

BILL ANALYSIS

H.B. 3387
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that many local farmers and vendors who sell local produce such as fruit, vegetables, and cheeses at farmers' markets are currently not allowed to offer samples of their products to consumers, even if they are regulated and inspected by a local health department or the Department of State Health Services (DSHS). Additionally, many farmers' markets now sell food that is cooked on-site. Interested parties observe that vendors who prepare and sell hot food are required to obtain a temporary food establishment permit from their local health department or DSHS, which is usually only valid for a short period of time. Interested parties contend that, because local health department rules can vary from department to department, the regulation of these activities is not consistent.

H.B. 3387 seeks to address these issues by allowing DSHS or a local health department to issue a single-event temporary food establishment permit to individuals selling food at a farmers' market without limitation on the number of days for which the permit is effective and allowing food sampling and cooking demonstrations at farmers' markets under certain conditions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 2 and 3 of this bill.

ANALYSIS

H.B. 3387 amends the Health and Safety Code to authorize the Department of State Health Services (DSHS) or a local health department to issue a temporary food establishment permit to a person who sells food at a farmers' market held at a single location without limitation on the number of days for which the permit is effective. The bill authorizes a person to whom such a permit is issued to, at the farmers' market for which the permit is issued, engage in the on-site preparation and sale of food, including heating food, scooping ice into cups, grilling food, preparing blended beverages, cutting food, and dividing servings for consumption. The bill requires a person to whom such a permit is issued to comply with the requirements of a temporary food establishment under provisions of law relating to regulation of food service establishments and retail food and with rules adopted under those provisions.

H.B. 3387 requires the executive commissioner of the Health and Human Services Commission, by rule and not later than September 1, 2012, to adopt temperature requirements for food prepared, sold, or distributed on-site at a farmers' market under the bill's provisions or provisions of law relating to the regulation of cooking demonstrations and food samples at farmers' markets as amended by the bill. The bill authorizes food prepared on-site at a farmers' market to be sold or distributed at a farmers' market only if the food is prepared in compliance with the temperature requirements adopted under the bill's provisions. The bill prohibits the executive commissioner or a state or local enforcement agency from mandating a specific method for complying with temperature control requirements for food prepared on-site at a farmers' market or transported to the farmers' market and from adopting a rule requiring a farmers' market to pay

a permit fee for conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples is conducted for a bona fide educational purpose.

H.B. 3387 removes language from provisions of law relating to the produce samples at municipally owned farmers' markets to instead establish that those provisions relate to the regulation of cooking demonstrations and food samples at farmers' markets. The bill specifies that, except as provided by the bill, provisions of law relating to the regulation of food service establishments and retail food do not regulate cooking demonstrations, the provision of samples of food, or the sale of food to consumers at a farmers' market and prohibits a rule adopted under state law from regulating such activity. The bill authorizes a person to process food on-site, including heating food, scooping ice into cups, grilling food, preparing blended beverages, cutting food, and dividing servings for consumption.

H.B. 3387 requires a person preparing produce samples on-site, if the person does not wear clean, disposable plastic gloves when preparing samples, to observe proper hand washing techniques immediately before preparing samples. The bill specifies that material required to be washed from produce intended for sampling is visible material. The bill makes the requirement that utensils and cutting surfaces be smooth, nonabsorbent, and easily cleaned or disposed of applicable to utensils and cutting surfaces used for cutting produce. The bill removes provisions requiring potable water to be available for hand washing and sanitizing as approved by the local or state enforcement agency, produce samples to be disposed of within two hours after cutting, utensil and hand washing water to be disposed of in a facility connected to the public sewer system or in a manner approved by the local or state enforcement agency, and the utensils and cutting surfaces used for cutting produce to be approved by the local or state enforcement agency.

H.B. 3387 authorizes a person to conduct a cooking demonstration at a farmers' market only if, regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration has a valid permit issued under provisions of law relating to food service programs and complies with the requirements of a temporary food establishment under law and rules adopted under those provisions, and, if the demonstrator provides a sample of food to consumers, the demonstrator provides a sample only and not a full serving and samples of food prepared during a demonstration are disposed of not later than four hours after the beginning of the demonstration. The bill defines "farmers' market," "food," and "produce." The bill makes conforming changes.

EFFECTIVE DATE

September 1, 2011.