

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on Health and Human Services Appropriations

BILL: CS/SB 1658

INTRODUCER: Budget Subcommittee on Health and Human Services Appropriations and Senator Storms

SUBJECT: Public Assistance

DATE: February 9, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable
2.	Pigott	Hendon	BHA	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill prohibits a recipient from using his or her electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automated teller machines located in gambling and adult entertainment establishments. The bill also provides a list of establishments inside the state that a cash assistance recipient may not access cash benefits through an EBT card from an automated teller machine (ATM).

Additionally, the bill requires the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal Supplemental Nutrition Assistance Program funds. The bill also prohibits the use of benefits at restaurants.

The bill will require programming changes to the EBT System to implement the prohibitions. The department analysis indicates costs are minimal and can be absorbed with existing resources. The bill would require the department to procure programming changes in FY 2011-12 prior to the implementation date of July 1, 2012.

Finally, the bill creates the “Healthy Foods Retail Act” and makes legislative findings regarding obstacles to a healthy diet, obesity resulting from a poor diet, the effect of inadequate access to retailers selling healthy, affordable foods, and the resulting impact on the health of low income families, children, and elderly people. The bill requires the Department of Agriculture and Consumer Services (DACS) to establish a financing program, to the extent funds are available, to fund healthy food retailers and it sets guidelines for participation, funding limitations, determination of eligible projects, types of expenditures authorized, requirements to be met by applicant, basis for setting the amount of funding, establishment of controls and compliance monitoring, and legislative reporting. The bill authorizes funding to be leveraged with other funding and it provides rule making authority for the DACS to administer this program.

The DACS analysis indicates implementing and administering the program would require additional resources. The establishment of the program will depend upon a reallocation of existing department funds. The bill does not provide an appropriation.

The effective date of the bill is July 1, 2012.

This bill amends sections 402.82 and 414.095, Florida Statutes. This bill creates unnumbered sections in the Florida Statutes.

II. Present Situation:

History of the Supplemental Nutrition Assistance Program

The idea of the federal government providing food subsidies to low-income families began as early as 1933 when the Roosevelt administration established the Federal Surplus Relief Corporation (FSRC) to “expand markets for agricultural products, and to purchase, store, and process surplus agricultural products so as to relieve the hardship and suffering caused by unemployment.”¹ In 1939, the United States Department of Agriculture (USDA) initiated an experimental food stamp program as a way to help low-income families buy healthy food.²

The Food Stamp Act of 1964 authorized a food stamp program to provide eligible households an opportunity to obtain a nutritionally adequate diet through the issuance of coupons.³ The goal of the program is to “alleviate hunger and malnutrition . . . by increasing food purchasing power for all eligible households who apply for participation.”⁴ The Hunger Prevention Law of 1988 authorized pilot programs to test whether the use of benefit cards or other electronic benefit delivery systems could enhance the effectiveness of the food stamp program.⁵ In 1996, federal

¹ Dennis Roth, Social Science Analyst, *Food Stamps: 1932-1937: From Provisional to Pilot Programs to Permanent Policy*, <http://www.nal.usda.gov/ric/ricpubs/foodstamps.htm> (last visited Jan. 23, 2012).

² *Id.*; see also Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program, A Short History of SNAP*, <http://www.fns.usda.gov/snap/rules/Legislation/about.htm> (last visited Jan. 23, 2012) [hereinafter *A Short History of SNAP*].

³ Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program, Legislative History*, http://www.fns.usda.gov/snap/rules/Legislation/history/PL_88-525.htm (last visited Jan. 23, 2012).

⁴ Food Research and Action Ctr., *SNAP/Food Stamps*, <http://frac.org/federal-foodnutrition-programs/snapfood-stamps/> (last visited Jan. 23, 2012) (as stated in the Food Stamp Act of 1977).

