

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 Judiciary Committee

BILL: CS/CS/SB 476

INTRODUCER: Judiciary Committee, Regulated Industries Committee, and Senator Evers

SUBJECT: Public Lodging Establishments

DATE: April 27, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Boland	Maclure	JU	Fav/CS
3.			BC	
4.				
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 preempts to the state matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments. This bill prohibits local governments from enacting such ordinances.

The bill requires that public food services establishments must complete, rather than simply attend, a remedial education program when such program is given as a sanction because of a violation of ch. 509, F.S., or rules of the Division of Hotels and Restaurants (division), because the establishment was operating without a license, or because the establishment operated with a revoked or suspended license. The bill also requires that such educational programs be administered by a food safety training program provider whose program has been approved by the division rather than programs sponsored by the Hospitality Education Program.

The bill replaces the classifications “resort condominium” and “resort dwelling” with the single term “vacation rental.” It provides that local laws, ordinances, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. However, the bill specifies that this prohibition does not apply to any local law, ordinance, or rule adopted on or before June 1, 2011.

Florida Statutes provide for an advisory council to promote better understanding and cooperation between the Division of Hotels and Restaurants of the Department of Business and Professional Regulation and the individuals and businesses that the Division regulates. The bill changes the number of members appointed to the advisory council by the Secretary of Business and Professional Regulation from seven members to six members. Additionally, the bill creates one new voting member of the advisory council who must represent the Florida Vacation Rental Managers Association. Consequently, the number of members composing the advisory council remains at 10 members.

The bill amends current law related to distribution of handbills at public lodging establishments and public food service establishments and specifies that this may be cited as the “Tourist Safety Act.” Under the bill, handbills may only be distributed with written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment. The bill increases the penalties for violation of the handbill statute by:

- Imposing new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (\$2,000 for the second violation, and \$3,000 for the third and any subsequent violations);
- Expanding the property that is subject to seizure or forfeiture under the Florida Contraband Forfeiture Act to include property used in violation of a person’s third or subsequent violation of the handbill distribution statute; and
- Permitting law enforcement officers to issue a notice to appear to a person without a warrant when the officer has probable cause to believe that the person has committed a violation of the Tourist Safety Act and the owner of the public lodging establishment and one other affiant sign affidavits to that effect.

The bill specifies that the amendments made by the Tourist Safety Act do not affect or impede the provisions of Florida Statute allowing lawful possession of a firearm in one’s automobile, or any other protection or right guaranteed by the Second Amendment to the United States Constitution.

This bill substantially amends the following sections of the Florida Statutes: 381.008, 386.203, 509.144, 509.032, 509.221, 509.241, 509.242, 509.251, 509.261, 509.291, and 932.701. The bill creates s. 901.1503, F.S.

II. Present Situation:

Vacation Rentals

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) 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 the department, there are more than 37,273

licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.¹

The term “public lodging establishments” includes transient and nontransient public lodging establishments.² The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

Section 509.013(4)(a)1., F.S., defines a “transient public lodging establishment” to mean:

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.

Section 509.013(4)(a)2., F.S., defines a “nontransient public lodging establishment” 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 1 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 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

1. 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;
2. Any hospital, nursing home, sanitarium, assisted living facility, or other similar place;
3. 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;
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 four 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; under ss. 381.008-381.00895; and

¹ See *Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf (last visited Mar. 1, 2011).

² Section 509.013(4)(a), F.S.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

Public lodging establishments are classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, rooming house, bed and breakfast inn, or resort dwelling.³

Section 509.242(1)(c), F.S., defines the term “resort condominium” as:

any unit or group of units in a condominium, cooperative, or timeshare plan which is rented 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 for periods of less than 30 days or 1 calendar month, whichever is less.

Section 509.242(1)(g), F.S., defines the term “resort dwelling” as

any 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 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

According to the vacation rental industry, the terms resort condominium and resort dwellings are not commonly used in the industry. Instead these classes of public lodging establishments are termed “vacation rentals.”

