

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 Regulated Industries

BILL: SB 752

INTRODUCER: Senator Calatayud

SUBJECT: Temporary Commercial Kitchens

DATE: March 1, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

I. Summary:

SB 752 requires the Division of Hotels and Restaurants within the Department of Business and Professional Regulation (DBPR) to establish rules for the operation of temporary commercial kitchens. The bill defines the term “temporary commercial kitchen” to mean “a food preparation and cooking facility set up for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted.” The term does not include a shed or a tent.

Temporary kitchens are kitchen facilities that are typically used when fixed kitchens are unavailable, e.g., have been damaged by a fire, or when a fixed kitchen is being refurbished, when extra kitchen space is needed, and for catering at events. Temporary kitchens may also be used after a natural disaster, such as a hurricane. Temporary kitchens are contained in a variety of modular structures, such as portable cabin structures, modular buildings, towed trailers, or standard freight containers.

The rules must require temporary commercial kitchens to:

- Be climate-controlled;
- Maintain a humidity factor of less than 60 percent in the space of the unit;
- Have a total gross weight not exceeding 5,000 pounds;
- Maintain ADA compliant entrances and access windows;
- Maintain a sink in compliance with the DBPR standards;
- Maintain either an internal or external fresh water supply and graywater disposal;
- Maintain electrical, plumbing, and mechanical specifications that meet or exceed national agency standards or best industry standards; and
- Maintain a wind rating greater than 70 mph.

The bill takes effect July 1, 2023.

II. Present Situation:

Department of Business and Professional Regulation, Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) within the DBPR is charged with enforcing the laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.¹

Public Food Service Establishments

A “public food service establishment” is defined as:²

...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.

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 located on an airplane, train, bus, or watercraft which is a common carrier;
- 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;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.

Health and Safety

The division must adopt and enforce sanitation rules to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments; approving public food service establishment facility plans;

¹ Section 509.032, F.S.

² Section 509.013(5)(a), F.S.

³ Section 509.013(5)(b), F.S.

conducting inspections for compliance with sanitation regulations; cooperating and coordinating with the Department of Health in epidemiological investigations; initiating enforcement actions; and other such responsibilities deemed necessary by the division.⁴

Effective November 1, 2019, the division has adopted the 2017 Food and Drug Administration (FDA) Food Code (food code), which establishes practical, science-based guidance and enforceable provisions for reducing risk factors known to cause or contribute to foodborne illness.⁵ The food code represents FDA's best advice for a uniform system to address the safety and protection of food offered at retail and in food service.⁶

The food code provides a plan review and inspectional guide for “mobile food establishments” based on the mobile unit's menu and operation. Mobile units range in type from push carts to food preparation catering vehicles. The guide provides a matrix of requirements that a mobile food establishment must follow based on the type of food that is available for sale to the consumer. This includes requirements for “time/temperature control for the safety of food”⁷ that is prepared within a mobile food establishment.⁸

Mobile Food Dispensing Vehicles – Food Trucks

Food Trucks⁹ are regulated by the DBPR as a “mobile food dispensing vehicles,”(MFDV),¹⁰ which are defined as:¹¹

...any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

To obtain a license as an MFDV, an applicant must complete a kitchen plan review for sanitation and safety concerns (if required).¹² No plan review is required if an operator buys a vehicle already licensed by the division and no changes have been made to the vehicle. A plan review is required if an operator:

- Constructs or uses a vehicle that has never been licensed by the division;
- Uses a vehicle that has been closed for more than one year; or
- Uses a vehicle that has been remodeled.

⁴ Section 509.032(2)(d), F.S.

⁵ Fla. Admin. Code R. 61C-1.001(12).

⁶ U.S. Public Health Service, FDA Food Code 2017, p. 327,

<http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited Mar. 2, 2023).

⁷ The term “time/temperature control for safety food” is defined in chapter 1, subpart 1-201, of the food code as a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

⁸ U.S. Public Health Service, FDA Food Code 2017, FDA Food Code Mobile Food Establishment Matrix, p. 754, <http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited Mar. 2, 2023).

⁹ Generally, a food truck is a large wheeled vehicle from which food is sold that typically contains cooking facilities where the food is prepared. Merriam-Webster Dictionary, *Food Truck*, <https://www.merriam-webster.com/dictionary/food%20truck> (last visited Mar. 1, 2023).

¹⁰ Section 509.101, F.S.

¹¹ Section 509.032, F.S., and Fla. Admin. Code R. 61C-1.002.

¹² Fla. Admin. Code R. 61C-1.002(5)(c); See also Florida Department of Business and Professional Regulation, *Division of Hotels and Restaurants – Guide to Mobile Food Dispensing Vehicles*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/mfdv-guide/> (last visited Mar. 1, 2023).

A plan review requires:

- A plan of the vehicle with the equipment labeled;
- A sample menu; and
- A side photograph of the vehicle showing the wheels and open service window, and the water/sewer or commissary location.

By rule, the division provides different license fees for a public food service establishment based on the the license classification for the establishment. The division's general classifications are nonseating and seating, which are then divided into sub-classifications.¹³ MFDVs are classified under the nonseating classification. The license for an MFDV requires payment of a \$50 application fee and a \$347 license fee.¹⁴

All new licensees are required to pass a sanitation and safety inspection prior to opening.¹⁵ Division personnel have the right to inspect licensed MFDVs as often as necessary to enforce the provisions of law and rule, and for the protection of the public's health, safety, and welfare.¹⁶

The division is required, upon proper finding, to immediately issue an order to close a licensed public food service establishment in the instance of a severe and immediate public health or safety or welfare threat.¹⁷

Commissary Services Registry

The DBPR defines the term "commissary" to mean "a licensed public food service establishment, which is utilized by a MFDV for the purpose of providing all required support services, including potable water and wastewater disposal that are not available on the mobile food dispensing vehicle."¹⁸

Operators of public food service establishments that provide commissary services are required to maintain a daily registry verifying that each MFDV that receives such services is properly licensed. Each MFDV operator must permanently affix in a prominent place on the side of the vehicle, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle matches the number on the vehicle operator's public food service establishment license.¹⁹

Mobility Requirements

"Permanent nonseating establishments" are described in current law as "fixed public food service establishments for which the sole service provided is intended as take-out or delivery, or which

¹³ See Fla. Admin. Code R. 61C-1.008(4).

¹⁴ Fla. Admin. Code R. 61C-1.008(4)(a)1.

¹⁵ Fla. Admin. Code R. 61C-1.002(3).

¹⁶ Section 509.032(2)(b), F.S.

¹⁷ Section 509.035, F.S.

¹⁸ Fla. Admin. Code R. 61C-1.001(8).

¹⁹ Section 509.101(3), F.S.

do not otherwise provide accommodations for consumption of food by guests on the premises, or premises under the control of the operator.”²⁰

MFDVs are described in current law as “mounted public food service establishments which are self-propelled or otherwise movable from place to place...”²¹ The DBPR’s Guide to Mobile Food Establishments (guide) provides that an MFDV license is a vehicle mounted food service license where the vehicle has adequate hand washing and dishwashing facilities, food protection, refrigeration, power and plumbing systems. The guide indicates that an MFDV operator performs food service activities inside the vehicle like food storage, cooking or preparation of food and dishwashing.²²

One of the requirements for obtaining an MFDV license is that the licensed location be a vehicle and for the vehicle to be mobile.²³ In order to be mobile, the DBPR requires “a side photograph of the vehicle showing its wheels and open service window must be submitted at time of application.”²⁴

Preemption

The regulation of public food service establishments is preempted to the state. This preemption does not affect the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.²⁵

The regulation of MFDVs is also preempted to the state. A municipality, county, or other local government entity may not:²⁶

- Require a separate license, registration, or permit beyond those established by the DBPR as a condition for the MFDV’s operation within the jurisdiction;
- Require a separate fee beyond those established by the DBPR as a condition for the MFDV's operation within the jurisdiction; or
- Prohibit MFDVs from operating within the entirety of the entity’s jurisdiction.

The preemption for the regulation of MFDVs does not apply to any port authority, aviation authority, airport, or seaport.²⁷

Temporary Kitchens

Temporary kitchens are kitchen facilities that are typically used when fixed kitchens are unavailable, e.g., have been damaged by a fire, or when a fixed kitchen is being refurbished,

²⁰ Fla. Admin. Code R. 61C-1.002(5)(a)1.

²¹ Fla. Admin. Code R. 61C-1.002(5)(a)2.

²² *Supra* note 12.

²³ Fla. Admin. Code R. 61C-1.002(5)(a)2.

²⁴ *Id.*

²⁵ Section 509.032(7), F.S.

²⁶ Section 509.102, F.S.

²⁷ *Id.*

when extra kitchen space is needed, and for catering at events.²⁸ Providers of temporary kitchens also market these kitchens for rent after a natural disaster, such as a hurricane.²⁹

Temporary kitchens are contained in a variety of modular structures, such as portable cabin structures, modular buildings, towed trailers, or standard freight containers.³⁰

A temporary kitchen is a “public food service establishment” as defined in s. 509.013(5)(a), F.S., and is therefore subject to regulation by the division.

Ghost Kitchens

Ghost kitchens, also known as virtual restaurants, are shared commercial kitchens that do not have a public-facing storefront and only offer food for delivery. Customers of ghost kitchens typically do not know the location where the food is prepared. Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when restaurants were shut down due to restrictions, or business volume slowed significantly. Some traditional restaurants also use ghost kitchens for delivery-only sales.³¹

The food code may be used to regulate ghost kitchen establishments. However, while the food code specifically references mobile food establishments, it does not reference ghost kitchens or similar locations or structures.

III. Effect of Proposed Changes:

The bill creates s. 509.101(4), F.S., to require the division to establish rules for the operation of temporary commercial kitchens.

