

STORAGE NAME: h3567.ca

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3567

RELATING TO: Affordable Residential Accommodations Establishments

SPONSOR(S): Representatives Reddick and Trovillion

COMPANION BILL(S): SB 1914 (s); HB 4511 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill represents a new approach in addressing concerns of inner-city low-income housing. It establishes affordable residential accommodations (ARA) which are private enterprises providing affordable housing to low-income individuals and families who are transient, migrant, seasonal, or temporary workers.

Each ARA must be permitted and inspected by the Department of Children and Family Services (DOCFS) and its representative county public health units. Proprietors of ARAs are authorized to establish reasonable rules and regulations to manage their ARAs, residents, and employees.

The bill provides that ARA proprietors are authorized to refuse of admission or immediately eject undesirable residents for illegal possession or dealing in controlled substances, intoxication, profanity, lewdness, or brawling. The bill outlines the legal requirements and procedures for refusing admission or ejecting undesirable residents by proprietors of ARAs.

A fiscal impact determination is not available for the DOCFS. The DOCFS contends that it is incorrectly sited as the state's lead oversight agency for the inspection and permitting requirements of the bill.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

According to a paper entitled *The Florida Residential Accommodations Act, Housing the Poor in a Capitalistic Society*, by an Orlando realtor and attorney, a need exists in Florida for a separate statute which will encourage private industry to provide housing for low-income people. The Florida Legislature has stated in various statutes the awareness of the shortage of housing for low-income people. In section 420.003(1), F. S., the Legislature expresses the need to involve the private sector and regulatory commitment to accomplish the state's goal of providing housing. The Community Development Corporation Support and Assistance program pursuant to chapter 290, F. S., is one of the support systems designed to enhance the production of more affordable housing. In s. 624.5105, F. S., the Legislature again recognized the problem of housing by acknowledging the extensive deterioration of public and private facilities and the need for private enterprise involvement.

In answer to the above challenges, some in private industry believe that establishing affordable residential accommodations (ARA) is a significant step to resolving low-income issues. Part II of chapter 83, F. S., is the Florida Residential Landlord and Tenant act which regulates residential tenancies. Proponents of ARAs believe that "[r]esidential landlord/tenant law presumes that tenants will suffer some kind of consequence for misbehavior and that each party has relatively equal bargaining power. With the poor, those presumptions are generally without merit."

The housing paper mentioned above states that:

The Florida Landlord/Tenant law is not conducive to the management of low income rentals, because immediate summary evictions are not allowed. The Innkeeper law (Chapter 509 for motels and hotels) allows for immediate evictions but there is potential conflict with the Landlord/Tenant law, and the tenants are subject to sales tax which in many counties is 10 percent or more.

Generally, low income people have some or all of the following disabilities: no credit or bad credit, little or no assets, no permanent job, limited education, no references and no recommendations, few skills, and no basic training in persona, hygiene and health, child care, housekeeping, etc. Many have prison records. Consequently, when they make application to rent a dwelling, there is little chance that a diligent landlord would rent to them. When a landlord makes the mistake of renting to the typical low-income family, it can be a most painful and costly experience. The only people who will rent to them on a full-time basis are slumlords, and landlords knowledgeable in the ways of staying solvent while dealing with people who have substantially nothing to lose.

Currently, proponents of ARAs state that a motel room with furniture, utilities, and shelter costs substantially more than the average low-income tenant can afford on a continual basis. However, this is the only place someone can obtain adequate shelter for as little as \$25 a day. This amount is slightly less than a day laborer clears after working all day. The proponents report that the day laborer probably has to work seven days a week, rain or shine, in order to have food and shelter on a regular basis. A low-income tenants' rent is usually 50 percent of their income and sometimes faces homelessness

when it rains as a result. This borderline situation is aggravated by laws which do not allow a sympathetic landlord to help, secure in the knowledge that the landlord has the legal right to terminate the landlord/tenant relationship.

Proponents of ARAs assert that the substance of the problem is that low-income people require furnished residence, with utilities included, which can be rented as they earn their living on a daily basis. That, they state, can be accomplished by private industry if a new statute designed for low-income people becomes law in Florida.

With the advent of drugs and other criminal elements encroaching upon Florida's central cities, proponents also claim that it is becoming increasingly difficult for owners of housing units in the inner city to maintain their housings' integrity, reputation, and good standing in the community. Such owners believe that the landlord/tenant laws are not adequate to help them meet these and other current housing problems.

