

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 793

City of Orlando, Orange County

SPONSOR(S): Adams

TIED BILLS:

IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>14 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
2) <u>Local Government Council</u>	<u></u>	<u>Nelson</u>	<u>Hamby</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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SUMMARY ANALYSIS

This bill creates a three-year pilot program authorizing the City of Orlando to adopt an ordinance establishing procedures for public food service establishments to apply for a limited exemption from existing Department of Business and Professional Regulation rules. The exemption would allow patrons' 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 City of Orlando; 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.

The City of Orlando estimates that any ordinance it may choose to adopt under this bill would be implemented within existing staff resources. The Department of Business and Professional Regulation also estimates this bill can be implemented within its existing resources. The Department of Health estimates an annual recurring cost of \$1,798 relating to increased food borne illness complaints.

**Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.**

## 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 in the City of Orlando.

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 the City of Orlando passes the appropriate ordinance.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The legislature requires the Division of Hotels and Restaurants (H &R) 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. 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 food borne illness.”<sup>1</sup> Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. The term “premises” is defined to mean “[t]he physical facility, its contents, and the contiguous land or property....”<sup>2</sup> There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.<sup>3</sup>

##### 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 in the City of Orlando. The bill grants the City the authority to adopt an ordinance that provides for a local exemption procedure to current H & R rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the City. 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 the City of Orlando. 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 the City to include additional regulations and limitations in the permits to protect the health, safety and general welfare of the public. The City is granted powers reasonably necessary to regulate and enforce this bill. The Division of Hotels and Restaurants is required to provide reasonable assistance to the City in the development of enforcement procedures and regulations.

This bill will not affect those establishments regulated by the Department of Health which include: detention facilities, child care facilities, schools, institutions, civic or fraternal organizations, bars and lounges, facilities used at temporary food events, and mobile food units.

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

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

<sup>3</sup> See, section 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.

### Fiscal Impacts

The Department of Business and Professional Regulation estimates this bill will have a small fiscal impact by increasing workload to help the City of Orlando develop rules and by increasing the number of calls to the Department's Customer Contact Center. The Department maintains that this impact can be absorbed within existing resources.

The Department of Health believes there could be increased complaints of restaurant-associated illnesses resulting from this bill, which would cause an increase in workload for DOH food borne illness epidemiologists. This would result in a small additional financial burden on DOH estimated at \$1,798 annually.

### C. SECTION DIRECTORY:

Section 1: Provides legislative findings and intent.

Section 2: Authorizes a local exemption for the City of Orlando.

Section 3: Provides for local discretion; requires codification of local exemption.

Section 4: Limits exemptions and provides permit requirements.

Section 5: Provides enforcement powers.

Section 6: Provides for state assistance.

Section 7: Provides an expiration date.

Section 8: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 22, 2005.

WHERE? *The Orlando Sentinel*, a daily newspaper distributed in Orange County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill specifically references the 2001 FDA Food Code. The Sponsor may want to amend the bill in anticipation of the DBPR adopting the recently published 2005 Food Code or some other guideline.

The Sponsor also may want to amend the bill to address additional issues which were raised by the DBPR, and subsequently remedied in the CS for HB 333 (2006), a similar bill, such as the need to:

- specify that dogs will not be permitted to travel through indoor or non-designated outdoor sections of a food service establishment; and
- provide that permits may not be transferred upon the sale of a food service establishment.

Other Comments

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill because the bill grants an exemption to general law which expressly limits the home rule powers of local governments in the regulation of public food service establishments.<sup>4</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>4</sup> Section 509.032(7), F.S.