

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1390

INTRODUCER: Regulated Industries Committee; Health Policy Committee; and Senator Hays

SUBJECT: Public Food Service Establishments

DATE: April 14, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Harper</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3. <u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1390 creates new exclusions from the definition of “public food service establishment”:

- Any place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Any eating place maintained and operated by, *or for the benefit of*, a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - For the use of members and associates; or
 - Temporarily to serve such events as fairs, carnivals, *food contests*, *cook-offs*, or athletic contests.
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting 1-3 days, hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.

Churches, religious organizations, and nonprofit fraternal or civic organizations that claim an exclusion from the definition of public food service establishment to provide the Division of Hotels and Restaurants within the Department of Business and Professional Regulation with documentation of such status when requested.

The bill is estimated to have a negative fiscal impact of \$228,410 on the Hotels and Restaurants Trust Fund. In addition, as a result of the reduction in license fees, there will be an estimated \$18,273 annual reduction in the service charge paid to the General Revenue Fund.

II. Present 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.

A “public food service establishment” is any building, vehicle, place, or structure, or any room or division therein where food is prepared, served, or sold for immediate consumption on or near the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.¹

At the end of the 2013-2014 fiscal year, there were 48,611 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.²

Exclusions from the Definition of Public Food Service Establishments

There are several exclusions from the definition of public food service establishment, including:³

- 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 events such 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 temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families.⁴
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services (DACS) under s. 500.12, F.S.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods.⁵
- Any research and development test kitchen limited to the use of employees and not open to the general public.

¹ Section 509.013(5)(a), 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 (last visited 4/1/2015).

³ Section 509.013(5)(b), F.S.

⁴ Including other similar food service establishments that are regulated under s. 381.0072, F.S.

⁵ Vending machines located in a facility regulated under s. 381.0072, F.S., that dispense potentially hazardous foods are also excluded from the definition.

Temporary Food Service Events

In Florida, a “temporary food service event” is any event of 30 days or less where food is prepared, served, or sold to the general public.⁶ During Fiscal Year 2013-2014, the division issued 7,718 temporary food service event licenses.⁷ The division issues licenses for 1-3 day events, 4-30 day events, and an annual license. The following license fees apply to temporary and annual licenses:⁸

License Type	Licenses Issued FY 2013-2014	License Fee	Total Revenue
1-3 day event	2,510	\$91	\$228,410
4-30 day event	3,136	\$105	\$329,280
Annual	151	\$456	\$68,856
Totals:	5,797	-	\$626,546

The division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events located elsewhere and operated by such organizations. The division does not require a license because these types of organizations are excluded from the division’s regulation.⁹

III. Effect of Proposed Changes:

The bill amends subparagraphs 1. and 2. of s. 509.0163(5)(b), F.S., to exclude from the definition of “public food service establishment” any:

- Place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Eating place maintained and operated *for the benefit of* a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or to serve certain temporary events.
- Eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve food contests or cook-offs.

The terms “food contests” and “cook-offs” are not defined and it is not clear how the department may interpret the term in determining what type of event may be excluded from the definition of public food service establishments.

The bill requires churches, religious organizations, and nonprofit fraternal or civic organizations that claim to be excluded from the definition of public food service establishment to provide the division with documentation of such status when requested by the division.

⁶ Section 509.13(8), F.S.

⁷ *Supra* note 2.

⁸ Data compiled by staff from Rule 61C-1.008(4)(a), F.A.C., and *supra* note 2. There were 1,921 licenses for temporary food service events that were already licensed either annually, permanently, or by the DACS. *See supra* note 2.

⁹ Department of Business and Professional Regulation, “Do churches, schools, or nonprofit organizations need a temporary food service event license?” (updated June 1, 2012), available at http://myfloridalicense.custhelp.com/app/answers/detail/a_id/104 (last visited on 4/12/2015).

The bill creates s. 509.0163(5)(b)3., F.S., to exclude from the definition of “public food service establishment” any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting 1 to 3 days, which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. The event host must provide the division with documentation of such status when requested by the division.

The bill amends s. 509.032(3)(c)3.a., F.S., clarify that establishments excluded from the definition of “public food service establishment” are not required to obtain and pay the license fee for temporary food service events.

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Currently, the division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events located elsewhere and operated by such organizations. The department indicates that the additional exclusions to the definition of “public food service establishment” will result in a reduction in license fees for temporary food service vendors who operate *for the benefit of* or at a 1-3 day event hosted by a church, religious organization, or nonprofit fraternal or civic organization. Any such public food service establishment that is currently required to be licensed would not be required to pay the applicable license fee of \$91 for a 1-3 day temporary license, \$105 for 4-30 day temporary license, or \$456 for an annual license.

C. Government Sector Impact:

The bill has an annual negative fiscal impact of \$228,410 on the Hotels and Restaurants Trust Fund of the department due to eliminating necessity of licenses for temporary food service events for certain events operated related to churches, religious organizations, and nonprofit fraternal or civic organizations. In addition, as a result of the estimated reduction in license and delinquent fees, there will be an \$18,273 annual reduction in the service charge paid to the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The terms “food contests” and “cook-offs” are not defined and it is not clear how the department may interpret the term in determining what type of event may be excluded from the definition of public food service establishments.¹⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013 and 509.032.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Regulated Industries Committee on March 31, 2015:

The committee substitute:

- Amends s. 509.0163(5)(b)1.b., F.S., to exclude from the definition of “public food service establishment” any place maintained and operated by a public or private school, college, or university temporarily to serve cook-offs;
- Amends s. 509.0163(5)(b)3., to require that churches or religious, nonprofit fraternal, or nonprofit civic organization that claim to be excluded from the definition of public food service establishment must provide the division with documentation of its status when requested by the division;
- Does not create s. 509.0163(5)(b)2.c., F.S., to exclude from the definition of “public food service establishment” any eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization by an individual or entity at a temporary event hosted by the church or organization, provided that the individual or entity guarantees a percentage of the profit to the host and does not generate more than \$2,000 in revenue from the single event or \$4,000 annually from all temporary food service events;

¹⁰ Department of Business and Professional Regulation, *2015 Legislative Bill Analysis: SB 1390*, March 16, 2015.

- Creates s. 509.0163(5)(b)3., F.S., to exempt from the definition of “public lodging establishment eating places maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting 1 to 3 days, which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization by an individual or entity at a temporary event hosted by the church or organization. It also requires that the event host must provide the division with documentation of its status when requested by the division; and
- Amends s. 509.032(3)(c)3.a., F.S., to provide that persons excluded from the definition of public food service establishment in s. 509.013(5)(b), F.S., are not required to obtain, and pay the license fee for, one of the classes of food service or food vendor license specified in this subparagraph.

CS by Health Policy on March 17, 2015:

The Committee Substitute excludes from the definition of “public food service establishments” certain eating places maintained or operated for the benefit of a church, a religious organization, a nonprofit fraternal organization, or a nonprofit civic organization by an individual or an entity at a temporary event hosted by the church or organization.

B. Amendments:

None.