

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Public Lodging & Public Food Service Establishments

SPONSOR(S): Business & Professions Subcommittee; Magar

TIED BILLS: **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Gonzalez	Luczynski
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	13 Y, 0 N	Gonzalez	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), enforces the provisions of chapter 509, F.S., and all other applicable laws relating to the license, inspection and regulation of public lodging establishments and public food service establishments.

Under current law, public food service establishments are inspected one to four times per year, based on a risk-based inspection frequency. Establishments' inspection frequency is determined annually. This bill enables the Division to reassess a public food service establishment's inspection frequency more than once annually.

Currently, the Department is required to provide each inspected establishment operator and event sponsor of proposed temporary food service events with the food-recovery brochure. The bill requires the Department only to notify the inspected establishment or temporary event sponsor of the food-recovery brochure.

Public food service establishments holding current licenses from the Division may operate at temporary food service events without obtaining a separate license only if the event is three days or less in duration. The bill allows public food service establishments holding current licenses to operate at all temporary food service events without a separate license, regardless of the duration of the event.

The bill allows the Division to deliver electronic copies of lodging and food service establishment inspection reports to operators. Also, the bill requires operators to make copies of inspection reports available to the Division at the time of inspection. Thus, according to the Department, the bill allows operators to maintain the inspection report in any format, including electronic, on the premises, so long as the inspection report can be readily retrieved upon public request or inspection by the Division.

The bill sets a flat rate delinquent license renewal fee of \$50 for all license renewals within 60 days after expiration.

The bill has a negative fiscal impact to the State. The estimated reduction in annual revenue to the Department's Hotels and Restaurants Trust Fund (Trust Fund) is \$461,420. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: \$13.9 million in FY 2015-16, \$17.2 million in FY 2016-17, and \$20.6 million in FY 2017-18.

This bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation - Public Food Service Establishment Inspections

The Division of Hotels and Restaurants (“Division”) within the Department of Business and Professional Regulation (“Department”), is charged with enforcing the provisions of chapter 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. The Division licenses public food service establishments within the state, and is responsible for inspections and quality assurance.¹

Public food service establishments do not include eating places maintained by schools for student and faculty use; eating places maintained by a church or religious organization, eating places on airplanes, trains, buses, or watercrafts; places certified or licensed by the Agency for Health Care Administration or the Department of Agriculture and Consumer Services; or movie theatre concession stands, and other places which serve beverages, popcorn, and other prepackaged food without additions or preparation.

The Division conducted 108,248 public food services inspections in fiscal year 2013-2014.²

In 2008, OPPAGA reviewed Florida’s food safety programs and 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.”³ In a 2010 follow-up report, OPPAGA restated its recommendation and 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.”⁴

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 establish a three-tiered system which replaces the designations of “critical” or “non-critical” violations. The new designations include “High Priority,” “Intermediate,” and “Basic.”

Currently, public food service establishments are inspected between one to four times per year, based on a risk-based inspection frequency classification. Establishments’ risk-based inspection frequency is determined annually based on the risk presented by the establishment’s type of food and food preparation processes, type of service, and compliance history.

The classification guidelines for determining the minimum number of annual inspections are presented in the following table:⁵

¹ s. 509.032, F.S.

² Division of Hotels and Restaurants, Annual Report: FY 2013-2014, pg. 14.

³ State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.

⁴ State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.

⁵ Rule 61C-1.002, F.A.C.

Classification	Public Food Service Establishment Classification Guidelines	Minimum Annual Inspections
Level 1	Establishments licensed as annual temporary public food service establishments or vending machines; or Establishments that: <ul style="list-style-type: none"> • Do not cook raw animal food; or • Cook raw animal food, but do not cool any cooked or heated foods. 	1
Level 2	Establishments that: <ul style="list-style-type: none"> • Cook raw animal food and cool any cooked or heated foods; or • Conduct a special process as described in 3-502.11 or 3-502.12, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.; or • Serve a raw or undercooked animal food that requires a consumer advisory under 3-603.11, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. or Rule 61C-4.010, F.A.C. 	2
Level 3	Establishments with a history of non-compliance resulting in three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles; or Establishments that serve a highly susceptible population as defined in the Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.	3
Level 4	Establishments with a confirmed foodborne illness within the previous calendar year as reported by the Florida Department of Health.	4

Effect of the Bill

The bill enables the Division to reassess a public food service establishment's inspection frequency in real-time upon identifying a change in the risk level, rather than waiting for the next annual reassessment. Such risk-based frequency categories and minimum annual reassessment are designed to support the development of data to classify establishments within the correct frequency category in real-time based upon public health risk and to allow the Division to focus its resources on establishments that pose higher risks.

The bill does not change the Division's authority to perform inspections at such other times as the Division determines is necessary to ensure the public's health, safety, and welfare, as well as to investigate complaints.

Present Situation - Food-Recovery Brochure

The food-recovery brochure was developed pursuant to s. 595.420(7), F.S., for public information purposes. The brochure is required to be updated annually and details the need for food recovery programs, the benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs, and the food recovery entities or food banks that exist in the state.

In inspecting public food service establishments, the Department is required to provide each inspected establishment with the food-recovery brochure.⁶ The Department is also required to provide the brochure along with other educational materials to event sponsors of proposed temporary food service events.⁷

⁶ s. 509.032(2)(g), F.S.

⁷ s. 509.032(3)(c)2., F.S.

The Florida Department of Agriculture and Consumer Services (“DACs”) develops and prints the food-recovery brochure, but prints a limited number of copies and does not provide brochures to the Division for dissemination. The food-recovery brochure is available on the DACs website in a PDF format.

Effect of the Bill

The bill revises the duties with respect to distribution of the food-recovery brochure. Rather than requiring the Department to provide each inspected establishment or temporary food service event sponsor with the food-recovery brochure, the Department is only required to notify the inspected establishments and event sponsors of the brochure.

Present Situation - Temporary Food Service Events

The Division licenses and inspects public food service establishments and food vendors at temporary food service events, defined as “any event of 30 or fewer consecutive days in duration ... where food is prepared, served or sold to the general public.”⁸ In FY 2013-2014, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events.

Public food service establishments and other food service vendors are required to obtain an individual or annual license from the Division for temporary food service events.⁹ There are two types of individual event licenses for temporary food service events: 1-3 day event licenses at a cost of \$91 and 4-30 day event licenses at a cost of \$105, per event. A temporary food service event annual license, which entitles the licensee to participate in an unlimited number of food service events during the license period, can also be purchased for \$456.¹⁰

Currently, public food service establishments holding current licenses from the Division may operate under the regulations of such a license at temporary food service events if the event is of three days or less in duration.¹¹ The licensees may operate at a temporary food service event without having to obtain a separate temporary food service event license, but are still subject to inspections at the event.

Effect of the Bill

The bill allows public food service establishments holding current licenses to operate at temporary food service events without a separate license, regardless of the duration of the temporary food service event. This bill does not change the definition of temporary food service event, which is limited to 30 days or fewer.

Present Situation - Public Food Service Establishment Inspection Reports

Notices served by the Division are required to be in writing and delivered personally to the operator of the public lodging establishment or public food service establishment.¹² If the operator of an establishment refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the Division may post such notice in a conspicuous place at the establishment.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to DBPR’s Single Licensing System and made available for public review on DBPR’s website.

⁸ Rule 61C-1.001(31), F.A.C.

⁹ s. 509.032(3), F.S.

¹⁰ Rule 61C-1.008, F.A.C.

¹¹ s. 509.032(3)(c)3.b., F.S.

¹² s. 509.091, F.S.

Public food service establishment and public lodging establishment operators are required to maintain the latest inspection report or a copy on the premises of the establishment.¹³ Operators are required to make such reports or copies available to the public upon request.

Effect of the Bill

The bill provides the Division the option to deliver electronic inspection reports to licensees. The Division may continue to provide hard copies of inspection reports upon request of the licensee. The bill requires operators of establishments to make copies of inspection reports available to the Division at the time of inspection of the establishment.

Present Situation - Delinquent Fees for License Renewal of Public Lodging Establishments

Public food service establishments and public lodging establishments are required to renew their licenses annually.¹⁴ If the license is not renewed by the expiration date, the licensee is assessed a delinquent fee.¹⁵ The Division is required to adopt delinquent fees by rule. Statute prescribes a maximum late fee of \$50 for licenses renewed within 30 days of the expiration date and a maximum of \$100 for licenses renewed more than 30 days, but less than 60 days, after the expiration date.

Effect of the Bill

The bill reduces the license renewal fee for delinquent licenses by setting a flat rate of \$50 instead of two separate rates. The maximum fee of \$100 for licenses more than 30 days late is removed, and a flat rate of \$50 is set for any late renewal from 1-60 days. Licensed expired more than 60 days will still be subject to an administrative complaint as prescribed in rule.

B. SECTION DIRECTORY:

Section 1: Amends s. 509.032, F.S., relating to inspections for licensed public food service establishments and the food-recovery brochure.

Section 2: Amends s. 509.091, F.S., relating to electronic lodging inspection reports and food service inspection reports.

Section 3: Amends s. 509.101, F.S., relating to copies of food service inspection reports to be maintained by operators of food service establishments.

Section 4: Amends s. 509.251, F.S., relating to delinquent fees for license renewal.

Section 5: Provides an effective date of July 1, 2015.

¹³ s. 509.101, F.S.

¹⁴ s. 509.241, F.S.

¹⁵ s. 509.251, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the Department's annual revenue to the Hotels and Restaurants Trust Fund by approximately \$461,420 per year. Section 1 reduces revenue by eliminating separate licenses for temporary food service events for licensed public food service establishments, which accounts for a reduction of \$130,620. Section 4 reduces revenue by reducing the delinquent fee, from \$100 to \$50, for licenses expired 30-60 days, which accounts for a reduction of \$330,880.

The Department's forecast of the Hotels and Restaurants Trust Fund with the revenue impact of HB 401 included for FY 2015-16 and thereafter:¹⁶

Hotels and Restaurants Trust Fund

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
July 1 Beginning Fund Balance	10,006,359	13,202,787	13,983,727	17,277,993
Estimated Revenues	30,988,150	30,574,676	30,586,391	30,635,805
Estimated Expenditures	(27,791,722)	(29,793,737)	(27,292,124)	(27,293,528)
June 30 Year-End Balance	13,202,787	13,983,727	17,277,993	20,620,269

The Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: \$13.9 million in FY 2015-16, \$17.2 million in FY 2016-17, and \$20.6 million in FY 2017-18.

The reduction in revenue will reduce the Service Charge to General Revenue by approximately \$36,914 annually.¹⁷

2. Expenditures:

Uncertain. The bill will reduce the Department's expenditures by reducing the amount of thermal paper used per year, by an unknown amount, as a result of electronic transmittal of inspection reports. A 1% reduction of thermal paper use would result in savings of \$509.87, 5% reduction will lead to \$2,549.34 in savings, 10% reduction will lead to \$5,098.68 in savings, and 15% reduction will lead to \$7,648.02 in savings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁶ Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

¹⁷ Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenditures for licensed public food service establishments that operate at temporary food service events by eliminating the cost of obtaining a separate license. Per establishment savings depend upon the type of license obtained, ranging from \$105 per 4-30 day event to \$456 for an annual license. Also, any establishment with a license expired more than 30 days would pay a reduced delinquent fee, saving \$50 per establishment. Total private sector expenditure reductions would be equivalent to the Division's revenue reduction.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division would be required to adopt procedures for electronic transmittal of the inspection reports and rules relating to how often the Division reassesses public food service establishment inspection frequencies. Also, the Division would need to amend the rules adopting the delinquent fee and disciplinary guidelines relating to operating on an expired license.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Performance Measures

Currently, the Division measures performance based on the percentage of statutorily required inspections completed each year. The Division may want to establish a performance measure that determines the effectiveness of the inspection process based on its ability to increase compliance with food service establishments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee adopted one amendment which amends the portion of the bill that removes the minimum and maximum inspections required per year. The bill preserves the current risk-based inspection frequency for public food service establishments requiring one to four inspections per establishment annually.

The staff analysis is drafted to reflect the committee substitute.