The 37,273 public lodging establishments licensed by the division are distributed as follows:⁴

- Nontransient apartments – 17,413 licenses covering 980,556 units;
- Transient apartments – 993 licenses covering 13,752 units;
- Nontransient rooming houses – 153 licenses covering 2,100 units;
- Transient rooming houses – 211 licenses covering 3,091 units;
- Resort condominiums – 3,174 licenses covering 91,453 units; and
- Resort dwellings – 10,602 licenses covering 25,112 units.

Public Food Service Establishments – Licensure

The division is responsible for inspecting public food service establishments to ensure that they meet the requirements of ch. 509, F.S., and division rules.⁵ Each public food service establishment must obtain a license and meet the standards set by the division to maintain that license.⁶

³ Section 509.242(1), F.S.

⁴ *2011 Legislative Analysis for SB 476*, Office of Legislative Affairs, Department of Business and Professional Regulation (Jan. 31, 2011).

⁵ Section 509.032, F.S.

⁶ Section 509.241, F.S.

Any public food service establishment that has operated or is operating in violation of ch. 509, F.S., or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

- Fines not to exceed \$1,000 per offense;
- Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program;⁷ and
- The suspension, revocation, or refusal of a license issued pursuant to ch. 509, F.S.

Advisory Council

Section 509.291, F.S., creates a 10-member advisory council to assist the division by advising it on matters affecting the private-sector entities regulated by the division. The stated purpose is to “promote better relations, understanding, and cooperation between such industries and the division; to suggest means of better protecting the health, welfare, and safety of persons using the services offered by such industries; to give the division the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division; to promote and coordinate the development of programs to educate and train personnel for such industries; and perform other duties that may be prescribed by law.”⁸

Public Lodging Establishments – Unlawful Distribution of Handbills

Under Florida law, it is illegal to deliver, distribute, or place, or attempt to deliver, distribute, or place, a handbill⁹ at or in a public lodging establishment¹⁰ without either written or oral permission when the public lodging establishment has posted a sign.¹¹

Any individual, agent, contractor, or volunteer who is acting on behalf of an individual, business, company, or food service establishment and engages in prohibited handbill distribution commits a first-degree misdemeanor.¹² There is no separate statutorily imposed fine for violation of this provision.

Any person who directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a first-degree

⁷ Section 509.302, F.S.

⁸ Section 509.291, F.S.

⁹ Section 509.144(1)(a), F.S., defines “handbill” to mean “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.”

¹⁰ Section 509.144(1)(c), F.S., defines “at or in a public lodging establishment” to mean “any property under the sole ownership or control of a public lodging establishment.” The term “public lodging establishment” is defined in s. 509.013, F.S.

¹¹ Section 509.144(1)(b), F.S., defines “without permission.” Section 509.144(4), F.S., sets forth the requirements that a posted sign must meet in order to prohibit advertising or solicitation under the statute.

¹² Section 509.144(2), F.S. A first-degree misdemeanor is punishable by up to one year in a county jail, a fine up to \$1,000, or both. *See* ss. 775.082 and 775.083, F.S.

misdeemeanor. Any person sentenced under this provision shall be ordered to pay a minimum fine of \$500 in addition to any other penalty imposed by the court.¹³

Florida Contraband Forfeiture Act

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.¹⁴

Section 932.701(2)(a), F.S., defines the term “contraband article” to include:

- Any controlled substance as defined in chapter 893, F.S., or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, F.S., if the totality of the facts presented by the state is clearly sufficient to meet the state’s burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.
- Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
- Any motor vehicle offered for sale in violation of s. 320.28, F.S.
- Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.

¹³ Section 509.144(3), F.S.

¹⁴ Sections 932.701–932.706, F.S.

- Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.

The current definition of the term “contraband article” does not include property that was used as an instrumentality in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

Relevant to the bill, there are indications that forfeitures may or do occur in some misdemeanor cases. For example, one Florida court has indicated (in dicta) that the definition of “contraband article” in s. 932.701(2)(a), F.S., would apparently apply to the seizure of “money as suspected contraband connected with narcotics activity, regardless of whether the crimes constitute felonies.”¹⁵ Additionally, the Florida Supreme Court has held that the Florida Contraband Forfeiture Act “does not preempt to the Legislature the field of vehicle seizure and forfeiture, much less impoundment, for misdemeanor offenses.”¹⁶ Therefore, a municipality may adopt “an ordinance that authorizes the seizure and impoundment of vehicles used in the commission of certain misdemeanors.”¹⁷

Warrantless Arrest and Notice to Appear

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Some examples include violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations; violations of pretrial release conditions in domestic and dating violence cases; misdemeanor battery; and criminal mischief or graffiti-related offenses. For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest – the officer only needs to have probable cause to believe the person committed the crime.

¹⁵ *Shuler v. State*, 984 So.2d 1274, 1275 (Fla. 2d DCA 2008) (footnote omitted).

¹⁶ *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1246 (Fla. 2006).

¹⁷ *Id.*

In Florida, a law enforcement officer has the option of issuing a notice to appear to someone in lieu of physically arresting that individual.¹⁸ A notice to appear is a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.¹⁹

III. Effect of Proposed Changes:

State Preemption of Nutritional Content and Marketing

The bill amends s. 509.032(7)(a), F.S., to preempt matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments to the state. This prohibits local governments from enacting such ordinances.

Vacation Rentals

The bill amends s. 509.242(1)(c), F.S., to replace the term “resort condominium” with the term “vacation rental.” It deletes the definition for the term “resort dwelling” in s. 509.242(1)(g), F.S. It defines a “vacation rental” to mean 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 creates s. 509.032(7)(b), F.S., providing that local laws, ordinances, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. However, the bill specifies that this paragraph does not apply to any local law, ordinance, or rule adopted on or before June 1, 2011.

The bill also amends ss. 381.008(8),²⁰ 386.203(4),²¹ 509.032(2),²² 509.221(9),²³ 509.241(2),²⁴ and 509.251(1),²⁵ F.S., to replace the term “resort condominium or resort dwellings” with the term “vacation rentals.”

Public Food Service Establishment – Licensure

The bill amends s. 509.261, F.S., which relates to the applicable sanctions for public food service establishment licensees that violate of ch. 509, F.S., or rules of the division, operate without a

¹⁸ Fla. R. Crim. P. 3.125.

¹⁹ *Id.*

²⁰ Section 381.008(8), F.S., defines the term “residential migrant housing” for purposes of the migrant housing provisions in ss. 381.008-381.00897, F.S.

²¹ Section 386.203(4), F.S., defines the term “designated smoking guest rooms at public lodging establishments” for purposes of the Florida Clean Indoor Air Act in part II of ch. 386, F.S.

²² Section 509.032(2), F.S., relates to the inspection of public lodging establishments.

²³ Section 509.221(9), F.S., provides, under current law, an exemption for resort condominiums and nontransient apartments from specified sanitary requirements in subsection (2), (5), and (6) of s. 509.221, F.S., which include requirements related to public bath rooms, providing soap and towels in guest rooms, and providing pillow covers and bed sheets.

²⁴ Section 509.241, F.S., which provides under current that condominium associations that do not own a resort condominium do not need to apply for a public lodging establishment license under s. 509.242(1)(c), F.S.

²⁵ Section 509.251, F.S., sets forth the license fees under current law for public lodging establishments, including resort condominiums and resort dwellings.

license, or operate with a revoked or suspended license. The bill provides that the sanction of a remedial education program requires completion of the program, rather than attendance. In addition, such educational programs are to be administered by a food safety training program provider whose program has been approved by the division as provided in s. 509.049, F.S., rather than programs sponsored by the Hospitality Education Program.

Advisory Council

The bill amends s. 509.291(1)(a), F.S., by changing the number of members appointed to the advisory council by the Secretary of Business and Professional Regulation from seven members to six members. Additionally, the bill creates one new voting member of the advisory council who must represent the Florida Vacation Rental Managers Association.²⁶ Consequently, the number of members composing the advisory council remains at 10 members.

