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Senate HELP Committee passes comprehensive food safety bill

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Following House action on food safety legislation last July, this week the Senate Health, Education, Labor and Pension Committee (HELP) passed its own "Food Safety Modernization Act of 2009," S.510. Now it's up to the Senate to find time in its already overloaded schedule for floor debate which is likely to be delayed until next year.

HELP Committee Chair Tom Harkin (D-IA) said the bill which the committee approved with solid bipartisan support on a unanimous voice vote "comprehensively reforms our current food system yet is adaptable enough to keep pace with an evolving industry."

The Food Safety bill sponsored by Senate Majority Whip Dick Durbin (D-IL) was co-sponsored by 7 Democratic and 6 Republican senators:

- Lamar Alexander, (R-TN)
- Jeff Bingaman (D-NM)
- Richard Burr (R-NC)
- Roland Burris (D-IL)
- Saxby Chambliss (R-GA)
- Christopher Dodd (D-CT)
- Kirsten Gillibrand (D-NY)
- Judd Gregg (R-NH)
- Orrin Hatch (R-UT)
- Johnny Isakson (R-GA)
- The late Ted Kennedy (D-MA)
- Amy Klobuchar (D-MN)
- Tom Udall (D-NM]

One key difference between the Senate version and the "Food Safety Enhancement Act of 2009" which the House passed in a contentious 283 to 142 vote July 30th, is that the Senate bill doesn't include the House's \$500 annual fee for food processing facilities. That \$500 fee, reduced from the \$1,000 originally proposed, is intended to partially offset the cost of greatly expanding U.S. Food & Drug Administration (FDA) inspections of food facilities. Due to widespread congressional concern over budget deficits, the

House's compromise \$500 fee is likely to be in the final bill worked out by the joint conference committee to reconcile differences between the two chambers' separate bills.

Sen. Pat Roberts (R-KS) complimented the Senate version for taking "a targeted, risk-based approach to food safety." But he said he plans to seek changes to avoid any potentially negative impacts on U.S. farm exports, explaining that "As a member of the Finance Committee and a Senator from a state whose economy greatly depends on exports, I look forward to continuing to work with the sponsors of the bill to ensure that at any and all trade compliance issues are addressed before the bill moves out of the Senate."

The best indicator of what happens next may come from what happened in the House floor debate last July.

Rep. John Dingell (D-MI), who sponsored H.R. 2749, the "Food Safety Enhancement Act of 2009," explained why the bill is needed: "Americans are dying because Food & Drug does not have the authority to protect them. And American agriculture is being hurt. . . A series of food borne disease outbreaks have laid bare unacceptable gaps in our food safety laws. And this will be the first major change in our food safety system with regard to Food & Drug since 1938. In the past two years alone, we have witnessed issues of melamine in infant formula and in milk products and we have seen tainted peppers from Mexico, harmful seafood and shellfish from China, and *e. coli* in spinach and problems from strawberries and raspberries. Each year, in spite of the fact that we have the most careful and safe food in the world, we find that 76 million people contract a food-borne illness in the United States. According to CDC [the federal Centers for Disease Control] some 5,000 die. This legislation contains significant policy solutions that will address this situation."

In the same House floor debate, former House Agriculture Committee Chair Bob Goodlatte (R-VA) expressed a very different view. He charged that "Unfortunately, this bill does little if anything to advance food safety . . . This legislation imposes significant regulatory burdens on small businesses . . . effectively creates a federal license to be in the food business . . . Like the Democrats' stimulus bill, cap and trade, and the proposed health care bill, this is another example of broadening the size and scope of government, raising new taxes on small businesses and intruding in the private lives of Americans."

House Agriculture Committee Ranking Member Frank Lucas (R-OK), who led the fight against the bill, was equally critical: "I don't think there is a single member of Congress who wouldn't support reasonable proposals that improve the safety of what is already the safest supply of food in the world. But this legislation is woefully inadequate. It fails to achieve what we are all seeking for our consumers, an improved food safety system." Instead, he said, the bill simply "expands the reach and authority of the U.S. Food & Drug Administration but does not require further accountability."

Key points of the Senate bill include:

- ✓ **Hazard analysis and preventive controls:** Requires all facilities that manufacture, process, pack or hold food to have in place risk-based preventive control plans to address identified hazards and prevent adulteration, and gives FDA access to these plans and relevant documentation.

- ✓ **Imports:** Requires importers to verify the safety of foreign suppliers and imported food. Allows FDA to require certification for high-risk foods, and to deny entry to a food that lacks certification or that is from a foreign facility that has refused U.S. inspectors. Creates a voluntary qualified importer program in which importers with a certification of safety for their foreign supplier can pay a user-fee for expedited entry into the U.S.
- ✓ **Inspection:** Requires FDA to inspect all food facilities more frequently, including inspections of high-risk facilities at least once a year and inspections of other facilities at least once every four years.
- ✓ **Mandatory Recall:** Gives FDA the authority to order a mandatory recall of a food product if the food will cause serious adverse health consequences or death and a company had failed to voluntarily recall the product upon FDA's request.
- ✓ **Administrative Detention:** Gives FDA the authority to administratively detain any food that is misbranded or adulterated under the Food, Drug, and Cosmetic Act.
- ✓ **Increases FDA Resources:** Increases funding for FDA's food safety activities through increased appropriations and targeted fees for food facility re-inspection, food recalls, and the voluntary qualified importer program.

For details on the food safety bill passed by the House on July 30th, go to:

<http://www.agri-pulse.com/uploaded/20090730H1.pdf>.