

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.)

Prepared By: Health Care Committee

BILL: CS/SB 1172

INTRODUCER: Regulated Industries Committee and Senators Aronberg and Argenziano

SUBJECT: Food Service Establishments/Dogs

DATE: April 10, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Bedford</u>	<u>Wilson</u>	<u>HE</u>	<u>Favorable</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a three-year pilot program authorizing municipalities to adopt an ordinance establishing procedures for public food service establishments to apply for a limited exemption from existing rules of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) that prohibit patrons' dogs in public food service establishments. The exemption would allow patrons' dogs in designated outdoor sections of public food service establishments.

This bill provides minimum requirements for permit applications and safety and sanitation regulations to be implemented by the municipalities. The bill provides for the division to provide assistance to participating municipalities in the development of enforcement procedures and regulations. It also provides that a permit issued under this section shall not be transferred to a subsequent owner upon the sale of the public food service establishment, that the permit shall expire at the sale of the establishment, and the subsequent owner must reapply for the permit if he or she wishes to continue to accommodate patron's dogs

The bill requires that participating municipalities monitor permitholders for compliance, and have a procedure to accept, document, and respond to complaints and to timely report to the division all complaints and the participating municipality's response to all complaints. A participating municipality is required to provide the division with a copy of all applications and permits issued, and these and all related materials must contain the appropriate division issued license number.

The bill has an effective date of July 1, 2006. It also provides that this section shall expire on July 1, 2009, unless reviewed by the Legislature and saved from repeal through reenactment.

This bill creates section 509.233, Florida Statutes, and one undesignated section of law.

II. Present Situation:

Section 509.032, F.S., authorizes the division to administer ch. 509, F.S., relating to the inspection or regulation of public lodging establishments and public food service establishments. The division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA Food Code or code).¹ The FDA Food Code is a reference document that “provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness.”² The FDA, the Centers for Disease Control and Prevention, and the Food Safety and Inspection Service of the U.S. Department of Agriculture jointly release the code and encourage the adoption of the code by regulatory agencies.

Section 6-501.115 of the code generally prohibits live animals on the premises of food service establishments. “Premises” is defined to mean “[t]he physical facility, its contents, and the contiguous land or property . . .”³ Section 6-501.115, CFR, provides that live animals may not be allowed on the premises of a food establishment. The FDA Food Code provides the following limited circumstances under which live animals may be permitted in a food establishment:⁴

- Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
- Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
- In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;
- Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals under certain circumstances; and
- In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in, a variety store that sells pets or a tourist park that displays animals.

Section 503.032(7), F.S., preempts the regulation of public food service establishments to the state. It permits local governments or local law enforcement to conduct food inspections relating to the building code and the fire prevention code. Section 503.032(7), F.S., provides:

¹ See rule 61C-4.010, F.A.C.

² See section 6-501.115, C.F.R. The FDA’s introduction to the Food Code is located at <http://www.cfsan.fda.gov/~dms/fc05-int.html>. (Last visited April 7, 2006.)

³ A copy of the 2001 FDA Food Code is available at http://www.state.fl.us/dbpr/hr/rules_statutes/foodcode2001.pdf. (Last visited April 7, 2006.) See also, section 1-201.10(b)(67), C.F.R., a copy is located at <http://www.cfsan.fda.gov/~dms/fc01-1.html#1-2>. (Last visited April 7, 2006.)

⁴ See section 6-501.115, C.F.R., at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>. (Last visited April 7, 2006.)

(7) **PREEMPTION AUTHORITY.**—The regulation of public lodging establishments and public food service establishments, the inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted under this section, and the regulation of food safety protection standards for required training and testing of food service establishment personnel are preempted to the state. This subsection does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022.

III. Effect of Proposed Changes:

This bill provides legislative findings that cite pertinent sections of the law and rules relating to the regulation of public food service establishments. The bill creates a three-year pilot program for an exemption to section 6-501.115 of the 2001 FDA Food Code, as codified by reference by the division,⁵ for the limited purpose of allowing patrons' dogs within certain designated outdoor portions of public food service establishments.

The bill permits a municipality to adopt an ordinance to grant itself an exemption to the current division rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the governing body of their municipality.

The bill provides that the local governing authority have the sole discretion in the procedure for adoption of the exemption. Municipalities are not required or compelled to adopt an ordinance pursuant to this section. It also provides that any ordinance adopted pursuant to this section shall provide for codification within the land development code of the participating municipality.

The bill also sets forth specific regulations that must be included in all permits issued by participating municipalities. The regulations include:

- Any local exemption adopted pursuant to this section shall only provide a variance to section 6-501.115, 2001 FDA Food Code, to allow patrons' dogs within certain designated outdoor portions of public food service establishments.
- Participating public food service establishments must apply for and receive a permit from the municipality before allowing patrons' dogs on their premises. The bill prescribes the following minimum information that must be included in an application:
 - The name, location and mailing address of the food service establishment.
 - The name, mailing address, and telephone contact information of the permit applicant.
 - A diagram and description of the outdoor area to be designated as available to patrons' dogs.

⁵ *Supra* at n. 1.

- A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

The bill also prescribes the following minimum regulations that must be included in any local ordinance adopted under this provision:

- All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs;
- Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the food service establishment;
- Patrons in a designated outdoor area shall be advised that they should wash their hands before eating, and waterless hand sanitizer shall be provided at all tables in the designated outdoor area;
- Employees and patrons shall be instructed that they shall not allow dogs to come into contact with items involved with food service operation, including serving dishes and utensils;
- Dogs must be kept on a leash and under reasonable control;
- Dogs shall not be allowed on chairs, tables, or other furnishings;
- All table and chair surfaces shall be cleaned and sanitized between seating of patrons;
- Spilled food and drink shall be removed from the floor or ground between seating of patrons;
- Accidents involving dog waste shall be cleaned immediately and the area sanitized;
- A sign or signs reminding employees and patrons of the applicable rules shall be posted on premises;
- A sign giving public notice that the designated outdoor area is available for the use of patrons and patrons' dogs; and
- Dogs shall not be permitted to travel through indoor or nondesignated outdoor portions of the public food service establishment.

The bill provides that a permit issued pursuant to this section shall not be transferred to a subsequent owner upon the sale of the public food service establishment. The bill provides that the permit shall expire at the sale of the establishment, and the subsequent owner must reapply for the permit if she or he wishes to continue to accommodate patron's dogs.

The bill grants participating municipalities such powers as are reasonably necessary to regulate and enforce the provisions of this section. It also requires that the division provide reasonable assistance to participating municipalities in the development of enforcement procedures and regulations.

The bill requires that participating municipalities monitor permit holders for compliance. The municipality must have a procedure to accept, document, and respond to complaints and to timely report to the division all complaints and the participating municipality's response to all complaints. The participating municipality is required to provide the division with a copy of all applications and permits issued, and all applications permits, and other related materials must

contain the appropriate division issued license number for each public food service establishment.

The bill provides that this section shall expire July 1, 2009, unless reviewed and reenacted by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although the bill does not require a fee, participating municipalities may potentially require a fee through the permitting process. Participating establishments may also incur indeterminate costs for compliance with the signage and sanitation requirements.

C. Government Sector Impact:

The Department of Business and Professional Regulation asserts that this bill would require \$74,673 in non-recurring costs to the department, including \$17,000 for a new motor vehicle. The department anticipates \$613,039 in recurring costs that would increase slightly each year. The recurring costs include the addition of eight full time employees to assist municipalities in the development of regulations, handle an increased volume of calls to the department's Customer Call Center, and to compensate for the additional time required to inspect exempted restaurants.

The Department of Health (DOH) represents that it may experience an increase in foodborne illness complaint investigations, but that this is speculative and difficult to quantify. It has estimated that the bill could result in an increase in investigations of up to 2.5 percent resulting in yearly additional costs of approximately \$13,187.

The DOH also asserts that the bill will likely result in significant additional costs to municipalities in the pilot areas for administration of the program, inspection of facilities prior to permitting, and investigations of non-foodborne illness complaints.

Participating municipalities may incur costs related to the requirements that they monitor permitholders for compliance, and adopt a procedure to accept, document, and respond to complaints and to timely report to the division all complaints and the participating municipality's response to all complaints.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH represents that the bill would require it to work with the DBPR to perform epidemiological investigations in public food service establishments as the result of foodborne illnesses. The DOH asserts that the bill increases the risk of foodborne illness transmitted through dogs both directly and indirectly as a result of increased risk of unsanitary conditions. The DOH anticipates that there may be an increase in foodborne illness complaint investigations.

The bill establishes a three-year pilot program, but most of the typical elements of a pilot program are not included in the bill. The provisions of the bill are repealed in three years, but there are no limits on the number of municipalities or public food service establishments that can participate in the pilot program. Pilot programs usually establish some limitations on who may participate before expanding the program statewide. There is also no requirement for an evaluation or submission of a report to the Legislature prior to the scheduled repeal of the pilot program.

The DOH represents that the bill does not appear to address the varying levels of obedience among dogs and their propensity for confrontation with both other dogs, which could result in widespread contamination, and other patrons, which could result in dog bites. Dog bites would require county health departments to investigate and quarantine the dogs.

VIII. Summary of Amendments:

None.

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