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DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 155
RELATING TO: Public Lodging/Food Svc.
SPONSOR(S): Representative(s) Trovillion
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

The Division of Hotels and Restaurants has authority to conduct inspections of public lodging establishments and public food service establishments to determine compliance with established standards of sanitation and safety. If an establishment is not in compliance with those standards at the time of the initial inspection, reinspection at a later time or date may be required. At present, there is no specific statutory authority provided to recover the cost of performing reinspections due to non-compliance.

This bill requires the Division of Hotels and Restaurants, within the Department of Business and Professional Regulation (DBPR), to charge a \$150 reinspection fee. This fee is to help the division recover the costs incurred when reinspection is performed on a public lodging establishment or a public food service establishment. The reinspection of such establishments is to verify that those establishments have corrected violations found during the division's initial or subsequent inspection.

The affected industries expressed concern regarding this method of raising money for DBPR. See "Other Comments" section for further comments.

This bill does not appear to have a fiscal impact on local governments. This bill appears to have a fiscal impact on state governments. See "Fiscal Impact on State Government" section for further details.

On February 12, 2002, the Committee on State Administration reported HB 155 favorably with one strike-all amendment. That amendment is traveling with the bill. See "Amendments or Committee Substitute Changes" section for further details.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill allows the Division of Hotels and Restaurants to impose a \$150 reinspection fee on public lodging establishments and food service establishments.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Division of Hotels and Restaurants has authority to conduct inspections of public lodging establishments¹ and public food service establishments² to determine compliance with established

¹ Section 509.013(4)(a), F.S., defines a "public lodging establishment" as "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. License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103." Also, the following are excluded from the definition:

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
- Any hospital, nursing home, sanitarium, assisted living facility, or other similar place;
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
- Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and
- Any establishment inspected by the Department of Health and regulated by chapter 513.

² Section 509.013(5)(a), F.S., defines a "public food service establishment" 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 following are excluded from the definition:

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty, or temporarily to serve such events as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

standards of sanitation and safety.³ If an establishment is not in compliance with those standards at the time of the initial inspection, reinspection at a later time or date may be required. At present, there is no specific statutory authority provided to recover the cost of performing reinspections due to non-compliance.

C. EFFECT OF PROPOSED CHANGES:

This bill requires the Division of Hotels and Restaurants, within the Department of Business and Professional Regulation, to charge a \$150 reinspection fee. The reinspection of public lodging establishments and public food service establishments is to verify that those establishments have corrected violations found during the division's initial or subsequent inspection.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:⁴

	<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
License Fees:			
Taxes:			
Other (identify):	\$3,585,000	\$3,585,000	\$3,585,000
TOTAL:	\$3,585,000	\$3,585,000	\$3,585,000

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- 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.
 - Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
 - 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.
 - 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.
 - Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
 - Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
 - Any research and development test kitchen limited to the use of employees and which is not open to the general public.

³ Sections 509.032(1) and (2)(a), (b), and (d), F.S.

⁴ The \$3,585,000 revenue is a result of an average of 23,900 reinspections performed each year at a charge of \$150 per reinspection. Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

2. Expenditures:⁵

Non-Operating Expenditures	<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
Service Charges (to General Revenue)	\$261,705	\$261,705	\$261,705
Other Indirect Costs			
Subtotal	\$261,705	\$261,705	\$261,705

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Affected industries will be charged a \$150 reinspection fee.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

⁵ Each trust fund is required to pay 7.3% to the general revenue. The \$261,705 expenditure is a result of the 7.3% owed to the general revenue. Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

B. RULE-MAKING AUTHORITY:

The bill does not provide for rulemaking authority. The Department of Business and Professional Regulation has said the bill may require *minor* modification to s. 61C-1.008, Florida Administrative Code, adding a provision for the \$150.00 reinspection fee.⁶

C. OTHER COMMENTS:

On November 2, 2001, committee staff met with the Department of Business and Professional Regulation (DBPR), the Florida Apartment Association, the Florida Hotel and Motel Association, the Florida Restaurant Association, and the Governor's Office of Policy and Budget. At that meeting, the Secretary of DBPR stated that the \$150 reinspection fee would cover the \$3.5 million needed by DBPR to break even in this year's budget. According to the Secretary, that fee would provide "gap financing" that would help avoid massive layoffs at DBPR until funding is provided.⁷ The associations present expressed concern with division investigators trying to meet a quota in order to satisfy budget requirements. The Florida Hotel and Motel Association asked why there was no sunset date on this bill if the reinspection fee is strictly for gap financing. The Secretary stated that she could not guarantee that the fee would not be necessary in the future.