Besides chapter 83, F. S., existing law that relates to the ARA concept includes:

- Part I of chapter 509, F. S., provides for the regulation of public lodging and public food service establishments; Under this part, the Department of Business and Professional Regulations (DBPR) regulates hotels, motels, apartment complexes, and rooming houses. Low-income individuals who are transient, migrant, seasonal, or temporary workers live in some of these establishments. The DBPR inspects these establishments for compliance with its sanitary, general safety, and fire safety standards.
- Chapter 381, F. S., requires the Department of Health (DOH) to address, through regulation, the public general health needs. Specifically, the DOH regulates migrant labor camps and residential migrant housing regulation pursuant to chapter 381, F. S. The DOH has sanitary and general safety standards for these facilities. These facilities house migrant and seasonal workers. The DOH also regulates mobile home parks under chapter 513, F. S. The DOH provides sanitary standards for these parks. Migrant, seasonal, transient, and temporary workers live in some of these parks.

The Department of Health reports that the U.S. Department of Housing and Urban Development (HUD) prescribes minimum housing quality standards for public housing developments and for Section 8 housing. Section 8 housing is privately owned housing on which HUD pays rent subsidies. Section 8 housing and public housing developments rent to low-income individuals and families. Local housing authorities routinely inspect this housing to ensure it complies with HUD's housing quality standards, relating to sanitation, safety, and maintenance.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Florida Affordable Residential Accommodations Act." The bill is primarily an aggregate of existing law from chapters 83, 381, and 509, F. S., tailored to the goals of this act.

Definitions

The bill defines an affordable residential accommodation (ARA) establishment to mean "any permitted unit or group of units, single complex of buildings, structure, barrack, or

dormitory, and the land appurtenant to such edifice, constructed, established, or operated as housing which is affordable to low-income individuals and families who are transient, migrant, seasonal, or temporary workers.”

It is not clear from this definition alone whether migrant labor camps, residential migrant housing, and some mobile home parks currently regulated by the Department of Health (DOH) come under the purview of the provisions of this bill. The DOH believes that they are. However, s. 510.032 of the bill provides the bill applies solely to affordable residential accommodations. It further states that the bill’s provisions may be used only for permitted dwelling units not used to circumvent the requirements of part II of chapter 83, F. S., or part I of chapter 509. Nor should the provisions of this bill be construed with reference to part II of chapter 83, F. S., or part I of chapter 509, F. S. Perhaps, this caveat is intended to exclude the type of housing programs indicated by the DOH and ensure that ARA regulations do not duplicate current housing programs.

Moreover, the definition of ARAs included several exemptions. The ARA definition expressly excluded:

- Universities;
- Hospitals, nursing homes, sanitarium, assisted living facilities, adult congregate living facility, or other similar place;
- Any place renting four rental units or less, unless units are held out to the public as ARAs;
- Any dwelling place unit licensed under chapter 509, F. S., provide, licensed public lodging facilities are presumed to meet all requirements of rules adopted pursuant to certain provisions of this bill for purposes of obtaining a permit to operate an affordable residential accommodation.

The bill provides many other definitions necessary to understand and implement the provisions of this bill. Among the definitions included are: “advance rent”, “rent”, “dwelling unit”, “proprietor”, “good faith”, “invited resident”, “personal hygiene facilities”, “premises”, and “security deposits.”

The bill defines resident of an ARA as any patron, customer, resident, lodger, boarder, lessee, or occupant who has paid for a license for the use and occupancy of an ARA. This definition appears to be without regard to age, gender, income, race, or religious preference. The bill provides that the ARA resident does not have a landlord/tenant relationship with the proprietor of the ARA, but rather the relationship is that of licensee and licensor. The bill prohibits collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs. It is difficult to predict if some motels or similarly situated facilities might attempt to escape state sales tax obligations by becoming an ARA.

Responsibilities of the Department of Children and Family Services

The bill requires the Department of Children and Family Services (DOCFS) and “its representative county public health units to perform permit and inspect ARAs. The DOCFS does not have representative county public health units. Such units come

under the state's Department of Health's (DOH) jurisdiction. Thus, it appears that the DOH is the most appropriate agency to implement much of the bill's provisions.

The bill provides for a trust fund. The Affordable Residential Accommodations Trust Fund must be used to carry out the ARA program. All permits and fees collected by the DOCFS must be deposited into the Affordable Residential Accommodations Trust Fund. The DOCFS must also deposit funds arising from administrative fines into the trust fund. The bill restricts use of the trust fund monies to entities performing required inspections under contract for the DOCFS.

Under the bill, all ARAs must obtain a permit with the DOCFS. Permit fees cannot exceed \$1000 and the fees must be based on the number of rental units in the ARA establishments. The bill also provides for application fees, late and reinstatement fees for ARAs.

The DOCFS must carry out the general regulatory provisions of this bill, conduct periodic health and safety inspections of the ARAs, issue written citations to proprietors who violate the provisions of this bill, seek prosecution of proprietors illegally operating ARAs, and adopt rules necessary to carry out the provisions of this bill. The bill also requires the DOCFS to investigate whether proprietors are engaging in any misleading advertising or unethical practices. However, these duties seem more appropriate for the Department of Health (DOH). The DOH is already equipped to handle permitting and inspections, the DOCFS is not.

The bill provides that, if during the inspection of an ARA, an inspector identifies elderly or disabled individuals who appear to be victims of neglect, or individuals who may be unable to "self-preserve" in an emergency, the DOCFS must convene meetings with the Department of Elderly Affairs, the local fire marshall, the ARA proprietor and affected residents and clients and other relevant organizations. It appears that this provision of the bill fails to include children as neglect victims. This provision is also an appropriate duty for the DOCFS.

Responsibilities of ARA Proprietors

The bill provides that ARAs are private enterprises and proprietors have the right to refuse accommodation. However, the same are prohibited from discriminating against the use of ARAs based on occupation, race, sex, color, religion, national origin, or income of the intended resident. Neither can ARAs proprietors retaliate against residents who register complaints against them.

As a private entity, the bill provides advertisement restrictions for ARA proprietors. Such proprietors cannot display any sign which may be seen from the highway or street with the rates charged at an ARA renting by the day or week unless the sign also includes the words "Affordable Residential Accommodations." In addition, a sign cannot be displayed which uses the words "motel", "hotel", or other indications that the facility caters to the traveling public or is licensed under chapter 509, F. S., unless there are dwelling units on the premises properly licensed under chapter 509.

If rules are established for the ARAs and their residents, the bill requires the proprietors to adhere to specific posting requirements. Rules must be reasonable.

The bill requires all ARA proprietors must maintain at all times a resident register. The register must be signed by residents who live in the ARAs' rental units. The register must include certain information and be available for the DOCFS' inspection. However, proprietors do not need to make available registers which are more than two years old. In addition, the proprietor must keep a current copy of the provisions of this bill in the ARA's office and must be made available to the public upon request. The proprietor must also make specific disclosures to its residents at the time at or before the time of rental, the name and address of the proprietor or the designated representative authorized to receive notices and demands on behalf of the proprietor.

Proprietors are obligated to maintain the premises of the ARA under the bill. Specifically, the proprietor is required to comply with all applicable building, housing, and health codes. In addition, unless otherwise agreed in writing, proprietors of an ARE unit other than a single-family or duplex must make reasonable provisions during the rental period such as locks and keys, clean and safe environment, properly functioning facilities for heat, running hot and cold water, adequate furniture, and extermination services.

The proprietor of an ARA may remove, a resident in a specific manner and for specific reasons which includes a required oral or written notice. If orally, the proprietor must notify the appropriate resident or visitor that the ARA no longer desires to entertain the resident and request that such resident or visitor immediately vacate the premises. If the notice is in writing, it must state "[y]ou are hereby notified that this accommodation no longer desires to entertain you as (its resident or visitor on the premises), and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

Residents or any visitor who illegally possesses or deals in controlled substances, or is intoxicated, profane, lewd, or brawling on the premises of an ARA may be removed. Disturbing the peace or other conduct which injures the dignity, reputation, or standing of the ARA will also constitute reasons for removal. The resident who fails to pay the agreed upon rental rate at the agreed upon time is subject to removal. According to the bill, removals cannot be based on discriminatory factors such as race, creed, color, or religion. If a person illegally remains on the premises of an ARA, the proprietor may call a law enforcement officer for assistance. In either case, the resident has effectively given up any right to occupancy and the proprietor is free to rent to other residents. However, the proprietor must make all reasonable efforts to care for any personal property which the expelled resident left on the premises and must refund any unused portion of rental moneys paid by the resident.

If a resident conduct is disorderly such that it poses a threat to the life or safety of the resident or others, the proprietor may take such person into custody and detain that person in a reasonable manner and for a reasonable time (see discussion on liability below). The proprietor must call a law enforcement officer immediately after detaining such resident.

Responsibilities of ARA Residents

According to the bill, residents of ARAs must do the following:

- Comply with appropriate building, housing, and safety codes imposed upon them and rules of the department;

- Keep their premises clean and sanitary, keep all plumbing fixtures clean and sanitary;
- Use and operate in a reasonable manner electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other equipment, furniture, and appliances, including elevators;
- Refrain from destroying, defacing, damaging, impairing, or remove any part of the premises or property of the ARA; and
- Conduct themselves in ways that do not disturb neighbors or management.

Local Government Responsibilities

The bill provides that it is the state's policy that counties and municipalities must permit and encourage the development and use of a sufficient number of ARA to meet local needs. This requirement seems vague since it does not express what constitutes "sufficient number."

Further, probably in anticipation of local zoning concerns, the bill states that counties or municipalities may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of ARAs. The discrimination cannot be based on the occupation, race, sex, color, religion, national origin, or income of the intended residents.

The bill provides that counties or municipalities may not issue an occupational permit to any ARAs unless it has a valid permit under the provisions of this bill. Such local governments' attorneys, sheriffs, police officers, and any other appropriate county or municipal official must, upon request, assist the department in the enforcement of the provisions of this bill.

Liabilities

In each instance where the resident is detained, the bill provides that both the proprietor and law enforcement officer are not criminally, or civilly liable for false arrest, false imprisonment, or unlawful detention on the basis of their compliance with the provisions of this bill. While the affected resident may not be able to sue for false arrest, false imprisonment, or unlawful detention on the state level, the question arises as to whether such resident still has federal liberty right laws available to her or him.

Penalties

Penalties, both criminal and administratively, are established through out the bill for violating the bill's provisions:

The bill provides that ARA proprietors who violate provisions pertaining to room rental rates, posting, and advertising are subject to a second degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S. In addition to the criminal penalty, such proprietors may face the suspension or revocation of any of their ARA permits, or fines on their permits imposed by the department. The department may issue civil penalties independently of a criminal conviction for violating these provisions.

Residents who illegally remain on the premises of an ARA commit a misdemeanor of the second degree, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S.

Further, a resident who resists reasonable efforts of a proprietor or a law enforcement officer to detain or arrest that resident in accordance with the provisions of this bill commits a first degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S. However, the same resident may escape prosecution if the resident did not know or have reason to know that the person seeking to make such detention or arrest was the proprietor of the ARA or a law enforcement officer.

Pursuant to the bill, any person who obtains lodging or other amenities at an ARA valued at \$300 or less fraudulently commits a second degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S. If such lodging or other amenities have a value of \$300 or more, such person commits a third degree felony, punishable as provided in s. 775.082, F. S., or s. 775.084, F. S.

Any person who resists an ARA proprietor's or law enforcement officer's efforts to recover stolen property which the proprietor or law enforcement officer has probable cause to believe had been stolen from the ARA, and who is subsequently found guilty of theft of the property in question, commits a first degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S. However, the same resident may escape prosecution if the resident did not know or reason to know that the person seeking to recover the property was the proprietor of the ARA or a law enforcement officer.

Any one breaking into a locked ARA unit commits a third degree felony, punishable as provided in s. 775.082, F. S., s.775.083, F. S., or 775.084, F. S.

Theft of property belonging to an ARA resident or the ARA by a contracted employee of the ARA constitutes a third degree felony, punishable as provided in s. 775.082, F. S. or s. 775.083, F. S.

The bill provides that it is unlawful to use inside an ARA unit any fuel-burning wick-type equipment for space heating unless such equipment is vented. As a result, any person violating this provision commits a second degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S.

Persons operating ARAs without the required permits and who fail to properly post permits from the department commits a first degree misdemeanor, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S. The bill also provides that local law enforcement agencies must provide immediate assistance in prosecuting an illegal operating ARA.

Persons operating ARAs without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal, and without first obtaining the required permit from the department commits a third degree felony, punishable as provided in s. 775.082, F. S., or s. 775.083, F. S., or s. 775.084, F. S. In addition, the department may impose a fine of up to \$1,000.

A second degree misdemeanor is punishable by imprisonment not to exceed 60 days or a \$500 fine. A first degree misdemeanor is punishable by imprisonment not to exceed 1 year or a \$1,000 fine. A third degree felony is punishable by imprisonment not to exceed five years or \$5,000 fine; for habitual offenders, imprisonment not to exceed 15 years.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill requires the Department of Children and Family Services to promulgate rules, primarily, to implement the inspection and permitting components of this bill.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Children and Family Services (DOCFS) will have the added responsibilities to inspect affordable residential accommodations (ARA) for health related matters and enforce this bill's provisions and its rules arising from this bill. The DOCFS is also required to permit ARAs statewide.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No. However, the bill creates new fees for applications and permits related to the development and operation of an ARA.

