

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 343 Recreational Vehicle Industries

**SPONSOR(S):** Commerce Committee, Business & Professions Subcommittee, Fetterhoff

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Thompson	Anstead
2) State Affairs Committee	21 Y, 0 N	Etheridge	Williamson
3) Commerce Committee	23 Y, 0 N, As CS	Thompson	Hamon

### SUMMARY ANALYSIS

The Department of Health (DOH) is responsible for the permitting of mobile home parks, lodging parks, RV parks, and recreational camps. When a RV park is damaged or destroyed by a natural disaster and rebuilt, the density standards to rebuild are prescribed by the current local ordinance, which may be smaller than the standards originally imposed. RV park guests are covered by Florida's landlord and tenant laws. However, the law does not apply to an RV park guest whose occupancy is less than six months (transient guest). Thus, a transient guest may be ejected from the park without notice, and property lost or abandoned by a transient guest becomes park property if certain conditions are met.

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency responsible for regulating the liquefied petroleum (LP) gas industry. Currently, the qualifications for recreational vehicle (RV) dealers/installers working in the LP gas industry are consolidated under the requirements of other LP gas license types (category I dealer, category II dispenser, and category V installer). Thus, in order to operate, the LP gas RV dealers/installers are required to obtain a license in one or more of the other LP gas categories, depending on their business.

The bill:

- Specifies that DOH is the exclusive regulatory and permitting authority for sanitary and permitting standards and operational matters for RV parks, mobile home parks, lodging parks, and recreational camps;
- Allows a RV park to be rebuilt after a natural disaster using the original density standards;
- Creates a rebuttable presumption that a RV park guest is a transient guest, under certain circumstances;
- Provides methods for the disposal of property left by certain guests of a RV park;
- Modifies the duties of a law enforcement officer called to assist with a person illegally on a RV park's premises to allow removal of such a person in lieu of arrest and limits the officer's liability;
- Requires DACS to establish by rule the requirements for agents qualified to administer LP gas examinations;
- Requires DACS to establish by rule a specific examination for RV dealers/installers; and
- Clarifies that in order to be eligible to apply for certification as a master qualifier for an LP gas business, "verifiable LP gas experience" or "professional certification" is required.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Recreational Vehicle Parks**

##### ***Permitting***

The Department of Health (DOH) is responsible for permitting mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps, and is the exclusive regulatory and permitting authority for establishing sanitary standards for these entities.<sup>1</sup> This includes regulations relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and general health issues.<sup>2</sup>

Before establishing a mobile home park, RV park, or recreational vehicle camp, a person must obtain a permit from DOH.<sup>3</sup> The permit must be renewed annually and a new permit is required when a park or camp is sold or its ownership is transferred.<sup>4</sup> A person maintaining or operating a park or camp without first obtaining a permit commits a second degree misdemeanor.<sup>5</sup>

When applying to DOH for a permit, the application must state the:

- Location of the existing or proposed park or camp;
- Type of park or camp to be established;
- Number of mobile homes, RVs, or tents to be accommodated;
- Type of water supply;
- Method of sewage disposal; and
- Any other information DOH requires.<sup>6</sup>

Parks and camps must also submit a valid set of plans to the county public health unit at the time of permit application.<sup>7</sup> The plans must include:

- A drawing<sup>8</sup> of the park or camp that includes the area and dimensions of the tract of land;
- The space number or other designation of the space;
- The location and size of all mobile home, RV, and tents spaces; and
- The location of all roadways.<sup>9</sup>

Additionally, for permanent buildings located within the park or camp, a floor plan must be submitted showing the number, types, and distribution of all plumbing fixtures.<sup>10</sup>

DOH will issue a permit if it determines that the park or camp complies with requirements in chapter 513, F.S., and that it is not a source of danger to the health of the general public.<sup>11</sup> Currently, there are approximately 5,500 mobile home parks, lodging parks, RV parks, and recreational camps in Florida.<sup>12</sup>

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<sup>1</sup> S. 513.051, F.S.

<sup>2</sup> See ch. 513, F.S.

<sup>3</sup> S. 513.02(1), F.S.

<sup>4</sup> S. 513.02(5), F.S.

<sup>5</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 513.10(1), 775.082, and 775.083, F.S.

<sup>6</sup> S. 513.03(1), F.S.

<sup>7</sup> Rule 64E-15.010(2)(b), F.A.C.

