

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 795 Premises Inspections

**SPONSOR(S):** Business & Professional Regulation Subcommittee; La Rosa and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Livingston	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	18 Y, 0 N	Livingston	Hamon

### SUMMARY ANALYSIS

The Division of Hotels and Restaurants licenses and inspects public food service (and public lodging establishments) as required by statute. Public food service establishments are defined as:

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.

The Division of Hotels and Restaurants is statutorily required to inspect most licensed establishments twice per year with certain exceptions. Temporary public food service establishments are inspected each time they operate at a temporary event.

The bill changes the inspection frequency for public food service establishments from biannual to a risk-based frequency requiring from one to four inspections annually, as adopted by rule. The bill specifies that the inspection frequency may be based on rules that consider establishment inspection and compliance history, type of food and food preparation, and type of service.

The division is required to annually reassess the inspection frequency. Such establishment-specific frequency categories and annual reassessment is designed to support the development of data to classify establishments within the correct frequency category each year based upon public health risk.

The Department of Business & Professional Regulation (DBPR) indicates that the bill will result in no increased costs and that the provisions of the bill will be accomplished within existing resources.

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Three Florida agencies operate food safety programs: Department of Business and Professional Regulation (DBPR), Department of Agriculture and Consumer Services (DACS), and Department of Health (DOH). In general, DBPR regulates restaurants, while DACS regulates grocery stores and supermarkets, as well as, bakeries, and convenience stores that offer food service and DOH regulates facilities such as hospitals, nursing homes, and schools that serve high-risk populations. Each agency issues licenses or permits to the food establishments that fall within their regulation and conducts food safety inspections of these establishments. Depending on the severity of violations, inspectors may require food items be removed from sale and destroyed or can close or fine the food establishment.

The Division of Hotels and Restaurants (division) within the DBPR licenses and inspects public food service establishments as required by ch. 509, F.S. Section 509.013(5)(a), F.S., defines public food service establishments as

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.

New public food service establishments, except vending machines, must pass a licensure inspection (61C-1.002, FAC). The division also requires a licensure inspection when a public food service establishment changes owner and the establishment 1) has not passed an inspection within 120 days of application, 2) completed a plan review or variance, or 3) is due for an inspection. An inspection is not required for license renewal.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to the DBPR's Single Licensing System and available for public review on the DBPR's website. The division conducted 108,731 public food services inspections in FY 2011-2012.<sup>1</sup>

OPPAGA has reviewed the division's inspection program and has recommended that "the Legislature direct the agencies to adopt a consistent methodology for measuring performance and authorize DBPR to use a risk-based approach to target its resources to restaurants that pose the greatest threat to public health."<sup>2</sup>

In a follow-up report, OPPAGA published progress report to inform the Legislature of actions taken in response to the 2008 OPPAGA report that examined Florida's food safety programs. The progress report noted that "Risk-based inspection frequency models consider the risk posed by different types of facilities, and enable regulators to target limited resources to the highest risk facilities."<sup>3</sup>

Effective, January 1, 2013, the division adopted provisions of the 2009 Food and Drug Administration (FDA) Food Code, which establishes provisions for reducing risk factors known to cause or contribute to foodborne illness. The new risk designations for Food Code provisions establishes a three-tiered system which replaces the designations of "critical" or "non-critical" violations. The new designations include "High Priority," "Intermediate," and "Basic."

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<sup>1</sup> Division of Hotels and Restaurants, Annual Report: FY 2011-2012, pg. 11.

<sup>2</sup> State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.

<sup>3</sup> State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.

## Effect of proposed changes

The bill changes the inspection frequency for public food service establishments from biannual to a risk-based frequency requiring from one to four inspections *annually, as adopted by rule*. *The bill specifies that the inspection frequency may be based on rules that consider establishment inspection and compliance history, type of food and food preparation, and type of service.* The division is required to annually reassess the inspection frequency. Such establishment-specific frequency categories and annual reassessment is designed to support the development of data to classify establishments within the correct frequency category each year based upon public health risk.

The division continues to be authorized to perform inspections at such other times as the division determines is necessary to ensure the public's health, safety, and welfare,<sup>4</sup> as well as, to investigate a complaints.

### B. SECTION DIRECTORY:

Section 1 amends s. 509.032, F.S., to require the division to inspect public food service establishments one to four times a year, as determined by a risk-based frequency adopted by rule.

Section 2 provides for an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The DBPR indicates that the bill will result in no increased costs and that the provisions of the bill can be accomplished with existing resources.<sup>5</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The division states that "this bill would streamline regulation by reducing the inspection burden on the type of establishments that present low risk to the public's health, safety and welfare, while focusing inspection resources on the type of establishments that present higher risk.

### D. FISCAL COMMENTS:

None.

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<sup>4</sup> See s. 509.032(2), F.S.

<sup>5</sup> Department of Business and Professional Regulation, Bill Analysis on HB 795, dated February 20, 2013, on file with the Government Operations Appropriations Subcommittee.

### **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:**

Currently, ch. 509, F.S. authorizes the division to adopt rules to carry out the provisions of this chapter. The bill specifies that the division, no later than July 1, 2014, adopt by rule a risk-based inspection frequency for public food service establishments.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 12, 2013, the Business & Professional Regulation Subcommittee considered one technical title amendment to correct an inadvertent reference to public lodging establishments and reported the bill favorably with a committee substitute (CS).

The staff analysis is drafted to reflect the CS.