⁵ *A Short History of SNAP*, *supra* note 2.

law mandated that states implement electronic benefit transfer (EBT) systems by 2002.⁶ The EBT system “allows a recipient to authorize transfer of their government benefits from a Federal account to a retailer account to pay for products received.”⁷ Food assistance benefits are deposited into a food assistance account each month and an EBT card, much like a bank card, is used to buy food.⁸

In 2008, the Food, Conservation, and Energy Act replaced the Food Stamp Act of 1977 and increased the commitment to Federal food assistance programs.⁹ As of November 2011, the program serves over 40 million low-income individuals each month.¹⁰ The bill also changed the name of the Federal food stamp program to the Supplemental Nutrition Assistance Program (SNAP), and changed the name of the Food Stamp Act to the Food and Nutrition Act of 2008.¹¹ According to the USDA, the new name reflects the department’s focus on nutrition, putting health food within reach for low income households, and improvement in accessibility.¹² While states are permitted to name the program on their own, the federal government has encouraged states to change the name to SNAP, or another alternative name, as an opportunity to fight stigma and promote messages about healthy eating to consumers.¹³ As of March 2011, 29 states had changed the name of their program to SNAP and eight states had changed the name of the program to an alternate name.¹⁴ Seven states were still using the name Food Stamp Program.¹⁵

Food and Nutrition Act of 2008

The Food and Nutrition Act (act) defines “eligible food” as “any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption.”¹⁶ The term also includes seeds and plants to grow foods for personal consumption, as well as some additional exceptions to allow for hot food products ready for consumption in certain circumstances.¹⁷ For example, eligible food products include:

- Breads and cereals;
- Fruits and vegetables;
- Meats, fish, and poultry;
- Dairy products; and

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program*, <http://www.fns.usda.gov/snap/snap.htm> (last visited Jan. 23, 2012).

¹¹ *A Short History of SNAP*, *supra* note 2

¹² Food and Nutrition Serv., *supra* note 10.

¹³ *Id.*

¹⁴ Supplemental Nutrition Assistance Program, United States Dep’t of Agriculture, *From Food Stamps to SNAP: State Name Change Tracking Chart*, <http://www.fns.usda.gov/snap/roll-out/state-chart.pdf> (last visited Jan. 23, 2012).

¹⁵ *Id.*

¹⁶ 7 C.F.R. s. 271.2.

¹⁷ *Id.*

- Seeds and plants to grow and product food for the household to eat.¹⁸

Households may not use food assistance benefits to buy:

- Beer, wine, liquor, cigarettes, or tobacco;
- Pet food, soaps, paper products; or household supplies;
- Vitamins and other medicines;
- Food that will be eaten in the store; and
- Hot foods.¹⁹

Soft drinks, candy, cookies, crackers, ice cream, bakery cakes, and certain energy drinks are eligible for purchase with SNAP benefits under the current definition of “eligible foods.”²⁰

Since the definition of “eligible foods” is part of a federal act, in order to change the definition it would require federal legislation. Under current law, the Administrator of the Food and Nutrition Service (administrator) may grant a waiver to a state to deviate from specific regulatory provisions of the act. Waivers may only be granted in the following situations:

- The specific regulatory provision cannot be implemented due to extraordinary temporary situations;
- The Food and Nutrition Service (FNS) determines that the waiver would result in a more effective and efficient administration of the program; or
- Unique geographic or climatic conditions within a state preclude effective implementation of the specific regulatory provision and require an alternate procedure.²¹

The administrator may not approve requests for waivers when the waiver would be inconsistent with the provisions of the act or the waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.²²

In 2004, Minnesota submitted a request for a waiver of the definition of eligible foods in order to prohibit the purchase of candy and soft drinks with SNAP (at the time, they were still called food stamp) benefits. The request was denied because the act defines food in a certain manner and the proposed change to the definition of food would be in direct conflict with the statute.²³

Additional concerns related to the waiver included:

- A uniform food stamp program allows FNS and states to implement interoperability. Allowing conflicting definitions of eligible food items would introduce obstacles to

¹⁸ Food and Nutrition Serv., U.S. Dep’t of Agriculture, *Supplemental Nutrition Assistance Program*, <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last visited Jan. 26, 2012).

¹⁹ *Id.*

²⁰ *Id.*

²¹ 7 C.F.R. s. 272.3(c).

