

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: **Sub. H.B. 223**

DATE: **May 17, 1999**

STATUS: **As Reported by House Commerce and Labor**

SPONSOR: **Rep. Terwilleger**

LOCAL IMPACT STATEMENT REQUIRED: **No - Offsetting Revenues**

CONTENTS: **Revises licensing of retail and food service establishments, adopts the Ohio Uniform Food Safety Code, and makes other changes**

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	-0-	-0-
Expenditures	Potential increase	Potential increase	Potential increase
General Operations Fund (470)			
Revenues	Potential minimal gain in license revenue offset by a potential loss in license revenue	Potential minimal gain in license revenue offset by a potential loss in license revenue	Potential minimal gain in license revenue offset by a potential loss in license revenue
Expenditures	Potential increase associated with conference/training expenses plus one potential new FTE	Potential increase associated with conference/training expenses plus one potential new FTE	Potential increase associated with conference/training expenses plus one potential new FTE
Food Safety Fund (4P7)			
Revenues	Potential minimal gain in license revenue offset by a potential loss in license revenue	Potential minimal gain in license revenue offset by a potential loss in license revenue	Potential minimal gain in license revenue offset by a potential loss in license revenue
Expenditures	- 0 -	-0-	-0-

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- The bill reduces the number of licenses issued to retail food establishments—generally supermarkets and grocery stores—and would also transfer licensing authority from the Department of Agriculture (AGR) to qualified local health departments.



- The bill authorizes local health departments to set license fees charged to retail food establishments. Since AGR would issue fewer licenses, the bill allows AGR to collect a supplemental fee in addition to the cost of the required licenses.
- The Departments of Health (DOH) and Agriculture (AGR) are each required to employ an individual knowledgeable in food safety and the epidemiology of foodborne illness. This person will serve as a liaison to the other agency and to the local boards of health. LBO is uncertain if either of the Departments will need to hire an additional staffperson.
- DOH and AGR will equally bear the expenses associated with the Retail Food Safety Advisory Council, consisting of the Directors of Health and Agriculture and 12 additional members. The members receive compensation for actual and necessary expenses and the departments are required to provide administrative support to the Council. These costs, in addition to costs associated with training and the biennial conference, would likely be covered by the GRF and the General Operations fund.
- The bill outlines where fines for violating the provisions of this bill are to be deposited. When the licensor of the establishment is AGR, 50 percent of fines are to be deposited in the Food Safety Fund (ORC 915.24). When the licensor of the establishment is DOH, 50 percent of fines are to be deposited in the General Operations Fund (ORC 3701.83). The remaining 50 percent is credited to the general fund of the political subdivision in which the case is prosecuted.

Local Fiscal Highlights

LOCAL GOVERNMENT		FY 1999	FY 2000	FUTURE YEARS
Counties				
Revenues	Potential minimal gain in fine revenue for violations of the Uniform Food Safety Code	Potential gain in fine revenue for violations of the Uniform Food Safety Code	Potential gain in fine revenue for violations of the Uniform Food Safety Code	Potential gain in fine revenue for violations of the Uniform Food Safety Code
Expenditures	Potential minimal increase in court costs	Potential increase in court costs	Potential increase in court costs	Potential increase in court costs
Local Health Departments				
Revenues	Potential gain from fine revenue for violations of the Uniform Food Safety Code	Potential gain from fine revenue for violations of the Uniform Food Safety Code	Potential gain from fine revenue for violations of the Uniform Food Safety Code	Gain in revenue from licensing activity and potential gain from fine revenue for violations of the Uniform Food Safety Code
Expenditures	Potential increase associated startup costs for some local health districts to achieve the capacity to administer and enforce ORC 3717.	Potential increase associated startup costs for some local health districts to achieve the capacity to administer and enforce ORC 3717.	Potential increase associated startup costs for some local health districts to achieve the capacity to administer and enforce ORC 3717.	Offsetting increase associated with licensure and inspection activities

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill outlines where fines for violating the provisions of this bill are to be deposited. When the licensor of the establishment is a local board of health, 50 percent of fines are to be deposited in an appropriate fund created for the board's use in administering the provisions of this chapter and the rules adopted under it applicable to retail food

establishments. The remaining 50 percent is credited to the general fund of the political subdivision in which the case is prosecuted.

- For local health departments (LHDs) currently inspecting food establishments, the provisions in this bill will be revenue neutral. For LHDs not currently performing this activity, there will be some start-up costs, but in the long run, the activities will be revenue neutral. The fees charged by LHDs for licensing the establishments under this bill will be uniform statewide and determined jointly by the Departments of Health and Agriculture.
- Although the Ohio Uniform Food Safety Code would take effective immediately upon enactment of this bill, the licensing activities to be performed by LHDs under the bill will begin on February 1, 2001.

Detailed Fiscal Analysis

Licensing Retail Food Establishments and the Role of the Department of Agriculture

Current Food Establishment Licensure Process

Under current law grocery stores are required to seek several licenses from both the Ohio Department of Agriculture (AGR) and local health departments. AGR licenses bakery items, frozen foods and desserts, water dispensers, and ice machines stationed on premises. The following is a current fee schedule for items typically available at grocery stores:

Table 1. Fee Schedule for Typical Grocery Store Items

Product	License Fee
Bakery/Baked Goods	\$30 annually
Frozen Foods	\$25 annually
Frozen Desserts	\$25/machine annually
Water/Bagged Ice	\$100/machine annually

Local health departments, meanwhile, issue separate licenses for sandwiches, pizza, and other foods prepared on site, as well as restaurants within grocery stores. Under current law, local health departments are also responsible for licensing entire retail operations. As a result, the inspection and licensure criteria vary widely from jurisdiction to jurisdiction.

Proposed Retail Food Establishment Licensure Process

The bill consolidates the retail food licensing process by 1) replacing multiple licenses with a single certificate; and 2) authorizing qualified health departments to license retail food establishments in place of AGR. This new licensing procedure would apply to supermarkets, grocery stores, convenience stores, and companies that service vending machines.

The current license fee structure would not support the agency's Division of Food Safety under this new licensing system. Table 2 shows the number of licenses issued and the fee income generated from the Division of Food Safety's licensure and inspection program from FY 1995 to FY 1999.

Table 2. AGR licensure data and fee income, AGR’s Food Safety Fund, FY 1995-1998

	FY 1995	FY 1996	FY 1997	FY 1998
Licenses	10,651	9,632	10,694	10,208
Fee Income	\$325,331	\$322,007	\$317,237	\$324,933

Note that the bill would not affect AGR’s licensure and inspection process for the estimated 2,500 soft drink bottlers, canners, syrup manufacturers, and dry goods warehouses across the state.

The bill would alter licensing procedures for supermarkets, grocery stores, convenience stores, and companies that service vending machines. First, Section 3717.25(A) would authorize local health departments to establish licensure and renewal fees that are sufficient to license these retail food establishments. To avoid widely disparate fees from jurisdiction to jurisdiction, the bill requires AGR and the Department of Health (DOH) to jointly establish uniform guidelines to calculate these fees.

Second, Section 3717.25(C) permits the Director of Agriculture to determine a supplemental fee that the local licensing authority would collect and pass on to AGR to cover the administrative and operating expenses associated with the statewide retail food safety program. The cost of the license fee would thus cover local and state costs of administration:

$$\begin{array}{r}
 \text{License fee established by local health department} \\
 + \quad \text{Supplemental fee determined by AGR} \\
 \hline
 \text{Total Licensing Cost Charged to Retail Food Establishment}
 \end{array}$$

A Food Safety Division official anticipates that the income from this supplemental assessment would be sufficient to keep the proposed changes to the state’s food safety licensure program “revenue neutral.”

The actual licensing of businesses under this bill will not occur until February 1, 2001, when sections 3717.21, 3717.24, and 3717.44 of the Revised Code, as contained in this bill, take effect. The delay in the enactment of these three sections is to allow for a limited transition period to the new licensing processes. Following enactment of the bill, the Departments of Agriculture and Health, and the local Boards of Health will have time to establish rules and procedures for the new activities associated with the bill.