While at the meeting, DBPR presented four options for breaking even in this year's budget:

- Creating a \$150 reinspection fee.⁸
- Reducing the number of inspections from three per year to two per year.⁹
- Reducing the number of inspections from three per year to one per year.¹⁰
- Providing an across the board increase in fees.¹¹

The Florida Restaurant Association recommended an increase in plan review fees and temporary licensing fees.¹²

The meeting concluded with the associations stating they were going to "meet, brainstorm suggestions for eliminating the \$3.5 million debt, and provide those suggestions to the Secretary."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on State Administration reported HB 155 favorably with one strike-all amendment. That amendment is traveling with the bill.

The strike-all amendment removes the \$150 reinspection fee established in the bill. At present, there is no such fee in law. Additionally, the strike-all amendment provides the following provisions, which are

⁶ Office of Legislative Affairs Legislative Analysis Form, HB 155, October 2, 2001.

⁷ DBPR also has a \$1 million debt that is owed to the state. DBPR is required to pay back that debt by July 2002, unless the Legislature grants the agency an additional year to make the payment. Meeting with DBPR, the Florida Apartment Association, the Florida Hotel and Motel Association, the Florida Restaurant Association, and the Governor's Office of Policy and Budget, November 2, 2001

⁸ HB 155 by Representative Trovillion.

⁹ Reduction in the number of yearly inspections would result in the layoff of inspectors.

¹⁰ *Id.*

¹¹ The Secretary of DBPR said she would get the auditors to come up with figures for an across the board increase regarding how much of an increase is needed in order to break even. Committee staff was not provided with those figures.

¹² Current temporary licensing fees are \$85 (1-3 days) and \$105. Meeting on November 2, 2001.

not addressed in the bill:

- Reduces the number of yearly inspections for transient¹³ and nontransient¹⁴ apartments from two to one.
- Amends the reporting requirements regarding temporary food service events¹⁵.
- Requires a public food service establishment or other food service vendor to obtain either an individual license¹⁶ for each temporary food service event in which such establishment participates or an annual license¹⁷ from the Division of Hotels and Restaurants.
- Requires the division to establish license fees by rule¹⁸.
- Requires the Secretary of DBPR and the division to periodically review the division's budget and financial status with the advisory council¹⁹.
- Requires the advisory council to make recommendations to the Secretary and the division.
- Requires the division to provide the advisory council, each year, with an annual internal audit of the financial records of the Hospitality Education Program.
- Requires that all instruction and training offered through the Hospitality Education Program be provided by private, Florida nonprofit, statewide organizations in the hospitality field under contract with the division.²⁰
- Provides requirements regarding the instruction and training offered through the Hospitality Education Program.
- Requires all public lodging establishments, public food service establishments, and temporary food service event licensees to pay an annual fee of \$10 (effective July 1, 2002).²¹ The division may increase the annual fee²² as necessary to fund the Hospitality Education Program (effective January 1, 2005). The fee must not exceed \$20.
- Requires the division to adopt rules providing the criteria for program approval and the procedures for processing program applications.²³
- Requires the division to increase the license fees of public lodging establishments and public food service establishments by \$45 (effective July 1, 2002).²⁴ However, the license fees for transient apartments and nontransient apartments must only increase by \$40 (effective July 1, 2002).²⁵

¹³ Section 509.242(1)(e), F.S., defines a "transient apartment" as "any apartment building in which units are advertised or held out to the public as available for transient occupancy."

¹⁴ Section 509.242(1)(d), F.S., defines a "nontransient apartment" as "any apartment building in which 75 percent or more of the units are available for rent to nontransient tenants."

¹⁵ Section 509.013(8), F.S., defines a "temporary food service event" as "any event of 30 days or less in duration where food is prepared, served, or sold to the general public."

¹⁶ The fee for an individual license will be no more than \$105.

¹⁷ The fee for an annual license will be no more than \$1000. Such license entitles a licensee to participate in an unlimited number of food service events during the license period.

¹⁸ Such rule may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

¹⁹ Section 509.291, F.S., creates the advisory council.

²⁰ The division must issue requests for competitive sealed proposals and must select three providers: one to provide instruction and training to transient and nontransient apartment licensees and their personnel; one to provide instruction and training to all other public lodging establishment licensees and their personnel; and one to provide instruction and training to public food service establishment licensees and temporary food service event licensees, and their personnel.

²¹ Requires the division to adopt this fee by rule. The annual fee is paid in addition to the annual license fee and is only used for the purpose of funding the Hospitality Education Program.

²² Requires the division to increase the fee by rule and with the approval of the advisory council.

²³ The advisory council must approve the criteria and procedures.

²⁴ At present, the basic license fee for a public food service establishment is \$140. The basic license fee for a public lodging establishment ranges from \$95-\$125. Information provided by the Florida Restaurant Association.

²⁵ The increase in license fees does not apply to the basic license fee for vending machines or to license fees for temporary food service events.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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