

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the house principles. The bill is designed to codify current rules of the division.

B. EFFECT OF PROPOSED CHANGES:

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 chapter 509, F.S., and related administrative rules, as well as, other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments.

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

By definition, exemptions from regulation include:

- (b) 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.
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. 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. Each public food service establishment 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 division has adopted rules related to bathrooms. In part, these rules are adopted according to the division authority to prescribe sanitary standards for public food service establishments. 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:

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 chapter 6 of the U.S. Food and Drug Administration's Food Code (FDA Food Code or code). The division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA Food Code or code). 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." 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., currently 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.

Effect of proposed changes

The provisions of **the bill** are designed to codify the sanitary standards that are currently required by the agency's rules for bathroom facilities in food service establishments. It also requires the division to inspect each food service establishment and "its toilet facilities" as often as necessary to ensure compliance with applicable laws and rules.

The bill creates s. 509.054, F.S., to statutorily establish sanitary standards as follows:

- 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;
- 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.

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 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.

The bill provides that the division may issue an emergency order to close the public food service establishment if the director of the division determines that a violation of these sanitary standards represent a severe and immediate public health or safety threat.

C. SECTION DIRECTORY:

Section 1. Creates s. 509.054, F.S., to prescribe sanitary standards for public food service establishments.

Section 2. Effective date - July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department expects revenues to increase as a result of fines for noncompliance, however that increase is currently indeterminate.

2. Expenditures:

The proposed legislation will likely have costs related to rule promulgation and the service charge to the General Revenue Fund, however the costs are currently indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate, likely to be minimal.

D. FISCAL COMMENTS:

The fiscal impact to the department is currently indeterminate; however, it is unlikely the department will require any additional resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities

have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES