



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 447 of the 128th G.A.

Date: March 24, 2010

Status: As Introduced

Sponsor: Rep. Murray

Local Impact Statement Procedure Required: No — Minimal cost

Contents: Electronic waste recycling program

State Fiscal Highlights

| STATE FUND | FY 2010 | FYs 2011 – 2017 | FUTURE YEARS |
|---|---------|--|---|
| Electronic Waste Recycling Fund (New Fund) | | | |
| Revenues | - 0 - | Annual gain of up to \$321,000 or more in registration fees | - 0* - |
| Expenditures | - 0 - | Annual increase in excess of \$200,000 to administer and enforce recycling program | Increase, subject to available cash balance |
| Hazardous Waste Clean-up Fund (Fund 5050) | | | |
| Revenues | - 0 - | Potential gain from civil penalties, magnitude uncertain | Potential gain from civil penalties, annual magnitude uncertain |
| Expenditures | - 0 - | - 0 - | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

* After October 1, 2016, no registration fees will be collected.

- **Ohio Environmental Protection Agency (Ohio EPA) expenditures generally.** The potentially problematic feature of the bill for the Ohio EPA is that it will start incurring costs to initiate this required electronic waste recycling program before it can start collecting any registration fee revenues. We do not know the magnitude of what is essentially start-up costs, nor how the Ohio EPA will pay for those costs. Additionally, the bill effectively prohibits the program from generating any revenues after October 1, 2016. How the Ohio EPA will finance the program's administrative and enforcement costs after that point in time is uncertain.
- **Electronic Waste Recycling Fund (New Fund).** It is estimated that up to \$321,000 or more will be generated in registration fees annually thorough FY 2017 for deposit in the Electronic Waste Recycling Fund, which the bill creates to pay for the costs the Director of Environmental Protection incurs to administer and enforce the required electronic waste recycling program. As noted in the preceding dot point, the bill prohibits any registration fees from being collected after October 1, 2016. Ohio EPA staff expect that the cost for the program's operations, including the payroll expenses of two full-time staff, will exceed \$200,000 annually.

- **Hazardous Waste Clean-up Fund (Fund 5050).** The amounts that might be collected and forwarded to the state annually as a result of a successful civil action for a violation of the bill are difficult to predict, and are thus uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

Counties

| | |
|--------------|---|
| Revenues | Potential gain from criminal penalties, annual magnitude uncertain |
| Expenditures | Potential minimal annual increase for courts of common pleas to adjudicate civil and criminal cases |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **County revenues.** The amount of money that any given county might collect annually from the imposition of civil penalties for a violation of the Solid, Hazardous, and Infectious Waste Law is uncertain.
- **County expenditures.** Our research to date suggests that, in any given county, criminal prosecutions for an alleged reckless violation of the bill's provisions will be extremely rare and that civil actions undertaken to enforce alleged violations of the bill's provisions will be relatively infrequent. Assuming this was true, then the associated costs for a court of common pleas to adjudicate these matters appear unlikely to exceed minimal annually.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Requires a manufacturer who sells or offers for sale in Ohio a new covered electronic device to register with the Director of Environmental Protection and include with the registration an annual fee of \$5,000 until October 1, 2016;
- Requires a recycler who operates in Ohio to register with the Director of Environmental Protection and include with the registration an annual fee of \$300 until October 1, 2016;
- Creates the Electronic Waste Recycling Fund consisting of all fees collected under the bill, to be used by the Director to implement the bill;
- Applies enforcement procedures and civil and criminal penalties currently established in the Solid, Hazardous, and Infectious Waste Law; and
- Creates the Electronic Waste Advisory Council, requires it to prepare a report on take-back programs, requires it to make recommendations for improving the recycling of covered electronic devices, and terminates it on July 1, 2013.

In researching the bill's provisions, LSC fiscal staff consulted with staff of the Ohio Environmental Protection Agency.

State fiscal effects

Ohio Environmental Protection Agency (Ohio EPA)

Revenues

Electronic Waste Recycling Fund. The bill creates the Electronic Waste Recycling Fund, which will receive all of the annual registration fees paid by manufacturers and recyclers and be used by the Director of Environmental Protection to administer and enforce the bill's provisions. Investment earnings of the fund will be credited to the fund.

Ohio EPA staff estimate that roughly 60 manufacturers and 70 electronic recyclers will register. Manufacturers will pay an annual registration fee of \$5,000 through October 1, 2016, and recyclers will pay an annual fee of \$300 for the same period of time. Assuming there is full compliance with the payment of these fees, approximately \$321,000 will be deposited into the fund annually ($60 \times \$5,000 + 70 \times \$300 = \$321,000$).

