

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 249	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health & Human Services Committee; Health Quality Subcommittee; Moskowitz and others	114 Y's	0 N's
COMPANION BILLS:	CS/SB 706	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 249 passed the House on February 18, 2016, and subsequently passed the Senate on March 10, 2016.

The Department of Business and Professional Regulation (DBPR) regulates public food service establishments through its Division of Hotels and Restaurants. It also oversees the issuance of licenses for the sale and service of alcoholic beverages in this state through its Division of Alcoholic Beverages and Tobacco (Division).

The bill amends the definition of "public food service establishment" to include a culinary education program that offers, prepares, serves, or sells food to the general public, making it subject to the regulation and oversight of the Division of Hotels and Restaurants. Under current law, a culinary education program is subject to the food safety and sanitation regulations of the Department of Health and, under the bill, will remain subject to its regulation. A culinary education program is a program provided by certain postsecondary institutions or career centers that educates enrolled students in the culinary arts.

Current law requires a caterer seeking a license to sell or serve alcohol on the premises of events at which it provides prepared food to derive at least 51% of its gross receipts from the sale of food and nonalcoholic beverages. The bill authorizes the Division to issue a special license to a culinary education program licensed as a public food service establishment for the sale and service of alcoholic beverages on the licensed premises of the culinary education program. For a licensed culinary education program that also provides catering services, the special license will allow it to sell or serve alcoholic beverages on the premises of events for which it provides prepared food, without meeting the requirement of deriving the majority of its gross receipts from the sale of food and nonalcoholic beverages.

The bill explicitly provides that the special license does not authorize the culinary education program to conduct any activities that would violate Florida's Beverage Law, including certain age restrictions, or local law. A culinary education program with a special license may not sell alcoholic beverages by the package for off-premise consumption.

The bill authorizes the DBPR to promulgate rules to administer the bill's provisions.

The DBPR estimates that the bill will likely result in an increase of revenue of \$142,166 annually (\$112,840 in Alcoholic Beverages & Tobacco Trust Fund and \$29,326 in the Hotels and Restaurants Trust Fund). Additionally, the DBPR indicates that any potential expenditure is insignificant and can be absorbed within current resources.

The bill was approved by the Governor on March 25, 2016, ch. 2016-120, L.O.F, and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Food Safety Programs

Three state agencies operate food safety programs in Florida: the Department of Agriculture and Consumer Services (DACS), the Department of Business and Professional Regulation (DBPR), and the Department of Health (DOH). The three agencies carry out similar regulatory activities, but have varying statutory authority, regulate separate sectors of the food service industry, and are funded at different levels because of statutory fee caps.¹ Each agency issues food establishment licenses or permits, conducts food safety and sanitation inspections, and enforces regulations through fines and other disciplinary actions.²

Each agency has authority over specific types of food establishments. In general, the DACS regulates grocery stores, supermarkets, bakeries, and convenience stores that offer food service, the DBPR regulates restaurants and caterers, and the DOH regulates facilities that serve high-risk populations such as hospitals, nursing homes, residential care facilities, and schools.³ While these agencies do not perform duplicate inspections, a single establishment with multiple food operations could be licensed or have food permits from multiple departments.⁴

Florida Food Safety Act⁵

Under the Florida Food Safety Act (act), the DACS is charged with administering and enforcing the provisions of the act in order to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food. It is further charged with the regulation of the production, manufacture, transportation, and sale of food, as well as articles entering into, and intended for use as ingredients in the preparation of, food.⁶

An individual seeking to operate a food establishment or retail food store must first obtain a food permit from the DACS.⁷ Prior to the issuance of a permit, the DACS performs an inspection of the food establishment, its equipment, and the methods of operation for compliance with the act. Section 500.03(1)(p), F.S., defines “food establishment” as a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include business or activity that is regulated under s. 413, 051, F.S., s. 500.80, F.S., ch. 509, F.S., or ch. 601, F.S.⁸

¹ Office of Program Policy Analysis and Gov't Accountability, *State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency*, Report No. 08-67 (Dec. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0867rpt.pdf> (last visited March 15, 2016).

² *Id.*

³ Office of Program Policy Analysis and Gov't Accountability, *State's Food Safety Programs Have Improved Performance and Financial Self-Sufficiency*, Report No. 10-44 (June 2010), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1044rpt.pdf> (last visited March 15, 2016).

⁴ *Supra* note 1.

⁵ See ch. 500, F.S.

⁶ Section 500.032, F.S.

⁷ Section 500.12(1), F.S.

⁸ This exemption applies to vending stands operated by eligible blind persons, cottage food operations, lodging and food service establishments, and citrus facilities.

