

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 883 Public Lodging Establishments

SPONSOR(S): Government Operations Appropriations Subcommittee, Business & Consumer Affairs Subcommittee, Horner

TIED BILLS: **IDEN./SIM. BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Morton	Creamer
2) Government Operations Appropriations Subcommittee	10 Y, 3 N, As CS	Topp	Topp
3) Economic Affairs Committee		Morton	Tinker

SUMMARY ANALYSIS

The bill combines the classifications in ch. 509, F.S., of resort condominiums and resort dwellings as 'vacation rentals.' 'Vacation Rental' is defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment."

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

The bill also revises the membership of the advisory council for the Division of Hotels and Restaurant of the Department of Business and Professional Regulation (DBPR).

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Vacation rentals are properties generally designed for residential purposes, such as single- and multi-family homes which are rented out to tourists on vacation. In Florida, they are divided into two main categories: resort condominiums and resort dwellings and are regulated as transient public lodging establishments.

Public lodging establishments are overseen by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation pursuant to ch. 509, F.S. Regulation of public lodging establishments is pre-empted to the state.

The chapter divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e. Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e. Motel 6)
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences. (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Resort dwelling:	Individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 1 month or which is advertised as such.
Resort condominium:	Any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times a year for periods of less than 1 month or is advertised as such.

All public lodging establishments are licensed, but the degree of inspections and the relevant fees differ based on the type of establishment.

The Division inspects resort condominiums and resort dwellings on receiving complaints only. The Division receives about three complaints of unlicensed resort condominiums or resort dwellings each year.

For resort dwellings and resort condominiums, licenses are issued under three categories:

1. Single – Individual owner, may include multiple units
2. Group – Licensed agent for all units rented
3. Collective – Licensed agent for up to 75 units separately located throughout a district

Operators of resort dwellings and resort condominiums pay a base fee of \$150, a Hospitality Education Program fee of \$10 and a unit fee. Unit fees on single and group licensees are incremental based on the total number of rental units. Collective licensees pay \$10 per unit.

The total fees licensees pay range from \$170-\$350 for single and group licensees, and are capped for collective licensees at \$910.

The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code. However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance.¹

Section 509.291, F.S., establishes an advisory council currently consists of 10 members. The Secretary of the DBPR appoints seven members, with the remaining three being statutory members representing the Florida Restaurant and Lodging Association, the Florida Apartment Association, and the Florida Association of Realtors.

The advisory council does not currently have a representative specifically from the resort condominium or resort dwelling industry. However, the Division reports that the council does have appointed members who work for licensees that own resort condominium properties, in addition to other types of public lodging or public food service establishments.

Proposed Changes

The bill reclassifies resort condominiums and resort dwellings as ‘vacation rentals,’ a new classification combining the two previous classes. ‘Vacation Rental’ is defined as “any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment.”

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

¹ See, e.g., Kim Hackett, “Property owners fight with Venice again on rental ban,” Sarasota Herald Tribune (February 8, 2011), available at <http://www.heraldtribune.com/article/20110208/ARTICLE/102081021>; Scott Wyman, “Possible Fort Lauderdale Restrictions On Short-Term Rentals Draw Opposition,” Sun-Sentinel (February 24, 2011), available at http://weblogs.sun-sentinel.com/news/politics/broward/blog/2011/02/possible_fort_lauderdale_restr.html.

The bill revises the membership of the advisory council for the Division of Hotels and Restaurant by reducing the number of members appointed by the Secretary of DBPR from seven to six and adding one representative from the Florida Vacation Rental Managers Association.

Current law provides a preemption of authority to the state for the regulation of public lodging and food establishments related to inspections, training and sanitation standards. The bill expands the state's preemption to include, "matters related to nutritional content and marketing of foods in such establishments."

The bill also revises the penalties for public food service establishments operating in violation of ch. 509, F.S.. The bill provides that the Division of Hotels and Restaurants may impose mandatory completion of a remedial educational program administered by a food safety program provider whose program has been approved by the division.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 509.032, F.S., to provide that vacation rentals are residential property for purposes of provisions related to the treatment of such properties. In addition, the preemption of authority for regulation of public food and public lodging establishes is amended to include nutritional content and marketing of foods offered in such establishments.

Section 2 amends s. 509.221, F.S., to conform changes by the bill related to facilities or units classified as vacation rentals.

Section 3 amends s. 509.241, F.S., to conform to changes by the bill.

Section 4 amends s. 509.242, F.S., to provide that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals and defines that term.

Section 5 amends s. 509.251, F.S., to conform to changes by the bill.

Section 6 amends s. 509.261, F.S., to provide that the Division of Hotels and Restaurants may impose mandatory completion of a remedial education program for public food service establishments that have operated in violation of ch. 509, F.S.

Section 7 amends s. 509.291, F.S., to increase the membership of an advisory council and provide for the Florida Vacation Rental Managers Association to appoint a member.

Section 8 amends ss. 381.008, F.S., to conform to changes by the bill.

Section 9 amends s. 386.203, F.S., to conform to changes to definitions by the bill.

Section 10 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011 the Government Operations Appropriations Subcommittee heard CS/HB 883. The committee adopted one amendment by Representative Horner, which:

- Includes in the state's preemption of authority related to public food and lodging establishments, "matters related to nutritional content and marketing of foods in such establishments."
- Authorizes the Division of Hotels and Restaurants to require mandatory completion of a remedial educational program administered by a food safety program provider for food service establishments operating in violation of ch. 509, F.S.

The bill analysis has been updated to reflect CS/CS/HB 883.