

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 Health Regulation Committee

BILL: CS/SB 386

INTRODUCER: Health Regulation Committee and Senator Crist

SUBJECT: Food Service/Restroom Inspections

DATE: March 19, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/1 amendment
2.	Wilson	Wilson	HR	Fav/CS
3.	_____	_____	GA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill eliminates the authority of the Division of Hotels and Restaurants (division) in the Department of Business and Professional Regulation (DBPR) to inspect public airport restrooms that are not located within a public food service establishment, but that are used by the patrons and employees of public food service establishments regulated by the agency.

The bill sets forth minimum sanitary standards for toilet facilities in food service establishments regulated by the division. The bill requires the division to inspect each public food service establishment and its toilet facilities pursuant to s. 509.032, F.S., as often as necessary to ensure compliance with applicable laws and rules.

The bill provides standards for the restroom doors, entrances and exits, cleanliness and repair of the toilet fixtures and facilities, and the flooring materials installed after July 1, 2008. It provides standards for trash receptacles and requires that sinks must have hot and cold running water with a 20-second automatic shut off for establishments constructed or substantially remodeled after July 1, 2008. There must be toilet tissue at each toilet at all times. Employee hand washing signs, hand cleansing materials, and sanitary hand drying facilities must also be available at each facility.

If the director of the division determines that a violation of these minimum sanitary standards represents a severe and immediate public health or safety threat, he or she may immediately issue an emergency order to close the public food service establishment using the procedures for emergency orders of suspension in s. 509.035, F.S.

This bill creates section 509.054, Florida Statutes.

II. Present Situation:

The division 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 DBPR, there are over 43,000 licensed public food service establishments.¹

Section 509.013(5), F.S., 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.

¹ For FY 2006-2007, there were 43,971 licensed public food service establishments. *Annual Report, Fiscal Year 2006-2007*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myflorida.com/dbpr/hr/reports/annualreports/documents/ar2006_07.pdf (Last visited March 15, 2008).

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.

Section 509.221, F.S., requires each public food service establishment to be properly lighted, heated, cooled, and ventilated and operated with strict regard to the health, comfort, and safety of the guests. Proper lighting includes daylight and artificial illumination. Each public food service establishment must be supplied with potable water and provide adequate sanitary facilities for the accommodation of its employees and guests. Each public food service establishment must maintain not less than one public bathroom for each sex, properly designated, and must provide in the main public bathroom soap and clean towels or other approved hand-drying devices.

Section 509.032(2)(a), F.S., requires the division to inspect each public food service establishment at least twice a year. The department has the right to enter and have access to public food service establishments at any reasonable time to conduct the inspections. Section 509.032, F.S., also requires the division to provide each inspected establishment with the food recovery brochure developed under s. 570.0725, F.S.²

The division has adopted rules related to bathrooms. In part, these rules are adopted according to the division's authority to prescribe sanitary standards which shall be enforced in public food service establishments.³ Rule 61C-1.004, Florida Administrative Code, provides general sanitation and safety requirements and standards for public food service establishments. It provides:

(2) Public bathrooms.

(a) Each public lodging and food service establishment shall be provided with adequate and conveniently located bathroom facilities for its employees and guests in accordance with provisions of these rules and the plumbing authority having jurisdiction. Public access to toilet facilities shall not be permitted through food preparation, storage, or warewashing areas. Bathroom fixtures shall be of readily cleanable sanitary design. Bathroom facilities shall be kept clean, in good repair and free from objectionable odors. Bathrooms shall provide at least 20 foot candles of light. The walls, ceilings, and floors of all bathrooms shall be kept in good condition.

(b) Public bathrooms shall be completely enclosed and shall have tight-fitting, self closing doors or, in public lodging establishments or bathrooms located outside a public food service establishment, have entrances and exits constructed in such a manner as to ensure privacy of occupants. Such doors shall not be left open except during cleaning or maintenance.

² See s. 509.032(2)(g), F.S.

³ See s. 509.032(3)(a), F.S.

(c) Hand-washing signs shall be posted in each bathroom used by employees.

(d) For the purposes of this section, the term toilet shall mean a flush toilet properly plumbed, connected and discharging to an approved sewage disposal system. In a bathroom where more than one toilet is provided, each toilet shall be separated by a partition from adjoining fixtures and a door shall be provided which will partially conceal the occupant from outside view.

Rule 61C-4.010(7), F.A.C., provides sanitation and safety requirements for bathroom facilities. It provides:

Bathroom Facilities – All bathrooms shall be of easy and convenient access to both patrons and employees. . . Easily cleanable receptacles shall be provided for waste materials and such receptacles in bathrooms for women shall be covered. Each public food service establishment shall maintain a minimum of one public bathroom for each sex, properly designated, except as provided herein.

