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**DATE:** March 5, 2002

**HOUSE OF REPRESENTATIVES  
COUNCIL FOR SMARTER GOVERNMENT  
ANALYSIS**

**BILL #:** CS/HB 155  
**RELATING TO:** Public Lodging/Food Svc.  
**SPONSOR(S):** Council for Smarter Government and 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 YEAS 12 NAYS 0
  - (4)
  - (5)
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I. SUMMARY:

The council substitute, in part,

- Requires only one annual inspection of transient and nontransient apartments, instead of two.
- Changes the licensing and reporting requirements for temporary food service events.
- Requires a food service vendor to obtain either an individual license, for a fee of no more than \$105, for each temporary food service event, or an annual license, for a fee of no more than \$1,000.
- Requires the Division of Hotels and Restaurants (division) to establish license fees by rule.
- Clarifies that late fees and fees to pay costs associated with initiating regulation of an establishment are not subject to the aggregate cap on license fees.
- Requires that the Secretary of the Department of Business and Professional Regulation (DBPR) and the division periodically review the division's budget and financial status with the advisory council for the purpose of maintaining the financial stability of the division.
- Requires the division to provide each year an annual internal audit of the financial records of the Hospitality Education Program (HEP) to the advisory council.
- Increases the annual fee for HEP to \$10.
- Makes modifications to statutory provisions governing the regulation of elevators.

See "Constitutional Issues" section for concerns.

See "Fiscal Impact on State Government" and "Direct Economic Impact on Private Sector" sections.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government                      Yes       No       N/A

The council substitute requires the Division of Hotels and Restaurants to establish license fees by rule and to adopt by rule criteria for providing approval and procedures for continuing education reporting for individuals that receive an elevator certificate of competency.

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:

**Chapter 509, part I, F.S.**

Chapter 509, part I, F.S., provides for regulation of public lodging establishments and public food service establishments. 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, F.S.; and

- Any establishment inspected by the Department of Health and regulated by chapter 513, F.S.

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.
- 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, F.S.
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.
- 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, F.S.
- Any research and development test kitchen limited to the use of employees and which is not open to the general public.

### **Elevator Inspections**

The 2001 Legislature enacted chapter 2001.186, Laws of Florida, which created the “Elevator Safety Act.” This act created the Elevator Safety Technical Advisory Committee; provided regulatory standards for elevators and similar equipment; provided for permits for conveyance construction or alteration; provided for certification of elevator companies and certificates of competency for elevator mechanics and elevator inspectors; and provided for fees and penalties. The bill also revised the third party inspection statutory language passed by the 2000 Legislature.

Section 509.072, F.S., creates the Hotel and Restaurant Trust Fund to be used by the Division of Hotels and Restaurants (division) of the Department of Business and Professional Regulation for expenses of administration and operation and carrying out all laws and rules relating to public lodging and public food services establishments and inspection of elevators. All funds collected by the division and the amounts paid for licenses and fees are to be deposited into the trust fund.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends s. 509.032, F.S. Requires only one annual inspection of transient and nontransient apartments, instead of two. Changes the licensing and reporting requirements for temporary food service events. Requires a food service vendor to obtain either an individual license, for a fee of no more than \$105, for each temporary food service event, or an annual license, for a fee of no more than \$1,000. Requires the Division of Hotels and Restaurants (division) to establish license fees by rule. Allows the division to limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

**Section 2.** Amends s. 509.251, F.S. Clarifies that late fees and fees to pay costs associated with initiating regulation of an establishment are not subject to the aggregate cap on license fees.<sup>1</sup>

**Section 3.** Amends s. 509.291, F.S. Requires that the Secretary of the Department of Business and Professional Regulation (DBPR) and the division periodically review the division's budget and financial status with the advisory council<sup>2</sup> for the purpose of maintaining the financial stability of the division. Requires the division to provide each year an annual internal audit of the financial records of the Hospitality Education Program (HEP) to the advisory council.

**Section 4.** Amends s. 509.302, F.S. Increases the annual fee for HEP to \$10.

**Section 5.** Amends s. 399.01, F.S. Provides definitions for the Elevator Safety Act. Deletes the definition of "certificate of competency," as this term is being replaced by "elevator certificate of competency." Deletes the definition of "escalator" at subsection (8), as existing subsection (7)(b) also defines this term. Amends the definition of "certified elevator inspector" to use the credentials of the American Society of Mechanical Engineers as opposed to the National Association of Elevator Safety Authorities. Amends the definition of "elevator certificate of competency" to provide further qualifications for obtaining an elevator certificate of competency.

