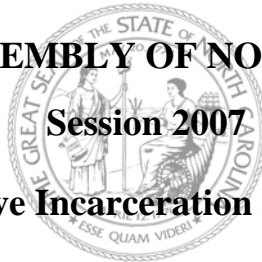


# GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

## Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 1362 (Second Edition)

**SHORT TITLE:** Amend Dry-Cleaning Solvent Cleanup Act.

**SPONSOR(S):** Senator Clodfelter

	FISCAL IMPACT				
	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>
<b>REVENUES:</b>					
Dry Cleaning Solvent Fund					See Assumptions & Methodology.
Civil Penalty & Forfeiture Fund					See Assumptions & Methodology.
<b>EXPENDITURES:</b>					
Dry Cleaning Solvent Fund					See Assumptions & Methodology.
General Fund:					
Correction					See Assumptions & Methodology.
Judicial					
<b>POSITIONS</b> (cumulative):					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Environment and Natural Resources, Dry Cleaning Solvent Cleanup Fund; Civil Penalty & Forfeiture Fund; Attorney General's Office; Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> New GS 143-215.105F(a1) is effective on August 1, 2007, and applies to applications for certifications made and assessment and remediation agreements entered into on or after that date. The amendments to GS 143-215.104F(f) are effective retroactively to August 1, 2001. All other amendments to GS 143-215.104F are effective July 1, 2007.					
<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:

- Changes the definition of *dry-cleaning solvent* in GS 143-215.104B(b) to *any hydrocarbon or halogenated hydrocarbon used as a solvent in a dry-cleaning operation or the degradation products from these solvents.*

- Adds a new definition of *halogenated hydrocarbon* and enacts new GS 143-215.104C(d) authorizing the Department of Environment and Natural Resources to use up to 1% of the Dry-Cleaning Solvent Cleanup Fund balance each fiscal year to investigate inactive hazardous substance disposal sites that the Department believes are contaminated by dry-cleaning solvents.
- Enacts new GS 143-215.104F(a1) providing that each person petitioning for certification of a facility or an abandoned site pursuant to GS 143-215.104G must pay an application fee of \$1,000 to the Environmental Management Commission, to be credited to the Dry-Cleaning Solvent Cleanup Fund, as noted above and makes conforming change to GS 143-215.104C. Also makes stylistic changes to GS 143-215.104G(a).
- Amends GS 143-215.104G(d) to make it permissive, rather than required, for the Commission to reject petitions for certification under the circumstances set forth in the subsection.
- Amends GS 143-215.104G(f) to provide that the financial responsibility required of persons petitioning the Commission to certify a facility or abandoned site is (1) 1% of the costs of assessment or remediation not exceeding \$1 million for dry-cleaning facilities owned by persons who employ fewer than the equivalent of five full-time employees, (2) 1.5% of the costs of assessment or remediation not exceeding \$1 million for abandoned dry-cleaning facility sites and for dry-cleaning facilities owned by persons who employ at least five but fewer than ten full-time employees, and (3) 2% of the costs of assessment or remediation not exceeding \$1 million for wholesale distribution facilities and for dry-cleaning facilities owned by persons who employ ten or more full-time employees.
- Repeals GS 143-215.104G(f)(4), which set forth financial responsibility requirements for abandoned sites and wholesale facilities.
- Amends GS 143-215.104P(a) to add two additional offenses – violations of air quality and hazardous waste regulations, respectively - for which the Environmental Management Commission (EMC) and Commission of Health Services (CHS) may assess civil penalties.
- Amends GS 105-187.31 (privilege tax on dry-cleaning solvent retailers) by changing the reference to a *dry-cleaning solvent that is chlorine based to halogenated hydrocarbon-based dry-cleaning solvent*.

