

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4021 Water Vending Machines

SPONSOR(S): Workman

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N	Livingston	Creamer
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill repeals regulatory provisions relating to water vending machines. Section 500.459, F.S., is repealed and s. 500.511, F.S., is amended to remove reference to these machines. These changes remove the statutory requirements concerning the operation of water vending machines.

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with permitting and operating water vending machines. The DACS estimates this reduction to be \$95,000 per fiscal year based on the \$35 fee paid to the DACS for each water vending machine.

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing permit applications. The DACS reports that this reduction would approach \$64,700 per year.

Additionally, the DACS reports that there are 106 "firm operators" that are issued a permit. Therefore, based on a \$10 surcharge currently collected by DACS and transferred to the Department of Health from each operator, this bill would have a negative fiscal impact on DOH trust funds of \$1,060.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 381, F.S., specifies Legislative intent relating to public health generally to include:

- Subsection 381.001(1), F.S., the Legislature recognizes that the state's public health system must be founded on an active partnership between federal, state, and local government and between the public and private sectors, and, therefore, assessment, policy development, and service provision must be shared by all of these entities to achieve its mission.

Currently, food¹ safety is the responsibility of various federal, state, and local agencies. At the state level, the Department of Agriculture and Consumer Services (DACS) regulates establishments selling primarily pre-packaged foods or beverages. The Department of Business and Professional Regulation regulates establishments selling primarily prepared foods, such as restaurants and mobile vendors. The Department of Health oversees food service in facilities such as schools and similar institutions. Each agency attempts to coordinate activities in an effort to avoid overlapping oversight of particular establishments.

Within the DACS, the water and ice program is located in the Division of Food Safety, Bureau of Food and Meat Inspection, Section on Sanitation & Safety.² This section administers the permitting requirements for water vending machines and monitors the purity of water sold through these devices. It also monitors the processing and labeling of bottled water and packaged ice sold in Florida. The section is responsible for the oversight of inspections of water vending machines, as well as, bottled water plants and packaged ice plants, and coordination of required product sample collection.

Unchanged since its enactment in 1984 and currently codified as section 500.459(1), F.S., the statement of legislative intent relating to water vending machines currently specifies:

It is the intent of the Legislature to protect the public health through licensing and establishing standards for water vending machines to ensure that consumers obtaining water through such means are given appropriate information as to the nature of such water and that such consumers are assured that the water meets acceptable standards for human consumption.

"Water vending machine" is defined to mean a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.³

A water vending machine operator must annually obtain a permit from the DACS prior to operating a water vending machine. The operator must:

- Make application.
- Submit payment of a fee not to exceed \$200 (current rules of the DACS sets the fee at \$35).
- The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

¹ Section 500.03(1)(l)1., F.S., defines food to include "articles used for food or drink for human consumption.

² <http://www.freshfromflorida.com/fs/inspectn.html#H2O>

³ Section 500.459(5)(c), F.S.

Operating standards specified in statute include:

- The placement of water vending machine indoors or otherwise protected against tampering and vandalism and located on flooring that is of cleanable construction.
- Surfaces of the machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments. Section 500.459, F.S., defines “sanitized” to mean treated in conformity with 21 C.F.R. s. 110.3(o).⁴
- Each water vending machine must have a backflow prevention device that conforms to the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.
- The source of water supply must be an approved public water system⁵ and must receive treatment and post disinfection according to approved methods established by rule of the DACS.
- Disclose on each water vending machine, in a position clearly visible to customers: the name and address of the operator; the operating permit number; the fact that the water is obtained from a public water supply; the method of treatment used; the method of post disinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Duties and responsibilities of the DACS relating to regulation of water vending machines include to:

- Approve applications for a permit and deny operations if the DACS finds that the vended water will not meet drinking water quality standards (if denied, specific technical reasons for the denial must be given by the DACS).
- Adopt rules to implement the provisions of this section.
- Establish frequencies and standards for sampling water quality.
- Order an operator to discontinue the operation of a water vending machine which represents a threat to the life or health of any person, or when the vended water does not meet standards.

Penalties are specified for violations.

Regulation of this program is currently preempted to the state.⁶

Effect of Proposed Changes

The bill repeals regulatory provisions relating to water vending machines. Section 500.459, F.S., is repealed outright and s. 500.511, F.S., is amended to remove reference to these machines. These changes remove the statutory requirements concerning regulation of the operation of water vending machines.

B. SECTION DIRECTORY:

Section 1. Repeals section 500.459, F.S., relating to the regulation of water vending machines.

Section 2. Amends section 500.511, F.S., to remove provisions relating to fees, enforcement, and preemption of regulation of water vending machines to the state.

⁴ “Sanitize” means to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

⁵ “Public health: general provisions, s. 381.0062(2)(m), F.S., defines (m) “Public water system” means a water system that is not included or covered under the Florida Safe Drinking Water Act, which provides piped water to the public.

⁶ Section 500.511, F.S., No county or municipality may adopt or enforce any ordinance that regulates the licensure or operation of water vending machines unless it is determined that unique conditions exist within the county which require the county to regulate such entities in order to protect the public health.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with permitting and operating water vending machines. The DACS estimates this reduction to be \$95,000 per fiscal year based on the \$35 fee paid to the DACS for each water vending machine.

Additionally, the DACS reports that there are 106 “firm operators” that are issued a permit. Therefore, based on a \$10 surcharge currently collected by DACS and transferred to the Department of Health from each operator, this bill would have a negative fiscal impact on DOH trust funds of \$1,060.⁷

The DACS application⁸ for a water vending machine permit includes the formula for an applicant to use for purposes of submitting the appropriate DACS fee and the surcharge fee for the Department of Health.

Determining your Fee: The fee for a Water Vending Machine Operating Permit is \$35 per machine. There is also a \$10 Epidemiology surcharge per operator collected for the Florida Department of Health .

(see example below when submitting an application for more than one machine permit.)

EXAMPLE for 10 machines:

$$\begin{array}{r} \$ 35.00 \text{ (permit fee per machine)} \\ \times \quad 10 \text{ (times number of machines)} \\ \hline \$350.00 \\ + \$ 10.00 \text{ (plus \$ 10 epidemiology surcharge)} \\ \hline = \$360.00 \text{ (fee)} \end{array}$$

* if you have machines permitted for the current permit year, the \$ 10 epidemiology surcharge does not apply.

2. Expenditures:

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing permit applications. The DACS reports that this reduction would approach \$64,700 per year. The DACS calculates that the reduction is a factor of the following workload for Fiscal Year 2009-2010 by the Division of Food Safety:

- permitted approximately 2,800 water vending firms at a cost of \$35 per permit;
- performed 309 inspections of water vending machines; and
- collected 673 vended water samples for testing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁷ Section 381.006(10), F.S., specifies that the Department of Health conduct “An environmental epidemiology function which shall investigate food-borne disease, waterborne disease, and other diseases of environmental causation, whether of chemical, radiological, or microbiological origin. A \$10 surcharge for this function shall be assessed upon all persons permitted under chapter 500. This function shall include an educational program for physicians and health professionals designed to promote surveillance and reporting of environmental diseases, and to further the dissemination of knowledge about the relationship between toxic substances and human health which will be useful in the formulation of public policy and will be a source of information for the public.

⁸ Application for a Water Vending Machine Operating Permit, DACS-14802 (Oct. 2007).

1. Revenues:
Unknown if any. See C. below.

2. Expenditures:
Unknown if any. See C. below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DACS reports that is unable to determine the full impact of this proposed legislation on local governments. The DACS notes that if adopted, regulation will no longer be preempted to the state and it will allow city and county jurisdictions to pursue local ordinances requiring permitting with fees, inspections and regulations unique to each local jurisdiction.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.