

STORAGE NAME: h0759.ca

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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 759

RELATING TO: Affordable Residential Accommodation

SPONSOR(S): Representatives Trovillion, Reddick and others

COMPANION BILL(S): HB 863 (c)

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

- (1) COMMUNITY AFFAIRS (PRC)
- (2) GOVERNMENTAL OPERATIONS (PRC)
- (3) GOVERNMENTAL RULES & REGULATIONS (PRC)
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS (FRC)
- (5)

I. SUMMARY:

This bill represents a new approach in addressing concerns of inner-city low-income housing. It establishes affordable residential accommodations (ARAs) which are private enterprises providing affordable housing to low-income individuals and families who are transient, migrant, seasonal, or temporary workers. Certain other facilities are excluded as ARAs, including dormitories, hospitals, and permitted migrant labor camps .

Each ARA must be permitted and inspected by the Department of Health and its representative county public health units. The bill provides for application and permit fees.

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 admission or immediately eject (or "lock-out") 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.

The bill establishes the Affordable Residential Accommodations Trust Fund.

II. SUBSTANTIVE ANALYSIS:

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, Florida needs a separate statute which will encourage private industry to provide housing for low-income people. The Florida Legislature has stated in various statutes its awareness of the shortage of housing for low-income people. In subsection 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. Formerly, the Community Development Corporation Support and Assistance program pursuant to chapter 290, F.S., enhanced the production of more affordable housing. However, the 1998 Legislature repealed the program. 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 accommodation establishments (ARAs) is a significant step to resolving low-income issues. Part II of chapter 83, F.S., is the Florida Residential Landlord and Tenant Act (act) which regulates residential tenancies. Specifically, the act applies to rental dwellings, but not nontransient occupancy in a hotel, condominium, motel or transient occupancy in a mobile home. This act establishes a procedure for terminating rental agreements. Under the act, the landlord may terminate the rental agreement for two instances of noncompliance. One instance is where the tenant is not given an opportunity to remedy the noncompliance and the other is where the tenant is given an opportunity to cure the noncompliance. In either case, the landlord cannot immediately lock-out the tenant. The landlord must give such a tenant a 7-day notice.

Proponents of ARAs state 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."

Such proponents also claim that the provisions of the Landlord/Tenant Act of chapter 83, F.S., do not support an adequate method of removing tenants who consistently deal in controlled substances, intoxication, profanity, lewdness, brawling, or otherwise disturbing the peace.

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, F.S., 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: (1) no credit or bad credit; (2) little or no assets; (3) no permanent job; (4) limited education; (5) no references or recommendations; (6) few skills; and (7) no basic training in personal, 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 7 days a week, rain or shine, in order to have food and shelter on a regular basis. Low-income tenants' rent is usually 50 percent of their income, and they sometimes face homelessness 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 a 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 establishment. 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.

Currently, section 509.141, F.S., allows removal of a guest for failure to make payment of rent at the agreed upon rate by the agreed upon check-out time. This provision applies only to transient and does not apply to a rental arrangement which is not for a transient occupancy and not temporary in nature. Further, the section states that the provision may not be used to circumvent the procedural requirements of the Florida Residential Landlord Tenant Act. This is according to the Office of the Attorney General based on a response to a letter from the City of Orlando regarding inquiries by public lodging operators to the municipal police department to assist in the eviction (or ejection) of undesirable guests pursuant to s. 509.141, F.S. Ejection of undesirable guests is immediate under s. 509.141, F.S. In its informal comments, the Office of the Attorney General discusses what constitutes transient:

A [t]ransient is 'a guest in transient occupancy.' The statute defines a '[t]ransient occupancy as an 'occupancy when it is the intention of the parties that the occupancy will be temporary.' There are rebuttable presumptions, however, that when a dwelling unit **is** the sole residence of a guest, the occupancy **is not** transient, and when the unit **is not** the sole residence of a guest, the occupancy **is** transient.

[S]ome operators of lodging establishments renting units under the conditions cited above have guests execute a document which states that the dwelling unit is not their sole residence. It appears to be the belief that such a practice ensures that the rental will be treated as a transient occupancy and, therefore, subject to the [ejection] provisions in chapter 509, F.S. A written declaration that the dwelling is not the sole residence of a guest, however, is not dispositive and would only result in a presumption of transient occupancy that could be rebutted by credible evidence showing that the occupancy is temporary.

It has been argued that the licensing of a lodging establishment under 509, F.S., allows use of the ejection proceedings. . . . [H]owever, the ejection proceedings in chapter 509, F.S., may not be used to circumvent the procedural requirements of Florida's Residential Landlord and Tenant Act. Thus, the mere licensing of an establishment as a transient establishment would not allow the use of chapter 509, F.S., ejection procedure when the dwelling units not being rented as a transient unit.

As such, part II, chapter 83, F.S., of the Landlord/Tenant Act provides protection to rental of residential dwelling units that are not transient. A landlord wishing to evict a tenant, must follow the procedures established in s. 83.59, F.S.

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, residential migrant housing, nursing homes, schools, health care facilities, and institutions 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 the common facilities for these parks. Migrant, seasonal, transient, and temporary workers live in some of these parks.

The DOH 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** laws 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 and whose proprietor operates such facilities as a private enterprise pursuant to [s.] 510.38." However, "low-income," "transient," "migrant," "seasonal," or "temporary" are not defined in the bill nor does the bill provide cross-references to any existing statutory definitions of these terms. Also, it is not clear whether or not the ARA establishments are intended to provide solely transient occupancy. Such a determination might be important in determining what eviction protections are due to the tenant who violates any or all the conditions of the tenancy.

Migrant labor camps, residential migrants, permitted under chapter 381, F.S., and recreational vehicle parks and recreational camps permitted under chapter 514, F.S., are excluded from the definition of ARA. However, it appears that mobile homes or mobile home parks can qualify as ARAs. The ARA definition also excludes the following:

- Universities;
- Hospitals, nursing homes, sanitariums, assisted living facilities, adult congregate living facilities, or other similar places;
- 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., provided 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 ARA.

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 "relax security deposits."

The provisions of this bill apply solely to affordable residential accommodations. It 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. The bill provides that its provisions must not be construed with reference to part II of chapter 83, F.S., or part I of chapter 509, F.S.

The bill prohibits collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs. **However, no one pays taxes on rentals for a dwelling in Florida.** Even under chapter 509, F.S., nontransients do not pay taxes. However, such groups can be evicted only under the Landlord/Tenant Act. It is difficult to predict if some motels or similarly situated facilities might attempt to escape state sales tax obligations by becoming an ARA. Proponents of this bill believe that most hotels and motels will not find providing housing for poor people an attractive venture. However, the DOH projects that approximately 2500 facilities may register as ARAs in the first year of the program if this bill passes.

Relationship between Resident and Proprietor

The bill defines an ARA resident 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**. A resident will not achieve the status of residential tenant with property rights in the premises of the ARA regardless of the length of occupancy. Based on this provision, the legal question arises as to whether or not residents can waive their landlord/tenant rights by agreeing to be considered a transient regardless of the length of time they occupy an ARA establishment. Proponents of this bill admit that they envision residents occupying some ARAs for years because of how well they will operate.

Responsibilities of the Department of Health

The bill requires the DOH and "its representative county public health units" to permit and inspect ARAs. 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 DOH must be deposited into the Affordable Residential Accommodations Trust Fund. The DOH 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 DOH.

Under the bill, all ARAs must obtain a permit with the DOH. 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 DOH 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 DOH to investigate whether proprietors are engaging in any misleading advertising or unethical practices.

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 DOH must convene meetings with the Department of Elderly Affairs, the local fire marshal, the ARA proprietor and affected residents and clients, and other relevant organizations. Further, the bill requires the DOH to report any instances of child neglect or other abuses to the central abuse hotline of the Department of Children and Family Services (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 to 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 inspection of the DOCFS. However, proprietors do not need to make available registers which are more than 2 years old. In addition, the proprietor must keep a current copy of the provisions of this bill in the ARAs office that must be made available to the public upon

request. The proprietor must also make specific disclosures to its residents 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 must be made available.

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, a 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 must be accompanied by a required oral or written notice. If notice is oral, 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. **A prominent Member of the Legislature with extensive local government background, as well as the DOH, expressed concern with requiring oral agreements.** The DOH opposes oral agreements because of the almost impossible task of tracking such agreements.

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 possess or deal in controlled substances, or are 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. 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's 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 removing any part of the premises or property of the ARA; and
- Conduct themselves in ways that do not disturb neighbors or management.

Section 510.121 of the bill requires the resident, unless otherwise agreed to, to pay the rent without demand or notice on the day **and hour** agreed upon in the rental agreement. The resident who fails to pay the agreed upon rental rate at the agreed upon time is subject to removal. Here, the Florida Legal Services, Inc. (FLS) points out that the Landlord/Tenant Act also requires rent to be paid without demand or notice, but differs from the present bill in that the act does not add the day and

hour requirement. FLS maintains this distinction is important since under the bill a proprietor may lock out a family or turn off their utilities immediately if rent is not paid on the hour.

