

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 415 Temporary Commercial Kitchens

**SPONSOR(S):** Commerce Committee, Regulatory Reform & Economic Development Subcommittee, Porras

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 2 N, As CS	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Helpling	Topp
3) Commerce Committee	17 Y, 0 N, As CS	Thompson	Hamon

### SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare. Food trucks are regulated by DBPR as a “mobile food dispensing vehicle,”(MFDV). To obtain a license as an MFDV, an applicant must complete a kitchen plan review for sanitation and safety concerns, apply for a license and pay the license fee, and schedule and pass an initial licensing inspection. Once licensed, Division personnel inspect MFDVs as often as necessary for the protection of the public’s health, safety, and welfare.

Ghost kitchens are shared temporary commercial kitchens optimized for use by food delivery services such as Grubhub or DoorDash. Ghost kitchens include physical spaces for operators to create food for off-premises consumption, and can have a central, commissary-style set-up with multiple restaurants or brands working out of the same physical space. Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when food delivery and take-out options were being widely utilized. Recently, due to operational and permitting issues, a few major restaurant chains and ghost kitchen provider platforms have reduced their investments in temporary commercial kitchens.

The bill:

- Includes temporary commercial kitchens as a regulated public food service establishment, thus requiring such establishments to be subject to regulation by DBPR.
- 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, and requires operators of temporary commercial kitchens to properly display their public food service establishment license number.
- Preempts the regulation involving licenses, registrations, permits, and fees of temporary commercial kitchens to the state.
- Authorizes MFDVs and temporary commercial kitchens that are operated on the same premises as and by a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment.
- Provides timeframes within which temporary commercial kitchens are allowed to operate, authorizes the Division to grant such operation and extensions, and requires the Division to be notified by the kitchen operator before commencing operations.

The bill may have an insignificant fiscal impact on state government and the private sector. See Fiscal Analysis & Economic Impact Statement.

The effective date of the bill is July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

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

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.<sup>1</sup>

A “public food service establishment” is defined as:<sup>2</sup>

...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:<sup>3</sup>

- 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.

Food Trucks<sup>4</sup> are regulated by DBPR as a “mobile food dispensing vehicle,” (MFDV),<sup>5</sup> and defined as:<sup>6</sup>

...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:<sup>7</sup>

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<sup>1</sup> S. 509.032, F.S.

<sup>2</sup> S. 509.013(5)(a), F.S.

<sup>3</sup> S. 509.013(5)(b), F.S.

<sup>4</sup> 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 Feb. 15, 2023).

<sup>5</sup> S. 509.101, F.S.

<sup>6</sup> S. 509.032, F.S.; R. 61C-1.002, F.A.C.

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**DATE:** 4/18/2023

- Complete a kitchen plan review for sanitation and safety concerns (if required);<sup>8</sup>
  - No plan review is required if an operator:
    - buys a vehicle already licensed by the Division and no changes are made
  - 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;
  - Plan review requires:
    - a plan of the vehicle with equipment labeled;
    - a sample menu;
    - a side photograph of the vehicle showing the wheels and open service window; and
    - the water/sewer or commissary location;
- Apply for a license and pay the license fee;<sup>9</sup>
  - A \$50 application fee is paid in addition to license fees (\$347 annual and \$178.50 half year fee) when making an application for a new or change of ownership license; and
- Schedule and pass the licensing inspection;<sup>10</sup>
  - All new licensees are required to pass a sanitation and safety inspection prior to opening.

Once licensed, Division personnel have the right to inspect MFDVs as often as necessary for enforcement of the provisions of law and rule, and for the protection of the public's health, safety, and welfare.<sup>11</sup>

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.<sup>12</sup>

## Preemption

The regulation of public food service establishments is preempted to the state. This does not preempt 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.<sup>13</sup>

The regulation of MFDVs involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local government entity is prohibited from:<sup>14</sup>

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

The MFDV preemption may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of MFDVs other than the regulations included in the preemption.

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<sup>7</sup> 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 Feb. 15, 2023).

<sup>8</sup> R. 61C-1.002(5)(c), F.A.C.

<sup>9</sup> R. 61C-1.008(4), F.A.C.

<sup>10</sup> R.61C-1.008(3), F.A.C.

<sup>11</sup> S. 509.032(2)(b), F.S.

<sup>12</sup> S. 509.035, F.S.

<sup>13</sup> S. 509.032(7), F.S.

<sup>14</sup> S. 509.102, F.S.

The preemption does not apply to any port authority, aviation authority, airport, or seaport.<sup>15</sup>

## Sanitation Rules

The Division is required to 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 the 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, and initiating enforcement actions, and for other such responsibilities deemed necessary by the Division.<sup>16</sup>

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.<sup>17</sup>

The Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service. This model is offered for adoption by local, state, and federal governmental jurisdictions for food service, retail food stores, or food vending operations.<sup>18</sup>

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"<sup>19</sup> that is prepared on board a mobile food establishment.<sup>20</sup>

## Commissary Services Registry

DBPR defines "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."<sup>21</sup>

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.<sup>22</sup>

## Mobility Requirements

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<sup>15</sup> *Id.*

<sup>16</sup> S. 509.032(2)(d), F.S.

<sup>17</sup> R. 61C-1.001(12), F.A.C.

<sup>18</sup> 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 Feb. 16, 2022).

<sup>19</sup> "Time/temperature control for safety food" is defined in chapter 1 of the Food Code as a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

<sup>20</sup> U.S. Public Health Service, FDA Food Code 2017, p. 754, <http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited Feb. 23, 2023).

<sup>21</sup> R. 61C-1.001(8), F.A.C.

<sup>22</sup> S. 509.101(3), F.S.

Current law describes MFDVs as “mounted public food service establishments which are self-propelled or otherwise movable from place to place...”<sup>23</sup> 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 system. The Guide provides that an MFDV operator performs food service activities inside the vehicle like food storage, cooking or preparation of food and dishwashing.<sup>24</sup>

According to the Guide, one of the basic requirements for obtaining an MFDV license is to be a vehicle, and to be mobile. In order to be mobile, the Guide provides that “a side photograph of the vehicle showing its wheels and open service window must be submitted at time of application.”<sup>25</sup>

## Ghost Kitchens

Ghost kitchens, also known as dark kitchens or virtual restaurants, are shared commercial kitchens optimized for food delivery service. Ghost kitchens are typically located in areas with a high concentration of delivery demand. The kitchens don’t have a storefront and the staff prepares dishes off of their menus that are only available for delivery. By eliminating the dining room and the wait-staff, this allows food businesses to save on overhead costs by utilizing the shared kitchen model.<sup>26</sup>

Unlike a restaurant with a physical location, ghost kitchen customers do not know exactly where the food is coming from. This may pose a health concern. The Food Code is used to regulate ghost kitchen establishments; however, the Food Code mentions the regulation of Mobile Food Establishments, but not ghost kitchens or similar structures. Ghost kitchens that are not mobile may fall outside of the regulations.<sup>27</sup>

Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when restaurants were shut down due to restrictions, or business volume slowed significantly due to low numbers of patrons being allowed in restaurants.<sup>28</sup> Throughout the pandemic, the delivery-only virtual brand model grew, and through much of 2022 it continued to grow.<sup>29</sup> As a result, venture capitalists invested heavily in the model, which allows access by established restaurant chains and new food entrepreneurs.<sup>30</sup> Recently, due to operational and permitting issues, a few major restaurant chains and provider platforms have reduced their investments in the shared kitchen model. As a result, some of the companies are shifting toward more conventional restaurant development plans.<sup>31</sup>

The U.S. online food delivery market size attained a value of \$18.5 billion in the year 2020. The market is further expected to grow between 2023 and 2028 to reach a value of almost \$33.7 billion by 2026.<sup>32</sup> However, a recent survey of nearly 1,600 Americans shows that consumers are changing their dining

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<sup>23</sup> S. 509.101, F.S., and R. 61C-1.002, F.A.C.

<sup>24</sup> DBPR, *supra* note 7.

<sup>25</sup> *Id.*  
<sup>26</sup> CloudKitchens, *What is a ghost kitchen?: the ultimate guide for your restaurant*, <https://cloudkitchens.com/blog/ultimate-guide-to-ghost-kitchens/#:~:text=The%20kitchens%20themselves%20don't,working%20on%20fulfilling%20online%20orders>. (last visited Feb. 15, 2023).

<sup>27</sup> Coppolino, Andrew, *Ghost Kitchens, Home Cooks Shake up Food Industry but Raise Safety Concerns*, CBCnews, CBC/Radio Canada (Jan. 28, 2023), <https://www.cbc.ca/news/canada/kitchener-waterloo/andrew-coppolino-food-safety-home-cooks-ghost-kitchens-1.6728312> (last visited Feb. 20, 2023).

<sup>28</sup> GlobalData, *Struggling foodservice brands must embrace dark kitchens, says GlobalData*, <https://www.globaldata.com/media/consumer/struggling-foodservice-brands-must-embrace-dark-kitchens-says-globaldata/> (last visited Feb. 15, 2023).

<sup>29</sup> PYMNTS, *Inflation Puts Pressure on Ghost Kitchen Model*, <https://www.pymnts.com/restaurant-innovation/2023/inflation-puts-pressure-on-ghost-kitchen-model/> (last visited Feb. 15, 2023).

<sup>30</sup> TechCrunch, *The next big restaurant chain may not own any kitchens*, <https://techcrunch.com/2018/10/07/the-next-big-restaurant-chain-may-not-own-any-kitchens/> (last visited Feb. 15, 2023).

<sup>31</sup> Restaurant Dive, *Ghost kitchens need to go omnichannel if they want to survive, experts say*, <https://www.restaurantdive.com/news/ghost-kitchens-need-to-go-omnichannel-if-they-want-to-survive-experts-say/641555/> (last visited Feb. 15, 2023).

<sup>32</sup> Expert Market Research, *United States Online Food Delivery Market Outlook*, <https://www.expertmarketresearch.com/reports/united-states-Online-food-delivery-market> (last visited Feb. 15, 2023).

and tipping habits, with 67 percent saying they're dining out less and 31 percent tipping less when they are dining out.<sup>33</sup>

Ghost kitchens come in all shapes and sizes, with some spaces being shared and others being used by just one restaurant brand. The three main types are depicted in the following table:<sup>34</sup>

Type 1	Incubator/Pop-Up Kitchens	An incubator/pop-up ghost kitchen is affiliated with a traditional restaurant but focuses primarily on online orders and deliveries.
Type 2	Kitchen Pods	Kitchen pods are small shipping containers that come with outfitted kitchens.
Type 3	Commissary/Shared Kitchens	Commissary kitchens are shared kitchen spaces owned and operated by a third-party company or entrepreneur rather than a restaurant. They usually house multiple restaurants, brands, or concepts under one roof, where staff shares everything from refrigerator space to frying pans.

### Miami Pilot Program for App-based Mobile Operations

On March 11, 2021, the City of Miami created a pilot program for previously unregulated “mobile operating units.” The pilot program defined “mobile operation unit” 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, and “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.<sup>35</sup> 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 permits, and provide information about the number of participating sites and employees to the city, and to report on the total number of code violations. Violations are punishable by a fine of \$250 for a first offense and \$500 for each subsequent offense. The pilot was renewed on March 24, 2022, for a second year.<sup>36</sup>

According to reports, in the year since Miami adopted the pilot program, other cities have followed suit, including Orlando.<sup>37</sup>

### Other States

In 2020, the U.S. had 1,500 ghost kitchens open across the country.<sup>38</sup> It has been reported that ghost kitchens have continued to open and operate in states such as New Jersey<sup>39</sup>, California<sup>40</sup>, Texas<sup>41</sup>, and

<sup>33</sup> Lending Tree, *Nearly 70% of Americans Say They're Dining Out Less Frequently Due to Inflation, and Almost a Third Are Tipping Less*, [https://www.lendingtree.com/credit-cards/study/restaurants-groceries-inflation/#:~:text=Nearly%207%20in%2010%20\(67,impacted%20their%20grocery%20shopping%20habits](https://www.lendingtree.com/credit-cards/study/restaurants-groceries-inflation/#:~:text=Nearly%207%20in%2010%20(67,impacted%20their%20grocery%20shopping%20habits). (last visited Feb. 16, 2023).

<sup>34</sup> Cheetah, *3 Types of Ghost Kitchens and Which One Is the Best Business to Start*, <https://www.gocheetah.com/blog/types-of-ghost-kitchens-best-for-you/> (last visited Feb. 17, 2023).

<sup>35</sup> City of Miami Ordinance S. 31-51. Food trucks operating on private land.

<sup>36</sup> City of Miami, *City Commission Agenda March 24, 2022*, <http://miamifl.iq.m2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&In line=True> (last visited Feb. 16, 2023).

<sup>37</sup> 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 Feb. 16, 2023).

<sup>38</sup> Emma Liem Beckett, *Ghost Kitchens Could Be a \$1t Global Market by 2030, Says Euromonitor*, *Restaurant Dive* (July 10, 2020), <https://www.restaurantdive.com/news/ghost-kitchens-global-market-euromonitor/581374/> (last visited Feb. 20, 2023).

<sup>39</sup> Townsquare Media, Inc., *This Restaurant's Rare Ghost Kitchen Is Available in New Jersey*, *92.7 WOBN*, *92.7 WOBN* (Feb. 16, 2023), <https://wobm.com/ixp/942/p/pancake-kitchen-cracker-barrel/> (last visited Feb. 20, 2023).

<sup>40</sup> Iman Palm, *Chipotle to Open Spinoff Restaurant in Santa Monica*, *KTLA News* (Feb. 15, 2023), <https://ktla.com/news/california/chipotle-to-open-spinoff-restaurant-in-santa-monica/> (last visited Feb. 20, 2023).



New York.<sup>42</sup> In 2021, the global ghost kitchen market was estimated to be worth approximately \$56 billion.<sup>43</sup>

Currently, the regulation of ghost kitchens among the states appears to primarily be conducted at the local level. Policymakers are considering how to adapt existing regulations to fit the unique challenges that ghost kitchens present. Because ghost kitchens do not fit the traditional definition of a restaurant, government officials are unsure how to regulate them. Depending on their operations, ghost kitchens may fall under the definition of “food facilities,” which must be registered with the FDA and are subject to FDA inspections. They also must abide by various safety requirements, including allergy management, hazard planning, and sanitation.<sup>44</sup>

If a kitchen is defined as a restaurant, “a facility that prepares and sells food directly to consumers for immediate consumption,” it is exempt from FDA registration, but still regulated by state law and local health authorities. Central kitchens that prepare food for a restaurant chain do not fall under the restaurant exemption unless they sell directly to consumers.<sup>45</sup>

### **Effect of Proposed Changes**

The bill includes temporary commercial kitchens as a regulated public food service establishment, thus requiring such establishments to be subject to regulation by DBPR.

The bill requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry in order to verify that each temporary commercial kitchen that receives such services is properly licensed.

The bill requires operators of temporary commercial kitchens to permanently affix in a prominent place on the side of the kitchen, in figures at least 2 inches high and in contrasting colors from the background, the operator’s public food service establishment license number.

The bill preempts the regulation involving licenses, registrations, permits, and fees of temporary commercial kitchens to the state. 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. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent.”

The bill clarifies that the local governments’ ability to regulate the operation of a temporary commercial kitchen other than the regulations described in the preemption are not affected.

The bill authorizes MFDVs and temporary commercial kitchens that are operated on the same premises as and by a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment that operates the MFDV or temporary commercial kitchen.

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<sup>41</sup> Brandi Addison, *Ghost Kitchens Are Taking North Texas by Storm. Here's a Guide to Ghost Kitchens around Grapevine*, Dallas New (May 3, 2022), <https://www.dallasnews.com/food/restaurant-news/2022/05/03/ghost-kitchens-are-taking-north-texas-by-storm-heres-a-guide-to-ghost-kitchens-around-grapevine/> (last visited Feb. 20, 2023).

<sup>42</sup> Luke Fortney, *This New Manhattan Ghost Kitchen Will Have Di Fara Pizza and a Steak Spot from Bobby Flay*, Eater NY, Eater NY (Feb. 14, 2023), <https://ny.eater.com/2023/2/14/23597544/wonder-manhattan-ghost-kitchen-di-fara-pizza-bobby-flay-steak-nyc>.

<sup>43</sup> Statista, *Ghost Kitchens - Statistics & Facts*, Statista Research Department (Nov. 25, 2022), <https://www.statista.com/topics/7563/ghost-kitchens/#:~:text=As%20of%202022%2C%20the%20market,reach%20223.7%20billion%20by%202027> (last visited Feb. 20, 2023).

<sup>44</sup> The Food and Drug Administration, *Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry*, <https://www.fda.gov/files/food/published/Questions-and-Answers-Regarding-Food-Facility-Registration-%28Seventh-Edition%29.pdf> (last visited Feb. 20, 2023).

<sup>45</sup> *Id.*

The bill provides the following timeframes, within which a temporary commercial kitchen are allowed to operate:

- In conjunction with a licensed permanent food service establishment to supplement the kitchen operations of such establishment, as follows:
  - A temporary commercial kitchen may operate in this capacity on the premises of such establishment for 60 consecutive days.
  - The operators of the temporary commercial kitchen may request, and the Division may grant, one extension of up to 60 additional consecutive days.
- During a period of renovation, repair, or rebuilding, a temporary commercial kitchen may operate in this capacity on the premises of the licensed permanent food service establishment or off the premises, as follows:
  - A temporary commercial kitchen operation may operate in this capacity within line of sight not to exceed 1,320 feet from the licensed permanent food service establishment for 120 days.
  - The Division may in its discretion grant an additional extension of time upon a reasonable and reliable demonstration by the licensed permanent food service establishment that additional time is needed to complete the renovation, repair, or rebuild.
- If a licensed permanent food service establishment, or the land where such establishment is sited, is rendered uninhabitable due to a natural disaster, which is the subject of a declared state of emergency, a temporary commercial kitchen may operate on the premises or near the location of such establishment, as follows:
  - A temporary commercial kitchen may only operate in this capacity during the period of repair and rebuilding of the establishment with which it is associated.
  - A temporary commercial kitchen operating in this capacity must notify the Division of its location within 7 days after a natural disaster renders the structure or the land uninhabitable and notify the Division of its location every 90 days thereafter.
- Other than the circumstances described above, a temporary commercial kitchen may not operate in one location for longer than 30 consecutive days, and an operator of a temporary commercial kitchen must notify the division within 48 hours after commencing operation.

## B. SECTION DIRECTORY:

- Section 1: amends s. 509.101, F.S.; relating to establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.
- Section 2: amends s. 509.102, F.S.; relating to mobile food dispensing vehicles; temporary commercial kitchens; preemption.
- Section 3: provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DBPR has provided that the bill may increase “revenue due to new license classification.”<sup>46</sup>

#### 2. Expenditures:

DBPR has provided that there may be an “increase in staff and labor to process, review, and approve” license applications and to “inspect and regulate” the temporary commercial kitchens.<sup>47</sup> However, the impact will likely be an insignificant fiscal impact to the department.

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<sup>46</sup> Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 415, pp. 3-4 (January 24, 2023).

<sup>47</sup> *Id.*



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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive impact on owners of temporary commercial kitchens by clearly authorizing them to operate in the state. Those owners operating temporary commercial kitchens without a license will be required to pay and obtain a license to continue to operate.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DBPR to establish rules for the operation of temporary commercial kitchens. Such broad rulemaking authority may be an improper delegation of legislative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 23, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute includes temporary commercial kitchens in the commissary registry and license display requirements for public food service establishments. The committee substitute preempts the regulation of temporary commercial kitchens to the state. The committee substitute also specifies the hours of operation of MFDVs and temporary commercial kitchens under certain circumstances.

On April 17, 2023, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides timeframes within which temporary commercial kitchens are allowed to operate, authority for the Division to grant the timeframes and extensions, and requirements for the Division to be notified when a temporary commercial kitchen commences operations.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.