²² *Id.*

²³ Correspondence from Ollice C. Holden, Regional Admin., Food and Nutrition Servs., U.S. Dep’t of Agriculture, to Maria Gomez, Assistant Commissioner, Minnesota Dep’t of Human Servs. (May 4, 2004) (on file with the Senate Committee on Children, Families, and Elder Affairs).

continuing interoperability and would undermine the significant benefits that interoperability provides to program recipients;

- Approval of such a waiver could include the reintroduction of a stigma to participants and would perpetuate the myth that participants do not make wise purchasing decisions; and
- Administrative difficulties ranging from what penalties would be brought against retailers for noncompliance and what entity – the state or the USDA – would be responsible for monitoring compliance.²⁴

While there is evidence that SNAP benefits may increase the availability of some nutrients in the home food supply, there is little research that addresses the effect of SNAP participation on nutrition-related health outcomes such as height and weight.²⁵

According to the USDA, Congress has considered placing limits on the types of foods eligible for purchase with SNAP benefits in the past. However, Congress concluded that designating foods as “luxury or non-nutritious” would be administratively costly and burdensome.²⁶

Healthy Foods Initiatives

Let's Move is a comprehensive initiative aimed at solving the problem of obesity. At its launch in February, 2010, the President of the United States signed a Presidential Memorandum creating a Task Force on Childhood Obesity. *Let's Move* reports that one in three children in America is overweight or obese and likely to suffer from diabetes at some point in their lives as well as other obesity-related health problems like heart disease, high blood pressure, cancer and asthma.²⁷

Among other suggestions, the organization has outlined actions to foster healthier food choices in school and recommendations for providing access to healthy, affordable food. In connection with this initiative, the nation's leading health foundations have created the Partnership for a Healthier America to facilitate partnerships with States, communities, and the non-profit and private sectors to address childhood obesity.²⁸

It is estimated that more than 23 million Americans, more than one-fourth of them being children, live in low-income urban and rural neighborhoods that are more than a mile from a supermarket with access to affordable, quality, and nutritious foods, resulting in many children not eating recommended levels of fruits, vegetables, and whole grains.²⁹

²⁴ *Id.*

²⁵ Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Serv., U.S. Dep't of Agriculture, *Making America Stronger: A Profile of the Food Stamp Program*, 21 (Sept. 2005), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Other/FSPPProfile.pdf> (last visited Jan. 23, 2012).

²⁶ Food and Nutrition Serv., *supra* note 18. In 2007, the USDA issued a detailed report relating to the challenges of restricting the use of SNAP benefits. See U.S. Dep't of Agriculture, *Implications of Restricting the Use of Food Stamp Benefits* (Mar. 1, 2007), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPPFoodRestrictions.pdf> (last visited Jan. 26, 2012).

²⁷ See *Let's Move!*, <http://www.letsmove.gov> (last visited Feb. 9, 2012).

²⁸ See Partnership for a Healthier America, <http://www.ahealthieramerica.org> (last visited Feb. 9, 2012).

²⁹ Press Release, The White House, *First Lady Michelle Obama Launches Let's Move: America's Move to Raise a Healthier Generation of Kids* (Feb. 9, 2010), available at <http://www.whitehouse.gov/the-press-office/first-lady-michelle-obama-launches-lets-move-americas-move-raise-a-healthier-genera> (last visited Feb. 9, 2012).

PolicyLink is a national research and action institute that was founded in 1999 for the purpose of advancing economic and social equity with a focus on low income communities and communities of color by relying on the experience of and sharing findings and analysis with national and local policymakers.³⁰ In a publication issued July 20, 2011, Policy Link followed up on a prior report prepared by PolicyLink and The California Endowment, a private health foundation, in 2005.³¹ The publication highlights the relationship between obesity and lack of access to healthy, fresh food, and particularly the problem it poses for low-income children and children of color, who face some of the highest rates of obesity. It found the situation to exist in both urban and rural communities. Strategies suggested by the report to develop new healthy food retail opportunities include: create financing sources to develop new grocery stores in low-income neighborhoods; improve small stores; start and sustain farmers' markets; and connect local farmers to low-income consumers. In summary, the PolicyLink report maintains that better access contributes to healthier eating which contributes to lower rates of obesity and diet-related disease. The Policy Link, in conjunction with the Food Trust,³² reported similar findings in a publication issued March 15, 2010³³ emphasizing that the lack of access to healthy and affordable foods in low-income communities has created "food deserts" due to the abundance of convenience stores and fast food restaurants that sell cheap, high-fat, high-sugar, processed foods while offering few healthy options, with a corresponding high presence of obesity, diabetes, and other diet-related diseases. There is a general agreement about the consequences of the lack of access to healthy foods and suggested solutions range from developing and expanding retail outlets to removing transportation barriers to allow for better access.