The bill provides that if rent is not paid in advance, the daily rate may be charged which may be up to twice the proportionate rent or double the advanced rent. So, for example, a unit that is \$500 for the month paid in advance, may be \$1000 for the month if paid on a daily basis.

Also, section 510.121 of the bill indicates that it pertains to duration of tenancy; however, the bill fails to provide information regarding duration of tenancy. According to FLS, such information is important as it relates to termination of the tenancy for other than bad acts of the resident.

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 ARAs 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 DOH 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 throughout 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 DOH. The DOH 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 the efforts of an ARA proprietor or law enforcement officer 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 had no 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 DOH commit 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 illegally 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 DOH commit 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 DOH 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 5 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 DOH 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 DOH will have the added responsibilities of inspecting ARAs for health-related matters and enforcing this bill's provisions and its rules arising from this bill. The DOH is also required to permit ARAs statewide.

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

N/A

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?

N/A

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 rent of ARA residents 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. However, if motels and similar facilities decide to operate as ARAs, then counties might 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?

N/A

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 of ARAs 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?

N/A

5. Family Empowerment:

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

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

The DOH must determine if neglect of children and elderly persons is present during inspections of ARAs and report such neglect as provided in the bill.

- (2) Who makes the decisions?

The DOH decides if neglect of children and elderly persons is occurring inside ARAs.

- (3) Are private alternatives permitted?

Yes. The bill allows the DOH to contract with private entities in its inspections of ARAs.

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

N/A

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

No. The ARA program is optional for families. However, proponents think ARAs are more beneficial housing alternatives than currently exist for certain families in Florida. Consequently, such certain 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?

N/A

- 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:

The bill creates chapter 510.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates chapter 510, as follows:

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; excludes from the definition of affordable residential accommodations establishments, university dormitories, hospitals, assisted living facilities, nursing homes, migrant labor camps, residential migrant housing, recreational vehicle parks or recreational camp, certain rental units, and any dwelling unit licensed under chapter 509, F.S., unless specifically qualified 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 DOH must be deposited into the Affordable Residential Accommodations Trust Fund.

Section 510.032. Requires that the provisions of this bill solely apply to ARAs; 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 DOH carry out the regulatory and inspection provisions of this bill; provides that the DOH is responsible for investigating whether proprietors are engaging in any misleading advertising or unethical practices; provides that the DOH is responsible for quality assurance; requires the DOH to inspect each permitted accommodation at least biannually; requires the DOH to meet with appropriate agencies to develop a plan to improve the safety of residents discovered during inspection to be children, elderly, or disabled victims of abuse or neglect or individuals who may be unable to "self-preserve" in an emergency; requires the DOH to submit a written report to the Governor at the end of each fiscal year; and authorizes the DOH to adopt rules necessary for the implementation of the provisions of this bill.

Section 510.034. Provides that the Legislature declares it is a state policy that each county and municipality must permit and encourage the development and use of a sufficient number of ARAs to meet local needs; prohibits counties and municipalities from enacting or administering local land use ordinances to discriminate against the development and use of ARAs based on occupation, race, sex, color, religion, national origin, or income of the intended residents; allows local governments to impose on ARAs certain taxes and assessments in parity with other dwellings to which the same type in the same zone are subject; allows local governments to extend preferential treatment to ARAs; and declares the rent charged to residents of an ARA is not taxable.

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

Section 510.037. Establishes right-to-entry provisions pertaining to the DOH right to inspect ARAs for compliance with statutes or rules adopted by the DOH; requires permission from owner to enter premises of the accommodations; provides that application for a permit to operate an ARA constitutes permission; and allows the DOH to publish inspection reports.

Section 510.038. Provides that ARAs 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 against under this section have 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 DOH to adopt rules necessary to protect the health and safety of accommodation residents and to 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 DOH's rules by filing a written application and paying a fee not to exceed \$100; requires variances granted by the DOH to be written; and allows the DOH to inspect ARAs whenever necessary to respond to emergency or insect conditions.

Sections 510.042. Provides that the regulation and inspection of ARAs is preempted to the state.

Section 510.101. Allows proprietors of ARAs 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; and intimates provisions on duration of tenancies (i.e. the bill fails to include actual provisions covering duration of tenancies as suggested from the catchline).

Section 510.122. Establishes requirements for room rental rates and advertising of ARAs; and provides a penalty for violators of this section.

