

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 558

INTRODUCER: Senator Stargel

SUBJECT: Public Lodging and Public Food Service Establishments

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 558 deletes the July 1, 2014 date by which the Division of Hotels and Restaurants (division) with the Department of Business and Professional Regulation was required to adopt a rule for risk-based inspection of public food service establishments. The number or frequency of risk-based inspections is based on several risk factors, including the type of food utilized, food preparation methods, and inspection and compliance history. The division adopted the risk-based inspection frequency rule on July 4, 2013. The bill requires the division to reassess the inspection frequency at least annually instead of annually.

The bill deletes the requirement that the division must provide each inspected public food service establishment and temporary food service event sponsor of the availability of the food recovery brochure. Instead it must notify the establishments that the brochure is available. The food recovery brochure is developed by the Department of Agriculture and Consumer Services to provide information about food recovery programs that provide surplus food to governmental agencies and local volunteer and nonprofit organizations for distribution to those in need. The division maintains an electronic copy of this brochure on its website.

The bill permits currently-licensed public food service establishments to operate at a temporary food service event for the duration of the event without obtaining an additional temporary food service event license if the event exceeds three days. The bill permits the division to deliver inspection reports to operators of public food service and public lodging establishments by electronic transmittal. The bill requires public food service establishments to maintain a copy of the inspection report and to make the copy of the inspection report available to the division upon inspection. However, it deletes the requirement that the establishment maintain a duplicate copy of the inspection report on the premises. According to the division, this would permit establishments to maintain the inspection report in any format or electronic location, such as in cloud storage or a corporate computer system, rather than as a physical, duplicate copy on

premises. The bill maintains the requirement that establishments must to make a copy of the inspection report available to the public upon request.

The bill deletes the \$100 delinquent fee for public food service establishments and public lodging establishments that file for renewal more than 30 but not more than 60 days after the expiration date of the license. Licensees who fail to file a license renewal for 30 days or less after the date the license expires would be assessed a \$50 delinquent fee.

The division estimates that the bill would reduce revenues by a total of \$461,420.

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

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of part I 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.

Public Food Service Establishments

At the end of FY 2013-2014, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.¹ During FY 2013-2014, the division also issued 7,718 temporary food service event licenses.²

Section 509.013(5)(a), F.S., defines the term “public food service establishment” to mean:

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.

Section 509.013(5)(b), F.S., exempts the following from the definition of the term “public food service establishment:

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:

¹ *Annual Report, Fiscal Year 2013-2014*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html (last visited February 20, 2015).

² *Id.*

- 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 facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families 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.

Public Lodging Establishments

At the end of FY 2013-2014, there were 38,472 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.³

The term “public lodging establishments” includes transient and nontransient public lodging establishments.⁴ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

Section 509.013(4)(a)1., F.S., defines a “transient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a “nontransient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public

³ *Id.*

⁴ Section 509.013(4)(a), F.S.

as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.⁵ A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.⁶

Section 509.013(4)(b), F.S., exempts dormitories, hospital and medical establishments, residential units, migrant labor camps, and establishments inspected by the Department of Health from the definition of “public lodging establishment.”

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, and timeshare project.⁷

The 38,472 public lodging establishments that were licensed by the division at the end of FY 2013-2014 were divided as follows:⁸

- Hotels - 1,720 licenses;
- Motels - 2,691 licenses;
- Nontransient apartments - 17,501 licenses;
- Transient apartments - 960 licenses;
- Bed and Breakfasts – 260 licenses;
- Vacation Rentals, Condominiums – 3,904 licenses; and
- Vacation Rentals, Dwellings – 11,436 licenses.

Inspections

The division, no later than July 1, 2014, was required to adopt by rule a risk-based inspection frequency for each licensed public food service establishment. The division’s rule must require at least one, but not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service.

On July 4, 2013, the division adopted a risk-based inspection frequency rule. Beginning July 1, 2014, all public food service establishments regulated by the division are required to have one to four unannounced inspections each year. The division bases the number of inspections on several risk factors, including the type of food utilized, food preparation methods, and inspection and compliance history.⁹

⁵ Section 509.242(1)(d), F.S.

