

STORAGE NAME: h0105.cfe

DATE: February 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILDREN AND FAMILY EMPOWERMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 105

RELATING TO: Distribution of Surplus Food

SPONSOR(S): Representative Jones

STATUTE(S) AFFECTED: Section 768.136, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CHILDREN AND FAMILY EMPOWERMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

House Bill 105 encourages the donation, collection and delivery of surplus food to charitable or nonprofit organizations for distribution to persons who are in need of food. The bill includes the following provisions:

- ▶ Provides intent language to encourage the donation of surplus food to charitable or nonprofit organizations.
- ▶ It requires that a donor of surplus or excess canned or perishable food make every reasonable effort to contact charitable or nonprofit organizations in the community to allow those organizations to collect the surplus food. It also requires that a charitable or nonprofit organization which provides food for persons who are in need of food makes every reasonable effort to contact any donors for the purpose of collecting any surplus or excess canned food or perishable food.
- ▶ Amends the definition of "Donor" so that it applies to any person or any public or private business, organization, agency, or institution. Defines "Transporter" of surplus or excess canned or perishable food.
- ▶ Exempts "transporter" from criminal penalty or civil damages arising from the condition of the food delivered, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor of the food or gleaner.
- ▶ Exempts the act of good faith transportation of surplus food from criminal penalty or civil damages regardless of whether the food transported is readily marketable due to appearance, freshness, grade, surplus, or other considerations.

The bill has no fiscal impact on the state or local government. The costs associated with the private sector are indeterminate. These costs depend on the extent of voluntary participation as a donor, gleaner, transporter or distributor of food.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Surplus Food

According to the United States Department of Agriculture [USDA National Hunger Clearinghouse], last year, more than 13 billion pounds of edible, "surplus" food were thrown away in the U.S. It is estimated that almost 20 percent of our food supply is wasted. At the same time, four million children under twelve and 20-30 million adults went hungry at least once every month.

From biblical origins, gleaning is the practice of gathering the extra crops that are left in the fields after a harvest. Coupled with food rescue and recovery, it denotes the collection and distribution of food to disadvantaged individuals.

Prepared and perishable foods come from a number of sources, including restaurants, caterers, hotels, corporate cafeterias, farms, wholesale docks, farmers' markets, and supermarkets. Anyone can lend a hand at any level, from large restaurant chains donating in bulk, to individuals volunteering time to glean on a farm.

Because fresh produce is highly perishable, donors and distributors must be matched quickly. Efficient transportation and storage are vital. Food must be sent in proper quantities where and when it is needed.

Gleaning groups, commonly known as prepared and perishable food rescue programs, cleanly and efficiently pick up and deliver the food donations. These organizations are trained in careful food handling and preparation methods. Donations of various sizes are routinely sent to child-care centers, soup kitchens, homeless shelters, food banks and food pantries, all of which serve the needy on a daily basis.

"Bill Emerson Good Samaritan Law"

Congress has recently passed the HR2428 - "Bill Emerson Good Samaritan Law" [Public Law No: 104-210] protecting donors for good faith donations of food for free distribution by charitable organizations. The act was signed by the President on October 1, 1996. The act does not supersede state or local health regulations.

Florida

According to the Department of Agriculture and Consumer Affairs, each year, 50 million pounds of food are disposed of in landfills and dump sites or plowed under the fields.

There are many groups and organizations involved in food distribution to the needy. Among these are:

- ▶ Farm Share Inc. This organization receives funding from the state and also uses private sources. They recover, process, and transport fresh produce they distribute both to agencies and individuals.
- ▶ South Florida Food Recovery. This organization revokes public and private funds and distributes at least one million meals yearly.

- ▶ Florida Association of Food Banks. All food banks in the state fall under this organization. Statewide, approximately two million lbs. are distributed yearly.
- ▶ Tampa Bay Harvest. This organization consists of more than 900 volunteers throughout Pinellas, Hillsborough and Pasco counties.
- ▶ Florida Department of Agriculture and Consumer Affairs in partnership with food distribution organization has provided assistance to distribute food to organizations and individuals through the food recovery program [see Section 570.0725].

According to an October 31, 1995 report by the Department of Agriculture and Consumer Affairs, in the first two years of operation, the food recovery program has distributed and processed more than 14 million pounds of cosmetically imperfect produce to Florida's most needy. The cost of this program has been less than \$350,000 over the two-year period, a cost of less than three cents per pound. If the food was delivered by conventional means, the cost would have been more than \$17,500,000 or \$1.25 per pound.

Section 570.0725, F.S.

Section 570.0725, F.S., delineates the statutory framework for the food recovery program under the Department of Agriculture and Consumer Affairs. This policy framework allows the Department of Agriculture and Consumer Affairs to:

- ▶ Identify suppliers, volunteers, and nonprofit organizations in the community to ascertain the level of interest in establishing a food recovery program.
- ▶ Provide facilities and other resources for initial organizational meetings.
- ▶ Provide direct and indirect support for the fledgling program, upon demonstration of serious interest at the local level.