**ASSUMPTIONS AND METHODOLOGY:**

**Revenues – Dry Cleaning Solvent Fund**

SB 1362 makes three changes to the amount of revenue received into the Dry Cleaning Solvent Fund each year: 1.) Section 4 creates a new \$1,000 application fee for each person petitioning or co-petitioning for certification of a facility or an abandoned site; 2.) Section 4 changes the financial responsibility requirements, effectively decreasing the co-payments into the Fund; and 3.) Section 14 broadens the base of solvents covered by the dry-cleaning solvent tax.

***1.) Application Fee***

A \$1,000 application fee would now be charged for each person petitioning or co-petitioning for certification of a facility or an abandoned site. The table below projects the number of petitioners each year and the application fee revenue generated.

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Estimated # of Petitioners	50*	54	81	81	109
Application Fee Generated	\$50,000	\$54,000	\$81,000	\$81,000	\$109,000

\*prorated by one month due to August 1, 2007 effective date

DENR anticipates that the number of petitioners will increase for three reasons:

- A.) The decrease in financial responsibility requirements will make the program less costly for responsible parties;
- B.) The implementation of risk-based rules will attract more responsible parties to participate;
- C.) Entry into the program will sunset on January 1, 2012.

**2.) Financial Responsibility Requirements**

Section 4 would decrease the financial responsibility requirements for potentially responsible persons. *An exact estimate of the decrease in revenue from this change is not available.*

Under existing law, responsible parties must pay a flat deductible and then a percentage co-payment of the clean-up costs after those costs have reached a certain dollar threshold. Under the new provisions in SB 1362, responsible parties would no longer pay a deductible, but rather they would pay the application fee explained above and then pay a percentage of the cleanup costs as a co-payment.

The illustration below provides an example of the decrease in revenue assuming the following conditions:

- A.) 100 sites active in the program with 60 “abandoned” sites, 13 “large facility” sites, 11 “medium,” and 16 “small;” and,
- B.) An average site clean-up cost of \$250,000.

<b><u>Under Existing Law</u></b>					
<b>Site Type</b>	<b># of Sites</b>	<b>Deductible</b>	<b>% Co-payment</b>	<b>Avg. Site Cost</b>	<b>Total Owed by Petitioners</b>
Abandoned	60	\$25,000	0.03	\$250,000	\$1,590,000
Large	13	\$15,000	0.03	\$250,000	\$214,500
Medium	11	\$10,000	0.02	\$250,000	\$126,500
Small	16	\$5,000	0.01	\$250,000	\$104,000
<b>Total Revenue Received for 100 Sites</b>					<b>\$2,035,000</b>

<b><u>As Proposed Under SB 1362</u></b>				
<b>Site Type</b>	<b># of Sites</b>	<b>% Co-payment</b>	<b>Avg. Site Cost</b>	<b>Total Owed by Petitioners</b>
Abandoned	60	0.015	\$250,000	\$225,000
Large	13	0.020	\$250,000	\$65,000
Medium	11	0.015	\$250,000	\$41,250
Small	16	0.010	\$250,000	\$40,000
<b>Total Revenue Received for 100 Sites</b>				<b>\$371,250</b>

As the above example illustrates, the loss of revenue would be \$1,663,750 for these 100 sites. It should be noted that this loss of revenue does not take place in one fiscal year, but rather would most likely be spread out across three years – with 40% of costs being collected in the first year, 40% in the second year, and 20% in the third year. Thus, a one-year loss of revenue might reasonably be estimated at \$665,500. This loss of revenue will be partially offset by the application fees described above.

**3.) Solvent Tax**

Section 14 broadens the base of solvents covered by the tax. The change from “chlorine-based” to “halogenated hydrocarbon-based” will encompass bromide solvents. Industry sources estimate that

approximately 200 gallons of bromide solvents are sold each year. Thus, approximately \$2,000 in new revenue will be raised.

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
New Tax Revenue*	\$2,042	\$2,085	\$2,129	\$2,175	\$2,226

\*adjusted annually for inflation

### **Revenues – Civil Penalties**

Section 12 adds new situations for which civil penalties may be assessed. To date, the Dry-Cleaning Compliance Program has not issued any civil penalties. Based on experience with other DENR compliance programs, the Department estimates that five civil penalties each year would be assessed for the new offenses contained in the PCS with a penalty range of \$400 to \$25,000.

### **Expenditures – Dry Cleaning Solvent Fund**

This PCS makes two changes to expenditures from the Fund: 1.) Section 2 stipulates that up to 1% of the Fund balance may be used in each fiscal year by the Department for investigation of sites; and, that the Attorney General may bring a civil action to secure reimbursement of costs incurred, per Commission request; and 2.) Section 11 increases the cap on the amount disbursed per year for any individual dry-cleaning solvent assessment agreement or remediation agreement and increases the cap for a certified facility or certified abandoned site that poses an imminent hazard.

#### ***1.) Use of Fund Balance for Investigation of Sites***

Section 2 authorizes the Department to use up to 1% of the Fund balance for investigation of sites. The Dry Cleaning Solvent Fund balance has grown over the past six years and as of June 19, 2007, the Fund balance was \$35,441,005. Revenues for the Fund have fluctuated but are in the range of \$9.5 to \$10.5 million per year and will continue at that pace until January 1, 2010 when the dry-cleaning solvent tax expires and June 30, 2010 when the dry-cleaning sales tax transfer ends. The Department estimates spending \$12 million in FY 2008-09, \$18 million in FY 2009-10, \$12 million in FY 2010-11, and \$10 million in FY 2011-12. Thus, the Fund balance should decrease over time and will range from a high of \$36 million to a low of \$4.5 million in FY 2011-12. *Therefore, the Department could expend anywhere from \$45,000 to \$360,000 annually for investigation of sites.*

Existing G.S. 143-215.104C authorizes the Commission to expend 20% of annual Fund revenue to defray the costs incurred by the Department and the Attorney General's Office for administration of the Program. Assuming annual revenues of \$10 million, \$2 million would be available for such costs – the Department estimates approximately \$700,000 in annual administrative costs, leaving \$1.3 million to cover any costs incurred by the Attorney General. Section 2 authorizes the Attorney General to initiate civil action to secure reimbursements of the costs incurred in connection with the investigation of inactive hazardous substance disposal sites, per request from the Commission. In addition, existing G.S. 143-215.104R authorizes the AG to initiate civil action for injunctive relief from violations alleged by the Commission. The Department anticipates only one or two injunctive relief actions annually; however, the number of potential civil actions initiated for reimbursements is unknown. Nevertheless, Fiscal Research anticipates that available funds will offset any additional workload increases experienced by the Attorney General's Office.

#### ***2.) Increase in Annual Spending Caps***

*An estimate as to how much additional money may be expended from the Fund due to the new, higher caps is not available.* As stated above, total expenditures from the Fund are expected to exceed \$10 million per year by 2008-09. The majority of the increase in spending will come as a result of risk-based remediation rules being implemented in the fall of 2007. These rules will allow the Program to

begin remediation at some sites, and it is anticipated that the remediation work will exceed the previous cap limits at some sites.

### **Expenditures – General Fund**

S.B. 1362 adds two offenses under G.S. 143-215.104P, for which civil penalties may be assessed:

1. Proposed G.S. 143-215.104P (a)(3a) makes it unlawful for a person to fail to comply with rules applicable to dry-cleaning solvents at facilities, as adopted by the Environmental Management Commission pursuant Article 21B (Air Pollution Control) of Chapter 143; and,
2. Proposed G.S. 143-215.104P(a)(3b) makes it unlawful for a person to fail to comply with rules applicable to dry-cleaning solvents at facilities, as adopted by the Commission for Health Services pursuant to Article 9 (Solid Waste Management) of Chapter 130A.

Inclusion of these offenses also expands the pool of potential offenders under G.S. 143-215.104Q:

- G.S. 143-215.104Q(a) provides that negligent violation of any subdivision of G.S. 143-215.104P(a) is a Class 2 misdemeanor;
- G.S. 143-215.104Q(b) provides that knowing and willful violation of any subdivision of G.S. 143-215.104P(a) is a Class I felony; and,
- G.S. 143-215.104Q(c) provides that violation of subdivision (3) through (10) of G.S. 143-215.104P(a) that a person knows to place another in imminent danger of death or serious bodily injury is a Class C felony.