⁶ Section 509.242(1)(e), F.S.

⁷ Section 509.242(1), F.S.

⁸ *Supra* note 1.

⁹ Rule 61C-1.002(8)(d)2., L.O.F., and *supra* note 1.

The division is required to inspect each licensed public lodging establishment at least biannually. However, transient and nontransient apartments must be inspected at least annually.¹⁰ In Fiscal Year 2013-14, the division completed 160,720 food service and lodging inspections.¹¹

The division has adopted the following inspection schedule:

- One inspection – Vending machines, annual temporary event vendors, and establishments that do not cook raw animal food or that cook and serve raw animal food but do not cool cooked or heated food;
- Two inspections – Establishments that cook raw animal food and cool any cooked or heated food; conduct special processes that increase food borne illness risk that are outlined in the Food Code; or serve raw or undercooked animal food that requires a consumer advisory;
- Three inspections – Establishments with three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles (which coincides with the Fiscal Year) or that serve a highly susceptible population; and
- Four inspections – Establishments with a confirmed foodborne illness within the previous calendar year.

All establishments licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare.¹²

During an inspection, the division is required to provide each public food service establishment a copy of the food-recovery brochure¹³ developed under s. 595.420, F.S. Section 595.420(7), F.S., provides for the Department of Agriculture and Consumer Services to develop a public information brochure that details the need of food recovery programs, the benefit of food recovery programs, the manner in which such organizations may become involved in food recovery programs, the protection afforded to such programs under s. 768.136, and the food recovery entities or food banks that exist in the state. The Department of Agriculture and Consumer Services must annually update this brochure. Food recovery programs provide surplus food to governmental agencies and local volunteer and nonprofit organizations for distribution to those in need, rather than continuing to see it destroyed.¹⁴

Section 509.091, F.S., requires the division to serve public lodging establishment and public food service establishment notices in writing by personal service or registered mail, including all inspection reports. If the operator of the establishment refuses to accept service or evades service, the division can post the notice in a conspicuous place at the establishment. The division prints the inspection report following each inspection and provides a copy to the operator. The operator of a public food service establishment is required to maintain the latest inspection report or a duplicate copy on the premises and make it available to the public upon request.¹⁵

¹⁰ Section 509.032(2)(a), F.S.

¹¹ *Supra* note 1. This total includes initial inspections and call-back inspections conducted by the division.

¹² Section 509.032(2)(a), F.S.

¹³ The department maintains a copy of the food recovery brochure on its website at:

<http://www.myfloridalicense.com/dbpr/hr/forms/hr-publications.html> (last visited February 20, 2015).

¹⁴ *See* 595.420(1), F.S.

¹⁵ Section 509.101(1), F.S.

Temporary Food Service Event Licenses

Section 509.032(3)(c)3.b., F.S., permits licensed public food service establishments to receive a temporary permit to operate under their license at temporary food service events of three days or less.

License Renewal

Public food service establishments and public lodging establishments are required to renew their licenses annually.¹⁶ Delinquent fees are assessed if the license is not renewed by the expiration date.¹⁷ The division is required to adopt delinquent fees by rule and to prescribe a maximum late fee of \$50 for licenses that are renewed within 30 days of the expiration date. Licenses that are renewed more than 30 but not more than 60 days after the expiration date must be assessed a delinquent fee not to exceed \$100.¹⁸ Licenses expire that are not renewed within 60 days after the expiration date are subject to an administrative complaint and a fine ranging from \$250 to \$1,000.¹⁹

According to the division, in FY 2013-14, the division licensed 87,083 public food service establishments and public lodging establishments and collected \$895,224 in delinquent fees. From 2007 through 2012, the division collected an average of \$849,669 in delinquent fees annually from 10,378 delinquent licensees. The \$100 delinquent fee accounted for approximately three-quarters, or more than \$660,000, of the average delinquent fees collected.²⁰

III. Effect of Proposed Changes:

Risk Based Inspection Frequency

The bill amends s. 509.032(2)(a), F.S., to delete the July 1, 2014 date by which the division was required to adopt a rule for risk based inspection frequency. The division adopted the rule on July 4, 2013.²¹

The bill also amends s. 509.032(2)(a), F.S., to require the division to reassess the inspection frequency at least annually instead of annually. According to the division, this would permit the department to reassess a public food service establishment's inspection frequency as frequently as the circumstances require.