In addition, the law allows the Department of Agriculture and Consumer Affairs to provide direct and indirect support to food recovery programs that are unable to obtain specific assistance from their communities or other sources by lending equipment, facilities, and staff resources for the collection, packaging, storage, and transportation of donated food, as needed.

Section 768.136, F.S.

Section 768.136, F.S., delineates the statutory framework which governs the liability for canned or perishable food distributed free of charge. In general, the framework exempts a donor, a gleaner [a person who harvests for free distribution an agricultural crop that has been donated by the owner], or a charitable or nonprofit organization distributing food from criminal penalty or civil damages arising from the condition of the food collected, delivered, or distributed unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor of the food, gleaner or a charitable or nonprofit organization.

B. EFFECT OF PROPOSED CHANGES:

The effect of the bill is to encourage the donation, collection and delivery of surplus food to charitable or nonprofit organizations for distribution to persons who are in need of food.

It requires that a donor of surplus or excess canned or perishable food make every reasonable effort to contact charitable or nonprofit organizations in the community to allow those organizations to collect the surplus food. It also requires that a charitable or nonprofit organization which provides food for persons who are in need of food makes every reasonable effort to contact any donors for the purpose of collecting any surplus or excess canned food or perishable food.

The bill expands the definition of a donor and creates a definition of transporters of surplus or excess canned or perishable food. A donor or transporter who meets the definition as delineated in the bill is exempt from criminal penalty or civil damages arising from the condition of the food delivered, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor of the food or gleaner [a person who harvests for free distribution an agricultural crop that has been donated by the owner].

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. *Does the bill create, increase or reduce, either directly or indirectly:*

i. *Any authority to make rules or adjudicate disputes?*

No

ii. *Any new responsibilities, obligations or work for other governmental or private organizations or individuals?*

It requires that a donor of surplus food make every reasonable effort to contact charitable or nonprofit organizations in the community to allow those organizations to collect the surplus food. It also requires that a charitable or nonprofit organization which provides food for persons who are in need of food makes every reasonable effort to contact any donors for the purpose of collecting any surplus or excess canned food or perishable food.

iii. *Any entitlement to a government service or benefit?*

No

b. *If an agency or program is eliminated or reduced:*

i. *What responsibilities, costs and powers are passed on to another program, agency, level or government, or private entity?*

N/A

ii. *What is the cost of such responsibility at the new level/agency?*

N/A

iii. *How is the new agency accountable to the people governed?*

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N/A

2. Lower Taxes:

- a. *Does the bill increase anyone's taxes?*

No

- b. *Does the bill require or authorize an increase in any fees?*

No

- c. *Does the bill reduce total taxes, both rates and revenues?*

No

- d. *Does the bill reduce total fees, both rates and revenues?*

No

- e. *Does the bill authorize any fee or tax increase by any local government?*

No

3. Personal Responsibility:

- a. *Does the bill reduce or eliminate an entitlement to government services or subsidy?*

No

- b. *Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?*

No

4. Individual Freedom:

- a. *Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?*

Yes. The bill creates the mechanism to encourage the donation, collection, and transportation of surplus food. It also exempts groups involved in surplus food distribution from criminal penalty or civil damages arising from the condition of the food.

- b. *Does the bill prohibit, or create new government interference with, any presently lawful activity?*

No

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

i. *Who evaluates the family's needs?*

N/A

ii. *Who makes the decisions?*

N/A

iii. *Are private alternatives permitted?*

The bill encourages private donors, agencies and transporters to participate in donation, collection, transportation and distribution of surplus food.

iv. *Are families required to participate in a program?*

No

v. *Are families penalized for not participating in a program?*

No

b. *Does the bill directly affect the legal rights and obligations between family members?*

No

c. *If the bill creates or changes some program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:*

i. *Parents and guardians?*

N/A

ii. *Services providers?*

N/A

iii. *Government employees/agencies?*

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides intent language to encourage the donation of surplus food to charitable or nonprofit organizations.

Requires that a donor of surplus or excess canned or perishable food make every reasonable effort to contact charitable or nonprofit organizations in the community to allow those organizations to collect the surplus food.

Requires that a charitable or nonprofit organization which provides food for persons who are in need of food makes every reasonable effort to contact any donors for the purpose of collecting any surplus or excess canned food or perishable food.

Section 2. Amends s. 768.136, F.S., which deals with the liability for canned or perishable food distributed free of charge.

Amends the definition of "Donor" so that the definition applies to any person or any public or private business, organization, agency, or institution.

Defines "Transporter" as a nonprofit organization, or any representative or volunteer acting on behalf of such organization, which elects as part of the service such organization provides to the community, to pick up and transport, without cost, surplus or excess canned or perishable food from donors and delivers such food to bona fide charitable or nonprofit organizations which provide food to persons who are in need of food or who are unable to provide food for themselves.

Exempts "transporter" from criminal penalty or civil damages arising from the condition of the food delivered, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor of the food or gleaner.

Exempts the act of good faith transportation of surplus food from criminal penalty or civil damages regardless of whether the food transported is readily marketable due to appearance, freshness, grade, surplus, or other considerations.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The costs associated with the private sector are indeterminate. These costs depend on the extent of voluntary participation as a donor, gleaner, transporter or distributor of food.

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to expend funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

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