

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/SB 476

INTRODUCER: Regulated Industries Committee and Senator Evers

SUBJECT: Public Lodging Establishments

DATE: April 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Boland</u>	<u>Maclure</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | 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 replaces the classifications “resort condominium” and “resort dwelling” with the single term “vacation rental.” It provides that vacation rentals are residential property and may not be prohibited or treated differently than other residential properties based solely on their classification, use, or occupancy.

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 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.

This bill substantially amends the following sections of the Florida Statutes: 381.008, 386.203, 509.032, 509.221, 509.241, 509.242, 509.251, 509.261, and 509.291.

II. Present Situation:

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 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.

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
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

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).

- 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

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

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.

⁵ Section 509.032, F.S.

⁶ Section 509.241, F.S.

⁷ Section 509.302, F.S. This program was not funded in FY 2010-2011.

⁸ Section 509.291, F.S.

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., to provide that vacation rentals are residential property and may not be prohibited or treated differently than other residential properties based solely on their classification, use, or occupancy.

The bill also amends ss. 381.008(8),⁹ 386.203(4),¹⁰ 509.032(2),¹¹ 509.221(9),¹² 509.241(2),¹³ and 509.251(1),¹⁴ F.S., to replace the term “resort condominium or resort dwellings” with the term “vacation rentals.”

Revocation or Suspension of Public Food Service Establishment Licenses

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 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.¹⁵ Consequently, the number of members composing the advisory council remains at 10 members.

⁹ 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.

¹⁰ 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.

¹¹ Section 509.032(2), F.S., relates to the inspection of public lodging establishments.

¹² 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.

¹³ 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.

¹⁴ Section 509.251, F.S., sets forth the license fees under current law for public lodging establishments, including resort condominiums and resort dwellings.

¹⁵ The Florida Vacation Rental Managers Association is a statewide association the 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).

Effective Date

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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.