STORAGE NAME: h0041a.ca
DATE: January 13, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS

BILL #: HB 41

RELATING TO: Affordable Residential Accommodations

SPONSOR(S): Representative Trovillion and others

TIED BILL(S): HB 53

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

(1) COMMUNITY AFFAIRS (PRC)
(2) REAL PROPERTY & PROBATE (CJC)
(3) CRIME & PUNISHMENT (CRC)
(4) FINANCE & TAXATION (FRC)
(5) HEALTH & HUMAN SERVICES APPROPRIATIONS (FRC)

I. SUMMARY:

This bill creates the "Florida Affordable Residential Accommodations Act" to address concerns that the Florida Residential Landlord and Tenant Act erects barriers to the provision of affordable housing for low-income households. The bill addresses these potential barriers, establishes a new regulatory system for affordable residential accommodations (ARAs), and exempts ARA rentals from the state sales tax.

For individuals and households currently considered non-transient for purposes of the Florida Residential Landlord and Tenant Act, the bill fundamentally alters the landlord/tenant relationship if they choose to reside in an ARA establishment. The bill authorizes the proprietor of an ARA to immediately remove or cause to be removed a resident who engages in a variety of behaviors, who fails to make payment of rent at the agreed-upon rental rate by the agreed-upon **checkout** time, or who, in the opinion of the proprietor, is a person the continued entertainment of whom would be detrimental to such establishment. In addition, the bill allows an ARA proprietor to lock out residents for failure to pay rent on time, have residents arrested for failure to pay rent with the intent to defraud, and take into custody residents and their guests for certain types of behavior under specified conditions. The bill prohibits discrimination based upon race, creed, color, sex, physical disability, or national origin.

The bill also creates a new regulatory process for ARA establishments. Drawing primarily from the Florida Residential Landlord and Tenant Act and the Innkeeper Act, the bill directs the Department of Health (DOH) to regulate and inspect ARA establishments to ensure minimum standards. This bill also prohibits the collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs.

The revenue estimating conference has not yet addressed this bill. By exempting ARA rentals from the state sales and use tax, this bill reduces revenues generated by the state sales tax. In addition, the bill reduces revenues collected by local governments under local option sales taxes, and reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties. DOH estimates license and application fees will provide DOH $372,000 in FY 2000-01 and $383,160 in FY 2001-02, with expected expenditures of $380,674 in FY 2000-01 and $387,713 in FY 2001-02.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [X] N/A []

2. Lower Taxes Yes [X] No [] N/A []

3. Individual Freedom Yes [X] No X[] N/A []

4. Personal Responsibility Yes [X] No [] N/A []

5. Family Empowerment Yes [] No [] N/A [] Unknown [X]

For any principle that received a "no" above, please explain:

Less Government: The bill creates a new regulatory scheme for ARAs.

Individual Freedom: This bill grants ARA proprietors greater freedom to control their facilities than is currently available under the Florida Residential Landlord and Tenant Act. However, it also creates a new regulatory scheme for these facilities.

Family Empowerment: It is unclear how this bill will affect families. If the bill results in increased access to affordable housing for low-income families, as proponents argue it will, the bill will assist low-income families. However, if the bill results in low-income families living in less secure housing, as opponents argue it will, the bill may harm low-income families.

B. PRESENT SITUATION:

State Affordable Housing Policy

The Florida Legislature has established in s. 420.0003(2), F.S., the goal that by the year 2010, “this state shall ensure that decent and affordable housing is available for all its residents.” Affordable housing is statutorily defined to mean that monthly rents or mortgage payments do not exceed 30 percent of a very low-income, low-income, or moderate income household’s income. Section 420.0003, F.S., contains the state housing strategy to achieve this goal.

In addition to a variety of federally and locally funded affordable housing programs, the Florida Legislature has created and funded several programs designed to achieve the state’s affordable housing goal. In 1992, the Legislature dramatically increased its commitment to the provision of affordable housing with passage of the William E. Sadowski Act (chapter 92-317, L.O.F.), which earmarked a portion of the state’s documentary stamp taxes for affordable housing. These funds are appropriated to fund a variety of state and local affordable housing programs. The Florida Housing Finance Corporation administers most of the state’s affordable housing programs and oversees the State Housing Initiatives Partnership Program (SHIP) through which local governments receive documentary stamp tax revenues. Programs administered through the Corporation include:

- State Apartment Incentive Loan (SAIL) Program;
- State Housing Initiatives Partnership (SHIP) Program;
- Low Income Rental Housing Tax Credit (LIHTC) Program;
- HOME Investment Partnerships (federally funded);
- Predevelopment Loan Program (PLP);
- Multifamily Mortgage Revenue Bond Program;
- Florida Home Ownership Assistance Program (HAP);
- Single Family Mortgage Revenue Bond Program.

In the "1998 Final Report of the Affordable Housing Study Commission," the Affordable Housing Study Commission (Commission) concluded three years of work devoted to developing a proposed Comprehensive Affordable Housing Policy for Florida. Despite having housing programs and a delivery system considered the best in the nation by many, the Commission's 1996 evaluation concluded that only a small part of the overall need for affordable housing is being met.

In its 1998 report, the Commission recommended to the Governor and the Legislature that a complete policy be adopted to replace the current State Housing Strategy in s. 420.0003, F.S. In brief, the strategy proposed by the Commission addresses the following areas: community revitalization, affordable housing providers, housing for households at 1 - 30 percent of area median income, housing for special needs households, preservation of existing affordable housing, obstacles to affordable housing, economic integration, and funding principles.

As noted, one issue the Commission focused on was housing needs of households with incomes below 30 percent of area median income. HB 41 appears to be directed towards this population as well. The Commission found this population is not being adequately served by current programs administered by the state, and local housing authorities, which deal with the needs of this population, may not be able to continue their current level of effort. In addition to adoption of a complete housing policy, the Commission recommended several policies to address this issue, including:

- The private sector should provide housing to meet the needs of the lowest income households;

- The state and regional Work and Gain Economic Self Sufficiency (WAGES) Boards should provide Temporary Aid for Needy Families (TANF) funds for rent subsidies in the form of vouchers or certificates to WAGES participants in need of affordable housing from the private sector;

- The Florida Housing Finance Corporation should provide: additional points under its competitive scoring system for state rental programs for units set aside for families in lower income categories; a progressively deeper subsidy in all state rental programs for developers who commit to meet the needs of families in lower income categories; a system of scoring that creates parity for developers in areas of high and low area median income.

During the year 2000, the Commission will prepare a plan to provide guidance on meeting the state's affordable housing goal. The plan will estimate the types of assistance needed by Florida's households, such as home improvement loans, mortgage loans and rental rehabilitation loans. The plan will then estimate the total costs of providing these affordable products to Florida households. Finally, the plan will provide strategies to ensure that these products are available and used.

Potential Concerns with The Florida Residential Landlord and Tenant Act as a Barrier to the Provision of Affordable Housing

According to a paper entitled *The Florida Residential Accommodations Act, Housing the Poor in a Capitalistic Society*, by an Orlando realtor and attorney, a new approach to affordable housing is needed. The authors state:

> In recognizing that a problem exists, the first inclination has been to devise some way to obtain government money, or sponsorship through tax incentives, grants, subsidized loans, subsidized rents, or some other governmental largess. However, the problem of housing low-income people can and should be solvable without governmental aid or interference by way of free enterprise.

The authors argue 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. Currently, the authors maintain, a motel room with furniture, utilities, and shelter costs substantially more than the average low-income tenant can afford on a continual basis, but this is the only place someone can obtain adequate shelter for as little as $25 a day. According to the authors, low-income tenants' rent is usually 50 percent of their income, and they sometimes face homelessness as a result. This borderline situation, they argue, 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.

The authors believe the Florida Residential Landlord and Tenant Act "is not conductive to the management of low income rentals, because immediate summary evictions are not allowed." They argue the eviction process dictated by the act requires notices and time periods which consume weeks, and sometimes months. The author's state that the "[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." Rather, the authors argue:

> 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.

The authors note that 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. This law is discussed beginning on page 7.

The author's argue that "[p]rivate industry can and will alleviate the bulk of the problem when the law will allow private industry to remain solvent while renting to people the majority of whom have problems paying rent and staying clear of legal problems."

The Florida Residential Landlord and Tenant Act

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 to residency or detention in a facility when detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. The act also does not apply to transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

Although a detailed discussion of the act is beyond the scope of this analysis, a summary of the major provisions of the act is provided as background information. Section 83.43, F.S., defines a “rental agreement” to mean any written, or oral agreement if for less duration than 1 year, providing for the use and occupancy of premises. The act requires that most notices to and from the landlord be in writing, even if the rental agreement is oral. Pursuant to s. 83.46, F.S., unless agreed otherwise, rent is payable without demand or notice, and periodic rent is payable at the beginning of each payment period. If the rental agreement does not specify the duration of tenancy, the span of the rental payment (weekly, monthly, etc.) determines the length of the agreement. Pursuant to s. 83.57, F.S., if a lease does not specify a specific duration, the tenancy may be terminated by either party giving written notice as follows:

- If rent is paid weekly, notice 7 days prior to end of any weekly period;
- If rent is paid monthly, notice 15 days prior to end of any monthly period;
- If rent is paid quarterly, notice 30 days prior to end of any quarterly period;
- If you rent is paid yearly, notice 60 days prior to end of any annual period.