Section 510.123. Authorizes certain guests to have legal access to ARAs; establishes rules that the proprietor of an ARA 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 ARAs.

Section 510.131. Requires the proprietor to maintain the premises of the ARA 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 ARA .

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

Section 510.133. Requires residents of an ARA 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 rental 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 ARA 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
- Failing 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 are 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 ARA 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 ARA 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 of 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 place if imposed by the proprietor of an ARA.

Section 510.211. Establishes safety requirements and procedures for any ARA.

Section 510.212. Provides regulations for three-or-more storied ARAs; 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 DOH 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 ARAs three or more stories high; requires automatic sprinkler systems in ARAs 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 ARAs 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 ARAs.

Section 510.241. Requires operators of ARAs to first be permitted by the DOH; 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 ARA 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 forfeiture 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 ARA.

Section 510.247. Authorizes the DOH to issue a permit if satisfied with the inspection of the ARA 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 U.S. Department of Housing and Urban Development shall substitute for the pre-permitting inspection required by the DOH 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 DOH to adopt rules setting permit fees to be paid by each ARA; provides that fees are based on the number of rental units in the ARA 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 ARA in violation of the provisions of this bill or the rules of the DOH; provides closing procedures of ARAs whose permits have been suspended or revoked; establishes maximum fines for each offense; requires the DOH 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 DOH; and provides other ways the DOH can fine, suspend, or revoke the permit of an ARA.

Section 510.262. Establishes prohibited acts by a proprietor of an ARA.

Section 510.265. Provides procedures for complaints from aggrieved parties arising from ARA violations.

Section 510.281. Establishes the duty of the DOH pursuant to its inspection findings to seek prosecution of proprietors operating an ARA contrary to the provisions of this bill.

Section 510.282. Authorizes the DOH 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 DOH in enforcing the provisions of this bill.

Section 510.401. Authorizes the proprietor of an ARA 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 ARA to recover the premises when a resident of the accommodation vacates the premises without notice.

Section 510.403. Authorizes the proprietor of an ARA 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 from residents who failed to pay their account or those who vacate the premises without notice.

Section 510.406. Allows the proprietor of an ARA 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 ARA.

Section 510.409. Provides that property held until certain residents of an ARA 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 ARA 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 is 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 ARA have satisfied their obligations, following a judgment for the plaintiff

Section 2 -- Provides that this act is effective October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Revenue:</u>	1999-00	2000-01
Affordable Residential Accommodations Trust Fund	\$ -0-	\$ -0-

Expenditures:

Department of Health

Rule promulgation and form development	2,211.00	-0-
Development of training curriculum	983.00	-0-

2. Recurring Effects:

<u>Revenue:</u>		
Affordable Residential Accommodations Trust Fund		
Permit fees from 2,500 ARA establishments @ \$110 each	275,000.00	286,000.00

Expenditures:

Department of Health

Notification to ARA establishments	3,000.00	3,090.00
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Rule training salaries	2,064.00	2,126.00
Travel costs	2,261.00	2,329.00
Inspections	182,000.00	187,400.00
Re-inspections	9,100.00	9,373.00
Complaints	3,185.00	3,281.00
Travel costs related to inspections	24,666.00	25,427.00
Plan Review	22,750.00	23,432.00

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenue:

Affordable Residential Accommodations Trust Fund	275,000.00	286,000.00
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Expenditures:

Department of Health

ARA establishment program	252,240.00	256,518.00
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. There are no projections available as to the number of hotels or motels that may want to qualify as ARAs. Hotels or motels qualifying as ARAs are prohibited from charging sales tax.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The DOH reports that ARA establishments that have to pay application and permit fees will most likely pass on some of these costs to tenants in the form of higher rental fees.

2. Direct Private Sector Benefits:

ARA establishment proprietors may reduce property loss and devaluation of their rental real estate through the provisions of this bill.

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

The DOH suggests that this bill will make it harder for some establishments to compete in the marketplace because of the additional permit fees and the costs of complying with additional fire safety requirements. These additional costs may affect their profits, thus making it more difficult to compete with establishments that do not have these costs.

D. FISCAL COMMENTS:

The DOH projects that there will be 2,500 ARA establishments in the first year of the program if passed. The DOH estimated the number of establishments affected by this bill in the following manner: $.04(61,758 \text{ housing units}) = 2,470$.

The .04 factor was used because approximately 4 percent of the migrant housing establishments DOH currently permits are public housing. Public housing and DOH establishments were used as the principal barometers of the types of housing this bill might affect because the former is specifically low-income or affordable housing, while the latter deals with migrant and seasonal farm worker housing. The 61,758 housing units are the number of Section 8 housing units in Florida.

