



Committee on Constitution & Civil Law

**Wednesday, January 23, 2008
2:00PM - 3:00PM
28 HOB**

MEETING PACKET

**Marco Rubio
Speaker**

**Marcelo Llorente
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Constitution & Civil Law

Start Date and Time: Wednesday, January 23, 2008 02:00 pm
End Date and Time: Wednesday, January 23, 2008 03:00 pm
Location: 28 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 99 Food Donation by Public Food Service Establishments by Porth
HB 151 Radio Equipment Using Law Enforcement Frequencies by Reed


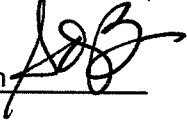
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 99 Food Donation by Public Food Service Establishments

SPONSOR(S): Porth and others

TIED BILLS: IDEN./SIM. BILLS: SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	_____	Thomas 	Birtman 
2) <u>Safety & Security Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates the "Florida Restaurant Lending a Helping Hand Act."

The bill amends existing provisions regarding liability for canned or perishable food distributed free of charge by expanding the definition of "perishable food" to include foods that have been prepared at a licensed public food service establishment. The bill provides protection from criminal and civil liability to public food service establishments that donate perishable foods apparently fit for human consumption to a bona fide charitable or nonprofit organization for free. This immunity from criminal penalty or civil damages does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility - The bill provides protection from criminal and civil liability to public food service establishments that donate perishable foods apparently fit for human consumption to a bona fide charitable or nonprofit organization for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Food Insecurity

The following national statistics were provided by American Second Harvest¹ regarding food insecurity (food security is a situation in which people do not live in hunger or fear of starvation):

- In 2006, 3.3% of all U.S. households (3.8 million households) accessed emergency food from a food pantry one or more times, or 21% of all food-insecure households.
- In 2006, food insecure (low food security or very low food security) households were 19 times more likely than food-secure households to have obtained food from a food pantry, an increase in likelihood from 17 times in 2005.
- In 2006, food insecure (low food security or very low food security) households were 15 times more likely than food-secure households to have eaten a meal at an emergency kitchen, an decrease in likelihood from 19 times in 2005 .
- In 2006, 55.5% of food-insecure households participated in at least one of the three major Federal food assistance programs – Food Stamp Program, The National School Lunch Program, and the Special Supplemental Nutrition Program for Women, Infants, and Children, remaining unchanged from 55.6% in 2005.

Liability for Canned or Perishable Food Distributed Free of Charge

Florida's law regarding liability for canned or perishable food that is distributed free of charge provides protection from criminal and civil liability to a good faith donor or gleaner² of any canned or perishable food apparently fit for human consumption to a charitable or nonprofit organization for free distribution.³ This immunity does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.⁴

The provisions of this section apply to the good faith donation of canned or perishable food regardless of whether such food is readily marketable due to appearance, freshness, grade, surplus, or other such

¹ America's Second Harvest states that they are the nation's largest charitable hunger-relief organization and they include a network of more than 200 member food banks and food-rescue organizations. See http://www.secondharvest.org/about_us/ (last visited on Jan. 15, 2008).

² Section 768.136(1)(b), F.S., defines "gleaner" as "a person who harvests for free distribution an agricultural crop that has been donated by the owner."

³ Section 768.136(2), F.S.

⁴ *Ibid.*

considerations.⁵ These provisions are not to be construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of food for human consumption and the immunity from liability does not relieve any donor of its duty to comply with any law regulating such donor with respect to health or sanitation.⁶ This same criminal and civil liability protection is provided for bona fide charitable or nonprofit organizations, or any representatives or volunteers acting on behalf of such organizations or uncompensated persons acting in a philanthropic manner providing services similar to those of such an organization, which accept, collect, transport, or distribute any canned or perishable food, apparently fit for human consumption, from a good faith donor or gleaner for free distribution.⁷

The term "donor," which appears to include public food service establishments, is defined as:

[A] person, business, organization, or institution which owns, rents, leases, or operates:

1. 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;
2. Any public location with vending machines dispensing prepared meals; or
3. Any retail grocery store.⁸

The term "canned food" is defined as:

[A]ny food which has been commercially processed and prepared for human consumption and which has been commercially packaged in such a manner as to remain nonperishable without refrigeration for a reasonable length of time.⁹

The term "perishable food" is defined as:

[A]ny food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. "Perishable food" includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables, and foods that have been noncommercially packaged or that have been frozen or otherwise require refrigeration to remain nonperishable for a reasonable length of time.¹⁰

There have been no reported court cases under this section of law and no cases were found that involved the donation of food.

⁵ Section 768.136(4), F.S.

⁶ Section 768.136(5), F.S.

⁷ Section 768.136(3), F.S.

⁸ Section 768.136(1)(a), F.S.

⁹ Section 768.136(1)(c), F.S.

¹⁰ Section 768.136(1)(d), F.S.

Regulation of Public Food Service Establishments

The Division of Hotels and Restaurant (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the DBPR, there are over 43,000 licensed public food service establishments in Florida.

A public food service establishment is defined in ch. 509, F.S., as follows:

- (a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served; or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.
- (b) The following are excluded from the definition in paragraph (a):
 1. Any place maintained and operated by a public or private school, college, or university:
 - a. For the use of students and faculty; or
 - b. Temporarily to serve such events as fairs, carnivals, and athletic contests.
 2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - a. For the use of members and associates; or
 - b. Temporarily to serve such events as fairs, carnivals, or athletic contests.
 3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
 4. Any eating place maintained by a hospital, nursing home, sanitarium, assisted living facility, adult day care center, or other similar place that is regulated under s. 381.0072.
 5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
 6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
 7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
 8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
 9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
 10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.¹¹

Other States and Federal Law

Laws providing immunity from criminal and civil liability for the donation of food are referred to as "Good Samaritan" food donation laws. All fifty states prior to 1990 had adopted some form of these laws.¹²

¹¹ Section 509.013(5), F.S.

¹² LOST FOOD AND LIABILITY: THE GOOD SAMARITAN FOOD DONATION LAW STORY, David L. Morenoff, Food and Drug Law Journal (2002). For a list of these statutes, see <http://www.usda.gov/news/pubs/gleaning/appd.htm> (last visited on Jan.15, 2008).

The first attempt to legislate in this area by Congress resulted in the passage of the Good Samaritan Food Donation Model Act that became part of Title IV of the National and Community Service Act, which President Bush signed into law on November 16, 1990.¹³ This Act did not mandate that the states follow its provisions, but it was an effort to give the states an opportunity to take a uniform approach to this issue.

When only one state adopted the Model Act in the five ensuing years, Congress adopted the Bill Emerson Good Samaritan Food Donation Act of 1996 which President Clinton signed into law on October 1, 1996.¹⁴ The key provisions of the 1996 Act provide:

- Protection for donors from liability when donating to a non-profit organization.
- Protection for donors from civil and criminal liability should the product donated in good faith later cause harm to the needy recipient.
- Standardization across the states of donor liability exposure.
- A liability floor of "gross negligence" or intentional misconduct for persons who donate grocery products.¹⁵

It is unclear if Congress intended to replace the various state measures with a uniform national law, in which case the state laws would have no further effect. Alternatively, Congress may have intended to establish greater, but not complete, consistency in this area of the law by making a liability floor of gross negligence a minimum national standard. If so, state laws that set a higher liability floor than that of the federal law, such as those holding food donors liable only for recklessness or intentional misconduct, would retain their force even after Congress acted.

Effect of Proposed Changes:

The bill creates the "Florida Restaurant Lending a Helping Hand Act."

The bill amends s. 768.136, F.S., to expand the definition of "perishable food" to include foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. While it appears that the current definition of "donor" includes public food service establishments, the bill clearly provides that the term "perishable food" includes foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. This change ensures that the protection from criminal and civil liability to a good faith donor or gleaner of any canned or perishable food apparently fit for human consumption to a charitable or nonprofit organization for free distribution includes all foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. Under the present law, it may include restaurant prepared meals only if the meals require refrigeration to remain nonperishable for a reasonable period of time.

Any donor operating under the provisions of this bill must comply with laws regulating health or sanitation.¹⁶

The bill has an effective date of July 1, 2008.

¹³ 42 U.S.C §§ 12671-12673.

¹⁴ 42 U.S.C § 1791.

¹⁵ *Ibid.*

¹⁶ Section. 768.136(5), F.S. This would likely include food sanitation and safety laws under chapter 509, F.S., such as temperature, storage, cleanliness, and the like.

C. SECTION DIRECTORY:

Section 1: Provides that the Act may be cited as the "Florida Restaurant Lending a Helping Hand Act."

Section 2: Amends s. 768.136, F.S., relating to liability for canned or perishable food distributed free of charge.

Section 3: Provides that the bill becomes effective on July 1, 2008.

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 is designed to encourage the donation of more food to charitable organizations. This should not have a direct impact on the private sector, however, the bill does provide limited immunity should a food service establishment choose to make donations as provided under the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to

raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."¹⁷ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.¹⁸ This right could be implicated if a court were to find that the bill abolishes a right of access to the courts that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.¹⁹

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.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

¹⁷ Fla. Jur. 2d., s. 360.

¹⁸ Kluger v. White, 281 So.2d 1, 4 (Fla. 1973).

¹⁹ The enactment of the Declaration of Rights of the Florida Constitution was part of Florida's new constitution of 1968 and occurred when it was ratified by the electorate on November 5, 1968.

HB 99

2008

1 A bill to be entitled
 2 An act relating to food donation by public food service
 3 establishments; providing a short title; amending s.
 4 768.136, F.S.; expanding the definition of "perishable
 5 food" to include foods prepared at a public food service
 6 establishment licensed under ch. 509, F.S.; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. This act may be cited as the "Florida
 12 Restaurant Lending a Helping Hand Act."

13 Section 2. Paragraph (d) of subsection (1) of section
 14 768.136, Florida Statutes, is amended to read:

15 768.136 Liability for canned or perishable food
 16 distributed free of charge.--

17 (1) As used in this section:

18 (d) "Perishable food" means any food that may spoil or
 19 otherwise become unfit for human consumption because of its
 20 nature, type, or physical condition. "Perishable food" includes,
 21 but is not limited to, fresh or processed meats, poultry,
 22 seafood, dairy products, bakery products, eggs in the shell,
 23 fresh fruits or vegetables, and foods that have been
 24 noncommercially packaged, ~~or~~ that have been frozen or otherwise
 25 require refrigeration to remain nonperishable for a reasonable
 26 length of time, or that have been prepared at a public food
 27 service establishment licensed under chapter 509.



28 Section 3. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Radio Equipment Using Law Enforcement Frequencies

SPONSOR(S): Reed

TIED BILLS: IDEN./SIM. BILLS: SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<hr/>	Davis 	Birtman 
2) <u>Safety & Security Council</u>	<hr/>	<hr/>	<hr/>
3) <hr/>	<hr/>	<hr/>	<hr/>
4) <hr/>	<hr/>	<hr/>	<hr/>
5) <hr/>	<hr/>	<hr/>	<hr/>

SUMMARY ANALYSIS

The bill amends section 843.16, Florida Statutes, to provide an exception that allows sworn law enforcement officers or emergency rescue personnel to install or transport radio equipment using specified frequencies while using personal transportation to and from work.

There is no anticipated fiscal impact on either state or local government.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security- The bill allows any sworn law enforcement officer or emergency rescue personnel to install or transport radio equipment using assigned frequencies of law enforcement officers while using personal transportation to and from work.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, s. 843.16, F.S., prohibits the installation or the transport of frequency modulation radio receiving equipment tuned to frequencies assigned to police or law enforcement officers or fire rescue personnel of any city, or county of the state, or to the state and any of its agencies except in emergency or crime watch vehicles.

An "emergency vehicle" is: A.) Any motor vehicle used by any law enforcement officer or employee of any city, any county, the state, the Federal Bureau of Investigation, or the Armed Forces of the United States while on official business, B.) Any fire department vehicle, C.) Any motor vehicle designated as an emergency vehicle by the Department of of Highway Safety and Motor Vehicles, D.) Any vehicle designed as an emergency vehicle by the sheriff, fire chief or chief of police. See s. 843.16(2)(a), F.S.

A "crime watch vehicle" means any motor vehicle used by any person participating in a citizen crime watch or neighborhood watch program when that program is approved by the sheriff or police chief for that neighborhood. See s. 843.16(2)(b), F.S.

The prohibition does not apply to valid holders of an amateur radio operator or station license, full time newspaper reporters and alarm system contractors. See s. 843.16(3), F.S. The penalties for violating these provisions are a first degree misdemeanor punishable as provided in ss. 775.082, F.S. or 775.083, F.S.¹

According to several police organizations,² the original intent of s. 843.16, F.S., was to punish those who used or possessed radio equipment using police frequencies who were engaged in the commission of a crime. The overall goal was to enhance the penalty and decrease the interception of police communications.

¹ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a definite term of imprisonment not to exceed one year.

Section 775.083, F.S., provides that a person sentenced to a first degree misdemeanor may also be fined an amount not to exceed \$1000.

² The following organizations provided input as to the original intent of s.843.16, F.S.: Florida Police Chiefs Association, Florida Police Benevolent Association, Tampa Police Department, and Tallahassee Police Department.

Today, according to several police organizations the statute in its application has become too restrictive as there are several police departments across the state that have officers who drive their personal cars to and from work and in the process are transporting their police radios with them. It is currently a misdemeanor for a sworn law enforcement officer or emergency rescue personnel to do what is common practice.

The Bill

The bill amends section 843.16, F.S., to allow any sworn law enforcement officer³ or emergency rescue personnel⁴ of any city or county of the state or of the state and any of its agencies while using personal transportation to and from work to transport radio equipment using an assigned frequency of police or law enforcement officers or fire rescue personnel. The bill does not mandate that the radio be turned on while off duty and does not change the current standard of practice in the field.

C. SECTION DIRECTORY:

Section 1: Amends s. 843.16, F.S., to provide an exception that allows any sworn law enforcement officer or emergency rescue personnel to install or transport radio equipment using specified frequencies while using personal transportation to and from work.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³ According to s.943.10, F.S., a "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁴ According to s.121.181, F.S., "Emergency rescue or public safety worker" means any person employed full time by the state or any political subdivision of the state as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety worker" does not include any person employed by a public hospital licensed under chapter 395 or any person employed by a subsidiary thereof.

1. Revenues:

There is no fiscal impact on state government revenue.

2. Expenditures:

There is no fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no fiscal impact on local government revenues.

2. Expenditures:

There is no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be some confusion as to who this bill applies to as the term "sworn law enforcement officer" and "emergency rescue personal" may not be clear. The Florida Statutes contain 12 different definitions of the term "law enforcement officer"⁵ and one definition of "emergency rescue or public safety workers"⁶ which is not the term used by the bill. The Florida Statutes do not define "Emergency Rescue Personnel." It is recommended that the bill be amended to more clearly define the terms "sworn law enforcement officer" and "emergency rescue personnel".

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁵ Florida statutes contains 12 different definitions of the term "law enforcement officer" and the cites include: ss. 705.101, F.S., 784.07, F.S., 741.28, F.S., 403.413, F.S., 112.531, F.S., 212.05, F.S., 496.404, F.S., 316.1906, F.S., 943.10, F.S., 790.001, F.S., 1006.66, F.S., and 110.07, F.S.

⁶ See s.121.181, F.S.

1 A bill to be entitled
 2 An act relating to radio equipment using law enforcement
 3 frequencies; amending s. 843.16, F.S.; providing an
 4 exception to prohibition on use of such equipment for
 5 specified personnel using personal transportation to and
 6 from work; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (3) of section 843.16, Florida
 11 Statutes, is amended to read:

12 843.16 Unlawful to install or transport radio equipment
 13 using assigned frequency of state or law enforcement officers;
 14 definitions; exceptions; penalties.--

15 (3) This section does ~~shall~~ not apply to the following:

16 (a) Any holder of a valid amateur radio operator or
 17 station license issued by the Federal Communications Commission.

18 (b) ~~or to~~ Any recognized newspaper or news publication
 19 engaged in covering the news on a full-time basis.

20 (c) ~~or~~ Any alarm system contractor certified pursuant to
 21 part II of chapter 489, operating a central monitoring system.

22 (d) Any sworn law enforcement officer or emergency rescue
 23 personnel while using personal transportation to and from work.

24 Section 2. This act shall take effect July 1, 2008.