<sup>8</sup> The drawing does not have to be drawn to scale or completed by an engineer if the space dimensions are shown. *Id.*

<sup>9</sup> Rule 64E-15.010(2)(b), F.A.C.

<sup>10</sup> *Id.*

<sup>11</sup> S. 513.03(2), F.S.

<sup>12</sup> The Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, <http://www.floridahealth.gov/environmental-health/mobile-home-parks/index.html> (last visited Feb. 9, 2020).

## **Local Governments**

Local governments have the authority to adopt ordinances that may affect the operation of an RV park within their jurisdiction. This includes regulation regarding lot and density size and separation or setback distances for an RV park. Current law requires separation and setback distances within an RV park to remain those distances established at the time of the RV park's initial approval by DOH and the local government of the jurisdiction in which the RV park is located.<sup>13</sup> However, when an RV park is destroyed by a natural disaster and the park operator chooses to rebuild, the density standards applied are those prescribed under the current density standards ordinances.<sup>14</sup> Such standards may be smaller than the standards originally imposed, causing the park to lose lots and the business that goes with them.<sup>15</sup> This, in turn, reduces the number of RV park lots available for Florida's visitors.<sup>16</sup>

## **Rights of Transient and Non-Transient Guests**

The Florida Residential Landlord Tenant Act (Act) governs most traditional rental arrangements, including those for apartments and single family housing units.<sup>17</sup> The Act also applies to a guest occupying an RV in an RV park for more than six months (tenant). However, a guest registered in an RV park for six months or less (transient guest) is subject only to the protections offered under the law that governs mobile home and RV parks.<sup>18</sup>

## **Ejectment & Eviction**

A park operator can only recover possession of a lot without a tenant's consent through an eviction under the Act. A residential eviction begins when the park operator serves the tenant notice to vacate the premises either by mailing or delivering a copy to the tenant, or if the tenant is not on the premises, by leaving a copy at the RV.<sup>19</sup> Such notice must state the reason for the eviction, which may include failure to pay rent,<sup>20</sup> lease violations,<sup>21</sup> and destruction of property,<sup>22</sup> and the time by which the tenant must either cure the violation or vacate the premises. A landlord can bring an action for possession in the county court of the county where the park is located by filing a complaint describing the lot and stating the facts that authorize its recovery if a tenant does not vacate the premises after termination of the tenant's rental agreement.<sup>23</sup> Should the landlord prevail, the court will issue a writ of possession to the sheriff, authorizing the sheriff to put the landlord in possession of the lot after a 24-hour notice period.<sup>24</sup>

However, an RV park operator may eject from the park any transient guest who illegally possesses or deals in a controlled substance, disturbs the peace and comfort of others, physically harms the park, or fails to timely pay rent at the agreed rate.<sup>25</sup> An ejectment begins when a RV park operator notifies a transient guest in writing that the park "no longer desires to entertain the [transient] guest" and asks him or her to leave immediately.<sup>26</sup> If the transient guest paid advanced rent, the park must, at the time ejection notice is given, give the transient guest any unused portion of the advanced payment.<sup>27</sup> A

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<sup>13</sup> S. 513.1115, F.S.

<sup>14</sup> Florida Department of Health, Agency Analysis of 2020 House Bill 647, p. 2 (Jan. 21, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Part II, Ch. 83, F.S.

<sup>18</sup> A transient guest means any guest registered as provided in s. 513.112, F.S., for six months or less. When a guest is permitted with the knowledge of the park operator to continuously occupy a RV in a RV park for more than six months, there is a rebuttable presumption that the occupancy is non-transient, and the eviction procedures of part II of ch. 83, F.S., apply. S. 513.01(12), F.S.

<sup>19</sup> S. 83.56(4), F.S.

<sup>20</sup> S. 83.56(3), F.S.

<sup>21</sup> S. 83.56(2)(b), F.S.

<sup>22</sup> S. 83.56(2)(a), F.S.

<sup>23</sup> S. 83.59, F.S.

<sup>24</sup> S. 83.62, F.S.

<sup>25</sup> S. 513.13(1), F.S.

<sup>26</sup> S. 513.13(2), F.S.

<sup>27</sup> *Id.*

transient guest who remains or attempts to remain in the park after receiving an ejection notice commits a second degree misdemeanor.<sup>28</sup>

If any person is on RV park premises illegally, the park operator may call upon any state law enforcement officer for help.<sup>29</sup> Such law enforcement officer has a duty, upon the park operator's request, to arrest the person illegally on RV park premises and take him or her into custody if the person does the following acts in the officer's presence:

- Illegally possess or deals in a controlled substance;
- Disturbs the peace and comfort of other persons;
- Causes harm to the physical park;
- Fails to pay rent at the agreed-upon rental rate by the agreed-upon time; or
- Remains in the park after being asked to leave.<sup>30</sup>

### ***Refusal of Accommodation and Services***

An RV park operator may not cause the termination or interruption of any utility service furnished to a tenant, including water, electricity, and gas, whether or not the utility service is under the control of, or payment is made by, the park operator.<sup>31</sup> Further, a park operator may not prevent the tenant from obtaining reasonable access to his or her RV and lot by any means,<sup>32</sup> and can only regain possession of the lot through the eviction process.

An RV park operator may refuse to provide accommodations or service to any person whose conduct on the park's premises displays intoxication, profanity, lewdness, or brawling; who indulges in such language or conduct in a manner that disturbs the peace or comfort of other guests; who engages in illegal or disorderly conduct; or whose conduct creates a nuisance.<sup>33</sup> However, the law does not expressly specify the process by which a park operator could require a transient guest to immediately leave the premises.

Additionally, a park operator may not refuse to provide accommodations or service to any person, transient or otherwise, on the basis of a person's race, color, national origin, sex, physical disability, or creed. Such refusal violates Florida's Fair Housing Act, the federal Fair Housing Act, and the Fourteenth Amendment of the United States Constitution.<sup>34</sup>

### ***Unclaimed Property***

A park operator must send written notice to a tenant or the property's owner when a tenant leaves personal property in an RV park after vacating the premises.<sup>35</sup> The notice must describe the property with enough detail that the property owner can identify it and, if not stored on park premises, state where the property is stored and that reasonable storage costs may be charged before the property is returned.<sup>36</sup> Additionally, the notice should specify where the property may be claimed and the date by which the claim must be made, which date must be at least ten days away if the notice is personally delivered and, if the notice is sent by mail, at least 15 days from the date the notice is placed in the mail.<sup>37</sup> The notice must be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address.<sup>38</sup> However, if a park operator has reason to believe that the notice will not be received by the intended person, the notice must also be delivered or

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<sup>28</sup> *Id.*

<sup>29</sup> S. 513.13(4), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> S. 83.67(1), F.S.

<sup>32</sup> S. 83.67(2), F.S.

<sup>33</sup> S. 513.118, F.S.

<sup>34</sup> Ss. 513.118 and 760.23, F.S.; *see also* 42 U.S.C. §§ 3601-19.

<sup>35</sup> Ss. 715.101(1) and 715.104(1), F.S.

<sup>36</sup> Ss. 715.104(2) and 715.107, F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 715.104(3), F.S.

sent to any other address known to the park operator where the person to be notified may reasonably be expected to receive it.<sup>39</sup>

A park operator must release the property if the property's owner pays the storage costs and acts to take possession of the property on or before the date specified in the notice.<sup>40</sup> However, a park operator may sell or dispose of the property if the property's owner does not respond in the timeframe specified in the notice.<sup>41</sup> Where the property's estimated value is less than \$500.00, the park operator can dispose of it in any manner, but where the property's estimated value is \$500.00 or more, the landlord must arrange for a public sale of the property at the nearest suitable place to where the property is held or stored.<sup>42</sup> A park operator must publish notice of the sale of the property once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held, and the advertisement must include the former tenant's name, the property's description, and the time and place of the sale.<sup>43</sup> If the property's owner pays the reasonable storage costs and claims the property prior to its sale, the park owner must withdraw the property from sale and release it to the owner.<sup>44</sup>

When property with an identifiable owner is left in an RV park by a guest, a park operator must send written notice to the guest or the property's owner and hold the property for 90 days.<sup>45</sup> If the property remains unclaimed after the 90-day holding period, it becomes park property.<sup>46</sup> However, these procedures do not apply to property with an identifiable owner left by a guest who vacated the premises without notice to the park operator and with an outstanding account.<sup>47</sup>

### **Local Government Authority**

The Florida Constitution grants counties<sup>48</sup> and municipalities<sup>49</sup> broad home rule authority. Non-charter county governments may exercise those powers of self-government provided by general or special law.<sup>50</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.<sup>51</sup>

Municipalities have those governmental, corporate, and proprietary powers necessary to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes,<sup>52</sup> except as otherwise provided by law.<sup>53</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> S. 715.108, F.S.

