

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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	14 Y, 1 N	Watson	Liepshutz
2) Local Government Council		Nelson	Hamby
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 Florida Department of Business and Professional Regulation (DBPR) rules. The exemption would allow dogs in designated outdoor sections of public food service establishments.

The 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; provides an effective date of July 1, 2006, and for automatic repeal if not renewed by July 1, 2009.

This bill will have an indeterminate effect on municipalities and restaurants that choose to participate 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 will increase slightly each year to implement the bill. Also, the Department of Health has indicated that it may experience an increase in foodborne illness complaint investigations resulting in yearly additional costs of approximately \$13,187.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

Present Situation

The legislature requires the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation (the "Division") to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare. Section 509.032(7), F.S., expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.

Pursuant to its rulemaking authority, the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA). 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. "Premises" is defined to mean "[t]he physical facility, its contents, and the contiguous land or property...."² There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.³

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 establish a local exemption procedure, by ordinance, to 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. 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 directed to provide reasonable assistance to participating municipalities in the development of enforcement procedures and regulations.

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

² See, s. 1-201.10(b)(67) at <http://www.cfsan.fda.gov/~dms/fc01-1.html#1-2>.

³ See, s. 6-501.115 at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>.

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

C. SECTION DIRECTORY

Section 1

Creates s. 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 provides for automatic repeal unless renewed.

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 Department of Business and Professional Regulation represents that implementation of this bill would require \$74,673 in non-recurring costs to the department, and \$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 DBPR's Customer Call Center, and to compensate for the additional time required to inspect exempted restaurants.

Also, the Department of Health (DOH) has stated that it may experience an increase in foodborne illness complaint investigations. While the DOH indicates 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.

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 electing 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:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The proposed language specifically references the 2001 FDA Food Code. If the DBPR decides to adopt the recently published 2005 Food Code or some other guideline, a resulting statute would require amending.

Other Comments

Florida Department of Business and Professional Regulation

Protecting the health (a condition of optimal well-being), safety (freedom from danger, risk or injury), and welfare (health, happiness and general well-being) of the public requires the Division to adopt rules that provide the greatest protection to the greatest amount of people possible. The FDA Food Code is scientifically-based and “represents FDA’s best advice for a uniform system of provisions that address the safety and protection of food offered . . . in food service.” (2001 FDA Food Code) For this reason, the Division adopted the FDA Food Code as the statewide food service standard.

The 2001 FDA Food Code defines “critical” as “a provision of this Code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.” The FDA Food Code identifies live animals in public food service establishments as critical. The risks associated with allowing animals, including dogs, in public food service establishments illustrates the critical nature of the issue.

This bill would reduce the ability of the Division to protect the public’s health, safety and welfare by introducing potential contaminants and safety hazards into public food service establishments. Animals carry disease-causing organisms which can be transmitted to humans through direct and indirect contamination of food and food-contact surfaces. Diseases carried by animals have caused infectious disease outbreaks, including Escherichia coli, Salmonella, Coxiella burnetti, Mycobacterium tuberculosis and ringworm. Exposure to rabies is also a concern. Diseases can be spread to humans through an animal’s saliva, urine, fecal matter, fur and skin. This bill does not address the presence of unhealthy dogs in public food service establishments or any form of regulation of current immunization status. This bill does provide for hand washing by employees, signage requiring hand washing, and requires hand sanitizer at each table in the designated area. However, there is no way to ensure patrons will follow the sanitation recommendations.

This bill would reduce public safety by introducing potential environmental hazards. Allergies can be associated with dander, fur, body wastes and saliva. Dogs also present an increased risk of bites, kicks, falls, scratches and other forms of aggression.

The bill does not establish any caps on monetary fees charged by local governments for the variance.

Finally, an opportunity for each individual municipality to adopt and enforce regulations would be created, resulting in multiple ordinances and jurisdictions throughout the state. Statewide, uniform jurisdiction is an integral component of attaining federal standardization. Providing for an exemption to the 2001 FDA Food Code would undermine efforts to achieve statewide standardization, as the federal standards would no longer be met. It would also create precedent for allowing "local preference" regarding technical food safety requirements. The Division would be required to assist municipalities with development of the exemption process and enforcement. The mandated state assistance would divert state resources from core mission, potentially reducing the effectiveness of the division in protecting the health, safety and welfare of the public.

Florida Department of Health

The Florida Department of Health (DOH) regulates food service establishments other than those addressed in the bill, in accordance with s. 381.0072, F.S. Food service establishments regulated by the DOH include detention facilities, child care facilities, schools, institutions, civic or fraternal organizations, bars and lounges, facilities used at temporary food events, mobile food units, and vending machines at any facility regulated under this section. Section 64E-11.008(8), F.A.C., prohibits animals from food service establishments regulated by the DOH, except for animals for the disabled as provided for in ch. 413.08, F.S. This standard is used in all 50 states and by the FDA.

As indicated in the bill, s. 509.032, F.S., requires the DOH to work with DBPR to perform epidemiological investigations in public food service establishments as the result of foodborne illnesses. This bill increases the risk of foodborne illness transmitted through dogs both directly and indirectly as a result of increased risk of unsanitary conditions, and it is anticipated that there may be an resulting increase in foodborne illness complaint investigations.

The DOH has concerns that the bill will significantly increase the risk of foodborne illness, especially in populations most susceptible, i.e., the elderly, young, and immune compromised. Additionally, the bill seeks to use hand sanitizers as a public health intervention. Currently, DOH follows the recommendations of the CDC and FDA that advise that hand sanitizers are not intended as a substitute for handwashing in food service establishments. Further, hand sanitizers are only effective against specific types of organisms and are not appropriate for high bacterial loads or viruses. Therefore, solely providing patrons with hand sanitizers for use after contact with dogs may be ineffective in adequately removing contaminants from the hands.

Additionally, the bill does not appear to address:

- varying levels of obedience among dogs and their propensity for confrontation both with other dogs (which could result in widespread contamination) and other patrons (which could result in dog bites);
- the restriction of animals from the inside dining areas, even when it is the only route of access to the designated dog-allowed, outdoor area;
- required intervention, such as vaccination, to prevent the possible spread for rabies and other zoonotic diseases;
- the recognition of the male dog's propensity for territorial marking through urination;
- employees incidental (and un-solicited) contact with dogs that result in a soiled and contaminated uniform; and
- oversight of this initiative by officials trained in public health who are accustomed to ensuring that plans, locations, and processes have effective barriers against microbiological and environmental contaminants.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES