Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1261 (Delegate McConkey)
Rules and Executive Nominations

Public Health - Food Product Labeling - Genetically Engineered Ingredients

This bill prohibits a food product that contains or consists of more than 1% ingredients that are genetically engineered from being sold in Maryland unless the packaging of the product is clearly and conspicuously labeled and includes a statement that the product contains genetically engineered ingredients. "Genetically engineered ingredient" means an ingredient that contains foreign genes that have been artificially inserted into the genetic code of the ingredient.

A violator is subject to existing civil and criminal penalties that apply to food establishments that violate laws regulating the industry. In addition, the Secretary of Health and Mental Hygiene may seize or condemn any food product sold in violation of the bill.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential significant increase in general fund expenditures to reflect the cost of testing and enforcement beginning in FY 2012. A reliable estimate of expenditures cannot be made at this time, as discussed below.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions. Potential significant increase in expenditures to reflect the cost of enforcement by local health departments (LHDs) beginning in FY 2012. A reliable estimate of expenditures cannot be made at this time, as discussed below.

Small Business Effect: Potential meaningful decrease in revenues for small businesses that manufacture, distribute, or sell genetically engineered foods.

Analysis

Current Law: A food establishment must be licensed by the Department of Health and Mental Hygiene (DHMH) and is subject to inspections. A food establishment is a food service facility or a food processing plant. If DHMH finds that a food establishment has violated the Maryland Food, Drug, and Cosmetic Act, or any regulation adopted under the Act, the licensee must be notified of the specific findings and the specific, reasonable date by which the licensee must correct the violations or deficiencies. If corrections are not made by the specified date, DHMH may suspend or revoke the food establishment's license.

Food establishment licensees that violate any laws regulating the industry are guilty of a misdemeanor and on conviction are subject to fines of up to $1,000 and/or up to 90 days imprisonment for a first violation. For a second violation, the maximum penalty is a $2,500 fine and/or one-year imprisonment. In addition, violators are subject to civil penalties of up to $5,000, collected by the District Court for any county, and may be enjoined from continuing the violation.

LHDs license and inspect food service facilities.

Background: The U.S. Food and Drug Administration (FDA) approved the first genetically altered material – a synthetic hormone injected into cows to increase milk production – for use in food in 1992. Since then, the use of genetically engineered crops has become widespread. Crops that are commonly genetically engineered in the United States include soybean, corn, cotton, and canola. (According to the U.S. Department of Agriculture, 93% of the soybean crop was genetically engineered in 2010.) Byproducts of these crops – soy lecithin and corn syrup, for example – are found in thousands of processed foods.

Currently, FDA is considering whether to approve a genetically engineered salmon that grows twice as fast as its natural counterpart. FDA has stated that it cannot require labeling for a genetically modified food unless it determines that the food is "materially" different from other food. (For example, FDA may require labeling if the genetically engineered food is unusual with respect to texture, taste, nutritional components, or allergens.) To date, FDA has not found that foods from genetically engineered organisms, as a class, differ from their conventional counterparts in terms of safety concerns, nutritional value, or functional characteristics. FDA does not consider the fact that a food was genetically engineered to be, in and of itself, a material difference.

Alaska requires genetically labeled modified fish and fish products to be labeled, while Vermont requires genetic engineering information to be included on seed labels. At least six other states (including Hawaii, Illinois, Massachusetts Oregon, Tennessee, and

West Virginia) are considering labeling certain foods that contain genetically engineered ingredients.

In the European Union and Japan, laws require the labeling of genetically modified foods.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: DHMH advises that there is currently no standardized test to detect and quantify the wide variety of foreign genetic elements that may be present in food. DHMH further advises that, if the department is tasked to develop a legally defensible laboratory testing program, significant additional staff, equipment, and infrastructure will be needed. It is estimated that a laboratory testing program will cost between $1.4 million and $1.7 million annually. However, DHMH advises that its ability to develop a testing program is dependent upon the willingness of private food manufacturers to disclose to the department certain patented gene sequence information. Given uncertainties as to whether laboratory testing is necessary for enforcement (and, in fact, whether such testing is even possible) exact costs associated with such testing cannot be reliably estimated at this time. It is assumed, however, that any general fund expenditures associated with testing will be significant.

It is assumed that, with the exception of any necessary testing, enforcement will mostly be conducted by LHDs. Depending on the extent of enforcement by LHDs (as discussed below), DHMH may require one additional full-time employee to coordinate with LHD staff.

General fund expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to the Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Because consumers cannot ascertain from taste or appearance whether a food contains genetically engineered ingredients, DHMH advises that enforcement can likely not be handled on a complaint-driven basis. DHMH further

advises that 16 part-time employees (representing one for each of the smaller counties) and 8 full-time employees (representing one for each of the larger counties) will be needed to conduct inspections, review labels, and contact businesses and manufacturers. It is estimated that such an enforcement process will cost between $1.0 million and $1.4 million annually. Should a more limited enforcement mechanism be adopted, fewer employees will be needed. However, Legislative Services advises that additional staff will likely be needed in either case, given the prevalence of genetically engineered ingredients and the lack of comparable enforcement efforts in place in this or any other State.

Expenditures may increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from $57 to $157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Conference of State Legislatures, *Washington Post*, U.S. Food and Drug Administration, U.S. Department of Agriculture, Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - April 11, 2011
ncs/mwc

Analysis by: Jennifer A. Ellick

Direct Inquiries to:
(410) 946-5510
(301) 970-5510