

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 631 Transactions in Fresh Produce Markets

**SPONSOR(S):** Healthy Families Subcommittee; Fullwood

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 778

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Healthy Families Subcommittee	11 Y, 0 N, As CS	Entress	Schoolfield
2) Health & Human Services Committee	13 Y, 0 N	Entress	Calamas

**SUMMARY ANALYSIS**

The bill allows the owner or operator of a market selling fresh produce, but does not have an Electronic Benefits Transfer (EBT) system, to allow certain specified groups to implement and operate an EBT system in the market on behalf of the produce sellers. The bill clarifies that this applies when the market owner or operator is not an authorized Supplemental Nutrition Assistance Program (SNAP) retailer.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### History of the Food Stamp Program

The food stamp program began in 1939, providing a discount for surplus food to people on relief. From 1939-1943, those who qualified were able to purchase stamps redeemable for the purchase of food, and were given additional stamps redeemable only towards purchasing surplus food.<sup>1</sup> In 1961 the Pilot Food Stamp Program was created by President Kennedy. The pilot program used the original food stamp program, but did not limit the use of additional stamps toward surplus food; those stamps could be used for perishables as well.<sup>2</sup>

The Food Stamp Act of 1964 made the program permanent and expanded the use of food stamps to “all items eligible for consumption, with the exception of alcohol and imported foods.”<sup>3</sup> Since then a number of changes and reforms to the program have taken place including changing the name of the program to the Supplemental Nutrition Assistance Program (SNAP), changing eligibility determinations and the introduction of the use of an Electronic Benefits Transaction card (EBT).<sup>4</sup>

##### Supplemental Nutrition Assistance Program-SNAP (Federal Program)

SNAP is a federal program that is administered by the individual states. SNAP aims to “provide children and low-income people access to food, a healthful diet and nutrition education in a way that supports American agriculture and inspires public confidence.”<sup>5</sup> The Food and Nutrition Act of 2008 defines “eligible food” as “any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods and hot food products prepared for immediate consumption.”<sup>6</sup> Eligible food 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.<sup>7</sup>

##### Retailers Accepting Food Stamps

Retailers accepting SNAP benefits as a form of payment must be licensed by the United States Department of Agriculture (USDA).<sup>8</sup> The Food and Nutrition Service (FNS) is responsible for licensing and monitoring of retail food stores participating in SNAP.<sup>9</sup> A separate SNAP permit is required for each store location and a SNAP permit is no longer valid if a store is closed, moved, or sold.<sup>10</sup> Licensed stores are fully reviewed for eligibility at least once every five years.<sup>11</sup>

To apply as a SNAP provider, retailers must meet basic eligibility. For basic eligibility, the store must sell food for home preparation and consumption and must also meet ONE of the following conditions:

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<sup>1</sup> A Short History of SNAP, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/snap/rules/Legislation/about.htm>. (last visited 2/26/13).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> About FNS, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/about-fns> (last visited 2/26/13).

<sup>6</sup> 7 C.F.R. s. 271.2.

<sup>7</sup> P.L. 110-246, provides that certain individuals because of age, disability or living arrangement may purchase hot foods with their SNAP EBT card.

<sup>8</sup> Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 2/15/13).

<sup>9</sup> Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 2/15/13).

<sup>10</sup> Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 2/15/13).

<sup>11</sup> SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

- Offer at least three varieties of qualifying foods in each of the following four stable good groups on a continuous basis<sup>12</sup>:
  - Meat, poultry, or fish;
  - Bread or cereal;
  - Vegetables or fruits; and
  - Dairy products.
- More than 50% of the total dollar amount of all retail sales sold in the store must be from the sale of eligible staple foods.<sup>13</sup>

Qualified retailers can then apply to be a SNAP provider, either online or with the use of a paper application.<sup>14</sup>

Once a retailer is licensed, the store will receive a seven digit FNS number, which is used to identify both the store and the owner.<sup>15</sup>

### Florida Food Assistance Program (SNAP)

The Florida Department of Children and Families (DCF) administers the state's food assistance program.<sup>16</sup> The Food Assistance Program is a 100% federally funded program. The USDA determines the amount of food assistance benefits an individual or family receives, based on the families' income and resources.<sup>17</sup> Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.<sup>18</sup> State law provides that DCF shall establish procedures in compliance with federal law for notifying the appropriate federal and state agencies of any violation of law regarding the food assistance program and the department must also notify the Department of Financial Services.<sup>19</sup> Currently, the state does not have any restrictions on the types of foods that can be purchased under the food assistance program<sup>20</sup>, as the USDA does not allow for such restrictions.<sup>21</sup>

### Use of the Electronic Benefits Card

Food assistance monies are placed on an Electronic Benefits Transaction (EBT) card. Once an individual applies for cash assistance or food assistance with DCF, they will receive an EBT card in the mail<sup>22</sup>, the card functions much like a credit card or debit card. Food assistance money can be used at any retail store that accepts the EBT SNAP card. Cash assistance money can be used to purchase a variety of items and may also be used at automatic teller machines (ATM's). Currently, there are no prohibitions on the use of the EBT card for out of state purchases. Current DCF rule<sup>23</sup> provides that cash assistance benefits can continue for one month after an individual has left the state, if the recipient requests the extension.<sup>24</sup> Additionally, DCF permits households who are temporarily absent from the state to access cash assistance for two months if they plan to return to the state.<sup>25</sup>

<sup>12</sup> The store must offer perishable goods in a least two of the categories.

<sup>13</sup> Supplemental Nutrition Assistance Program, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-eligibility.htm>. (last visited 2/15/13).

<sup>14</sup> Supplemental Nutrition Assistance Program, USDA "Operating a CSA and SNAP Participation," *accessible at*: <http://www.fns.usda.gov/snap/ebt/fm.htm>. (last visited 2/15/13).

<sup>15</sup> SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

<sup>16</sup> S. 414.31, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> DCF Food Assistance Program Fact Sheet, [www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf](http://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf). (last visited 2/26/13).

<sup>19</sup> S. 414.33, F.S.

<sup>20</sup> Need cite- from old bill analysis

<sup>21</sup> 7 C.F.R. s. 271.2.

<sup>22</sup> EBT Card Issuance, Department of Children and Families Access Program. <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/ebt-card-issuance>. (last visited 2/26/13).

<sup>23</sup> 65A-4.220(6). F.A.C.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Stores must have an EBT system to accept payment from SNAP benefits.<sup>26</sup> Shortly after receiving approval to offer SNAP benefits, Florida's EBT contractor will contact the retailer regarding an EBT system.<sup>27</sup> There are three ways to accept EBT: point of sale (POS), a machine that collects EBT, credit, and debit, and a manual paper voucher process. The POS system is electronic and free for retailers selling over \$100 in SNAP benefits monthly.<sup>28</sup> Retailers which would like to collect EBT, credit, and debit on one machine must contact a third-party processor to obtain the machinery. The fee for this machinery is negotiated between the retailer and the third-party processor.<sup>29</sup> The manual paper voucher process is a free way for retailers to accept EBT.<sup>30</sup> The retailer must fill out a voucher explaining what was purchased and the price of the purchase, and have the customer sign the form. Prior to completing the transaction, the retailer must call customer service to confirm that the customer has enough money in their SNAP account to purchase the items.<sup>31</sup> At that point the transaction is complete. To collect money from the transaction, the retailer must electronically clear the voucher within 15 days or send the voucher to the state by the set expiration date.<sup>32</sup> Retailers using POS systems usually receive payment from the EBT payment within two banking days.<sup>33</sup>

### Farmer's Markets

Farmer's Markets are sometimes eligible to collect SNAP benefits as a form of payment for the sale of food. The USDA defines a farmer's market as "a multi-stall market at which farmer-producers sell agricultural products directly to the general public at a central or fixed location, particularly fresh fruit and vegetables (but also meat products, dairy products, and/or grains)."<sup>34</sup> Like traditional retailers, the USDA requires farmer's markets to obtain a license in order to accept SNAP benefits as a form of payment.<sup>35</sup>

Individual farmers may apply for and receive a license to accept SNAP benefits, but when individual farmers do not have a license to accept SNAP benefits, the farmer's market, rather than the individual farmers, must hold an FNS license to accept SNAP.<sup>36</sup> In these cases, the farmers market has to use a scrip system for payment of good and use a centralized POS device to process transactions.<sup>37</sup> The farmer's market also has to train farmers in scrip redemption rules and procedures, since the market's ability to accept SNAP benefits could be jeopardized if the farmer commits a SNAP violation while operating under the market's license.<sup>38</sup> In addition, the farmer's market must develop an accounting system and method for reimbursing vendors.<sup>39</sup>

### Scrip Systems

There are two basic scrip systems: a paper scrip (or token system) and a receipt system.<sup>40</sup> The paper scrip system requires the farmer's market to design and purchase tokens or print paper script.<sup>41</sup>

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<sup>26</sup> SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

<sup>27</sup> SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

<sup>28</sup> SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> What is a Farmer's Market, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-what\\_is\\_fm.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_fm.htm).

<sup>35</sup> Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-market\\_responsibilities.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm).

<sup>36</sup> Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-what\\_is\\_scrip.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm).

<sup>37</sup> *Id.*

<sup>38</sup> Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-market\\_responsibilities.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm).

<sup>39</sup> *Id.*

<sup>40</sup> Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-what\\_is\\_scrip.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm).

