# Ohio Legislative Service Commission

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# Fiscal Note & Local Impact Statement

**Bill**: S.B. 253 of the 129th G.A. **Date**: February 13, 2012

**Status**: As Introduced **Sponsor**: Sen. Lehner

**Local Impact Statement Procedure Required**: No

**Contents**: Electronic waste recycling program

## State Fiscal Highlights

| STATE FUND | FY 2012 | FY 2013 – FUTURE YEARS |
|---|---|---|
| **Electronic Waste Recycling Fund (New Fund)** | | |
| Revenues | - 0 - | Annual gain of up to $300,000 or more in registration fees |
| Expenditures | - 0 - | Annual increase in excess of $200,000 to administer and enforce recycling program |
| **Hazardous Waste Clean-up Fund (Fund 5050)** | | |
| Revenues | - 0 - | Potential gain from civil penalties, magnitude uncertain |
| Expenditures | - 0 - | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **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.
- **Electronic Waste Recycling Fund (New Fund).** It is estimated that up to $300,000 will be generated in registration fees annually 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. Ohio EPA staff expects 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's requirements are difficult to predict, and are thus uncertain.

# Local Fiscal Highlights

| LOCAL GOVERNMENT | FY 2012 – 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.** 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.

# 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 up to $5,000 unless the balance of the Electronic Waste Recycling Fund exceeds $600,000;
- 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, 2015.

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 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 will register. Manufacturers will pay an annual registration fee of up to $5,000. Assuming there is full compliance with the payment of this fee, up to $300,000 will be deposited into the fund annually. This annual registration fee will continue to be assessed as long as the balance of the fund does not exceed $600,000 on December 31 of any year. If the balance exceeds that amount the Director of Environmental Protection is not permitted to collect the annual registration fee from manufacturers for the subsequent year.

**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 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.

**Electronic Waste Advisory Council.** The bill creates the Electronic Waste Advisory Council consisting of specified members, and terminates it on July 1, 2015. 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, 2015, will be minimal, and that money 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," money 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 January 2012 housed in excess of 50,000 inmates.

As it appears that there are no special crediting provisions applicable to the money resulting from the imposition of criminal fines under the Solid, Hazardous, and Infectious Waste Law, presumably the general rules of fine distribution apply. This 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. Thus, the associated costs for a court of common pleas to adjudicate these matters appear unlikely to exceed minimal annually.

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