At the federal level, the Healthy, Hunger Free Kids Act of 2010³⁴ reauthorizes expiring provisions of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide funding for federal school meal and child nutrition programs and increase access to healthy food for low-income children. One of its aims is to ensure that more local foods are used in the school setting by helping communities establish local farm to school networks. On November 30, 2011, bipartisan bills were introduced in both the United States Senate and House to establish a Healthy Food Financing Initiative (HFFI)³⁵ which will, if it becomes law, appropriate \$125 million to improve access to healthy foods in underserved areas by providing loans and grants to eligible fresh, healthy food retailers as administered by a National Fund Manager in partnership with local groups, and state and municipal governments.

³⁰ See Policy Link, <http://policylink.org> (last visited Feb. 9, 2012).

³¹ Rebecca Flournoy, Policy Link, *Healthy Food, Healthy Communities: Promising Strategies to Improve Access to Fresh, Healthy Foods and Transform Communities* (2011), available at http://www.policylink.org/atf/cf/%7B97C6D565-bb43-406D-a6d5-eca3bbf35af0%7D/HFHC_FULL_FINAL_20120110.PDF (last visited Feb. 9, 2012).

³² The Food Trust was founded in 1992 as a non-profit entity whose goal is to make affordable, healthy food available to all. See The Food Trust, *Who We Are*, <http://thefoodtrust.org> (last visited Feb. 9, 2012).

³³ Sarah Treuhaft and Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Foods and Why It Matters* (March 15, 2012), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/FINALGroceryGap.pdf> (last visited Feb. 9, 2012).

³⁴ Public Law 111-296 (Dec 13, 2010), available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ296/pdf/PLAW-111publ296.pdf> (last visited Feb. 9, 2012).

³⁵ S.B. 1926 and H.R. 3525.

Several states have adapted financing initiatives aimed at facilitating access to healthy foods in underserved areas.³⁶ Louisiana adopted the first statewide Healthy Food Retail Act in 2009 contingent upon funding by the state.³⁷ While there has been no appropriation to fund this program on a statewide basis, the National Policy & Legal Analysis Network to Prevent Childhood Obesity cites the city of New Orleans' use of Community Development Grant Money as a creative way to fund the state's Healthy Food Retail program.³⁸

The Department of Agriculture and Consumer Services (DACs) has created the Florida "Farm to School" program to bring nutritious, fresh fruits and vegetables from local farms to schools. DACs is not intended to be a party to any agreement but a source of information to promote opportunities for schools and growers to work together to increase the volume of locally grown produce that is served in school cafeterias and dining halls.³⁹

The Junior League of Greater Orlando (League) is a community service organization that created HIP kids (Healthy Informed Playful Kids) to address immediate and long term challenges faced by hungry children. As an outgrowth of that cause, the Chair of the Public Affairs Committee researched nationwide programs aimed at bringing healthy foods into food deserts, defined for their purposes as low-income communities whose closest grocery store or market is at least 1-5 miles from that community resulting in little to no access to fresh fruits and vegetables and other healthy foods.⁴⁰ Examples of successful efforts were found in several states. A result was that this bill, which is modeled after the Louisiana Healthy Food Retail Act of 2009, was filed.

III. Effect of Proposed Changes:

This bill provides that the electronic benefit transfer system shall prevent a recipient from using the electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automatic teller machines (ATMs) located in gambling and adult entertainment establishments. The bill does provide that it does not prohibit the use of an EBT card to access federal Supplemental Nutrition Assistance Program (SNAP) benefits in any manner authorized by federal law. Essentially, the intent of the bill is to prohibit the use of state dollars through the electronic benefit transfer system in certain circumstances, but that an individual may still be able to use federal SNAP funds under the same circumstances if allowed by federal law.

³⁶ See Pennsylvania, <http://www.thefoodtrust.org/php/programs/fffi.php> (last visited Feb. 9, 2012); Illinois, <http://www.rwjf.org/publichealth/digest.jsp?id=10962> (last visited Feb. 9, 2012); New York, <http://www.esd.ny.gov/BusinessPrograms/HealthyFoodHealthyCommunities.html> (last visited Feb. 9, 2012); *see also* The University of North Carolina at Chapel Hill, *Healthy Retail and Dining Initiatives*, <http://americanindianhealthyeating.unc.edu/tools-for-healthy-tribes/food-retail/> (last visited Feb. 9, 2012).

³⁷ Chapter 3-D. Healthy Food Retail Act, available at <http://legis.state.la.us/lss/newWin.asp?doc=670617> (last visited Feb. 9, 2012).

³⁸ Manel Kappagoda, Nat'l Policy & Legal Analysis Network to Prevent Childhood Obesity, *Financing Healthy Food Retail & Promoting Physical Activity Opportunities* (April 9, 2010), available at <http://www.ncsl.org/portals/1/documents/health/MKappagodaSF10.pdf> (last visited Feb. 9, 2012).

³⁹ Fla. Dep't of Agriculture and Consumer Servs., *Florida "Farm to School" Program*, <http://www.florida-agriculture.com/FarmToSchool/> (last visited Feb. 9, 2012).

⁴⁰ Telephone conversation with Katherine Martin, Chairperson, and professional staff of the Senate Committee on Agriculture (Dec. 3, 2012).

The bill requires the Department of Children and Family Services (DCF or department) to:

- Add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds.
- Prohibit the use of benefits at restaurants, including fast-food restaurants; and
- Use culturally sensitive campaigns to promote the modifications made pursuant to the bill, as well as the benefits of healthy and nutritious eating habits.

The bill specifies certain foods that are to be added to the list of items that may not be purchased with federal SNAP funds. These foods include:

- Foods containing trans fats;
- Sweetened beverages, including sodas;
- Jello;
- Candy;
- Ice cream;
- Pudding;
- Popsicles;
- Muffins;
- Sweet rolls;
- Cakes;
- Cupcakes;
- Pies;
- Cobblers;
- Pastries;
- Doughnuts;
- Corn-based salty snacks;
- Pretzels;
- Party mix;
- Popcorn; and
- Potato chips.

The department is authorized to collaborate with any public or nongovernmental organization that promotes the health and well-being of all residents of the state. The department is required to seek all necessary federal approvals to implement this bill.

Finally, the bill provides that a cash assistance recipient may not access cash benefits through an EBT card from an ATM in this state located in:

- An adult entertainment establishment;⁴¹
- A pari-mutuel facility;⁴²

⁴¹ An “adult entertainment establishment” means an adult bookstore, adult theater, special cabaret, and unlicensed massage establishment. Section 847.001, F.S.

⁴² A “pari-mutuel facility” is defined as a racetrack, fronton, or other facility used by a permitholder for the conduct of pari-mutuel wagering. Section 550.002(23), F.S.

- A gaming facility authorized under a tribal-state gaming compact;
- A commercial bingo facility that is not an authorized bingo establishment;⁴³
- A store or establishment in which the principal business is the sale of firearms; and
- A retail establishment licensed to sell malt, vinous, or spirituous liquors under the Beverage law.

The bill also creates unnumbered sections of law that may be cited as the “Healthy Foods Retail Act” (act).

The bill suggests the following legislative findings:

- Low income families, children, and elderly people face obstacles to a healthy diet when fresh fruits and vegetables and other healthy foods aren’t readily available or affordable. National research indicates that these types of residents are most often affected by inadequate access to supermarkets and other retailers that sell healthy foods as well as by high rates of obesity.
- Obesity, resulting from poor diet and physical inactivity, is the fastest growing cause of disease and death in the United States and especially puts adults and children at risk for developing serious health problems.
- People who have better access to retail food outlets that sell fresh fruits, vegetables, and other healthy food tend to have healthier diets and lower levels of obesity according to studies.
- The development of quality retail food outlets creates jobs, expands markets for farmers, and supports economic vitality in underserved communities.
- The purpose is to establish a program to:
 - Provide a source of financing for food retailers in underserved communities;
 - Increase access to affordable healthy food;
 - Promote sale and consumption of fresh fruits and vegetables, especially those that are locally grown; and
 - Support expanded economic opportunities in low-income and rural communities.

