



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 4003 Signed by Governor on May 19, 2017
Author: Hiott
Subject: Food Safety Standards
Requestor: House of Representatives
RFA Analyst(s): Gardner and Walling
Impact Date: January 4, 2018

Estimate of Fiscal Impact

	FY 2017-18	FY 2018-19
State Expenditure		
General Fund	\$0	\$0
Other and Federal	See Below	See Below
Full-Time Equivalent Position(s)	9.00	0.00
State Revenue		
General Fund	Undetermined	Undetermined
Other and Federal	\$0	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

This bill will result in no expenditure impact on the General Fund or Other Funds, as Federal Funds (FSMA grant dollars from the FDA) will cover costs associated with the implementation of the state’s Produce Safety Act.

Explanation of Fiscal Impact

Signed by Governor on May 19, 2017

State Expenditure

This bill creates the Produce Safety Act (act) to establish safety standards for produce grown and sold in South Carolina. This act will ensure South Carolina meets the requirements of the federal Food Safety Modernization Act (FSMA) administered by the Food and Drug Administration (FDA). The bill provides definitions, including “covered produce,” meaning produce specifically covered under the act, and “covered farm,” meaning a farm with an average annual monetary value of produce sold during the previous three-year period of more than \$25,000 on a rolling basis and adjusted for inflation using 2011 as the baseline year for calculating the adjustment. Covered produce is eligible for exemption from the requirements of the act if it is commercially processed or includes documentation noting that the food is not processed to adequately reduce the presence of microorganisms of public health significance.

When growing, harvesting, packing, storing, or holding covered produce, covered farms must comply with the requirements of 21 C.F.R. Part 21, the act, or any regulation promulgated pursuant to the act by the South Carolina Department of Agriculture (department). Additionally, the bill establishes the circumstances under which a farm may be exempt from the provisions of the act.

The department will be responsible for issuing exemption certificates to qualifying farms, promulgating necessary regulations to support the act, inspecting farms, and reviewing farm and carrier records to determine a farm's compliance with the act. The department may not use evidence obtained from a farm inspection or a records review in a criminal prosecution of the person from whom the information was obtained, nor may it hold carriers responsible for compliance with the provisions of the act. The commissioner of the department or his authorized agent may also inspect a farm or secure samples and specimens related to a foodborne illness outbreak directly linked to the farm. The commissioner or his agent may seize, condemn, destroy, or require the destruction of covered produce under the control of a person in violation of any provision of 21 C.F.R., Part 112, the act, or regulations promulgated pursuant to the act, provided written consent is obtained from the person from whom the covered produce was seized.

In the case the Commissioner or his agent is unable to secure such written consent, he shall make a complaint before a magistrate or other officer having jurisdiction where the covered produce was seized. The circuit court is responsible for rendering judgments as to whether covered produce should be condemned or destroyed or if it should be forfeited to the department. While either party may appeal such decision with the South Carolina Court of Appeals, it is not necessary for the state or the department to give any appeal bond. Proceeds arising from any sale of covered produce must be disposed of in accordance with the act or any regulations promulgated pursuant to the act.

The bill makes it unlawful for a person to impede, obstruct, hinder, prevent or attempt to prevent the commissioner or his agent from conducting his duties as allowed for by the act. Persons convicted of willfully violating the provisions of the act are guilty of a misdemeanor and will be assessed a civil penalty of up to \$1,000 for each violation or imprisoned for not more than 30 days. The penalty only applies for violations of the provisions of the act, not for violations of any state regulations. The act will be repealed either upon the effective date of the repeal of 21 C.F.R. Part 112, upon such time that the federal government declines to award funds to the state to implement the provisions of federal law embodied in the act, or upon the time that federal award funds are exhausted as determined by the commissioner, whichever is later.

Commission on Prosecution Coordination. The commission indicates that the implementation of this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

Commission on Indigent Defense. The commission indicates that the implementation of this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

Department of Agriculture. The department expects that the bill will result in no expenditure impact on the General Fund or Other Funds, as Federal Funds (FSMA grant dollars from the FDA) will cover costs associated with the department's implementation of the state's Produce Safety Act. The department expects to receive approximately \$700,000 annually from the FDA to implement the program. The department will retain \$585,000 of the money each year, and it will provide an annual sub-grant of \$100,000 to the Clemson University Public Service and Agriculture network and an annual sub-grant of \$15,000 to the Department of Health and Environmental Control (DHEC). The department will use its portion of the money to hire

additional staff (9 FTEs, which will be responsible for ensuring farmers understand how the FSMA affects them and for performing on-farm inspections), equipment, and supplies to support the implementation of the program. The department reports that the bill will have no expenditure impact on the General Fund or Other Funds.

Clemson University Public Service Activities. The bill establishes the state's Produce Safety Act, whose activities will be funded at least in part through an annual federal grant of \$700,000 from the FDA to the South Carolina Department of Agriculture (SCDA). Through the year 2021, SCDA will make an annual sub-grant of these funds in the amount of \$100,000 to Clemson University's Public Service and Agriculture network (also known as Clemson Extension) for the implementation of a number of provisions in the act. The university has hired an extension associate in a time-limited position (with no FTE but to include fringe) to lead and promote the extension's educational efforts in coordination with the SCDA. The associate will provide two training sessions each year to farmers and human and animal food manufacturers.

Beginning in FY 2018-19 and continuing through FY 2021-22, the university will use \$105,635 in recurring monies from the General Fund to cover both the salary and fringe of the extension associate (\$97,635) and operating expenses for travel, training, and office supplies (\$8,000). Beginning in FY 2018-19 and continuing through FY 2021-22, the university will use \$50,000 in non-recurring monies from the General Fund to cover computer needs (including IT hardware and software), vehicle needs, and supplies. The total expenditure impact on the General Fund in FY 2018-19 is \$155,635, and is \$105,635 for each fiscal year beginning in FY 2019-20 through FY 2021-22. Federal Funds in the amount of \$100,000 will be awarded annually to the university beginning in 2017 and continuing through 2021.

Department of Corrections. This bill establishes a new misdemeanor offense for obstructing the Commissioner of the Department of Agriculture or his agent from conducting duties related to the inspection or seizure of covered produce. The penalty for this offense is a fine of \$1,000 for each violation or imprisonment for not more than 30 days. The bill will have no expenditure impact on the department since the agency only manages inmates who have been sentenced to prison terms exceeding 90 days in length.

Department of Health and Environmental Control. The bill establishes the state's Produce Safety Act, whose activities will be funded at least in part through an annual federal grant of \$700,000 from the FDA to the South Carolina Department of Agriculture (SCDA). Through the year 2021, SCDA will make an annual sub-grant of these funds in the amount of \$15,000 (Federal Funds) to the department to implement a number of the provisions in the act. The department reports that it can meet these requirements using only the annual award amount, therefore there will be no expenditure impact on the General Fund or Other Funds.

Judicial Department. The department indicates the new criminal offense created by this bill may result in additional hearings and trials in circuit court, which the department expects to manage without an expenditure impact.

State Revenue

The bill generates new revenue in the amount of \$700,000. This money will be granted to the Department of Agriculture, who will provide annual sub-grants to Clemson University (\$100,000) and the Department of Health and Environmental Control (\$15,000). The bill also creates a new offense of impeding the Commissioner of the Department of Agriculture or his agent from performing his duties as they relate to the FSMA and allows for the sale of condemned produce. The department reports that while it will retain in its Other Funds account both civil penalties assessed for violations of the bill's provisions and monies collected from the sale of condemned produce, it expects the amounts collected to be negligible. As there is no data available to estimate the amount of revenue that may be generated, any state revenue generated from civil penalties is undetermined.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director