

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/SB 706

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Culinary Education Programs

DATE: February 23, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 706 permits a culinary education program with a public food service establishment license to obtain a special alcoholic beverage license under certain conditions. The special license allows for the sale of alcoholic beverages on the licensed premise in designated areas only. If the culinary education program is a licensed caterer, the bill allows for the sale and consumption of alcoholic beverages on the premises of the catered event at which the licensee is also providing prepared food. The bill does not permit the sale of alcoholic beverages by the package for off-premises consumption.

The requirement that the caterer derive 51 percent of its gross revenue from the sale of food and nonalcoholic beverages to be eligible for a special alcoholic beverage license does not apply to a culinary education program with a public food service establishment license.

The bill defines culinary education program and provides for the applicability of the Department of Health sanitation rules to a licensed culinary education program. The bill also revises the definition of “public food service establishment” to include a culinary education program, which requires the culinary education program to be licensed as a public food service establishment by the DBPR.

The bill authorizes the DBPR to adopt rules to administer the bill’s provisions.

See Section V. Fiscal Impact statement. The bill will generate additional state revenue.

II. Present Situation:

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.¹ In Florida, culinary education programs fall within the Hospitality and Tourism Career curriculum under the Department of Education's (DOE) Career and Technical Education programs. The curriculum offers students hands-on educational opportunities in a variety of trades and programs throughout the state in school districts, community colleges, and state universities.²

Currently, there are no stand-alone culinary education programs approved in the State University System.³ Hospitality management majors may take courses in law, food and beverage management, leadership and ethics, catering management, resort operations, beverages (alcoholic and non-alcoholic), event, and convention management.⁴

The DOE reports that there are a total of 75 postsecondary culinary education programs including: 16 culinary schools licensed by the Commission for Independent Education,⁵ 36 postsecondary adult vocational programs, and 23 programs offered by state colleges.⁶

Food Safety Programs

Three state agencies operate food safety programs in Florida: the Department of Business and Professional Regulation (DBPR), the Department of Agriculture and Consumer Services (DACS), and the Department of Health (DOH). Each agency regulates a separate sector of the food service industry, issues food establishment licenses or permits, conducts food safety and sanitation inspections, and enforcement capabilities.⁷ 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.⁸

¹ Course Advisor, *What is Culinary Education?*, available at <http://resources.courseadvisor.com/culinary-hospitality/culinary-education-cooking-schools> (last visited Feb. 19, 2016).

² DOE, *Career & Technical Education - Hospitality & Tourism*, available at <http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/hospitality-tourism.stml> (last visited Feb. 19, 2016).

³ State University System of Florida, Board of Governors, *Senate Bill 706 Analysis*, p. 1 (Nov. 10, 2015) (on file with the Senate Committee on Health Policy).

⁴ Florida State University, Dedman School of Hospitality, *B.S. Degree in Hospitality Mgmt., Requirements for the Hospitality Management Major* (2015-2016) available at <http://business.fsu.edu/docs/default-source/cob/Department-Docs/undergraduate-programs/hospitality2015-2016.pdf?sfvrsn=2> (last visited Feb. 19, 2016).

⁵ The Commission for Independent Education is responsible for matters relating to nonpublic, postsecondary, educational institutions. See DOE, *Commission for Independent Education*, available at <http://www.fldoe.org/policy/cie> (last visited Feb. 19, 2016).

⁶ Florida House of Representatives, *Staff Analysis CS/HB 249* (Oct. 22, 2015) (on file with the Senate Committee on Fiscal Policy).

⁷ 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/reports/pdf/0867rpt.pdf> (last visited Feb. 19, 2016).

⁸ 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 Feb. 19, 2016).

Department of Business and Professional Regulation: Public Food Service Establishments

The Division of Hotels and Restaurants within the DBPR, regulates and inspects “public food service establishments” pursuant to part I of ch. 509, F.S.⁹ A public food service establishment is any building, vehicle, place, structure, or any room or division in a building 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.¹⁰

There are several exclusions from the definition of public food service establishment, 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 events such as fairs, carnivals, and athletic contests.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), or other similar place regulated as a food service establishment by the DOH.
- Any place of business issued a permit or inspected by the DACS under s. 500.12, F.S.¹¹

License fees can vary depending on the type of establishment and its size.¹²

Department of Agriculture and Consumer Services: Florida Food Safety Act

The DACS administers and enforces the Florida Food Safety Act (the act) pursuant to ch. 500, F.S. The purpose of the act is to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food.¹³ The DACS also regulates the production, manufacture, transportation, and sale of food.¹⁴

Food establishments¹⁵ and retail food stores must obtain a food permit from the DACS.¹⁶ The DACS inspects the food establishment, its equipment, and the methods of operation for compliance with the Food Safety Act prior to the issuance of a permit.

