

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 142

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Agriculture)

Education, Health, and Environmental Affairs

Environmental Matters

Secretary of Agriculture - Farm Food Safety

This departmental bill expands specified authority of the Secretary of Agriculture to establish a farm quarantine and issue related orders by allowing for action to be taken in the event of a pathogen infection or infestation. The bill also expands a prohibition against concealment of an infection or infestation to include pathogen infection or infestation. The bill also amends the Secretary's authority to certify farm products upon request, to allow for food safety certification of farm products in accordance with U.S. Food and Drug Administration (FDA) standards.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The bill is not expected to have an immediate impact on State finances. In future years, however, the bill's authorization of food safety certification of farm products by the Maryland Department of Agriculture (MDA) may result in increased special and/or federal fund revenues and expenditures associated with conducting the food safety certification.

Local Effect: None.

Small Business Effect: MDA has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs that the bill has no adverse impact on small businesses, noting, however, that the bill may benefit small farm businesses in a meaningful way, as indicated by MDA and discussed below.

Analysis

Bill Summary:

Farm Quarantine Authority

The bill expands the Secretary of Agriculture's authority to establish a farm quarantine and issue related orders by adding pathogen infection or infestation as a reason to take appropriate action to control or restrict the use of farmland, crops, livestock, poultry, or a farm product existing on a farm. The bill also expands a prohibition against a person concealing an infection or infestation on a farm, to include concealment of a pathogen infection or infestation.

In addition, the bill makes a nonsubstantive change to terminology, replacing "processing" of eggs with "packing" of eggs in reference to the Secretary's authority to regulate or prohibit the processing/packing of eggs when it is determined that doing so may prevent, limit, control, or eradicate any threat.

Farm Product Certification Authority

The bill amends the Secretary's authority to certify farm products upon request to include authority to certify farm products to a food safety standard, including FDA standards. Under the bill, the Secretary may examine the practices used in the production of a product and may designate any competent person licensed, commissioned, or credentialed for work by FDA to inspect, examine, classify, and certify any farm product or farm production practices.

The bill also authorizes the Secretary, in certifying farm products or production practices to accept technical, financial, and advisory assistance from any cooperating federal agency. The Secretary must deny access to any business-related information concerning any person who applies for a certificate or is certified, unless disclosure is determined to be necessary to protect the public health.

The bill also gives the Secretary the authority to revoke or suspend a certificate, after an opportunity for a hearing, for failure to comply with adopted regulations.

Current Law:

Farm Quarantine Authority

The Secretary of Agriculture may establish a farm quarantine and issue appropriate orders necessary to control or restrict the use of farmland, crops, livestock, poultry, or a

farm product existing on a farm that (1) has been exposed to or contaminated by a radiological or chemical toxic material or agent; or (2) is infected or infested with a disease or pest. More specific authority regarding the actions the Secretary may take relating to a farm quarantine is also specified in statute. The Secretary must consult with the Governor, the Secretary of Health and Mental Hygiene, and the Secretary of the Environment before establishing a quarantine for a farm and provide reasonable notice of a quarantine or order. The Secretary is required to establish procedures for a landowner, tenant, or animal owner to request the amendment, rescission, or termination of a quarantine or order.

A person may not resist the application of a quarantine or order of the Secretary or conceal the fact that a farm has been exposed to or contaminated by any radiological or chemical agent or toxic material or has been infected or infested with any disease or pest. The Secretary is given specified enforcement authority relating to the Secretary's quarantine authority, including the ability to impose a civil penalty for a violation of a quarantine or order and to seek an injunction against a person violating the law or a quarantine or order.

Farm Product Certification Authority

When requested by any person financially interested in any farm product, the Secretary may:

- (1) examine the product to determine its quality, condition, grade, or other classification, either on the basis of standards established by the Secretary, or the standards announced from time to time by the U.S. Department of Agriculture (USDA);
- (2) provide the person with an official certificate; and
- (3) adopt rules and regulations concerning the inspection and certification of any farm product, including the payment of reasonable fees.

The Secretary must cooperate with the U.S. government and any federal agency and may designate any competent person who has been licensed for work by USDA to examine, classify, and certify any farm product in accordance with the rules and regulations it adopts and at the places the volume of business warrants.

Fee revenue from certification of farm products goes to the Commodity Quality Grading Fund within MDA to defray partially the expenses incurred in administering certifications. Unexpended money at the end of a fiscal year remains in the fund and does not revert to the general fund.

Background: MDA indicates that the bill's amendments to the Secretary's farm production certification authority allow the department to develop voluntary on-farm food safety programs to assist Maryland fruit and vegetable producers in meeting anticipated federal standards for produce production safety required under the federal Food Safety Modernization Act (FSMA) (enacted in January 2011). The bill also allows MDA to cooperate with FDA, the federal agency responsible for implementing FSMA, by adopting standards they issue and by accepting funding. FDA is expected to publish proposed standards soon, though it may be over a year before final standards are issued.

MDA currently conducts training sessions in conjunction with the University of Maryland for fruit and vegetable producers who want to learn more about good agricultural practices, based on past FDA guidance. MDA also funds a staff position at the University of Maryland that helps farmers write food safety plans for their farms. Once the pending FDA standards are adopted, these efforts would be continued, along with an MDA voluntary food safety certification program.

MDA advises that the bill's expansion of the Secretary's farm quarantine authority to include pathogen infection or infestation will assist the Secretary of Agriculture in reducing the potential for foodborne illnesses and protecting agricultural markets. This expanded authority is also needed for MDA to assist FDA in implementing FSMA.

State Fiscal Effect: MDA expects to use existing inspection staff to conduct food safety certifications, at least initially. Approximately 950 farms produce fruits and vegetables in Maryland, but MDA does not expect them all to seek certification, since it is voluntary. Initially, MDA would only inspect farms to the extent existing staff can do so. Some of the farms are also already visited by MDA for inspections under other programs, and inspections could be combined.

Any funding for the food safety certification program for operating expenses and/or additional personnel in the future will come from special or federal funds. Fees could be charged for the certification, which is how other voluntary certification programs offered by MDA are funded. MDA also has approximately \$250,000 in USDA grant funding that could be used for the program over the next three years. If FDA requires inspections of certain farms in its regulations, MDA expects that FDA would reimburse MDA for the cost.

The application of existing civil penalty provisions relating to the violation of a quarantine or order due to the expanded authority provided by the bill is not anticipated to materially affect State finances.

Small Business Effect: MDA indicates the bill will provide assistance to small farm businesses in developing and implementing food safety plans, reducing the economic

impact of pending federal regulations. The bill will also help to protect Maryland farmers from losses in sales that can result from implication of a Maryland producer in a foodborne illness outbreak.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Maryland Department of the Environment, Department of Health and Mental Hygiene, Department of Legislative Services

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mm/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Secretary of Agriculture – Farm Food Safety

BILL NUMBER: SB 142

PREPARED BY: Maryland Department of Agriculture

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small farm businesses will benefit from the legislation as it will provide assistance in developing and implementing food safety plans reducing the economic impact of pending federal regulations.