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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1471
RELATING TO: Food Service Employee Training
SPONSOR(S): Representative(s) Alexander
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 11 NAYS 0
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

The bill requires the Division of Hotels and Restaurants to adopt rules for the administration of the food service training certificate program, including requirements for issuance and replacement of wallet-sized certification cards, maintenance of records documenting training, and updating training materials. The division shall also be responsible for providing, by contract or otherwise, a computerized database to verify the training of all affected employees.

The bills alters the approval process for grandfathering existing programs by requiring that programs be submitted only by food service establishments. The bill provides that at the request of an establishment operator, the division shall review any food safety training program established and administered to food handler employees at the operator's establishment prior to July 1, 2000. This provision appears to require programs established and administered by other professional non-food service providers to use a food service establishment as the medium by which their program seeks approval and also requires the use of that program by that food service establishment.

These revisions also strike existing statutory language that prohibits the division from requiring use of its contracted provider or paying a fee to the provider and requires that all training must be administered by a certified food service manager. This provision may prevent program providers who are not licensed food service establishments from administering their own programs.

The bill will have a negative, but indeterminate, impact on state revenue.

The act will take effect upon becoming a law.

[The committee on Business Regulation adopted one "strike-everything" amendment which is traveling with the bill.]

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill appears to expand the requirements of the Division of Hotels and Restaurants' food service training certificate program and the division's responsibilities regarding the program.

B. PRESENT SITUATION:

Chapter 509, F.S., authorizes the Division of Hotels and Restaurants [division] of the Department of Business and Professional Regulation to regulate public lodging and public food service establishments.

Florida Administrative Code 61C-4.010, provides that public food service establishments shall be subject to the provisions of federal law, Chapter 3, Food Code, for purposes of food safety and sanitation issues, except when specifically authorized otherwise by rule. Combined, the Federal Food Code and Florida's Administrative Code provide comprehensive food service safety standards.

Section 509.039, F.S., requires the division to implement training and certification standards for all *food service managers* who are responsible for the storage, preparation, display, or serving of foods to the public. These standards provide for a certification program which authorizes private or public agencies to conduct an approved test and certify the results of those tests to the division. The fee for the test may not exceed \$50. Section 509.039, F.S., does not require the division to maintain a database for the examination and certification of food service managers. The division has adopted, by rule, the Conference for Food Protection's recommended accredited examination providers as those approved to examine individuals employed as food managers in the state. Certifications provided by these examinations are recognized and have nation-wide reciprocity. This information is maintained by the certifying organizations, in accordance with division rule, and provided to the division upon request.

Similarly, s. 509.049, F.S., requires the Division of Hotels and Restaurants to adopt, by rule, minimum food safety protection standards for *food service employees*. These standards are to be used in the training of food service employees who are responsible for the storage, preparation, display, or serving of food to the public in establishments subject to the regulation of Chapter 509, F.S.

Amendments to this statute by the 2000 Legislature implemented a food safety training certificate program for food service employees to be administered by a private nonprofit provider. Persons employed in the service of food on the effective date of the bill were required to receive certification

by January 1, 2001. Food service employees hired after November 1, 2000, are required to receive certification within 60 days after their employment. Food service establishment operators are authorized to designate a certified food service manager to administer the program to the operator's employees. Certification is valid for three years and the division is authorized to establish, by rule, a per employee fee sufficient to cover the contracted price for the program. The fee is presently established at \$6.

Following the issuance of a request for competitive sealed proposals, this four-year contract was awarded to the Florida Restaurant Association. Approximately 100 other established food safety training programs that were being utilized on the effective date of the 2000 amendments to s. 509.049 and met the division's standards for qualification, were also approved for use throughout the state under the grandfather provision included in the law.

The Division estimates that there are approximately one-half million food service employees working in Florida at any given time. Additionally, according to statistics provided to the division by the National Restaurant Association, the restaurant industry is transitory and has an employee turnover rate in excess of 100% with an estimated 64% working in food service for less than three years with their current employer.

The division is currently promulgating rules to require each establishment with an approved program to issue their own certificate cards and maintain their own records that can be presented to the division upon request for verification of an employee's training status. The division has already established as a condition of program approval that providers maintain appropriate records, and the current rules require that establishments maintain the curriculum and materials used to conduct training.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 509.039, Florida Statutes, regarding the food safety training certificate program. The bill requires the division to adopt rules for the effective administration of the certificate program, including requirements for issuance and replacement of wallet-sized certification cards, maintenance of records documenting training, and updating training materials. Some of the provisions included in this legislation have already been addressed by rule. For example, the division has already established as a condition of program approval that providers maintain appropriate records and the current rules require that establishments keep the curriculum and materials used to conduct training up to date. The division is currently promulgating rules to require each establishment with an approved program to issue their own certificate cards and maintain their own records that can be presented to the division upon request for verification of an employee's training status.

The bills appears to alter the approval process for grandfathering existing programs by requiring that programs be submitted only by food service establishments. The bill provides that the request of an establishment operator, the division shall review any food safety training program established and administered to food handler employees at the operator's establishment prior to July 1, 2000. If the division determines that the food safety training program complies with the minimum food safety standards and rules, it shall approve the program for use by any other operator of a food establishment. This provision appears to require programs established and administered by other professional non-food service providers to use a food service establishment as the medium by which their program seeks approval and also requires the use of that program by that food service establishment.

The revisions contained in this legislation also strike language that prohibits the division from requiring use of its contracted provider or paying a fee to the provider and provides that the division shall be responsible for providing, by contract or otherwise, a computerized database to verify the training of all affected employees.

Finally, the bill requires that all training must be administered by a certified food service manager. This provision appears to prevent program providers who are not licensed as food service establishments from administering their own programs unless their program administrator is a certified food manager.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Significantly amends s. 509.049, Florida Statutes, relating to administration of the food safety training certificate program.

Section 2. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this legislation are not expected to have an impact on state revenue collections.

2. Expenditures:

The cost for the Division of Hotels and Restaurants to develop and maintain a computerized database of certified food service employees is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- Some previously approved private training providers may be precluded from providing training under the provisions of this legislation.
- In order to cover their cost of providing the database, food service employees may see an increase in the cost of certification if the Division of Hotels and Restaurants determines to outsource the creation and maintenance of the database to an outside provider.

D. FISCAL COMMENTS:

The Division of Hotels and Restaurants estimates that there are approximately one-half million food service employees working in Florida at any given time. Additionally, according to estimates provided to the division by the National Restaurant Association, the restaurant industry has an employee turnover rate in excess of 100% with an estimated 64% working in food service for less than three years with their current employer. With a three-year certification period, the numbers of employees maintained in a database could easily exceed one million.

The Division of Hotels and Restaurants reports that they do not currently have the capability of developing and maintaining a computerized database of sufficient size and scope to handle records for the numbers of employees that would need to be certified.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The division is required to adopt rules regarding administration of the food service employee training certification program, including requirements for the issuance and replacement of wallet-size certification cards; maintenance of records documenting the training of employees; and updating of training materials.

C. OTHER COMMENTS:

The Division reports that the Florida Restaurant Association, the division's contracted provider for employee training, has sold 285,427 certification books which includes the certification card and the scantron sheet for database maintenance. The FRA's training verification report is predicated upon operators voluntarily returning the scantron sheets to the FRA after the program is administered. However, only 47,500 of the scantron sheets have been returned to be entered into the FRA database. It appears that the cards are issued to the employee following training but without the necessity of returning the scantron information sheets.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 19, 2001, the Committee on Business Regulation, adopted one "strike-everything" amendment to the bill and passed the bill, 11 Yeas and 0 Nays. The amendment conforms the House bill to the Senate bill as follows:

- The amendments to s. 509.049, F.S., clarify that a food service training program may be submitted for approval to the Division of Hotels and Restaurants by the operator of a restaurant or by a private provider of food service training.
- The amendments to s. 509.049, F.S., clarify that the Division of Hotels and Restaurants may adopt rules concerning, but not limited to: the information to be included on application forms; the maintenance of specified records by providers of training; the specific food-safety related components of the training program; and the licensee's responsibility for providing proof of employee training.
- The strike-everything amendment also included a repeal of subsection (6) of s. 561.32, F.S. That subsection imposes a transfer fee, equal to 50 times the license fee, on the transfer of any quota liquor license issued after October 1, 2000. Inclusion of this amendment necessitated a title change and the title now reads, "An act relating to public food service establishments *and* alcoholic beverage licenses." The dual subject matter, as expressed in the title of the bill, may subject the legislation to constitutional challenge.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

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