

# **HJR 8 Study: Childhood Hunger**

## ***Stakeholder Suggestion: Support Gleaning Programs***

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for the Children, Families, Health, and Human Services Interim Committee  
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### *Background*

Efforts to obtain unused food products from farms, restaurants, and grocery stores for use by food banks have become an established part of the effort to alleviate hunger nationwide. These efforts — often known as "gleaning" — have been undertaken by national, state, and local groups and have been supported by legislation at the state and national levels. Gleaning is seen as a way to reduce food waste and, at the same time, provide food to those in need.

The Children, Families, Health, and Human Services Interim Committee asked for more information in November 2011 about a stakeholder suggestion to provide support for gleaning programs that collect both prepared foods and fresh foods. The suggestion also recommended offering tax incentives for restaurants, farmers, and ranchers who participate in gleaning efforts.

This briefing paper provides additional information about the ways in which gleaning programs work, as well as about federal and state laws related to food recovery efforts. It also presents options for committee consideration.

### *How Gleaning, or Food Recovery, Works*

In its publication "*A Citizen's Guide to Food Recovery*," the U.S. Department of Agriculture says the four most common methods of food recovery are:

- field gleaning, or collecting crops from fields that have already been mechanically harvested or that are not economically profitable to harvest;
- perishable food rescue or salvage, or collecting perishable produce from wholesale and retail sources;
- food rescue, or collecting prepared foods from restaurants and others in the food service industry; and
- nonperishable food collection, or collecting processed foods that have long shelf lives.

Typically, national, state, or local organizations must take the following steps to establish programs:

- find donors from among farmers, farmers' markets, community gardens, restaurants, and grocery stores;
- find a food bank or pantry that will accept the food;
- recruit volunteers who will collect and distribute the food; and

- obtain the equipment needed to collect the food and take it to a food bank, including cooling or refrigeration equipment needed for transport or storage.

In Montana, some local groups have organized gleaning efforts. For example, the Missoula Food Bank's Food Circle program recovers food that has been prepared by area restaurants, caterers, grocery store delicatessens, and the University of Montana. The food bank re-packages the food into single servings and freezes it for distribution to the food bank's clients and to nonprofit agencies serving children, families, senior citizens, and homeless individuals.<sup>1</sup>

#### Liability Protection for Gleaning Efforts

Both Congress and the Montana Legislature have recognized that liability concerns may prevent businesses or individuals from participating in gleaning efforts. Both bodies have passed laws providing immunity for donations of food that is distributed for free.

- In Montana, 27-1-716, MCA, provides criminal and civil immunity to anyone who donates canned or perishable food in good faith, if the food appears to be fit for human consumption and is donated to a charitable or nonprofit organization or to a person who collects such food for free distribution. The law also exempts the receiving organization from liability for distributing the food. The liability protection does not apply to injuries caused by gross negligence or intentional misconduct. The protection explicitly applies to donated food that appears to be fit for consumption but is not "readily marketable due to appearance, grade, surplus, or other considerations." The law was enacted in 1981.
- Congress approved civil and criminal immunity for food donations in 1990 and made the immunity permanent with passage of the Bill Emerson Good Samaritan Food Donation Act in 1996. The law provides, essentially, the same protections as the Montana law. It also encourages gleaning, through a "Sense of Congress" section that says each state should encourage the donation of apparently wholesome food or grocery products to nonprofit organizations for distribution to needy individuals.

#### Approaches in Other States

Some states have passed laws or appropriated money to support organized gleaning efforts. Examples include:

- a 10% tax credit in Oregon, California, and North Carolina, typically based on the value of the quantity of the donated crop;
- a grant program in New Jersey that supports food collection and distribution efforts and administrative costs for gleaning organizations;

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<sup>1</sup> "Food Circle," *Missoula Food Bank* [on-line]; available at <http://www.missoulafoodbank.org/Programs/Services/foodcircle.html>; accessed Jan. 6, 2012.