Although the Department estimates that five civil penalties (indicative of criminal offenses) will be assessed each year, the elements of these potential offenses are unknown. Thus, *while Fiscal Research does not expect a significant fiscal impact due to the proposed offense expansions, the numbers of potential charges and convictions for the affected offenses are indeterminate.*<sup>1</sup>

**Department of Correction – Division of Prisons:** Since Class 2 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence will not impact the state prison population.<sup>2</sup> In FY 2005-06, 17% of Class 2 misdemeanor convictions resulted in active sentences, with an average estimated time served of 13 days. Accordingly, any impact on local jail populations and DOC reimbursements should prove negligible.

Conversely, because there are no surplus prison beds, any resultant Class C or I felony active sentence will necessitate the construction of an additional bed. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustration, if *twelve* Class I convictions occur annually, *the combination of active sentences and probation revocations will require one additional prison bed in the first applicable year; four additional beds in the second year; and two new employees in the second year.*

In contrast, under Structured Sentencing (with the exception of extraordinary mitigation), all Class C offenders must receive an active sentence. In FY 2005-06, the average estimated time served was 95 months. Again, for illustration, if *one* Class C conviction occurs annually, *one additional prison bed would be needed in the first applicable year, and two additional beds by the second year.* In addition,

---

<sup>1</sup> The Administrative Office of the Courts currently does not maintain any offense code for violation of G.S. 143-215.104Q, possibly indicating that these offenses are infrequently charged and/or infrequently result in conviction.

<sup>2</sup> 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.

because a mandatory period of Post-Release Supervision follows release from prison for Classes B1-E offenders, additional revocations could occur beyond the five-year fiscal note horizon.

Assuming these examples and inmate assignment to medium custody, the construction of six additional prison beds within a new, stand alone facility could cost the State approximately \$408,240 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$252,720.<sup>3</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$174,586 by FY 2009-10.<sup>4</sup>

**Department of Correction – Community Corrections:** In FY 2005-06, 83% of Class 2 misdemeanor and 85% of Class I felony convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision (any impact on Post-Release supervision caseloads would be assumed beyond the five-year horizon).* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Included below is a brief discussion of DCC supervision 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:** As previously indicated, Section 2 expands current G.S. 143-215.104C to authorize the Attorney General (per Environmental Management Commission request) to initiate civil action to recover the costs incurred by the Department of Environment and Natural Resources in investigating inactive hazardous substance disposal sites contaminated by dry-cleaning solvent, where a potentially responsible party is not willing to pay such costs. It is not known how many additional investigations would be conducted or civil actions filed.

In addition, Section 12 expands current G.S. 143-215.104P(a) by imposing a civil penalty of \$10,000 or less (or \$25,000 or less if hazardous waste is involved) against violators of hazardous waste and air quality regulations that apply to dry-cleaning facilities. Consequently, inclusion of these two

---

<sup>3</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>4</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

violations could result in additional criminal cases, and increase the opportunity for appeal of civil penalties to superior court. It is not known how many criminal offenses might result, or how many violators would contest the imposition of civil penalties; however, few additional cases are anticipated.

Estimated FY 2007-08 trial and plea costs for the affected offense classes are shown below. These costs account for indigent defense.

<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
Class 2 misdemeanor	\$2,770	\$226
Class I felony	\$6,980	\$298
Class C felony	\$13,049	\$657

**SOURCES OF DATA:** Department of Environment and Natural Resources; N.C. Association of Launderers and Cleaners; Moody’s economy.com; N.C. Sentencing and Policy Advisory Commission; Judicial Branch; Department of Correction; Department of Justice; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Bryce Ball and Kristin Walker

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** June 26, 2007



**Signed Copy Located in the NCGA Principal Clerk's Offices**