

The Florida Senate
PROFESSIONAL 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: Regulated Industries Committee

BILL: CS/CS/SB 1462

INTRODUCER: Regulated Industries Committee, Health Regulation Committee, and Senator Crist

SUBJECT: Food Service Establishments

DATE: April 17, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HR	Fav/CS
2.	Oxamendi	Imhof	RI	Fav/CS
3.			HA	
4.				
5.				
6.				

I. Summary:

The bill eliminates the authority of the Division of Hotels and Restaurant (division) to inspect restrooms in public airports that are used by the patrons and employees of the public food service establishments regulated by the agency.

The bill sets forth minimum sanitary standards for food service establishments regulated by the division. The bill requires that the division inspect each public food service establishment and its toilet facilities pursuant to s. 509.032, F.S., as often as necessary to ensure compliance with applicable laws and rules.

The following minimum sanitation standards for each toilet facility in a food service establishment include that:

- It be completely enclosed with a tight-fitting, self-closing door or have entrances and exits constructed in such a manner as to ensure the privacy of occupants;
- Patrons must not pass through the food-preparation or utensil-washing area to get to the toilet facilities;
- Toilet fixtures must be cleanable;
- Toilet facilities must be kept clean and in good repair;
- The floors must be made of nonabsorbent material for establishments constructed or substantially remodeled after July 1, 2007;
- The waste receptacles must contain a trash-can liner and must be covered for women, and they must be emptied at least once a day or more if necessary to prevent excessive accumulation;

- There must be running water at each sink, and establishments constructed or substantially remodeled after July 1, 2007 must have hot and cold running water at each sink;
- Sinks with an automatic shut-off must run for at least 20 seconds for establishments constructed or substantially remodeled after July 1, 2007;
- There must be toilet tissue at each toilet at all times;
- Each toilet facility must be lighted and ventilated for establishments constructed or substantially remodeled after July 1, 2007;
- There must be a sign posted that notifies employees to wash their hands;
- Hand-cleansing, antimicrobial soap or detergent and hot and cold water must be available at each sink; and
- Sanitary towels or an air dryer for each facility.

If the director of the division determines that a violation of these minimum sanitary standards represents a severe and immediate public health or safety threat, he or she may immediately issue an emergency order to close the public food service establishment using the procedures for emergency orders of suspension in s. 509.035, F.S.

The bill provides an effective date of July 1, 2007.

This bill creates section 509.054, Florida Statutes.

II. Present Situation:

The Division of Hotels and Restaurant (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the DBPR, there are over 43,000 licensed public food service establishments.¹

Section 509.013(5), defines a public food service establishment as follows:

- (a) "Public food service establishment" means 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.
- (b) The following are excluded from the definition in paragraph (a):
 1. Any place maintained and operated by a public or private school, college, or university:
 - a. For the use of students and faculty; or
 - b. Temporarily to serve such events as fairs, carnivals, and athletic contests.

¹ For FY 2005-2006, there were 43,216 licensed public food service establishments. *Annual Report, Fiscal Year 2005-2006*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myflorida.com/dbpr/hr/annualreports/ar2005_06.pdf (Last visited April 11, 2007).

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - a. For the use of members and associates; or
 - b. Temporarily to serve such events as fairs, carnivals, or athletic contests.
3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
4. 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.
5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
6. 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.
7. 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.
8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 509.221, F.S., requires each public food service establishment must also be properly lighted, heated, cooled, and ventilated and with strict regard to the health, comfort, and safety of the guests. Proper lighting includes daylight and artificial illumination. Each public food service establishment must be supplied with potable water and provide adequate sanitary facilities for the accommodation of its employees and guests, including at least one bathroom for each sex.² Each public food service establishment must maintain not less than one public bathroom for each sex, properly designated, and must provide in the main public bathroom soap and clean towels or other approved hand-drying devices.

Section 509.221(2)(b), F.S., requires that the division inspect each public food service establishment at least twice a year. The department has the right to enter and have access to public food service establishments at any reasonable time to conduct the inspections. Section 509.032, F.S., also requires that the division provide each inspected establishment with the food recovery brochure developed under s. 570.0725, F.S.³

Section 509.221(5), F.S., each public food service establishment shall provide in the main public bathroom soap and clean towels or other approved hand-drying devices.

