

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 General Government Appropriations Committee

BILL: CS/CS/CS/SB 2016

INTRODUCER: General Government Appropriations Committee, Community Affairs Committee,
 Regulated Industries Committee, and Senator Aronberg

SUBJECT: Public Lodging and Food Service Establishments

DATE: April 15, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Mays</u>	<u>Deffenbaugh</u>	<u>BI</u>	Favorable
3.	<u>Molloy</u>	<u>Yeatman</u>	<u>CI</u>	Fav/CS
4.	<u>Frederick</u>	<u>DeLoach</u>	<u>GA</u>	Fav/CS
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 revises and creates definitions relating to public lodging and public food service establishments; revises and repeals certain responsibilities of the Division of Hotels and Restaurants (division) in the Department of Business and Professional Regulation (department) relating to the Florida Fire Prevention Code; revises requirements for the food service manager certification examination, and repeals requirements relating to copies of chapter 509 maintained in a licensed transient establishment. Requirements relating to the supply of potable water and adequate sanitary facilities in public food service establishments are revised and requirements relating to public bathroom facilities in public lodging establishments and public food service establishments are revised and clarified. The bill clarifies the classification of certain buildings and building complexes as transient apartments or roominghouses, and creates disciplinary provisions which may be enforced by the division.

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

The department will no longer collect fees for restroom variances, which will result in a \$10,000 reduction in revenues, but does expect an indeterminate but positive increase in revenue due to

the collection of unpaid and new fines. Additionally, the elimination of fire code enforcement and inspection responsibilities by the department will result in a reduction of three full-time equivalent positions and \$250,000 in department expenditures.

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.039, 509.101, 509.211, 509.221, 509.242, and 509.561.

This bill repeals section 509.201, Florida Statutes.

II. Present Situation:

The division is 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 43,000 licensed public food service establishments and over 36,000 licensed public lodging establishments.¹

Public Food Service Establishments

Section 509.013(5), 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. Exceptions are provided for:

- 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.

¹ For FY 2006-2007, there were 43,971 licensed public food service establishments and 36,964 licensed public lodging 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 5, 2008).

- 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.

Public Lodging Establishments

Section 509.013(4), 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 therefore, are set out in s. 509.242, F.S. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103, F.S. Exceptions are provided for the following.

- 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.
- Any establishment inspected by the Department of Health and regulated by chapter 513.²

Section 509.013(11), F.S., defines the term “transient establishment” to mean “any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

Section 509.013(12), F.S., defines the term “transient occupancy” to mean:

Occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient. There is a rebuttable presumption that, when the dwelling

² Chapter 513, F.S., relates to the regulation of mobile home and recreational vehicle parks.

unit occupied is not the sole residence of the guest, the occupancy is transient.

Section 509.013(13), F.S., defines the term “transient” to mean “a guest in transient occupancy.”

Section 509.242, F.S., requires that public lodging establishments must be classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, roominghouse, resort dwelling, or bed and breakfast inn, if the establishment satisfies the provided criteria.

Section 509.242(1)(d), F.S., provides that “a nontransient apartment is any apartment building in which 75 percent or more of the units are available for rent to nontransient tenants.”

Section 509.242(1)(e), F.S., provides that “a transient apartment is any apartment building in which units are advertised or held out to the public as available for transient occupancy.”

Preemption

Section 509.032(7), F.S., provides that the following activities are preempted to the state.

- The regulation of public food service establishments and public lodging establishments.
- The inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted under s. 509.302, F.S.
- The regulation of food safety protection standards for required training and testing of food service establishment personnel are preempted to the state.

Section 509.032(7), F.S., also provides that the authority of local governments or local enforcement districts to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022, F.S., is not preempted.

Food Service Manager Certification

Section 509.039, F.S., requires the training and certification by the division of all food service managers who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. The training and certification relates to food safety protection standards which the division must adopt by rule. The standards adopted by the division must be consistent with the Standards for Accreditation of Food Protection Manager Certification Programs adopted by the Conference for Food Protection.³

³ The Conference for Food Protection (conference) is an organization composed of representatives from the food industry, government, academia, and consumer organizations. Its mission is to identify and address emerging problems of food safety and to formulate recommendations. The conference meets at least biennially. See the conference’s website located at: <http://www.foodprotect.org/About/index.php?page=about.html> (Last visited March 5, 2008). A copy of “Standards for Accreditation of Food Protection Manager Certification Programs” adopted by the Conference for Food Protection can be found at http://www.foodprotect.org/Managercertification/MTTCStandards_11-06.pdf (Last visited March 5, 2008).

The division may contract with private organizations to provide the training and certification that complies with the division's standards. Section 509.039, F.S., authorizes the division to charge the organizations it contracts with a fee of not more than \$5 per certified test to cover the administrative costs of the division. All managers employed by a food service establishment must pass an approved test and receive a certificate attesting to their successful passing of the test. Managers have a period of 90 days after employment to pass the required test.

Requirement to Keep a Copy of Chapter 509, F.S.

Section 509.101, F.S., requires that each operator of a transient establishment must maintain at all times a current copy of ch. 509, F.S., in the office of the licensed establishment and make the copy available to the public upon request.

Conduct/Refusal of Service

Section 509.142, F.S., allows operators of public lodgings and public food service establishments to refuse service to anyone whose conduct constitutes a nuisance. Such refusal may not be based upon race, creed, color, sex, physical disability, or national origin.

Safety Regulations

Section 509.211(2), F.S., requires that the division, or its agent, must immediately notify the local fire safety authority or the State Fire Marshal of any major violation of a rule adopted under ch. 633, F.S., relating to fire prevention and control, which relates to public lodging establishments or public food service establishments. The division is also authorized to impose administrative sanctions for violations of these rules or may refer the violations to the local fire safety authorities for enforcement.

Section 509.221, F.S., requires that each public food service establishment and public lodging establishment be supplied with potable water and provide adequate sanitary facilities for the accommodation of its employees and guests. These facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets. The sanitary facilities shall be connected to approved plumbing, and the plumbing must be sized, installed, and maintained in accordance with the Florida Building Code. Wastewater or sewage must also be properly treated onsite or discharged into an approved sewage collection and treatment system.

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

Section 509.221(2)(b), F.S., requires that the division 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 509.221(5), F.S., requires that each transient establishment and each public food service establishment must provide in the main public bathroom soap and clean towels or other approved hand-drying devices. It also requires that each public lodging establishment must 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 division has not met the requirement of two inspections per year. The Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed and reported on the division's inspection program in 2005. The 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."⁴ The division was reviewed again in 2007 by OPPAGA. The report concluded that the division had "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."⁵

Florida Building Code

The Florida Building Code (code) specifies the minimum number of plumbing fixtures that are required based upon the type of occupancy. For example, the code requires plumbing fixtures for restaurants, banquet halls and food courts, for transient hotels, motels, and boarding houses, and for transient boarding houses.⁶ The code also requires separate restroom facilities wherever plumbing fixtures are required.⁷ However, it provides exceptions to the separate facilities requirement for dwelling units and sleeping units; food service establishments which seat 10 persons or less; and business and mercantile occupancies with a total floor area of 3,000 square feet or less.⁸

III. Effect of Proposed Changes:

Public Lodging Establishments

The bill amends and creates definitions in s. 509.13, F.S, as follows:

- "Public lodging establishment" is clarified to include both transient and nontransient lodging establishments.
- "Transient public lodging establishment" is created to mean any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings that 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 is advertised or held out to the public as a place regularly rented to guests.

⁴ *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.

⁵ *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.

⁶ See s. 403.1, Florida Building Code, Plumbing.

⁷ See s. 403.2, Florida Building Code, Plumbing.

⁸ *Id.*

- “Nontransient public lodging establishment” is created 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 one calendar month, whichever is less; or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.
- “Nontransient establishment” is created to mean any public lodging establishment that is rented or leased to guests by an operator who intends that the dwelling unit occupied will be the sole residence of the guest.⁹
- “Nontransient occupancy” is created to mean occupancy when it is the intention of the parties that the occupancy will not be temporary. The bill creates a rebuttable presumption that when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.
- “Nontransient” is created to mean a guest in a nontransient occupancy.

Fire Safety Inspections

The bill amends s. 509.032(2)(d), F.S., to eliminate the requirement that the division assist the State Fire Marshal in updating the Florida Fire Prevention Code, and to eliminate the division’s responsibility to enforce the Florida Fire Prevention Code when conducting inspections. However, the division is required to notify the local fire safety authority or the Marshal of any readily observable violation of a fire prevention and control rule relating to public lodging or public food service establishments. The identification of such a violation does not require any fire safety inspection certification.

Preemption¹⁰

The bill amends s. 509.032(7), F.S., to clarify that state regulation of public food service establishments and public lodging establishments includes, but is not limited to:

- The inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted under s. 509.302; F.S., and
- The regulation of food safety protection standards for required training and testing of food service establishment personnel are preempted to the state.

Food Service Manager Certification

The bill amends s. 509.039, F.S., to provide that food service managers must pass the required food service manager certification test within 30 days after employment. All public food service establishments must provide the Division of Hotels and Restaurants with proof of the food

⁹ This provision is consistent with the definition of “transient occupancy” in s. 509.013(12), F.S., which provides that “there is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.”

¹⁰ The state's preemption of regulatory authority is potentially expanded beyond the listed functions. The terms “including” and “includes” should not be interpreted to exclude or delimit the preemption in s. 509.032(7), F.S., to the listed activities. As a matter of statutory interpretation, the terms “includes” and “including” are terms of enlargement, not limitation; they illustrate rather than limit a general principle and convey the conclusion that there are other items includable, though not specifically enumerated by the statute. *See Bautista v. Star Cruises*, 396 F.3d 1289(11th Cir. 2005)

manager's certification upon request, including when the division is conducting an inspection of the establishment..

Requirement to Keep a Copy of Chapter 509, F.S.

The bill amends s. 509.101(2), F.S., to eliminate the requirement that each operator of a transient establishment must at all times maintain a current copy of ch. 509, F.S., in the office of the licensed establishment and make the copy available to the public upon request.¹¹

Conduct/Refusal of Service

The bill amends s. 509.142, F.S., to require food service and public lodging establishments to accommodate any person using a child conveyance in a reasonable manner that does not pose a hazard to the safety or health of employees or other patrons.

Safety Regulations

The bill repeals s. 509.211(2), F.S., which requires that the division, or its agent, must immediately notify the local fire safety authority or the State Fire Marshal of any major violation of a fire prevention and control rule adopted under ch. 633, F.S., and repeals the division's authority to impose administrative sanctions for violations of these rules and to refer the violations to the local fire safety authorities for enforcement.

Sanitary Regulations

The bill creates s. 509.221(1)(a) and (b), F.S., to provide separate requirements for public lodging establishments and public food service establishments, respectively, to provide potable water and adequate sanitary facilities. The provisions are identical to the current requirements in s. 509.221(1), F.S., except for the following two provisions that are applicable to both classes of establishments:

- Section 509.221(1)(a), F.S., eliminates the requirement that public food service establishments must provide potable water and adequate sanitary facilities to guests. Section 509.221(1)(b), F.S., limits this requirement to the establishment's employees.
- Section 509.221(1)(b), F.S., clarifies that the sanitary facilities must be connected to approved plumbing, and the plumbing must be sized, installed, and maintained in accordance with the Florida Building Code as approved by the local plumbing authority or approved by the local building authority.

The bill also amends s. 509.221(2)(a), F.S., to eliminate the requirement that each public lodging establishment and each public food service establishment must maintain not less than one public bathroom for each sex, properly designated, unless otherwise provided by rule. The bill requires that these establishments maintain public bathroom facilities in accordance with the Florida Building Code as approved by the local building authority.

¹¹ This requirement is maintained in s. 509.101(1), F.S.

The bill also amends s. 509.221(5), F.S., to delete the requirement that each public food service establishment furnish each guest with two clean individual towels so that two guests will not be required to share a towel that has not first been laundered. The bill limits this requirement to public lodging establishments.

Classification of Public Lodging Establishments

The bill amends ss. 509.242(1)(d) and (e), F.S., to include roominghouses within the definition for nontransient and transient apartments. The bill further amends s. 509.242(1)(e), F.S., to provide that a transient apartment or roominghouse 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 to transient occupancy.

