

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 558

INTRODUCER: Senator Stargel

SUBJECT: Public Lodging and Public Food Service Establishments

DATE: April 8, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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## I. Summary:

SB 558 permits the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation to reassess the inspection frequency of public food service establishments at least annually and deliver inspection reports to operators of public lodging and public food service establishments electronically.

The bill also repeals the:

- 3-day operating limitation for current public food service establishment licensees at temporary food service events;
- July 1, 2014, requirement date for the division to adopt a risk-based inspection frequency rule because the division adopted such a rule on July 4, 2013;
- Requirement a public food service establishment maintain a duplicate copy of the inspection report on the premises;
- Requirement that the division provide a food recovery brochure to public food service establishments and temporary food service event sponsors; and
- \$100 delinquent fee for public lodging and public food service establishments that file for renewal between 30 and 60 days after the expiration date of the license.

The bill is estimated to have a negative fiscal impact of \$461,420 on the Hotels and Restaurants Trust Fund. In addition, as a result of the estimated \$461,420 reduction in license fees, the department estimates a \$36,914 annual reduction in the service charge paid to the General Revenue Fund.

## II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) licenses public lodging and public food service establishments under part I of ch. 509, F.S. The division enforces all applicable laws relating to

the inspection and regulation of public lodging and public food service establishments with the purpose of protecting the public's health, safety, and welfare.<sup>1</sup>

### **Public Lodging Establishments**

A "public lodging establishment" is any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented out to guests. These establishments are either:

- Transient, meaning it is rented more than 3 times in a year for periods less than 30 days or 1 month; or
- Non-transient, meaning it is rented for periods more than 30 days or 1 month.<sup>2</sup>

Public lodging establishments are classified as a hotel, motel, vacation rental, non-transient apartment, transient apartment, bed and breakfast inn, and timeshare project.<sup>3</sup>

Dormitories, hospital and medical establishments, residential units, migrant labor camps, and establishments inspected by the Department of Health are exempt from the definition of "public lodging establishment."<sup>4</sup>

In FY 2013-14, there were 38,472 licensed public lodging establishments, including hotels, motels, non-transient and transient rooming houses, and resort condominiums and dwellings.<sup>5</sup>

### **Public Food Service Establishments**

A "public food service establishment" is any place<sup>6</sup> where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises, including food that was called for or taken out by customers or prepared prior to being delivered to another location.<sup>7</sup>

There are numerous locations exempt from the definition of a "public food service establishment" including any place maintained and operated by a public or private school, college or university and any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization.<sup>8</sup>

In FY 2013-14, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.<sup>9</sup>

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<sup>1</sup> Section 509.032(2)(a), F.S.

<sup>2</sup> Section 509.013(4)(a), F.S.

<sup>3</sup> See s. 509.242, F.S.

<sup>4</sup> *Id.* at (b).

<sup>5</sup> *Annual Report, Fiscal Year 2013-2014*, Division of Hotels and Restaurants, Department of Business and Professional Regulation, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr\\_annual\\_reports.html](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html) (last visited April 1, 2015).

<sup>6</sup> Including any building, vehicle, structure, room or the division of such. s. 509.013(5)(a), F.S.

<sup>7</sup> See s. 509.013(5)(a), F.S.

<sup>8</sup> See s. 509.013(5)(b), F.S.

<sup>9</sup> *Supra* note 5.

### **Temporary Food Service Event Licenses**

A “temporary food service event” is any event of 30 days or less where food is prepared, served, or sold to the general public.<sup>10</sup> The division issues individual licenses for each temporary food service event. However, current public food service establishment licensees are able to operate at temporary food service events which are 3 days or less.<sup>11</sup>

Temporary food service event licenses cost \$105 for a 4-30 day event and \$456 for an annual license.<sup>12</sup> In FY 2013-14 the division issued 7,718 licenses, of which 3,136 were for 4-30 day licenses.<sup>13</sup> The division does not know how many of those licenses were issued to currently-licensed public food service establishments.<sup>14</sup>

### **Public Food Service Establishment Inspections**

Public food service establishments are inspected on a risk-based inspection frequency. The division was required to adopt a risk-based inspection frequency rule by July 1, 2014.<sup>15</sup>

On July 4, 2013, the division adopted a risk-based inspection frequency rule which requires all public food service establishments to have one to four unannounced inspections each year. The number of inspections is based on risk presented by the establishment’s type of food and food preparation processes, type of service, and compliance history.<sup>16</sup> In FY 2013-14 the division completed over 127,000 public food service inspections.<sup>17</sup>

### **Food Recovery Brochures**

During inspections and at food service events the division is required to provide a public food service establishment or event sponsor with a copy of the food recovery<sup>18</sup> brochure, developed under s. 595.420, F.S. The Florida Department of Agriculture and Consumer Services (DACS) is required to develop a brochure that details the need and benefit of good recovery programs, the manner in which organizations may become involved, and the food recovery entities or food banks that exist in the state.<sup>19</sup> The DACS develops and prints the food recovery brochure, but prints a limited number of copies and does not provide printed brochures to the division for dissemination.<sup>20</sup>

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<sup>10</sup> Section 509.013(8), F.S.

<sup>11</sup> Section 509.032(3)(c), F.S.

<sup>12</sup> Rule 61C-1008(4)(a), F.A.C. and *supra* note 5 at 7-8.

<sup>13</sup> *Supra* note 5.

<sup>14</sup> 2015 Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 558*, Feb. 20, 2015.

<sup>15</sup> Section 509.032(2), F.S.

<sup>16</sup> Rule 61C-1.002(8)(d)2., F.A.C.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> Food recovery programs provide surplus food to governmental agencies and local volunteer and nonprofit organizations for distribution to those in need, rather than destroying it. s. 595.420(1), F.S.

<sup>19</sup> Section 595.420(7), F.S.

<sup>20</sup> The brochure is currently 27 pages long. 2015 Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 558*, Feb. 20, 2015.

## **Inspection Reports**

All notices, including inspection reports, served by the division must be in writing and personally delivered by an agent of the division or by registered letter to the operator of the public lodging or public food service establishment. If an operator refuses a notices or if the agent, after due diligence, is unable to serve the notice, the division may to post the notice in a conspicuous place at the establishment.<sup>21</sup>

A public food service establishment is required to have the latest inspection report or a duplicate copy on the premises and must make it available to the public upon request.<sup>22</sup>

## **License Renewal**

Public lodging and public food service establishments must renew their licenses annually and are assessed delinquent fees if a license is not renewed by the expiration date. Section 509.251, F.S., requires the division to adopt delinquent fees by rule and prescribes maximum delinquent fees of:

- \$50 for licenses not renewed within 30 days of the expiration date; and
- \$100 for a license not renewed within 30 but not more than 60 days of the expiration date.<sup>23</sup>

From 2007 to 2012, the division collected an average of \$849,669 in delinquent fees annually from 10,378 delinquent licensees. The \$100 delinquent fee accounted for approximately three-quarters, or more than \$660,000, of the average delinquent fees collected. In FY 2013-2014, the division licensed 125,555 public lodging and public food service establishments and collected \$895,224 in delinquent fees.<sup>24</sup>

## **III. Effect of Proposed Changes:**

### **Temporary Food Service Event Licenses (Section 1)**

The bill amends s. 509.032(3)(c)3.b., F.S., to repeal the 3-day operating limitation for current public food service establishment licensees at temporary food service. This change effectively permits currently-licensed public food service establishments to operate at a temporary food service event for the duration of the event without obtaining an additional temporary food service license even if the event exceeds three days.

The bill allows the department to notify temporary food service event sponsors of the availability of the food-recovery brochure, in lieu of providing a copy.

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<sup>21</sup> Section 509.091, F.S., and 2015 Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 558*, Feb. 20, 2015.

<sup>22</sup> Section 509.101(1), F.S.

<sup>23</sup> Section 509.251, F.S. The division adopted the maximum delinquent fees in rule 61C-1.008(5), F.A.C.

<sup>24</sup> *Supra* note 14.

**Inspections (Section 1)**

The bill repeals the July 1, 2014, requirement date for the division to adopt a rule for a risk-based inspection frequency because the division adopted a risk-based inspection frequency rule on July 4, 2013.<sup>25</sup>

The bill requires the division to reassess a licensed public food service establishment's frequency of inspections at least annually. This permits the division to reclassify a public food service establishment's inspection frequency in real-time upon identifying a change in the risk level, instead of waiting until the next annual assessment.

The bill allows the department to notify public food service establishments of the availability of the food-recovery brochure, instead of having to provide a copy.

**Inspection Reports (Sections 2 and 3)**

The bill permits the division to deliver inspection reports to operators of public lodging or public food service establishments by electronic means.

The bill requires public food service establishments to maintain a copy of the latest inspection report and make it available to the division during inspections. The bill repeals the requirement that the establishment have a duplicate copy of the latest inspection report on premises. This allows establishments to maintain the inspection report in any format or electronic location as long as it can be retrieved and viewed as necessary.

**License Renewal (Section 4)**

The bill amends s. 509.251, F.S., to repeal the \$100 delinquent fee for public lodging and public food service establishments that renew licenses more than 30 but not more than 60 days after the expiration date of the license. A license renewal filed after the expiration date is subject to a delinquent fee not to exceed \$50.

**Effective Date (Section 5)**

The bill provides an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

**B. Public Records/Open Meetings Issues:**

None.

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<sup>25</sup> Rule 61C-1.002(8)(d), F.A.C.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill repeals the \$100 delinquent fee for public lodging and public food service establishments renew a license 30 but not more than 60 days after the expiration of the license. A license renewal filed after the expiration date is subject to a delinquent fee not to exceed \$50.

The bill permits current public food service establishment licensees to operate at a temporary food service event for the duration of the event, saving the establishment the expense of obtaining an additional temporary food service event license if the event exceeds three days. Per establishment savings depend upon the type of license obtained, ranging from \$105 per 4-30 day event to \$456 for an annual license.<sup>26</sup>

C. Government Sector Impact:

The bill has negative fiscal impact of \$461,420 on the Hotels and Restaurants Trust Fund due to eliminating necessity of licenses for temporary food service events for licensed public food service establishments (\$130,620) and reducing the delinquent fee, from \$100 to \$50, for the renewal of a public lodging and public food service establishment licenses expired for 30-60 days (\$330,800). In addition, as a result of the estimated \$461,420 reduction in license and delinquent fees, there will be a \$36,914 annual reduction in the service charge paid to the General Revenue Fund.<sup>27</sup>

Additionally, the division anticipates an indeterminate decrease in expenses by not having to provide a copy of food recovery brochure to public food service establishments and temporary food service event sponsors. The department also anticipates an indeterminate reduction in expenses due the department being able to electronically deliver inspection reports.<sup>28</sup>

**VI. Technical Deficiencies:**

None.

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<sup>26</sup> *Supra* note 14.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 509.032, 509.091, 509.101, and 509.251.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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