



General Government Policy Council

Wednesday, January 20, 2010

Morris Hall

1:00 PM – 1:30 PM

**Larry Cretul
Speaker**

**Baxter Troutman
Chairman**

Council Meeting Notice
HOUSE OF REPRESENTATIVES

General Government Policy Council

Start Date and Time: Wednesday, January 20, 2010 01:00 pm

End Date and Time: Wednesday, January 20, 2010 01:30 pm

Location: Morris Hall (17 HOB)

Duration: 0.50 hrs

Consideration of the following bill(s):

CS/HB 69 Tomato Food Safety by Agriculture & Natural Resources Policy Committee, Crisafulli

NOTICE FINALIZED on 01/13/2010 16:01 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 69 Tomato Food Safety
SPONSOR(S): Crisafulli and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Kaiser	Reese
2)	Natural Resources Appropriations Committee	12 Y, 0 N	Bellflower	Dixon
3)	General Government Policy Council		Kaiser <i>dk</i>	Hamby <i>22e</i>
4)				
5)				

SUMMARY ANALYSIS

CS/HB 69 authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes.

The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards and authorizes the department to impose administrative fines¹ or issue a written notice or warning for violations.

This bill codifies existing practices that the department was authorized to establish in the 2007 legislative session. The Division of Fruits and Vegetables (division) has 184 positions and a current budget of \$12.7 million. The division currently has 20 auditors that will be absorbing the responsibilities of the Tomato Good Agricultural Practices (T-GAP) inspection program on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. The department states that no additional budget or positions are needed to implement this legislation.

The effective date of this legislation is July 1, 2010.

¹ Administrative fines may not exceed \$5,000 per violation.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:

Current Florida law does not recognize tomato "repackers" in the definition of "food establishment." The bill adds "repackers" to the definition.

Section 2:

During the 2007 legislative session, CS/HB 651 was enacted authorizing the Division of Food Safety (division) within the Department of Agriculture and Consumer Services (department) to perform food safety inspections, under the Tomato Good Agricultural Practices (T-GAP) inspection program on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. Since the enactment of the T-GAP program, the division has been working with the Florida tomato industry to create and implement good agricultural practices, guidelines and standards, as well as to implement an annual audit and inspection program to ensure compliance.

The bill authorizes the department to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes. The bill requires the rules to be based on federal requirements, available scientific research, generally accepted industry practices, or recommendations of food safety professionals. The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. Topics that may be covered by the rules include:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and,
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards. The department is granted the authority to impose administrative fines² or issue a written notice or warning for compliance violations.

The bill affirms that a person documenting compliance with the department's rules, T-GAPs and tomato best management practices (BMPs) is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill also gives the department rule-making authority to implement the BMP program.

Section 3:

The department currently has the authority³ to act as an adviser to producers and distributors and to assist them in the economical and efficient distribution of their agricultural products through a cooperative effort. The bill gives the department rule-making authority to establish BMPs for agricultural production and food safety.

Section 4:

The bill cross-references the duties of the department with regards to food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers as it relates to the duties of the Division of Fruits and Vegetables.

B. SECTION DIRECTORY:

Section 1: Amends s. 500.03, F.S.; revises the definition of "food establishment."

Section 2: Creates s. 500.70, F.S.; provides definitions; allows rule-making authority; sets parameters for rules; authorizes the Department of Agriculture and Consumer Services to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations or vehicles being used to transport or hold tomatoes; authorizes the imposition of administrative fines and/or written notices for violations; and, provides a presumption of compliance under certain circumstances.

Section 3: Amends s. 570.07, F.S.; allows rule-making authority.

Section 4: Amends s. 570.48, F.S.; revises the duties of the Division of Fruit and Vegetables.

Section 5: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

² Administrative fines may not exceed \$5,000 per violation.

