

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1580

SHORT TITLE: Environmental Excellence Program Agreement Act (EEPAA).

SPONSOR(S): Representatives Gibson; Mitchell and Culp.

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available (X)		
	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>
REVENUES	-	-	-	-	-
EXPENDITURES	Reliable estimate not available. Likely some increased level of expenditure. See Assumptions and Methodology.				
POSITIONS:	Reliable estimate not available. Likely some increased level of FTEs. See Assumptions and Methodology.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources ("DENR")					
EFFECTIVE DATE: July 1, 1999					

BILL SUMMARY¹:

This bill adds Article 17 (Environmental Excellence Program Agreements Act; "the Act") to GS Ch. 143 creating a voluntary program whereby entities subject to environmental laws may enter agreements with the Secretary of DENR which may contain provisions superceding otherwise applicable local, regional, or state environmental statutes, rules, or regulations (but not including statutes or ordinances regulating the selection of a location for a new facility, including swine farms, concentrated animal feeding operations, animal waste management systems, and radioactive or hazardous waste sites).

¹ NCGA Bill Digest, HB 1580; May 18, 2000.

Parties

The parties to an EEPA will be the entity which is subject to the environmental laws and either the Secretary or, as designated by the Secretary, the director (or governing board) of a state, regional, or local agency that administers environmental laws to which the entity is subject.

Public notice and comment

The plan put forward for an agreement must identify and notify groups affected by the proposed agreement, such as employees, neighbors, community and civic organizations, governmental agencies, trade and business associations, and environmental organizations. At least 30 days before entering an agreement, the Secretary or director must publish a notice of the proposed agreement in a general circulation newspaper in each county in which a facility of the entity is located, and the public must have 30 days to comment after the notice is published.

Approval of an agreement

To approve an EEPA, the Secretary or director must find that the agreement specifies *one or more* of the following:

- (1) emissions reductions, reductions in the discharge of wastes, or reductions in environmental risk that will achieve *better overall environmental results* than those required by otherwise applicable environmental regulations, or
- (2) compliance with applicable environmental regulations that is *equal to or better than* the method of compliance or the method of demonstrating compliance that is required under regular law.

The bill does not define the “better overall environmental results” referred to in the first element. The second element may be met by demonstrating an innovative approach or cost-effective results. The Secretary or director may require the entity to demonstrate financial ability to comply with the agreement.

Effect of an agreement

An agreement supercedes any environmental laws or regulations identified in the agreement as superceded, and the entity need no longer comply with those superceded laws or regulations, but instead must comply with the terms of the agreement. The Secretary or director may offer incentives including public recognition programs, tax credits, preferred vendor status, streamlined record-keeping monitoring and reporting requirements, extended permit intervals, expedited permit processing, and priority in consideration for grant funds.

Eligibility

An entity owning or operating a facility subject to state or local environmental laws or regulations is eligible to enter an agreement. Trade associations or other authorized representatives of owners or operators of facilities may enter agreements for programmatic coverage of multiple facilities. The bill sets out required elements to be present in the agreement.

Other provisions

Provides for judicial review under the Administrative Procedure Act of the decision to approve, terminate, or modify an agreement. Provides for termination of an agreement for nonperformance. Provides that the Act does not create a private cause of action for citizen suits. Authorizes fees with respect to programs under an agreement and the adoption of rules for the agreement program.

ASSUMPTIONS AND METHODOLOGY:

The fiscal impact of the Act depends upon the net change in workload for DENR implied by the bill. This workload includes both engineering and legal time. Existing information regarding the EEPA process is not sufficient for predicting the engineering time it will require. It seems reasonable, however, to assume there will be a net increase with respect to the traditional permitting process. Legal time clearly will be an additional expense. Valid estimates of this expense are dependent on valid estimates of the total time required. As no valid time projections are available, legal costs cannot be accurately forecast at this time.

Engineering Time

Should each EEPA process require no more time than that which is needed to complete the permit(s) for which the EEPA serves as a substitute, DENR staff will simply shift attention from the permit to EEPA process with no net change in effort or cost. Should the EEPA process prove more involved and time consuming than the permit process, however, DENR will experience a net increase in workload and require additional FTEs to cover the additional work.

Unfortunately, very little information exists regarding how much effort will be required to complete an EEPA.

A similar regulatory program does not currently exist in North Carolina. Although similar programs are being implemented in other states, DENR has indicated that the procedures, types of EEPAs, and associated costs vary so considerably across states and may be so different from those anticipated for North Carolina that comparisons are of little predictive value. Thus it is very difficult to project accurately the time needed to complete the EEPA application and negotiation process. DENR has suggested that its Brownfields Program is a reasonable analogue to the EEPA, as Brownfields agreements must be negotiated and often involve extensive review, investigations, analysis, and public participation. This comparison is superficial, however, and does not consider the potential for EEPAs to be far more complex than typical Brownfields projects. Rather than venture a guess based on loose comparisons, this fiscal note takes the position that no valid point estimate of time required to complete an EEPA is currently available.

At the very least it seems reasonable to expect that in the years immediately following implementation of the Act, a given EEPA will take longer to process than its corresponding traditional permit(s). DENR staff will be learning an entirely new approach for handling environmental regulation, a task that will include evaluating the viability of new technologies and ad hoc performance “standards.” Furthermore, as each proposed EEPA could present unique and/or unprecedented conditions, DENR staff will lose the economies of scale gained through a uniform permit process. It is possible that eventually the EEPA process may require less time than the traditional permit process, but it is impossible at this time to assess the probability of that scenario being realized.

DENR has indicated that it does not expect the EEPA process will require any more time for monitoring and enforcement than is required by the permitting process. In other words, time now spent on monitoring and enforcing EEPAs would simply have been spent performing the same functions for permits. This assumption should be regarded with caution. Again, it is important to recognize that the EEPA process is unprecedented and open-ended. As with the negotiation stages of the process, DENR staff will need to devise new approaches to monitoring. Engineers may be challenged to develop expertise about a broad range of new technologies and the environmental implications of new emissions standards. This effort will likely be time

intensive and could increase significantly the net gain in FTEs required to manage the EEPA process.

Legal Time

Unlike a traditional permit, the EEPA is a negotiated legal agreement between the applicant and DENR. Crafting the EEPA therefore involves not only the efforts of DENR environmental engineers (i.e., as in the permit process), but also significant work by legal counsel. DENR anticipates continuing its practice of obtaining legal services through the State Attorney General's Office and reimbursing the Office on a per hour basis.

TECHNICAL CONSIDERATIONS:

According to DENR, the purposes of the EEPA include both the ability to switch to technology that has not been tested and accepted for the particular pollution control and the ability to trade pollution discharges from one medium to another, such as from water to air. DENR indicates that the determination of the potential success of these proposals may require modeling, as well as technical literature review on the capacity of the new technology. Very little information exists, particularly for cross-media trading, from which to make the final decisions on entering the agreements.

Note that as written, the effective date for the Act is July 1, 1999. This means the Act would be retroactive to that date if passed in current form.

FISCAL RESEARCH DIVISION 733-4910

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