- c. Does the bill reduce total taxes, both rates and revenues?

Possibly. The bill provides that ARA residents' rent cannot be taxed as to sales tax, tourist development tax, or any other excise tax. It is difficult to predict what fiscal impact this may have on counties, if any. Since ARAs are not currently operating in any Florida county, counties will not miss what they never had. However, if motels and similar facilities decide to operate as ARAs, then the counties may lose certain taxes.

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Proprietors must pay certain application and permit fees for the privilege of operating ARAs. Such proprietors must also make sure their ARAs are structurally sound, sanitary, properly furnished, and safe pursuant to the provisions of this bill.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Provisions of the bill may effectively untie the hands of inner city landlords to maintain crime-free, respectable dwelling units. It also provides individuals with a profit-making venture possibly resulting in a positive impact on the economy of the state.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The Department of Children and Family Services must determine if neglect of elderly persons is present during inspections of ARAs.

- (2) Who makes the decisions?

The Department of Children and Family Services decides if neglect of elderly persons is occurring inside ARAs.

- (3) Are private alternatives permitted?

Yes. The bill does not provide prohibitions against the Department of Children and Family Services to continue to use contracted private entities in its inspection of ARAs.

- (4) Are families required to participate in a program?

No. Families are not required to live in an ARA. It is totally voluntary.

- (5) Are families penalized for not participating in a program?

No, at least not by the government. Proponents think ARAs are more beneficial housing alternatives than currently exist for certain families in Florida. Consequently, such families who do not take advantage of ARAs may be imposing a type of self-penalty.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION RESEARCH:

Section 1 -- Creating:

Section 510.011, creates the "Florida Affordable Residential Accommodations Act."

Section 510.013, defines the terms "affordable residential accommodations establishments", "dwelling unit", "proprietor", "rent", "tenant", "resident", and several other terms necessary to implement the provisions of this bill; exempts university dormitories, hospitals, assisted living facilities, nursing homes, certain rental units, and any dwelling unit licensed under chapter 509, F. S., unless specifically qualifies as an affordable residential accommodations establishment.

Section 510.021, establishes the Affordable Residential Accommodations Trust Fund; provides that the trust fund shall be used to carry out the Affordable Residential Accommodations program; and provides that all permits and fees collected by the Department of Children and Family Services (department) must be deposited into the Affordable Residential Accommodations Trust Fund.

Section 510.032, requires that the provisions of this bill solely applies to affordable residential accommodations; and provides that the provisions of this bill must not be construed with reference to part II of chapter 83, F. S., or part I of chapter 509, F.S.

Section 510.033, requires that the department carry out the regulatory and inspection provisions of this bill; provides that the department responsible for investigating whether proprietors are engaging in any misleading advertising or unethical practices; provides that the department is responsible for quality assurance; requires the department to inspect each permitted accommodation at least biannually; requires the department to meet with appropriate agencies to develop a plan to improve the safety of residents discovered during inspection to be elderly or disabled victims of abuse or neglect or individuals who may be unable to "self-preserve" in an emergency; requires the department to submit a written report to the Governor at the end of each fiscal year; and authorizes the department to adopt rules necessary for the implementation of the provisions of this bill.

Section 510.034, provides that the Legislature declares that it is a for a state policy that each county and municipality must permit and encourage the development and use of a sufficient number of affordable residential accommodations to meet local needs; prohibits counties and municipalities from enacting or administering local land use ordinances to discriminate against the development and use of affordable residential accommodations based on occupation, race, sex, color, religion, national origin, or income of the intended residents; allows local governments to impose their zoning and taxing laws; allows local governments to extend preferential treatment to affordable residential accommodations; and declares that the rent charged to residents of an affordable residential accommodation is not taxable.

Section 510.036, requires the department to issue notices of citation in writing to affordable residential accommodations proprietors who violate the provisions of this bill; and provides that willful refusal to sign and accept a citation issued by the department constitutes a second degree misdemeanor.

Section 510.037, establishes right-to-entry provisions pertaining to the department's right to inspect affordable residential accommodations for compliance with statutes or rules adopted by the department; requires permission from owner to enter premises of the accommodations ; provides that application for a permit to operate an affordable residential accommodations constitutes permission; and allows the department to publish inspection reports.

