

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1159 Food Recovery

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Agriculture, Conservation & Resiliency Subcommittee, Roth

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	19 Y, 0 N, As CS	Mamontoff	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	Byrd	Pigott
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

It is estimated that forty percent of the food produced in the United States goes uneaten, and approximately one-fifth of Floridians are food insecure, including one million children. Each year, millions of pounds of surplus and slightly blemished fresh fruits and vegetables are destroyed while many residents of the state go without food.

Food recovery programs are beneficial to residents who otherwise lack the means to purchase fresh fruit and vegetables by providing surplus goods for distribution to those in need rather than destroying them. The Commissioner of Agriculture is responsible for assisting these programs, and when needed, aiding in their establishment and supporting their continued and efficient operation.

The Food Recovery Program, enacted by the Legislature in 1994 and administered by the Department of Agriculture and Consumer Services (DACS), gathers leftover farm-fresh produce after harvests, collects unsold food products from wholesale and retail sources, and distributes recovered foods to local food banks and emergency food programs. Through this program, DACS connects farmers with non-profit organizations and volunteers.

The bill directs DACS to implement a pilot program for food recovery entities to negotiate a discounted price for fresh food products. The purpose of this program is to encourage food recovery entities to receive and distribute more fresh food products that can be exclusively distributed for charitable purposes to relieve human hunger in the state.

The bill directs food recovery entities to negotiate and pay no more than 50 percent of the current wholesale market price to food producers for the purchase of fresh food products. The bill also directs DACS to reimburse a food recovery entity for each negotiated purchase of products as well as an additional two cents per pound of products purchased for costs associated with delivery and distribution.

The bill directs DACS to submit reports on the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025, and annually thereafter.

The bill directs DACS to adopt rules to implement the pilot program and provides a sunset date of January 1, 2028, for the pilot program.

The bill does not have a fiscal impact to the state.

The bill provides an effective date of July, 1 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

It is estimated that forty percent of the food produced in the United States goes uneaten, and approximately one-fifth of Floridians are food insecure, including one million children.<sup>1</sup> Each year, millions of pounds of surplus and slightly blemished fresh fruits and vegetables are destroyed while many residents of the state go each day without food.<sup>2</sup> While food banks and food pantries are critical to addressing food insecurity, they do not always have access to fresh, nutrient-dense food.<sup>3</sup> Food banks often receive donations of less-healthy options, including canned or packaged food products that have a longer shelf life and are easier to distribute. Lack of funding, staff, and physical infrastructure make it difficult for a food bank or food pantry to secure, store, and distribute perishable foods, such as fruits and vegetables.<sup>4</sup>

The Commissioner of Agriculture is responsible for assisting in food recovery programs, and when needed, aiding in their establishment and supporting their continued and efficient operation.<sup>5</sup> Food recovery programs are beneficial to residents who otherwise lack the means to purchase fresh fruit and vegetables by providing surplus goods for distribution to those in need rather than destroying them.<sup>6</sup> In order to help coordinate the establishment of food recovery programs, the Department of Agriculture and Consumer Services (DACS) may:

- Identify suppliers, volunteers, and nonprofit organizations in the community to ascertain the level of interest in establishing a food recovery program;
- Provide facilities and other resources for initial organizational meetings; and
- Provide direct or indirect support for the fledgling program, upon demonstration of serious interest at the local level.<sup>7</sup>

Enacted by the Legislature in 1994, and administered by the Division of Food, Nutrition, and Wellness within DACS, the Food Recovery Program (program) gathers leftover farm-fresh produce after harvests, collects unsold food products from wholesale and retail sources, and distributes recovered foods to local food banks and emergency food programs. Through the program, DACS connects farmers with non-profit organizations and volunteers and holds workshops and trainings on the program.<sup>8</sup> The program works to recover food in two ways:

- By working with farmers: Volunteers visit farms and collect surplus produce in a process known as gleaning.
- By working with schools: DACS provides schools with guidance on food waste audits, share tables, food donations, and composting.<sup>9</sup>

The primary goal of the program is to reduce food waste through field gleaning (i.e. gathering leftover crops from fields after they have been commercially harvested) while increasing farmer profit margins

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<sup>1</sup> Florida Department of Agriculture and Consumer Services (DACS), *Food Recovery Program*, <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Food-Recovery-Program> (last visited Jan. 18, 2024).

