

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 454

INTRODUCER: Commerce and Tourism Committee and Senator Wise

SUBJECT: Public Lodging Establishments

DATE: February 16, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Favorable</b>
2.	Tell	Hrdlicka	CM	<b>Fav/CS</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |  |   |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="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 CS exempts from regulation by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation apartment buildings that are inspected by the U.S. Department of Housing and Urban Development (HUD), or other entity acting on its behalf, and that are designated primarily as housing for persons age 62 or older.

The division may require the operator of the establishment to attest in writing that the apartment meets the criteria to qualify for the exemption. Additionally, the division may adopt rules to implement this exemption.

This CS amends s. 509.013, F.S.

**II. Present Situation:**

**Public Lodging Establishments**

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 over 37,544 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.<sup>1</sup>

The term “public lodging establishments” includes transient and nontransient public lodging establishments.<sup>2</sup> 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.

A nontransient apartment or roominghouse is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.<sup>3</sup> A transient apartment or roominghouse is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.<sup>4</sup>

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

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<sup>1</sup> Division of Hotels and Restaurants, Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2010-2011*, 8, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2010\\_11.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2010_11.pdf) (last visited Feb. 16, 2012).

<sup>2</sup> Section 509.013(4)(a), F.S.

<sup>3</sup> Section 509.242(1)(d), F.S.

<sup>4</sup> Section 509.242(1)(e), F.S.

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, F.S.; and

6. Any establishment inspected by the Department of Health and regulated by ch. 513, F.S.

Public lodging establishments are classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or vacation rental.<sup>5</sup>

There are 37,544 public lodging establishments licensed by the division. For example, there are:<sup>6</sup>

- Hotels - 1,619 licenses;
- Motels - 2,817 license
- Nontransient apartments - 17,498 licenses;
- Transient apartments - 1,002 licenses;
- Nontransient rooming houses - 152 licenses;
- Transient rooming houses - 218 licenses.

Although all public lodging establishments are licensed, the degree of inspections and the applicable fees vary based on the type of establishment. The division is required to inspect public lodging establishments at least three times annually, but nontransient and transient apartments are inspected at least once annually.<sup>7</sup>

Public lodging establishment license fees are required under s. 509.251(1), F.S., to be adopted by rule, based on the number of rental units. The aggregate amount of all license fees may not exceed \$1000.

Transient apartments pay a base fee of \$125, an incremental unit-based fee ranging from \$10 for a single unit to \$190 for more than 500 units, and the \$10 Hospitality Education Program (HEP) fee,<sup>8</sup> for a total fee ranging from \$145 to \$325.<sup>9</sup>

Non-transient apartments pay a base fee of \$95, an incremental unit-based fee ranging from \$20 to \$190, and the \$10 HEP fee, for a total fee ranging from \$125 to \$295.<sup>10</sup>

### **Housing for Persons Age 55 or Older**

The Fair Housing Act<sup>11</sup> prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, handicap, or familial status, e.g., families with children under the age of 18 living with parents or legal guardians, pregnant women, and people trying to get custody of

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<sup>5</sup> Section 509.242(1), F.S.

<sup>6</sup> *Supra*, note 1.

<sup>7</sup> Rule 61C-1.002(8)(d), F.A.C.

<sup>8</sup> Section 509.302(2)(a), F.S.

<sup>9</sup> *See* Rule 61C-1.008, F.A.C.

<sup>10</sup> *Id.*

<sup>11</sup> 42 U.S.C. 3601-3619.

children under 18. The Housing for Older Persons Act of 1995<sup>12</sup> provides an exception for housing for older persons, provided that:

- HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a federal, state or local government program, or
- It is occupied solely by persons who are 62 or older, or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

Families with children can be legally excluded from housing that satisfies the legal definition of senior housing or housing for older persons.

