HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 249 (CS/SB 454)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Government Operations Appropriations Subcommittee and Bembry (Commerce and Tourism; Wise)	114 **Y's**	0 **N's**
COMPANION BILLS:	CS/SB 454	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 249 passed the House on February 23, 2012, and subsequently passed the Senate on March 8, 2012. The bill would provide an exemption from regulation as public lodging establishments for all rooming houses and apartment buildings that are inspected by the U.S. Department of Housing and Urban Development, or its agent, and are designated primarily as housing for persons age 62 or older.

The bill is expected to have an insignificant negative fiscal impact on the Department of Business and Professional Regulation's Hotels and Restaurants Trust Fund.

The bill was approved by the Governor on April 27, 2012, ch. 2012-165, Laws of Florida. The effective date of the bill is October 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Public Lodging Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) oversees the regulation of Public Lodging and Food Service Establishments. Chapter 509, F.S., divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e., Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e., Motel 6).
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Vacation rentals:	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.

All public lodging establishments are licensed, but the degree of inspections and the relevant license fees differ based on the type of establishment. Each licensee pays a $50 application fee and a $10 annual Hospitality Education Program fee. Transient lodging establishments are also inspected 2 to 3 times per year. Nontransient lodging establishments are inspected 1 to 2 times per year.

Transient apartments pay a base fee of $125 and an incremental unit-based fee ranging from $10 for a single unit to $190 for more than 500 units for a total annual fee ranging from $145 to $325. Non-transient apartments pay a base fee of $95 and an incremental unit-based fee ranging from $20 to $95, depending on the number of units for a total annual fee ranging from $125 to $295.

As of October 3, 2011, DHR licenses 17,516 nontransient apartments and 1,005 transient apartments.

Transient roominghouses pay a fee ranging from $190 for a single unit to $370 for more than 500 units. Nontransient roominghouses pay a fee ranging from $170 to $340, depending on the number of units.

As of March 9, 2011, DHR licenses 165 nontransient roominghouses and 212 transient roominghouses.

The following types of lodging are excluded from the definition of public lodging establishment, and, therefore, are not subject to the regulations:

- Dormitories or other facilities maintained by schools, colleges, or universities for housing students, faculty, or visitors.
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services.
- Migrant labor camps or residential migrant housing permitted by the Department of Health.
- Mobile home and recreational vehicle parks inspected by the Department of Health.
- 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.
- 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.

U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) operates five programs that designate assisted housing developments for either low-income elderly residents alone, or low-income elderly residents and residents with disabilities. The primary HUD program that provides housing for low-income elderly households is the Section 202 Supportive Housing for the Elderly program. The Public Housing and project-based Section 8 housing programs have projects dedicated to elderly households. The Section 221(d)(3) Below Market Interest Rate and Section 236 programs are mortgage subsidy programs that provide housing for all age levels, but have properties specifically dedicated to elderly households.[1]

HUD designates certain property as elderly housing. HUD programs define elderly housing as households where one or more persons are age 62 or older. If owners are unable to rent units to elderly families, they may give preference to near-elderly families (defined as age 50 or older) with an adult member who has a disability.[2]

HUD Rental Housing Programs for Low-Income Elderly Households		
Program	**Income Eligibility**	**Units Designated for Elderly Households[3]**
Section 202		262,704
1981 to present	50% of area median income.	
1974 to 1981	80% of area median income.	

[1] Congressional Research Service, Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents, RL33508 (Sept. 2010), *available online at* http://aging.senate.gov/crs/aging13.pdf.
[2] *Id.*
[3] Data from 2005. *Id.*

1968 to 1974	Higher of 80% of area median income or 135% of Public Housing income limits.	
1962 to 1968	Income limits set on a community basis.	
1959 to 1962	No income limits.	
Section 8 Rental Assistance	50% of area median income.	200,455
Public Housing	80% of area median income.	76,638
Section 236	80% of area median income.	65,877
Section 221(d)(3) BMIR	95% of area median income.	1,154

Under Section 202, HUD provides capital advances to finance the construction, rehabilitation or acquisition of housing for very low-income elderly persons and provides rent subsidies for the projects to help make them affordable. Occupancy in Section 202 housing is open to any very low-income household comprised of at least one person who is at least 62 years old at the time of initial occupancy.

The Real Estate Assessment Center (REAC) conducts physical inspections of housing that is owned, insured or subsidized by HUD, including section 202 properties. REAC inspections cover all building exteriors, all building systems, all common areas and all units.[4] The frequency of REAC inspections is based on the outcome of previous reviews, with the best performing properties (90 points or higher) inspected every 3 years, and the worst performing properties (79 points or less) inspected annually. Such housing is also subject to Management and Occupancy Reviews (MOR), which review compliance with relevant agreements and laws and include physical inspections of the buildings and grounds.[5]

The Housing Choice Voucher Program, also known as Section 8 Housing, provides certain populations, including the elderly, with financial assistance with rent costs.[6] Applicants meeting eligibility criteria, including income limits, are given vouchers toward rental costs in approved rental units. The program regulations set forth basic housing quality standards (HQS) which all units must meet before assistance can be paid on behalf of a family and at least annually throughout the term of the assisted tenancy.[7] Local public housing agencies inspect the units for health and safety.

The HQS covers 13 key aspects of housing quality, including sanitary facilities, food preparation and refuse disposal, space and security, thermal environment, illumination and electricity, structure and materials, interior air quality, water supply, lead-based paint, access, site and neighborhood, sanitary condition, and smoke detectors.

Certain housing is designated for use by elderly persons, including congregate housing, where tenants share dining spaces and are given food service, and group homes, and must meet additional quality standards.[8]

<u>Effect of Changes</u>

[4] *See* HUD Physical Inspection Library, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/library/lib_phyi.
[5] *See* HUD, Occupancy Requirements of Subsidized Multifamily Housing Programs, 4350.3, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4350.3.
[6] *See* Housing Choice Vouchers Fact Sheet, U.S. Dept. of Housing and Urban Development, *available at* http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8.
[7] 24 CFR Part 982.
[8] Housing Choice Voucher Program Guidebook, U.S. Dept. of Housing and Urban Development, Ch. 17, Special Housing Types, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11761.pdf.

The bill would exempt from regulation as public lodging establishments all roominghouses (regardless of the age of occupants) and any apartment buildings that are inspected by the U.S. Department of Housing and Urban Development, or its agent, and are designated primarily as housing for persons at least age 62. The division is given rulemaking authority to implement the exemption.

The DBPR indicates that a total of 298 apartments and 377 roominghouses would likely become exempt under the provisions of the bill.[9]

The bill is effective on October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill is expected to have an annual insignificant negative fiscal impact on revenues to the Hotels and Restaurants Trust Fund. DBPR estimates the deregulation of elderly housing will result in an annual reduction in revenue of $43,265.[10] In the 2011 Regular Session, the DBPR estimated that the deregulation of roominghouses would result in an annual reduction in revenue of $70,255.

2. Expenditures:

   The bill will reduce expenses related to apartment inspections by an amount equivalent to the number of establishments meeting the exemptions, approximately 675.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would reduce costs on those apartment buildings and roominghouses meeting the exemption requirements. The DBPR estimates 298 nontransient apartment licenses would likely become exempt under the provisions of the bill and an additional 377 currently licensed roominghouses would no longer require licensure.

D. FISCAL COMMENTS:

None.

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[9] Department of Business and Professional Regulation Bill Analysis dated January 24, 2012 and updated as of February 7, 2012.
[10] *Id.*