With respect to this new fund and its revenue generation potential, two additional provisions are notable. First, if the balance in the fund is greater than \$1 million on December 31 of any year, the Director of Environmental Protection is not permitted to collect the annual \$5,000 registration fee from manufacturers for the

subsequent fiscal year. Second, no annual registration fees will be collected from manufacturers or recyclers after October 1, 2016.

Hazardous Waste Clean-up Fund. In its conversations with Ohio EPA staff, LSC fiscal staff learned that alleged violations of the bill's provisions would more likely be addressed through a civil rather than criminal action. That said, the Director of Environmental Protection may request in writing that the Attorney General bring a civil action if it is determined that a manufacturer or recycler violated any of the bill's provisions. The court of jurisdiction, likely a court of common pleas, may impose a civil penalty not to exceed \$10,000 for each day of the violation. Pursuant to current law, that penalty, if collected, would be forwarded to the state for deposit in the Hazardous Waste Clean-up Fund (Fund 5050). The amounts that might be collected and forwarded to the state annually as a result of a successful civil action are difficult to predict, and are thus uncertain.

Expenditures

Staffing. Ohio EPA staff has indicated that the agency will in all likelihood need to hire the equivalent of two full-time staff (FTEs) in order to administer and enforce the bill's provisions. The payroll expenses, including salary and benefits, for two FTEs are expected to total roughly \$200,000 annually. Additional, lesser amounts will also need to be allocated to cover any related annual maintenance and equipment costs. The potentially problematic feature of the bill for the Ohio EPA is that it will start incurring costs to initiate this required electronic waste recycling program before it can start collecting any registration fee revenues. We do not know the magnitude of what is essentially start-up costs, nor how the Ohio EPA will pay for those costs.

Additionally, the bill effectively prohibits the program from generating any revenues after October 1, 2016. How the Ohio EPA will finance the program's administrative and enforcement costs after that point in time is uncertain.

Electronic Waste Advisory Council. The bill creates the Electronic Waste Advisory Council consisting of specified members, and terminates it on July 1, 2013. The Council is required to: (1) prepare a report that evaluates computer take-back programs and video display device take-back programs, (2) make recommendations for improving the recycling of covered electronic devices, and (3) evaluate and recommend certain other specified items. The Council is required to meet at least quarterly. Members of the Council serve without compensation and are not explicitly authorized for the expenses incurred in the performance of their duties.

Presumably, the Ohio EPA will provide any staff and support services that the Council requires to perform its duties and responsibilities. We assume that the annual cost of these services through July 1, 2013 will be minimal, and that moneys for this purpose will be allocated from the available cash balance in the Electronic Waste Recycling Fund.

Local fiscal effects

Counties

To the degree that the bill creates local fiscal effects, it will be felt by counties as a result of the application of existing enforcement procedures and penalties under the Solid, Hazardous, and Infectious Waste Law, as described in more detail below.

Civil actions. Under the Solid, Hazardous, and Infectious Waste Law, a civil action could be filed in a court of common pleas, and the court may impose a civil penalty of \$10,000 for each day of violation. As noted under our discussion of "State fiscal effects," moneys resulting from the imposition of these civil penalties would be forwarded to the state for deposit to the credit of the Hazardous Waste Clean-up Fund (Fund 5050).

Criminal actions. Under the Solid, Hazardous, and Infectious Waste Law, a person found in a court of common pleas to have recklessly violated that Law would be guilty of a felony. Each day of violation constitutes a separate offense.

For a first offense, the court is required to: (1) fine the person at least \$10,000 but not more than \$25,000, or (2) sentence the person to a prison term of at least two years but not more than four years, or (3) impose both the fine in (1) and the prison term in (2). For a second or subsequent conviction, the court is required to: (1) fine the person at least \$20,000, but not more than \$50,000, per day of violation, or (2) sentence the person to a prison term of at least two years, but not more than four years, or (3) impose both the fine in (1) and the prison term in (2).

For the purposes herein, we are assuming that a violation resulting in the imposition of a prison term will be a relatively infrequent occurrence, and that an occasional violator being sentenced to a prison term will not create any discernible incarceration costs for a state prison system that as of March 2010 housed in excess of 50,000 inmates.

As it appears that there are no special crediting provisions applicable to the moneys resulting from the imposition of criminal fines under the Solid, Hazardous, and Infectious Waste Law, presumably the general rules of fine distribution apply, which means that any criminal fines collected would be deposited in the general fund of the county of the court of common pleas that adjudicated the matter.

Adjudicatory costs. Our research to date suggests that, in any given county, criminal prosecutions for an alleged reckless violation of the bill's provisions will be extremely rare and that civil actions undertaken to enforce alleged violations of the bill's provisions will be relatively infrequent. Assuming this was true, then the associated costs for a court of common pleas to adjudicate these matters appear unlikely to exceed minimal annually.