<sup>2</sup> Section 595.420(1), F.S.

<sup>3</sup> DACS, *Agency Analysis for HB 399*, March 1, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

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

<sup>5</sup> Section 595.420(2), F.S. A food recovery program is a local, volunteer-based organization near an agricultural production area of the state that is established for the exclusive purpose of soliciting, collecting, packaging, and delivering surplus fresh fruit and vegetables for distribution in communities throughout the state. Distribution of the food to the needy is accomplished by DACS and volunteer and nonprofit organizations.

<sup>6</sup> Section 595.420(1), F.S.

<sup>7</sup> Section 595.420(3), F.S.

<sup>8</sup> DACS, *Food Recovery Program*, <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Food-Recovery-Program> (last visited Jan. 18, 2024).

<sup>9</sup> *Id.*

through tax incentives. Trained volunteers conduct the field gleaning, post-harvest produce pick-up, as well as transportation of the produce. DACS ensures that donors are provided with proper documentation for a potential tax deduction based on the number of pounds donated.<sup>10</sup>

Food distribution programs are funded by the Legislature through the program. Partnerships for the 2022-2023 fiscal year included:

- The Farmers Feeding Florida Program, which is run by the Feeding Florida organization and purchases cosmetically blemished produce from local agricultural producers and provides it to households in need through Feeding Florida's member food banks.
- The Farm Share Program, which provides food free of charge to local community partner agencies as well as directly to families, children, senior citizens, and individuals in need to address food insecurity throughout the state.<sup>11</sup>

For the 2023-2024 fiscal year, \$5 million in nonrecurring funds was appropriated from the General Revenue Fund to DACS for the Fresh Florida Food Products Program for the purchase and delivery of fresh Florida food products to the following organizations: Feeding Florida Program,<sup>12</sup> Farm Share Program,<sup>13</sup> and the Palm Beach County Food Bank.<sup>14</sup>

The recipient organizations are required to purchase, transport and distribute non-Emergency Food Assistance Program (TEFAP)<sup>15</sup> fresh food products from Florida agricultural companies for the benefit of Florida residents in need.<sup>16</sup> The recipient organization will be reimbursed for the fresh food products as per the seller's invoice and some transportation costs. In order to qualify for reimbursement, the recipient organizations are directed to do the following:

- Purchase fresh food products at a discount;
- Ship the fresh food products within seven days of harvest; and
- Submit monthly reports to DACS.<sup>17</sup>

The purchased Florida grown fresh products are restricted to charitable purposes for hunger relief and may not re-enter the wholesale, retail or secondary market. DACS must reimburse the recipient organizations on a monthly basis, and the recipient organization must pay the seller within 14 days after receiving their specific reimbursement.<sup>18</sup>

## Effect of the Bill

The bill directs DACS, subject to appropriation, to implement a pilot program for food recovery entities<sup>19</sup> to negotiate a discounted price for fresh food products<sup>20</sup> (products) so that the products can be exclusively distributed for charitable purposes to relieve human hunger in the state.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> \$2,500,000 was appropriated for Feeding Florida. General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>13</sup> \$2,250,000 was appropriated for Farm Share. *Id.*

<sup>14</sup> \$250,000 was appropriated for the Palm Beach County Food Bank. *Id.*

<sup>15</sup> The Emergency Food Assistance Program (TEFAP) is a federal program that helps supplement the diets of people with low income by providing them with emergency food assistance at no cost. USDA provides 100 percent American-grown USDA Foods and administrative funds to states to operate TEFAP. USDA, Food and Nutrition Services, *The Emergency Food Assistance Program*, <https://www.fns.usda.gov/tefap/emergency-food-assistance-program> (last visited Jan. 20, 2024).

<sup>16</sup> General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>17</sup> The monthly reports must include, at a minimum, the amount of food purchased by type, quantity and cost, the purchase location, the purchase date, and distribution location.

<sup>18</sup> General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>19</sup> The bill defines "food recovery entity" as a nonprofit association engaged in food recovery and distribution that has at least 10 years of operation in the state and has received a minimum of 10 million pounds of perishable fresh food products annually for the last 3 years.

<sup>20</sup> The bill defines "fresh food products" as high-quality fresh fruits, vegetables, proteins, and dairy produced by a food producer that are delivered to their final destination for charitable distribution and meet United States Department of Agriculture commodity standards and grades upon such delivery.

The bill directs food recovery entities to negotiate and pay no more than 50 percent of the current wholesale market price<sup>21</sup> to a food producer<sup>22</sup> for the purchase of food products. The harvest or processing date and the current wholesale market price of each product purchased and the shipment destination must be included by invoice, bill of lading, or other documents from the food producer to the food recovery entity. A food recovery entity may reject any product that does not meet its quality standards.

The bill directs DACS to reimburse a food recovery entity for each negotiated purchase of products and an additional two cents per pound of products purchased for costs associated with delivery and distribution for charitable purposes. To receive reimbursement, a food recovery entity must do the following:

- Certify in writing that the purchased products meet the quality standards of the food recovery entity, the products will not be sold to wholesale, retail, or secondary markets for monetary gain, and each fresh food product was purchased at a discounted price; and
- Submit an invoice as prescribed by DACS which includes the shipment date, the shipment location by shipper and city, the number of packages shipped and the price for each product, the total price paid for each product, the total invoice price paid, and the total pounds shipped by measured weight or by estimate.

The bill directs DACS to submit reports on the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025, and annually thereafter. The reports must include the following:

- Each product by package size, total number of packages, and average price per package;
- Each product by total pounds and total average price per pound; and
- Total dollars spent on each product and total dollars spent on all products.

The bill directs DACS to adopt rules to implement the pilot program. The bill also provides an expiration date of January 1, 2028, for the pilot program.

## B. SECTION DIRECTORY:

Section 1. Amends s. 595.420, F.S., relating to food recovery.

Section 2. Provides an effective date of July 1, 2024.

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<sup>21</sup> The bill defines “current wholesale market price” to mean the wholesale market price for each food product on the invoice date at the closest shipping point, as reported by the USDA Market News.

<sup>22</sup> The bill defines “food producer” as an agricultural company, or their associated shipper, that produces fresh food products in the state.

## 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:

The bill may have a positive economic impact on agricultural producers, processors and brokers in the state should the Legislature appropriate funds through the pilot program to sell fresh produce to food recovery entities.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill directs DACS to adopt rules to implement the pilot program.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2024, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the definition of “food recovery entity” to specify that means a nonprofit association engaged in food recovery that has at least 10 years of operation in the state, rather than 20 years.

This analysis is drafted to the committee substitute as approved by the Agriculture, Conservation & Resiliency Subcommittee.

On February 12, 2024, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Defines “current wholesale market price” to mean the wholesale market price for each food product on the invoice date at the closest shipping point, as reported by the USDA Market News;
- Specifies a discounted price of no more than 50 percent of the current wholesale market price paid to a food producer for the purchase of food products;
- Revises current market price to current wholesale market price of each fresh food product purchased to be included by invoice, bill of lading, or other documents from the food producer to the food recovery entity;
- Requires a food recovery entity to certify in writing each fresh food product was purchased at the discounted price to receive reimbursement;
- Revises the report submission end date from January 1, 2026, to annually thereafter; and
- Extends the expiration date to January 1, 2028.

The analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.