³ Section 570.07(10), F.S.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

This bill codifies existing practices that the department was authorized to establish in the 2007 legislative session. The Division of Fruits and Vegetables (division) has 184 positions and a current budget of \$12.7 million. The division currently has 20 auditors that will be absorbing the responsibilities of the Tomato Good Agricultural Practices (T-GAP) inspection program on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. The department states that no additional budget or positions are needed to implement this legislation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority to:

- Establish food safety standards to protect public safety from tainted tomatoes;
- Establish tomato good agricultural practices and tomato best management practices;
- Administer the food safety act as it relates to tomatoes; and,
- Establish best management practices for agricultural production and food safety.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On November 4, 2009, the Agriculture and Natural Resources Policy Committee adopted (3) amendments to HB 69.

- **Amendment 1** amends the title to clarify that the bill refers only to tomato food safety.
- **Amendment 2** clarifies that the Department of Agriculture and Consumer Services may base the rules on any of the criteria listed in the bill rather than on all of the criteria listed.
- **Amendment 3** removes Sections 5-6, relating to the Florida Agricultural Museum.

1 A bill to be entitled
 2 An act relating to tomato food safety; amending s. 500.03,
 3 F.S.; revising the term "food establishment" to include
 4 tomato repackers for purposes of the Florida Food Safety
 5 Act; creating s. 500.70, F.S.; defining terms; requiring
 6 minimum food safety standards for producing, harvesting,
 7 packing, and repacking tomatoes; authorizing the
 8 Department of Agriculture and Consumer Services to inspect
 9 tomato farms, greenhouses, and packinghouses or repackers;
 10 providing penalties; authorizing the department to
 11 establish good agricultural practices and best management
 12 practices for the tomato industry by rule; providing a
 13 presumption that tomatoes introduced into commerce are
 14 safe for human consumption under certain circumstances;
 15 providing exemptions; authorizing the department to adopt
 16 rules; amending s. 570.07, F.S.; authorizing the
 17 department to adopt best management practices for
 18 agricultural production and food safety; amending s.
 19 570.48, F.S.; revising duties of the Division of Fruit and
 20 Vegetables for tomato food safety inspections; providing
 21 an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraph (n) of subsection (1) of section
 26 500.03, Florida Statutes, is amended to read:

27 500.03 Definitions; construction; applicability.—

28 (1) For the purpose of this chapter, the term:

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29 (n) "Food establishment" means any factory, food outlet,
 30 or any other facility manufacturing, processing, packing,
 31 holding, or preparing food, or selling food at wholesale or
 32 retail. The term does not include any business or activity that
 33 is regulated under chapter 509 or chapter 601. The term includes
 34 tomato packinghouses and repackers but does not include any
 35 other establishments that pack fruits and vegetables in their
 36 raw or natural states, including those fruits or vegetables that
 37 are washed, colored, or otherwise treated in their unpeeled,
 38 natural form before they are marketed.

39 Section 2. Section 500.70, Florida Statutes, is created to
 40 read:

41 500.70 Tomato food safety standards; inspections;
 42 penalties; tomato good agricultural practices; tomato best
 43 management practices.-

44 (1) As used in this section, the term:

45 (a) "Field packing" means the packing of tomatoes on a
 46 tomato farm or in a tomato greenhouse into containers for sale
 47 for human consumption without transporting the tomatoes to a
 48 packinghouse.

49 (b) "Packing" or "repacking" means the packing of tomatoes
 50 into containers for sale for human consumption. The term
 51 includes the sorting or separating of tomatoes into grades and
 52 sizes. The term also includes field packing.

53 (c) "Producing" means the planting, growing, or
 54 cultivating of tomatoes on a tomato farm or in a tomato
 55 greenhouse for sale for human consumption.

56 (2) The department may adopt rules establishing food

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57 safety standards to safeguard the public health and promote the
58 public welfare by protecting the consuming public from injury
59 caused by the adulteration or the microbiological, chemical, or
60 radiological contamination of tomatoes. The rules must be based
61 on federal requirements, available scientific research,
62 generally accepted industry practices, or recommendations of
63 food safety professionals. The rules shall apply to the
64 producing, harvesting, packing, and repacking of tomatoes for
65 sale for human consumption by a tomato farm, tomato greenhouse,
66 or tomato packinghouse or repacker in this state. The rules may
67 include, but are not limited to, standards for:

68 (a) Registration with the department of a person who
69 produces, harvests, packs, or repacks tomatoes in this state who
70 does not hold a food permit issued under s. 500.12.

