

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1203 (Second Edition)

SHORT TITLE: No Motor Fuel Sales Limits.

SPONSOR(S): Representatives Brubaker and Gibson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES	No General Fund Impact - See Civil Penalties section				
EXPENDITURES					
DACS	\$64,119	\$87,201	\$88,945	\$90,724	\$92,538
DOJ (R)	\$166,475	\$178,791	\$182,367	\$186,014	\$189,734
(NR)	\$43,200				
POSITIONS: (cumulative)	3.5	3.5	3.5	3.5	3.5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Agriculture and Consumer Services; Department of Justice				
EFFECTIVE DATE:	Effective Oct. 1, 2003, and applies to sales of fuel or offers of sale on or after that date.				

BILL SUMMARY:

The proposed legislation makes clarifying changes to the Motor Fuel Marketing Act. The definition of the cost of fuel is amended to be the total of the most recently published average reseller rack cost of fuel by grade and quality, the freight charges on the fuel, and all state and federal excise taxes. The bill makes clarifying changes for exceptions to the prohibition against selling fuel below cost. The maximum penalty for establishing a price below cost is increased from \$1,000 to \$10,000. The Commissioner of Agriculture, rather than the Attorney General, shall investigate allegations of violations of the Act. The bill also prohibits limiting the quantity of fuel sold or offered for sale from a fuel pump to any one particular customer. Fuel must be dispensed into a container approved by the fire prevention code, the state building code, or by the DOT. Violation of either provision is subject to civil penalty of not more than \$5,000.

Source: Bill Digest H.B. 1203

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture and Consumer Services

The proposed legislation will impact the Department of Agriculture and Consumer Services Standards Division (Division.) Currently, the Motor Fuels Section has responsibility for testing motor fuels for compliance with guaranteed quality specifications. Upon implementation of the bill, the Division's inspectors would also be responsible for responding to allegations of motor fuel being sold below cost.

If allegations were made of motor fuel being sold below cost, the Division would be required to investigate and make a determination on a claim within three days of receipt of the written complaint. Valid complaints would then be forwarded to the Attorney General's office for further investigation and enforcement. Currently, the DOJ Consumer Services Section processes 10 to 20 unfair fuel pricing complaints a year. Because there is no way to determine how many complaints will be made under the revised Motor Fuel Marketing Act, this fiscal analysis estimates costs on the basis of one instance of a complaint.

The Division estimates it would need one additional outside auditor (Grade 75) to handle the investigative duties associated with new complaints. The legislation would also require the auditor to maintain a subscription to the Oil Price Information Service (OPIS) to research the cost of motor fuels in question. A subscription to OPIS is \$5,076 annually (\$47 per month for nine racks.) Total salary and benefits for this new position would be \$85,491. Costs in the front-page box have been adjusted to reflect the October 1, 2004, effective date and increased by two percent each year.

The Division estimates it would be able to assume the additional field responsibilities in the proposed legislation with their existing staff, but only at the expense of other inspection services they currently provide. The Division estimates approximately \$1,500 in staff time per investigation. In recent years, many inspector functions have been combined to reduce travel overlap, especially in rural areas. The Division currently employs four types of employees who visit establishments potentially impacted by this bill:

- *Gasoline and Oil Dispenser Inspectors:* test retail petroleum dispensers for accuracy, perform inspections for DENR and DOR, and respond to consumer complaints. Equipped with a truck-mounted system for testing dispensers, typically in urban areas.
- *Weights and Measures Inspectors:* test scales for accuracy, inspect price scanning systems, and respond to consumer complaints.
- *Dual Role Inspectors:* perform both the Gasoline and Oil Dispenser Inspector and Weights and Measures Inspector responsibilities. Helps to minimize travel by sending a single inspector into establishments, typically in more rural areas.
- *Field Chemists:* responsible for on-site inspection of petroleum products. Equipped with mobile laboratories to perform tests while at a station.

These inspectors routinely visit sites in their areas, thus additional investigative responsibilities would reduce available time spent on routine inspection responsibilities. Across the state, inspectors currently average one service station visitation once every 18 months, for a total of 78,000 initial inspections in 2003. The Department would prefer overall frequency of inspection be no more than 14 months statewide. Additional responsibilities may further increase this gap.

Department of Justice

The Department of Justice (DOJ) has estimated a need for two sworn Consumer Fraud Investigators and one half-time Attorney III to implement this Bill. Fiscal Research has reviewed DOJ's request, and has revised the costs of the Bill to two civilian Consumer Protection Specialists and one half-time Attorney III. Total recurring costs for positions and related expenses are estimated at \$175,285 and nonrecurring costs for two vehicles and three computers are estimated at \$43,200. Costs in the front-page box have been adjusted to reflect the October 1, 2004, effective date and increased by two percent each year.

Investigator Positions: Currently, a civilian attorney or consumer specialist conducts investigations of gas prices. These investigations make up less than half the workload for those positions. DOJ believes that the proposed changes in the bill would significantly change the scope and volume of incoming complaints and the resulting enforcement practices. Investigators would be required make site visits and possibly seal and close gas pumps at gas stations where unfair pricing is occurring. DOJ believes such enforcement actions would pose bodily harm safety risks to the investigators, thereby justifying the need for two armed and sworn law enforcement positions, one based in Raleigh and one based in Charlotte. However, other state agencies use civilian personnel when closing a business or aspects of a business. This fiscal note includes costs for two civilian Consumer Protection Specialists: salary and benefits total \$49,968 per position. DOJ states that each position would require an annual subscription to OPIS to check gasoline prices (\$4,563 each), a vehicle (\$18,000), and a computer (\$2,400).

Currently, DOJ receives 10 to 20 complaints per year; less than five percent are valid. DOJ estimates the proposed legislation could increase unfair motor fuel pricing complaints three to four times over their existing complaints. However, under this Bill the Department of Agriculture would handle initial investigations, and DOJ would only be responsible for pursuing complaints that the Department of Agriculture deems valid. DOJ recommends two positions due to the need to investigate complaints across the state. Depending on the number of valid complaints and the amount of travel required, the workload generated by this Bill might not fully occupy two full-time positions.

Attorney Position: DOJ reports that an Attorney III currently handles these cases. They estimate that the additional workload resulting from this bill would be the equivalent of one-half of an Attorney III position. Total salary and benefits would be \$43,681.

Civil Penalty: The maximum civil penalty cap for each offense is increased from \$1,000 to \$10,000. The proceeds of civil penalties are to be remitted to the Civil Penalty and Forfeiture Fund. DOJ reports they have not sought civil penalties in a predatory pricing case under current law. No estimate is available on the possible number and amount of penalties associated with the new requirements.

The proposed legislation also amends G.S. 75-88 to include a new \$5,000 civil penalty for violating public disclosure laws, limiting the quantity of motor fuel sold improperly, and dispensing motor fuels into unauthorized containers. The proceeds of civil penalties are to be remitted to the Civil Penalty and Forfeiture Fund. No estimate is available on the possible number and amount of penalties associated with the new requirements.

SOURCES OF DATA: Dept. of Agriculture and Consumer Services, Dept. of Justice

TECHNICAL CONSIDERATIONS:

- 1) The effective date in HB 1203 v.2 as passed by the House was October 1, 2003.
- 2) Many of the DACS Standards inspectors currently work from home and are not required to transmit information over a secure system. If the information to be transmitted were to contain sensitive information ITS may require the Division to move to a secure setup, which would require an additional \$250 per person per month.
- 3) The implementation plans for both DACS and DOJ are tentative at this time. If the bill were to become law, the two agencies would hold a meeting to discuss the most efficient means of implementing the legislation.

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