Public Lodging Establishments – Unlawful Distribution of Handbills

The bill amends current law related to distribution of handbills at public lodging establishments and public food service establishments and specifies that this may be cited as the “Tourist Safety Act.” Whereas current law allows for the distribution of handbills only with the express written or oral permission of the owner or his agent, the bill amends that language to state that handbills may only be distributed with written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment. The bill increases the penalties for violation of the handbill statute by:

- Imposing new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (\$2,000 for the second violation, and \$3,000 for the third and any subsequent violations);
- Expanding the property that is subject to seizure or forfeiture under the Florida Contraband Forfeiture Act to include property used in violation of a person’s third or subsequent violation of the handbill distribution statute; and
- Permitting law enforcement officers to issue a notice to appear to a person without a warrant when the officer has probable cause to believe that a violation of the Tourist Safety Act has been committed and the owner of the public lodging establishment and one other affiant sign affidavits to that effect.

The bill specifies that the amendments made by the Tourist Safety Act do not affect or impede the provisions of Florida Statute allowing lawful possession of a firearm in one’s automobile, or any other protection or right guaranteed by the Second Amendment to the United States Constitution.

Florida Contraband Forfeiture Act

²⁶ The Florida Vacation Rental Managers Association is a statewide association that represents the companies and professionals who rent and manage resort, vacation and other short-term rentals. Information about the association can be found at: <http://www.fvrma.org/> (Last visited March 2, 2011).

The bill amends the Florida Contraband Forfeiture Act to add to the list of contraband that is subject to forfeiture to the state, “any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, security, book, or record, which is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of s. 509.144 [the unlawful handbill distribution statute], whether or not comprising an element of the offense.” This provision will have the effect of imposing a substantial penalty on those who violate the Tourist Safety Act three or more times, as those people will potentially have the personal property listed above subjected to forfeiture.

Warrantless Issuance of Notice to Appear

The bill provides that a police officer may, without a warrant, issue a notice to appear to a person when the officer has probable cause to believe that the person has committed a violation of the unlawful handbill distribution statute (s. 509.144, F.S.), and the owner of the public lodging establishment and one other affiant sign affidavits to that effect.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the general rule that misdemeanors are not subject to warrantless arrest. Some examples include violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations; violations of pretrial release conditions in domestic and dating violence cases; misdemeanor battery; and criminal mischief or graffiti-related offenses. For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest – the officer only needs to have probable cause to believe the person committed the crime.

The same would be true in regard to issuing a notice to appear without a warrant. A notice to appear is authorized by Florida Rules of Criminal Procedure.²⁷ Even though the officer does not take the offender into custody when issuing a notice to appear, a notice to appear is the equivalent of an arrest.²⁸ However, it should be noted that the issuance of a notice to appear without a warrant poses less potential concerns (i.e. – false arrest or unlawful imprisonment) than actually making a warrantless physical arrest, because issuing a notice to appear does not involve the officer physically taking the offender into custody.

Effective Date

The bill provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ Fla. R. Crim. P. 3.125.

²⁸ Pinellas County Criminal Justice Center, Defensehelp.com, available at <http://www.defensehelp.com/Misdemeanor-Criminal-Charges-Lawyer/notice-to-appear-equivalent-arrest> (last visited April 26, 2011).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The rights of private property owners to prohibit certain activities versus a person's right to free expression on that private property has been addressed by the U.S. Supreme Court. In one example, the Court allowed picketers to protest on shopping mall property because the characteristics of the shopping mall were more like a public forum than private property.²⁹ The Court generally gives greater deference to free expression over property rights when a public forum is involved. Later, the Court revised its position, stating that a relationship must exist between the speech and the property when it upheld a ban against anti-war protesters on mall property.³⁰ The current position of the Court appears to be that the right to free expression on private property is not guaranteed in the U.S. Constitution when the property owner objects.³¹

However, the U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.³² For example, a Florida circuit court held that the State Constitution "prohibits a private owner of a 'quasi-public' place from using state trespass laws to exclude peaceful political activity."³³ The court reversed the conviction of a man (Wood) who was convicted in county court of trespass for staying in the Panama City Mall after having been told by mall security that his solicitation of signatures in the mall to appear on a ballot for political office violated the mall's rules and was told to stop the solicitation in the mall or leave. However, in a later Florida circuit court case, the court held that "there is no right under the First Amendment to the United States Constitution to engage in free speech or other political activity on private property without the property owner's permission."³⁴ This case involved a citizen and political action committee soliciting signatures for a political petition on the private property of a Publix supermarket in Tallahassee.