71 (b) Proximity of domestic animals and livestock to the
72 production areas for tomatoes.

73 (c) Food safety related use of water for irrigation during
74 production and washing of tomatoes after harvest.

75 (d) Use of fertilizers.

76 (e) Cleaning and sanitation of containers, materials,
77 equipment, vehicles, and facilities, including storage and
78 ripening areas.

79 (f) Health, hygiene, and sanitation of employees who
80 handle tomatoes.

81 (g) Training and continuing education of a person who
82 produces, harvests, packs, or repacks tomatoes in this state,
83 and the person's employees who handle tomatoes.

84 (h) Labeling and recordkeeping, including standards for

85 identifying and tracing tomatoes for sale for human consumption.

86 (3) (a) The department may inspect tomato farms, tomato
87 greenhouses, tomato packinghouses, repacking locations, or any
88 vehicle being used to transport or hold tomatoes to ensure
89 compliance with the applicable provisions of this chapter and
90 the rules adopted under this chapter.

91 (b) The department may impose an administrative fine not
92 to exceed \$5,000 per violation, or issue a written notice or
93 warning under s. 500.179, against a person who violates any
94 applicable provision of this section or any rule adopted under
95 this section.

96 (4) (a) The department may adopt rules establishing tomato
97 good agricultural practices and tomato best management practices
98 for the state's tomato industry based on applicable federal
99 requirements, available scientific research, generally accepted
100 industry practices, or recommendations of food safety
101 professionals.

102 (b) A person who documents compliance with the
103 department's rules, tomato good agricultural practices, and
104 tomato best management practices is presumed to introduce
105 tomatoes into the stream of commerce that are safe for human
106 consumption, unless the department identifies noncompliance
107 through inspections.

108 (5) Subsections (2) and (4) do not apply to tomatoes sold
109 by the grower on the premises at which the tomatoes are grown or
110 at a local farmers' market, if the quantity of tomatoes sold
111 does not exceed two 25-pound boxes per customer.

112 (6) The department may adopt rules pursuant to ss.

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113 120.536(1) and 120.54 to administer this section.

114 Section 3. Subsection (10) of section 570.07, Florida
 115 Statutes, is amended to read:

116 570.07 Department of Agriculture and Consumer Services;
 117 functions, powers, and duties.—The department shall have and
 118 exercise the following functions, powers, and duties:

119 (10) To act as adviser to producers and distributors, when
 120 requested, ~~and~~ to assist them in the economical and efficient
 121 distribution of their agricultural products, ~~and~~ to encourage
 122 cooperative effort among producers to gain economical and
 123 efficient production of agricultural products, and to adopt
 124 rules establishing comprehensive best management practices for
 125 agricultural production and food safety.

126 Section 4. Paragraph (e) of subsection (2) of section
 127 570.48, Florida Statutes, is amended to read:

128 570.48 Division of Fruit and Vegetables; powers and
 129 duties; records.—The duties of the Division of Fruit and
 130 Vegetables include, but are not limited to:

131 (2)

132 (e) Performing tomato food safety inspections under s.
 133 500.70 on tomato farms, in tomato greenhouses, and in tomato
 134 packinghouses and repackers.

135 Section 5. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 69 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: General Government Policy
2 Council
3 Representative Brandenburg offered the following:

4
5 **Amendment**

6 Remove lines 108-111 and insert:

7 (5) Subsections (2) and (4) do not apply to tomatoes sold
8 by the grower on the premises where the tomatoes are grown, at a
9 local farmers market, at a U-pick operation or at a roadside
10 stand provided the quantity of tomatoes sold does not exceed two
11 25-pound boxes per customer per day.