Department of Health: Food Service Protections

The DOH regulates and inspects food service establishments to protect the public from food borne illness.¹⁷ Generally, these food service establishments include food service operations

⁹ Section 509.032, F.S.

¹⁰ Section 509.013(5)(a), F.S.

¹¹ Section 509.013(5)(b), F.S.

¹² Rule 61C-1.008, F.A.C.

¹³ See ch. 500, F.S.

¹⁴ Section 500.032, F.S.

¹⁵ Section 500.03(1), 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 vending stands operated by eligible blind persons, cottage food operations, lodging and food service establishments, and citrus facilities. Further, a “food service establishment” is defined as any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food.

¹⁶ Section 500.12(1), F.S.

¹⁷ See s. 381.0072, F.S., and Rule ch. 64E-11, F.A.C. The DOH regulation of food service establishments is limited to establishments not permitted or licensed by the DACS or by the Division of Hotels and Restaurants within the DBPR.

located in institutional settings (such as detention facilities, schools, assisted living facilities, and adult day care centers), civic and fraternal organizations, bars and lounges that don't prepare food, and theaters.¹⁸

All food service establishments require a sanitation certificate issued by the DOH. The DOH is authorized to charge an annual fee for the sanitation certificate. The annual fee can range from \$85 to \$300, depending on the type of facility and number of food operations within the facility.¹⁹

The DOH is authorized to inspect food service establishments as often as necessary.²⁰ The DOH utilizes a risk-based inspection program to conduct more frequent inspections of food service establishments that pose a greater risk to the public of food borne illness. High risk facilities are inspected 4 times per year, moderate risk 2 times per year, and low risk once per year. The inspections are performed by the environmental health sections of the local county health departments in which the food service establishment is located.²¹

There are several types of inspections including routine inspections, re-inspections, and complaint inspections. Routine inspections are periodic inspections that are performed as a part of the on-going food safety system. Re-inspections are completed when a facility has violations that need corrections in more than the standard time frame. Complaint inspections are performed in response to a citizen's complaint. Both routine and complaint inspections are unannounced inspections.²²

Florida's Beverage Law

Florida's Beverage Law regulates alcoholic beverages.²³ 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.²⁴

Florida law limits the number of alcoholic beverage licenses that permit the sale of beer, wine, and distilled spirits that may be issued per county.²⁵ The number of licenses is limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number. 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

¹⁸ Section 381.0072(1)(b), F.S.

¹⁹ See Rule 64E-11.013, F.A.C.

²⁰ Section 381.0072(2)(d), F.S.

²¹ DOH, *Food Safety and Sanitation*, available at <http://www.floridahealth.gov/%5C/environmental-health/food-safety-and-sanitation/index.html> (last visited Feb. 19, 2016).

²² *Id.*

²³ Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. Section 561.01(4), F.S. defines "alcoholic beverages" as distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

²⁴ Section 561.02, F.S.

²⁵ Section 561.20, F.S.

license.²⁶ However, there are several exceptions to the number of quota licenses issued known as “special licenses.”²⁷

The annual fee for a quota license to sell alcoholic beverages on the premises varies based on county population but ranges from \$624 to \$1,820.²⁸ Upon the approval of a new license by the Division of Alcoholic Beverages and Tobacco the licensee must pay a one-time fee of \$10,750.²⁹ 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.³⁰

Quota License Exception for Caterers

The limitation on the number of licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, and sells or serves alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food.³¹

A caterer’s annual fee is \$1,820 for a license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer is also providing prepared food.³²

III. Effect of Proposed Changes:

Department of Business and Professional Regulation: Public Food Service Establishments

Section 2 amends s. 509.013, F.S., to provide that the term “public food service establishments” includes a culinary education program that offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another agency for compliance with sanitation standards. Such a culinary education program will be subject to regulation by the Division of Hotels and Restaurants of the DBPR.

Department of Health: Food Service Protections

Section 1 amends s. 381.0072, F.S., to provide that the term “food service establishments” includes a culinary education program where food is prepared and intended for individual portion service, regardless of the whether there is a charge for the food or whether the program is inspected by another state agency for compliance with sanitation standards.

