Impact on the Judicial System and Department of Correction

Violations of G.S. 130A-310.55 would generally be Class 2 misdemeanors.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and

estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would create a new offense **by expanding current Class 2 environmental offenses to include various actions regarding destruction or removal of mercury switches**, the Sentencing Commission has no historical data from which to estimate the potential number of convictions under the legislation. As Class 2 misdemeanants with active sentences are housed in county jails rather than state prison, local governments would principally incur any costs of incarceration resulting from this bill. However, most Class 2 misdemeanants are likely to receive non-active sentences, which would impact the Division of Community Corrections in the Department of Correction. As it is not known how many additional Class 2 misdemeanor convictions would occur due to this legislation, the specific impact to the Department of Correction and local governments cannot be determined.

- In FY 2003-04, 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The remaining 15 percent of Class 2 misdemeanor convictions resulted in active sentences and the average active sentence lengths was 23 days.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the offenses created by this bill would be new, the Administrative Office of the Courts has no data from which to estimate the number of new charges that would arise. As the number of new charges that would result from this bill cannot be estimated, the specific cost cannot be determined.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor charge via trial is \$2,322. This cost includes an estimated \$1,373 in costs of time in court and attorney costs and an additional \$949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$272 per plea.

SOURCES OF DATA: Clean Car Campaign, DENR, Division of Motor Vehicles

TECHNICAL CONSIDERATIONS:

- DENR considers the language of the bill ambiguous as to whether the Department or the recyclers are responsible for collection, storage, transportation and disposal of the switches.
- If the \$5 paid per switch is significantly higher than amounts available in other jurisdictions there will be an incentive to import switches to the state, creating higher payment costs and higher monitoring and enforcement costs.
- The revenues available to the program are expected to grow over time while the number of switches to dispose of is expected to decrease.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bob Weiss

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: August 22, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices