

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 512 (Third 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:

Correction \*See Assumptions and Methodology\*

Probation \*See Assumptions and Methodology\*

Judicial \*See Assumptions and Methodology\*

TOTAL EXPENDITURES: \*See Assumptions and Methodology\*

REVENUES:

None Expected

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

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:

The proposed legislation amends the laws governing the licensing and regulation of rendering plants. The act removes definitions, increased licensing fee, renewal requirements, and other provisions related to collectors of waste kitchen grease included in earlier versions of the bill.

The proposed legislation enacts the following:

- Amends G.S. 106-168.5, changing the title of the group that furnishes a member of the rendering plant inspection committee from the NC Division of the Southeastern Renderers Association to the North Carolina Renderers Association.
- Alters G.S. 106-168.8 to add proof of general liability insurance in the amount of \$1 million dollars as a requirement for a rendering operation.
- Makes it a Class H felony to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than \$1,000. If the value is \$1000 or less, then the offense is a Class 1 misdemeanor.

The act defines "Waste kitchen grease" as animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage as defined in G.S. 130A-290.

The act becomes effective January 1, 2012, and applies to the collection of waste kitchen grease or the taking of waste kitchen grease containers and the waste contained on or after that date. The portion of the bill creating the larceny offense becomes effective January 1, 2012, and applies to offenses occurring on or after that date.

*Adapted from Committee Counsel's Bill Summary for the PCS to the 2<sup>nd</sup> Edition Dated June 3, 2011.*

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Agriculture and Consumer Services (DACS)**

The proposed legislation no longer impacts DACS. The bill will not increase the responsibilities of the Department, its expenditures, or its revenues.

### **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**

#### *Section 1*

The bill 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, is not amended to 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.<sup>1</sup>

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 indicates that this offense is infrequently charged and/or infrequently results in convictions. It is, therefore, unknown 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.

### *Section 2*

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

Subsection (1) makes it a Class 1 misdemeanor 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, if the value of the container (or the container and the grease) is \$1,000 or less.

Larceny (and aiding in larceny) of any property valued at or below \$1,000 is already a Class 1 misdemeanor under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

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 aiding and abetting larceny during FY 2009-10.

Subsection (2) makes 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, if the value of the container (or the container and the grease) is more than \$1,000.

Larceny (and aiding in larceny) of any property with a value of more than \$1,000 is already a Class H felony under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

There were 985 Class H felony convictions under G.S. 14-72(a) for larceny and 15 Class H felony convictions under G.S. 14-72(a) for aiding and abetting larceny during FY 2009-10.

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<sup>1</sup>For example, the bill would prohibit a collector of raw material to do the following: (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.

## **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 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.<sup>2</sup>

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.

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

*Section 2*

This legislation would also create a new Class H felony for larceny of waste kitchen grease valued at \$1,000 or more and a new Class 1 misdemeanor for larceny of waste kitchen grease valued at less than \$1,000. 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. Therefore, no impact is anticipated due to this section.

*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:** Department of Agriculture and Consumer Services; North Carolina Sentencing and Policy Advisory Commission; Judicial Branch.

**TECHNICAL CONSIDERATIONS:** none

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**DATE:** June 9, 2011



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