

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			
3)	General Government Policy Council			
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 fines<sup>1</sup> or issue a written notice or warning for violations.

The department indicates that the cost of performing the inspections is offset by a recently adopted rule<sup>2</sup> authorizing<sup>3</sup> the assessment of a fee for inspection of tomato packing houses and repackers. The effective date of this legislation is July 1, 2010.

<sup>1</sup> Administrative fines may not exceed \$5,000 per violation.

<sup>2</sup> Rule 5K-4.020, F.A.C.

<sup>3</sup> Section 500.12 (1)(f), F.S.

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

STORAGE NAME: h0069a.ANR.doc

DATE: 10/14/2009

## 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 fines<sup>4</sup> 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 authority<sup>5</sup> 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

<sup>4</sup> Administrative fines may not exceed \$5,000 per violation.

<sup>5</sup> Section 570.07(10), F.S.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

At a meeting on October 30, 2009, as well as in a follow-up email, the Department of Agriculture and Consumer Services (department) indicated that the legislation has no fiscal impact on state government. The department stated the fiscal impact to state government indicated in last year's analysis of this legislation has been offset by the adoption of a rule authorizing the assessment of a \$100 food permit fee for tomato packing houses and repackers.<sup>6</sup>

### 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.

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<sup>6</sup> Section 500.12 (1)(f), F.S.; Rule 5K-4.020, F.A.C.