

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Transactions in Fresh Produce Markets

SPONSOR(S): Fullwood

TIED BILLS: **IDEN./SIM. BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	12 Y, 0 N	Entress	Brazzell
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Supplemental Nutrition Assistance Program (SNAP) is a federal program which offers nutrition assistance to low-income individuals and families. Individuals and families who meet eligibility standards receive an Electronic Benefits Transfer (EBT) card. Money is deposited on the EBT card for families and individuals to purchase certain types of food each month. To accept SNAP benefits from an EBT card, businesses selling food must have an EBT system and be licensed by the United States Department of Agriculture (USDA). The USDA licenses farmer's markets and allows farmer's markets to operate EBT systems, but not all farmer's markets accept SNAP benefits.

The bill allows the owner or operator of a market selling fresh produce, such as a farmer's market, that 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 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, 2014.

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.¹ 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.²

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.”³ 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 introducing of the use of an Electronic Benefits Transaction card (EBT).⁴

Supplemental Nutrition Assistance Program-SNAP (Federal Program)

Today, 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.”⁵ 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.”⁶ 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.⁷

Retailers Accepting Food Stamps

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food stores participating in SNAP.⁹ A separate SNAP license is required for each store location and a SNAP permit is no longer valid if a store is closed, moved, or sold.¹⁰ Licensed stores are fully reviewed for eligibility at least once every five years.¹¹

¹ A Short History of SNAP, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/snap/rules/Legislation/about.htm>. (last visited 3/2/14).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ About FNS, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/about-fns> (last visited 3/2/14).

⁶ 7 C.F.R. s. 271.2.

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

⁸ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 3/2/14).

⁹ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 3/2/14).

¹⁰ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 3/2/14).

¹¹ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 3/2/14).

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

- Offer at least three varieties of qualifying foods in each of the following four stable food groups on a continuous basis¹²:
 - 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.¹³

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

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.¹⁵

Florida Food Assistance Program

The Florida Department of Children and Families (DCF) administers and operates the state's food assistance program (SNAP), including the eligibility process for recipients.¹⁶ The federal government pays 100 percent of the SNAP benefits, and the federal and state governments share the administrative costs.¹⁷ The USDA determines the amount of food assistance benefits an individual or family receives, based on the individual's or family's income and resources.¹⁸ 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.¹⁹ 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.²⁰

¹² The store must offer perishable goods in a least two of the categories.

¹³ Supplemental Nutrition Assistance Program, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-eligibility.htm>. (last visited 3/2/14).

¹⁴ Supplemental Nutrition Assistance Program, USDA "Operating a CSA and SNAP Participation," *accessible at*: <http://www.fns.usda.gov/snap/ebt/fm.htm>. (last visited 3/2/14).

¹⁵ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/merchants.htm>. (last visited 3/2/14).

¹⁶ S. 414.31, F.S.

¹⁷ SNAP/Food Stamps, Food Research and Action Center, *accessible at*: <http://frac.org/federal-foodnutrition-programs/snapfood-stamps/>. (last visited 3/2/14).

¹⁸ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf . (last visited 3/2/14).

¹⁹ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf . (last visited 3/2/14).

²⁰ S. 414.33, F.S.

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.²¹

Stores must have an EBT system to accept payment from SNAP benefits.²² Shortly after receiving approval to offer SNAP benefits, Florida's EBT contractor will contact the retailer regarding an EBT system.²³ 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. Retailers using POS systems usually receive payment within two banking days.
- To use a machine that processes credit, debit, and EBT transactions, the retailer must arrange to have commercial equipment provided to you by a third-party processor. Commercial equipment is provided at a cost that the retailer negotiates with the third-party processor. Commercial equipment is often integrated, meaning that the POS terminal, cash register, and scanning device are all connected together in order to speed transactions and minimize errors.
- The manual paper voucher process is a free way for retailers to accept EBT. The retailer must fill out a voucher 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. 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.²⁴

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)."²⁵ Like traditional retailers, the USDA requires farmer's markets to obtain a license in order to accept SNAP benefits as a form of payment.²⁶

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 in order to accept SNAP.²⁷ In these cases, the farmers market can use a scrip system for payment and use a centralized POS device to process transactions.²⁸

There are two basic scrip systems: a paper scrip (or token system) and a receipt system.²⁹

²¹ 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 3/2/14).

²² SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>.

²³ SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm>. (last accessed 3/2/14).

²⁴ *Id.*

²⁵ 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. (last accessed 3/2/14).

²⁶ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm. (last accessed 3/2/14).

²⁷ Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm. (last accessed 3/2/14).

²⁸ *Id.*

²⁹ Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm. (last accessed 3/2/14).

- The paper scrip system requires the farmer's market to design and purchase tokens or print paper script.³⁰ 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.³¹ Customers can then use the paper scrip or tokens to purchase eligible food at booths throughout the market.³²
- With the receipt system, customers shop for eligible food and individual vendors hold this food aside for the customer.³³ The vendor makes a list of the food and the customer takes the list to a centralized POS to pay with their EBT card.³⁴ After paying, the customer receives a receipt, which they take to the vendor in exchange for the food which has been held aside.³⁵

The farmer's market also must 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.³⁶ In addition, the farmer's market must develop an accounting system and method for reimbursing vendors.³⁷

Farmer's Markets Which Accept EBT

Only a small percentage of farmers' markets and produce markets participate in SNAP EBT.³⁸ Currently, farmers' markets choose whether or not to participate. For farmers' markets that 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.³⁹

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. Fourteen Florida farmers markets' are currently participating in EBT with one more market in the implementation phase.⁴⁰

³⁰ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm. (last accessed 3/2/14).

³¹ Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-what_is_scrip.htm. (last accessed 3/2/14).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm. (last accessed 3/2/14).

³⁷ *Id.*

³⁸ Feasibility of Implementing Electronic Benefit Transfer Systems in Farmer's Markets, Supplemental Nutrition Assistance Program, Report to Congress, US Department of Agriculture, Food and Nutrition Service, 2010, *accessible at*: <http://www.fns.usda.gov/ebt/learn-about-snap-benefits-farmers-markets>. (last accessed 3/2/14)³⁹ Department of Children and Families analysis of HB 535, January 23, 2014.

³⁹ Department of Children and Families analysis of HB 535, January 23, 2014.

⁴⁰ *Id.*

Effect of Proposed Changes

The bill creates an unnumbered section of law relating to the use of SNAP benefits in fresh produce markets.

The bill authorizes the owner or operator of a market selling fresh produce, but does not have an EBT system, to allow certain groups, instead of the owner or operator, to implement and operate an EBT system in the market on behalf of the produce sellers. The bill lists groups authorized to set up the EBT operations and specifies that these groups must also be authorized by the Food and Nutrition Service. The groups specified in the bill 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:

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES