



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #494

Environmental Regulation and Licensing (DHFS -- Health)

[LFB 2001-03 Budget Summary: Page 374, #8]

CURRENT LAW

The Department of Health and Family Services (DHFS) environmental sanitation regulation and licensing program is responsible for inspecting and licensing of recreational facilities (campgrounds, camping resorts, recreational and educational camps and public swimming pools), food services operations (restaurants, food vending operations and temporary restaurants), lodging establishments (hotels, bed and breakfast establishments and tourist rooming houses) and tattoo and body piercing establishments.

DHFS promulgates rules establishing: (1) permit fees and late fees for untimely permit renewal for recreational facilities; and (2) permit fees, preinspection fees and fees for untimely permit renewal for food and lodging establishments. Most permits are issued on an annual basis, except for bed and breakfast establishments, which are biennial. In addition, DHFS may sign contracts with local health departments (LHDs) to act as agents of DHFS to inspect and license facilities. Local health departments (LHDs) that act as agents of DHFS in the regulation of facilities establish their own fees, and must reimburse DHFS up to 20% of the DHFS fee. DHFS currently charges LHDs 10% of state fees. Fees from permits and LHDs fund DHFS inspectors and administration of the program.

Permits issued for temporary restaurants, such as a booth at a fair, may be applied to locations other than which the permit was initially approved, if approval is secured from DHFS prior to operation at the new location, or if the new location remains in the jurisdictional area of a LHD granted agent status for the regulation of facilities.

GOVERNOR

Funding. Provide \$250,000 PR in 2002-03 to increase support for the environmental sanitation regulation and licensing program.

Recreational Facilities. Authorize DHFS to establish, by rule, preinspection fees, reinspection fees and fees for operating without a license for recreational facilities. Prohibit DHFS, or a LHD that acts as an agent for DHFS, from granting a permit to a person who intends to operate a recreational facility without a preinspection.

Hotels, Restaurants, Tourist Rooming Houses and Vending Machines. Authorize DHFS to establish, by rule, reinspection fees, fees for operating without a permit and fees for comparable compliance or variance requests for hotels, restaurants, tourist rooming houses, vending machine commissaries and vending machines. In addition, authorize DHFS to establish, by rule, fees for pre-permit review of restaurant plans.

Also, repeal the provision that enables transfer of a permit for a temporary restaurant to premises other than that for which it was issued.

Bed and Breakfast Permits. Require persons who operate bed and breakfasts to obtain annual, rather than biennial, permits from DHFS. DHFS indicates that the permit fee (currently \$106) would be reduced by one-half, so that there would be no net change in the fee operators would have to pay.

Revenues from the fees authorized under the bill, which would be set by rule, are estimated to generate \$250,000 annually, beginning in 2002-03.

DISCUSSION POINTS

1. The DHFS environmental sanitation regulation and licensing program currently supports 46.50 FTE positions, including 27 inspectors. In 2000, DHFS inspectors were responsible for 15,416 recreational, lodging and restaurant facilities (or 571 facilities per inspector).

2. In addition, 32 LHDs have signed agreements with DHFS to act as agents in the regulation and licensure of facilities. These LHDs employed 123 inspectors that were responsible for 15,413 facilities (or 125 facilities per inspector) in 2000. An additional LHD is expected to obtain agent status on July 1, 2001, for a total of 33.

3. In 1999-00, the program generated \$2,836,800 from fee revenues. As the number of LHDs that assume agent status increases, DHFS revenues decrease because DHFS only receives 10% of its fees from LHDs. By statute, DHFS can charge LHDs up to 20% of the state fee.

4. The number of LHDs that have signed contracts to assume agent status with DHFS increased from 27 to 33 from 1996 to 2000. While the number of LHDs that are granted agent status decreases DHFS inspection workload, it increases the demand for the training that DHFS

provides to local agents.

5. Each DHFS inspector is currently responsible for 500 to 600 facilities. DHFS staff are currently able to inspect each facility every 18 months. The U.S. Food and Drug Administration recommends that these types of facilities be inspected twice each year.

6. The Senate Health Committee has recently expressed concerns over the frequency of inspections in the state. As a result, DHFS has made a commitment to work towards inspecting each facility on an annual basis. In order to reach the goal, DHFS staff indicate that they will have to work to overcome turnover problems resulting from the current workload and hire LTEs (usually retired inspectors, or student interns majoring in related areas). In addition, as more LHDs become agents for inspections of local facilities, DHFS staff will be better able to inspect facilities under the state’s jurisdiction more frequently.

7. Current fees are not expected to generate revenues sufficient to support the environmental sanitation regulation and licensing program over the biennium. DHFS has the authority to set facility fees by rule. DHFS is currently proposing a rule change that would increase revenues over the biennium to address the projected deficit. The fees authorized under the budget are intended to allow DHFS to recoup fees for services it currently performs, but does not have the authority to charge fees for those services.

8. For example, DHFS currently requires preinspections of recreational facilities, by rule. However, the statutes do not authorize fees for preinspections of recreational facilities. In addition, DHFS re-inspects facilities that are found to be significantly non-compliant with existing rules to ensure they are brought in to compliance. However, DHFS does not have the authority to charge facilities for the reinspections. Allowing DHFS to charge for these types of activities would allow them to recoup more of their costs in enforcing the regulations.

9. The following table below indicates the additional fees that would be authorized under the bill, the levels that DHFS currently intends to set those fees under rule, the estimated numbers of facilities affected and the estimated annual revenues that would be generated by these fees.

<u>Modification</u>	<u>Expected Fee</u>	<u>Estimated Number of Facilities</u>	<u>Estimated Annual Revenues</u>
Pre-inspections of recreational facilities	\$250	40	\$10,000
Re-inspections of facilities due to no-compliance	100	1,500	150,000
Operating without a license	250	100	25,000
Comparable compliance or variance requests	150	100	15,000
Reviewing restaurant plans prior to licensing	250	<u>100</u>	<u>25,000</u>
Total		1,840	\$225,000

10. As shown, the Governor's proposed fees are anticipated to increase revenue to the program by \$225,000 annually. Because the fees would have to be set by rule, DHFS does not anticipate revenue from the new fees until 2002-03.

11. The bill would also eliminate the statutory provision that allows a person operating a temporary restaurant to transfer a permit to a premise, other than the premise for which it was originally provided. According to DHFS, requiring temporary restaurants to be inspected at each site would better ensure public health and safety. DHFS proposes a \$25 fee per inspection, and anticipates 1,000 inspections per year for revenue of \$25,000. The current annual permit is \$77.

12. In addition to generating revenue for services already being provided, the fees authorized under the bill are expected to assist with overall compliance of state food safety regulations by allowing DHFS to charge for operating without a license and for reinspections for noncompliance.

13. According to DHFS, most local health departments that have been granted agent status already charge the fees that the state would be authorized to charge under the bill, and already require site inspections for each location for temporary restaurants. Therefore, authorizing DHFS to establish these fees would also provide for more consistent enforcement of facility regulation in the state.

14. The bill would require annual, instead of biennial, permits for bed and breakfast establishments to make those permits consistent with other facility permits. DHFS indicates that it would reduce the current \$160 biennial fee by one-half, so that no additional revenues would be generated from the annual permits. This would make bed and breakfast renewals consistent with renewals for other facilities.

15. The bill would provide additional expenditure authority of \$250,000 in 2002-03 in supplies and services funding to reflect the additional revenues under the bill. However, based on a more recent analysis of expenditures, if the Committee wishes to increase funding for the program, the funding should be reallocated as follows: (a) \$125,600 for salaries; (b) \$78,900 for LTEs; (c) \$28,100 for data processing; and (d) \$17,400 in supplies and services.

16. According to DHFS, the adjustment in salary is needed to reflect that most of the positions in the appropriation have salaries that are broadbanded so that vacancies are typically filled at salaries higher than the minimum. The increased LTE funding would be used to hire additional staff so that DHFS would be able to inspect facilities more frequently. The increased data processing and supplies and services funding relates to technology to support facility licensing and electronic field inspection of facilities.

17. In its budget request, DHFS indicates that the fees requested under the bill were to address a program deficit. In order for the fees to offset a projected deficit, expenditure authority should not be increased. However, DHFS now indicates that revenues should be sufficient to cover expenditures under the bill, and that the additional expenditure authority is needed to allow the program to meet its commitment to inspect facilities more frequently. Because it is a program

revenue appropriation, the Committee could delete the \$250,000 increase in 2002-03, and the Department could request additional authority in the future under s. 16.515 of the statutes after DHFS demonstrates that revenues are sufficient to support additional budgeted expenditures.

ALTERNATIVES

A. Permit and Fees

1. Approve the Governor’s recommendations to: (a) authorize DHFS to establish, by rule, preinspection fees, reinspection fees and fees for operating without a license for recreational facilities; (b) prohibit DHFS, or a LHD, from granting a permit to a person who intends to operate a recreational facility without a preinspection; (c) authorize DHFS to establish, by rule, reinspection fees, fees for operating without a permit and fees for comparable compliance or variance requests for hotels, restaurants, tourist rooming houses, vending machine commissaries and vending machines; (c) authorize DHFS to establish, by rule, fees for pre-permit review of restaurant plans; (d) repeal the provision that enables transfer of a permit for a temporary restaurant to premises other than that for which it was issued; and (e) require persons who operate bed and breakfasts to obtain annual, rather than biennial permits.

2. Maintain current law and reduce projected program revenues by \$250,000 in 2002-03.

Alternative A2	PR-REV
2001-03 REVENUE (Change to Base)	- \$250,000

B. Expenditures

1. Approve the Governor's recommendation, as modified, to provide \$250,000 PR in 2002-03 to increase funding for salaries (\$125,600), LTE funding (\$78,900), supplies and services (\$17,400) and data processing (\$28,100).

2. Maintain current law and delete \$250,000 PR in 2002-03 from the bill.

Alternative B2	PR
2001-03 FUNDING (Change to Base)	- \$250,000

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