Licensing Food Service Operations by Local Health Departments

Food service operations (FSO) are classified into various classes depending upon the factors contributing to foodborne disease. The frequency of the inspections will vary depending upon the classification of the FSO. The frequency, under this bill, will be contained in rules adopted by the Public Health Council. Under current law, there are six categories of FSOs – three for commercial entities and three for non-commercial operations. For each group, Class I represents the smallest risk of foodborne disease and Class III represents the greatest risk. Table 3 illustrates the average inspection fees charged by local health departments statewide.

Table 3. Average Inspection Fees for Food Service Operations

Classification	Avg. Fee
Commercial	
Class I	\$90
Class II	\$165
Class III	\$253
Non-Commercial	
Class I	\$56
Class II	\$94
Class III	\$142

Costs Related to the Ohio Uniform Food Safety Code and Other Training Responsibilities

AGR’s Division of Food Safety employs 22 food safety inspectors whose responsibilities would vastly change as a result of the bill. The bill would curtail the number of inspections and licenses issued by the Division, but would increase the Division’s role in training local boards of health in the latest inspection techniques. Another provision requires AGR to develop rules concerning retail food establishments that would be adopted in the “Ohio Uniform Food Safety Code.” The Code, which would be developed in conjunction with DOH, would reflect the most current food safety standards imposed by the U.S. Food and Drug Administration. According to an AGR official, these federal guidelines are revised every two years, requiring the Division to provide its staff with ongoing training.

Section 3717.08(B) specifies other training requirements and programs that would impose additional costs on AGR as well as DOH. First, the bill would require both agencies to sponsor training programs for agency staff, boards of health, and representatives from the grocery and restaurant businesses. An AGR official estimates that the costs associated with these conferences would be confined to in-kind expenses such as providing the meeting space and staff support, and that the agency would not charge a registration fee for those attending. The bill does not specify the scope of these conferences, but directs AGR and DOH to develop separate, but coordinated training programs.

Both AGR and DOH would also be required to co-sponsor a biennial statewide food conference. According to the Division of Food Safety, this conference would be patterned after the National Conference for Food Protection. The purpose of these meetings is to convene experts in food safety training, technology, and regulation, and forward their recommendations on to the FDA. Those attending the statewide food conference would forward their recommendations or concerns to AGR and DOH. A staffperson with the Department of Health estimated that a four-day conference would cost approximately \$10,000, to be split by AGR and DOH. A portion of this expense would be recouped via registration fees.

Retail Food Safety Advisory Council

The bill establishes the 14-member Retail Food Safety Advisory Council (RFSAC). In addition to the Directors of Health and Agriculture, the Council will consist of 12 individuals representing various groups related to food safety and the food industry. The Departments of Health and Agriculture are

required under the bill to equally pay for the actual and necessary expenses of the Council members, as well as provide administrative support.

According to the Department of Health, the expenses associated with the Council should be minimal. Using figures for the Public Health Council as a guide, total annual cost for the RFSAC should total no more than \$10,000. This is based on four meetings per year and associated costs related to meetings and activities required under the bill for the RFSAC.

Under Section 6 of the bill, the Retail Food Safety Advisory Council is required to conduct a five-year study to determine whether the recommendations of the Food Safety Council created by Am. Sub. H.B. 113 of the 122nd General Assembly have been implemented and to evaluate the level of food safety awareness of consumers. The report shall be issued to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate on or before June 1, 2006. It is unclear what the costs of performing this study will total. However, they will be equally borne by the Departments of Health and Agriculture.

DOH Expenses

Under section 3717.11 of the Revised Code, as contained in the bill, the Department of Health is required to determine whether a local health department is qualified and has the capacity to administer and enforce the proposed Chapter 3717. of the Revised Code (the Ohio Uniform Food Safety Code). These surveys must be conducted at least once every three years. According to a staff person with the Department, costs associated with these surveys average about \$3,000 per survey.

According to DOH, surveys similar to those required under the bill are already performed, which would lead to only minimal increases in expenditures, if any. For boards of health deemed incapable of enforcing the Uniform Food Safety Code, an alternate licensor will be found to cover the required activities until such time as the local board of health has the resources to perform the required activities.

Courts Activity

The bill outlines the proper location for the deposit of fines levied for violations of the proposed Chapter 3717. of the Revised Code. In cases when a person or government entity is found to be in contempt of court for failing to comply with a restraining order, injunction, or writ of mandamus issued, the fine shall be \$1,000 for each offense. Under the bill, every day in non-compliance counts as a separate offense. For all fines collected, 50 percent shall be credited to the general fund of the political subdivision in which the case is prosecuted. The remaining 50 percent is deposited in one of the following three places:

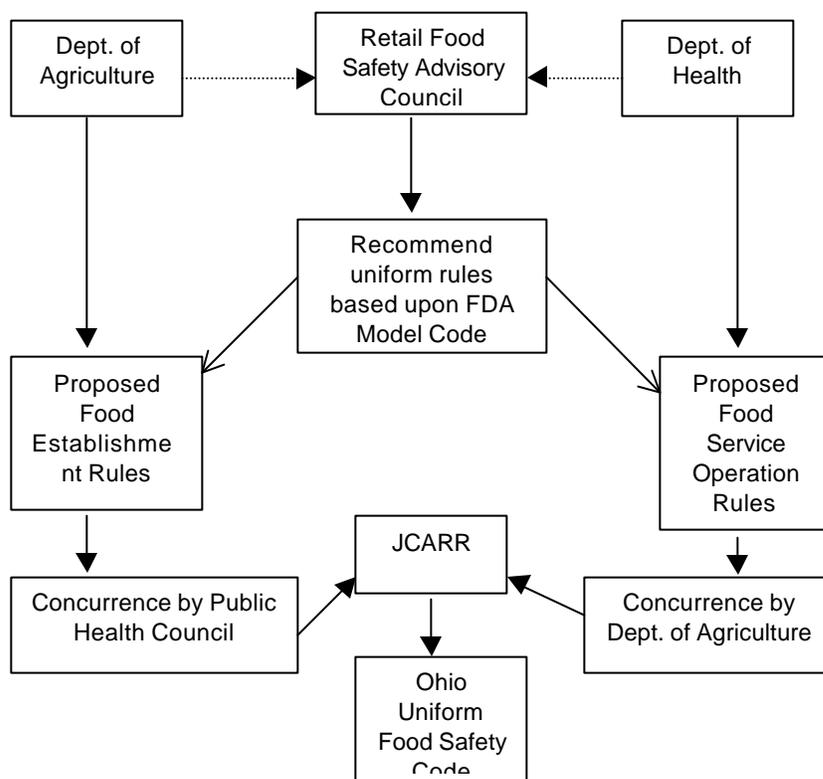
- 1) For situations when the licensor of a retail food establishment is a local board of health, the remaining 50 percent shall be deposited in an appropriate fund created for the board's use in administering the provisions of Chapter 3717. of the Revised Code and the rules adopted under it applicable to retail food establishments.
- 2) For situations when the licensor of a retail food establishment is the Department of Agriculture, the remaining 50 percent shall be deposited into the state treasury to the credit of the Food Safety Fund created in section 915.24 of the Revised Code.

- 3) For violations involving food service operations, when the licenser is a local board of health, the remaining 50 percent go to the same location as noted in item 1 above. If the licenser of the food service operation is the Department of Health, the remaining 50 percent shall be deposited into the state treasury to the credit of the General Operations Fund created under section 3701.83 of the Revised Code.

In addition to receiving this new potential fine revenue, local courts will have increased expenditures related to court activities in prosecuting violators of the Ohio Uniform Food Safety Code.

Process to Establish the Ohio Uniform Food Safety Code

The following chart, adapted from the final report of the Ohio Food Safety Advisory Council, illustrates the process to be followed by AGR and DOH in establishing the Ohio Uniform Food Safety Code.



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