The U.S. Department of Housing and Urban Development operates programs that designate assisted housing developments for either low-income elderly residents alone, or low-income elderly residents with disabilities.<sup>13</sup>

Inspections of housing for the elderly are conducted on housing that is part of HUD's "Housing Choice Voucher Program," also known as "Section 8 Housing," which provides certain populations, including the elderly, with financial assistance with rent costs.<sup>14</sup> The program regulations provide basic housing quality standards (HQS) which all tenant-based housing must meet. These standards must be met before assistance can be paid on behalf of a resident and at least annually throughout the term of the assisted tenancy.<sup>15</sup> Local public housing agencies inspect the units for health and safety. Certain housing is designated for use by elderly persons, including congregate housing, where tenants share dining spaces and are given food service, and group homes, and must meet additional quality standards.<sup>16</sup>

There are three different types of HQS inspections:

*Initial Inspections:* These occur when a qualified party applies to use a voucher for a specific housing unit prior to the signing of a lease.

*Annual inspections:* These ensure that housing units currently under lease continue to meet HQS throughout the tenancy of the participant residents.

*Special Inspections:* These may be inspections that are prompted by a complaint or are quality control inspections. Quality control inspections examine a sample of housing units within a local public housing association's jurisdiction each year.<sup>17</sup>

<sup>12</sup> 42 U.S.C. 3607(b)(2)(C).

<sup>13</sup> The Section 202 Supportive Housing for the Elderly Program provides housing for low-income elderly households. See Section 202 Supportive Housing for the Elderly Program, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/progdesc/eld202](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202) (last visited Feb. 16, 2012).

<sup>14</sup> See U.S. Dept. of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet*, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet) (last visited Feb. 16, 2012).

<sup>15</sup> 24 CFR Part 982.401.

<sup>16</sup> U.S. Dept. of Housing and Urban Development, *Housing Choice Voucher Program Guidebook*, , Ch. 17, *Special Housing Types*, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/forms/guidebook](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook) (last visited Feb. 16, 2012).

<sup>17</sup> See U.S. Department of Housing and Urban Development, *Housing Quality Standards (HQS) – Frequently Asked Questions*, available at: <http://www.hud.gov/offices/pih/programs/hcv/hqs/hqsfaq.pdf> (last visited Feb. 16, 2012).

According to the Department of Business and Professional Regulation, the division does not differentiate between apartments rented primarily to persons age 62 or older and any other rental population. The division does not collect any data to identify apartments inspected by HUD.

The department indicated that HUD lists approximately 298 apartments in Florida as “Elderly.” The division estimates it currently licenses nearly all of the apartments listed as “Elderly” by HUD.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The CS amends s. 509.013(4)(a), F.S., to provide an exemption from regulation by the division for apartment buildings that are inspected by the U.S. Department of Housing and Urban Development, or other entity acting on its behalf, and that are designated primarily as housing for persons age 62 or older.

The CS allows the division to require the operator of the establishment to attest in writing that the apartment meets the criteria to qualify for the exemption. Additionally, the division may adopt rules to implement this exemption.

The CS provides an effective date of October 1, 2012.

### **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.

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<sup>18</sup>Office of Legislative Affairs, Department of Business and Professional Regulation, *2012 Legislative Analysis for SB 454*, (Jan. 24, 2012). On file with the Senate Committee on Commerce and Tourism.

**B. Private Sector Impact:**

According to the division, the CS would reduce the regulatory costs for apartment complexes that are designated primarily as housing for persons at least 62 years of age. The division estimates 298 establishments will be affected.<sup>19</sup>

**C. Government Sector Impact:**

According to the division, the CS would reduce license fees collected and deposited into the Division of Hotels and Restaurants Trust Fund. The exact reduction in license fees is indeterminate, but the division estimates an approximate annual fiscal impact of \$43,265. The division anticipates that the CS may also minimally reduce the amount of fines collected.<sup>20</sup>

**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 Commerce and Tourism on 2/16/2012:**

This committee substitute differs from the bill as originally filed in that it:

- Clarifies that the exemption applies to apartment buildings (as opposed to complexes) and raises the age to 62, as used by HUD;
- Permits the division to require the operator of the apartment building to attest that the building meets the requirements for the exemption;
- Allows the division to adopt rules to implement this exemption; and
- Changes the effective date of the bill to October 1, 2012.

**B. Amendments:**

None.

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

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<sup>19</sup> Id.

<sup>20</sup> Id.