Food Recovery Brochure

The bill amends s. 509.032, F.S., to permit the division to notify each inspected public food service establishment and temporary food service event sponsor of the availability of the food recovery brochure. The bill deletes the requirement that the division must provide each inspected

¹⁶ Section 509.251(1), F.S., for public lodging establishments, and s. 509.251(2), F.S., for public food service establishments.

¹⁷ *Id.*

¹⁸ See rule 61C-1.008(5), F.A.C.

¹⁹ See rule 61C-1.005(6)(f), F.A.C.

²⁰ 2015 Department of Business and Professional Regulation Legislative Bill Analysis for SB 558, February 20, 2015.

²¹ Rule 61C-1.001(31), F.A.C.

establishment with a copy of the brochure. The bill does not specify how the division must make the brochure available.

Temporary Food Service Event Licenses

The bill amends s. 509.032(3)(c)3.b., to delete the three-day temporary license restriction for currently-licensed public food service establishments operating under their license at temporary food service events lasting up to three days. The bill would permit currently-licensed public food service establishments to operate at a temporary food service event for the duration of the event without obtaining an additional temporary food service event license even if the event exceeds three days.

Inspection Reports

The bill amends s. 509.091, F.S., to permit the division to deliver inspection reports to operators of public food service and public lodging establishments by electronic transmittal.

The bill amends s. 509.101(1), F.S., to require public food service establishments to maintain a copy of the inspection report and to make the copy of the inspection report available to the division upon inspection. It deletes the requirement that the establishment maintain a duplicate copy of the inspection report on the premises. According to the division, the bill permits establishments to maintain the inspection report in any format or electronic location, such as in cloud storage or a corporate computer system, rather than as a physical, duplicate copy on premises. The bill maintains the requirement that establishments must make a copy of the inspection report available to the public upon request.

Delinquent Fees

The bill amends s. 509.251, F.S., to delete the \$100 delinquent fee for public food service establishments and public lodging establishments that file for renewal more than 30 but not more than 60 days after the expiration date of the license. Licensees who fail to file a license renewal for 30 days or less after the date the license expires would be assessed a \$50 delinquent fee.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the \$100 delinquent fee for public food service establishments and public lodging establishments that file for renewal more than 30 but not more than 60 days after the expiration date of the license. Licensees who fail to timely renew their license within 30 days after the expiration date of the license would pay a reduced delinquent fee, saving \$50 per establishment. However, they would also be subject to an administrative complaint and a fine ranging from \$250 to \$1,000.

The bill would permit currently-licensed public food service establishments to operate at a temporary food service event for the duration of the event and would save them the expense of obtaining an additional temporary food service event license if the event exceeds three days.

C. Government Sector Impact:

The bill permits the division to notify each inspected public food service establishment and temporary food service event sponsor of the availability of the food recovery brochure. The division anticipates an indeterminate decrease in expenses relating to deleting the requirement that the division must provide each inspected establishment with a copy of the brochure. The department also anticipates an indeterminate reduction in expenses due the provision in the bill that permits the department to deliver copies of inspection reports electronically to licensees.

The bill deletes the \$100 delinquent fee for public food service establishments and public lodging establishments that file for renewal more than 30 but not more than 60 days after the expiration date of the license. The division anticipates that repeal of the \$100 late delinquent fee will reduce the division's revenue from delinquent fees. However the division does not expected that this decrease will to impact operations. The division anticipates a \$330,800 reduction in revenue.

The bill would permit currently-licensed public food service establishments to operate at a temporary food service event for the duration of the event and would save them the expense of obtaining an additional temporary food service event license if the event exceeds three days. The department anticipates a \$130,620 reduction in revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.032, 509.091, 509.101, and 509.251.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.