Pursuant to s. 83.49, F.S., the landlord has the discretion to collect various deposits as well as some rent in advance. These advance payments generally range from a half-month's to two months rent. A tenant who puts down a deposit, but then decides not to occupy the unit, may not be entitled to a refund. If a deposit is non-refundable, it must be so stated in the rental agreement. A damage deposit is one of the most common requirements of landlords. When a tenant moves out, the landlord must either return the deposit (plus interest, if applicable) within 15 days of termination of the lease, or justify in writing, within the 15-day period, why they are keeping a portion or all of the money. The justification must be sent by certified mail to the tenant’s last known mailing address. If the notice is not sent as required within the 15-day period, the landlord forfeits their right to impose a claim unless the tenant failed to give proper notice prior to vacating. If the tenant objects to the landlord retaining all or a portion of the deposit, the matter may be taken to a court of competent jurisdiction.

Pursuant to s. 83.53, F.S., a landlord can enter a dwelling at reasonable times and with proper notice to inspect, make necessary or agreed upon repairs, decorations, alterations or improvements; supply agreed upon services or show it to a prospective or actual purchaser or tenant, mortgagee, workman or contractor. The landlord may also enter at any time when: the tenant has given consent; there is an emergency; the tenant unreasonably withholds consent; and the tenant is absent for an extended period of time (but only to "protect or preserve" the premises).

Under the act, a tenant is an equal party with a landlord. The landlord's responsibilities depend upon the type of rental unit. If the unit is a single-family house, duplex, triplex or mobile home, s. 83.51(1), F.S., requires the landlord to:

- comply with building, housing and health codes;

- keep the roof, windows, screens, floors, outside walls and all other structural components in good repair; and

- keep the plumbing in reasonable working condition.

The landlord's obligations may be altered or modified in writing with respect to a single-family home or duplex.

If the unit is a triplex or other type unit, in addition to complying with subsection (1), unless otherwise agreed upon in writing, subsection (2) of s. 83.51, F.S., requires the landlord to:

- provide for the extermination of rats, bugs and wood-destroying organisms;
- provide locks and keys;
- maintain the clean and safe condition of common areas;
- provide a functioning heating device;
- provide running water and hot water;
- remove garbage from the premises; and
- provide a smoke detection device.

Section 83.52, F.S., addresses the tenant's obligations to maintain a dwelling unit. The tenant is responsible for:

- Complying with applicable provisions of the building, housing and health codes;
- keeping the dwelling clean and sanitary;
- removing garbage from the dwelling;
- keeping the plumbing repaired;
- not defacing or damaging the premises;
- occupying the dwelling without disturbing the peace; and
- not abusing the electrical, plumbing, heating, air conditioning or other systems furnished by the landlord.

Section 83.56, F.S., addresses the rights of both the tenant and the landlord to terminate a rental agreement under specified conditions. Under s. 83.56(1), F.S., if a landlord fails to comply with the obligations under s. 83.51(1), F.S., or material provisions of the rental agreement within 7 days of receiving appropriate written notice from the tenant identifying the problem and indicating an intent to terminate the agreement, the tenant may terminate the agreement. However, if the failure to comply with s. 83.51(1), F.S., or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has and continues to make reasonable efforts to correct the problem, the rental agreement may be terminated or altered as follows. If the dwelling unit is untenantable and the tenant vacates, the tenant is not liable for rent during the time the dwelling is uninhabitable. If the dwelling is not untenantable and the tenant remains in occupancy, the rent for the period of noncompliance is to be reduced by an amount proportional to the loss of rental value. Pursuant to s. 83.60, F.S., a tenant may withhold the rent if the landlord fails to comply with 83.51(1), F.S. If the problem is not corrected within the seven days and the tenant withholds the rent, the landlord may take the tenant to court to collect it. Under these circumstances, the tenant must pay the rent into the court registry pending the judge's determination of the case.

Section 83.56(2), F.S., addresses situations where the tenant materially fails to comply with his or her obligations under s. 83.52, F.S. If the noncompliance is of a nature that the tenant should not be given an opportunity to correct the noncompliance (such as destruction, damage, misuse of property, unreasonable disturbances) or if the

noncompliance is a subsequent or continuing noncompliance within 12 months of a written warning of a similar violation, the landlord may terminate the rental agreement with written notice giving the tenant 7 days to vacate the premises. If the noncompliance is of a nature that the tenant should be given an opportunity to cure it, the landlord may provide the tenant written notice of the noncompliance specifying that if the problem is not corrected within 7 days of receipt the landlord will terminate the rental agreement.

Section 83.56(3), F.S., addresses termination of rental agreements for failure to pay rent. The landlord must serve the tenant a written notice allowing three days (excluding weekends and legal holidays) for the tenant to pay the rent or move. If the tenant does not pay rent or move, the landlord may terminate the rental agreement.

Section 83.59, F.S., provides the legal procedure a landlord must follow to recover possession of a premises when the tenant does not vacate upon the termination of the rental agreement. In order for the landlord to gain payment of the rent or possession of the dwelling, the landlord must file suit in county court and is entitled to the summary procedure in s. 51.011, F.S. If the court agrees with the landlord, it will notify the tenant in writing. The tenant then has five days (excluding weekends and legal holidays) to respond -- also in writing -- to the court. If the tenant does not respond or a judgment is entered against them, pursuant to s. 83.62, F.S., the clerk of the county court will issue a "writ of possession" to the sheriff who will notify the tenant that they will be evicted in 24 hours.

Pursuant to s. 83.64, F.S., a landlord may not evict a tenant solely in retaliation for the tenant complaining to a governmental agency about a code violation, joining or establishing a tenant's "union" or similar organization, or asserting other tenant rights. In addition, s. 83.67, F.S., prohibits the following acts:

- Shutting off the utilities or interrupting service; even if the service is in the landlord's name;

- changing the locks or using a device that denies the tenant access;

- removing the outside doors, locks, roof, walls or windows (except for purposes of maintenance, repair or replacement); and

- removing the tenant's personal property from the dwelling unit unless action is taken after surrender, abandonment or lawful eviction.

If any of these acts occur, the tenant may sue for actual and consequential damages or three months' rent, whichever is greater, plus court costs and attorney's fees.

The Innkeeper Act, Part I of Chapter 509, F.S.

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.

Section 509.141, F.S., allows immediate removal of a guest who:

- while on the premises, illegally possesses or deals in controlled substances or is intoxicated, profane, lewd, or brawling;

- indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;

- fails to make payment of rent at the agreed-upon rental rate by the agreed-upon checkout time;

- fails to check out by the time agreed upon in writing by the guest; or

- in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment.

The admission to, or the removal from, such establishments may not be based upon race, creed, color, sex, physical disability, or natural origin.

This provision applies only to transient and does not apply to a rental arrangement that is not for a transient occupancy and not temporary in nature. Further, s. 509.035, F.S., states that the provisions of this part may not be used to circumvent the procedural requirements of the Florida Residential Landlord Tenant Act.

The question of whether an occupancy of a lodging establishment is transient, and therefore, subject to the ejection procedures in s. 509.141, F.S., is a question of fact. The Office of the Attorney General has addressed this and related issues in informal comments in 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.
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> [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 not temporary.
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> > 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 procedures when the dwelling unit is 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.

Department of Health

Chapter 381, F.S., requires the Department of Health (DOH) to address, through regulation, the public general health needs. Pertinent to this bill, DOH regulates migrant labor camps and residential migrant housing under chapter 381, F.S. DOH has sanitary and general safety standards for these facilities, which house migrant and seasonal farm workers. DOH also regulates mobile home parks under authority of chapter 513, F.S., through the enforcement of sanitary standards. Migrant, seasonal, transient, and temporary workers live in some of these parks.

U.S. Department of Housing and Urban Development

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.

Taxation

Section 212.031, F.S., relating to lease of or license in real property, declares that every person who engages in the business of renting, leasing, letting, or granting license for the use of any real property is exercising a taxable privilege unless otherwise exempted. Additionally, s. 212.055, F.S., authorizes local governments to levy one or more of six types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each.

Pursuant to s. 212.031, F.S., property used exclusively as dwelling units is exempted. Section 212.03, F.S., relating to transient rentals tax, declares that any person engaging in the business of renting, leasing, letting, or granting license to use any living quarters or sleeping accommodations in any hotel, apartment house, rooming house, or tourist or trailer camp is exercising a taxable privilege, and imposes a 6 percent tax on the rental. The section provides that this tax may not be applied to any person who has entered into a bona fide written lease for longer than 6 months in duration for continuous residence at any one hotel, apartment house, rooming house, tourist or trailer camp, or condominium, or to any person who has resided continuously longer than 6 months in any one such establishment and has paid the tax levied under this section. In addition, subsection (7)(b) provides that the tax may not be applied to rentals to any person who resides in a building or group of buildings intended primarily for lease or rent to persons as their permanent or principal place of residence. The stated intent of this subsection is to provide tax relief for persons who rent living accommodations rather than own their homes, while still providing a tax on the rental of lodging facilities that primarily serve transient guests. The section also exempts the rentals in trailer camps, mobile home parks, and recreational vehicle parks which are intended primarily for rental as a principal or permanent place of residence. Finally, the rental of living accommodations in migrant labor camps is not taxable.

Section 212.0305, F.S., provides for the levy of convention development taxes by counties. The section provides that any payment made by a person to rent, lease, or use any living

quarters or accommodations which are exempt from the tax imposed under s. 212.03, F.S., are likewise exempt from any tax imposed under this section.

C. EFFECT OF PROPOSED CHANGES:

Summary of Public Policy Effects

This bill addresses concerns raised with the Florida Residential Landlord and Tenant Act in *The Florida Residential Accommodations Act, Housing the Poor in a Capitalistic Society* (see "Present Situation"), by creating the "Florida Affordable Residential Accommodations Act." The bill includes provisions from several existing statutory chapters, primarily chapters 83, 381, and 509, F.S.

Landlord/Tenant Relationship

For individuals and households currently considered non-transient for purposes of the Florida Residential Landlord and Tenant Act, the bill fundamentally alters the landlord/tenant relationship if they choose to reside in an ARA.

As discussed below, the bill authorizes the proprietor of an ARA to:

- Immediately remove or cause to be removed a resident who:
    - while on the premises, illegally possesses or deals in controlled substances or is intoxicated, profane, lewd, or brawling;
    - indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
    - fails to make payment of rent at the agreed-upon rental rate by the agreed-upon **checkout** time; or
    - in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment;
- Lock out residents for failure to pay rent on time;
- Have residents arrested for failure to pay rent with the "intent to defraud";
- Take into custody residents and their guests for certain types of behavior under specified conditions.

In addition, the bill:

- Limits the proprietor's liability for damage to personal property to specified amounts, and
- Excludes two classes protected by Florida's Fair Housing Act: handicap and familial status.

While part I of chapter 509, F.S., authorizes public lodging operators to take such actions against transient occupants, as noted above, such acts against non-transient occupants

are prohibited by Florida's Residential Landlord and Tenant Act. The bill prohibits discrimination based upon race, creed, color, sex, physical disability, or national origin.

Regulation of ARAs

In addition to altering the current landlord/tenant relationship, this bill creates a new regulatory process for ARA establishments. As discussed below, drawing primarily from the Florida Residential Landlord and Tenant Act , as well as part I of chapter 509, F.S., the bill directs DOH to regulate and inspect ARA establishments to ensure minimum standards.

Sales Tax Exemption

This bill also prohibits the collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs. The bill declares the rental of an ARA dwelling unit is not a taxable privilege.

Availability and Affordability of Housing for Low-Income Households

The effect this bill will have on the availability and affordability of housing for low income households is unknown. By altering the relationship between the resident and landlord, or in the case of ARAs the proprietor, the bill increases the ability of private businesses to control who they serve. In addition to conversions of existing housing -- both housing licensed under part I of chapter 509, F.S., and housing not licensed under the Innkeeper Act -- the increased control granted to private business may encourage entry into the low-income housing market. As a result, the bill may result in an increase in the availability of housing for low-income households.

The overall effect the bill will have on the affordability of housing is also unknown. The exemption from sales tax will lower the costs of providing ARA services. However, meeting the new regulatory requirements imposed on ARAs could increase operating expenses. As noted below, the bill does not provide a definition of affordable, does not define the types of household who may reside in ARAs, and does not provide a limitation on the rental charges an ARA may charge for a unit.

Proponents of the legislation believe the act allows and encourages private businesses to provide ARAs that are affordable to low-income households. Proponents maintain the bill's provisions will be used by private businesses to serve low-income households, and argue that the regulatory scheme created in the bill serves as a disincentive for conversion of "middle class apartments" to ARA housing in order to avoid landlord/tenant act requirements. They argue:

> The new statute will stimulate competition in providing low-income housing -- possibly, without any governmental assistance whatsoever . . . This new law will also help stimulate revitalization of rundown areas which plague almost every city in Florida. By giving property owners more control of their property and relieving police departments of many small but recurring problems, many cities may find a new incentive for owners to upgrade their properties and increase property values. In addition, the overwhelming problem of low-income housing is addressed without the necessity of government involvement or investment. Government stimuli would become a real world incentive instead of programs for taxpayer abuse.

In addition, the proponents argue the bill does not detract from present government programs, but makes management easier for government sponsored low income housing.

Finally, proponents argue that the bill is a "practical approach to housing the working poor that will provide private industry with the tools needed to prevent borderline families from slipping into homelessness, while using the regulatory powers of the state to insure that the worthwhile low income housing goals of the state are met without abusive exploitation by the unscrupulous."

Opponents to the legislation view the bill in an entirely different light. The Affordable Housing Study Commission (Commission), is a statutory body (s. 420.609, F.S.) whose duties include analyzing solutions and programs to address the state's acute need for housing for people with very low to moderate income, and making policy and funding recommendations to the Governor and the Legislature. The current Commission's membership has not met to discuss HB 41; however, the Commission has commented on ARA legislation proposed during the 1999 Legislative Session. In response to staff's request for comment, the Commission Chair submitted a letter reiterating the Commission's past concerns about the proposed ARA legislation.

Acknowledging the continuing shortage of affordable, decent housing in the state, the Commission Chair states: "Even with this in mind, the bill is antithetical to the current affordable housing delivery system that Florida has established." The Commission Chair argues the ARA legislation could not be applied to "government sponsored low-income housing" because the "landlord-tenant relationship is considered to be very important in housing supported with either federal or state funding.

Regarding the issue of affordability, the Commission Chair states the bill does not require landlords to rent housing at affordable prices, and includes a stiff penalty if a tenant does not pay his or her rent on the exact day and hour that it is due. Noting the existence of other "onerous tenant requirements and landlord allowances in the bill," the Commission Chair argues these provisions "only serve to take advantage of tenants and do not support them in anyway." The Commission Chair also expresses concern with the bill's exclusion of two classes covered in the state's Fair Housing Act: handicap and familial status.

Regarding the issue of availability of adequate housing, the Commission Chair concludes as follows:

> The Commission has worked hard to shift the way middle and upper-income citizens think about housing for the underserved wage earners. While low-income people must take responsibility for making their own way, we believe that access to safe and secure shelter is a fundamental value of our society. If a resident has a constant fear of angering the landlord and being kicked out in an instant, this is not adequate shelter.

In response to similar legislation filed in the 1998 and 1999 Legislative Sessions, Florida Legal Services, Inc., provided comments and a detailed analysis of the ARA legislation. In these comments, staff stated that this bill is not an affordable housing initiative for low-income families. Noting that neither "affordable housing" nor "low income" are defined in the bill, League staff state: "There is nothing in this bill that creates affordable housing. Affordable housing will not be created simply by enhancing landlords' rights at the expense of tenants' rights."

Summary of the Bill's Major Provisions

This bill's major provisions are discussed below. For additional details regarding the bill, see the "Section by Section," "Comments," and "Amendments" sections of the analysis.

Definitions

The bill defines an "affordable residential accommodations (ARA) establishment" to mean:

> "any permitted unit or group of units, single complex of buildings, dwelling, building or group 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.] 510.038."

The terms "low-income," "transient," "migrant," "seasonal," and "temporary" are not defined in the bill, and the bill does not provide cross-references to any existing statutory definitions of these terms.

Migrant labor camps, residential migrant housing, 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 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. This portion of the definition anticipates a licensed public lodging facility wishing to also license some of its units as ARA units. The requirements for advertising in s. 510.122, F.S., clearly indicate the bill allows a hotel or motel licensed under part I of chapter 509, F.S., to also have units licensed under the ARA Act. The provision suggests there is a presumption of compliance with regulations relating to safety.

The term "rental agreement" is defined to mean: "any written agreement, or oral agreement providing for a license to use and occupy a unit of the premises." Thus the bill allows oral rental agreements, regardless of the duration of the agreement. As noted in the "Present Situation" section of the analysis, The Florida Residential Landlord and Tenant Act allows oral rental agreements if for less duration than 1 year. This bill does not address the duration of the rental agreement, or required notice periods to terminate a rental agreement.

The bill provides many other definitions necessary to understand and implement the provisions of this bill.

Application

The provisions of this bill apply solely to affordable residential accommodations, and the bill states that the bill's provisions may be used only for permitted dwelling units and may not be used to circumvent the requirements of part II of chapter 83, F.S., or part I of chapter

509, F.S. The provisions of the bill are not to be construed with reference to part II of chapter 83, F.S., or part I of chapter 509, F.S.

For the provisions of this bill to apply, a unit or group of units must meet the definition of an ARA establishment. Read literally, to meet the definition of an ARA "a unit or groups of units, etc.," must be permitted as an ARA, operate as housing which is affordable to low-income individuals and families who are transient, migrant, seasonal, or temporary workers; and operate as a private enterprise pursuant to s. 510.038. As previously discussed, the terms "affordable," "low-income," "transient," "migrant," "seasonal," and "temporary workers" are not defined.

As noted, the definition of an ARA establishment only applies to "permitted" facilities. Section 510.241, relating to the requirement to obtain a permit to operate an ARA, makes it a misdemeanor of the first degree to establish, maintain, or operate an ARA without having first obtained a permit. Thus, an ARA is defined such that it must be permitted to be an ARA. A permit is only required if a facility is established, maintained, or operated as an ARA.

As such, the bill only requires a permit if the proprietor operates the facility as a private enterprise pursuant to s. 510.038. Section 510.038 provides, in part, that ARAs are private enterprises and declares no landlord-tenant relationship exists between an ARA and the resident. Rather, the ARA licenses the use and occupancy of the premises, and the relationship between the resident and proprietor is that of licensee and licensor. The section states the license provides the resident a non-assignable personal privilege and does not provide a licensee any title, interest, or estate in the property of the proprietor. A resident may not achieve the status of residential tenant with property rights in the premises regardless of length of occupancy.

Taxes

The bill prohibits collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs. However, the bill does not prohibit the imposition of local taxes, fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.

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. As noted, 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.

Responsibilities of ARA Proprietors

The bill provides that ARAs are private enterprises, and proprietors have the right to refuse accommodation. However, proprietors are prohibited from discriminating based upon race, creed, color, sex, physical disability, or national origin. ARAs proprietors are prohibited from retaliating against residents who register complaints against them.

The bill provides advertisement restrictions for ARA proprietors. 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.

Proprietors are obligated to maintain the premises of the ARA. 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 ARA unit other than a single-family or duplex must make reasonable provisions during the rental period for 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.

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 deals 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. Removals cannot be based upon race, creed, color, sex, physical disability, or national origin. 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

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.

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.

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.

Responsibilities of the Department of Health

The bill requires the DOH and "its representative county public health units" to permit and inspect ARAs. Funds in the Affordable Residential Accommodations Trust Fund must be used to carry out the ARA program. All permits and fees collected by DOH must be deposited into the Affordable Residential Accommodations Trust Fund. DOH must also deposit funds arising from administrative fines into the trust fund. The bill restricts use of the trust fund monies to carrying out the laws and rules under DOH's jurisdiction pertaining to the construction, maintenance, and operation of ARAs.

Under the bill, all ARAs must obtain a permit from 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.

DOH must carry out the general regulatory provisions of this bill, conduct periodic health and safety inspections of 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 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, 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 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).

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. Further, 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 because of 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 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. The bill does not, of course, address federal civil rights.

Penalties

Penalties, both criminal and administrative, 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.

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 with intent to defraud the proprietor, 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. 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. The bill makes several additional actions by a proprietor a misdemeanor of the second degree, including obstructing or hindering any agency of DOH in the proper discharge of their duties, failure to obtain a permit and pay fees, and refusal to perform duties imposed by law or rule.

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.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates chapter 510, as follows:

Section 510.011 provides this chapter may be cited as the “Florida Affordable Residential Accommodations Act.”

Section 510.013 defines the terms “advance rent,” “affordable residential accommodations establishments,” “building code,” “common areas,” “Department,” “deposit money,” “director,” “dwelling unit,” “good faith,” “invited resident,” “other authorized visitors,” “personal hygiene facilities,” “premises,” “private living quarters,” “proprietor,” “rent,” “rental agreement,” “resident,” “security deposits,” “single complex of buildings,” “smoke detection device,” and “tenant.”

Section 510.021 provides for the uses of the Affordable Residential Accommodations (ARA) Trust Fund, and requires all funds collected by the department and amounts paid for permits and fees to be deposited in the State Treasury into the ARA Trust Fund. **(See “Amendments” section regarding: Inspection of Elevators.)**

Section 510.032 provides that the provisions of this chapter apply solely to ARAs and may be used only for permitted dwelling units and shall not be used to circumvent the requirements of part II of chapter 83, F.S., or part I of chapter 509, F.S. The section provides that this chapter shall not be read with reference to part II of chapter 83, F.S., or part I of chapter 509, F.S.

Section 510.033 provides the duties of DOH under this chapter. DOH is required to carry out the regulatory and inspection provisions of this bill, including: ascertaining that

proprietors do not engage in any misleading advertising or unethical practices; having responsibility for quality assurance; inspecting each permitted accommodation at least biannually; reporting abuse of children, elderly, or disabled; and, convening meetings 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.

The section requires DOH to submit a written report to the Governor at the end of each fiscal year, and directs DOH to adopt rules necessary for the implementation of the provisions of this bill.

Section 510.034 declares it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number of ARAs to meet local needs, and finds that discriminatory practices inhibiting such development are a matter of state concern. The section authorizes proprietors of such housing to invoke the provision of this chapter, and 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. The section declares this chapter does not prohibit the imposition of local taxes, fees, charges, or assessments to which other dwellings of the same type in the same zone are subject, and allows local governments to extend preferential treatment to ARAs. The section prohibits the collection of sales tax, tourist development tax, or any other excise tax on the rents paid by residents of ARAs, and declares the rental of an ARA dwelling unit is not a taxable privilege.

Section 510.036 requires notices served by DOH to be in writing and delivered personally or by registered or certified mail. Under specified conditions, notices may be posted at the accommodation. The section provides that willful refusal to sign and accept a citation issued by DOH constitutes a second degree misdemeanor.

Section 510.037 establishes right-to-entry provisions pertaining to DOH's right to inspect ARAs for compliance with statutes or rules adopted by DOH; requires permission from the 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 to any person who is objectionable or undesirable to the proprietor, but prohibits such refusal based on race, creed, color, sex, physical disability, or national origin. Persons aggrieved by a violation of this chapter or rules adopted under this chapter have a right of action pursuant to s. 760.07, F.S.

The section declares no landlord-tenant relationship exists between an ARA and the resident. Rather, the ARA licenses the use and occupancy of the premises, and the relationship between the resident and proprietor is that of licensee and licensor. The section states the license provides the resident a non-assignable personal privilege and does not provide a licensee any title, interest, or estate in the property of the proprietor. A resident may not achieve the status of residential tenant with property rights in the premises regardless of length of occupancy.

Section 510.041 authorizes DOH to adopt rules necessary to protect the health and safety of ARA residents and to implement the provisions of this bill; provides that the rules must include provisions relating to plans review of new, expanded, or remodeled ARAs, personal hygiene facilities, lighting, sewage disposal, safety, minimum living space, bedding, insect

and rodent control, garbage, heating equipment, water supply, maintenance and operation of ARAs, and other matters necessary to protect the life and health of the residents.

The section allows the proprietor to apply for a permanent structural variance from DOH's rules by filing a written application and paying a fee not to exceed $100; requires variances granted by DOH to be written; and allows the DOH to inspect ARAs whenever necessary to respond to emergency or epidemiological conditions.

Sections 510.042 provides that the regulation and inspection of ARAs is preempted to the state. **(See "Amendments" section regarding: State Preemption.)**

Section 510.101 allows proprietors of ARAs to establish reasonable management rules and regulations for its residents, which rules and regulations are deemed a special contact between the proprietor and each resident or employee using the services of the proprietor. The rules and regulations control the liabilities, responsibilities, and obligations of all parties. The section requires rules and regulations and this chapter be posted in a prominent place; requires the proprietor to review with, and provide a copy of, the rules and regulations to each resident, and to maintain a copy of this chapter at each ARA.

The section requires the proprietor to maintain a registry of residents. The proprietor also is required to maintain written rental agreements, if any, in the same manner as the registry.

Section 510.105 provides that every rental agreement or duty within this **"part"** imposes an obligation of good faith in its performance or enforcement. **(See "Amendments" section regarding: "Part.")**

Section 510.111 establishes disclosure requirements for the proprietor.

Section 510.121 establishes provisions for payment of rent and late fees. Unless otherwise agreed, rent is payable without demand or notice and is due on the day and hour agreed upon in the rental agreement. The section authorizes a daily rate to be charged that may be no more than twice the proportionate rent. Late payment fees are limited to no more than 15 percent of the periodic rent. **(See "Amendments" section regarding: Duration of Tenancies.)**

Section 510.122 establishes requirements for room rental rates and advertising of ARAs; provides for violations of this section to be a misdemeanor of the second degree; and provides for suspension or revocation of permits and fines for such violations.

Section 510.123 authorizes "invited guests" to have access to a resident's private living quarters; authorizes other authorized visitors to have access to the common areas of an ARA; provides that other visitors are licensees for purposes of any premises liability; authorizes ARAs to establish specified rules for 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. **(See "Amendments" section regarding: Invited Guest/Trespass Warrant.)**

The section authorizes any person denied rights guaranteed by this chapter to bring an action in an appropriate court, and, upon favorable adjudication, provides for the court to enjoin enforcement of any rule, practice, or conduct that operates to deprive the person of such rights.

Section 510.131 addresses a proprietor's obligation to maintain the premises of an ARA. Subsection (1) requires the proprietor to comply with the requirements of this section and the requirements of applicable building, housing, and health codes. The proprietor's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex. **(See "Amendments" section regarding: State Preemption.)**

Subsection (2) requires, unless otherwise agreed in writing, the proprietor to make reasonable provisions for: locks and keys, clean and safe common areas, garbage removal, heat, running hot and cold water, floor coverings and windows and window coverings, adequate furnishings for each room, the extermination of rodents and insect pests, smoke detectors, and other similar provisions for residents of the ARA. The subsection declares nothing in this subsection: authorizes a resident to raise noncompliance with this subsection as a defense to an action for possession under s. 510.141, F.S., or any other provision of law; nor prohibits a rental agreement from providing for the resident to pay costs or charges for services and utilities when in excess of the allowable amount shown in the rental agreement. The subsection declares the proprietor is not responsible for conditions created or caused by the negligent or wrongful act or omission of the resident, their family or other person on the premises with the resident's consent.

Section 510.132 addresses a proprietor's liability for property of residents. The section limits the proprietor's liability for property of residents to situations where the loss was the result of fault or negligence of the proprietor, and limits this liability to $500 unless the resident has filed an inventory with the proprietor, in which case the limit is $1,000.

Section 510.133 requires residents of an ARA to comply with all obligations imposed on residents by building, housing, and health codes and DOH rules. Requires residents to maintain their dwelling unit by generally keeping it clean and not defacing or otherwise destroying the property. The section requires residents and their guests to conduct themselves in a manner that is not unreasonably disturbing to neighbors, the management, or constitutes a breach of the peace.

Section 510.134 establishes provisions and requirements governing the proprietor's access to dwelling units. Proprietors are guaranteed access to dwelling units between the hours of 7:30 a.m. and 8:00 p.m. for the purposes of routine inspection, agreed repairs, and other management functions. The section provides for reasonable notice to residents prior to such entry for repairs and specifies conditions under which the proprietor may enter dwelling for other listed purposes. Proprietors are authorized to enter a dwelling at any time for the preservation and protection of the premises. The section prohibits proprietors from abusing the right of access to harass a resident. **(See "Amendments" section regarding: Chapter 509.)**

Section 510.136 provides rental options for residents in the event of casualty damage, not caused by the residents, to their dwelling units. **(See "Amendments" section regarding: Security Deposits.)**

Section 510.138 provides that either the proprietor or resident may recover damages caused by noncompliance with the rental agreement or this **"part,"** and provides that legal fees may not be assessed against the losing party for any action taken under this chapter. **(See "Amendments" section regarding: "Part" and Attorney Fees.)**

Section 510.141 authorizes the proprietor of an ARA to remove or caused to be removed from the ARA any resident or **"visitor"** who on the premises of the ARA:

- Possesses or deals in illegal controlled substances;
- Is Intoxicated, profane, lewd, or brawling;
- Indulges in any language or conduct which disturbs the peace and comfort of other residents or which injures the reputation, dignity, or standing of the accommodation;
- fails to make payment of rent at the agreed-upon rental rate by the agreed-upon **checkout** time; or
- Fails to check out by the agreed upon time;
- Is, in the opinion of the proprietor, a person the continued entertainment of whom would be detrimental to such accommodation.

The section further provides admission to, or the removal from, an ARA shall be at the sole discretion of the proprietor, but may not be based upon race, creed, color, sex, physical disability, or national origin. **(See "Amendments" section regarding: "Visitor.")**

To remove or cause to be removed a resident or **"visitor,"** the section requires the proprietor to notify, orally or in writing, the resident or **visitor** that the accommodation no longer desires to entertain the resident on the premises and to request that the resident or **visitor** leave the premises immediately. If in writing, the notice is to be in the form provided in the section. The section provides for the return of the unused portion of advance rent at the time of such notice.

The section establishes procedures and penalties when residents or visitors fail to vacate the premises. A resident or **visitor** who remains or attempts to remain in an ARA after being requested to leave commits a misdemeanor of the second degree. Proprietors are authorized to call upon any law enforcement officer of this state for assistance, and upon request of the proprietor, law enforcement officers may arrest and take into custody any resident or **visitor** who fails to vacate an ARA after being requested to do so as provided for in this section.

Upon request by the proprietor to leave the premises or upon arrest, a resident is deemed to have abandoned right of occupancy and the proprietor is allowed to make the premises available to other residents. A proprietor is required to use reasonable and proper means to care for any personal property left on the premises by the resident, and must refund unused rental payments. The section provides that taking into custody and detention by a law enforcement officer in compliance with this subsection does not make the officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

Section 510.142 authorizes the proprietor to refuse amenities or service to a person who, in the sole opinion of the proprietor, displays intoxication, profanity, lewdness, or brawling; who indulges in language and conduct that disturbs the peace or comfort of other residents; who engages in illegal or disorderly conduct; who illegally possesses or deals in controlled substances; or whose conduct constitutes a nuisance. The section states this provision applies to all guests, invitees, and licensees. The refusal may not be based upon race,

creed, color, sex, physical disability, or national origin. **(See "Amendments" section regarding: "Invitee/Guest.")**

Section 510.143 authorizes the proprietor to detain a person if the proprietor has probable cause to believe the person was engaging in disorderly conduct in violation of 877.03, F.S., on the premises of the ARA and such conduct was creating a threat to the life or safety of the person or others. The proprietor must call a law enforcement officer immediately following detainment. The section authorizes a law enforcement officer to arrest, with or without a warrant, on or off the premises of the ARA any person the officer has probable cause to believe violated s. 877.03, F.S., on the premises of the ARA and such conduct was creating a threat to the life or safety of the person or others. The section 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. A person who resists reasonable efforts of a proprietor or a law enforcement officer to detain or arrest them in accordance with this section commits a misdemeanor of the first degree, 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 a law enforcement officer.

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 and such property or the value thereof may be recovered by taking the person into custody. A proprietor must call a law enforcement officer immediately upon taking a person into custody. The section authorizes law enforcement officers to make an arrest on or off the premises without a warrant. Persons resisting the reasonable efforts by the law enforcement officer or the proprietor to recover such property and subsequently found guilty of theft of the property, commits a misdemeanor of the first degree, unless the person did not know or did not have reason to know that the person seeking to recover the property was the proprietor or a law enforcement officer. The section allows the charge of theft and of resisting apprehension to be tried concurrently.

The section makes theft of property belonging to a resident of an ARA or of property belonging to the ARA by an employee of the ARA or by an employee of a person, firm, or entity under contract to provide services to an ARA a felony of the third degree.

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. If charges are imposed for delivering phone messages, the section requires notice of such charges in the ARA's rules. The section authorizes DOH to suspend or revoke the permit, or impose a fine against any ARA that violates this section.

Section 510.211 establishes safety requirements and procedures for any ARA and provides penalties and administrative sanctions for violations of certain requirements. **(See "Amendments" section regarding: Safety.)**

Section 510.212 directs DOH to provide rules relating to inspection of 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 addresses firesafety in ARAS. Subsection (1) requires automatic sprinkler systems in ARAs three or more stories high; requires that the sprinklers be installed in compliance with the provisions of the National Fire Protection Association NAPA No. 13, "Standards for the Installation of Sprinkler Systems"; requires single station smoke detection devices in specified areas notwithstanding the number of stories; provides an exception. **(The Division of the State Fire Marshal is reviewing this section. See "Amendments" section.)**

Subsection (2) requires ARAs with three or more stories to have either a system complying with subsection (1) or an approved sprinkler system for certain rooms excluding resident rooms if specified conditions are met, including having an automatic fire detection system meeting the requirements of NFPA 72A and NFPA 72E, including smoke detectors in each resident room meeting specified requirements.

Subsection (3) provides an exemption from the requirement in subsection (1) relating to single station smoke detectors for ARAs under three stories for which the construction contract was let before October 1, 1983, if each resident room has a smoke detector meeting specified requirements.

Subsection (4) states this section applies only to ARAs three or more stories high wherein more than 50 percent of the units are advertised or held out to the public as available for ARA occupancy.

Subsection (5) 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 Officer.

Subsection (6) directs the Division of the State Fire Marshall to adopt any rules necessary for the enforcement of this section; directs the Division to enforce this section in accordance with the provisions of chapter 633, F.S., and provides that a violation of this section may be subject to administrative sanctions by DOH.

Subsection (7) addresses the number of specialized smoke detectors for the deaf and hearing impaired an ARA must provide and limits this number to a rate of at least one device per 50 dwelling units and no more than five devices per ARA.

Subsection (8) declares the NFPA publications referenced in this section are the most recently adopted by rule of the Division of State Fire Marshal.

Section 510.221. Provides sanitary regulations for ARAs. **(See "Amendments" section regarding: Sanitation.)**

Section 510.241 addresses permits required to operate an ARA. Subsection (1) requires operators of ARAs to obtain a permit from the DOH and post such permit; makes failure to obtain and post permit a first degree misdemeanor; and makes permits nontransferable from one place or individual to another.

Subsection (2) authorizes DOH to deny permits to establishments not constructed and maintained in compliance with law and regulations and under other specified conditions. The subsection also requires DOH to adopt by rule a staggered schedule for permit renewals. **(See "Amendments" section regarding: Permits.)**

Subsection (3) provides a procedure to apply for a permit.

Subsection (4) requires a permit to be displayed in the office or lobby of an ARA.

Subsection (5) makes it a felony of the third degree to establish, maintain, or operate an ARA without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal without first obtaining a permit from DOH.

Subsection (6) provides for fines for non-compliance with 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. **(See "Amendments" section regarding: Fines.)**

Section 510.245 prohibits any municipality or county from issuing an occupational permit to an unpermitted ARA.

Section 510.247 authorizes 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 in the case of 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, 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. **(See "Amendments" section regarding: HUD.)** The section states that permits shall expire on September 30 next after the date of issuance unless sooner revoked. **(See "Amendments" section regarding: Permits.)**

Section 510.251 requires 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 and are not to exceed $1,000; provides that applications for a change of ownership cannot exceed $50; provides for late and reinstatement fees. **(See "Amendments" section regarding: Duplication.)**

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 ARA Trust Fund; restricts use of trust fund monies to entities performing required inspections under contract for the DOH; and provides other ways DOH can fine, suspend, or revoke the permit of an ARA. **(See "Amendments" section regarding: Fines.)**

Section 510.262 prohibits a proprietor of an ARA from taking specified actions in retaliation against a resident who has taken specified actions. **(See "Amendments" section regarding: Eviction.)**

Section 510.265 provides procedures for complaints from aggrieved parties arising from ARA violations. Unless DOH believes the alleged violation poses a serious and immediate threat to public health, in which case it must conduct an inspection as soon as practicable, the proprietor has 20 days to correct the alleged violation and DOH is to conduct an inspection as soon as practicable after the 20-day period. DOH is required to adopt rules to implement this section.

Section 510.281 requires DOH to make complaint and seek arrest of proprietors operating an ARA contrary to the provisions of this bill. The state attorney, upon request by DOH, is directed to conduct the prosecution. DOH also is directed to proceed in courts mandamus or injunction whenever such proceedings are necessary to enforce the provisions of this bill or DOH rules implementing this chapter. The section makes several actions by a proprietor a misdemeanor of the second degree, including obstructing or hindering any agency of DOH in the proper discharge of their duties, failure to obtain a permit and pay fees, and refusal to perform duties imposed by law or rule.

Section 510.282. Authorizes DOH to issue citations containing orders to correct, to pay a fine, or both, for violations of this chapter or field sanitation facility rules when such violations are enforceable by an administrative or civil remedy, or when such violations are misdemeanors of the second degree. **(See "Amendments" section regarding: Sanitation Facility.)** The section provides that a citation issued under this section is a notice of proposed agency action, and establishes procedure for issuing citations and monetary limits on fines. All fines collected under this chapter must be deposited in the ARA Trust Fund. **(See "Amendments" section regarding: Fines.)**

Section 510.285 requires any state or county attorney, sheriff, police officer, and other appropriate municipal and county official to assist DOH or its agents in the enforcement of this chapter.

Section 510.401. Upon a reasonable determination by a proprietor of an ARA that a resident has accumulated a large outstanding account, the section authorizes the proprietor to lock the resident out of their dwelling unit and interrupt any utility service to require the resident to confront the proprietor and pay the outstanding balance or arrange for payment. **(See "Other Comments" section regarding: Outstanding Account.)** The section establishes procedures for such act and provides for the resident to remove from the dwelling personal property essential to the health of the resident. The section makes it a felony of the third degree to break into a dwelling locked in accordance with this section, 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. The section requires the proprietor, with at least one other person, to make an itemized inventory of property belonging to the resident and store the property until a settlement or final court judgement is obtained.

Section 510.403 authorizes the proprietor of an ARA to seek prosecution of a writ of distress against the resident who has failed to make payments or has vacated the premises without notice in order to recover losses. The writ of distress is to be predicated on the lien

created by s. 713.67, F.S., relating to liens for board, lodging, etc., hotels., etc., or 713.68, F.S., relating to liens for hotels, apartment houses, roominghouses, boardinghouses, etc.

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 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 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, including clothing and items essential to the health and safety of the resident.

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

Section 510.413 addresses judgement for plaintiff when goods are not delivered to the defendant and provides for plaintiff to have judgement for damages under specified conditions and authorizes inclusion of reasonable attorney fees and costs.

Section 510.414 addresses judgement for plaintiff when goods are retained by or redelivered to defendant and provides for plaintiff to have judgement for damages under specified conditions and authorizes inclusion of reasonable attorney fees and costs.

Section 510.415 addresses judgment for the defendant when personal property is retained by or redelivered to the defendant and provides for defendant to have judgement against plaintiff for any damages due for the taking of the property, including reasonable attorney's fees and costs.

Section 510.416 addresses judgment for the defendant where personal property is *not* retained by or redelivered to the defendant and provides for defendant to have judgement against plaintiff for possession of the property, and allows judgement to include reasonable attorney's fees and costs.

Section 510.417 addresses the sale of personal property held until certain residents of an ARA have satisfied their obligations, following a judgment for the plaintiff.

Section 2. An effective date of October 1, 2000, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

By exempting ARA rentals from the state sales and use tax, this bill will reduce revenues generated by the state sales tax. The revenue estimating conference has not yet addressed this bill.

DOH estimates the regulatory components of the bill will have the following fiscal impact on the department.

	2000-01	2001-02
Department of Health		
ARA Trust Fund		
ARA Permit Fee ($100/permit)	320,000	329,600
ARA Application Surcharge ($25/unit)	80,000	82,400
General Revenue Fund		
7% GR service charge	(28,000)	(28,840)
Total Revenues	372,000	383,160

2. Expenditures:

Department of Health		
ARA Trust Fund		
Non-Recurring Costs	18,209	
Recurring Costs (2 FTEs)	362,465	387,713
Total Expenditures (2 FTEs)	380,674	387,713

As indicated above, DOH's fiscal analysis estimates expenditures exceeding revenues. However, the estimated budget deficit could be corrected by increasing the ARA permit fee above $100 and/or by increasing the ARA permit application fee above $25. Section 510.251 authorizes permit fees up to $1,000 and application fees up to $50.

In addition to DOH, the State Fire Marshal's Office incur costs associated with adopting and enforcing administrative rules to implement the firesafety provisions included in s. 510.215.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill reduces revenues collected by local governments under local option sales taxes, and reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties. The revenue estimating conference has not yet addressed this bill.

2. Expenditures:

   As discussed in the "Effects of Proposed Changes" and "Section by Section" portions of the analysis, this bill creates a variety of criminal infractions, and places a variety of duties on local law enforcement officers. The fiscal impact on county court systems and local law enforcement agencies will depend in part on the number of ARAs permitted under this act. Local firesafety officials may incur costs associated with enforcing the fire safety provisions in the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As discussed in the "Effects of Proposed Changes" section of the analysis, this bill may result in increased availability of housing that is affordable to low-income households. ARA's are exempt from paying sales taxes on rentals, but will have to pay application and permit fees and may incur additional costs complying with ARA standards. ARAs will recoup these costs through rental payments.

D. FISCAL COMMENTS:

Sales Tax Exemption

As noted, by exempting ARA rentals from the state sales and use tax, this bill will reduce revenues generated by the state sales tax, the tourist development tax, and local option sales taxes. The revenue estimating conference has not yet addressed this bill.

As discussed in the "Present Situation" section, under part I of chapter 509, F.S., certain nontransients do not pay sales taxes. It is difficult to predict if some motels or similarly situated facilities might attempt to escape state sales tax obligations by becoming an ARA.

Fiscal Impact on DOH

The fiscal impact on DOH is based on the fiscal analysis prepared by DOH. DOH estimates there will be 3,200 ARA establishments in fiscal year 2000-01, and that this number will grow by 3 percent for fiscal year 2001-02. DOH states their methodology for the estimate of the number of regulated establishments is as follows:

The number of establishments affected by this bill was estimated in the following manner: .04(80,000 housing units) = 3,200.

The 0.4 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 law might affect because the former is specifically low-income or affordable housing, while the later deals with migrant and seasonal farm worker housing. The 80,000 housing units is the estimated number of section 8 housing units in Florida. The figure was

obtained from the web pages of the U.S. Department of Housing and Urban Development.

The validity of this methodology is questionable, since as noted in the "Effects of Proposed Changes" section, section 8 housing will probably not fall under this bill's provisions. The estimate, and thus the methodology, were used for this fiscal analysis because no alternative was available. The number of establishments that would choose to be regulated under the ARA is unknown.

As indicated in the fiscal impact on DOH, a $100 permit fee and a $25 application fee are assumed. The two FTEs are accountant IV positions in Revenue Management to provide fiscal support and revenue reconciliation. In fiscal year 2000-01, the 2 FTEs are for 9 months, and in fiscal year 2001-02, they are for 12 months. DOH provided additional information to support their projected expenditures under the bill. The fiscal impact is based on a 3 percent increase in the number of ARAs after the first year, and an additional anticipated 3 percent increase in costs. While only two home office FTEs are included in the analysis, DOH notes that in some counties additional positions may be required to handle the increased workload.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

As noted in the "Fiscal Analysis" section, this bill creates a variety of criminal infractions, and places a variety of duties on local law enforcement officers. However, criminal laws are exempt from Section 18 of Article VII of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill reduces the authority of municipalities and counties to raise revenues. The revenue estimating conference has not yet addressed this bill; therefore, it cannot be determined if the bill will have a significant impact and whether the provisions of Article VII, Section 18(b), Florida Constitution, apply.

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

While the bill reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

DOH notes s. 510.033(4) grants rulemaking authority to the department, but it is insufficient to meet the requirements for rulemaking authority found in Chapter 120, F.S., as amended in 1999. DOH suggests that as the bill progresses, this subsection will need to be enhanced. Section 510.033(4) directs DOH to adopt such rules as are necessary to carry

out the provisions of this chapter. Section 510.041(1) directs DOH to adopt rules necessary to protect the health and safety of residents of ARAs and to implement the provisions of this chapter. DOH believes subsection (4) of s. 510.033 is duplicative and should be deleted.

C. OTHER COMMENTS:

Visitor

Section 510.141 provides admission to, or the removal from, an ARA shall be at the sole discretion of the proprietor, but may not be based upon race, creed, color, sex, physical disability, or national origin. Since this provision applies to a "visitor," it may conflict with s.. 510.123, which state's a resident of an ARA may decide who may visit him or her in the residents private living quarters and prohibits proprietors from attempting to prohibit an "invited guest" access to or egress from the private living quarters of a resident except for any violation of s. 510.143.

Outstanding Account

Section 510.401 provides that upon a reasonable determination by a proprietor of an ARA that a resident has accumulated a large outstanding account, the proprietor is authorized to lock the resident out of their dwelling unit and interrupt any utility service to require the resident to confront the proprietor and pay the outstanding balance or arrange for payment. What constitutes a "large outstanding account" is not defined and is left to the discretion of the proprietor.

Department of Health Comments

DOH submitted an analysis of HB 41 that includes numerous comments and suggested amendments. Several technical comments made by DOH are included in the "Amendments" section of the analysis. DOH's additional comments are summarized below:

Definition of ARAs

DOH notes that the definition of an ARA is the central focus of the bill, but the definition includes the terms: low income individuals, transient, migrant, seasonal and temporary workers without defining these terms. As a result, DOH believes it is difficult to determine to whom the bill applies. DOH recommends that these terms be further defined in the bill.

Oral Agreements

Section 510.013(17) includes oral agreements in the definition of "rental agreement." DOH states this could pose difficulties for the department should the agency get involved in resolving rental agreement disputes between the proprietor and resident of an ARA. DOH suggests oral agreements be eliminated.

Applicable Laws and Rules

DOH notes that s. 510.033(1) directs DOH to carry out all of the provisions of this chapter and "all other applicable laws and rules" relating to the inspection or regulation of ARAs for the purposes of safeguarding public health, safety, and welfare. DOH believes the phrase "all other applicable laws and rules" is overly broad.

Availability of Fire Protection

Section 510.111(2) requires the proprietor of certain establishments to disclose to residents the availability or lack of availability of fire protection. DOH believes it would also be beneficial to the resident if the proprietor disclosed the type of fire protection that is available.

Department of Insurance: Division of the State Fire Marshal

Section 510.215 addresses firesafety in ARAs. The Division (Division) of the State Fire Marshal of the Department of Insurance is directed to adopt any rules necessary for the implementation and enforcement of this section and is directed to enforce this section. The Division is in the process of conducting an analysis of s. 510.215. (See "Amendments" section.)

Proponents of HB 41

This bill was initiated in response to *The Florida Residential Accommodations Act, Housing the Poor in a Capitalistic Society*, authored by an Orlando realtor and attorney. As indicated in both the "Present Situation" and the "Effects of Proposed Changes" sections of the analysis, the authors strongly support HB 41.

Orange County Sheriffs Office

During the 1999 Legislative Session, the Sheriff of Orange County endorsed HB 759, which is essentially identical to HB 41. In his letter of endorsement, the sheriff stated:

> With this legislation, property managers and law enforcement will gain an additional and useful tool to dislodge drug dealers, prostitutes, and other lawbreakers from lower income housing areas.

Florida Commission on Human Relations

During the 1999 Legislative Session, the Executive Director of the Florida Commission on Human Relations indicated the Commission did not oppose HB 759, which is essentially identical to HB 41.

Opponents

The Affordable Housing Study Commission

As discussed in the "Effects of Proposed Changes" section, the current Commission's membership has not met to discuss HB 41 due to several recent appointments of new members. However, the Commission has commented on ARA legislation proposed during the 1999 Legislative Session. In response to staff's request for comment, the Commission Chair submitted a letter reiterating the Commission's past concerns about the proposed ARA legislation. Noting that an important tenant of this legislation is to exempt ARA proprietors from the Landlord Tenant Act, the Commission Chair states:

> [t]he Commission has continually maintained that all people, rich or poor, should be afforded the same due process rights. The ARA would allow 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 evict troublesome tenants, and while the process can be time consuming, it ensures that tenants have some time to find a new home. The Commission has gone on record to say that the current law is adequate for the kinds of problems that the bill claims to solve.

Florida Legal Services, Inc.

As noted in the "Effects of Proposed Changes" section, In response to similar legislation filed in the 1998 and 1999 Legislative Sessions, Florida Legal Services provided comments and a detailed analysis of the ARA legislation. In these comments, League staff state:

> As we have stated, Florida Legal Services supports the creation of affordable housing that is safe for all Florida families. However, we do not feel this bill is the vehicle for helping the state reach this goal. We are philosophically opposed to any legislation that abrogates tenants' rights to the extent this bill does. We can never agree that any person in this state should be locked out of his or her home. We remain committed to work with all interested parties on this issue and continue to suggest that this subject is more appropriately dealt with through an interim project.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor requested an amendment to address several issues. Some of the changes are substantive and others are technical. The amendment removes everything after the enacting clause and inserts new language. The amendment changes the following provisions in the bill:

Substantive Changes:

ARA Definition/DBPR

In the definition of ARA establishment, the bill excludes 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.* DOH suggests the language in italics is unnecessary and suggests deleting the language. However, this portion of the definition appears to anticipate a licensed public lodging facility wishing to also license some of its units as ARA units. The requirements for advertising in s. 510.122, clearly indicate the bill allows a hotel or motel licensed under part I of chapter 509, F.S., to also have units licensed under the ARA Act. The provision suggests there is a presumption of compliance with regulations relating to safety.

The amendment excludes "any dwelling unit licensed under chapter 509," F.S., from the definition of an ARA and deletes the phrase *"provided licensed public lodging facilities are presumed to meet all requirements of rules adopted pursuant to ss. 510.212, 510.215, and 510.221 for purposes of obtaining a permit to operate an affordable residential accommodation."* The amendment also modifies s. 510.122 to prohibit ARAs from advertising their facilities as hotels or motels.

ARA Trust Fund

DOH states that county health departments deposit fees and fines they collect and other regulatory funds they collect into the County Health Department Trust Fund. Consequently, DOH believes a new trust fund is not needed. DOH believes the process would be simpler if

fees and fines collected in this program were deposited in the County Health Department Trust Fund.

The amendment replaces references to the "Affordable Residential Accommodations Trust Fund" with the existing "County Health Department Trust Fund," and provides for ARA program funds to be deposited in this trust fund.

State Preemption

Sections 510.042 provides that the regulation and inspection of ARAs is preempted to the state. However, s. 510.131, which addresses a proprietor's obligation to maintain the premises of an ARA, requires the proprietor to comply with the requirements of this section and the requirements of applicable building, housing, and health codes. The two provisions appear to be contradictory. The preemption language in s. 510.042 could be interpreted to prevent local governmental agencies from enforcing their housing ordinances in ARAs.

The amendment removes s. 510.042 from the bill.

Proprietor's Access

Section 510.134(2)(f) authorizes a proprietor to enter a dwelling unit to grant access to DOH personnel for the purpose of enforcing provisions of this chapter. DOH believes this provision should be revised to also include the purpose of enforcing rules adopted under the authority of this chapter.

The amendment adds language to include enforcement of DOH rules.

Security Deposits

Section 510.013 defines the terms "deposit money," and "security deposits." However, the bill addresses such deposits only in relation to casualty damage (s. 510.136), and does not address claims against the security deposit nor recourse by the tenant to such claims.

The amendment creates a new section 510.1211 to address security deposits. The amendment also modifies s. 510.136 to specify that if a rental agreement is terminated due to casualty damage, the proprietor has 45 rather than 15 days to return the security deposit and to specify that the proprietor is only required to return that portion of the security deposit that is not required to pay other amenities.

Attorney Fees

Section 510.138 provides that legal fees may not be assessed against the losing party for any action taken under this chapter. However, ss. 510.413, 510.414, 510.415, and 510.416 authorize judgement to include reasonable attorney's fees and costs.

The amendment removes the prohibition of legal fees being assessed against the loosing party for any action taken under this chapter.

Safety

Section 510.211(1), relating to safety regulations, requires an approved locking device be present on every bedroom or apartment in an ARA. This requirement appears to conflict with s. 510.131, which provides that unless agreed in writing by both parties, the proprietor of a

dwelling unit other than a singly-family home or duplex must make reasonable provision for locks. It is unclear whether the proprietor is required to follow s. 510.211 or s. 510.131.

The amendment inserts language in 510.211(1) stating that proprietors must comply with this subsection notwithstanding s. 510.131.

Sanitation

Section 510.221(5), relating to sanitation regulations, requires ARA proprietors to take effective measures to protect accommodations against the entrance and breeding on the premises of all vermin. However, s. 510.131 states that unless otherwise agreed in writing, the proprietor of a dwelling unit other than a singly-family home or duplex shall make provision for the extermination of rats, mice, roaches, etc. It is unclear whether the proprietor required to follow s. 510.221 or s. 510.131.

The amendment inserts language in 510.221(5) stating that proprietors must comply with this subsection notwithstanding s. 510.131.

Communicable Diseases

Section 510.221(6) prohibits employment of persons suffering from or being a carrier of a communicable disease if there is a likelihood that the disease can be transmitted to others. It also requires ARA proprietors to report employees that they believe to be a public health risk. DOH suggests that to eliminate any chance that the legislation might be misinterpreted, it is important to state that this bill does not apply to persons who are HIV infected. Section 760.50, F.S., as well as the Americans with Disabilities Act, prohibit discrimination in employment, accommodations, etc., on the basis of AIDS/HIV. In addition, DOH questions whether the language is necessary to protect the public's health.

In response to DOH concerns, the amendment deletes most of s. 510.221(6) and requires only that ARA proprietors report employees that they believe to be a public health risk.

Fire Protection

In response to discussion with local fire officials and the Division of State Fire Marshal, the amendment deletes much of s. 510.215. As amended, s. 510. 215 requires ARAs three or more stories in height to be equipped with an automatic fire sprinkler system installed in compliance with the Florida Fire Prevention Code. The amendment retains language stating that this section applies only to ARAs three or more stories high wherein more than 50 percent of the units are advertised or held out to the public as available for ARA occupancy. The amendment also allows special consideration to ARAs under this section if they are listed in the National Register of Historic Places or as determined by the State Historic Preservation Officer.

Permits

Section 510.241(2) requires DOH to adopt by rule a staggered schedule for permit renewals. This requirement is inconsistent with s. 510.247, which states that permits shall expire, unless sooner revoked, on September 30 next after date of issuance. DOH requests that the requirement to adopt by rule a staggered schedule be deleted to allow all inspections to occur during the same time period.

The amendment deletes the requirement that DOH adopt by rule a staggered schedule.

Fines

Section 510.241(6) authorizes DOH to impose a fine of up to $1,000 for violations of that section. This is inconsistent with s. 510.261(1)(a) and s. 510.282(3) which limit fines to a maximum of $500 per violation. DOH recommends amending the bill to allow maximum fines of $1,000.

The amendment corrects conflicting limits on administrative fines by setting the limit at $1,000.

HUD

Section 510.247 provides that in the case of a facility owned or operated by a public housing authority, or a facility already licensed as a public lodging establishment by DBPR, an annual satisfactory sanitation inspection of the living units by the Department of Housing and Urban Development (HUD) shall substitute for the permitting inspection required by DOH. However, HUD does not inspect facilities licensed as a public lodging establishment by DBPR. In addition, as noted in the "Effects of Proposed Changes" section, it appears HUD facilities could not be ARAs.

The amendment deletes the language allowing a satisfactory inspection by HUD to substitute for the permitting inspection required by DOH.

Eviction

Section 510.262, relating to prohibited retaliatory acts, prohibits an ARA proprietor from "bringing or threatening to bring against the resident an action for eviction . . ." However, this bill does not provide for evictions.

The amendment replaces references to "tenancy" with "rental agreement" and replaces the reference to "eviction or possession or another civil action" with an action pursuant to s. 510.141.

Complaints/DOH Investigations

Section 510.265 limits establishments to a 20-day time frame to correct certain violations. DOH believes this limit may be too restrictive, and argues they should have more latitude with imposing corrective action time frames. DOH notes this section also requires the department to advise a proprietor to correct the violation based solely on a belief that the violation exists. Normal agency practice is to conduct a complaint investigation first to see if the complaint is valid and if it falls under the agency's jurisdiction before orders to correct a violation are given. DOH provided alternative language.

The amendment inserts alternative language provided by DOH that provides for DOH to investigate the complaint if it determines the complaint falls within its jurisdiction. The amendment provides for DOH to complete the investigation of the complaint in accordance with agency rules or procedures. The amendment does not specify a time limit in which a complaint must be remedied.

Arrests of ARA Violators

Section 510.281(1) provides that DOH, upon ascertaining by inspection that any ARA is being operated contrary to the provisions of this chapter, shall make complaint and cause the arrest of the violator. DOH believes this is overly punitive, and suggests making this provision optional rather than required.

The amendment replaces "shall" with "may" to make it optional for DOH to make complaint and cause the arrest of an operator.

Technical Changes:

Public Health Units

Section 510.013(5) defines the "Department" as the Department of Health and its representative county public health units. DOH states county public health units should be changed to "county health departments.

The amendment replaces a reference to "county public health units" with "county health departments."

Inspection of Elevators

Section 510.021, relating to the ARA Trust Fund, makes reference to the use of trust funds moneys by DOH pertaining to the inspection of elevators. The regulation and inspection of elevators is under the jurisdiction of the Department of Business and Professional Regulation.

The amendment removes inspection of elevators from the list of eligible trust fund expenses. Elevators will be inspected by DBPR as required under current law.

Rulemaking

Section 510.033(4) directs DOH to adopt such rules as are necessary to carry out the provisions of this chapter. Section 510.041(1) directs DOH to adopt rules necessary to protect the health and safety of residents of ARAs and to implement the provisions of this chapter. DOH believes subsection (4) of s. 510.033 is duplicative and should be deleted.

The amendment deletes 510.033(4).

Part

Sections 510.105 and 510.138 reference this "part." This reference should be changed to this "chapter," since the bill creates a chapter, not a part.

The amendment changes the reference to "part" to "chapter."

Duration of Tenancies

Although the catchline for s. 510.121 references "duration of tenancies, the section does not include provisions covering duration of tenancies. As a result, the bill does not address situations where a resident is current on rent and otherwise a good tenant but the proprietor wishes the tenant to vacate the ARA unit.

The amendment removes "duration of tenancies" from the catchline, since this issue is not addressed.

Invited Guest/Trespass Warrant

Section 510.123 addresses access to affordable residential accommodations by guests. The section uses the term "invited guest." However, this term is not defined in the definition section, s. 510.011. The term "Invited resident" is also used in the section, and is defined to be "any person who is invited by a resident to an affordable residential accommodation to visit that resident." It is unclear why the undefined term "invited guest" is used.

Section 510.123 states that no resident shall invite a person onto the premises who has been issued a trespass warrant by a law enforcement officer. The restriction is not limited to persons who have been issued a trespass warrant on the premises of the ARA, and could apply to any trespass warrant issued anywhere.

The amendment replaces references to the undefined term "guests" with the defined term "invited residents." The amendment also clarifies that no resident shall invite a person onto the premises who has been issued a "warrant for trespass on the same premises by a law enforcement officer."

Proprietor's Rules

Section 510.123(5) authorizes proprietors to adopt other rules reasonably related to the purpose of promoting the safety, welfare, or security of residents, visitors, or the proprietor's business. DOH believes this should be revised to ensure that such rules do not conflict with this statute or the rules adopted by DOH to implement this statute.

The amendment adds the statement that a proprietor's rules may not conflict with this chapter or rules adopted to implement this chapter.

Chapter 509

Section 510.134(2)(e) authorizes a proprietor to enter a dwelling unit to enforce provisions of s. 509.141, s. 509.142, or 509.143. This appears to be a drafting error, since this bill does not relate to chapter 509. The bill should be amended to replace these references with appropriate references to the bill's provisions.

The amendment replaces incorrect references to chapter 509 with chapter 510.)

Visitor

Section 510.141, relating to refusal of admission and ejection of undesirable residents, authorizes the proprietor of an ARA to remove or cause to be removed from the ARA any resident or "visitor" who on the premises of the ARA engages in certain conduct or who is, in the opinion of the proprietor, a person the continued entertainment of whom would be detrimental to such accommodation. The term "visitor" is not defined in the definition section, s. 510.013. The term "Invited resident" is defined to be "any person who is invited by a resident to an affordable residential accommodation to visit that resident." It is unclear why the undefined term "visitor" is used.

The amendment replaces references to the undefined term "visitor" with the defined term "invited residents."

Invitee/Guests

Section 510.142, relating to conduct on premises and refusal of service, states the section applies to guests, invitees, and licensees. As with the use of the terms "visitor" and "invited guest" discussed above, the bill does not define "guests" or "invitees." Presumably, a "guest" and an "invitee," though not defined, are both "invited residents," which is defined.

The amendment replaces references to the undefined terms "guests" and "invitees" with references to the defined term "invited residents."

Permit Requirement

DOH notes subsection (510.241(1) is confusing. It deems a person who operates an ARA without first obtaining a permit and not posting that permit to have committed a *misdemeanor of the first degree*. A person cannot post a permit if they do not have one. DOH also states this provision seems to be inconsistent with s. 510.241(5), which considers operating without a permit to be a *felony of the third degree*. However, the difference in penalty may be intentional, since under 510.241(5), the violation involves operating without a permit and not providing adequate personal hygiene facilities, lighting, etc.

The amendment deletes language in 510.241(1) addressing the requirement to display an ARA permit. This issue is addressed in 510.241(4).

Duplication

Paragraphs (a) and (b) of subsection (2) of s. 510.251 duplicate subsections (a) and (b) of subsection (1) of s. 510.251 and should be deleted.

The amendment deletes subsection (2) from s. 510.251.

Field Sanitation

Section 510.282 authorizes DOH to issue citations containing orders to correct, to pay a fine, or both, for violations of this chapter or field sanitation facility rules. This bill does not address field sanitation rules, which refer to providing adequate toilets, hand washing facilities, and drinking water to farm workers working in agricultural fields. The reference should be deleted.

The amendment deletes the reference to field sanitation rules.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
Thomas L. Hamby	Joan Highsmith-Smith