

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Canned or Perishable Food Distributed Free of Charge

SPONSOR(S): Rogers and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 160

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|-------------------------------|---------------|----------------|--|
| 1) Civil Justice Subcommittee | 13 Y, 0 N | Ward | Bond |
| 2) K-12 Subcommittee | 13 Y, 0 N | Brink | Ahearn |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Current law protects donors who give food to a charitable organization from civil and criminal liability related to injury caused by such donated food. The term “donor” is defined in law. The bill adds a specific reference to public schools to the definition of “donor.”

The bill does not appear to have a fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A donor who donates canned or perishable food to a charity enjoys protection from criminal and civil liability.¹ A "donor" is defined as a person,² business, organization,³ or institution which owns, rents, leases, or operates:

- Any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure, that is maintained and operated as a place where food is regularly prepared, served, or sold for immediate consumption on or in the vicinity of the premises; or to be called for or taken out by customers; or to be delivered to factories, construction camps, airlines, locations where catered events are being held, and other similar locations for consumption at any place;
- Any public location with vending machines dispensing prepared meals; or
- Any retail grocery store.⁴

When food is apparently fit for human consumption and donated to a bona fide charitable or nonprofit organization, the donor is not subject to criminal penalties or civil damages arising from the condition of the food unless an injury is caused by the gross negligence, recklessness, or misconduct of the donor.⁵ ⁶ Likewise, a nonprofit or charitable organization or a representative of such organization which distributes donated food is protected from criminal and civil penalties under the same conditions.

Public schools in Florida participate in school lunch and breakfast programs subsidized by the federal government. Federal law was amended in 2011 to include: "[e]ach school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations."⁷ While public schools are presumably included under the current statutory definition of "donor," the express phrase "public schools" does not appear in the definition's language.

Effect of Proposed Changes

The bill expressly includes the phrase "public schools" within the statutory definition of "donor" as it relates to protection from criminal and civil liability for injuries caused by donated food.

B. SECTION DIRECTORY:

Section 1. Amends s. 768.136, F.S., including phrase "public schools" within definition of the term "donor".

Section 2. Provides an effective date of July 1, 2014.

¹ Section 768.136, F.S.

² The term "person" is defined in statute to include "individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S. This broad definition could be construed to include public schools.

³ The term "school" is defined as an "organization of students for instruction purposes of an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education." Section 1003.01, F.S. It thus appears that a public school may also fall under the current definition of "donor" as an organization.

⁴ Section 768.136(1), F.S.

⁵ Section 768.136(2), F.S.

⁶ Public school districts, as agencies of the state, enjoy sovereign immunity protection to the extent it has not been waived pursuant to s. 768.28, F.S. See *Orlando v. Broward County*, 950 So. 2d 54, at 57 (Fla. 1st DCA 2005) ("Article X, section 13 of the Florida Constitution provides absolute sovereign immunity for the state and its agencies absent waiver by legislative enactment or constitutional amendment") (internal quotations omitted).

⁷ 42 U.S.C. §1758(l)(1).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.