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DATE: February 9, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 155

RELATING TO: Public Lodging/Food Svc.

SPONSOR(S): Representative(s) Trovillion

TIED BILL(S): None

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

- (1) COMMITTEE ON STATE ADMINISTRATION
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

The Division of Hotels and Restaurants has authority to conduct inspections of public lodging establishments and public food service establishments to determine compliance with established standards of sanitation and safety. If an establishment is not in compliance with those standards at the time of the initial inspection, reinspection at a later time or date may be required. At present, there is no specific statutory authority provided to recover the cost of performing reinspections due to non-compliance.

This bill requires the Division of Hotels and Restaurants, within the Department of Business and Professional Regulation (DBPR), to charge a \$150 reinspection fee. This fee is to help the division recover the costs incurred when reinspection is performed on a public lodging establishment or a public food service establishment. The reinspection of such establishments is to verify that those establishments have corrected violations found during the division's initial or subsequent inspection.

The affected industries expressed concern regarding this method of raising money for DBPR. See "Other Comments" section for further comments.

This bill does not appear to have a fiscal impact on local governments. This bill appears to have a fiscal impact on state governments. See "Fiscal Impact on State Government" section for further details.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill allows the Division of Hotels and Restaurants to impose a \$150 reinspection fee on public lodging establishments and food service establishments.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

The Division of Hotels and Restaurants has authority to conduct inspections of public lodging establishments¹ and public food service establishments² to determine compliance with established

¹ Section 509.013(4)(a), F.S., defines a “public lodging establishment” 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. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.” Also, the following are excluded from the definition:

- 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.

² Section 509.013(5)(a), F.S., defines a “public food service establishment” 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.” The following are excluded from the definition:

- 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.

standards of sanitation and safety.³ If an establishment is not in compliance with those standards at the time of the initial inspection, reinspection at a later time or date may be required. At present, there is no specific statutory authority provided to recover the cost of performing reinspections due to non-compliance.

C. EFFECT OF PROPOSED CHANGES:

This bill requires the Division of Hotels and Restaurants, within the Department of Business and Professional Regulation, to charge a \$150 reinspection fee. The reinspection of public lodging establishments and public food service establishments is to verify that those establishments have corrected violations found during the division's initial or subsequent inspection.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:⁴

	<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
License Fees:			
Taxes:			
Other (identify):	\$3,585,000	\$3,585,000	\$3,585,000
TOTAL:	\$3,585,000	\$3,585,000	\$3,585,000

2. Expenditures:⁵

Non-Operating Expenditures	<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
Service Charges (to General Revenue)	\$261,705	\$261,705	\$261,705
Other Indirect Costs			
Subtotal	\$261,705	\$261,705	\$261,705

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- 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.

³ Sections 509.032(1) and (2)(a), (b), and (d), F.S.

⁴ The \$3,585,000 revenue is a result of an average of 23,900 reinspections performed each year at a charge of \$150 per reinspection. Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

⁵ Each trust fund is required to pay 7.3% to the general revenue. The \$261,705 expenditure is a result of the 7.3% owed to the general revenue. Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Affected industries will be charged a \$150 reinspection fee.

D. FISCAL COMMENTS:

None.

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 to take 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 revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide for rulemaking authority. The Department of Business and Professional Regulation has said the bill may require *minor* modification to s. 61C-1.008, Florida Administrative Code, adding a provision for the \$150.00 reinspection fee.⁶

C. OTHER COMMENTS:

On November 2, 2001, committee staff met with the Department of Business and Professional Regulation (DBPR), the Florida Apartment Association, the Florida Hotel and Motel Association, the Florida Restaurant Association, and the Governor's Office of Policy and Budget. At that meeting, the Secretary of DBPR stated that the \$150 reinspection fee would cover the \$3.5 million needed by DBPR to break even in this year's budget. According to the Secretary, that fee would provide "gap

⁶ Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

financing” that would help avoid massive layoffs at DBPR until funding is provided.⁷ The associations present expressed concern with division investigators trying to meet a quota in order to satisfy budget requirements. The Florida Hotel and Motel Association asked why there was no sunset date on this bill if the reinspection fee is strictly for gap financing. The Secretary stated that she could not guarantee that the fee would not be necessary in the future.

While at the meeting, DBPR presented four options for breaking even in this year’s budget:

- Creating a \$150 reinspection fee.⁸
- Reducing the number of inspections from three per year to two per year.⁹
- Reducing the number of inspections from three per year to one per year.¹⁰
- Providing an across the board increase in fees.¹¹

The Florida Restaurant Association recommended an increase in plan review fees and temporary licensing fees.¹²

The meeting concluded with the associations stating they were going to “meet, brainstorm suggestions for eliminating the \$3.5 million debt, and provide those suggestions to the Secretary.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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⁷ DBPR also has a \$1 million debt that is owed to the state. DBPR is required to pay back that debt by July 2002, unless the Legislature grants the agency an additional year to make the payment. Meeting with DBPR, the Florida Apartment Association, the Florida Hotel and Motel Association, the Florida Restaurant Association, and the Governor’s Office of Policy and Budget, November 2, 2001

⁸ HB 155 by Representative Trovillion.

⁹ Reduction in the number of yearly inspections would result in the layoff of inspectors.

¹⁰ *Id.*

¹¹ The Secretary of DBPR said she would get the auditors to come up with figures for an across the board increase regarding how much of an increase is needed in order to break even. Committee staff was not provided with those figures.

¹² Current temporary licensing fees are \$85 (1-3 days) and \$105. Meeting on November 2, 2001.