With the paper scrip system, customers swipe their EBT card at a centrally located POS device and the market staff give the customers paper scrip, or tokens in exchange for the amount debited from the EBT card.<sup>42</sup> Customers can then use the paper scrip or tokens to purchase eligible food at booths throughout the market.<sup>43</sup> With the receipt system, customers shop for eligible food and individual vendors hold this food aside for the customer.<sup>44</sup> The vendor makes a list of the food and the customer takes the list to a centralized POS to pay with their EBT card.<sup>45</sup> After paying, the customer receives a receipt, which they take to the vendor in exchange for the food which has been held aside.<sup>46</sup>

### Point of Sale (POS) Devices

There are three ways that farmer's markets can accept SNAP benefits, after receiving a license to do so: point-of-sale EBT only devices, wireless credit/POS devices, and manual vouchers. Like retailers, farmers markets which conduct at least \$100 per month in SNAP benefits are eligible to receive a free POS device that can process EBT transactions.<sup>47</sup> However, to use this device the market must have a central location, with electricity and a phone line, where the device can be placed and operated.<sup>48</sup> Manual vouchers can also be used by farmer's markets to process SNAP benefits without a charge to the farmer or farmer's market.<sup>49</sup> In this case, market staff must call the state's EBT processor to confirm that the funds in the EBT account are sufficient to purchase the customer's food.<sup>50</sup> The customer would then sign the voucher for the purchase amount and the market would either mail the voucher to the EBT processor or clear the manual vouchers through a POS device at a later time.<sup>51</sup> Farmer's markets may also purchase or lease wireless POS equipment that accepts EBT as well as debit and/or credit cards.<sup>52</sup> This option would not be free.<sup>53</sup> There has been a desire to use smartphones and tablets at farmer's markets to process SNAP benefits.<sup>54</sup> However, these devices are not able to perform PIN transactions, a requirement of processing EBT benefits.<sup>55</sup>

### Farmer's Markets Which Accept EBT

Only a small percentage of farmers' markets and produce markets participate in SNAP EBT in the state of Florida.<sup>56</sup> Currently, farmers' markets choose whether or not to participate. For farmers' markets that do choose to be a SNAP retailer, DCF provides them with an EBT system. The EBT POS devices are installed and the retailer receives EBT services via the vendor under contract to DCF, as required by federal regulation.

In order to encourage greater EBT participation within the markets, USDA provided grant money to expand the use of the EBT wireless POS devices within farmers' markets. The funding has been offered to markets which were not already authorized SNAP retailers on or before November 18, 2011, the date on which Public Law 112-55 was enacted.<sup>57</sup>

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<sup>41</sup> Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-market\\_responsibilities.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm).

<sup>42</sup> Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-what\\_is\\_scrip.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> EBT Equipment and Manual Vouchers, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-EBT\\_Equipment.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-EBT_Equipment.htm).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Smartphones/Tablets, Supplemental Nutrition Assistance Program, USDA *accessible at*: [http://www.fns.usda.gov/snap/ebt/fm-scrip-smartphones\\_tablets.htm](http://www.fns.usda.gov/snap/ebt/fm-scrip-smartphones_tablets.htm).

<sup>55</sup> *Id.*

<sup>56</sup> Department of Children and Families analysis of HB 631, February 18, 2013.

<sup>57</sup> *Id.*

On July 27, 2012 the State of Florida announced the funding opportunity and engaged in a marketing campaign to encourage more farmers' markets to participate in EBT. Promotional letters, flyers, social media engagement, and emails have been sent out to inform farmers markets throughout the state about this opportunity. Eight Florida farmers markets' are currently participating in EBT with three more markets in implementation phase.<sup>58</sup>

### **Effect of Proposed Changes**

The bill creates an unnumbered section of law relating to the use of SNAP benefits in fresh produce markets. DCF currently provides an Electronic Benefit Transfer system (EBT) system to farmers markets that choose to become a SNAP retailer.<sup>59</sup>

The bill allows the owner or operator of a market selling fresh produce, but does not have an EBT system, to allow certain authorized groups to implement and operate an EBT system in the market on behalf of the produce sellers. The groups listed in the bill who may set up the EBT operations must be authorized by the Food and Nutrition Service and includes a food nutrition service group, association of produce sellers active in the market or a food nutrition service third party organization.

If an outside group establishes the EBT system, the bill requires that the market owner or operator must reasonably accommodate the group in the implementation and operation of the EBT system for accepting SNAP benefits.

This bill states that the EBT system requirement does not apply to a market selling fresh produce whose owner or operator has an EBT system for accepting SNAP benefits in the market. The requirement also does not prohibit an authorized food and nutrition service produce seller in a market selling fresh produce from operating his or her own EBT system as part of his or her customer transaction options. The bill also does not require a market owner or operator to create, operate, or maintain an EBT system on behalf of his produces sellers.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates an unnumbered section of law, relating to the Fresh Produce Markets

**Section 2:** Provides for an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DCF rulemaking authority for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 25 and 27, the bill allows both an authorized Food Nutrition Service group and an authorized Food Nutrition Service third-party organization to implement and operate an electronic benefits transfer system. The difference between an authorized Food Nutrition Service group and an authorized Food Nutrition Service third-party organization is unclear.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Healthy Families Subcommittee adopted a strike-all amendment which made the requirement of market owners to allow groups to set up EBT systems optional, rather than mandatory.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.