<sup>41</sup> S. 715.109(1), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> 715.109(2)-(3), F.S.

<sup>44</sup> S. 715.108(2), F.S.

<sup>45</sup> S. 513.115, F.S.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; S. 513.115, F.S.

<sup>48</sup> Counties are subdivisions of the state created by law. *See* art. VIII, s. 1(a), Fla. Const.

<sup>49</sup> Municipalities are created by general or special law or recognized pursuant to art. VIII, s. 2 or s. 6, Fla. Const. *See* s. 165.031(3), F.S. The term "municipality" may be used interchangeably with the terms "city," "town," or "village."

<sup>50</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>51</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>52</sup> A "municipal purpose" is any activity or power which may be exercised by the state or its political subdivisions. *See* s. 166.021(2), F.S.

<sup>53</sup> Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

## **Preemption**

Counties and municipalities have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies to a particular topic, it precludes a local government<sup>54</sup> from exercising authority in that particular area.<sup>55</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>56</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>57</sup> In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.<sup>58</sup> In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>59</sup>

Implied preemption is a decision by the courts to recognize state preemption in the absence of an explicit legislative directive.<sup>60</sup> Preemption of a local government enactment is implied only where "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area," and strong public policy reasons exist for finding preemption.<sup>61</sup> Implied preemption is found where the local legislation would present a danger of conflicting with the state's pervasive regulatory scheme.<sup>62</sup>

## **Effect of Proposed Changes**

### **Permitting**

The bill requires a new owner of a mobile home park, lodging park, RV park, or recreational camp to apply to DOH for a permit within 60 days after the date of transfer, instead of before the date of transfer.

### **Local Government Authority**

The bill preempts all "permitting authority" for "permitting standards" to DOH for RV parks, mobile home parks, lodging parks, and recreational camps.

The bill allows an RV park damaged or destroyed by a natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval.

The bill also provides that DOH regulations relating to placement of RVs on lots in RV parks supersede any other county, municipality, or special district ordinance or regulation regarding the lot size, density, or separation or setback distance of an RV park which goes into effect after the initial permitting and construction of the park.

These changes eliminate or significantly reduce local governments' authority to adopt ordinances affecting the operation of an RV park within their jurisdiction.

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<sup>54</sup> Including without limitation counties, municipalities, school districts, special districts, or any other subdivision of the state.

<sup>55</sup> Wolf, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Feb. 9, 2020).

<sup>56</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>57</sup> *Mulligan*, *supra* at 934 So. 2d at 1243.

<sup>58</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>59</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>60</sup> *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

<sup>61</sup> *Id.*, quoting *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826, 831 (Fla. 1<sup>st</sup> DCA 1996), citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984).

<sup>62</sup> *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

## ***Rights of Transient and Non-Transient Guests***

The bill creates a rebuttable presumption that a guest is a transient guest. Specifically, the bill provides if the guest registry indicates that the intended length of stay is under 6 months, the guest is presumed to be transient. Unless rebutted by the guest, this will allow an RV park operator to eject a transient guest in accordance with the requirements for RV parks in s. 513.13, F.S., instead of potentially having to go through the lengthy eviction process in accordance with landlord-tenant law.

## ***Ejection and Eviction***

The bill adds a posted park rules and regulations violation to the list of reasons for which a park operator may eject a transient guest from park premises. The bill also requires that, when a park operator sends a transient guest written notice of his or her ejection from the premises, such notice must state: "You are hereby notified that this recreational vehicle park no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state".

Additionally, the bill gives a law enforcement officer called by a park owner to help with a person illegally on RV park premises the option to remove the person from the premises or arrest the person if the park operator requests such action and indicates that such a person:

- Illegally possessed or dealt in a controlled substance;
- Disturbed the peace and comfort of other persons;
- Caused harm to the physical park;
- Failed to pay rent at the agreed-upon rental rate by the agreed-upon time; or
- Remained in the park after being asked to leave.<sup>63</sup>

Thus, the officer no longer has to witness an offense before taking the person into custody, and may remove the offending person from the premises in lieu of making an arrest. Additionally, a person arrested or removed by a law enforcement officer under this section who cannot immediately remove his or her property may arrange a time to pick up the property in the company of a law enforcement officer within 48 hours of arrest or removal.

Finally, the bill changes references from "eviction" to "ejection" in the context of removing a transient guest, as such a guest is not protected by the Act and its eviction process.

