

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Economic Affairs Committee, 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	7 Y, 3 N, As CS	Morton	Tinker

SUMMARY ANALYSIS

The bill amends laws relating to public lodging establishments and public food service establishments, regulated by Division of Hotels and Restaurant of the Department of Business and Professional Regulation (DBPR).

Generally, the bill preempts local regulation of matters relating to nutritional content and marketing and provides that the DBPR can impose mandatory remedial training for food safety violations.

As to vacation rentals, the bill

- Reclassifies resort condominiums and resort dwellings as 'vacation rentals,' a newly defined class combining the two previous classes.
- Revises the membership of the advisory council for the division.
- Preempting new local regulations of vacation rentals based solely on classification, use or occupancy. Regulations adopted by June 1, 2011, would be exempt.

As to handbill distribution, the bill creates the "Tourist Safety Act of 2011," which amends current law to:

- Require written permission for the distribution of handbills in public lodging and food service establishments.
- Provide that certain protected communications are not subject to the restrictions.
- Provide for fines and forfeiture for violations
- Permits a law enforcement officer to issue a notice to appear on probable cause of a violation.

The bill is not anticipated to have a significant fiscal impact on state or local government.

The bill will be effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Vacation rentals

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 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.

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.

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 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. This restriction will not apply to any local law, ordinance or rule adopted on or before June 1, 2011.

Food Safety

Current Situation

The DBPR may take disciplinary action against licensees for violations of ch. 509, F.S., including requiring remedial training. This training used to be provided by the Hospitality Education Program, which is funded by a \$10 annual fee on all public food service and public lodging licenses.² Until 2009, the Hospitality Education Program provided training programs, including continuing education and remedial training, for no additional charge to the licensee.

The DBPR also selects private nonprofit providers to administer the food safety training certificate program for food service employees.³ The DBPR has approved approximately 130 such food service employee training programs.

Proposed Changes

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.

Handbill Distribution

Current Situation

Section 509.144(2), F.S., prohibits persons acting on behalf of another to, without permission, deliver, distribute, or place a handbill at or in a public lodging establishment. Subsection (3) of the statute also prohibits persons to, without permission, direct another person to deliver, distribute, or place a handbill in a public lodging establishment. Both crimes are punishable as 1st degree misdemeanors. In addition to the 1st degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of \$500.

Currently, s. 509.144, F.S., defines the term "without permission" as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (4)."⁴ The term "handbill" is defined as "a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act."

Proposed Changes

² Fla. Stat. s. 509.302(2)(a).

³ Fla. Stat. s. 509.049.

⁴ Section 509.144(4), F.S., sets forth the manner in which public lodging establishments who intend to prohibit advertising or solicitation must post signs prohibiting such behavior.

The bill creates the “Tourist Safety Act of 2011”. The bill amends the definition of the term “without permission” to remove “oral permission.” Thus, a person who distributes handbills must have the written permission of the public lodging establishment’s owner or manager. The bill also amends the definition of the term “handbill” to specify that the term does not include communications protected by the First Amendment to the United States Constitution.

Additionally, the bill provides the following fines for second and third offense violations of subsections (2) and (3) of the handbill statute:

- For a second violation, a minimum fine of \$2,000
- For a third or subsequent violation, a minimum fine of \$3,000.

The bill also specifies that it does not affect or impede the provisions of s. 790.251, F.S.,⁵ or any other protection or right guaranteed by the 2nd Amendment to the United States Constitution.⁶

Notice to Appear

The bill creates s. 901.1503, F.S., to authorize a law enforcement office to issue a “notice to appear”:

- If there is probable cause to believe that a violation of s. 509.144, F.S., (the handbill statute) has been committed; and
- If the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

Florida Contraband Forfeiture Act

Current Situation

The Florida Contraband Forfeiture Act (Act) provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Act.

Proposed Changes

The bill amends s. 932.701, F.S., by defining the term “contraband article” to include property that was used as an instrument in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

The bill provides an effective date of upon becoming law.

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 and may not be based on specified criteria.

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.

⁵ Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

⁶ The 2nd Amendment to the United States Constitution sets forth the right of the people to keep and bear arms.

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 provide for the Florida Vacation Rental Managers Association to appoint a member to the advisory council.

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 cites sections 11 through 14 as the "Tourist Safety Act of 2011."

Section 11 amends s. 509.144, F.S., to provide that 'handbill' does not include certain communications and that permission to distribute handbills must be written, and to provide for penalties and forfeiture.

Section 12 creates s. 901.1503, F.S., to authorize law enforcement to give a notice to appear without a warrant to a person when there is probable cause of a violation.

Section 13 amends s. 932.701, F.S., to provide that certain property of a person who violates s. 509.144 for a third or subsequent time is subject to forfeiture.

Section 14 specifies that the Tourist Safety Act does not affect or impede rights guaranteed by Florida's Right to Keep and Bear Arms in Motor Vehicles Act of 2008 or the 2nd Amendment to the U.S. Constitution.

Section 15 provides that the bill will become effective upon becoming law.

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:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such, local governments may see increased revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such, violators will be required to pay fines as required by the bill. Third time offenders may also have their property seized.

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 adopted one amendment and reported the bill favorably as a committee substitute. The incorporated changes included:

- Expanding 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."
- Authorizing 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.

On April 7, 2011, the Economic Affairs Committee adopted three amendments and reported the bill favorably as a committee substitute. The incorporated changes included:

- Creating the Tourist Safety Act of 2011 to amend current law related to distribution of handbills at public lodging establishments and public food service establishments.
- Providing that preemption of local regulations restricting the use of vacation rentals is not applicable to those regulations adopted on or before June 1, 2011.
- Changing the effective date to "upon becoming law," rather than July 1, 2011.

The analysis has been updated to reflect the changes in the CS/CS/CS/HB 883.