

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 Rules

BILL: CS/CS/SB 752

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Calatayud

SUBJECT: Temporary Commercial Kitchens

DATE: April 18, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 752 regulates temporary commercial kitchens in the same manner as mobile food delivery vehicles (MFDVs or food trucks). The bill defines the term “temporary commercial kitchen” to mean “any kitchen that is a public food service establishment, used 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, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.” The term does not include a tent.

Temporary kitchens are typically used when fixed kitchens are unavailable, e.g., when damaged by a fire, or during remodeling, 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 bill:

- Requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry to verify that each temporary commercial kitchen that receives such services is properly licensed;

- Requires operators of temporary commercial kitchens to properly display their public food service establishment license number to assist the public food service establishment to verify the licensure of the temporary commercial kitchens;
- Preempts regulation of licenses, registrations, permits, and fees for temporary commercial kitchens to the state; and
- Authorizes MFDVs and temporary commercial kitchens that are operated on the same premises of a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment.

The bill additionally allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;
- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The bill also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days.

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 Division of Business and Professional Regulation (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

¹ Section 509.032, F.S.

² Section 509.013(5)(a), F.S.

³ Section 509.013(5)(b), F.S.

- 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; 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

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 March 24, 2023).

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.

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 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

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 April 3, 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 April 3, 2023).

¹⁰ Section 509.102, 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 April 3, 2023).

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

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

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 an 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 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

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.

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.

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, 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.

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.*

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 April 3, 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 April 3, 2023).

³⁰ *Id.* See also U.S. Mobile Kitchens, *Temporary Kitchens*, at: <https://www.usmobilekitchens.com/mobile-kitchens/temporary-kitchens> (last visited April 3, 2023).

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 amends s. 509.101(3), F.S., to require operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry to verify that each temporary commercial kitchen that receives such services is properly licensed, and requires operators of temporary commercial kitchens to properly display their public food service establishment license number. The bill applies to temporary commercial kitchens the same requirements that currently apply to commissary services for MFDVs under current law.

The bill amends s. 509.102, F.S., to apply the same requirements to temporary commercial kitchens that apply to MFDVs under current law.

The bill creates s. 509.102, F.S., to define the term “temporary commercial kitchen” to mean “any kitchen that is a public food service establishment, used 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, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.” The term does not include a tent.³²

Under the bill, temporary commercial kitchens are subject to regulation under ch. 509, F.S.

The bill preempts the regulation for licenses, registrations, permits, and fees for temporary commercial kitchens to the state. Under the bill, local governments may not:

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

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 April 3, 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 April 3, 2023).

The bill provides that an MFDV “or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.” This provision may permit a licensed public food service establishment to operate a separately licensed MFDV or a temporary commercial kitchen at the same location and for the same hours as the public food service establishment.

The bill clarifies that local governments’ authority to regulate the operation of temporary commercial kitchens is not affected, except as described in the preemption.

The bill additionally allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;
- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The bill also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days, and operators of a temporary commercial kitchen must notify the division within 48 hours of commencing operation in a location.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR anticipates an indeterminate fiscal impact for the bill.³³ 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.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Distinguishing MFDVs and Temporary Commercial Kitchens

A mobile food delivery vehicle (food truck or MFDV) is defined as:³⁵

...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.

The bill defines temporary commercial kitchen as:

...any kitchen that is a public food service establishment, used 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, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Under the bill, the primary distinction between an MFDV and a temporary commercial kitchen is that a temporary commercial kitchen prepares food for takeout or delivery-only and it may be a portable structure that can be towed. Otherwise, it is not clear that an MFDV may not also

³³ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 415* (Jan. 24, 2023) (on file with the Senate Regulated Industries Committee).

³⁴ *Id.*

³⁵ Section 509.032, F.S., and Fla. Admin. Code R. 61C-1.002.

qualify as a temporary commercial kitchen because an MFDV must be self-propelled and is necessarily axle-mounted, i.e., it moves on wheels connected to an axle,³⁶ and must include the same self-contained utilities as a temporary commercial kitchen.

Local Pilot Programs

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.”³⁷ 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.³⁸ The pilot program was renewed on March 24, 2022, for a second year.³⁹

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

The City of Orlando has adopted a similar pilot program.⁴⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.101 and 509.102.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Commerce and Tourism on April 4, 2023:

The amendment allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;

³⁶ See Merriam-Webster.com, *axle*, <https://www.merriam-webster.com/dictionary/axle> (last visited March 24, 2023).

³⁷ 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 April 3, 2023).

³⁸ *Id.*

³⁹ City of Miami, City Commission Agenda March 24, 2022, <http://miamifl.igmp2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&Inline=True> (last visited April 3, 2023).

⁴⁰ 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 April 3, 2023).

- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The CS also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days.

CS by Regulated Industries on March 7, 2023:

The CS includes temporary commercial kitchens in the requirements:

- For public food service establishments who provide commissary services to temporary commercial kitchens. Currently, these requirements only apply to commissary services provided to mobile food dispensing vehicles (food trucks);
- For food trucks, including the preemption of regulation to the state.

The CS also:

- Permits a food truck or temporary commercial kitchen to operate on the same premises as and by a separately licensed public food service establishment that may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen; and
- Removes the requirement that the Division of Hotels and Restaurants adopt rules regulating temporary commercial kitchens.

B. Amendments:

None.