The division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA Food Code or code). Section 61C-4.010(6), F.A.C., also requires that the physical facilities comply with ch. 6 of the U.S. Food and Drug Administration's Food Code (FDA Food Code or code).⁴ The FDA Food Code is a reference document that “provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness.”⁵ Regarding toilet facilities, the FDA Food Code requires:

- Completely enclosed and provided with a tight-fitting and self-closing door, with exceptions;
- Doors may not be left open unless cleaning or conducting maintenance;
- All fixtures must be cleanable;
- All physical facilities must be cleaned and maintained in good repair;
- Floors must be constructed of nonabsorbent materials;
- Waste receptacles must be provided, may be lined, those receptacles in female toilet facilities must be covered, and waste receptacles must be cleaned;
- Provide soap at each sink or one soap dispenser per two sinks and provide disposable towels, a continuous towel system, or a heated-air drying device;
- Automatic shut-off water faucets, when provided, must run for a minimum of 15 seconds;
- Minimum lighting requirements;
- Toilet tissue must be supplied at each toilet;
- Ventilation of sufficient capacity must be installed to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes; and
- A clearly visible sign notifying employees to wash their hands shall be provided at all hand-washing sinks used by employees.

⁴ See generally rule 61C-4.010, F.A.C.

⁵ See s. 6-501.115, C.F.R. The FDA's introduction to the Food Code. Found at <http://www.cfsan.fda.gov/~dms/fc05-int.html> (Last visited March 15, 2008).

Section 509.035, F.S., authorizes the division to order an immediate closure of a licensed establishment upon determination by the State Health Officer or division director of a severe and immediate threat to the public health, safety, or welfare. According to the division, it primarily issues immediate orders to close public food service establishments for violations relating to roaches and rodents, no water, no hot water, and sewage on premises.

The Office of Program Policy Analysis and Government Accountability reviewed the division's inspection program in 2005. The 2005 report concluded that:

although the Division of Hotels and Restaurants had improved its operations in recent years, it had not inspected food establishments, public lodging, and apartments as often as required by law for several years. Inspection shortfalls were due mainly to staffing cuts, changes in inspection field procedures, and problems implementing handheld computers. Because inspections gauge compliance with health and safety requirements, this problem increases risks to the public.⁶

The division was reviewed again in 2007. The 2007 report concluded that:

Consistent with our recommendations, the Division of Hotels and Restaurants has improved its operations and is making progress toward completing the food and lodging inspections required by law. Although not yet achieving full statutory compliance, overall inspections have increased significantly since our last review. These increases are due to the Legislature appropriating the division more staff as well as to improvements in division technology. However, if the division cannot eventually achieve long-term statutory compliance, it may need to pursue revenue-generating options identified in our prior report and use such funds to hire more inspectors.

As we recommended, the division also has improved its sanctioning process, which has boosted productivity and provided better disclosure to food and lodging establishments. In addition, the division enhanced its website to improve its usefulness for Florida consumers.⁷

III. Effect of Proposed Changes:

The bill creates s. 509.054, F.S., to require a toilet facility in a food service establishment regulated under ch. 509, F.S., to meet the minimum sanitation standards set forth in the bill.

The bill requires the division to inspect each food service establishment and its toilet facilities pursuant to s. 509.032, F.S., "as often as necessary to ensure compliance with applicable laws

⁶ *Division of Hotels and Restaurants Improves Operations But Not Meeting Inspection Goals*, Report No. 05-51, Office of Program Policy Analysis & Government Accountability, Florida Legislature, November 2005. Found at <http://www.oppaga.state.fl.us/reports/govt/r05-51s.html> (last visited March 15, 2008).

⁷ *Division of Hotels and Restaurants Improves Operations and Makes Progress in Meeting Inspection Goals*, Report No. 07-41, Office of Program Policy Analysis & Government Accountability, Florida Legislature, October 2007. Found at <http://www.oppaga.state.fl.us/reports/govt/r07-41s.html> (last visited on March 15, 2008).

and rules.” Section 509.032(2)(a), F.S., requires each public food service establishment to be inspected at least twice a year. It is unclear whether the bill would require inspections of the restrooms to be as frequent or more frequent than the biannual inspection requirement in current law.

The minimum sanitary standards in the bill are:

- Each toilet facility must be completely enclosed with a tight-fitting, self-closing door or have entrances and exits constructed in such a manner as to ensure the privacy of occupants. The door must be closed except during cleaning or maintenance;
- A patron must not pass through the food-preparation or utensil-washing area to get to the toilet facilities;
- Toilet fixtures must be cleanable, and kept clean and in good repair;
- The floors must be made of nonabsorbent material for establishments constructed or substantially remodeled after July 1, 2008, and cleaned daily;
- The waste receptacles must contain a trash-can liner and must be covered. They must be emptied at least once a day or more if necessary to prevent excessive accumulation of waste material;
- Hand-cleansing, antimicrobial soap or detergent and running water must be available at each sink;
- A supply of sanitary towels or a hand-drying device providing heated air must be located in each toilet facility;
- There must be running water at each sink, and establishments constructed or substantially remodeled after July 1, 2008 must have hot and cold running water at each sink;
- Sinks with an automatic shut-off must run for at least 20 seconds for establishments constructed or substantially remodeled after July 1, 2008;
- All sinks, devices, dispensers, and all related fixtures must be kept clean and in good repair;
- There must be toilet tissue at each toilet at all times;
- Each toilet facility must be lighted and ventilated for establishments constructed or substantially remodeled after July 1, 2008; and
- There must be a sign posted that notifies employees to wash their hands at each hand washing sink used by the public food service employees.

