

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 103 Transactions in Fresh Produce Markets

SPONSOR(S): Health & Human Services Committee; Fullwood

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Tuszynski	Brazzell
2) Health & Human Services Committee	11 Y, 0 N, As CS	Tuszynski	Calamas

SUMMARY ANALYSIS

The Supplemental Nutrition Assistance Program (SNAP) is a federal program that 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 farmers' markets and allows farmers' markets to operate EBT systems, but not all farmers' 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 does not require farmers' markets to operate or maintain an EBT system, nor does it apply to markets that already accept SNAP benefits through an EBT system.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2016.

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 the use of an Electronic Benefits Transaction (EBT).⁴

Supplemental Nutrition Assistance Program-SNAP

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

State SNAP Administration

The Florida Department of Children and Families (DCF) administers and operates the SNAP program including the eligibility process for recipients.⁸ The federal government pays 100 percent of the SNAP benefits, and the federal and state governments share the administrative costs.⁹ 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.¹⁰ 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.¹¹ State law requires DCF to 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 DCF must also notify the Department of Financial Services.¹²

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 December 30, 2015).

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 December 30, 2015).

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 S. 414.31, F.S.

⁹ SNAP/Food Stamps, Food Research and Action Center, *accessible at*: <http://frac.org/federal-foodnutrition-programs/snapfood-stamps/> (last visited December 30, 2015).

¹⁰ DCF Food Assistance Program Fact Sheet, *accessible at*: <http://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf> (last visited December 30, 2015).

¹¹ *Id.*

¹² S. 414.33, F.S.

Use of the Electronic Benefits Card

Food assistance monies are placed on an EBT card. Once an individual applies for cash assistance or food assistance with DCF, he or she will receive an EBT card in the mail.¹³

There are three ways for retailers to accept SNAP benefits using EBT: a point of sale (POS) system; a machine that processes EBTs, credit, and debit transactions; 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 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 his or her 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.¹⁴

Retailers Accepting SNAP Benefits

Retailers accepting SNAP benefits as a form of payment must be licensed by the United States Department of Agriculture (USDA).¹⁵ The Food and Nutrition Service (FNS), within the USDA, licenses and monitors retail food stores participating in SNAP.¹⁶ 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.¹⁷ Licensed stores are fully reviewed for eligibility at least once every five years.¹⁸

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 basis¹⁹:
 - 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.²⁰

¹³ EBT Card Issuance, Department of Children and Families Access Program, *accessible at*: <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/ebt-card-issuance> (last visited December 30, 2015).

¹⁴ SNAP Training guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retailers/store-training.htm> (last accessed December 30, 2015)

¹⁵ Supplemental Nutrition Assistance Program-Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/additional-information> (last visited December 30, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Supplemental Nutrition Assistance Program Training Guide for Retailers, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/supplemental-nutrition-assistance-program-training-guide-retailers> (last visited December 30, 2015).

¹⁹ The store must offer perishable goods in a least two of the categories.

²⁰ Supplemental Nutrition Assistance Program, USDA Food and Nutrition Service, *accessible at*: <http://www.fns.usda.gov/snap/retail-store-eligibility-usda-supplemental-nutrition-assistance-program> (last visited December 30, 2015).

Qualified retailers can then apply to be a SNAP provider, either online or with the use of a paper application.²¹

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.²²

Farmers' Markets

Farmers' markets are eligible under federal law to collect SNAP benefits as a form of payment for the sale of food.²³ The USDA defines a farmers' 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)."²⁴ Like traditional retailers, the USDA requires farmers' markets to obtain a license in order to accept SNAP benefits as a form of payment.²⁵

Individual farmers may apply for and receive a license to accept SNAP benefits, but when individual farmers do not have a license, the farmers' markets, rather than the individual farmers, must hold an FNS license in order to accept SNAP.²⁶ In these cases, the farmers' markets can use a scrip²⁷ system for use and payment within the market and use a centralized POS device to process transactions.²⁸

The FNS describes two basic scrip systems to be used in markets with a centralized POS device: a paper scrip (or token system) and a receipt system.²⁹

The paper scrip system requires the farmers' markets to design and purchase tokens or print paper scrip.³⁰ With the paper scrip system, customers swipe their EBT card at a centrally located POS device and the market staff gives 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 that has been held aside.³⁵

The farmers' markets 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

²¹ SNAP Retail Merchants. "Operating a CSA and SNAP Participation." *accessible at*: <http://www.fns.usda.gov/ebt/what-farmers-market> (last visited December 30, 2015).

