

HOUSE BILL REPORT

HB 2681

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to implementing the federal produce safety rule.

Brief Description: Implementing the federal produce safety rule.

Sponsors: Representatives Springer, Buys, Blake and Chandler; by request of Department of Agriculture.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/23/18, 1/30/18 [DP].

Brief Summary of Bill

- Authorizes the Washington State Department of Agriculture (WSDA) to take actions necessary to cooperate in the implementation of the Produce Safety Rule.
- Authorizes the WSDA to take certain actions in order to verify farm compliance with the Produce Safety Rule.
- Exempts certain records received by the WSDA in connection with the Produce Safety Rule from disclosure under the Public Records Act if the record is exempt from disclosure under federal law, including the Freedom of Information Act.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 14 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Kretz, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and Walsh.

Staff: Robert Hatfield (786-7117).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Produce Safety Rule.

Pursuant to the Food Safety Modernization Act, the United States Food and Drug Administration (FDA) has adopted a regulation entitled Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, more commonly known as the Produce Safety Rule. The Produce Safety Rule establishes minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption in the United States.

The Produce Safety Rule establishes six categories of requirements that must be met by farms subject to the rule: water quality; biological soil amendments; sprouts; domesticated and wild animals; worker training, health, and hygiene; and equipment, tools, and buildings.

Farms must document required food safety practices and make those records available to the FDA. In addition, the FDA claims the authority to inspect any farm for compliance with the new requirements.

The Produce Safety Rule does not apply to all farms. Exemptions to the Produce Safety Rule include, among others: farms that handle only produce that the FDA has identified as being rarely consumed raw; farms with an average of \$25,000 or less in annual produce sales; and farms that handle only produce for personal or on-farm consumption.

Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records.

Freedom of Information Act.

The Freedom of Information Act (FOIA) is a federal law that provides for the disclosure of information and documents controlled by the United States government. There are multiple exemptions to FOIA, including for trade secrets, certain commercial and financial information obtained from a person, and geological information and data concerning wells.

Summary of Bill:

The "Produce Safety Rule" is defined as the standards for the growing, harvesting, packing, and holding of produce for human consumption, adopted by the United States Food and Drug Administration as a final rule on November 15, 2015, and codified at 21 C.F.R. Parts 11, 16, and 112.

The Washington State Department of Agriculture (WSDA) is authorized to take actions necessary to cooperate in the implementation of the Produce Safety Rule. The WSDA may cooperate in the implementation of the Produce Safety Rule only to the extent that the WSDA receives federal funding for such cooperation.

The WSDA is authorized to establish a voluntary compliance program for farms exempt or partially exempt from the Produce Safety Rule.

The WSDA is authorized to take certain actions in order to verify produce farm compliance with the Produce Safety Rule, including, among others: sampling water for microbial water quality criteria; inspecting for the presence and management of wild and domesticated animals; inspecting equipment, tools, and buildings for adequate sanitation; and requiring and receiving records submitted by produce farms in order to verify compliance with the Produce Safety Rule.

The WSDA is required to adopt rules as necessary to implement the Produce Safety Rule.

A produce safety account is created within the agricultural local fund for the purpose of receiving funds in connection with the implementation of the Produce Safety Rule.

Information and records received by the WSDA from the federal government or from others under a contract with the federal government are exempt from disclosure under the Public Records Act if the information or record is exempt from disclosure under federal law, including the Freedom of Information Act.

A new chapter in the Revised Code of Washington, titled the Produce Safety Rule Implementation Act, is created.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill allows the Washington State Department of Agriculture (WSDA) to act on behalf of the federal government, and state government can sometimes act more nimbly than the federal government. The Produce Safety Rule requires an on-farm inspection program. The Food and Drug Administration (FDA) has been heavily enforcement minded in the past, and the prospect of having inexperienced federal inspectors showing up on people's property has people nervous. The WSDA is committed to helping producers comply, and moving to enforcement only when necessary. The FDA has committed to funding state implementation activities for several years. The WSDA understands the agricultural industry and it makes sense that the WSDA would be the ones to enforce the new program.

(Opposed) None.

Persons Testifying: Representative Springer, prime sponsor; Steve Fuller, Washington State Department of Agriculture; and Dave Ducharme, Washington State Tree Fruit Association.

Persons Signed In To Testify But Not Testifying: None.