Disciplinary Provisions

The bill creates s. 509.261(8), F.S., to authorize the division to fine, suspend, or revoke the license of any public lodging establishment or public food service establishment that fails to comply with the requirements of a final order or other administrative action issued against the licensee by the division.¹²

The bill also creates s. 509.261(9), F.S., to authorize the division to refuse to issue or renew the license of any public lodging establishment or public food service establishment that has failed to pay in full all outstanding fines required by any final order or other administrative action issued against the licensee by the division.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Under current law, the division can not pursue noncompliance with its final orders and unpaid fines, and must file a case in circuit court for noncompliance. This provision would permit the division to directly enforce its final orders and fines.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill eliminates the requirement that each public lodging establishment and each public food service establishment maintain not less than one bathroom for each sex, designated unless otherwise provided by rule. Establishments would no longer be required to obtain variances from these requirements from the division and would eliminate the costs associated with obtaining these variances from the division.

C. Government Sector Impact:

According to the department, the bill will have a fiscal impact on the division. The bill eliminates the requirement that each public lodging establishment and each public food service establishment maintain not less than one public bathroom for each sex, properly designated, unless otherwise provided by rule. According to the department, this provision prompts regular requests from these types of establishments for variances from these requirements. According to the department, the bill's elimination of this responsibility would eliminate the fees collected from restroom variance requests.

The bill authorizes the division to fine, suspend, or revoke the license of any public lodging establishment or public food service establishment that fails to comply with the requirements of a final order or other administrative action issued against the licensee by the division. The division estimates that this provision will provide an indeterminate increase in funds to the division due to the collection of unpaid fines and additional fines which will be levied for noncompliance fines being collected and additional fines levied for noncompliance with final orders.

The division also represents that its expenditures will decrease as a result of removing the fire inspection responsibilities.

The department estimates the following fiscal impact for the bill:

REVENUE			
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
License Fees:			
Taxes:			
Increase in collection of unpaid fines/additional fines	Indeterminate Increase	Indeterminate Increase	Indeterminate Increase
Restroom Variance Fees:	\$(10,000)		
TOTAL:	Indeterminate	Indeterminate	Indeterminate

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Salaries/Benefits # of FTE's (3.00) FTE	\$(144,583)	(same)	(same)
Salary Rate (104,922)			
Other Personal Services			
Expenses	(95,214)		
Operation of Motor Vehicles	(9,000)		
Transfer to DMS/HR Services	(1,203)		
Subtotal	\$(250,000)	(same)	(same)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS/CS by General Government Appropriations on April 15, 2008:

The committee substitute (CS) requires public lodging and food service establishments to reasonably accommodate persons with child conveyance devices that are used reasonably and pose no safety risk to employees or other patrons. The CS restores the language in current law to require that public lodging establishments file room rate notices with the division, post these notices in each room, and follow specific advertisement requirements, including type-size and wording requirements. Additionally, the CS clarifies that the number, designation, and plumbing requirements of restrooms in establishments regulated by the department will follow the established requirements of the Florida Building Code as approved by the local building authority.

CS/CS by Community Affairs on April 3, 2008:

The CS revises food service manager certification requirements, and requires that public food service establishments must provide proof of certification to the Division of Hotels and Restaurants upon request. The division is directed to notify local fire safety authorities or the State Fire Marshall of readily observable fire safety violations relating to public lodging or public food service establishments.

CS by Regulated Industries on March 11, 2008:

The CS deletes the requirement in s. 509.221(5), F.S., that each public food service establishment must furnish each guest with two clean individual towels so that two guests

will not be required to share a towel that has not first been laundered. The CS clarifies that this requirement applies to each transient public lodging establishment.

The CS does not amend a cross-reference in s. 509.221(9), F.S., and amends ss. 509.242(1)(d) and (e), F.S., to clarify that a “nontransient apartment or roominghouse” or “transient apartment or roominghouse” may be a “complex of buildings.” The CS also amends the definition of “transient apartment or roominghouse” s. 509.242(1)(e), F.S., to replace the term “25 percent or more” with the term “more than 25 percent” when defining the number of the units that must be advertised or held out to the public as available to transient occupancy.

B. Amendments:

None.