

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 706

INTRODUCER: Senator Altman

SUBJECT: Culinary Education Programs

DATE: February 4, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	Pre-meeting
2.			HP	
3.			FP	

I. Summary:

SB 706 permits certain culinary education programs to qualify for an alcoholic beverages license for the sale of beer, wine, and distilled spirits (alcoholic beverages). The Department of Business and Professional Regulation (DBPR) regulates public food service establishments through its Division of Hotels and Restaurants and the sale and service of alcoholic beverages through its Division of Alcoholic Beverages and Tobacco (DABT).

The bill defines a culinary education program to mean a program that educates enrolled students in the culinary arts, including preparation, cooking, and presentation of food, or a program that 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;
- Florida College System institution;
- Nonprofit independent college or university that is located and chartered in this state, meets certain accreditation requirements, and is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or
- Nonpublic postsecondary educational institution.

The bill creates a special alcoholic beverages license for culinary education programs. Current law requires that a caterer must possess a public food service establishment license issued by the Division of Hotels and Restaurants in order to qualify for an alcoholic beverage license. However, current law may disqualify a culinary education program from a license issued by the Division of Hotels and Restaurants if it is a place regulated and licensed by the Department of Health. The bill permits a culinary education program to qualify for a public food service license issued by the Division of Hotels and Restaurants in order for the program to also qualify for an alcoholic beverage license. The program would remain subject to the sanitation rules established by the Department of Health.

Current law requires a caterer licensed to sell or serve alcohol beverages must derive at least 51 percent of its gross receipts from the sale of food and nonalcoholic beverages. The bill deletes this requirement for culinary education programs.

The bill explicitly provides that the special license does not authorize the culinary education program to conduct any activities that would violate alcoholic beverages laws, 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 provides an effective date of July 1, 2016.

II. Present Situation:

Florida's Beverage Law

Florida's Beverage Law regulates alcoholic beverages.¹ The Division of Alcoholic Beverages and Tobacco (DABT), within the Department of Business and Professional Regulation (department), is responsible for the regulation of the manufacture, packaging, distribution, and sale of alcoholic beverages within the state.²

The term "alcoholic beverages" is defined in 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 in 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 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 beer, wine, and distilled spirits that may be issued per county. 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. The licenses can also be issued 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

¹ Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law

² Section 561.02, F.S.

prospective applicant must either purchase an existing license or enter a drawing to win the right to apply for a newly authorized quota license.³

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits.⁴ Quota license exceptions are known as “special licenses.”

The annual fee for a quota license for the consumption of alcoholic beverages on the premises will vary based on county population but ranges from \$624 to \$1,820.⁵ However, at the initial issuance of a new license, the licensee must pay a one-time fee of \$10,750.⁶ 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.⁷

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.⁸

A qualified, licensed 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.⁹

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, regulate separate sectors of the food service industry, and are funded at different levels because of statutory fee caps.¹⁰ Each agency issues food establishment licenses or permits, conducts food safety and sanitation inspections, and enforces regulations through fines and other disciplinary actions.¹¹

³ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, FAQs – Frequently Asked Questions, Licensing-related FAQs, available at <http://www.myfloridalicense.com/dbpr/abt/faq.html> (last visited February 1, 2016).

⁴ 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% of gross profits from the sale of food and nonalcoholic beverages; and specialty centers built on government-owned land, bowling establishments, and airports.

⁵ See s. 565.02(1), F.S.

⁶ Section 561.19(5), F.S.

⁷ 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 January 25, 2016).

⁸ Section 561.20(2)(a)5., F.S.

⁹ See ss. 561.20(2)(a)5. and 565.02(1)(b), F.S.

¹⁰ 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 February 1, 2016).

¹¹ *Id.*

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.¹² 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.¹³

Public Food Service Establishments

The Division of Hotels and Restaurants is the state entity charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division of Hotels and Restaurants inspects and licenses public food service establishments, defined in 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.¹⁴

There are several exclusions from the definition of public food service establishment, including:¹⁵

- 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, the Department of Children and Families, or other similar place regulated under s. 381.0072, F.S.
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services (DACCS) 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.

¹² 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 February 1, 2016).

¹³ *Supra* note 10.

¹⁴ Section 509.013(5)(a), F.S.

¹⁵ Section 509.013(5)(b), F.S.

- 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.

The exemption for places regulated under s. 381.0072, F.S., applies to “food service establishments” licensed and regulated by the DOH. The term “food service establishment” includes various types of facilities, including public or private schools, adult day care centers, short-term residential treatment centers, residential treatment facilities, homes for special services, and intermediate care facilities for persons with developmental disabilities.¹⁶

Department of Agriculture and Consumer Services - Florida Food Safety Act

Under the Florida Food Safety Act (Food Safety Act),¹⁷ the DACS is charged with administering and enforcing the provisions of the Food Safety 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.¹⁸

An individual seeking to operate a food establishment or retail food store must first obtain a food permit from the DACS.¹⁹ 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 Food Safety 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 regulated under s. 413.051, F.S., s. 500.80, F.S., ch. 509, F.S., or ch. 601, F.S.²⁰

Department of Health Food Service Protections

The Department of Health has been charged with protecting the public from food borne illness for locations that are not licensed under ch. 500, F.S., by the DACS or ch. 509, F.S., by the Division of Hotels and restaurants.²¹ This Department of Health’s authority includes developing and enforcing standards and requirements for the storage, preparation, serving, and display of food in food service establishments as defined in s. 381.0072(2)(c), F.S.

The Department of Health utilizes a risk-based inspection program to conduct more frequent inspections of facilities posing a greater risk to the public becoming sick from the consumption

¹⁶ See s. 381.0072(1)(b), F.S.

¹⁷ See ch. 500, F.S.

¹⁸ Section 500.032, F.S.

¹⁹ Section 500.12(1), F.S.

²⁰ This exemption applies to vending stands operated by eligible blind persons, cottage food operations, lodging and food service establishments, and citrus facilities.

²¹ Section 381.0072(1), F.S.

of their product.²² The inspections are performed by the environmental health sections of the local county health departments.

III. Effect of Proposed Changes:

Department of Health Food Service Protections

The bill amends s. 381.0072(1), F.S., to provide 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 amends s. 381.0072(2), F.S., to define 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 as defined in s. 100.21, F.S.;²³
- Florida College System institution as defined in s. 100.21, F.S.;²⁴
- 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;²⁵ or
- Nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.²⁶

Culinary education programs located in secondary schools are not included in this definition.²⁷

The bill amends s. 381.0072(2) (c), F.S., to provide that the term “food service establishment” 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 with compliance standards.

²² Florida Department of Health, *Food Safety and Sanitation*, available at <http://www.floridahealth.gov/Environmental-Health/food-safety-and-sanitation/index.html> (last visited February 1, 2016).

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ 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, is political subdivisions, or the federal government.

²⁷ 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 January 25, 2016).

Chapter 509, F.S., Public Food Service Establishments

The bill amends s. 509.013(5)(a), F.S., to provide that the term “public food service establishments,” which are regulated by the Division of Hotels and Restaurants, 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.

Alcoholic Beverage License for Caterers

The bill amends s. 561.20(2)(a)5., F.S., to exempt a licensed culinary education program from the requirement that a caterer licensed to sell alcoholic beverages must derive at least 51 percent of its gross profits from the sale of food and nonalcoholic beverages.

The bill also creates s. 561.20(2)(a)6., F.S., to create a quota license exception for a culinary education program, as defined in s. 381.0072(2), F.S., which is license as a public food service establishment by the Division of Hotels and Restaurants.

This special license permits a licensed culinary education program to sell alcoholic beverages for consumption on its licensed premises. The culinary education program must specify designated areas in its facility where alcoholic beverages may be consumed. Alcoholic beverages may not be removed from the designated area and the alcoholic beverages sold for consumption on the premises must be consumed on the licensed premises only.²⁸

The bill provides that this special license for a culinary education program does not require the licensee to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

If a culinary education program 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 culinary education program must prominently display its license at catered events, and maintain for three years all records required by the department by rule to demonstrate compliance with the requirements of s. 561.20(2)(a)6., F.S.

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. 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 bill requires the culinary education program to maintain for three years all records required by rule of the DBPR to demonstrate compliance with state law. In current law, the recordkeeping requirement for alcoholic beverage licensees is based on statute.

²⁸ 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.

Section 561.55(3)(b), F.S., requires each licensed vendor of alcoholic beverages to keep records of all purchases and other acquisitions of alcoholic beverages for a period of three years.

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.

If the culinary education program possess any other license under the Beverage Law, the bill prohibits the culinary education program on the licensed premises authorized under the other license. The bill prohibits a licensed culinary education program from selling alcoholic beverages by the package for off-premise consumption. The bill requires a culinary education program to comply with age requirements for vendors as provided under the Beverage Law.²⁹

The bill authorizes the Division of Alcoholic Beverages and Tobacco 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.

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:

None.

²⁹ 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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new special alcoholic beverage license for culinary education programs. According to the Department of Business the Professional Regulation the new license type will generate additional state revenue. Each license fee will generate \$1,820 annually regardless of the population of the county where the license is issued. The number of new licenses contingent upon the number of entities that meet the license qualifications. The department 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Changes:**

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

None.

B. Amendments:

None.