

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1109 Public Lodging and Public Food Service Establishments
SPONSOR(S): Jobs & Entrepreneurship Council/Dorworth
TIED BILLS: **IDEN./SIM. BILLS:** SB 2016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>10 Y, 0 N</u>	<u>Marra/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>16 Y, 0 N, As CS</u>	<u>Marra/Topp</u>	<u>Thorn</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Division of Hotels and Restaurant (division) within the Department of Business and Professional Regulation (DBPR) is charged with protecting the public health, safety, and welfare by enforcing the provisions of ch. 509, F.S., and other laws relating to the inspection and regulation of public lodging establishments and public food service establishments.

The bill includes nontransient lodging, defined as establishments renting or advertised as regularly rented for at least 30 days or 1 calendar month, within the definition of "public lodging establishments." It defines nontransient establishment, nontransient occupancy and nontransient. It includes roominghouses within the definition of transient and nontransient apartments for purposes of licensure and amends the definition for transient apartments to include establishments in which more than 25% of the units are available for transient occupancy. Roominghouses would still defined as a separate classification of public lodging establishments.

The bill removes the requirements for public lodging establishments to provide a copy of chapter 509 for the public onsite and to provide certain rate notifications onsite and in advertisements.

The bill removes the requirements for public food service establishments to provide restrooms for guests, requiring instead that adequate facilities be provided for employees and to provide separate restrooms for each gender. The bill shortens the statutory timeframe for managers to complete a basic food protection practices test from within 90 days of employment to within 30 days.

The bill requires public food service and public lodging establishments to accommodate child conveyances that are used reasonably and pose no safety risk.

The bill alters the division's duties and abilities by:

- Granting the division specific authority to collect fines and enforce final orders through additional sanctions, including fines, suspension or revocation of licenses and refusal to issue or renew licenses.
- Removing the division's role in updating and enforcing the Florida Fire Prevention Code. The division is required to report readily apparent fire code violations to firesafety officials.
- Providing that restrooms are to be maintained in accordance with the Florida Building Code as approved by local authorities and removing the division's ability to provide exceptions by rule.

The department will no longer collect fees for restroom variances but does expect to increase the collection of both unpaid and new fines. Additionally, the department will be able to reduce expenditures of \$250,000 in FY 2008-09.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill removes the Division of Hotels and Restaurant's role in producing and enforcing the Florida Fire Prevention Code and shifts the role of approving sanitary facilities to local governments.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Division of Hotels and Restaurant (division) within the Department of Business and Professional Regulation (DBPR) 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 DBPR, the division licenses a total of 80,363 public food service and public lodging establishments.

The bill addresses administrative, safety and sanitary regulations, the changes of which are outlined below.

Administrative regulations

Current public lodging classifications

Currently, public lodging establishment is defined by s. 509.013(4), F.S., 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.

Certain establishments meeting these requirements are currently exempted from the definition:

1. Any dormitory maintained by schools and universities;
2. Any hospital, nursing home, sanitarium, assisted living facility, or other similar place;
3. Any place renting 4 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 4 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; and
6. Any establishment inspected by the Department of Health and regulated by chapter 513.2.

Chapter 509 further distinguishes public lodging establishments based on transiency. Section 509.013 defines the following terms:

- (11) "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.
- (12) "Transient occupancy" means 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 unit occupied is not the sole residence of the guest, the occupancy is transient.
- (13) "Transient" means a guest in transient occupancy.

Public lodging establishments are classified for licensure purposes by s. 509.242, F.S., which sets out the requirements for each class:

1. Hotel;
2. Motel;
3. Resort Condominium;
4. Nontransient Apartment;
A nontransient apartment is any apartment building in which 75 percent or more of the units are available for rent to nontransient tenants.
5. Transient Apartment;
A transient apartment is any apartment building in which units are advertised or held out to the public as available for transient occupancy.
6. Roominghouse;
A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, resort condominium, nontransient apartment, bed and breakfast inn, or transient apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.
7. Resort Dwelling; and
8. Bed and Breakfast Inn.

Proposed public lodging classifications

The bill extends the definition of “public lodging establishments” to include nontransient lodging. **The bill** keeps the current definition of public lodging establishments to define transient public lodging and creates a new definition for nontransient public lodging. It differentiates between the two based on the length of time guests rent the unit and how the establishment is advertised:

- establishments renting for less than 30 days or 1 calendar month, whichever is less, or held out to the public as regularly rented, are considered **transient** public lodging establishments
- establishments renting for at least 30 days or 1 calendar month, whichever is less, or held out to the public as regularly rented for such periods of time, are considered **nontransient** public lodging.

The bill further provides definitions to mirror those currently included for transiency.

“Nontransient establishment” means any public lodging establishment that is rented or leased to guests by an operator who intends the establishment rented to be the sole residence of the guests.

“Nontransient occupancy” means occupancy the parties intend to not be temporary, and

“Nontransient” means a guest in nontransient occupancy.

The bill includes **roominghouses** within the definition of nontransient and transient apartments. The definition of transient apartments is further amended to include establishments in which more than 25% of the units are available for transient occupancy. Roominghouses would still be defined as a separate classification of public lodging establishments.

Current notice requirements

Currently, s. 509.101, F.S., requires public lodging and public food establishments keep a current copy of chapter 509, F.S., onsite and notify patrons via posted sign that the chapter is available for public review.

Section 509.201, F.S., requires public lodging establishments renting by the day or week to post rate schedules in each rentable unit, showing the maximum amount charged for the unit rented, the amount charged for extra conveniences and the dates during the year when the maximum charges prevail. The rate schedules, along with any changes, must also be submitted to the division.