Department of Health Food Service Protections

The DOH has been charged with protecting the public from food borne illness.⁹ This includes developing and enforcing standards and requirements for the storage, preparation, serving, and display of food in food service establishments. Section 381.0072(2)(c), F.S., defines a “food service establishment” as a:

detention facility, public or private school, migrant labor camp, assisted living facility, facility participating in the United States Department of Agriculture Afterschool Meal Program located at a facility or site that is not inspected by another state agency for compliance with sanitation standards, adult family-care home, adult day care center, short-term residential treatment center, residential treatment facility, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food events or mobile food units at any facility expressly named in paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether there is a charge for the food.

The DOH utilizes a risk-based inspection program, which means that it more frequently inspects those facilities that pose a greater risk to the public becoming sick from consumption of their product than those that pose a lesser risk.¹⁰ The inspections are performed by the Environmental Health sections of the local County Health Departments.

Department of Business and Professional Regulation Oversight of Public Food Service Establishments

The Division of Hotels and Restaurants within the DBPR is the state entity charged with enforcing the provisions of part I of ch. 509, F.S., titled Public Lodging and Public Food Service Establishments, 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 of Hotels and Restaurants inspects and licenses 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.¹¹

There are several exclusions from the definition of public food service establishment, including:¹²

- 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 located on an airplane, train, bus, or watercraft which is a common carrier.

⁹ Section 381.0072(1), F.S.

¹⁰ Florida Department of Health, *Food Safety and Sanitation*, available at <http://www.floridahealth.gov/Environmental-Health/food-safety-and-sanitation/index.html> (last visited March 15, 2016).

¹¹ Section 509.013(5)(a), F.S.

¹² Section 509.013(5)(b), F.S.

- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration, the Department of Children and Families, or other similar place regulated under s. 381.0072, F.S.¹³
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.
- Any place of business where the food available for consumption is limited to ice, beverages, popcorn, or other prepackaged food.
- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods.
- Any research and development test kitchen limited to the use of employees and not open to the general public.

Florida's Beverage Law

Florida's Beverage Law regulates alcoholic beverages.¹⁴ The Division of Alcoholic Beverages and Tobacco, within the DBPR, is responsible for the regulation of the manufacture, packaging, distribution, and sale of alcoholic beverages within the state.¹⁵

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" are defined by s. 565.01, F.S., to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor, along with beer and wine, that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. This is commonly known as a quota license. Due to the limitation on the number of quota licenses that may be issued, a prospective applicant must either purchase an existing license or enter a drawing to win the right to apply for a newly authorized quota license.¹⁶ This limitation on the number of licenses per county does not apply to a:

- Bona fide hotel, motel, or motor court of a certain size and deriving a majority of its gross profits from the rental of hotel or motel rooms;
- Condominium licensed under ch. 590, F.S.;
- Restaurant of a certain size and deriving at least 51% of its gross profits from the sale of food and nonalcoholic beverages; and
- Caterer, licensed by the Division of Hotels and Restaurants under ch. 509, F.S., deriving at least 51% of its gross revenue from the sale of food and nonalcoholic beverages, and selling or

¹³ See *supra* note 2.

¹⁴ Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

¹⁵ Section 561.02, F.S.

¹⁶ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *FAQs – Frequently Asked Questions*, available at <http://www.myfloridalicense.com/dbpr/abt/faq.html> (last visited March 15, 2016).

serving alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food.¹⁷

The annual fee for a quota license that allows for the consumption of alcoholic beverages on the premises will vary based on county population but ranges from \$624 to \$1,820.¹⁸ However, at the initial issuance of a new license, the licensee must pay a one-time fee of \$10,750.¹⁹ For the purchase and transfer of an existing license, a licensee must pay a transfer fee (not to exceed \$5,000). The cost of purchasing an existing license is determined by the market condition for quota licenses.²⁰

A qualified, licensed caterer's annual fee for a license to sell or serve alcoholic beverages on the premises of events at which the caterer is also providing prepared food is \$1,820.²¹

Culinary Education Programs

A culinary education program prepares individuals for a career in the culinary arts, which includes developing knowledge of food science, diet, and nutrition.²² Culinary education programs vary widely and can result in the award of a certificate, an Associate's Degree, or a Bachelor's Degree. Additionally, culinary education may be obtained as a concentration in another degree program, such as Hospitality Management or Business Administration, or may be obtained as part of an established apprenticeship program.

There does not appear to be a single entity that accredits or oversees culinary education programs. Depending on the program, it may be subject to oversight by local and state education entities or may be accredited by an independent accreditation organization.²³ The Florida Department of Education reports that there are a total of 75 postsecondary culinary education programs under its purview.²⁴

Effect of the Bill

Department of Health Food Service Protections

Current law provides that a food service establishment is subject to the food safety and sanitation regulations adopted by the DOH, unless it is licensed under ch. 500, F.S., or ch. 509, F.S. The bill maintains this requirement, but also expressly provides that a public food service establishment that is a culinary education program licensed under ch. 509, F.S., remains subject to the food sanitation regulations of the DOH. The bill includes a culinary education program that prepares food intended for individual portion service, whether there is a charge, or whether the program is inspected by another state agency for compliance with sanitation standards, in the definition of "food service establishments."

