

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 633 Public Food Service Establishments

**SPONSOR(S):** Raulerson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Butler	Anstead
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	17 Y, 0 N	Butler	Hamon

### SUMMARY ANALYSIS

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

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

Such exclusion from the definition of “public food service establishment” removes regulatory oversight. Places that fall within the exclusion are not required to comply with state health and safety standards. The Division does not collect a licensing fee and does not conduct inspections of places that qualify for the exclusion.

The bill adds “food contests” and “cook-offs” to the list of temporary events that are excluded from the definition of “public food service establishment” when maintained and operated by a public or private school, college, university, or a church or a religious, nonprofit fraternal or nonprofit civic organization.

A new exclusion is created for “any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.”

The bill provides that the Division may request documentation from individuals claiming to be excluded from the definition of public food service establishment that indicate “its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.”

The bill is expected to have a significant negative fiscal impact on state funds by reducing revenues to the Hotels and Restaurants Trust Fund up to \$199,654 annually. However, the Department estimates that the fiscal year-end balance of the Hotels and Restaurants Trust Fund (including the impact of HB 633) will maintain a positive surplus cash balance of: \$18.1 million in FY 2016-17, \$20.2 million in FY 2017-18, and \$22.1 million in FY 2018-19.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Public Food Service Establishments

The Division is 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, to protect the public health, safety, and welfare of Florida citizens.

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

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

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

At the end of fiscal year 2014-2015, there were 90,158 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.<sup>2</sup>

The number of temporary event license applications processed during the last four fiscal years is as follows:

<u>Fiscal Year</u>	<u>Temporary Event License Applications</u>
2014-15	7,849
2013-14	7,718
2012-13	7,292
2011-12	7,125

In Fiscal Year 2014-15, the Division licensed and inspected 7,849 public food service establishments and food vendors at temporary food service events.<sup>3</sup>

Since 1998,<sup>4</sup> there have been a total of 2,382 outbreaks of foodborne illness in Florida.<sup>5</sup> For the last three years on record (2012-2014), the Center for Disease Control (CDC) reports there have been 58 outbreaks of foodborne illness in Florida, of which, 1 was confirmed to have originated at a fair, 3 were confirmed to have originated from a catered event, and 22 were confirmed to originate from a Restaurant.<sup>6</sup> Of these Florida cases, 1,023 persons contracted an illness during an outbreak and 87 persons were hospitalized; though, there were no deaths reported due to a foodborne illness outbreak within 2012-2014.<sup>7</sup>

<sup>1</sup> s. 509.13(8), F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2014-2015*, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf).

<sup>3</sup> Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2014-2015*, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf).

<sup>4</sup> The Center for Disease Control (CDC) Foodborne Outbreak Online Database (FOOD) was developed to allow foodborne outbreak data to be more publicly available and contains information on outbreaks of foodborne illnesses dating back to 1998. CDC, *Foodborne Outbreak Tracking and Reporting*, <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

<sup>5</sup> CDC, *Outbreaks per State*, <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

<sup>6</sup> CDC, *FOOD Tool Data*, available at <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

<sup>7</sup> *Id.*

## Exclusions from the Definition of Public Food Service Establishments

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

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

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity.

## Sponsors of Temporary Food Service Events

Sponsors of temporary food service events<sup>8</sup> are required at least three days before the event to provide the Division with event details, including the type of food service proposed, the time and location of the event, and a complete list of food service vendors participating in the event. Sponsors are also required to provide the Division with the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor’s current license as a public food service establishment or temporary food service event licensee.

This notification may be completed orally, by telephone, in person, or in writing and the process may not be used to circumvent the license requirements.<sup>9</sup>

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

## Effect of the Bill

The bill amends the current exclusion of certain temporary eating places operated and maintained by a public or private school, college, university, or a church, a religious, nonprofit fraternal, or nonprofit civic organization to also exclude eating places at “food contests” and “cook-offs” operated and maintained by these organizations.

The bill creates a new exclusion for any “eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.”

The bill provides that the Division may request documentation from a church, or a religious, nonprofit fraternal, or nonprofit civic organization claiming to be excluded. The Division may also request documentation from an event host, when an individual or entity claims to be excluded from licensure and inspection while maintaining and operating an eating place at the host’s event.

Because this exclusion could be applied to any food vendor at an event hosted by a nonprofit organization, and many such events are hosted by nonprofit organizations, the Division estimates a loss of up to 100 percent of temporary event permit fee revenue for events that last less than three

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<sup>8</sup> s. 509.032(3)(c), F.S.

<sup>9</sup> s. 509.032(3)(c), F.S.

days.<sup>10</sup> Sponsors and nonprofit hosts will still be required to submit certain event information, pursuant to s. 509.032(c)(3), F.S., even if every vendor at an event is excluded.

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

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

**B. SECTION DIRECTORY:**

**Section 1** amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain entities and individuals; providing the Division with the authority to request documentation of individuals or entities claiming to be excluded.

**Section 2** amends s. 509.032, F.S., to make conforming clarifications for licensure requirements.

**Section 3** provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The loss of license fees would decrease revenues to the Hotels and Restaurants Trust Fund by up to \$199,654 annually.<sup>11</sup> This estimate considers the worst case scenario of a 100% reduction in licensing revenue from temporary food service establishment permits for events that last three days or fewer. The Department estimates that the fiscal year-end balance of the Hotels and Restaurants Trust Fund (including the impact of HB 633) will maintain a positive cash balance as noted in the chart below.<sup>12</sup>

<b>Hotels and Resaurants Trust Fund</b>			
	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Beginning Balance	15,794,062	18,106,062	20,194,824
Estimated Revenue	32,197,130	32,255,320	32,281,423
Impact of HB 633	(199,654)	(199,654)	(199,654)
<b>TOTAL Revenue</b>	<b>31,997,476</b>	<b>32,055,666</b>	<b>32,081,769</b>
Estimated Expenditures	29,684,974	29,967,406	30,127,907
<b>Estimated Year-end Balance</b>	<b>18,106,062</b>	<b>20,194,824</b>	<b>22,148,887</b>

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

<sup>10</sup> Florida Department of Business and Professional Regulation, Agency Bill Analysis of 2016 Senate Bill 764, p. 5 (November 23, 2015), which is substantially similar to HB 663.

<sup>11</sup> Florida Department of Business and Professional Regulation, Agency Bill Analysis of 2016 Senate Bill 764 (November 23, 2015), which is substantially similar to House Bill 633.

<sup>12</sup> Florida Department of Business and Professional Regulation, *Operating Account Forecast of Hotels and Restaurants Trust Fund*, received by staff of the Government Operations Appropriations Subcommittee on December 10, 2015 (on file with the subcommittee).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.