The division has adopted rules related to bathrooms. In part, these rules are adopted according to the division authority to prescribe sanitary standards which shall be enforced in public food

² Section 509.211(2)(a), F.S.

³ *Supra* at n. 4.

service establishments.⁴ Rule 61C-1.004, F.A.C., provides general sanitation and safety requirements and standards for public food service establishments. It provides:

(2) Public bathrooms.

(a) Each public lodging and food service establishment shall be provided with adequate and conveniently located bathroom facilities for its employees and guests in accordance with provisions of these rules and the plumbing authority having jurisdiction. Public access to toilet facilities shall not be permitted through food preparation, storage, or warewashing areas. Bathroom fixtures shall be of readily cleanable sanitary design. Bathroom facilities shall be kept clean, in good repair and free from objectionable odors. Bathrooms shall provide at least 20-foot candles of light. The walls, ceilings, and floors of all bathrooms shall be kept in good condition.

(b) Public bathrooms shall be completely enclosed and shall have tight-fitting, self closing doors or, in public lodging establishments or bathrooms located outside a public food service establishment, have entrances and exits constructed in such a manner as to ensure privacy of occupants. Such doors shall not be left open except during cleaning or maintenance.

(c) Hand-washing signs shall be posted in each bathroom used by employees.

(d) For the purpose of this section, the term toilet shall mean a flush toilet properly plumbed, connected and discharging to an approved sewage disposal system. In a bathroom where more than one toilet is provided, each toilet shall be separated by a partition from adjoining fixtures and a door shall be provided which will partially conceal the occupant from outside view.

Rule 61C-4.010(7), F.A.C., provides sanitation and safety requirements for bathroom facilities. It provides:

Bathroom Facilities – All bathrooms shall be of easy and convenient access to both patrons and employees . . . Easily cleanable receptacles shall be provided for waste materials and such receptacles in bathrooms for women shall be covered. Each public food service establishment shall maintain a minimum of one public bathroom for each sex, properly designated, except as provided herein.

Section 61C-4.010(7), F.A.C., provides, in relevant part, that each bathroom facility in the public food service establishment must have easily cleanable receptacles and provide for waste materials and the receptacles in bathrooms for women must be covered.

Section 61C-4.010, F.A.C., also requires that the physical facilities comply with ch. 6 of the U.S. Food and Drug Administration's Food Code (FDA Food Code or code).⁵ The division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA Food Code or code).⁶ The FDA Food Code is a reference document that "provides practical, science-

⁴ See s. 509.032(3)(a), F.S.

⁵ See rule 61C-4.010(6), F.A.C.

⁶ See rule 61C-4.010, F.A.C.

based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness.”⁷ Regarding toilet facilities, the FDA Food Code requires:

- Completely enclosed and provided with a tight-fitting and self-closing door, with exceptions;
- Doors may not be left open unless cleaning or conducting maintenance;
- All fixtures must be cleanable;
- All physical facilities must be cleaned and maintained in good repair;
- Floors must be constructed of nonabsorbent materials;
- Waste receptacles must be provided, may be lined, those receptacles in female toilet facilities must be covered, and waste receptacles must be cleaned;
- Provide soap at each sink or one soap dispenser per two sinks and provide disposable towels, a continuous towel system, or a heated-air drying device;
- Automatic shut-off water faucets, when provided, must run for a minimum of 15 seconds;
- Minimum lighting requirements;
- Toilet tissue must be supplied at each toilet;
- Ventilation of sufficient capacity must be installed to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes; and
- A clearly visible sign notifying employees to wash their hands shall be provided at all hand washing sinks used by employees.

Section 509.035, F.S., authorizes the division to order an immediate closure of a licensed establishment upon determination by the State Health Officer or division director of a severe and immediate public health or safety or welfare threat. According to the division, it primarily issues immediate orders to close public food service establishments for violations relating to roaches and rodents, no water, no hot water, and sewage on premises.

III. Effect of Proposed Changes:

The bill creates s. 509.054, F.S., to require that a toilet facility in a food service establishment regulated under ch. 509, F.S., must meet the minimum sanitation standards set forth in the bill.

The bill requires the division to inspect each food service establishment and its toilet facilities pursuant to s. 509.032, F.S., as often as necessary to ensure compliance with applicable laws and rules. Section 509.032(2)(a), F.S., requires that each public food service establishment must be inspected at least twice a year. It is unclear whether the bill would require an inspection of the restrooms must be as frequent, or more frequent than the biennial inspection requirement in current law.

The minimum sanitary standards are:

- Each toilet facility must be completely enclosed with a tight-fitting, self-closing door or have entrances and exits constructed in such a manner as to ensure the privacy of occupants. The door must be closed except during cleaning or maintenance;

⁷ 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 12, 2007.)

- A patron must not pass through the food-preparation or utensil-washing area to get to the toilet facilities;
- Toilet fixtures must be cleanable, and kept clean and in good repair;
- The floors must be made of nonabsorbent material for establishments constructed or substantially remodeled after July 1, 2007, and washed and scoured daily;
- The waste receptacles must contain a trash-can liner and must be covered for women, and they must be emptied at least once a day or more if necessary to prevent excessive accumulation;
- Hand-cleansing, antimicrobial soap or detergent and running water must be available at each sink;
- There must be running water at each sink, and establishments constructed or substantially remodeled after July 1, 2007 must have hot and cold running water at each sink;
- Sinks with an automatic shut-off must run for at least 20 seconds for establishments constructed or substantially remodeled after July 1, 2007;
- All sinks, devices, dispensers, and all related fixtures must be kept clean and in good repair;
- There must be toilet tissue at each toilet at all times;
- Each toilet facility must be lighted and ventilated for establishments constructed or substantially remodeled after July 1, 2007; and
- There must be a sign posted that notifies employees to wash their hands.

The provisions of the bill codify the minimum sanitary standards that are currently required by the agency's rules, except that the bill would increase the time that a faucet with an automatic shut-off must run from at least 15 seconds to at least 20 seconds.⁸

The bill requires that there must also be towels or an air dryer in each facility. Section 509.211(5), F.S., requires that each public food service establishment must "provide in the main public bathroom soap and clean towels or other approved hand-drying devices and each public lodging establishment shall furnish each guest with two clean individual towels so that two guests will not be required to use the same towel unless it has first been laundered." The bill extends this requirement to all restrooms in a public food service establishment.

The bill provides that the minimum sanitary standards in this section do not apply to restrooms in a public airport as defined in ss. 330.27(2) and 330.27(6), F.S., which are not located within a food service establishment. This would eliminate authority of the division to inspect restrooms in public airports that are used by the patrons and employees of the public food service establishments regulated by the agency.

The bill provides that the division may immediately issue an emergency order to close the public food service establishment using the procedures for emergency orders of suspension in s. 509.035, F.S., if the director of the division determines that a violation of these minimum sanitary standards represent a severe and immediate public health or safety threat.

⁸ *Id.*

Effective Date

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would require that food service establishments that are constructed or remodeled after July 1, 2007, must install water heating devices to provide hot water in restrooms used by patrons if not currently available. The department estimates that 40 percent of the 43,216 licensed public food service establishments do not currently comply with the requirement to provide hot water in all restrooms. The cost of making hot water available at each sink in a public food service establishment is unknown.

Food service establishments that are newly constructed or substantially remodeled after July 1, 2007, that install automatic shut-offs on their hand washing sinks must bear the costs of ensuring they run for a minimum of 20 seconds. That means establishments will have to purchase faucets that meet this standard, and repair or replace any existing ones that do not. It is unknown how many establishments may opt to use these kinds of devices. The department is not aware of any currently manufactured automatic shut-off equipment that meets this requirement.

Public food service establishments that are constructed or remodeled after July 1, 2007, would incur costs to install floors made of nonabsorbent materials and to be lighted and ventilated, if not already provided.

C. Government Sector Impact:

There may be additional administrative costs due return inspections, inspector and administrative workload resulting from increased administrative complaints, and legal

activities necessary due to rule promulgation and additional administrative complaint actions. The extent to which the bill would require additional administrative expenses is not clear because most of the minimum sanitary standards in the bill that are currently required by the agency's rules.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 120.545, F.S., requires the Joint Administrative Procedures Committee to review agency rules "for the purpose of determining whether the rule reiterates or paraphrases statutory material. Since language in this bill duplicates the division's administrative rules in a number of areas, those administrative rules will have to be amended or repealed.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
