

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1219 Public Food Service Establishments

SPONSOR(S): Business & Professions Subcommittee; Raulerson; Combee and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	17 Y, 0 N	Butler	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) of the Department of Business and Professional Regulation (Department) licenses and inspects public food service establishments, which are defined as a place where food is prepared, served, or sold for consumption by the general public.

An eating place that is excluded from the definition of “public food service establishment” is removed from the regulatory oversight of the Division. The Division will not be able to charge a license fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

Current law excludes from the definition of “public food service establishment” any place maintained and operated by a public or private school, college, university, church or a religious, nonprofit fraternal or nonprofit civic organization temporarily for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests.

The bill adds “food contests” to the list of temporary events that are excluded from the definition of “public food service establishment.” The bill amends s. 509.013, F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
 - Guarantees a percentage of the profit generated at the event will be provided to the nonprofit host; and,
 - Does not generate more than \$4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill amends s. 509.032, F.S., to require sponsors of temporary food services events to collect and submit certain contact information to the Division individuals or entities that operate an exempted eating place at the sponsor’s event.

The bill is expected to have a negative fiscal impact on state funds by reducing revenues to the Hotels and Restaurants Trust Fund up to \$228,410 annually. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive surplus cash balance of: \$14.1 million in FY 2015-16, \$17.4 in FY 2016-17, and \$20.8 in FY 2017-18.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Food Service Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (Department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

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.

A “temporary food service event” means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.¹

At the end of fiscal year 2013-2014, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.² The number of temporary event license applications processed during the last three fiscal years:

<u>Fiscal Year</u>	<u>Temporary Event License Applications</u> ³
2013-14	7,718
2012-13	7,292
2011-12	7,125

During the last three fiscal years, one confirmed foodborne illness outbreak occurred in 2013 which sickened eight individuals.⁴

Exclusions from the Definition of Public Food Service Establishments

The definition of “public food service establishment” in s. 509.013(5)(b), F.S., excludes certain places, including:

- Any place maintained and operated by a public or private school, college, or university:
 - For the use of students and faculty; or
 - Temporarily to serve such events as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - For the use of members and associates; or

¹ s. 509.13(8), F.S.

² Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2013-2014*, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html.

³ Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

⁴ Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

- Temporarily to serve such events as fairs, carnivals, or athletic contests.

The Division broadly applies “members and associates” when determining licensure requirements.

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity. In Fiscal Year 2013-14, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events. The Division collected an estimated \$626,546 in temporary event license fees in Fiscal Year 2013-14.

Sponsors of Temporary Food Service Events

Pursuant to s. 509.032(3)(c), F.S., sponsors of temporary food service events are required at least three days before the event to provide the Division with event details, including the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor’s current license as a public food service establishment or temporary food service event licensee.

The Division uses this information to prepare and send inspectors to efficiently inspect each temporary food service establishment before the event begins or soon after the event begins. Generally the Division sends enough inspectors to inspect every temporary food service establishment within an hour of the inspectors arriving.

Notification to the Division may be completed orally, by telephone, in person, or in writing and this notification process may not be used to circumvent the license requirements of this ch. 509, F.S.

Effect of the Bill

The bill excludes temporary food contests from the definition of “public food service establishment” if conducted at any place maintained and operated by a public or private school, college, university, church, or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill amends s. 509.013(5)(b)3., F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
 - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and
 - Does not generate more than \$4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill does not provide a minimum percentage of profit that an individual or entity must guarantee to the nonprofit host to be excluded from the definition of “public food service establishment.” Therefore, this exclusion could be applied to any food vendor at an event hosted by a nonprofit organization that guarantees any percentage of profit to the host. The Division estimates a loss of up to 100 percent of temporary event permit fee revenue for events that last less than three days.⁵

The bill provides the Division with the authority to request documentation of the annual revenue generated from eating places during the previous calendar year from an individual or entity that claims an exemption.

⁵ Florida Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 2 (Mar. 16, 2015) (This analysis is to a previous version of SB 1390 that was identical to HB 1219, but has since been amended).

An eating place that is excluded from the definition of "public food service establishment," is removed from the regulatory oversight of the Division. The Division will not be able to charge a permit fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

A sponsor of a temporary food service event is required to submit additional information to the Division related to individuals or entities claiming an exemption at one of their events, specifically, a complete list of names, addresses, phone numbers, and the type of exemption that is being claimed by each individual or entity.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain events and locations provide the Division with the authority to request documentation of individuals claiming an exemption.

Section 2 amends s. 509.032, F.S., to require a sponsor of a temporary food service event to submit additional information to the Division related to individuals or entities claiming an exemption.

Section 3 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The loss of license fees could decrease revenues to the Hotels and Restaurants Trust Fund by up to \$228,410 annually.⁶ This reduction estimate considers the worst case scenario of a 100% reduction in licensing revenue from temporary food service establishment permits for events that last three days or fewer. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive cash balance of: \$14.1 million in FY 2015-16, \$17.4 in FY 2016-17, and \$20.8 in FY 2017-18.⁷

While the Division forecasts this reduction as the worst case scenario, the annual revenue cap of \$4,000 on the exempted eating places should prevent a large amount of eating places from using the exemption, and subsequently, the actual fiscal impact is indeterminate and likely less than the worst case scenario presented here.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁶ Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 4 (Mar. 16, 2015).

⁷ Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

The bill decreases permit fees and regulatory oversight for temporary food contests and for persons who operate eating places at events hosted by a church, religious organization, or nonprofit fraternal or civic organization.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Business & Professions Subcommittee considered and adopted one amendment. The amendment:

- Removes the exclusion from permitting or inspection for an eating place operating “for the benefit of” a nonprofit organization;
- Provides a new exclusion from licensing or inspection for a temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
 - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and,
 - Does not generate more than \$4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.
- Authorizes the Division to request documentation of eating places claiming an exemptions; and,
- Requires the sponsor of a temporary food service event to submit to the Division a list of all eating places being operated at their event and information for any individual or entity claiming an exemption.

The staff analysis is drafted to reflect the committee substitute.