²² *Supra.* at FN 18.

²³ 7 U.S.C. s. 2012(o) and 7 CFR s. 271.2 – A Farmers' Market is included in the definition of Retail food store for the purposes of SNAP.

²⁴ What is a Farmers' Market, Supplemental Nutrition Assistance Program, USDA, *accessible at*: <http://www.fns.usda.gov/ebt/what-farmers-market> (last accessed December 30, 2015)

²⁵ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA, *accessible at*: <http://www.fns.usda.gov/ebt/market-responsibilities> (last accessed December 30, 2015).

²⁶ Scrip System, Supplemental Nutrition Assistance Program, USDA *accessible at* <http://www.fns.usda.gov/ebt/scrip-system-paper-scrip-token-or-receipts> (last accessed December 30, 2015).

²⁷ A document used as evidence that the holder or bearer is entitled to receive something.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA, *accessible at*: http://www.fns.usda.gov/snap/ebt/fm-scrip-market_responsibilities.htm (last accessed December 30, 2015).

³¹ Scrip System, Supplemental Nutrition Assistance Program, USDA, *accessible at* <http://www.fns.usda.gov/ebt/scrip-system-paper-scrip-token-or-receipts> (last accessed December 30, 2015).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

while operating under the market's license.³⁶ In addition, the farmers' markets must develop an accounting system and method for reimbursing vendors.³⁷

Only a small percentage of farmers' markets nationwide participate in SNAP EBT. In order to encourage greater EBT participation, the USDA provides grants to expand the use of SNAP benefits and EBT within farmers' markets.³⁸

DCF announced a USDA grant on July 27, 2012, that would provide free wireless EBT equipment allowing up to 100 farmers' markets within the state to handle SNAP redemption.³⁹ As of October 10, 2015, 82 of Florida's farmers' markets are participating in EBT.⁴⁰

Effect of Proposed Changes

The bill creates s. 414.456, F.S., to authorize the owner or operator of a fresh produce market that does not have an EBT system to allow certain groups 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 FNS. 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 it does not:

- Apply to a market selling fresh produce whose owner or operator has an EBT system for accepting SNAP benefits in the market;
- 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; or
- Require a market owner or operator to create, operate, or maintain an EBT system on behalf of his produces sellers.

The bill provides for an effective date of July 1, 2016.

Effect of Proposed Changes

The bill authorizes the owner or operator of a fresh produce market that does not have an EBT system to allow certain groups 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.

³⁶ Market Responsibilities, Supplemental Nutrition Assistance Program, USDA, *accessible at*: <http://www.fns.usda.gov/ebt/market-responsibilities> (last accessed December 30, 2015).

³⁷ *Id.*

³⁸ Learn About SNAP Benefits at Farmers Markets, EBT, USDA, *accessible at*: <http://www.fns.usda.gov/ebt/learn-about-snap-benefits-farmers-markets> (last accessed December 30, 2015).

³⁹ More Farmers' Markets in Florida Will Soon Accept Food Assistance Cards, Florida Department of Children and Families, *accessible at*: <http://www.myflfamilies.com/press-release/more-farmers-markets-florida-will-soon-accept-food-assistance-cards> (last accessed December 30, 2015).

⁴⁰ SNAP Authorized Farmers' Markets, USDA *accessible at* Department of Agriculture, National Farmers Market Directory, *accessible at*: <http://www.fns.usda.gov/ebt/learn-about-snap-benefits-farmers-markets> (last accessed December 30, 2015).

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 s. 414.456, F.S., relating to supplemental nutrition assistance programs in 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

On January 14, 2016, the Health and Human Services Committee adopted one amendment. The amendment created s. 414.456, F.S., instead of an unnumbered section of law.

The bill was reported favorably as a committee substitute, and the analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.