- authority for the Florida Department of Agriculture to identify suppliers, volunteers, and nonprofit organizations interested in gleaning efforts, facilitate initial organizational efforts, create an informational brochure, and provide direct or indirect support to programs that are in their initial start-up phases; and
- an annual appropriation in Arizona to support the gleaning project operated by the Association of Arizona Food Banks. The appropriation in fiscal year 2010 amounted to nearly \$317,000, representing about 13% of the \$2.5 million budget for the program.

Stakeholders who made this recommendation for the HJR 8 study suggested that the state provide tax incentives for participating farmers, ranchers, and restaurants.

### Options for Consideration

If the committee wants to support organized gleaning efforts, members could consider the following options:

1. Approve the drafting of legislation to provide tax incentives to farmers, ranchers, and restaurants that participate in gleaning programs.

*Note: Tax incentives could take the form of a tax deduction or a tax credit. A deduction would reduce a participant's taxable income by the amount of the deduction. A credit would reduce a participant's final tax liability by a fixed amount or a percentage of the taxable income. Tax incentives do not require an appropriation. Instead, they result in a "tax expenditure," or a reduction in the amount of revenue due to the state.*

*The revenue reduction caused by an incentive for participation in gleaning programs would depend on the type of incentive and the number of farmers, ranchers, or restaurants participating in gleaning programs. For example, 19,325 individuals reported farm income in tax year 2009. In addition, 2,714 corporations classified as either agriculture, timber, or fishing filed corporate tax returns that year. If about 80% of the corporations were involved in agricultural efforts, that would amount to about 2,171 corporate farm or ranch entities.*

*Most agricultural tax filers do not report taxable income because of their expenses; many report losses that carry over into future tax years. In tax year 2009, both individual and corporate agricultural filers reported negative income. Thus a refundable tax credit is most likely to encourage participation in gleaning programs because it would result in payment to the filer even if the filer did not have a taxable income.*

*If 10% of the individuals or corporations engaged in farming and ranching received a refundable tax credit of \$250 for participating in gleaning programs, approximately 1,930 individuals and 217 corporations would receive the credit. That would result in a tax expenditure of \$536,750.*

*State records show that about 4,560 restaurants are licensed in Montana. The Missoula Food Bank currently partners with about 15 local restaurants for its food recovery program, or about 3.5% of the 441 restaurants in the county. Using that percentage as a starting point, about 137 restaurants may participate in a gleaning program statewide. If the restaurants were given a \$250 credit against their tax liability, the state's revenues would be reduced by \$34,250. If the tax credit were extended to other food retailers and wholesalers, such as delicatessens or warehouses, about 200 of the approximately 6,675 licensed establishments might be participate. The tax expenditure in that case would be about \$50,000.*

2. Approve the drafting of legislation to appropriate funding for the purchase of equipment needed by local food banks or charitable organizations to conduct a gleaning program. Equipment includes collection bins, storage bins or facilities, and vehicles.

*Note: The costs of a bill to fund equipment purchases would depend on the amount allocated to each participating organization and the number of organizations involved. The committee could choose to limit funding to a certain number of groups each year. For example, grants of \$2,000 to 10 organizations would cost \$20,000.*

3. Approve the drafting of legislation requiring the appropriate state agencies to support the creation of gleaning programs by identifying potential participants and developing educational materials.

*Note: A bill to require action by state agencies should provide an appropriation or direct the agencies to undertake the activities within their existing budgets.*

4. Approve the drafting of a resolution encouraging farmers, ranchers, restaurants, and food banks to participate in food recovery efforts.

*Note: A resolution would serve merely as a suggestion. It would not require participation in gleaning programs.*

5. Find that gleaning programs offer a way to reduce the waste of fresh or prepared food while also assisting with efforts to alleviate childhood hunger. Include the finding in the final report on the HJR 8 study.
6. Identify other options for consideration.