

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 50 (Chair, Environment and Transportation Committee)(By
Request - Departmental - Agriculture)

Environment and Transportation

Department of Agriculture - Maryland Produce Safety Program

This departmental bill establishes a Maryland Produce Safety Program in the Maryland Department of Agriculture (MDA), which must conform with federal standards for growing, harvesting, packing, and holding produce for human consumption. **The bill takes effect July 1, 2019, and terminates if the federal standards are repealed or federal funding to implement the bill either is not received or is exhausted.**

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill's penalty provisions are not expected to materially affect local government operations or finances.

Small Business Effect: MDA has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment as discussed below.

Analysis

Bill Summary:

Maryland Produce Safety Program, in General

The bill establishes a Maryland Produce Safety Program in MDA to reduce the risk of adverse impacts on human health from the consumption of contaminated produce. The program must conform with the federal standards for growing, harvesting, packing, and holding produce for human consumption.

The Secretary of Agriculture must administer and enforce the program but may delegate the Secretary's authority to enforce the standards for sprouts, established under specified federal regulations, to the Secretary of Health. The Secretary of Agriculture may also grant a "qualified exemption" to a farm and suspend or revoke a qualified exemption (upon notice and opportunity to be heard) in accordance with specified federal regulations.

A "qualified exemption" under federal regulations is available to farms with a specified limited amount of annual sales (less than \$500,000, adjusted for inflation using 2011 as the baseline year), the majority of which are direct sales to consumers or to relatively local restaurants or retail food establishments (within the same state or Indian reservation or within 275 miles of the farm).

When conducting a "covered activity" on "covered produce," a "covered farm" must comply with the requirements of the program. A farm that has a qualified exemption must comply with more limited requirements under federal regulations. A covered farm, including one that has a qualified exemption, must keep specified records and make them available to the Secretary upon request.

A "covered farm" is a farm or a farm mixed-type facility for which, on a rolling basis, the average annual monetary value of produce sold during the previous three-year period is more than \$25,000 (adjusted for inflation using 2011 as the baseline year).

"Covered produce" is defined in federal regulations and generally consists of fruits and vegetables and mixes of intact fruits and vegetables (such as fruit baskets) that are raw agricultural commodities. "Covered produce," however, does not include a specified list of produce that is rarely consumed raw or produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management. Produce that receives commercial processing that adequately reduces the presence of microorganisms of public health significance is eligible for exemption from the federal standards for growing, harvesting, packing, and holding produce for human consumption.

“Covered activity” is also defined in federal regulations and generally means growing, harvesting, packing, or holding covered produce on a farm, as well as certain manufacturing/processing of covered produce on a farm.

Authority of the Secretary of Agriculture

The Secretary of Agriculture is given various types of authority under the program, including specified authority to:

- adopt regulations to carry out the program, including requirements for the registration of farms subject to the program;
- enter a farm that claims it is not subject to the program’s requirements to inspect and verify the farm’s produce sales records;
- enter and inspect a covered farm, copy any record required to be kept under the program, and take a reasonable sample of covered produce inventory to determine compliance;
- issue and enforce a stop-sale order if a farm is found to be in violation of the program’s requirements;
- bring an action for an injunction to (1) enforce the program’s requirements; (2) enforce an order issued by the Secretary under the bill; or (3) prevent or restrain a violation of the bill;
- detain covered produce found to be in violation of the program’s requirements for up to 30 consecutive days;
- file a petition in circuit court for condemnation of covered produce found to be in violation of the requirements of the program;
- issue a subpoena to compel testimony or the production of any record required to be kept under the program;
- file a petition in a court of competent jurisdiction for an order of contempt against a person that fails to obey a subpoena, as specified; and
- apply for an administrative search warrant to enter a private premises to conduct any inspection required or authorized by law to determine compliance with the program’s requirements.

Specified procedural requirements and other provisions apply to the above-mentioned authority.

Penalties

A person who violates a provision of the bill is subject to criminal penalties applicable to a violation of the Agriculture Article. (Pursuant to Title 12 of the Agriculture Article, a person who violates any provision of the article is guilty of a misdemeanor and subject to

a fine of up to \$500 and/or imprisonment for up to three months. For a second or subsequent offense, a person is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.)

Instead of or in addition to any other penalty authorized under the Agriculture Article, the Secretary may impose a civil penalty of up to \$5,000 for each violation of a provision of the bill or any order issued by the Secretary under the program. Civil penalties collected by the Secretary are paid into the general fund.