The bill defines the term “temporary commercial kitchen” to mean “a food preparation and cooking facility set up for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted.” The term does not include a shed or a tent. The bill does not define the terms “tent”³² or “shed.”³³

²⁸ The Caterer, *Temporary kitchens: Everything you need to know*, Nov. 24, 2004, <https://www.thecaterer.com/news/foodservice/temporary-kitchens-everything-you-need-to-know> (last visited Mar. 2, 2023).

²⁹ Mobile Kitchens USA, *Affected by a Natural Disaster? Mobile Kitchens USA Can Help*, <https://mobilekitchens.com/2018/04/05/affected-by-a-natural-disaster-mobile-kitchens-usa-can-help/> (last visited Mar. 2, 2023).

³⁰ *Id.* See also U.S. Mobile Kitchens, *Temporary Kitchens*, at: <https://www.usmobilekitchens.com/mobile-kitchens/temporary-kitchens> (last visited Mar. 2, 2023).

³¹ Eater, *Ghost Kitchens Are the Wave of the Future. But Is That a Good Thing?*, Nov. 9, 2020, <https://www.eater.com/21540765/ghost-kitchens-virtual-restaurants-covid-19-industry-impact> (last visited Mar. 2, 2023).

³² In pertinent part, the term “tent” means “a collapsible shelter of fabric (such as nylon or canvas) stretched and sustained by poles and used for camping outdoors or as a temporary building.” See Merriam-Webster.com, *tent*, <https://www.merriam-webster.com/dictionary/tent> (last visited Mar. 2, 2023).

³³ In pertinent part, the term “shed” means “a slight structure built for shelter or storage especially : a single-storied building with one or more sides unenclosed.” See Merriam-Webster.com, *shed*, <https://www.merriam-webster.com/dictionary/shed> (last visited Mar. 2, 2023).

The rules must require temporary commercial kitchens to:

- Be climate-controlled;
- Maintain a humidity factor of less than 60 percent in the space of the unit;
- Have a total gross weight not exceeding 5,000 pounds;
- Maintain ADA³⁴ compliant entrances and access windows;
- Maintain a sink in compliance with the DBPR standards;
- Maintain either an internal or external fresh water supply and graywater disposal;
- Maintain electrical, plumbing, and mechanical specifications that meet or exceed national agency standards or best industry standards; and
- Maintain a wind rating greater than 70 mph.

The bill does not preempt the regulation of temporary commercial kitchens.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁴ The Americans with Disabilities Act (ADA) of 1990, as amended, in 42 U.S.C. s. 12101 *et seq.*, prohibits discrimination against individuals with disabilities in employment, in the provision of public services, and in public accommodation or public entity.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR anticipates an indeterminate fiscal impact for the bill.³⁵ The division considers temporary commercial kitchens to be in the same classification as mobile food delivery vehicles, but if temporary kitchens are classified by the division under another classification, the division anticipates an indeterminate increase in license fees.³⁶

VI. Technical Deficiencies:

The bill uses the acronym “ADA” to reference the Americans with Disabilities Act (ADA) of 1990.³⁷ The bill should be amended to replace the acronym “ADA” with the Americans with Disabilities Act (ADA) of 1990.

VII. Related Issues:

The City of Miami has created a pilot program to regulate “mobile operating units.” The term “mobile operation unit” is defined by the city as a “movable stand, cart, vehicle, truck, van, or trailer through which mobile operations are performed on a parking lot site or on vacant land.” The term “delivery food vehicle” is defined as “any vehicle used as or in conjunction with a mobile operation unit operating with app-based meal production for delivery only to be consumed off-premises.”³⁸ The regulations require the mobile operating units to refrain from providing on-site takeout or dine-in service.

Mobile operating units are required to obtain city business tax receipts and a “peddler’s permit.” The ordinance provides restrictions for food truck gatherings, such as prohibiting their operation in certain zones. It also requires a site plan survey indicating the general placement of a food truck. Violations are punishable by a fine of \$250 for a first offense and \$500 for each subsequent offense.³⁹ The pilot program was renewed on March 24, 2022, for a second year.⁴⁰

It is not clear whether the ordinance is applicable to temporary commercial kitchens.

The City of Orlando has adopted a similar pilot program.⁴¹

³⁵ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 415* (Jan. 24, 2023) (on file with the Senate Regulated Industries Committee).

³⁶ *Id.*

³⁷ *Supra* note 34.

³⁸ City of Miami Ordinance s. 31-51(h),

https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTIITHCO_CH31LOBUTAMIBURE_ARTIIOBUTABT_S31-51FOTROPPLA (last visited Mar. 2, 2023).

³⁹ *Id.*

⁴⁰ City of Miami, City Commission Agenda March 24, 2022,

<http://miamifl.igmp2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&Inline=True> (last visited Mar. 2, 2023).

⁴¹ The Community Paper, *Ghost kitchens pilot program passed by the City*,

<https://www.yourcommunitypaper.com/articles/ghost-kitchens-pilot-program-passed-by-city/> (last visited Mar. 2, 2023).

VIII. Statutes Affected:

This bill substantially amends section 509. 101 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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