**Section 6.** Amends s. 399.02, F.S. Deletes a requirement that DBPR review service maintenance contracts and determine whether they ensure safe operation of the elevator. Makes each elevator owner responsible for inspections after a certificate of operation has been issued.

**Section 7.** Amends s. 399.03, F.S. Transfers modified provisions for temporary operation inspections to this section from s. 399.07(2), F.S., with the required inspection done by a private inspector, not a state elevator inspector.<sup>3</sup> Requires that an original inspection report be filed with DBPR within 5 days of the inspection. Provides additional requirements for application for elevator permits.

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<sup>1</sup> Section 509.251(1), F.S., provides that the license fee must not exceed \$1000.

<sup>2</sup> Section 509.291, F.S., creates an advisory council whose purpose is to "promote better relations, understanding, and cooperation between such industries and the division; to suggest means of better protecting the health, welfare, and safety of persons using the services offered by such industries; to give the division the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division; and to promote and coordinate the development of programs to educate and train personnel for such industries."

<sup>3</sup> As these were the last inspections required of state elevator inspectors, this completes the privatization of elevator inspections.

**Section 8.** Amends s. 399.049, F.S. Revises the grounds for suspension or revocation of certification or registration.<sup>4</sup>

**Section 9.** Amends s. 399.061, F.S. Deletes the current exception to the requirement for annual inspections that allows inspections every two years for elevators that are subject to service maintenance contracts, thereby requiring an annual inspection for all elevators. Requires that a report on service maintenance contracts be filed at least annually.

**Section 10.** Amends s. 399.07, F.S. Extends the period of validity of a certificate of operation from one to two years. The provisions on certificates of operation in paragraph (1)(d) are reorganized and moved to newly designated subsection (1). Deletes the provisions on temporary use permits, which are modified and transferred to s. 399.03, F.S. Among the modifications is requiring inspection by a private inspector, not a state elevator inspector. As the state is no longer conducting these inspections, an inspection fee provided in current paragraph (2)(d) is not contained in the new provisions in s. 399.03, F.S.

**Section 11.** Amends s. 399.105, F.S. Deletes a restriction on issuance of a fine for commencing installation of an elevator without a construction permit, to shorten the time for correction of a violation from 60 days to 30 days, with discretion to extend the time for good cause shown, and to subject an elevator owner who continues to operate an elevator after it has been sealed by DBPR to civil fine.

**Section 12.** Amends s. 399.106, F.S. Makes a technical correction.

**Section 13.** Amends s. 399.125, F.S. Deletes a requirement that an “incident” occurring in or upon any elevator be reported to the division, with “accidents” still to be reported.

**Section 14.** Amends s. 399.13, F.S. Requires that agreements between the department and municipalities and counties provide for all inspections to be conducted by a certified elevator inspector rather than a holder of a certificate of competency. Allows a local government that assumes elevator inspection duties to hire private inspectors to conduct inspections.

**Section 15.** Amends s. 509.072, F.S. Requires DBPR to maintain a separate account within the trust fund for funds collected for inspection of elevators. Requires that, to the maximum extent possible, DBPR directly charge all expenses to the account for elevator inspections.<sup>5</sup> Requires DBPR to proportionately allocate expenses that cannot be directly charged among the accounts of expenses incurred by the department. Requires DBPR to maintain adequate records to support its allocation of expenses. Prohibits using elevator inspection funds to pay for hotel and restaurant regulation expenses. Prohibits transfer of the funds to any other trust fund.

**Section 16.** Provides an effective date of upon becoming law.

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<sup>4</sup> New grounds include failure of a certified elevator inspector to file a copy of an elevator inspection report within 5 days of the inspection and fraud, misrepresentation, or bribery in the practice of the profession. The ground of a failure to notify DBPR and the certificate of operation holder of an elevator that is out of compliance with the elevator safety code is deleted.

<sup>5</sup> “Direct charge expenses” include, but are not limited to, costs for investigations, examinations, or legal services.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation. Details as to any subsidization and the effects of the council substitute on other regulatory programs were unavailable at the time of drafting.<sup>6</sup>

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation.<sup>7</sup>

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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<sup>6</sup> Council for Smarter Government Analysis, CS/HB 1667, March 4, 2002, at 8. Senate Staff Analysis and Economic Impact Statement, CS/HB 1450, February 26, 2002, at 5.

<sup>7</sup> *Id.*

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

The council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The council substitute appears to raise a constitutional concern. The council substitute appears to contain more than one subject.<sup>8</sup> It contains provisions relating to hotels and restaurants in addition to elevators.

B. RULE-MAKING AUTHORITY:

The council substitute requires the Division of Hotels and Restaurants to establish license fees by rule and to adopt by rule criteria for providing approval and procedures for continuing education reporting for individuals that receive an elevator certificate of competency.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**Committee on State Administration**

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 not addressed in the bill:

- Reduces the number of yearly inspections for transient<sup>9</sup> and nontransient<sup>10</sup> apartments from two to one.
- Amends the reporting requirements regarding temporary food service events<sup>11</sup>.
- Requires a public food service establishment or other food service vendor to obtain either an individual license<sup>12</sup> for each temporary food service event in which such establishment participates or an annual license<sup>13</sup> from the Division of Hotels and Restaurants.
- Requires the division to establish license fees by rule<sup>14</sup>.

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<sup>8</sup> Section 6, Art. III of the State Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith.”

<sup>9</sup> 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.”

<sup>10</sup> 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.”

<sup>11</sup> 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.”

<sup>12</sup> The fee for an individual license will be no more than \$105.

<sup>13</sup> 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.

- Requires the Secretary of DBPR and the division to periodically review the division's budget and financial status with the advisory council<sup>15</sup>.
- 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.<sup>16</sup>
- 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).<sup>17</sup> The division may increase the annual fee<sup>18</sup> 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.<sup>19</sup>
- Requires the division to increase the license fees of public lodging establishments and public food service establishments by \$45 (effective July 1, 2002).<sup>20</sup> However, the license fees for transient apartments and nontransient apartments must only increase by \$40 (effective July 1, 2002).<sup>21</sup>

### **Council for Smarter Government**

On March 1, 2002, the Council for Smarter Government adopted a substitute strike-all amendment to the strike-all amendment traveling with HB 155. The bill was reported favorably as a council substitute.

The council substitute removes the \$150 reinspection fee established in the bill. At present, there is no such fee in law. Additionally, the council substitute provides the following provisions, which are not addressed in the bill:

- Requires only one annual inspection of transient and nontransient apartments, instead of two.
- Changes the licensing and reporting requirements for temporary food service events.
- Requires a food service vendor to obtain either an individual license, for a fee of no more than \$105, for each temporary food service event, or an annual license, for a fee of no more than \$1,000.
- Requires the Division of Hotels and Restaurants (division) to establish license fees by rule.

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<sup>14</sup> 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.

<sup>15</sup> Section 509.291, F.S., creates the advisory council.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> Requires the division to increase the fee by rule and with the approval of the advisory council.

<sup>19</sup> The advisory council must approve the criteria and procedures.

<sup>20</sup> 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.

<sup>21</sup> 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.

- Clarifies that late fees and fees to pay costs associated with initiating regulation of an establishment are not subject to the aggregate cap on license fees.
- Requires that the Secretary of the Department of Business and Professional Regulation (DBPR) and the division periodically review the division's budget and financial status with the advisory council for the purpose of maintaining the financial stability of the division.
- Requires the division to provide each year an annual internal audit of the financial records of the Hospitality Education Program (HEP) to the advisory council.
- Increases the annual fee for HEP to \$10.
- Deletes a requirement that DBPR review service maintenance contracts and determine whether they ensure safe operation of the elevator.
- Provides that inspections for temporary elevator use are to be conducted by a private inspector, not a state elevator inspector.
- Requires that a certified elevator inspector file a copy of an elevator inspection report within five days after the inspection and subject the inspector to discipline for failure to do so.
- Requires an annual inspection for all elevators.
- Requires local governments to use certified elevator inspectors, and allows a local government that assumes elevator inspection duties to hire a private inspector to conduct inspections.
- Requires DBPR to maintain a separate account within the Hotel and Restaurant Trust Fund for elevator inspection program revenue.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Don Rubottom