The bill provides the following definitions for this act:

- “Department” means the Department of Agriculture and Consumer Services.
- “Funding” means grants, loans, or a combination of grants and loans.
- “Healthy food retailers” means for-profit or not-for-profit retailers that sell high-quality fresh fruits and vegetables at competitive prices.
- “Program” means a public-private partnership administered by the department to provide a dedicated source of financing for food retailers that provide increased access to the supply of healthy food contemplated by this act.
- “Underserved community” means a geographic area located in a lower income or high-poverty area with limited access to healthy food retailers.

The bill directs the Department of Agriculture and Consumer Services (DACS) to establish a financing program, to the extent funds are available to fund healthy food retailers that provide

⁴³ Section 849.0931, F.S., provides that charitable, nonprofit, or veteran’s associations may conduct bingo games or instant bingo under certain conditions.

access to affordable healthy food in underserved communities in accordance with the following guidelines:

- The DACS may contract with qualified nonprofit organizations or community development financial institutions to administer the program, raise matching funds, provide marketing support, evaluate applicants, make award decisions, underwrite loans, and monitor compliance and impact as well as coordinate with complementary nutrition assistance and educational programs.
- Funding shall be provided on a competitive, one-time basis for eligible projects.
- Types of projects that may be funded by the program are:
 - New construction of supermarkets and grocery stores;
 - Store renovations and expansion and infrastructure upgrades that improve availability and quality of fresh produce;
 - Marketing and distribution outlets that enable food retailers in underserved communities to regularly obtain fresh produce; and
 - Other projects that meet the intent of this act to create or improve access to healthy food retailers.
- Specific purposes for which funds may be used, excluding any use for a restaurant, are:
 - Site acquisition and preparation;
 - Construction costs;
 - Equipment and furnishings;
 - Workforce training;
 - Security;
 - Predevelopment costs such as market studies and appraisals; and
 - Working capital for first-time inventory and start-up costs.
- For-profit or not-for-profit entities, both private and public, may apply for funding.
- Applicants must meet the following criteria:
 - The project must benefit an underserved community;
 - A meaningful commitment to sell fresh fruits and vegetables must be demonstrated that will be measured by standards developed by the department;
 - Vouchers issued by SNAP must be accepted and clients of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) must be served. For program applicants that are not eligible to be included in either of these two categories, the DACS shall establish standards to measure a meaningful commitment to serve low-income households.
- The amount of funding shall be based on the following criteria:
 - A demonstrated capacity to successfully implement the project, including relevant experience and likelihood of self-sustainability;
 - The ability of applicant to repay debt;
 - The degree to which the project requires public funding and the level of need in the area to be served. Consideration may be given to factors that indicate accessibility to retail outlets for low-income residents, such as proximity to public transit lines;
 - The degree to which the project will promote sales of fresh produce, especially locally grown;

- The degree to which the project will have a positive impact on the underserved community, including job creation or retention for local residents; and
- Other criteria consistent with this act as determined by the DACS.
- The DACS shall establish benchmarks and reporting requirements to make certain the program benefits both rural and urban communities, in addition to establishing monitoring and accountability mechanisms, such as tracking fruit and vegetable sales data.
- The DACS shall prepare an annual report for the Legislature for any projects funded.

To the extent practicable, funds described in this act may be leveraged with other funding, including, but not limited to, the New Markets Tax Credits Program, federal and foundation grants, incentives available to Empowerment Zones or Renewal Communities, operator equity, and funding from private sector financial institutions under the federal Community Reinvestment Act of 1977.

The DACS may adopt rules as necessary to administer this section.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill increases the list of foods that may not be purchased using federal Supplemental Nutrition Assistance Program (SNAP) funds. Accordingly, individuals would be required to use private funds to purchase the items listed in the bill.