²⁶ DBPR, Division of Alcoholic Beverages and Tobacco, *Frequently Asked Questions, Licensing-related*, available at http://www.myfloridalicense.com/dbpr/abt/documents/abt_frequently_asked_questions_001.pdf (last visited Feb. 19, 2016).

²⁷ Section 561.20(2), F.S., also provides special licenses for hotels and motels, condominiums licensed under ch. 509, F.S., restaurants that derive at least 51 percent of gross profits from the sale of food and nonalcoholic beverages, specialty centers built on government-owned land, bowling establishments, and airports.

²⁸ See s. 565.02(1), F.S.

²⁹ Section 561.19(5), F.S.

³⁰ *Supra* note 27.

³¹ Section 561.20(2)(a)5., F.S.

³² See ss. 561.20(2)(a)5. and 565.02(1)(b), F.S.

Establishments permitted or licensed by the DACS under ch. 500, F.S., or the DBPR under ch. 509, F.S., are not subject to DOH sanitation rules. However, the bill provides that a food service establishment, that is a culinary education program licensed under ch. 509, F.S., is subject to the sanitation rules of the DOH.

Culinary Education Programs

The bill defines the term “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 experience in culinary arts-related businesses. A culinary education program must be inspected by a state agency for compliance with sanitation standards. The culinary education program must be provided by a:

- State university;³³
- Florida College System institution;³⁴
- Career center;³⁵
- Charter technical career center;³⁶
- 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;³⁷ or
- Nonpublic postsecondary educational institution.³⁸

Culinary education programs located in secondary schools are not included in this definition.³⁹

³³ Section 1000.21(6), F.S., defines “state university” as the 12 state universities and any branch campuses, centers, or other affiliates of the institutions.

³⁴ Section 1000.21(3), F.S., defines “Florida College System institution” as the 28 state colleges and any branch campuses, centers, or other affiliates of the institutions.

³⁵ 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.

³⁶ 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.

³⁷ 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.

³⁸ Section 1005.02(11), F.S., defines a “nonpublic postsecondary educational institution” as 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, its political subdivisions, or the federal government.

³⁹ 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* Merriam-Webster Dictionary, *Definition for Secondary School*, available at <http://www.merriam-webster.com/dictionary/secondary%20school> (last visited Feb. 19, 2016).

Alcoholic Beverage License for Caterers

Section 3 amends s. 561.20, F.S., to allow a culinary education program which is licensed as a “public food service establishment” by the Division of Hotels and Restaurants to be able to obtain a special license allowing the sale and consumption of alcoholic beverages on the licensed premises. The bill exempts a culinary education program that is licensed as a public food service establishment and that provides catering, from the requirement that the caterer derive 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

To obtain a special beverage license, the bill requires a culinary education program to specify in its application the designated areas in its facility where alcoholic beverages may be consumed. A licensee is also required to:

- Prohibit alcoholic beverages from being removed from the designated area;
- Sell alcoholic beverages for consumption on premises only;⁴⁰
- Comply with age requirements for vendors as provided under the Beverage Law.⁴¹

A culinary education program is not permitted to sell alcoholic beverages by the package for off-premises consumption.

If a culinary education program also provides catering services, the bill allows 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 culinary education program must:

- Prominently display its beverage license at catered events at which it will be selling or serving alcoholic beverages; and
- Maintain for 3 years all records required by the DBPR by rule to demonstrate compliance;
- Pay the annual state license tax of \$1,820.

If a culinary education program also has any other license under the Beverage Law, the special license, as allowed under the bill, 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 authorizes the Division of Alcoholic Beverages and Tobacco to adopt rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

⁴⁰ Section 561.01(11), F.S., defines “licensed premises” as 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 as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and 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.

⁴¹ 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 if the alcoholic beverage is delivered as part of the student’s required curriculum at an accredited postsecondary educational institution and 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, or bowling alleys.

The bill is effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet reviewed the impact of this bill.

The bill creates a new special alcoholic beverage license for culinary education programs that are licensed public food service establishments. Licensees will pay the annual fee up to \$1,820 depending on the population of the county. The DBPR estimates that 62 entities are currently known to operate culinary education programs in the state which could qualify for the new license. The city and county where each new license is issued will receive 38 percent and 24 percent of the license fees, respectively.⁴²

The bill also requires a culinary education program that provides catering services to pay a state license tax of \$1,820 annually.