The section also limits the ability of public lodging establishments to advertise their room rates: such advertisements must include additional information, including the number of rental units, the rates of each, whether the rates listed are for single or multiple occupancy, and the dates the rates are in effect.

There is an exception for advertisements in guides or directories published by nonprofit organizations and for advertisements in classified sections of newspapers and other publications.

Violations of the notification requirements constitute a second degree misdemeanor. The division may also suspend or revoke the operator's license and impose fines for violations.

An exception is provided for resort condominiums, nontransient apartments and resort dwellings.

Proposed notice requirements

The bill would remove the requirement to keep a current copy of chapter 509, F.S., onsite.

The bill would repeal the rate notification and advertisement requirements and the enforcement mechanisms.

Current food service manager certification

All managers employed by a food service establishment must pass a division-approved test to demonstrate knowledge of basic food protection practices. Section 509.039, F.S., requires this test be passed within 90 days of employment.

Proposed food service manager certification

The bill shortens the statutory timeframe for managers to complete a basic food protection practices test from within 90 days of employment to within 30 days.

Current enforcement

Currently, s. 509.261, F.S., permits the division to fine, suspend or revoke the license of any public lodging or public food service establishment that violates chapter 509, F.S., or the rules of the division. If such fines are not paid or final orders are not followed, the division files a noncompliance case in Circuit Court as there is no administrative option to enforce its final orders.

Proposed enforcement

The bill permits the division to fine, suspend or revoke the license of any public lodging or public food service establishment that fails to comply with a final order or other administrative action issued against the licensee by the division.

The bill also permits the division to refuse to issue or renew licenses for public lodging or public food establishments until all outstanding fines are paid as required by final orders or other administrative actions.

Safety regulations

Current division involvement in Fire Prevention Code

Currently, the division is charged with assisting with updating the Florida Fire Prevention Code (fire code) and enforcing the fire code as it applies to division licensees. The division must also report violations of the fire code to local fire safety authorities or the State Fire Marshal and has the authority to impose sanctions for violations of fire safety rules.

Proposed division involvement in Fire Prevention Code

The bill removes the requirements for the division to provide assistance in updating and enforcing the fire code. It also removes the duty to notify local fire safety authorities or the State Fire Marshal of major fire code violations and the ability to impose sanctions for fire safety rule violations. The bill requires the division to report readily observable fire code violations to the local firesafety authority or the State Fire Marshal.

Current preemption

Currently, s. 509.032, F.S., preempts to the state the regulation of public lodging and food service establishments and details a list of specific functions, including conducting inspections and regulation of food safety protection standards.

Proposed preemption

The bill states that the regulatory functions preempted to the state are not limited to those outlined in s. 509.032, F.S.

Current conduct/refusal of service

Currently, s. 509.142, F.S., allows operators of public lodging 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.

Proposed conduct/refusal of service

The bill requires public food service and public lodging establishments to accommodate child conveyances that are used reasonably and pose no safety risk.

Sanitary regulations

Current restroom facility regulation

Currently, both public lodging and food service establishments must meet the same sanitary regulations:

- Have a supply of potable water;
- Provide adequate sanitary facilities for its employees and guests;
- Have those facilities connected to approved plumbing that is sized, installed, and maintained in accordance with the Florida Building Code;
- Properly treat or discharge wastewater or sewage; and
- Provide at least one bathroom for each gender, unless otherwise provided by rule.

Proposed restroom facility regulation

The bill removes the requirement that public food service establishments have adequate sanitary facilities for guests, requiring instead that adequate facilities be available for employees and setting forth requirements for soap and a method for drying hands that mirror existing requirements. **The bill** removes the requirement that establishments have separate bathrooms for each gender, instead requiring facilities to be maintained in accordance with the Florida Building Code as approved by the local authorities. It would also give local authorities a role in approving plumbing guidelines.

According to DBPR, these changes remove the division's ability to approve restroom facilities, thus eliminating the need for applications for rule variance requests.

C. SECTION DIRECTORY:

Section 1. Amends s. 509.013, F.S., providing definitions for transient public lodging establishment, nontransient public lodging establishment, nontransient establishment, nontransient occupancy and nontransient.

Section 2. Amends s. 509.032, F.S., relating to the division's role in the Florida Fire Prevention Code.

Section 3. Amends s. 509.039, F.S., relating to deadline for food management test.

Section 4. Amends s. 509.101, F.S., relating to requirement to make current law available for public review.

Section 5. Repeals s. 509.201, F.S., relating to fee notice requirements.

Section 6. Amends s. 509.142, F.S., relating to refusal of service.

Section 7. Amends s. 509.211, F.S., relating to requirement for division to report fire safety violations.

Section 8. Amends s. 509.221, F.S., relating to sanitary facility regulations.

Section 9. Amends s. 509.242, F.S., relating to license classification of public lodging facilities.

Section 10. Amends s. 509.261, F.S., providing administrative enforcement measures.

Section 11. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department anticipates the collection of an indeterminate amount of unpaid and new fines but will also lose approximately \$10,000 in revenues in FY 2008-09 related to restroom variance fees.

2. Expenditures:

The department anticipates a reduction in expenditures of \$250,000 in FY 2008-09.

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)	(144,583)		
FTE			
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)		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

The department will no longer collect fees for restroom variances but does expect to increase the collection of both unpaid and new fines. Additionally, the department will be able to reduce expenditures of \$250,000 in FY 2008-09.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2008, the Jobs and Entrepreneurship Council heard the bill, adopted a council substitute and reported the substitute favorably.

The council substitute requires public food service and public lodging establishments to accommodate child conveyances that are used reasonably and do not pose safety risks; shortens a deadline for food service managers to pass a food protection test to 30 days; and requires the division to notify firesafety officials of readily apparent fire code violations.