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:

A representative of the Orange County Sheriff's Office, speaking on behalf of the Florida Sheriff's Association, states that the sheriffs' community **supports** the bill. The sheriffs believe that the bill improves their response to the needs of landlords with criminally disruptive tenants, as well as non-tenants.

Although, the County Sheriff's Office generally serves eviction court orders, a representative from the Florida Police Chief Association suggested that streamlining the process to obtain a court order for an eviction may be a possible solution to the issues addressed in this bill. In addition, the representative observed that the ARA program must offer some type of alternative due process or appeal mechanism for evicted tenants even if it is not the existing Landlord-Tenant Act.

It appears the alternative is for either the proprietor or resident to sue each other for failure to comply with the rental agreement as provided in the bill. However, that may be an expensive alternative for the typical resident of an ARA. Moreover, the bill provides procedures for complaints from aggrieved parties arising from ARA violations, which includes reporting the complaint to the DOH.

Representatives from the DOH believe that any agency designated to enforce the provisions of this bill "**can make it [the ARA program] work,**" provided certain provisions in the bill are clarified. One example of such a provision is the definition of ARA. The DOH states that it is not clear who is or can be an ARA, partly because elements of the definition are not defined. As they pertain to inspections, the DOH strongly **supports** the enforcement and penalty provisions of the bill.

The Florida Commission on Human Relations indicates it **supports** HB 759.

The Florida Legal Services, Inc. supports the creation of affordable housing that is safe for all Florida families. However, the FLS does not believe this bill is the vehicle for helping the state reach this goal. The FLS philosophically **opposes** any legislation that abrogates tenants' rights to the extent that this bill does. It states that it will never agree that any person in this state ought to be locked out of his or her

home. Nevertheless, the FLS asserts that it “remains committed to work with all interested parties on this issue.”

The Affordable Housing Study Commission is a statewide body consisting of 21 citizens representing various interests. Together these citizens evaluate affordable housing programs for people with very low to moderate incomes and recommend changes to the Legislature and Governor. The Affordable Housing Study Commission concurs in the bill’s premise that there is a shortage of affordable housing in the state; however, the Affordable Housing Study Commission believes that current law is adequate for the kinds of problems the bill claims to solve and **opposes** the bill.

The Affordable Housing Study Commission’s additional reasons for opposing the bill include:

- Without code enforcement, from which ARAs are exempt, unscrupulous landlords will take advantage of this leeway and allow their buildings to become run-down.
- Applying the ARA to government sponsored low-income housing will prove unsuccessful because the landlord-tenant relationship is considered to be very important in housing supported with either federal or state funding.
- The bill will effectively exempt certain landlords from compliance with the Landlord Tenant Act. As such, the ARA circumvents due process rights for poor people, a right that must be afforded to the rich or poor. The ARA allows tenants to be evicted immediately, keeping them from having the time to remove their possessions. The Landlord Tenant Act provides for a process that allows any landlord to get rid of troublesome tenants. Even though the process can be time consuming, it ensures that tenants have some time to find a new home.
- The ARA does not require landlords to rent housing at affordable prices. In fact, the bill provides a stiff penalty (eviction) if a tenant does not pay the rent on the exact day and hour that it is due.

The question arose as to whether the DOH was the most appropriate agency to administer and enforce the ARA establishments program. The Florida Housing Finance Corporation (FHFC) and individual sheriff’s offices were ruled out. Their roles are so different from what is required in the bill. The FHFC’s main mission is to properly distribute money for the construction of affordable housing throughout the state. The FHFC and the sheriff’s office need special training to perform responsibilities already available within the DOH and Department of Business and Professional Regulation.

Currently, the DOH serves select populations and are responsible for the health and safety inspections of:

- Migrant farm-worker housing;
- Institutions;
- Nursing homes;
- Schools; and
- Health care facilities.

Currently, the DBPR enforces the Florida Residential Landlord and Tenant Act. The DBPR inspects the following:

- Apartment buildings;
- Rooming houses;
- Hotels;
- Motels; and
- Restaurants.

The DBPR inspectors are also trained in inspecting for health and safety of the above entities. The DBPR has not provided a position as to whether or not it is the appropriate agency to administer and enforce the provisions of this bill.

STORAGE NAME: h0759.ca

DATE: March 30, 1999

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Trovillion offers the following amendment to HB 759:

On page 5, line 2 , remove said line and insert:

facilities as a private enterprise pursuant to s. 510.038.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Nayola R. Frazier

Joan Highsmith-Smith