Most cases have only applied to a situation involving a "quasi-public" forum of a shopping mall. This bill only addresses public lodging establishments, which unlike shopping malls are generally open only to paying patrons.³⁵ The bill amends the

²⁹ *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

³⁰ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

³¹ *Hudgens v. NLRB*, 424 U.S. 507 (1976) (finding no right of free expression for picketers wishing to demonstrate on mall property when the mall owner objected).

³² *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

³³ *Wood v. State*, 2003 WL 1955433 (Fla. Cir. Ct., 2003) (not reported in So.2d).

³⁴ *Publix Supermarkets, Inc. v. Tallahasseeans for Practical Law Enforcement*, 2005 WL 3673662 (Fla. Cir. Ct., 2005) (not reported in So.2d).

³⁵ The prohibition of handbill distribution in public lodging establishments has only been specifically permitted by Florida law since 2005. Ch. 2005-183, L.O.F.

definition of “handbill” in s. 509.144(1)(a), F.S., to specify that it does not include communication protected by the First Amendment to the United States Constitution. As a result, if a court were to hold that sliding pizza delivery pamphlets under hotel room doors without permission is constitutionally protected free speech, the bill’s provisions would likely not apply to such activity.

Also, it should be noted that the bill recognizes freedom of speech and other constitutional rights (i.e. – gun ownership/possession) by stating that the bill does not infringe on any Second Amendment rights and by excluding from the definition of “handbill” any communications protected by the First Amendment to the United States Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires that public food services establishments must complete, rather than simply attend, a remedial education program when such program is given as a sanction because of a violation of ch. 509, F.S., or rules of the Division of Hotels and Restaurants (division), because the establishment was operating without a license, or because the establishment operated with a revoked or suspended license. Such completion would be at personal expense.

Additionally, persons or businesses violating s. 509.144, F.S., will be faced with increased financial penalties, and for the third and any subsequent offenses, personal property may be seized and forfeited.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met on SB 476; however, the conference did meet on SB 366, which is substantially similar to SB 476’s Tourist Protection Act. The conference found that the provisions in the Tourist Protection Act would have no prison bed impact.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁶ Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results*, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm>.

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 by Judiciary on April 25, 2011:

- Specifies that the provision prohibiting local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy, applies only to any local law, ordinance, or rule adopted on or before June 1, 2011;
- Restricts the ways that a person may receive permission to distribute handbills to written permission;
- Imposes new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (for a second violation, a minimum fine of \$2,000, and for a third or subsequent violation, a minimum fine of \$3,000);
- Provides for seizure and forfeiture under the Florida Contraband Forfeiture Act of any personal property that was used or was attempted to be used as an instrumentality in the commission of, or aiding and abetting in the commission of, a person's third or subsequent violation of the unlawful handbill distribution statute, whether or not comprising an element of the offense;
- Provides that an officer may issue a notice to appear to a person without a warrant if there is probable cause to believe that a violation of the unlawful handbill distribution statute has been committed, and the owner or manager of the public lodging establishment in which the violation occurred and one additional affiant sign an affidavit containing information that supports the probable cause determination;
- Specifies that the amendments made by this act to ss. 509.144 and 932.701, F.S., and the creation of s. 901.1503, F.S., by this act do not affect or impede the provisions of a statute concerning the possession of a firearm in a vehicle (s. 790.251, F.S.), or any other protection or right guaranteed by the Second Amendment to the United States Constitution; and
- Changes the effective date so that this act shall take effect upon becoming a law.

CS by Regulated Industries on March 22, 2011:

The committee substitute (CS) does not amend s. 509.013(4), F.S., to revise the definitions for the terms "transient public lodging establishment" and "nontransient public lodging establishment."

The CS amends s. 509.032(7)(a), F.S., to preempt matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments.

The CS does not create s. 509.101(3), F.S., to require each operator of a vacation rental to retain advance payment or deposit paid by a guest until the occupancy begins or is cancelled according to the rental agreement or the operator's cancellation rules.

The CS amends s. 509.261, F.S., which relates to the applicable sanctions for public food service establishment licensees.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
