

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 512 (First Edition)

SHORT TITLE: Rendering Act Amendments.

SPONSOR(S): Representative Torbett

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Dept. of Ag & Consumer Services	\$ 18,521	\$ 17,665	\$ 18,403	\$ 19,445	\$ 23,181
Correction		*See Assumptions and Methodology*			
Probation		*See Assumptions and Methodology*			
Judicial		*See Assumptions and Methodology*			
TOTAL EXPENDITURES:		*See Assumptions and Methodology*			
REVENUES:					
Dept. of Ag & Consumer Services		Between \$2,000 and \$23,000			
POSITIONS (cumulative):					
Dept. of Ag & Consumer Services	0.43	0.43	0.43	0.43	0.43
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch, Department of Agriculture & Consumer Services					
EFFECTIVE DATE: January 1, 2012					
*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.					

BILL SUMMARY:

House Bill 512, Rendering Act Amendments, amend Article 14A (G.S. 106-168.1 through G.S. 106-168.16), which governs rendering plants and their operations. HB 512 amends the Article to include the collection and processing of waste kitchen grease. In doing so, HB 512 (1) modifies the definition of “collector” to include a person who collects waste kitchen grease but does not include restaurants or other food establishments that generate kitchen grease and (2) adds definitions for farmer, waste kitchen grease, and waste kitchen grease operation.

HB 512 requires that any person that stores or processes waste kitchen grease at any waste kitchen grease operation or acts as a collector of waste kitchen grease obtain a valid rendering license. The application fee for a license is increased in HB 512 from \$50 to \$100. The rendering license is valid for one year. Renewing the license requires (1) the submission of a certification under oath of compliance with the legal requirements for licensure and (2) the payment of an annual \$100 renewal fee. In addition, HB 512 adds proof of general liability insurance of \$1 million to the minimum standards required for conducting rendering operations.

HB 512 adds G.S. 106-168.14A which makes collectors of waste kitchen grease subject to certain provisions, including application procedures for licensing, licensing renewal requirements, and information retention and inspection requirements and prohibits any person required to be licensed from collecting or transporting waste kitchen grease without possessing a copy of the license and conspicuously displaying the licensee’s name and license number on any vehicle used to transport the waste kitchen grease. It is a violation of Article 14A to: (1) sell or offer for sale to any unlicensed person any waste kitchen grease, knowing such unlicensed person would transport or process the waste kitchen grease in violation of Article 14A; (2) steal, misappropriate, contaminate, or damage any waste kitchen grease container; and (3) take or possess waste kitchen grease from a collector that is not licensed, unless otherwise authorized by Article 14A, or knowingly take possession of waste kitchen grease that has been stolen. G.S. 106-168.14A does not apply to a farmer who collects waste kitchen grease for a use related to his or her farm

HB 512 specifies that a container containing waste kitchen grease that bears a name on the container is presumed to be owned by the person named on the container unless another person in writing states that he or she is the owner. Finally, HB 512 makes it a Class H felony for any person to take and carry away, or aid in the taking or carrying away, of any waste kitchen grease in a container bearing the name of the owner of the container and bearing a notice that unauthorized removal is prohibited without written consent of the owner.

BACKGROUND

Waste kitchen grease is the used cooking oil, from either plant or animal origin, from restaurants. Until recently, this grease was considered a waste product and restaurants had to pay to get rid of it. However, thanks to the alternative fuels movement, waste kitchen grease is now a highly desirable raw material for further processing into biofuel for engines. Many citizens have converted their vehicles to burn cooking oil; farmers have done the same for farm equipment. There is a growing industry of processors producing biofuel on a larger scale. In addition, waste kitchen grease can be used as a low cost additive to animal feed and other products. Due to increased demand for the raw product, theft of waste kitchen grease is increasing.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture and Consumer Services (DACS)

Expenditures

HB 512 significantly expands the Department’s current licensing program. Presently, licenses are one-time application, with no renewal, for a limited type of rendering. HB 512 adds three new components to the current program that will increase the workload of the DACS rendering program: (1) a new category of rendering (waste kitchen grease) with many more processors and collectors; (2) an annual renewal requirement for licenses; and (3) the need to check insurance requirements. Due to these changes, the Department has indicated that they will need the equivalent of a 15 hours per week temporary Processing Asst. IV. The rendering license program currently has no dedicated employees. This part-time position would handle licensing, receipt collection, database maintenance, renewal notices, warning letters, civil penalty processing, etc.

The recommended position would be part-time with a salary grade 59, which has a minimum salary of \$25,705. Working 15 hours per week (or 43% of full-time) corresponds to a total salary of \$11,053. While part-time positions are not eligible for retirement and health insurance benefits, the State must still pay Social Security on the wages. This adds \$846 to the personnel costs for this position for a total of \$11,899. This position would require operating funds as well. According to the Department’s submittal, the positions would require over \$6,600 for travel, general operating supplies, and equipment (ex: a computer). DACS has indicated that the computer would need to be replaced after three years. Fiscal Research has altered DACS’ submittal to reflect the more typical State computer replacement schedule of four to five years; this change does not impact operating costs for FY 2011-12 but does change costs in the later years. Table 1 provides expected operating costs through FY 2015-16 adjusted for inflation.

Table 1: Expected Operating Expenditures, FY 2011-12 through FY 2015-16

	FY2011-12	FY2012-13	FY2013-14	FY2014-15	FY2015-16
Salary	\$ 11,053	\$ 12,033	\$ 13,078	\$ 13,946	\$ 14,677
Social Security	846	921	1,000	1,067	1,123
<i>Total Personnel Costs</i>	<i>\$ 11,899</i>	<i>\$ 12,954</i>	<i>\$ 14,078</i>	<i>\$ 15,013</i>	<i>\$ 15,800</i>
Travel	2,547	2,625	2,703	2,770	2,839
General	1,528	1,575	1,622	1,662	1,703
Equipment	2,547	512	0	0	2,839
<i>Total Operating Costs</i>	<i>\$ 6,622</i>	<i>\$ 4,711</i>	<i>\$ 4,325</i>	<i>\$ 4,432</i>	<i>7,381</i>
Total Expenditures	\$ 18,521	\$ 17,665	\$ 18,403	\$ 19,445	\$ 23,181
<i>Salary & Wage Inflation*</i>		8.87%	8.68%	6.64%	5.24%
<i>General Inflation</i>		3.05%	2.99%	2.47%	2.49%

* Inflation estimates provided by Moody's.

Revenues

HB 512 doubles the licensing fee and adds a requirement to renew the license annually. The Department currently licenses 10 renderers and 10 collectors. All of whom have had their licenses for several years. The last two to be licensed applied in 2008 for a total fee collection of \$200 in FY 2008-09. No revenue for rendering license has been collected since that time. Under HB 512, these

20 licensees would begin paying annual renewals fees for new revenue to DACS of \$2,000. This represents the lower boundary of the range of expected revenue.

DACS expects that several processors, perhaps up to 10, and numerous collectors, perhaps up to 200, would apply for licenses. While this would increase revenue above that expected from the renewals of existing licensees, DACS cannot provide a precise estimate of the actual number of collectors and processors seeking licenses due to lack of data. The Fiscal Research Division concurs that there is not enough data available to accurately estimate the number of processors and collectors. The Department noted that HB 512 exempts farmers from licensing requirements, but not individuals picking up small amounts for personal vehicle use. Therefore, DACS' estimate assumes that these small volume collectors would be required to be licensed. An estimate using the very high end of the ranges provided by DACS would indicate that revenue could potentially reach \$21,000 per year.

While HB 512 will increase annual revenues, it could also drive some processors and collectors from the market. The Department does not anticipate a significant reduction in the number of processors or collectors but believe that one or two might cease operations due, in part, to the annual fee.

Table 2: Range of Expected Revenues, FY 2011-12 through FY 2015-16

Bottom of Range Estimate						
	#	FY2011-12	FY2012-13	FY2013-14	FY2014-15	FY2015-16
Existing Licensees Renewals	20	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
New Collectors	0	0	0	0	0	0
New Processors	0	0	0	0	0	0
<i>Total Expected Revenue</i>	<i>20</i>	<i>\$ 2,000</i>	<i>\$ 2,000</i>	<i>\$ 2,000</i>	<i>\$ 2,000</i>	<i>\$ 2,000</i>
Top of Range Estimate						
	#	FY2011-12	FY2012-13	FY2013-14	FY2014-15	FY2015-16
Existing Licensees Renewals	20	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
New Collectors	200	20,000	20,000	20,000	20,000	20,000
New Processors	10	1,000	1,000	1,000	1,000	1,000
<i>Total Expected Revenue</i>	<i>230</i>	<i>\$ 23,000</i>	<i>\$ 23,000</i>	<i>\$ 23,000</i>	<i>\$ 23,000</i>	<i>\$ 23,000</i>

Impact of Criminal Penalties

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The proposed legislation amends G.S. Chapter 106, Article 14A, to establish a licensure requirement for (1) the storing or processing of waste kitchen grease at a waste kitchen grease operation; and (2) acting as a collector of waste kitchen grease. However, the criminal enforcement provision in Article 14A, found in G.S. 106-168.15, does not apply to these new waste kitchen grease licensees. The bill would maintain the statute in its current form, under which it is a Class 1 misdemeanor to conduct rendering operations or collect raw material (*i.e.*, inedible animal carcasses or portions thereof) in

violation of the provisions of the Article. By amending Article 14A, the bill does increase the potential criminal exposure of persons engaged in rendering operations and collectors of raw material under G.S. 106-168.15, by further regulating their conduct.¹

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-168.15. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is, therefore, not known how many convictions occurred under G.S. 106-168.15 in FY 2009-10, or how many additional convictions may result from the proposed broadening of the statute. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

G.S. 14-79.2. Larceny of waste kitchen grease

This statute would make it a Class H felony to take and carry away, or aid in taking and carrying away, any waste kitchen grease within a container bearing the name of the owner and a notice that unauthorized removal is prohibited without the owner's written consent. Larceny (and aiding in larceny) of property valued at or below \$1,000.00 is a Class 1 misdemeanor under G.S. 14-72(a). Larceny of property with a value exceeding \$1,000.00 is a Class H felony – the same classification as the proposed offense.

Insofar as the value of the stolen waste kitchen grease and its container does not exceed \$1,000.00, the new offense would reclassify a subset of Class 1 misdemeanor larcenies under G.S. 14-72(a) as Class H felonies under G.S. 14-79.2.

There were 16,666 Class 1 misdemeanor convictions under G.S. 14-72(a) for Larceny and 94 Class 1 misdemeanor convictions under G.S. 14-72(a) for Aid and Abet Larceny during FY 2009-10. It is not known how many of these offenses involved waste kitchen grease in the requisite container so as to qualify for the new Class H felony in G.S. 14-79.2. The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009-10, 36 percent of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, three convictions were reclassified from Class 1 to Class H, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug

¹For example, the bill would not allow a collector of raw material to: (1) sell or offer for sale to any unlicensed person any waste kitchen grease, knowing such unlicensed person would transport or process the grease in violation of the Article; (2) steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein; or (3) take or possess waste kitchen grease from a collector that is not licensed unless otherwise allowed under Article 14A, or knowingly take possession of stolen waste kitchen grease.

treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$3.44 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

AOC provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1

The proposed legislation would expand the licensing requirements for rendering operations under Article 14A of Chapter 106, and thus expand the scope of the current Class 1 misdemeanor for licensing violations in that Article. AOC does not have an offense code for rendering license violations, and therefore cannot determine the number of charges under current law. The legislation has the potential to increase the number of Class 1 misdemeanor charges for licensing violations. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. Superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (3 hours at \$75 per hour) per indigent defendant.

Section 2

The proposed legislation would also create a new Class H felony for larceny of waste kitchen grease. Under current statutes, larceny of waste kitchen grease would be charged as larceny (or aiding in larceny) under G.S. 14-72(a) – a Class 1 misdemeanor if the value of the property is \$1,000 or less or a Class H felony if the value of the property exceeds \$1,000.

For larceny offenses involving waste kitchen grease valued at \$1,000 or less, the legislation would have the effect of increasing the offense class from a Class 1 misdemeanor to a Class H felony. In calendar year 2010, there were 39,743 defendants charged with misdemeanor larceny under G.S. 14-

² DCC incurs costs of \$0.97 per day for each offender sentenced to the Community Service Work Program.

72(a), and 495 defendants charged with aiding and abetting misdemeanor larceny. AOC cannot determine the subset of those charges that involved the larceny of waste kitchen grease.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class H felonies in the bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 1 misdemeanors to Class H felonies, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

For larceny offenses involving waste kitchen grease valued at more than \$1,000, the proposed legislation would have no fiscal impact, as these offenses are already Class H felonies.

Overall

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Bill Digest H.B. 512 (03/29/0201); Department of Agriculture and Consumer Services; North Carolina Sentencing and Policy Advisory Commission; Judicial Branch.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee; Sarah Stone

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 25, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices