

STORAGE NAME: h1153s1a.hcl

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: CS/HB 1153 and HB 845

RELATING TO: Smoking Areas/Restaurants

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Constantine and Representative Casey and others

TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1)	BUSINESS REGULATION & CONSUMER AFFAIRS	YEAS 6	NAYS 0
(2)	TOURISM	YEAS 8	NAYS 0
(3)	HEALTH CARE LICENSING & REGULATION	YEAS 11	NAYS 2
(4)			
(5)			

I. SUMMARY:

The bill provides that, effective October 1, 2000, no more than 50 percent of the dining room seating in a restaurant may be designated as a smoking area. The bill further provides that, effective October 1, 2001, the smoking area limits are reduced to 35 percent.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Does the bill create, increase or reduce, either directly or indirectly:

Any new responsibilities, obligations or work for other governmental or private organizations or individuals?

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Does the bill prohibit, or create new government interference with any presently lawful activity?

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain.

Less Government - The Clean Indoor Air Act allows restaurants which seat more than 50 patrons to designate areas for smoking not to exceed 65 percent of their seating in the dining area. The bill eliminates the distinction between restaurants which seat more than 50 patrons and those which seat less than 50. As a result, all public restaurants which choose to allow smoking would be required to comply with the smoking area square footage limitations of the bill.

Individual Freedom - The Clean Indoor Air Act allows the owner of a restaurant to designate smoking areas within the facility. The Act provides that these provisions do not require the designation of smoking areas. The bill restricts any area which may be designated for smoking to 35 percent of the seating capacity. Restaurants which are currently exempt, by definition, from the Act would be required to adhere to the 35 percent smoking restriction.

B. PRESENT SITUATION:

Part II of Chapter 386, F.S., is cited as the "Florida Clean Indoor Air Act." The stated intent of the Act is to "protect the public health, comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke by providing a uniform statewide maximum code." This part specifically preempts regulation of smoking to the state.

With certain exceptions for private functions, the Act prohibits smoking in a public place or at a public meeting except in designated smoking areas. Public place is defined to mean enclosed, indoor areas used by the general public located within 22 different statutorily

listed categories of buildings and facilities. The definition includes restaurants which seat more than 50 persons.

The Act specifies that locations within a public place may be designated as smoking areas by the person in charge of that building or facility. The stated intent of the Act specifies that these provisions are not to be interpreted to require the designation of smoking areas and it is the legislative intent to discourage the designation of an area within a government building as a smoking area.

An area designated for smoking may not contain more than one-half of the square footage within a single enclosed area. This limitation does not apply to restaurants which seat more than 50 persons. These restaurants may not include more than 65 percent of their dining room seats as part of their smoking area.

The Department of Health and the Division of Hotels and Restaurants within the Department of Business and Professional Regulation are authorized to enforce the provisions of the Act. These two agencies, in consultation with the State Fire Marshal within the Department of Insurance, are authorized to adopt rules to further implement the enforcement program.

A person prosecuted for violating the ban on smoking in a public place outside a designated smoking area commits a noncriminal violation punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation. Fines collected are to be used by the Department of Health for children's medical services programs.

Additionally, a restaurant licensee may be disciplined for violations of the smoking provisions of Chapter 386, F.S., pursuant to the authority of the Division of Hotels and Restaurants. Section 509.032, F.S., provides in part, "The division shall carry out all the provisions of this chapter and all other applicable laws and rules relating to the regulation of....public food service establishments for the purpose of safeguarding the public health, safety, and welfare." Penalties imposed under this authority are deposited into the Hotel and Restaurant Trust Fund.

C. EFFECT OF PROPOSED CHANGES:

The bill reduces the square footage area which may be designated for smoking in restaurants. The reduction is phased in over two years.

Effective October 1, 2000, public restaurants which seat more than 50 persons are prohibited from designating more than 50 percent of their seating in the dining area as smoking allowed rather than the current maximum of 65 percent.

Effective October 1, 2001, all public restaurants are prohibited from designating more than 35 percent of their seating in the dining area as smoking allowed.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 386.205, F.S., to phase in the reduction in designated smoking areas in restaurants which seat more than 50 patrons from 65 percent to 50 percent, effective October 1, 2000, and to 35 percent for all restaurants, effective October 1, 2001.

Section 2. Amends s. 386.203, F.S., to require all restaurants to comply with the provisions of the act, effective October 1, 2001.

Section 3. Provides that the bill shall take effect October 1, 2000, except as otherwise provided in the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The provisions of the bill do not address or impact local government revenues.

2. Expenditures:

The bill does not require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any direct economic impact on the private sector is unknown.

D. FISCAL COMMENTS:

The Division of Hotels and Restaurants of the Department of Business and Professional Regulation currently licenses 36,709 restaurants, both seated and unseated. In fiscal year 99-00, 742 citations, to date, have been issued by the division for violations by restaurant licensees of the provisions of the Clean Indoor Air Act. In fiscal year 98-99, 1586 violations were cited. Direct revenues attributed to smoking violations are unknown. Final penalties which may be imposed after negotiation, informal hearings and formal procedures often include combined violations where a lump sum penalty may be imposed. These penalties would not reflect individual specific fines to statute comparisons.

Fines which are imposed against individuals for smoking in no smoking areas are by statute to be used by the Department of Health for children's medical services programs under part I of Chapter 391, F.S. Figures reported by the Department of Health indicate an

insignificant amount of revenue has been generated for allocation to the children's medical service program.

The division does not anticipate the provisions of the bill to have a fiscal impact on state revenue. It could be anticipated that violations would continue to occur; however, it is not anticipated that a significant increase would be expected as a result of the expansion of the non-smoking zones in restaurants.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Representatives from the Florida Restaurant Association, the American Cancer Society, the American Lung Association, the American Heart Association, the Florida Society for Respiratory Care, and the Florida School Health Association all appeared at the April 5, 2000, Health Care Licensing & Regulation Committee meeting in support of the bill. These representatives indicated that the bill is a compromise that has been worked on over the past two years and is supported by all involved parties.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a strike everything amendment which contained the identical language of HB 1153. The committee then unanimously approved the motion to adopt the bill, as amended, as a committee substitute for HB 1153 and HB 845.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Alan W. Livingston

Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON TOURISM:

Prepared by:

Staff Director:

Judy C. McDonald

Judy C. McDonald

AS FURTHER REVISED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Andrew "Andy" Palmer

Lucretia Shaw Collins