

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 476

INTRODUCER: Senator Evers

SUBJECT: Public Lodging Establishments

DATE: March 19, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Oxamendi | Imhof | RI | Pre-meeting |
| 2. | _____ | _____ | JU | _____ |
| 3. | _____ | _____ | BC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill amends the definitions of transient and nontransient public lodging establishments to increase the maximum period that a transient public lodging establishment is regularly rented from less than 30 days to less than 181 days. The bill also increases the minimum length of each rental period required to classify as a nontransient establishment from at least 30 days to at least 181 days. Rentals that exceed the maximum on a regular basis would be classified as nontransient public lodging establishments.

The bill replaces the classifications “resort condominium” and “resort dwelling” with the single term “vacation rental.” It provides that vacation rentals are residential property and may not be prohibited or treated differently than other residential properties based solely on their classification, use, or occupancy. The bill requires that vacation rental operators must keep advance payment or deposit until occupancy starts or upon proper cancellation.

The bill increases the membership of the advisory council from 10 members to 11 members. The new voting member must represent the Florida Vacation Rental Managers Association.

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.101, 509.221, 509.241, 509.242, 509.251, and 509.291.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public

lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are over 37,273 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.¹

The term “public lodging establishments” includes transient and nontransient public lodging establishments.² The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

Section 509.013(4)(a)1., F.S., defines a “transient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a “nontransient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
2. Any hospital, nursing home, sanitarium, assisted living facility, or other similar place;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and

¹ See *Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf (Last visited March 1, 2011).

² Section 509.013(4)(a), F.S.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

Public lodging establishments are classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or resort dwelling.³

Section 509.242(1)(c), F.S., defines the term “resort condominium” as:

any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Section 509.242(1)(g), F.S., defines the term “resort dwelling” as

any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

According to the vacation rental industry, the terms resort condominium and resort dwellings are not commonly used in the industry. Instead these classes of public lodging establishments are termed “vacation rentals.”

The 37,273 public lodging establishments licensed by the division are distributed as follows:⁴

- Nontransient apartments – 17,413 licenses covering 980,556 units;
- Transient apartments – 993 licenses covering 13,752 units;
- Nontransient roominghouses – 153 licenses covering 2,100 units;
- Transient roominghouses – 211 licenses covering 3,091 units;
- Resort condominiums – 3,174 licenses covering 91,453 units; and
- Resort dwellings – 10,602 licenses covering 25,112 units

Advisory Council

Section 509.291, F.S., creates a 10-member advisory council to assist the division by advising it on matters affecting the private-sector entities regulated by the division. The stated purpose is to “promote better relations, understanding, and cooperation between such industries and the division; to suggest means of better protecting the health, welfare, and safety of persons using the services offered by such industries; to give the division the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws and rules

³ Section 509.242(1), F.S.

⁴ 2011 Legislative Analysis for SB 476, Office of Legislative Affairs, Department of Business and Professional Regulation (January 31, 2011).

administered by the division; to promote and coordinate the development of programs to educate and train personnel for such industries; and perform other duties that may be prescribed by law.”

Real Estate Professionals

Part I of ch. 475, F.S., provides for the licensing and regulation of the practice real estate brokers, sales associates, and real estate schools. Section 475.011(11), F.S., provides an exception to the licensing and regulation. It exempts persons, partnerships, corporations, or other legal entities which, for another and for compensation or other valuable consideration, rent or advertise for rent, for transient occupancy, any public lodging establishment licensed under ch. 509, F.S.,

III. Effect of Proposed Changes:

Transient and Nontransient Lodging Establishments

The bill amends s. 509.013(4)(a), F.S., to revise the definitions for the terms transient public lodging establishment and nontransient public lodging establishment. The amended definition increases the maximum rental period required to classify as a transient public lodging establishment from less than 30 days to less than 181 days. The bill also increases the minimum length of each rental period required to classify as a nontransient establishment from at least 30 days to at least 181 days.

The definition of nontransient public lodging establishment provided in the bill may conflict with exemption in s. 509.013(4)(b)4., F.S., which exempts from the licensure requirement single-family, two-family, three-family, and four-family houses or dwellings and condominiums, timeshares, and cooperatives, provided that no more than four rental units within a single complex of buildings are available for rent and they are rented for more than 30 days or one-month periods. In effect, the bill may limit the number of long-term vacation rentals requiring licensure to only those with more than four rental units in a complex.

Vacation Rentals

The bill also amends s. 509.242(1)(c), F.S., to replace the term “resort condominium” with the term “vacation rental.” It deletes the definition for the term “resort dwelling” in s. 509.242(1)(g), F.S. It defines a “vacation rental” to mean any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment.

The bill also amends ss. 509.032(2), 509.221(9), 509.241, and 509.251, F.S., to replace the term “resort condominium or resort dwellings” with the term “vacation rentals.”

The bill creates s. 509.032(7)(b), F.S., to provide that vacation rentals are residential property and may not be prohibited or treated differently than other residential properties based solely on their classification, use, or occupancy.

The bill creates s. 509.101(3), F.S., to require each operator of a vacation rental to retain advance payment or deposit paid by a guest until the occupancy begins or is cancelled according to the rental agreement or the operator's cancellation rules.

Advisory Council

The bill amends s. 509.291(1)(a), F.S., to increase the membership of the advisory council from 10 members to 11 members. The new voting member must represent the Florida Vacation Rental Managers Association.⁵

Effective Date

The bill would take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases from less than 30 days to less than 181 days the maximum rental period required to be classified as a transient public lodging establishment. It also increases from at least 30 days to at least 181 days the minimum length of each rental period required to be classified as a nontransient establishment. This may require some dwellings, including condominiums, timeshares, and multi-family residences, that rented four or more times per year for periods of several months, which are not currently required to be licensed, to obtain a license as a vacation rental. This change may increase license fees collected by the division.

⁵ The Florida Vacation Rental Managers Association is a statewide association that represents the companies and professionals who rent and manage resort, vacation and other short-term rentals. Information about the association can be found at: <http://www.fvrma.org/> (Last visited March 2, 2011).

C. Government Sector Impact:

As noted in the Private Sector Impact section of this analysis, if the bill increases the number of dwellings that may require a public lodging establishment license, there would be an increase in license fees collected by the division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill does not directly relate to the practice of real estate professions under part I of ch. 475, F.S., by increasing the maximum rental period required to classify an establishment as a transient public lodging establishment, the bill would affect the persons who are exempt from regulation as real estate professionals, as provided s. 475.011(11), F.S. According to a representative for the Florida Association of Realtors, such unlicensed persons would likely be responsible for retaining the advance payment deposit required in s. 509.101(3), F.S.

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

None.

B. Amendments:

None.