The provisions of the bill codify the minimum sanitary standards that are currently required by the agency’s rules, except that the bill would increase the time that a faucet with an automatic shut-off must run from at least 15 seconds to at least 20 seconds.⁸

The bill requires that there must also be towels or an air dryer in each facility. Section 509.221(5), F.S., requires each public food service establishment to “provide in the main public bathroom soap and clean towels or other approved hand-drying devices and each public lodging establishment shall furnish each guest with two clean individual towels so that two guests will not be required to use the same towel unless it has first been laundered.” The bill extends this requirement to all restrooms in a public food service establishment.

⁸ *Id.*

The bill provides that the minimum sanitary standards in this section do not apply to restrooms in a public airport as defined in s. 330.27(2), F.S.,⁹ which are not located within a public food service establishment. This would eliminate the authority of the division to inspect restrooms in public airports that are used by the patrons and employees of the public food service establishments regulated by the agency. According to the division, this exemption could contribute to an increased incidence of food borne illness and cross-contamination. The division has expressed “serious concerns” about this exemption and its potential affect on public health.

The bill provides that the division may immediately issue an emergency order to close a public food service establishment using the procedures for emergency orders of suspension in s. 509.035, F.S., if the director of the division determines that a violation of these minimum sanitary standards represents a severe and immediate public health or safety threat.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would require food service establishments that are constructed or remodeled after July 1, 2008, to install water heating devices to provide hot water in restrooms used by patrons if not currently available. It is not clear how many licensed public food service establishments do not currently provide hot water in all restrooms. The cost of making hot water available at each sink in a public food service establishment is unknown.

⁹ Section 330.27, F.S., defines the term “public airport” to mean “an airport, publicly or privately owned, which is open for use by the public.”

Food service establishments that are newly constructed or substantially remodeled after July 1, 2008, must install automatic shut-offs on their hand washing sinks. They must also bear the costs of ensuring that the water in the washing sinks runs for a minimum of 20 seconds. It is unknown how many establishments currently use these kinds of devices. The availability of and cost of faucets that would comply with this requirement are unknown.

Public food service establishments that are constructed or remodeled after July 1, 2008, would also incur the cost of installing floors made of nonabsorbent materials, if not already provided.

C. Government Sector Impact:

There may be additional administrative costs due to return inspections, inspector and administrative workload resulting from increased administrative complaints, and legal activities necessary due to rule promulgation and additional administrative complaint actions. The extent to which the bill would require additional administrative expenses is not clear because most of the minimum sanitary standards in the bill that are currently required by the agency's rules.

Several of the provisions of this act only apply to establishments that are renovated after the effective date of this act. There may be additional administrative costs related to determining whether an establishment has been renovated since the effective date of this act. According to the division, the division currently has no method of informing its inspectors during inspections regarding which establishments have been renovated after the act's effective date. While in the field, the division's inspector does not have access to the files in the district offices that contain plan reviews and application dates that would assist in determining whether an establishment has been renovated.

According to the division, the division has been recognized by the U.S. Food and Drug Administration for achieving four of the FDA's nine standards. According to the division, it is the largest restaurant inspection program to reach this level of achievement. The division is working toward meeting all nine FDA national food standards. The division has expressed the concern that removal of duplicative sanitation requirements currently adopted from the Food Code could prevent the division from achieving the nine national standards. The division has also expressed concern regarding the expense of additional rulemaking required to comply with s. 120.545, F.S., e.g., advertising in the Florida Administrative Weekly, rule workshops, and the cost of copies requested by interested parties.

The bill authorizes the division to issue emergency orders for immediate closure for failing to comply with the specified requirements. According to the division, although it already has the authority to close any establishment that poses an immediate threat to health, safety and welfare, including restroom sanitation and physical conditions as a reason for emergency closure would increase the potential number of emergency closures issued. The division is also concerned that the bill does not provide authority to adopt rules relating to enforcement of the specified sanitation requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 120.545, F.S., requires the Joint Administrative Procedures Committee to review agency rules “for the purpose of determining whether the rule reiterates or paraphrases statutory material. Since language in this bill duplicates the division’s administrative rules in a number of areas, those administrative rules will have to be amended or repealed.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 19, 2008:

The committee substitute requires both women’s and men’s toilet facilities to be equipped with receptacles for waste that are covered.

- B. **Amendments:**

None.