Section 510.038, provides that affordable residential accommodations are private enterprises and the proprietor has the right to refuse accommodations not based on race, creed, color, sex, physical disability, or national origin; provides that persons discriminated under this section has recourse under chapter 760, F. S., relating to the discrimination in the treatment of persons and minority representation; and provides that the relationship between proprietor of an accommodation and a resident is not a landlord-tenant relationship, but that of licensee and licensor.

Section 510.041, authorizes the department to adopt rules necessary to protect the health and safety of accommodation residents and implement the provisions of this bill; provides that the rules must include provisions relating to the construction of residential accommodations; allows the proprietor to apply for a permanent structural variance from the department's rules by filling a written application and paying a fee not to exceed \$100; requires variances granted by the department to be written; and allows the department to inspect affordable residential accommodations whenever necessary to respond to emergency or insect conditions.

Sections 510.042, provides that the regulation and inspection of affordable residential accommodations is preempted to the state.

Section 510.101, allows proprietors of affordable residential accommodations to establish reasonable management rules and regulations for its residents; requires rules to be posted in a prominent place and other related notice requirements to ensure residents' awareness of the rules; and requires the proprietor to maintain a registry of residents .

Section 510.105, requires obligation of good faith in the performance or enforcement of the rental agreement.

Section 510.111, establishes disclosure requirements for the proprietor.

Section 510.121, establishes provisions for payment of rent.

Section 510.122, establishes requirements for room rental rates and advertising of affordable residential accommodations; and provides a penalty for violators of this section.

Section 510.123, authorizes certain guests to have legal access to affordable residential accommodations; establishes rules that the proprietor of an affordable residential accommodation may impose on certain guests and requires the proprietor to post such rules if imposed; and provides that this section does not create a general right to solicit in affordable residential accommodations.

Section 510.131, requires the proprietor to maintain the premises of the affordable residential accommodations by complying with applicable building, housing, and health codes; requires, unless otherwise agreed on, the proprietor to make reasonable provisions for locks and keys, clean and safe environment, garbage removal, working heat facilities, running hot and cold water, adequate furnishings for each room, the extermination of rodents and insect pests, smoke detectors, and other similar provisions for residents of the affordable residential accommodations.

Section 510.132, provides provisions relating to the liability for property of residents.

Section 510.133, requires residents of affordable residential accommodations to maintain their dwelling unit by generally keeping it clean and not deface or otherwise destroy the property; and requires residents to conduct themselves in a manner that is not unreasonably disturbing to neighbors.

Section 510.134, establishes provisions and requirements governing the proprietor's access to dwelling units

Section 510.136, provides options for residents in the event of casualty damage, not caused by the residents, to their dwelling units.

Section 510.138, provides that either the proprietor or resident may sue each other for failure to comply with the rental agreement; and provides that legal fees must not be assessed against the losing party for any action taken under this bill.

Section 510.141, provides a number of reasons that the proprietor of an affordable residential accommodation can refuse admission or evict potential or current residents, including:

- Possessing or dealing in illegal controlled substances;
- Is Intoxicated, profane, lewd, or brawling;
- Disturbing the peace;
- Failing to pay rent on time; or
- Fails to check-out on time;

requires the proprietor to notify, orally or in writing, the resident that the accommodation no longer wants the resident on the premises and must request that the resident leave the premises; establishes specific requirements for the notice requesting that the

resident must vacate the premises; and establishes procedures and penalties when residents fail to vacate the premises.

Section 510.142, authorizes the proprietor to refuse amenities or service to residents who display intoxication, profanity, lewdness, or brawling or generally illegal or disorderly conduct.

Section 510.143, authorizes the proprietor to detain certain residents and requires the same to call a law enforcement officer immediately following detainment; provides for possible arrest of certain residents; provides that the detaining proprietor and law enforcement officer is not civilly or criminally liable for false arrest, false imprisonment, or unlawful detention on the basis of any action taken in compliance with this section; and provides that it is a first degree misdemeanor for a person to resist reasonable efforts of a proprietor or law enforcement, unless that person did not know or did not have reason to know that the person seeking to make such detention or arrest was the proprietor of the accommodation or law enforcement.

Section 510.151, provides that any person obtaining lodging or other amenities worth less than \$300 at any affordable residential accommodation with the intent to defraud the proprietor commits a second degree misdemeanor, it is a third degree felony if the lodging or other amenities are valued at more than \$300; and exempts persons from the provisions of this section if there is an agreement in writing for delay in payments to the proprietor.

Section 510.161, establishes rules of evidence relating to the prosecution of defrauding activities against the proprietor of the accommodation.