Private entities and public-private partnerships will benefit to the extent they are awarded grants and may further benefit from loans and loan terms that facilitate or accelerate the growth or expansion of business opportunities.

C. Government Sector Impact:

According to the Department of Children and Family Services (DCF or department), the bill may have an impact on temporary cash assistance recipients regarding successful administration of the Relocation Assistance Program. Pursuant to rule, DCF currently authorizes temporary cash assistance benefits to continue for one month following the month of departure from the state if the recipient requests the extension.⁴⁴ This bill restricts the use of out-of-state access to cash benefits, which would require DCF to amend its rule.⁴⁵

The bill will require programming changes to the EBT System to implement the prohibitions. The department analysis indicates costs are estimated at \$35,000 and can be absorbed with existing resources.

The Department of Agriculture and Consumer Services (DACS) is charged with implementing and administering this program and it estimates that it would incur expenditures as shown in the table below. This impact may be offset by an anticipated application fee but the amount of revenue from this source is unknown at this time.

Expenditures	FY 11-12	FY 12-13	FY 13-14
Recurring			
FTEs (3)	\$141,430	\$141,430	\$141,430
Support	\$ 15,000	\$ 7,500	\$ 7,500
Total recurring	\$156,430	\$148,930	\$148,930

The bill provides that the financing program proposed will be established to the extent funds are available. As there is no dedicated appropriation of funds for the program, the establishment of the program will depend upon a reallocation in an undetermined amount of existing department funds.

VI. Technical Deficiencies:

The bill directs the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds. Although the bill provides a list of some items that are prohibited, the bill does not define “nonstaple, unhealthy foods,” nor does it provide any guidelines for determining what is unhealthy. It is unclear how the department will determine what is or is not unhealthy for purposes of using SNAP funds.

According to DCF, the cash transaction set does not provide identification codes for business types other than financial institutions. Accordingly, there is currently no standardized or accurate way to gather merchant identification data based on the transaction set data that currently exists in the industry. Any data gathering is reliant on Third Party Processors and terminal operators to provide. The department recommends

⁴⁴ Rule 65A-4.220(6), F.A.C.

⁴⁵ Dep’t of Children and Families, *Staff Analysis and Economic Impact, SB 1658* (Jan. 11, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

that effective exclusion of certain terminals would be best managed by the Third Party Processors.⁴⁶

On line 34, the bill provides that the electronic benefit transfer system designed and implemented pursuant to this *chapter* shall prevent a recipient from using the electronic benefit transfer (EBT) card in certain locations. The electronic benefit transfer system is created in s. 402.82, F.S., so the bill may need to be amended to use the term “section” rather than “chapter.”

VII. Related Issues:

In 2010, California – through executive order – restricted cash access with the EBT card at certain establishments. These establishments included:

- Bail bonds.
- Bingo halls.
- Cannabis shops.
- Cruise ships.
- Gun and ammunition stores.
- Liquor stores.
- Night clubs, saloons, and taverns.
- Psychic readers.
- Race tracks.
- Smoking shops.
- Spa and massage salons.
- Tattoo and piercing shops.⁴⁷

Throughout the process, the state learned:

- ATM blocking is an inexact process.
- Some locations that should be blocked will be missed.
- Some locations that have been blocked should be active.
- Blocking ATMs solely by category is impossible because all ATMs use the same Financial Institution Category Code.
- Intense effort for contractor and state to determine exact locations to be blocked.
- Monitoring is extremely difficult.
- Reactivations due to new processor occur frequently.
- Changes in location name.⁴⁸

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on Health and Human Services Appropriations on February 8, 2012:

The committee substitute creates the “Health Foods Retail Act” (act). The committee substitute establishes legislative findings relating to the act and requires the Department of Agriculture and Consumer Services (DACS) to establish a financing program to fund healthy food retailers. The committee substitute sets guidelines for participation, funding limitations, determination of eligible projects, types of expenditures authorized, requirements to be met by applicant, basis for setting the amount of funding, establishment of controls and compliance monitoring, and legislative reporting.

- B. **Amendments:**

None.