Culinary Education Programs

The bill defines a culinary education program as a program that educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and

¹⁷ Section 561.20(2)(a), F.S. Other special licenses are permitted under s. 561.20(2), F.S.

¹⁸ Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *Licenses and Permits for Alcoholic Beverages*, (Aug. 28, 2015), available at <http://www.myfloridalicense.com/dbpr/abt/licensing/ABTLicenses.pdf> (last visited March 15, 2016).

¹⁹ *Supra* note 16.

²⁰ *Id.*

²¹ *Supra* note 18.

²² Course Advisor, *What is Culinary Education?*, available at <http://resources.courseadvisor.com/culinary-hospitality/culinary-education-cooking-schools> (last visited March 15, 2016).

²³ For an example of an independent accrediting body, see American Culinary Federation, *Accreditation for Culinary Arts and Baking and Pastry Programs*, available at <http://www.acfchefs.org/ACF/Education/Accreditation/ACF/Education/Accreditation/> (last visited March 15, 2016).

²⁴ E-mail correspondence with Department of Education staff (Oct. 15, 2015). There are 16 culinary schools licensed by the Commission for Independent Education, 36 Postsecondary Adult Vocational programs, and 23 programs offered by state colleges.

experience in culinary arts-related businesses. A culinary education program must be inspected by a state agency for compliance with sanitation standards and provided by a:

- State university;²⁵
- Florida College System institution;²⁶
- Career center as defined in s. 1001.44, F.S.;²⁷
- Charter technical career center as defined in s. 1002.34, F.S.;²⁸
- Nonprofit independent college or university that is located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program;²⁹ or
- Nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.³⁰

Culinary education programs located in secondary schools are not included in this definition.³¹

Public Food Establishments

The Division of Hotels and Restaurants, within the DBPR, inspects and regulates public food service establishments. The bill amends the definition of “public food service establishments” to include a culinary education program that offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another agency, making it subject to the regulation of the DBPR.

Sale and Service of Alcoholic Beverages

The Division of Alcoholic Beverages and Tobacco, within the DBPR, regulates the sale of alcoholic beverages in this state. Current law provides that a caterer seeking to sell or serve alcoholic beverages for consumption at events it caters must be duly licensed by the Division of Alcoholic Beverages and Tobacco, and must derive at least 51% of its gross profits from the sale of food and nonalcoholic drinks. The bill exempts a licensed culinary education program providing catering services from the requirement that it must derive 51% of its gross profits from the sale of food and nonalcoholic beverages.

The bill provides that a duly licensed culinary education program is not subject to the provisions of law that limit the number of alcoholic beverage licenses that may be issued in each county. The bill provides that a duly licensed culinary education program may be granted a special license that will permit the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. At the time of application for the special license, the culinary education program

²⁵ Pursuant to s. 1000.21(6), F.S., “state university” refers to the 12 state universities and any branch campuses, centers, or other affiliates of the institutions.

²⁶ Pursuant to s. 1000.21(3), F.S., “Florida College System institution” refers to the 28 state colleges and any branch campuses, centers, or other affiliates of the institutions.

²⁷ Section 1001.44, F.S., defines a career center as an educational institution offering terminal courses of a technical nature and courses for out-of-school youth and adults, and is subject to the state’s education code and the control of the district school board of the school district in which it is located.

²⁸ Section 1002.34(3)(a), F.S., defines a charter technical career center as a public school or a public technical center operated under a charter granted by a district school board or Florida College System institution board of trustees or a consortium, including one or more district school boards and Florida College System institution boards of trustees, that includes the district in which the facility is located, that is nonsectarian in its programs, admission policies, employment practices, and operations, and is managed by a board of directors.

²⁹ The William L. Boyd, IV, Florida Resident Access Grant Program provides tuition assistance to Florida undergraduate students attending an eligible independent, non-profit college or university located in Florida. See s. 1009.89, F.S.

³⁰ Pursuant to s. 1005.02(11), F.S., a nonpublic postsecondary educational institution means any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, or supported by the State of Florida, its political subdivisions, or the federal government.