Section 510.162, authorizes law enforcement officers or proprietors of an affordable residential accommodation to take a person into custody if there is probable cause to believe that the person committed theft of personal property of the accommodation; authorizes law enforcement officers to make an arrest on or off the premises without a warrant; and provides certain penalties for persons resisting the reasonable efforts by the law enforcement officer or the proprietor to recover such property.

Section 510.191, establishes procedures for handling unclaimed property left by certain residents.

Section 510.201, requires notice of telephone surcharges on telephone calls to be posted in a conspicuous if imposed by the proprietor of an affordable residential accommodation

Section 510.211, establishes safety requirements and procedures for any affordable residential accommodation.

Section 510.212, provides regulations for three or more storied affordable residential accommodations; provides that such accommodations must file a certificate stating that balconies, platforms, stairways, and railways have been inspected by the appropriate person; requires that the certificate be filed with the department every 3 years; and provides for administrative sanctions against the proprietor if the certificate is not properly or timely filed.

Section 510.215, provides fire safety regulations for affordable residential accommodations three or more stories high; requires automatic sprinkler systems in affordable residential accommodations three or more stories high; requires that the sprinklers be installed pursuant with the provisions of the National Fire Protection Association NAPA No. 13, "Standards for the Installation of Sprinkler Systems"; allows special exceptions to affordable residential accommodations under this section if they are listed in the National Register of Historic Places or as determined by the State Historic Preservation.

Section 510.221, provides sanitary regulations for affordable residential accommodations.

Section 510.241, requires operators of affordable residential accommodations to first be permitted by the department; provides for annual renewal of permits; provides procedures for applying for a permit; requires that the permit be displayed in a conspicuous place in the office or lobby; provides for a penalty against affordable residential accommodation operators who fail to provide adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal; provides for fines and criminal penalties arising from non-compliance of this section; subjects land used in connection with a felony violation of this section to seizure and forfeit pursuant to the Contraband Forfeiture Act; and provides for the specific distributions of proceeds arising from any forfeiture pursuant to this section.

Section 510.245, prohibits any municipality or county from issuing an occupational permit to an unpermitted affordable residential accommodation .

Section 510.247, authorizes the department to issue a permit if satisfied with the inspection of the affordable residential accommodation and the accommodation has paid its application fees; requires applications to be filed at least 30 days prior to operation; and provides that an annual satisfactory sanitation inspection of the living units by the Department of Housing and Urban Development shall substitute for the pre-permitting inspection required by the department facilities owned or operated by a public housing authority, or a facility already licensed as a public lodging establishment by the Department of Business and Profession Regulation.

Section 510.251, requires the department to adopt rules setting permit fees to be paid by each affordable residential accommodation; provides that fees are based on the number of rental units in the affordable residential accommodation not to exceed \$1,000; provides that applications for a change of ownership cannot exceed \$50; provides for late and reinstatement fees

Section 510.261, provides for the suspension or revocation of permits from any affordable residential accommodation in violation of the provisions of this bill or the rules of the department; provides closing procedures of affordable residential accommodations whose permits have been suspended or revoked; establishes maximum fines for each offense; requires the department to deposit all funds arising from administrative fines into the Affordable Residential Accommodations Trust Fund; restricts use of trust fund monies to entities performing required inspections under contract for the department; and provides other ways the department can fine, suspend, or revoke the permit of an affordable residential accommodations.

Section 510.262, establishes prohibited acts by a proprietor of an affordable residential accommodation.

Section 510.265, provides procedures for complaints from aggrieved parties arising from affordable residential accommodation violations.

Section 510.281, establishes the duty of the department pursuant to its inspection findings to seek prosecution of proprietors operating an affordable residential accommodation contrary to the provisions of this bill.

Section 510.282, authorizes the department to issue citations containing orders to correct, to pay a fine, or both for violations of the provisions of this bill; and establishes the procedure for issuing citations.

Section 510.285, requires the municipality and county law enforcement agencies, upon request, to assist the department in enforcing the provisions of this bill.

Section 510.401, authorizes the proprietor of an affordable residential accommodation to lockout certain residents, usually those with large outstanding accounts; establishes procedures for such act; and relieves proprietors from criminal or civil liability in action arising from a lockout.

Section 501.402, establishes the rights of a proprietor of an affordable residential accommodation to recover the premises when a resident of the accommodation vacates the premises without notice.

Section 510.403, authorizes the proprietor of an affordable residential accommodation to seek prosecution against the resident who has failed to make payments or has vacated the premises without notice in order to recover losses.

Section 510.404, establishes which county the proprietor may bring his or her suit against to recover losses for a violation of section 501.403.

