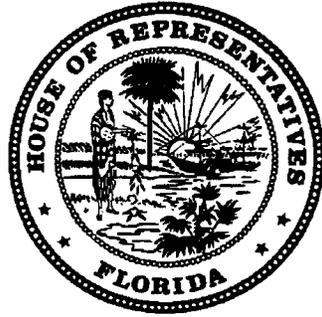




Government Operations Appropriations Subcommittee Meeting Packet

**January 12, 2016
1:30 p.m. – 3:30 p.m.
Morris Hall**



AGENDA

Government Operations Appropriations Subcommittee

January 12, 2016

1:30 p.m. – 3:30 p.m.

Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of Bills
 - CS/HB 297 Limitations on Actions other than for the Recovery of Real Property by Civil Justice Subcommittee, Perry
 - HB 633 Public Food Service Establishments by Raulerson
- III. Closing Remarks/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 297 Limitations on Actions Other than for the Recovery of Real Property
SPONSOR(S): Civil Justice Subcommittee; Perry and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 4 N, As CS	King	Bond
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Both a statute of limitations and a statute of repose limit the time period with which a person may file a lawsuit. A statute of limitations usually begins when the cause of action accrues and bars the lawsuit after a set period of time. A statute of repose extinguishes the right of action altogether and begins at the occurrence of a specified event.

Under current law, a cause of action founded on the design or construction of a building is subject to a four-year statute of limitations and a 10-year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The difference between the two is in treatment of a latent defect. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus limits the cause of action even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete upon final payment. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the last day that the contractor, architect, or engineer performs services related to the contract.

This bill also provides that any action that would otherwise be barred by this change in the definition of the completion of the contract may be commenced within one year after the effective date of the bill.

This bill does not appear to have a fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.¹ Moreover, unlike a statute of limitations, a statute of repose abolishes or completely eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.² Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.³

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, when an action involves a latent defect,⁴ the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest. Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

¹ *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

² *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997)

³ *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988)

⁴ Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge. *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

Recent Case Law

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion . . . of the contract' "⁵ for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for purposes of s. 95.11(3)(c), F.S., on the date final payment is made.⁶ It reasoned that

[c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.⁷

The court's definition of completion of the contract subjects the triggering of the statute of limitations period to particular actions of the injured party. This differs from the normal operation of a statute of repose which is usually based on the actions of the injuring party.

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to define the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and statute of limitations for design, planning, or construction defects is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The amendment to s. 95.11(3)(c), F.S., applies to any action commenced on or after July 1, 2016, regardless of when the cause of action accrued. Therefore, a party whose cause of action accrued prior to the changes in this bill, but who commences the action after July 1, 2016, could be barred from bringing the action by the shortening of the statute of repose resulting from the change in the definition in the completion of the contract. The bill provides that in such circumstances, if the action would not have been barred under the court's definition of the completion of the contract, the action may be commenced before July 1, 2017. If the action is not commenced by July 1, 2017 and is barred by the new definition of the completion of the contract, then the action will be forever barred.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts 327.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2016.

⁵ *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).

⁶ *Id.* at 708.

⁷ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Although the right to commence an action is a valid and protected property interest,⁸ a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.⁹ Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.¹⁰ The amendment to s. 95.11(3)(c), F.S., made in this bill may reduce the time allowed for a suit after the cause of action arose, but the bill appears to give a litigant reasonable time to enforce his or her right before being completely barred.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

⁸ See *Polk Cty. BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).

⁹ *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

¹⁰ *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162, 181 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that any action that would otherwise be barred by changing the definition of the completion of the contract may be commenced within one year after the effective date of the act. This analysis is drafted to the committee substitute as reported favorably by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to limitations on actions other than
 3 for the recovery of real property; amending s. 95.11,
 4 F.S.; specifying the date of completion for specified
 5 contracts; providing for applicability; reenacting s.
 6 627.441(2), F.S., relating to commercial general
 7 liability policy coverage to contractors for completed
 8 operations, to incorporate the amendment made by the
 9 act to s. 95.11, F.S., in a reference thereto;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (c) of subsection (3) of section
 15 95.11, Florida Statutes, is amended to read:

16 95.11 Limitations other than for the recovery of real
 17 property.—Actions other than for recovery of real property shall
 18 be commenced as follows:

19 (3) WITHIN FOUR YEARS.—

20 (c) An action founded on the design, planning, or
 21 construction of an improvement to real property, with the time
 22 running from the date of actual possession by the owner, the
 23 date of the issuance of a certificate of occupancy, the date of
 24 abandonment of construction if not completed, or the date of
 25 completion or termination of the contract between the
 26 professional engineer, registered architect, or licensed

27 contractor and his or her employer, whichever date is latest;
 28 except that, when the action involves a latent defect, the time
 29 runs from the time the defect is discovered or should have been
 30 discovered with the exercise of due diligence. In any event, the
 31 action must be commenced within 10 years after the date of
 32 actual possession by the owner, the date of the issuance of a
 33 certificate of occupancy, the date of abandonment of
 34 construction if not completed, or the date of completion or
 35 termination of the contract between the professional engineer,
 36 registered architect, or licensed contractor and his or her
 37 employer, whichever date is latest. The date of completion of
 38 the contract between the professional engineer, registered
 39 architect, or licensed contractor and his or her employer is the
 40 last day during which the professional engineer, registered
 41 architect, or licensed contractor furnishes labor, services, or
 42 materials, excluding labor, services, or materials relating to
 43 the correction of deficiencies in previously performed work or
 44 materials supplied.

45 Section 2. The amendment made by this act to s.
 46 95.11(3)(c), Florida Statutes, applies to any action commenced
 47 on or after July 1, 2016, regardless of when the cause of action
 48 accrued, except that any action that would not have been barred
 49 on July 1, 2017, under s. 95.11(3)(c), Florida Statutes, before
 50 the amendment made by this act may be commenced before July 1,
 51 2017, and if it is not commenced by that date and would be
 52 barred by the amendment made by this act to s. 95.11(3)(c),

53 Florida Statutes, it shall be barred.

54 Section 3. For the purpose of incorporating the amendment
 55 made by this act to section 95.11, Florida Statutes, in a
 56 reference thereto, subsection (2) of section 627.441, Florida
 57 Statutes, is reenacted to read:

58 627.441 Commercial general liability policies; coverage to
 59 contractors for completed operations.—

60 (2) A liability insurer must offer coverage at an
 61 appropriate additional premium for liability arising out of
 62 current or completed operations under an owner-controlled
 63 insurance program for any period beyond the period for which the
 64 program provides liability coverage, as specified in s.
 65 255.0517(2)(b). The period of such coverage must be sufficient
 66 to protect against liability arising out of an action brought
 67 within the time limits provided in s. 95.11(3)(c).

68 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 633 Public Food Service Establishments
SPONSOR(S): Raulerson
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		Topp	Topp <i>BDT</i>
3) Regulatory Affairs Committee			

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.¹

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.²

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.³

Since 1998,⁴ there have been a total of 2,382 outbreaks of foodborne illness in Florida.⁵ 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.⁶ Of these Florida cases, 1,023 persons contracted an illness during an outbreak and 87

¹ s. 509.13(8), F.S.

² 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.

³ 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.

⁴ 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).

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

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

persons were hospitalized; though, there were no deaths reported due to a foodborne illness outbreak within 2012-2014.⁷

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 events⁸ 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.⁹

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

⁷ *Id.*

⁸ s. 509.032(3)(c), F.S.

⁹ s. 509.032(3)(c), F.S.

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 days.¹⁰ 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.¹¹ 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.¹²

Hotels and Resaurants Trust Fund			
	FY 2016-17	FY 2017-18	FY 2018-19
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)
TOTAL Revenue	31,997,476	32,055,666	32,081,769
Estimated Expenditures	29,684,974	29,967,406	30,127,907
Estimated Year-end Balance	18,106,062	20,194,824	22,148,887

¹⁰ 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.

¹¹ 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.

¹² 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).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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.

1 A bill to be entitled
 2 An act relating to public food service establishments;
 3 amending s. 509.013, F.S.; revising the definition of
 4 the term "public food service establishment" to
 5 exclude certain events; amending s. 509.032, F.S.;
 6 clarifying that a food service license is not required
 7 to be obtained if an event is excluded under the
 8 definition of the term "public food service
 9 establishment"; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (5) of section 509.013, Florida
 14 Statutes, is amended to read:

15 509.013 Definitions.—As used in this chapter, the term:

16 (5) (a) "Public food service establishment" means any
 17 building, vehicle, place, or structure, or any room or division
 18 in a building, vehicle, place, or structure where food is
 19 prepared, served, or sold for immediate consumption on or in the
 20 vicinity of the premises; called for or taken out by customers;
 21 or prepared prior to being delivered to another location for
 22 consumption.

23 (b) The following are excluded from the definition in
 24 paragraph (a):

25 1. Any place maintained and operated by a public or
 26 private school, college, or university:

- 27 a. For the use of students and faculty; or
 28 b. Temporarily to serve such events as fairs, carnivals,
 29 food contests, cook-offs, and athletic contests.

30 2. Any eating place maintained and operated by a church or
 31 a religious, nonprofit fraternal, or nonprofit civic
 32 organization:

- 33 a. For the use of members and associates; or
 34 b. Temporarily to serve such events as fairs, carnivals,
 35 food contests, cook-offs, or athletic contests.

36
 37 Upon request by the division, a church or a religious, nonprofit
 38 fraternal, or nonprofit civic organization claiming an exclusion
 39 under this subparagraph must provide the division documentation
 40 of its status as a church or a religious, nonprofit fraternal,
 41 or nonprofit civic organization.

42 3. Any eating place maintained and operated by an
 43 individual or entity at a food contest, cook-off, or a temporary
 44 event lasting from 1 to 3 days which is hosted by a church or a
 45 religious, nonprofit fraternal, or nonprofit civic organization.

46 Upon request by the division, the event host must provide the
 47 division documentation of its status as a church or a religious,
 48 nonprofit fraternal, or nonprofit civic organization.

49 ~~4.3.~~ Any eating place located on an airplane, train, bus,
 50 or watercraft which is a common carrier.

51 ~~5.4.~~ Any eating place maintained by a facility certified
 52 or licensed and regulated by the Agency for Health Care

53 Administration or the Department of Children and Families or
 54 other similar place that is regulated under s. 381.0072.

55 ~~6.5.~~ Any place of business issued a permit or inspected by
 56 the Department of Agriculture and Consumer Services under s.
 57 500.12.

58 ~~7.6.~~ Any place of business where the food available for
 59 consumption is limited to ice, beverages with or without
 60 garnishment, popcorn, or prepackaged items sold without
 61 additions or preparation.

62 ~~8.7.~~ Any theater, if the primary use is as a theater and
 63 if patron service is limited to food items customarily served to
 64 the admittees of theaters.

65 ~~9.8.~~ Any vending machine that dispenses any food or
 66 beverages other than potentially hazardous foods, as defined by
 67 division rule.

68 ~~10.9.~~ Any vending machine that dispenses potentially
 69 hazardous food and which is located in a facility regulated
 70 under s. 381.0072.

71 ~~11.10.~~ Any research and development test kitchen limited
 72 to the use of employees and which is not open to the general
 73 public.

74 Section 2. Paragraph (c) of subsection (3) of section
 75 509.032, Florida Statutes, is amended to read:

76 509.032 Duties.—

77 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD
 78 SERVICE EVENTS.—The division shall:

79 (c) Administer a public notification process for temporary
 80 food service events and distribute educational materials that
 81 address safe food storage, preparation, and service procedures.

82 1. Sponsors of temporary food service events shall notify
 83 the division not less than 3 days before the scheduled event of
 84 the type of food service proposed, the time and location of the
 85 event, a complete list of food service vendors participating in
 86 the event, the number of individual food service facilities each
 87 vendor will operate at the event, and the identification number
 88 of each food service vendor's current license as a public food
 89 service establishment or temporary food service event licensee.
 90 Notification may be completed orally, by telephone, in person,
 91 or in writing. A public food service establishment or food
 92 service vendor may not use this notification process to
 93 circumvent the license requirements of this chapter.

94 2. The division shall keep a record of all notifications
 95 received for proposed temporary food service events and shall
 96 provide appropriate educational materials to the event sponsors
 97 and notify the event sponsors of the availability of the food-
 98 recovery brochure developed under s. 595.420.

99 3.a. Unless excluded under s. 509.013(5)(b), a public food
 100 service establishment or other food service vendor must obtain
 101 one of the following classes of license from the division: an
 102 individual license, for a fee of no more than \$105, for each
 103 temporary food service event in which it participates; or an
 104 annual license, for a fee of no more than \$1,000, that entitles

105 | the licensee to participate in an unlimited number of food
 106 | service events during the license period. The division shall
 107 | establish license fees, by rule, and may limit the number of
 108 | food service facilities a licensee may operate at a particular
 109 | temporary food service event under a single license.

110 | b. Public food service establishments holding current
 111 | licenses from the division may operate under the regulations of
 112 | such a license at temporary food service events.

113 | Section 3. This act shall take effect July 1, 2016.