

HOUSE OF REPRESENTATIVES STAFF ANALYSIS - Revised

BILL #: HB 333 Public Food Service Establishments
SPONSOR(S): McInvale and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	_____	Watson	Liepshutz
2) Local Government Council	_____	_____	_____
3) Commerce Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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 DBPR rules. The exemption would allow 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; provides for state assistance in the development of enforcement procedures and regulations; an effective date of July 1, 2006; and automatic repeal if not renewed by July 1, 2009.

This bill will have an indeterminate effect on municipalities and restaurants that choose to participate in the program relating to permitting revenues and fees and regulatory compliance. DBPR estimates a non-recurring cost of \$74,673 and recurring costs of \$613,009 that increase slightly per year to implement the bill. The Department of Health's best estimate of financial impact anticipates an annual recurring cost of \$13,187.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Less Government: This bill increases the number of government bodies that have regulatory authority over health guidelines for public food service establishments. DBPR represents that the bill will indirectly require more government employees.

Individual Liberty: This bill increases commercial and individual liberty by allowing public food service establishments and individuals the ability to choose to bring dogs into outdoor areas of such establishments if their municipality passes an appropriate ordinance.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The legislature requires the Division of Hotels and Restaurants to carry out laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety, and welfare. Pursuant to its rulemaking authority the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration. The 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."¹ Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. There are limited exceptions to the prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.²

Effect of Proposed Changes

This bill creates a three year pilot program that would permit patrons' dogs within designated outdoor areas of food service establishments. The bill grants municipalities the authority to adopt an ordinance that empowers itself to grant a variance to current Division of Hotels and Restaurant 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. Minimum requirements for the information supplied in the application process are outlined in the bill.

The bill also sets forth specific regulations that must be included in all permits issued by participating municipalities. The regulations include various restrictions on the dogs' mobility, sanitation measures to reduce health risks posed by dogs, and signs notifying guests and employees of applicable rules and procedures. The bill also allows municipalities to include additional regulations and limitations in the permits to protect the health, safety and general welfare of the public. Municipalities are granted powers reasonably necessary to regulate and enforce this bill. The Division of Hotels and Restaurants is ordered to provide reasonable assistance to participating municipalities in the development of enforcement procedures and regulations.

The act has an effective date of July 1, 2006 and expires on July 1, 2009 unless reenacted by the legislature.

¹ See the FDA's introduction to the Food Code at <http://www.cfsan.fda.gov/~dms/fc05-int.html>

² See section 6-501.115 at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>

C. SECTION BY SECTION ANALYSIS

Section 1

Creates section 509.233, FS. Provides findings and intent, authorizes local exemption, provides limits on the exemption and permit requirements, grants enforcement powers, provides for state assistance, and creates future review and appeal.

Section 2

Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not impact state revenues.

2. Expenditures:

The DBPR represents that implementation of this bill would require \$74,673 in non-recurring costs to the department and \$613,000 in recurring costs that increase slightly each year. The recurring costs include the addition of 8 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.

Department of Health speculates a recurring cost of \$13,187 annually in personnel expenses as a result of this bill. DOH is required to work with DBPR to perform epidemiological investigations in public food service establishments after complaints of foodborne illness. The Department of Health anticipates an increase in complaints as a result of the 'increased risk of unsanitary conditions.' The agency represents investigations could increase up to 2.5%.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has the potential to increase fees for participating municipalities through the permitting process.

2. Expenditures:

This bill has the potential to create an indeterminate impact upon expenditures associated with monitoring and enforcement in municipalities that choose to participate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Establishments choosing to participate will incur indeterminate costs associated with compliance to the signage and sanitation requirements and possibly training costs for personnel.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The statute specifically references the 2001 FDA Food Code. If the DBPR decides to adopt the recently published 2005 Food Code or some other guideline the statute would require amending to remain effective.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES