

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1584

SPONSOR: Regulated Industries Committee and Senator Wasserman Schultz

SUBJECT: Food Service/Diaper Changing Tables

DATE: March 20, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill requires that each public food service establishment licensed on or after January 1, 2005, and each public food service establishment issued a renewal license after that date must provide a diaper-changing table in each properly designated public bathroom. The bill also provides that each public food service establishment and each public lodging establishment may provide diaper-changing tables in its required sanitary facilities.

The bill exempts from the diaper-changing table requirement any public bathroom in public food service establishment that the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) determines is too small to accommodate a diaper-changing table or that the installation of the table would impede compliance with the Americans with Disabilities Act. The bill authorizes the division to adopt rules to administer the diaper-changing table requirement.

The bill establishes dimension and placement requirements for the diaper-changing tables, and requires that the Division of Hotels and Restaurant to establish by rule requirements for inspecting diaper changing tables, and the disposal of soiled diapers.

The bill also exempts from the diaper-changing table requirement any public food service establishment that is licensed as an alcoholic beverages vendor under s. 565.02(1)(b)-(f), F.S., or is an establishment that prohibits persons under 18 years of age on the premises. This bill would take effect on July 1, 2004.

This bill substantially amends section 509.221, Florida Statutes.

## II. Present Situation:

The Division of Hotels and Restaurants of the Department of Business and Professional Regulation is the state agency charged with enforcing the provisions 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. According to the department, there are over 40,000 licensed food service establishments in Florida,<sup>1</sup> and there are over 34,000 licensed public lodging establishments.<sup>2</sup>

### Public Food Service Establishment

Section 509.013(5), defines a public food service establishment as follows:

- (a) "Public food service establishment" means 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.
- (b) The following are excluded from the definition in paragraph (a):
  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:
    - 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 hospital, nursing home, sanitarium, assisted living facility, adult day care center, 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.

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<sup>1</sup> For FY 2002-2003 there were 41,364 licensed food service establishments. *Annual Report, Fiscal Year 2002-2003*, Division of Hotels and Restaurants, Department of Business and Professional Regulation.

<sup>2</sup> *Id.* For FY 2002-2003, there were 34,248 licensed public lodging establishments.

10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

### **Public Lodging Establishment**

Section 509.013(4)(a), F.S., defines the term "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 one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

For the purpose of licensure, the public lodging establishment does not include condominium common elements as defined in s. 718.103, F.S. Section 509.013(4)(b), F.S., excludes the following locations from the definition of public lodging establishment:

1. 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;
2. Any hospital, nursing home, sanitarium, assisted living facility, or other similar place;
3. 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;
4. 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;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and
6. Any establishment inspected by the Department of Health and regulated by chapter 513.

### **Sanitary Regulations.**

Section 509.221, F.S., provides sanitary regulations for public lodging and public food service establishments. The provision requires that they be supplied with potable water and provide adequate sanitary facilities for the accommodation of its employees and guests. The facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets.

### **Restroom Facilities**

Section 509.221(2), F.S., requires each public lodging and public food service establishment to maintain not less than one public bathroom for each sex, unless otherwise provided by rule of the division. The division is required to establish by rule categories of establishments not subject to this requirement.

Section 553.86, F.S., requires the Florida Building Commission to incorporate into the Florida Building Code a ratio of public restroom facilities for men and women in all buildings that are newly constructed after September 30, 1992, and that have restrooms open to the public. This restroom equity requirement does not apply to establishments licensed under ch. 509, F.S., if the establishment does not provide meeting or banquet rooms which accommodate more than 150 persons and the establishment has at least the same number of water closets for women as the combined total of water closets and urinals for men.

### III. Effect of Proposed Changes:

**Section 1.** Section 509.221(6), F.S., of the bill requires that each public food service establishment licensed after January 1, 2005, and each public food service establishment issued a renewal license after that date must provide a diaper-changing table in each properly designated public bathroom. In locations with separate male and female bathrooms, the bill would require a diaper-changing table in each bathroom. Food service establishments licensed on the effective date of this bill, or with licenses renewed before January 1, 2005, would not be subject to this requirement until the licenses were renewed.

Section 509.221(1), F.S., is amended to provide that each public food service establishment and each public lodging establishment may provide diaper-changing tables in its sanitary facilities.

The bill exempts from the diaper-changing table requirement any public bathroom in a public food service establishment that the division determines is too small to accommodate a diaper-changing table or that the installation of the table would impede compliance with the Americans with Disabilities Act (ADA).<sup>3</sup> The bill authorizes the division to adopt rules to administer the diaper-changing table requirement. According to the representative for the division, the division could not determine ADA compliance because it does not have the expertise and ADA compliance is a function performed by local building code enforcement authorities.

The bill also exempts from the diaper-changing table requirement any public food service establishment that is licensed as an alcoholic beverages vendor under s. 565.02(1)(b)-(f), F.S., or is an establishment that prohibits persons under 18 years of age on the premises. Section 565.02(1)(b)-(f), F.S., establishes the license taxes for alcoholic beverage vendors where consumption on the premises is permitted. Licenses issued under s. 565.02(1)(a)-(f), F.S., are limited in the number that may be issued per county; the limitation is dependent on the population of the county.<sup>4</sup> According to the department, there are a number of licensed food service establishments in Florida that cater to an adults-only clientele.

Section 509.221(b), F.S., defines the term “diaper-changing table” to mean a sturdy table or other elevated surface that has a changing surface that is at least 36 inches above floor level and is not used for any purpose other than diaper changing. The bill requires that the diaper-changing table must:

- be adjacent to or near the bathroom sink;
- have a clean, moisture-proof surface;

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<sup>3</sup> 42 U.S.C. 12101, *et seq.*

<sup>4</sup> *See s. 561.20(1), F.S.*

- be sturdy and maintained in good repair: and
- be kept free of all objects except those used for diaper changing.

The bill requires the division to establish by rule procedures for:

- inspecting diaper changing tables; and
- disposing of soiled diapers.

**Section 2.** The bill would take effect on July 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

According to the department, establishments subject to the requirement of the bill may to be assessed fees for permits to modify buildings where construction may be necessary to retrofit bathrooms.

##### **B. Private Sector Impact:**

According to the department, establishments subject to the requirement of the bill may have to spend funds to retrofit facilities to accommodate the diaper-changing tables.

Based upon a general internet research, there are a number of pre-fabricated diaper changing units available for purchase at a wide variance of costs, including some priced as low as \$115 to as high as \$900, depending on the construction materials and the size or configuration necessary to fit within certain confined spaces. According to the department, installation costs for such units are unknown and would vary depending on the existing bathroom size, building code requirements for installation of such units, and any concerns relative to maintaining ADA standards.

##### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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