

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1083 Small Food Retailers

SPONSOR(S): Agriculture & Property Rights Subcommittee; Lee, Jr. and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 1592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	10 Y, 2 N, As CS	Thompson	Smith
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Healthy Food Financing Initiatives have been developed at the local, state, and federal levels to provide funding to create healthy food options in low-income areas in which residents do not live in close proximity to affordable and healthy food retailers. The Department of Agriculture and Consumer Services (DACs) administers the state's Healthy Food Financing Initiative.

The bill repeals the Healthy Food Financing Initiative and directs DACs to establish the Healthy Food Assistance Program that focuses on providing smaller retailers assistance for projects that increase the availability and sales of fresh and nutritious food in low-income and moderate-income communities.

The bill provides the duties and responsibilities of DACs in administering the Healthy Food Assistance Program to include:

- Establishing program administrator eligibility guidelines;
- Establishing criteria for a project administrator to use in the selection of projects;
- Providing educational materials to a project administrator to educate consumers regarding healthy eating;
- Granting appropriated funds to a qualified not-for-profit project administrator; and
- Electronically submitting an annual report on the program to the President of the Senate and Speaker of the House of Representatives.

The bill provides that the project administrator of the Healthy Food Assistance Program be responsible for implementing and operating the program by:

- Establishing and administering an application process, based on enumerated requirements, for small food retailers to participate;
- Promoting program availability throughout the state and undertake efforts to raise funds from private and public sources;
- Using up to ten percent of the funds distributed by DACs for administrative and operational costs;
- Collecting and providing data as required by DACs;
- Establishing goals, standards, and accountability mechanisms for eligible project applicants; and
- Expending funds for each approved project only for certain purposes.

The bill provides a repeal date of June 30, 2020, unless the Healthy Food Assistance Program is reviewed and saved from repeal by the Legislature.

The bill appears to have an indeterminate negative fiscal impact on DACs. The bill may have a positive fiscal impact on the "small food retailers" eligible to receive financial assistance.

The effective date of the bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1083a.APR

DATE: 3/21/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Access to Healthy Food Options

According to DACS, access to quality retail grocers in Florida is strongly linked to a variety of diet-related health outcomes.¹ Communities, particularly low-income areas, in which residents do not live in close proximity to affordable and healthy food retailers are known as food deserts.² Healthy food options in these communities are hard to find or are unaffordable.³ There are food deserts in urban, rural, and tribal communities.⁴

There are many ways to measure food store access for individuals and for neighborhoods, and many ways to define which areas are food deserts.⁵ Most measures and definitions take into account at least some of the following indicators of access:

- Accessibility to sources of healthy food, as measured by distance to a store or by the number of stores in an area;
- Individual-level resources that may affect accessibility, such as family income or vehicle availability; and
- Neighborhood-level indicators of resources, such as the average income of the neighborhood and the availability of public transportation.⁶

Census-tract-level⁷ characteristics provide context on food access in neighborhoods.⁸ The United States Department of Treasury defines a low-income census tract as any tract where:

- The tract's poverty rate is 20 percent or greater;
- The tract's median family income is less than or equal to 80 percent of the State-wide median family income; or
- The tract is in a metropolitan area and has a median family income less than or equal to 80 percent of the metropolitan area's median family income.⁹

¹ Florida Department of Agriculture and Consumer Services, Impact of Food Deserts on Diet-Related Health Outcomes, available at: <http://www.freshfromflorida.com/Divisions-Offices/Food-Nutrition-and-Wellness/Florida-s-Roadmap-To-Living-Healthy/Impact-of-Food-Deserts-on-Diet-Related-Health-Outcomes> (last visited Mar. 16, 2017).

² Administration for Children & Families, U.S. Department of Health & Human Services, available at: <http://www.freshfromflorida.com/Divisions-Offices/Food-Nutrition-and-Wellness/Florida-s-Roadmap-To-Living-Healthy/Impact-of-Food-Deserts-on-Diet-Related-Health-Outcomes> <https://www.acf.hhs.gov/ocs/programs/community-economic-development/healthy-food-financing> (last visited Mar. 15, 2017).

³ Id.

⁴ Id.

⁵ U.S. Department of Agriculture, Food Access Research Atlas, Documentation, <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (last visited Mar. 15, 2017).

⁶ Id.

⁷ U.S. Census Bureau provides that "Census Tracts" are small, relatively permanent statistical subdivisions of a county or equivalent entity that are updated by local participants prior to each decennial census as part of the Census Bureau's Participant Statistical Areas Program. The Census Bureau delineates census tracts in situations where no local participant existed or where state, local, or tribal governments declined to participate. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data, available at: https://www.census.gov/geo/reference/gtc/gtc_ct.html (last visited Mar. 15, 2017).

⁸ U.S. Department of Agriculture, Food Access Research Atlas, Documentation, <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (last visited Mar. 15, 2017).

⁹ U.S. Department of the Treasury, New Markets Tax Credit (NMTC) Program Evaluation Final Report, p. 36, available at: <https://www.cdfifund.gov/Documents/NMTC%20Program%20Evaluation%20Final%20Report.pdf> (last visited Mar. 15, 2017).

A census tract is considered to have low access if a significant number or share of individuals in the tract is far from a supermarket. Recent data provides that the number of low-income census tracts increased from 29,285 in 2010 to 30,870 in 2015.¹⁰

To increase food store access, states, and the federal government have undertaken initiatives to increase access to healthy, affordable foods in these low access communities. Twenty-eight states have taken some action to address the issue.¹¹ These actions include, but are not limited to, creating financing initiatives, undertaking studies, and studying access to food.

Healthy Food Financing Initiative

Current law directs DACS to establish by rule a Healthy Food Financing Initiative (program) that comprises and coordinates the use of federal, state, and private loans and grants, federal tax credits, and other forms of financial assistance.¹² This financial assistance must be used for rehabilitation or expansion of independent grocery stores, supermarkets, and community facilities to increase access to fresh produce and other nutritious food in underserved communities.¹³

The law defines the following terms:

- “Community facility” means a property owned by a nonprofit or for-profit entity in which health and human services are provided and space is offered in a manner that provides increased access to, or delivery or distribution of, food or other agricultural products to encourage public consumption and household purchases of fresh produce or other healthy food to improve the public health and well-being of low-income children, families, and older adults.¹⁴
- “Independent grocery store or supermarket” means an independently-owned grocery store or supermarket whose parent company does not own more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database.¹⁵
- “Low-income community” means a population census tract, as reported in the most recent U.S. Census Bureau American Community Survey,¹⁶ that meets one of the following criteria:
 - A poverty rate of at least 20 percent;
 - In the case of a low-income community located outside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or
 - In the case of a low-income community located inside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan median family income, whichever is greater.¹⁷
- “Program” means the Healthy Food Financing Initiative established by DACS.¹⁸
- “Underserved community” means a distressed urban, suburban, or rural geographic area where a substantial number of residents have low access to a full-service grocery store or supermarket. An area with limited supermarket access must be:
 - A census tract, as determined to be an area with low access by the USDA, as identified in the Food Access Research Atlas;¹⁹

¹⁰ U.S. Department of Agriculture, Economic Research Service Economic Information Bulletin Number 165 (January 2017), p. 3, available at: <https://www.ers.usda.gov/webdocs/publications/eib165/eib-165.pdf?v=42752> (last visited Mar. 15, 2017).

¹¹ Healthy Food Portal, *Policy Efforts and Impacts, State and Local*, <http://healthyfoodaccess.org/policy-efforts-and-impacts/state-and-local> (last visited November 18, 2015).

¹² Ch. 2016-221, Laws of Fla., codified in s. 500.81, F.S.

¹³ s. 500.81(2), F.S.

¹⁴ s. 500.81(1)(a), F.S.

¹⁵ s. 500.81(1)(c), F.S.

¹⁶ U.S. Census Bureau, *Our Surveys and Programs*, <https://www.census.gov/programs-surveys.html> (last visited November 20, 2015).

¹⁷ s. 500.81(1)(d), F.S.

¹⁸ s. 500.81(1)(e), F.S.

¹⁹ U.S. Department of Agriculture, *Food Access Research Atlas*, <http://www.ers.usda.gov/data-products/food-access-research-atlas.aspx> (last visited November 18, 2015).

- Identified as a limited supermarket access area as recognized by the CDFI Fund;²⁰ or
- Identified as an area with low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.²¹

DACS is authorized to contract with one or more nonprofit organizations or Florida-based federally certified CDFI to administer the program.²² To be eligible to contract with DACS to administer the program, the CDFI or nonprofit organization must demonstrate:

- Prior experience in healthy food financing;
- Support from the CDFI Fund within the Treasury;
- The ability to manage and operate lending and tax credit programs; and
- The ability to assume full financial risk for loans made under the program.²³

DACS is required to establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, underwrite and disburse grants and loans, and monitor program compliance and impact.²⁴ To carry out these directives, the law authorizes DACS to contract with a third-party.²⁵ If DACS contracts with a third party administrator, the third party administrator must create a revolving loan fund for the purpose of financing projects that meet the criteria of the program.²⁶ The third-party administrator must report to DACS annually.²⁷

DACS is also required to create eligibility guidelines and provide financing through an application process.²⁸ Eligible projects must:

- Be located in an underserved community;
- Primarily serve low-income communities; and
- Provide for renovation or expansion of, including infrastructure upgrades to, existing independent grocery stores or supermarkets; or the renovation or expansion of, including infrastructure upgrades to, community facilities to improve the availability and quality of fresh produce and other healthy foods.²⁹

DACS is required to report to the Legislature annually on the projects funded, the geographic distribution of the projects, the costs of the program, and the outcomes, including the number and type of jobs created.³⁰

The law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the program after 7 years and report to the Speaker of the House of Representatives and the President of the Senate.³¹ The report must include, but is not limited to, health impacts based on data collected by the state on diabetes, heart disease and other obesity-related diseases, and other factors as determined by DACS.³² If the OPPAGA report determines the program to be unsuccessful after 7 years, DACS must create guidelines to return unused funds to the initial investor.³³

²⁰ CDFI Fund, *CDFI Information Mapping System*, <https://www.cdfifund.gov/Pages/mapping-system.aspx> (last visited November 18, 2015).

²¹ s. 500.81(1)(f), F.S.

²² s. 500.81(3)(a), F.S.

²³ *Id.*

²⁴ s. 500.81(3)(b), F.S.

²⁵ s. 500.81(3)(b)1., F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ s. 500.81(3)(b)2., F.S.

²⁹ *Id.*

³⁰ s. 500.81(3)(b)3., F.S.

³¹ s. 500.81(4)(a), F.S.

³² *Id.*

³³ s. 500.81(4)(b), F.S.

Eligible applicants for financing include for-profit entities, including a convenience store or a fueling station, or not-for-profit entities, including, but not limited to, a sole proprietorship, partnership, limited liability company, corporation, cooperative, nonprofit organization, nonprofit community development entity, or private university.³⁴

To receive program financing, applicants must:

- Demonstrate the capacity to successfully implement the project and the likelihood that the project will be economically self-sustaining;
- Demonstrate the ability to repay the loan; and
- Agree, as an independent grocery store or supermarket, for at least 5 years, to:
 - Accept Supplemental Nutrition Assistance Program (SNAP)³⁵ benefits;
 - Apply to accept Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)³⁶ benefits and accept such benefits if approved;
 - Allocate at least 30 percent of food retail space for the sale of perishable foods, which may include fresh or frozen dairy products, fresh produce, and fresh meats, poultry, and fish;
 - Comply with all data collection and reporting requirements established by DACS; and
 - Promote the hiring of local residents.³⁷

The law provides an exception to the 30 percent minimum requirement for food retail space for corner stores, bodegas, and other non-traditional grocery stores if the funding will be used for refrigeration displays, or other one-time capital expenditures to promote the sale of fresh produce or perishables.³⁸

DACS or its third-party administrator is required to determine which projects receive financing by:

- Giving preference to local Florida-based grocers or local business owners with experience in grocery stores and to grocers and business owners with a business plan model that includes written documentation of opportunities to purchase from Florida farmers and growers before seeking out-of-state purchases;
- Considering the level of need in the area to be served;
- Considering the degree to which the project will have a positive economic impact on the underserved community, including the creation or retention of jobs for local residents;
- Considering the location of existing independent grocery stores, supermarkets, or other markets relevant to the applicant's project and provide the established entity the right of first refusal for such projects; and
- Considering other criteria as may be determined by DACS.³⁹

Financing is authorized for selected projects for the following purposes:

- Site acquisition and preparation;
- Construction and build-out costs;
- Equipment and furnishings;
- Workforce training or security;
- Predevelopment costs, such as market studies and appraisals;
- Energy-efficiency measures;

³⁴ s. 500.81(5), F.S.

³⁵ SNAP is a federal program that offers nutrition assistance to millions of eligible, low-income individuals and families and provides economic benefits to communities. USDA, *Supplemental Nutrition Assistance Program*, <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last visited November 18, 2015).

³⁶ WIC is a federal program that provides grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. USDA, *Women, Infants, and Children (WIC)*, <http://www.fns.usda.gov/wic/women-infants-and-children-wic> (last visited November 18, 2015).

³⁷ s. 500.81(5), F.S.

³⁸ Id.

³⁹ s. 500.81(6), F.S.

- Working capital for first-time inventory and startup costs;
- Acquisition of seeds and starter plants for the residential cultivation of fruits, vegetables, herbs, and other culinary products. The bill stipulates that only 7 percent of the total funds expended in any one project may be used for such acquisition; and
- Other purposes as may be determined by DACS or its third-party administrator.⁴⁰

DACS is prohibited from distributing more than \$500,000 among more than three recipients.⁴¹

Effect of Proposed Changes

The bill provides the following findings:

- Overweight children and adults are at greater risk for numerous adverse health consequences, including type-two diabetes, heart disease, stroke, high blood pressure, high cholesterol, certain cancers, asthma, low self-esteem, depression, and other debilitating diseases.
- In Florida, nearly 27 percent of adults were considered overweight or obese in 2015, and nearly 13 percent of children were considered overweight and obese in 2011.
- Obese children are at least twice as likely as non-obese children to become obese adults.
- Obesity-related health conditions have serious economic costs.
- Annual health care costs from obesity are at least \$190 billion dollars, or 21 percent of the nation's total health care spending, and are expected to rise substantially.
- Roughly 40 percent of these costs are paid through Medicare and Medicaid, meaning that taxpayers pay much of the cost.
- Medicare and Medicaid spending would be reduced by 8.5 percent and 11.8 percent, respectively, in the absence of obesity-related spending.
- Annual medical expenditures in Florida related to obesity are estimated at \$6,675,670,940 with approximately \$2.6 billion of this amount paid by Medicare and Medicaid in the state.
- Many Americans, particularly those in low-income neighborhoods, rural areas, and communities of color, reside where adequate access to full-service grocery stores is not guaranteed.
- Low-income areas have more than twice as many convenience stores and four times as many small grocery stores as high-income areas.
- Proximity to convenience stores within a neighborhood is associated with higher rates of obesity and diabetes.
- Small food retailers tend to sell few fresh produce, whole grains, or low-fat dairy products.
- Small food retailers commonly sell highly processed foods that are high in fat and low in nutrients.
- Small food retailers tend to charge higher prices for their food as compared to grocery stores and supermarkets.
- Providing assistance to existing small food retailers to stock fresh produce and other healthy foods and promote good nutrition can provide residents with access to healthier foods.
- Community programs that work with small food retailers have shown promise in increasing healthy food sales, improving store offerings, and promoting good nutrition.
- The program established pursuant to this act is intended to be a source of funding to provide assistance for Florida's small food retailers operating in certain urban and rural areas so that the retailers sell more fresh fruits and vegetables and other healthy foods at affordable prices to neighboring residents in an effort to improve residents' diets and health.

Healthy Food Assistance Program

The bill repeals the Healthy Food Financing Initiative and establishes the Healthy Food Assistance Program (Program) within DACS.

⁴⁰ s. 500.81(7), F.S.

⁴¹ s. 500.81(8), F.S.

The purpose of the program is to provide a process for small food retailers to receive assistance for projects that increase the availability and sales of fresh and nutritious food, including fresh vegetables, fruits, meats, and seafood in low-income and moderate-income communities.

The bill defines the following terms:

Low-income community: a population census tract, as reported in the most recent United States Census Bureau American Community Survey, which meets one of the following criteria:

- The poverty rate is at least 20 percent;
- In the case of a low-income community located outside a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or
- In the case of a low-income community located within a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan area's median family income, whichever is greater.

Moderate-income community: means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, in which the median family income is between 81 percent and 95 percent of the statewide median family income or metropolitan area's median family income.

Program: the Healthy Food Assistance Program established within DACS pursuant to s. 595.430, F.S.

Project administrator: an entity selected by DACS to manage the program to assist small food retailers in low-income and moderate-income communities in the state.

Small food retailer: a small-scale retail store of less than 3,000 square feet, such as a corner store, convenience store, neighborhood store, small grocery store, or bodega, which sells a limited selection of foods and other products.

Development of the Healthy Food Assistance Program

The bill requires DACS to administer, and develop guidelines for the operation of the program. The guidelines may include procedures for granting appropriated funds to a qualified project administrator to provide assistance to small food retailers in urban and rural low-income and moderate-income communities to increase the sales of fresh produce and other healthy foods.

In administering the program, DACS is required to:

- Establish program administrator eligibility guidelines, including, but not limited to, the development of an application process for project administrators and monitoring and accountability mechanisms for projects receiving assistance under the program. At a minimum, a project administrator must be a not-for-profit entity and have demonstrated experience in developing and implementing strategies for healthy food retail in small stores.
- Establish criteria for a project administrator to use in determining which projects to select, including, but not limited to, consideration of the level of need in the area proposed to be served by the applicant.
- Provide materials to a project administrator that educate consumers on the benefits of healthy eating and encourage, when possible, buying Fresh from Florida agricultural products for distribution.
- Electronically submit an annual report to the President of the Senate and the Speaker of the House of Representatives regarding the program, including, but not limited to, projects funded, project expenditures, the geographic distribution of funds, program results, and the program's impact on any health-related initiatives.

Project Administrator of the Healthy Food Assistance Program

The bill provides duties and responsibilities for project administrators who are responsible for implementing and operating the program. The project administrator is required to establish and administer an application process for small food retailers to participate in the program.

At a minimum, in order to receive assistance under the program, a small food retailer must be located in a low-income community or moderate-income community, and accept, or agree to apply to and accept Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) benefits.

The project administrator is also required to:

- Promote the program availability throughout the state and undertake efforts to raise funds from other private and public sources;
- Use up to 10 percent of the funds distributed by DACS for administrative and operational costs associated with operating the program, if such costs are not covered by other budgets or in-kind resources;
- Collect and provide data and other information quarterly as required by DACS;
- Establish defined goals, standards, and accountability mechanisms for eligible project applicants to ensure that the expenditure of moneys is consistent with the purpose of the program;
- Develop a plan for eligible project applicants by describing specific goals for increasing the sales of produce and other healthy foods and educating consumers on the benefits of healthy eating, including, but not limited to, mechanisms to:
 - Engage communities to support participating small food retailers; and
 - Seek guidance from state, county, or municipal agencies, private or public universities, cooperative extension services, community-based organizations, and community members.
- Establish standards to assess whether project goals are met;
- Ensure expenditures are appropriate by monitoring the activities of small food retailers.
- Expend funds for each approved project only for the following purposes:
 - Refrigeration, display shelving, or other equipment that small food retailers need, up to a maximum of \$7,500 per retailer.
 - Materials and supplies for nutrition education and healthy food promotion.
 - Initial purchases of healthy foods, including dairy products, and fresh produce, up to a maximum of \$2,000 per retailer.

The bill exempts the project administrator of the program from provisions of Chapter 287, F.S., relating to state procurement of certain property services.

Funding/Repeal Date of the Healthy Food Assistance Program

Funding for DACS to perform its duties and responsibilities as it relates to the Healthy Food Assistance Program is contingent upon appropriations provided by the Legislature in the General Appropriations Act.

The bill includes a repeal date of June 30, 2020, unless the Healthy Food Assistance Program is reviewed and saved from repeal by the Legislature.

B. SECTION DIRECTORY:

Section 1 creates s. 595.430, F.S., related to Healthy Food Assistance Program.

Section 2 creates s. 595.431, F.S., related to definitions.

Section 3 creates s. 595.432, F.S., related to duties and responsibilities of the department.

Section 4 creates s. 595.433, F.S., related to duties and responsibilities of project administrators.

Section 5 repeals s. 500.81, F.S., related to Healthy Food Financing Initiative.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has no fiscal impact on state revenues.

2. Expenditures:

The fiscal impact on state government is indeterminate. The bill requires funding for DACS to be as provided by the Legislature in the General Appropriations Act.

According to DACS, not knowing the amount of an appropriation for the program, it is difficult to estimate costs to the department. The larger the appropriation, the greater the number of small retailers that could be served and the bigger the impact to the department, including the need for an FTE and costs to cover materials that educate consumers on the benefits of healthy eating.⁴²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has no fiscal impact on local government revenues.

2. Expenditures:

The bill has no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector since small food retailers in urban and rural low-income and moderate-income communities will be eligible to receive financial assistance to increase the sales of fresh produce and other healthy foods.

D. FISCAL COMMENTS:

The bill requires funding for DACS to perform its duties and responsibilities pursuant to the bill to be as provided by the Legislature in the General Appropriations Act.

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.

⁴² Florida Department of Agriculture & Consumer Services, Agency Analysis of 2017 HB 1083, p. 3 (Mar. 8, 2017).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Agriculture & Property Rights Subcommittee adopted one amendment to the bill. The amendment removes the provision that requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study the policy impact of placing healthy food in previously underserved communities. The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.