

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 512 (Second 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					
<i>*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.</i>					

BILL SUMMARY:

House Bill 512 amends the laws governing the licensing and regulation of rendering plants to include the collection of waste kitchen grease. The proposed committee substitute removed storage and processing of waste kitchen grease from the operation of the bill.

The definition section of Article 14A, G.S. 106-168.1, is amended to add "waste kitchen grease" to the definition of collector of raw materials for sale to a renderer or other person for further processing. Waste kitchen grease means 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. The term "farmer" is also added to the definitions. Farmer means a person actively engaged in agriculture but does not include a person who cultivates a garden for personal use.

G.S. 106-168.2, requiring licensing for rendering operations, is amended to add persons engaging in the collecting of waste kitchen grease to those who must obtain a license.

G.S. 106-168.3 is amended to make it clear that there is no exemption from licensing requirements for collectors of waste kitchen grease.

G.S. 106-168.4 increases the application fee for a rendering license from \$50 to \$100 and adds an annual renewal fee of \$100.

G.S. 106-168.5 amends 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.

G.S. 106-168.7 adds a provision requiring annual renewal of a rendering license.

G.S. 106-168.8 adds proof of general liability insurance in the amount of \$1 million dollars as a requirement for a rendering operation.

G.S. 106-168.9 is amended to clarify that a person holding a rendering license or acting as a collector of raw materials or kitchen waste grease may transport such in accordance with the provisions of Article 14A.

G.S. 106-168.10 is amended to clarify that a person holding a rendering license (and not a collector of waste kitchen grease) may kill diseased, old, or crippled animals on the premises of the owner if asked.

G.S. 106-168.11 is amended to clarify that a rendering license extends to the agents and employees of the person holding the license when they are acting within the scope of their authority.

G.S. 106-168.14 clarifies that collectors of raw material are subject to the requirements of G.S. 106-168.8(5) and (6) regarding vehicles and containers used to transport raw materials.

House Bill 512 also adds several new sections to Article 14A providing for the licensure of persons who collect, store, and process waste kitchen grease. New G.S. 106-168.14A requires collectors of

waste kitchen grease to apply for a license not less than 30 days before beginning collection or transportation of the waste. Applications are to include (1) name and address; (2) description of operations; (3) make, model, license number and vehicle id number of vehicles used to transport waste kitchen grease; and (4) \$100 application fee.

The Commissioner of Agriculture is required to issue each licensee a unique license number and certificate. The license is renewable annually on January 1, and there is a \$100 annual renewal fee. Licensees must keep records for two years, and these records must be made open to the Department for inspection. Records shall contain (1) name and address of each location or person from whom waste kitchen grease was obtained; (2) quantity of material from each location; (3) date on which material was obtained; and (4) the waste kitchen grease operation or other processor to whom the waste was delivered.

When collecting or transporting waste, licensees must have a copy of their license in his or her possession at all times or other proof of compliance with this article. The licensee's name and license number must be conspicuously displayed (three inches or greater letters) on any vehicle used to transport waste kitchen grease.

It is unlawful to (1) sell or offer to sell waste kitchen grease to a person not licensed to transport the waste; (2) steal, contaminate, or damage any waste kitchen grease container or grease; or (3) take grease from an unlicensed collector or knowingly take possession of grease that has been stolen. The proposed committee substitute adds (4) place a label on a waste kitchen grease container owned by another in order to assert ownership of the container.

The provisions of new G.S. 106-168.14A do not apply to a farmer who collects waste kitchen grease for use related to his or her farm.

New G.S. 106-168.14B provides for a presumption that a waste kitchen grease container belongs to the person whose name is on the container.

New G.S. 14-79.2 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 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.

Adopted from Committee Counsel's Bill Summary for the PCS to the First Edition Dated May 5, 2011.

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, individuals apply for a license once for a limited type of rendering, and there is no renewal requirement. 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>	\$ 6,622	\$ 4,711	\$ 4,325	\$ 4,432	7,381
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</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</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

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.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 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.

¹For 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.

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.

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.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

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

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

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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