

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1450

SPONSOR: Regulated Industries Committee and Senator Constantine

SUBJECT: Public Lodging & Food Service

DATE: February 26, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill:

- Requires only one annual inspection of transient and nontransient apartments.
- Requires that a food service vendor obtain either an individual license for each temporary food event for a fee of no more that \$105, or an annual license, for a fee of no more than \$1,000.
- Clarifies that late fees and fees to pay costs associated with initiating regulation of the establishment are not subject to the aggregate cap on license fees.
- Requires that the secretary and the division periodically review its budget and financial status with the advisory council for the purpose of maintaining the financial stability of the division, with the council to make recommendations on adequate funding levels.
- Privatizes the Hospitality Education Program by requiring that all instruction and training offered through the program be provided by private, Florida nonprofit statewide organizations under contract with the division, and increases the annual fee to fund the program from \$6 to \$10.
- Deletes a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator
- Provides that inspections for temporary elevator use are to be conducted by a private inspector, not a state elevator inspector.
- Requires that a certified elevator inspector file a copy of an elevator inspection report within 5 days after the inspection and subjects the inspector to discipline for failure to do so.
- Requires an annual inspection for all elevators.
- Allows a local government that assumes elevator inspection duties to hire private inspector to conduct inspections.

- Requires the department to maintain a separate account within the Hotel and Restaurant Trust Fund for elevator inspection program revenue.

The bill substantially amends the following sections of the Florida Statutes: 509.032, 509.251, 509.291, 509.302, 399.01, 399.02, 399.03, 399.049, 399.061, 399.07, 399.105, 399.106, 399.125, 399.13, and 509.072.

## II. Present Situation:

Chapter 509, Part I, provides for regulation of lodging and food service establishments.

“Public lodging establishment” is defined as “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242.” s. 509.013(4), F.S. The section expressly excludes from the definition of public lodging establishment the following:

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
- Any hospital, nursing home, sanitarium, assisted living facility, or other similar place.
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
- Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and
- Any establishment inspected by the Department of Health and regulated by chapter 513.

“Public food service establishment” is defined as “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.” s. 509.013(5), F.S. The section expressly excludes from the definition of public food service establishment the following:

- 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.

- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any eating place maintained by a hospital, nursing home, sanitarium, assisted living facility, adult day care center, or other similar place that is regulated under s. 381.0072.
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
- Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
- Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
- Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 509.032, F.S., provides that the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (the division) has the duty to inspect each licensed establishment at least twice a year and at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division is to establish a system to determine inspection frequency.

### III. Effect of Proposed Changes:

**Section 1** amends s. 509.032, F.S., to require only one annual inspection of transient and nontransient apartments. The section also changes the licensing and reporting requirements for temporary food service events, requiring that a food service vendor obtain either an individual license, for a fee of no more than \$105, for each temporary food event, or an annual license, for a fee of no more than \$1,000.

**Section 2** amends s. 509.251, F.S., to clarify that late fees and fees to pay costs associated with initiating regulation of the establishment are not subject to the aggregate cap on license fees.

**Section 3** amends s. 509.291, F.S., to require that the secretary and the division periodically review the division's budget and financial status with the advisory council for the purpose of maintaining the financial stability of the division. The council is to make recommendations on adequate funding levels.

**Section 4** amends s. 509.302, F.S., to privatize the Hospitality Education Program by requiring that all instruction and training offered through the program be provided by private, Florida nonprofit statewide organizations under contract with the division. The section also increases the annual fee to fund the program from \$6 to \$10.

**Section 5** Amends s. 399.01, F.S., the definitions for the Elevator Safety Act. It deletes the definition of 'certificate of competency' as this term is being replaced by "elevator certificate of

competency.” It deletes the definition of “escalator” at subsection (8) as subsection (7)(b) also defines this term. It amends the definition of “certified elevator inspector” to use the credentials of the American Society of Mechanical Engineers as opposed to the National Association of Elevator Safety Authorities. It amends the definition of “elevator certificate of competency” to provide further qualifications to obtain an elevator certificate of competency.

**Section 6** amends s. 399.02, F.S., to delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator. The section also makes each elevator owner responsible for inspections after a certificate of operation has been issued.

**Section 7** amends s. 399.03, F.S., to transfer modified provisions for temporary operation inspections to this section from s. 399.07(2), F.S., with the required inspection done by a private inspector, not a state elevator inspector. As these were the last inspections required of state elevator inspectors, this completes the privatization of elevator inspections. The section also requires that an original inspection report be filed with the department within 5 days of the inspection and provides additional requirements for application for elevator permits.

**Section 8** amends s. 399.049, F.S., to revise the grounds for suspension or revocation of certification or registration. New grounds include failure of a certified elevator inspector to file a copy of an elevator inspection report within 5 days of the inspection and fraud, misrepresentation, or bribery in the practice of the profession. The ground of a failure to notify the department and the certificate of operation holder of an elevator that is out of compliance with the elevator safety code is deleted.

**Section 9** amends s. 399.061, F.S., to delete the current exception to the requirement for annual inspections that allows inspections every two years for elevators that are subject to service maintenance contracts, thereby requiring an annual inspection for all elevators. This section also requires that a report on service maintenance contracts be filed at least annually.

**Section 10** amends s. 399.07, F.S., to extend the period of validity of a certificate of operation from one to two years. The provisions on certificates of operation in paragraph (1)(d) are reorganized and moved to newly designated subsection (1). The section also deletes the provisions on temporary use permits, which are modified and transferred to s. 399.03, F.S. Among the modifications is requiring inspection by a private inspector, not a state elevator inspector. As the state is no longer conducting these inspections, an inspection fee provided in current paragraph (2)(d) is not contained in the new provisions in s. 399.03.

**Section 11** amends s. 399.105, F.S., to delete a restriction on issuance of a fine for commencing installation of an elevator without a construction permit, to shorten the time for correction of a violation from 60 days to 30 days, with discretion to extend the time for good cause shown, and to subject an elevator owner who continues to operate an elevator after it has been sealed by the department to civil fine.

**Section 12** amends s. 300.106, F.S., to make a technical correction.

**Section 13** amends s. 399.125, F.S., to delete a requirement that an “incident” occurring in or upon any elevator be reported to the division, with “accidents” still to be reported.

**Section 14** amends s. 399.13, F.S., to allow a local government that assumes elevator inspection duties to hire private inspector to conduct inspections.

**Section 15** amends s. 509.072, F.S., to require the department to maintain a separate account within the trust fund for funds collected for inspection of elevators. It requires that, to the maximum extent possible, the department directly charge all expenses to the account for elevator inspections. “Direct charge expenses” include, but are not limited to, costs for investigations, examinations, or legal services. The department is to proportionately allocate expenses that cannot be directly charged among the accounts of expenses incurred by the department. The department is required to maintain adequate records to support its allocation of expenses. The bill prohibits using elevator inspection funds to pay for hotel and restaurant regulation expenses. It prohibits transfer of the funds to any other trust fund.

**Section 16** provides that the bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation.

C. Government Sector Impact:

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation. Details as to any past subsidization and

the effects of this bill on other regulatory programs were unavailable at the time of drafting.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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