³¹ The term “secondary school” generally refers to a high school or similar institution providing instruction for students between elementary school and college and usually offering general, technical, vocational, or college-preparatory courses. See <http://www.merriam-webster.com/dictionary/secondary%20school> (last visited March 15, 2016).

must specify designated areas in its facility where alcoholic beverages may be consumed. Alcoholic beverages sold for consumption on the premises must be consumed on the licensed premises only.³²

For a culinary education program that also provides catering services, the bill provides that the special license will also allow for the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. The bill provides that the culinary education program will be assessed an annual fee of \$1,820 annually in compliance with s. 565.02(1)(b), F.S., regardless of the population of the county where the license is issued.³³ The culinary education program must prominently display its beverage license at any catered event at which it will be selling or serving alcoholic beverages. The licensee is required to maintain records for 3 years to demonstrate compliance with state law.

If a culinary education program also has any other license under the Beverage Law, the special license, provided under the bill's provisions, does not authorize the holder to conduct activities on the premises that are governed by the other license or licenses that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this bill authorizes a licensee to conduct activities that are prohibited by the Beverage Law or local law.

The bill places certain limitations on a culinary education program possessing a special license provided under its provisions. The bill prohibits a licensed culinary education program from selling alcoholic beverages by the package for off-premise consumption. The bill also requires a licensed culinary education program to comply with age requirements for vendors as provided under the Beverage Law.³⁴

The bill authorizes the Division of Alcoholic Beverages and Tobacco within the DBPR to promulgate rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

The bill provides an effective date of July 1, 2016.

³² Pursuant to s. 561.01(11), F.S., "licensed premises" means not only the rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law.

³³ Dep't of Business and Professional Regulation, *2016 Agency Legislative Bill Analysis of House Bill 249* (November 10, 2015) (on file with the Health and Human Services Committee).

³⁴ Sections 562.11(4) and 562.111(2), F.S., allows alcoholic beverages to be served to a student who is at least 18 years of age and the alcoholic beverage is delivered as part of the student's required curriculum at an accredited postsecondary educational institution if the student is enrolled in the college and required to taste alcoholic beverages for instructional purposes only during class under the supervision of authorized personnel. Section 562.13, F.S., prohibits the employment of a person under the age of 18 by vendors licensed under the Beverage Law; however, this prohibition does not apply to employees under the age of 18 for certain types of establishments, such as drug stores, grocery stores, hotels, bowling alleys, etc.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The new special alcoholic beverage license type will generate additional revenue for the state. Each license fee will generate \$1,820 annually regardless of the population of the county where the license is issued.³⁵ The anticipated number of new licenses is contingent upon the number of entities that currently meet the license qualifications or are subsequently established in accordance with the license qualifications.

Approximately 62 entities are currently known to operate culinary education programs and could pursue application for the new license. The DBPR estimates that if the known 62 current culinary education program purchase the new special alcoholic beverage license type, the new licenses would generate total annual revenue of \$112,840 which will be deposited into the Alcoholic Beverages and Tobacco Trust Fund (with cities and counties receiving 38% and 24%, respectively). Revenue could increase if additional entities meet the requirements of the bill and apply for a license with the DBPR.

The DBPR estimates that the revenue increase associated with the food service license provisions of the bill to be approximately \$29,326 annually, which will be deposited into the Hotels and Restaurants Trust Fund.

2. Expenditures:

In order to comply with the provisions of the bill, the DBPR advises that it will need to modify software applications it currently uses to accommodate the changes made by the provisions of the bill. The bill will also increase the number of food safety and sanitation inspections that must be performed, as each licensee will require at least two inspections per year. The DBPR indicates that these costs can be absorbed by existing resources.³⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Cities and counties receive 38% and 24%, respectively, of the license fees for each new license issued in its jurisdiction. If the known 62 current culinary education programs that may be affected by this bill purchased an alcoholic beverage license, the new licenses would generate total annual revenue of \$112,840 with cities and counties receiving \$42,879 and \$27,082, respectively. Therefore, the bill may provide a positive fiscal impact on those cities and counties in which there is a culinary education program licensed to sell or serve alcoholic beverages.³⁷

2. Expenditures:

None.

³⁵ Dep't of Business and Professional Regulation, *2016 Agency Legislative Bill Analysis of House Bill 249* (November 10, 2015) (on file with the Health and Human Service Committee).

³⁶ *Id.*

³⁷ *Id.* See also s. 561.342, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The initial fee for a culinary education program seeking to be licensed as a caterer by the Division of Hotels and Restaurants, within the DBPR, is \$473 and the annual renewal fee is \$273. If a licensed culinary education program seeks to obtain a license to sell or serve alcoholic beverages, it must also pay the licensure fee for that additional license, which will be \$1,820 per year.³⁸

With the ability to provide alcoholic beverages as a caterer, some culinary education programs may be able to generate additional revenue for its programs and students. Existing catering businesses may experience a decrease in business due to the increased competition from the culinary education programs.

D. FISCAL COMMENTS:

None.

³⁸ *Supra* note 35.