Section 510.405, provides the requirements for filing a legal complaint arising out of residents who failed to pay their account or those who vacate the premises without notice.

Section 510.406, allows the proprietor of an affordable residential accommodation to seek a prejudgment writ of distress to recover property of resident defendant

Section 510.407, provides for the legal procedure to execute a writ of distress for certain property.

Section 510.408, establishes provisions for an officer of the court to retain certain property until final judgment is rendered arising from residents vacating the premises of an affordable residential accommodation.

Section 510.409, provides that property held until certain residents of an affordable residential accommodation have satisfied their obligations must be inventoried by the court officer holding such property.

Section 510.411, exempts certain property of a resident of an affordable residential accommodation from a writ of distress and prejudgment writ of distress.

Section 510.412, allows third party intervention of legal claims on property arising from the provisions of this bill.

Section 510.413, relates to judgment for the plaintiff when personal property not delivered to defendant.

Section 510.414, relates to judgment for the plaintiff when personal property is retained by or delivered to the defendant.

Section 510.415, relates to judgment for the defendant when personal property is retained by or redelivered to the defendant.

Section 510.416, relates to judgment for the defendant where personal property is *not* retained by or redelivered to the defendant.

Section 501.417, relates to the sale of personal property held until certain residents of an affordable residential accommodation have satisfied their obligations, following a judgment for the plaintiff

Section 2 -- Provides that this act shall take effect October 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

(See Fiscal Comments)

2. Recurring Effects:

(See Fiscal Comments)

3. Long Run Effects Other Than Normal Growth:

(See Fiscal Comments)

4. Total Revenues and Expenditures:

(See Fiscal Comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

(See Fiscal Comments)

2. Recurring Effects:

(See Fiscal Comments)

3. Long Run Effects Other Than Normal Growth:

(See Fiscal Comments)

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The private sector is responsible for paying all application and permit fees associated with the provisions of this bill. the bill provides that permit fees must not exceed \$1,000.

2. Direct Private Sector Benefits:

Provisions of the bill may effectively untie the hands of inner city landlords to maintain crime-free, respectable dwelling units. It also provides individuals with a profit-making venture possibly resulting in a positive impact on the economy of the state.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate at this time. More information is needed regarding the impact that this bill may have on motels, hotels, and other similarly situated facilities. A response to this section may also depend on a qualified prediction of how many ARAs may receive permits to operate if this bill passes.

D. **FISCAL COMMENTS:**

A fiscal impact statement is not available for costs associated with the Department of Children and Family Services since the bill makes an inconsistent reference to this agency. The sponsor is aware of the glitch and is working with staff to correct. A fiscal impact statement will be provided once the correct state oversight agency is officially identified.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require cities or counties to spend money or take action that requires expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with cities and counties.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The following amendments are incorporated in the “strike everything” amendment and resolves some of the bills technical deficiencies:

(1) Clarifying definition of “affordable residential accommodations”:

Page 4, line 26, remove said line, and insert:

or temporary workers and whose proprietor operates such facilities as a private enterprise pursuant to s. 510.038.

(2) To correct agency reference:

Page 5, lines 21 through 23, remove said lines and insert:

(5) “Department” means the Department of Health and its representative county health departments.

(3) To conform language:

Page 5, lines 29 and 30, remove said lines, and insert:

(7) “Director” means the Secretary of the Department of Health.

(4) To prevent duplication with existing laws:

Page 5, between lines 11 and 12, insert:

5. Any migrant labor camp or residential migrant housing permitted under chapter 381.

6. Any recreational vehicle park, or recreational camp permitted under chapter 514.

(5) To clarify:

Page 9, line 28, after "identifies", insert:

children.

(6) To clarify:

Page 9, line 29, remove said line, and insert:

appear to be victims of neglect, as defined in chapters 39 and 415, or,

(7) To clarify:

Page 10, line 1, after "shall" , insert:

report the neglect to the Department of Children and Family Services central abuse hotline and

(8) To ensure that department personnel are granted access to dwelling units so they can be inspected:

Page 26, between lines 16 and 17, insert:

(f) To grant access to department personnel for the purpose of enforcing the provisions of this chapter.

(9) Technical correction:

Page 40, line 11, remove said line and insert:

county health department

Page 47, lines 5 through 9, remove said lines, and insert:

danger to the public health and safety by the department for failure to meet sanitation standards or the premises have been determined by the department to be unsafe or unfit for human occupancy.

STORAGE NAME: h3567.ca

DATE: April 1, 1998

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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