The bill requires culinary education programs to obtain a public food service establishment license from the Division of Hotels and Restaurants. According to the DBPR, the initial public food service establishment license fee is \$473 and the annual fee \$273, depending on the county and number of seats of the establishment.⁴³

B. Private Sector Impact:

The DBPR notes that it is not clear whether there are any significant differences between the inspection standards used by the Division of Hotels and Restaurants and the standards that are required by the DOH.⁴⁴ Culinary education programs in the private sector may face an increased burden to the extent that meeting such standards are different than any current standards.

⁴² DBPR, *CS/HB 249 Analysis*, p. 6 (Nov. 10, 2015) (on file with the Senate Committee on Health Policy).

⁴³ *Id.* at 6. This estimate is based on the price of a whole year new public food service establishment license for a 100 seat establishment (\$50 application fee + \$150 plan review + \$273 license fee = \$473).

⁴⁴ *Id.* at 5.

Culinary education programs seeking a license as a public food service establishment from the Division of Hotels and Restaurants will likely pay an initial fee of \$473 and an annual fee of \$273.⁴⁵

Culinary education programs seeking a special alcoholic beverages license from the Division of Alcoholic Beverage and Tobacco must pay the annual fee of up to \$1,820 depending on the population of county. In addition, a culinary education program that provides catering services must pay a state license tax of \$1,820 annually.

C. Government Sector Impact:

The DBPR states that the number of special license for alcoholic beverages is contingent upon the number of entities that meet the license qualifications. The DBPR estimates that 62 entities are currently known to operate culinary education programs in the state which could qualify for the special license. The city and county where each new license is issued will receive 38 percent and 24 percent of the license fees, respectively.⁴⁶

The DBPR anticipates an increase in food service establishment licenses, plan reviews, and statutorily required inspections due to the bills requirement that culinary education programs be licensed as public food service establishments. The DBPR estimated that new public food service establishment licenses will generate additional license revenue of approximately \$473 per new license the initial year and \$273 per license for annual renewals, depending on county and number of seats (estimates based upon 100 seat establishments for the 62 entities currently known to operate culinary education programs).

New licenses will need to be created, rules adopted, and updates made to the application and the inspectors' electronic device inspection program. According to the DBPR, technology changes can be made within existing resources.

The DBPR estimated the following fiscal impact:

Fiscal Year:	2016-2017	2017-2018	2018-2019
Revenues:			
Division of Alcoholic Beverages and Tobacco	\$112,840	\$112,840	\$112,840
Division of Hotels and Restaurants	\$29,326	\$16,926	\$16,926
Expenditures:			
Service charge to General Revenue	\$11,373	\$10,381	\$10,381

Cities and counties would receive \$42,879 and \$27,082, respectively, of the above listed revenues of the Division of Alcoholic Beverages and Tobacco.⁴⁷

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 4.

Universities and other public colleges may be required to pay associated fees for licenses and inspection which may affect the availability and cost of culinary education programs.⁴⁸

The Department of Health reports no fiscal impact.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR notes that the bill creates a special alcoholic beverage license which expands privileges for the sale and service of liquor in Florida as an additional exception to Florida's quota beverage license provisions based on county population size. The standards and qualifications for the culinary education programs are beyond the control and jurisdiction of the DBPR, and the determination of who qualifies for this license will be primarily controlled by the manner in which other agencies establish, interpret, modify, or enforce the core qualifications of a culinary education program.⁵⁰

Culinary education programs may be subject to multiple sanitation requirements and penalties for the same violations and disparate timeframes to remedy such violations.

The bill authorizes the Division of Alcoholic Beverages and Tobacco to adopt the special license for culinary education programs. Additionally, the DBPR's Division of Hotels and Restaurants will adopt rules to regulate and inspect culinary education programs as "public food service establishments." The DOH will adopt rules to regulate and inspect culinary education programs as "food service establishments."

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0072, 509.013, and 561.20.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 9, 2016:

The committee substitute includes the following places within the definition of a culinary arts education program: a career center, as defined in s. 1001.44, F.S., and a charter technical career center, as defined in s. 1002.34, F.S.

⁴⁸ *Supra* note 3.

⁴⁹ DOH, *HB 249 Analysis*, (Oct. 1, 2015) (on file with the Senate Committee on Fiscal Policy).

⁵⁰ *Supra* note 42 at 6.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