Termination

The bill terminates if (1) the federal standards for growing, harvesting, packing, and holding produce for human consumption are repealed; (2) MDA does not receive federal funding to implement the bill; or (3) any federal funding received by MDA to implement the bill is exhausted.

Current Law/Background:

Federal Standards

The federal standards for the growing, harvesting, packing, and holding of produce for human consumption, also referred to as the “Produce Safety Rule,” were established under the federal Food Safety Modernization Act and are implemented by the U.S. Food and Drug Administration (FDA). The standards took effect January 26, 2016. Required compliance with the standards, however, is being phased in, and, with the exception of certain standards, (1) farms with annual sales of produce of more than \$500,000 must be in compliance beginning January 26, 2018; (2) farms with annual sales of produce of more than \$250,000 but not more than \$500,000 must be in compliance beginning January 28, 2019; and (3) farms with annual sales of produce of more than \$25,000 but not more than \$250,000 must be in compliance beginning January 27, 2020. FDA delayed the beginning of routine inspections until spring 2019, and MDA indicates that the beginning of routine inspections will be phased in with routine inspections of smaller farms beginning in 2020 and 2021.

Covered activities involving sprouts are subject to an earlier phased-in compliance schedule, which began in January 2017, because sprouts are especially vulnerable to dangerous bacteria due to the warm, moist, and nutrient-rich conditions needed to grow them.

MDA indicates that the Produce Safety Rule implements standards for the areas where contamination of produce is most likely to occur, such as irrigation water, use of biological soil amendments, worker health and hygiene, and control of domestic animals and wildlife.

MDA Involvement in Implementing Federal Standards

MDA indicates that climate, growing season, irrigation water sources, environmental laws/regulations, and the use of biological soil amendments are all factors that need to be considered when implementing food safety practices and can vary significantly from one state to another. In order to use state expertise and working relationships with farmers, and allow for consideration of state laws/regulations and practices when determining compliance, FDA has given states the opportunity to enter into five-year cooperative agreements to develop and implement a state produce safety program to provide education, technical assistance, outreach, inspection, and enforcement aligned with the Produce Safety Rule.

MDA entered into a cooperative agreement with FDA in October 2016 and has been receiving federal funding since then. MDA's activities up to this point have largely focused on preparing Maryland farmers for compliance but now must also focus on routine inspections and compliance.

State Fiscal Effect: The bill is not expected to materially affect State finances because MDA is already receiving federal funding under the cooperative agreement with FDA to implement the federal Produce Safety Rule, and it appears that federal funding for inspection and compliance efforts is still available to MDA even in the absence of this bill. If the bill is not enacted, MDA inspections and compliance efforts would be conducted under FDA's authority, and FDA would handle enforcement actions.

MDA does not expect that the handling of enforcement actions at the State level, pursuant to the bill's provisions, materially affects the level of State spending of federal funds under the cooperative agreement.

Under the cooperative agreement, MDA spent \$171,800 and \$454,300 in federal funds in fiscal 2017 and 2018, respectively. More than \$500,000 is included for these activities in both the fiscal 2019 budget and the Governor's proposed fiscal 2020 budget.

The Maryland Department of Health (MDH) indicates that sprout producers are currently licensed and inspected by the Prevention and Health Administration's Office of Food Protection, which enforces the federal standards for sprouts. The bill does not have a fiscal impact on MDH.

Any civil penalties imposed under the bill, as well as any proceeds from sales of condemned covered produce (deposited in the general fund pursuant to the bill), are not expected to materially affect State finances in the near term. The application of existing criminal penalty provisions to violations of the bill's provisions is also not anticipated to materially affect State finances.

The Judiciary advises that any increase in caseload resulting from the bill is not anticipated to have a material impact on its operations or finances.

Small Business Effect: DLS concurs that the bill does not negatively impact small businesses because it merely implements existing federal law and regulations. MDA, however, indicates that small business farms may benefit from the bill because it will allow for MDA to take into account specific circumstances and environmental laws and regulations that are applicable to Maryland farmers when enforcing the federal Produce Safety Rule.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Maryland Department of Health; Department of Public Safety and Correctional Services; Judiciary (Administrative Office of the Courts); Caroline County; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2019
mm/lgc

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ANALYSIS OF ECONOMIC IMPACT ON LOCAL GOVERNMENT

TITLE OF BILL: Maryland Produce Safety Program

BILL NUMBER: HB 50

PREPARED BY: Department of Agriculture
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON LOCAL GOVERNMENT

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON LOCAL GOVERNMENT

PART B. ECONOMIC IMPACT ANALYSIS

N/A