## ***Refusal of Accommodation & Services***

The bill authorizes an RV park operator to refuse access to the premises to any transient guest or visitor who:

- Displays intoxication, profanity, lewdness, or brawling;
- Indulges in language or conduct that disturbs the peace, quiet enjoyment, or comfort of other guests; or
- Engages in illegal or disorderly conduct or conduct constituting a nuisance or safety hazard.

Under the bill, a transient guest or visitor who refuses to leave after being asked to do so by the park operator commits trespass, and the operator may call a law enforcement officer to have the person and his or her property removed from the premises. The bill provides immunity from liability, except for tort liability,<sup>64</sup> for a law enforcement officer involved in the removal of a transient guest or visitor from an RV park under these circumstances, and provides that, if conditions do not allow for immediate removal of the person's property, he or she may arrange a time to pick up the property, in the company of a law enforcement officer, within 48 hours of his or her removal.

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<sup>63</sup> *Id.*

<sup>64</sup> The state waives sovereign immunity for tort liability for itself and its agencies and subdivisions. Thus, the bill provides that a law enforcement officer removing a person illegally on RV park premises does not have sovereign immunity where such an officer would not normally have sovereign immunity, i.e., for tort liability. S. 768.28, F.S.

## ***Unclaimed Property***

The bill provides a method for handling property left in an RV park by a guest who has vacated the premises without notice to the operator and who has an outstanding account allowing such property to be considered abandoned property that may be disposed of using the disposition process as provided in:

- The Disposition of Personal Property Landlord and Tenant Act;<sup>65</sup> or
- The requirements governing the collection, storage and disposition of lost or abandoned personal property on public property, which includes properties located within a theme park or entertainment complex, as defined in s. 509.013(9), F.S., or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment.<sup>66</sup>

## **Liquefied Petroleum Gas**

### ***Background***

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency charged with regulating the liquefied petroleum (LP) gas industry, including licensing, inspection, training, and examination requirements, in accordance with ch. 527, F.S. These responsibilities enable DACS to ensure that those persons engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.<sup>67</sup>

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same:

- Propane;
- Propylene;
- Butanes (normal butane or isobutane); and
- Butylenes.<sup>68</sup>

Propane, the most widely used LP gas, is an energy source for hotels, restaurants, schools, hospitals, nursing homes, universities, private homes, recreational vehicles, agricultural and industrial facilities, and is used as an alternative fuel for vehicles.<sup>69</sup>

### ***Business Licenses***

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. DACS must license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license are a third degree felony.<sup>70</sup>

The license categories and associated fees are as follows:<sup>71</sup>

<b>License Category</b>	<b>Annual License Fee</b>
Category I LP gas dealer	\$400
Category II LP gas dispenser	\$400

<sup>65</sup> Ss. 715.10-715.111, F.S.

<sup>66</sup> S. 705.185, F.S.

<sup>67</sup> Florida Department of Agriculture and Consumer Services, *Safe Dispensing of Propane, Propane Dispensing Unit Operator Training Manual*, <https://www.fdacs.gov/content/download/78592/file/Safe-Dispensing-of-Propane-Manual.pdf> (last visited Nov. 23, 2019).

<sup>68</sup> S. 527.01(1), F.S.

<sup>69</sup> Florida Department of Agriculture and Consumer Services, *supra* note 1, at 4.

<sup>70</sup> S. 527.02, F.S.

<sup>71</sup> *Id.*



Category III LP gas cylinder exchange unit operator	\$65
Category IV dealer in appliances and equipment	\$65
Category V LP gas installer	\$200
Category VI miscellaneous operator	\$200

Licensees may elect to renew their license annually, biennially, or triennially, and are required to meet the same requirements and conditions, including fee amounts, for each licensed year. An expired license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.<sup>72</sup>

### *Training and Examinations*

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.<sup>73</sup> DACS is also authorized to adopt rules that are:<sup>74</sup>

- In the interest of public health, safety, and welfare and to promote the safe handling of LP gas, equipment, and systems; and
- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACS website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.<sup>75</sup>

In addition, any person applying for a license to engage in category I dealer, category II dispenser, or category V installer activities must prove competency by passing a written examination administered by DACS or its agent.<sup>76</sup>

### **Qualifiers**

Each category I dealer, category II dispenser, or category V installer licensee must employ a full-time employee who has received a qualifier certificate from DACS. Qualifiers are required to function in a supervisory capacity, and a separate qualifier must be present for every 10 employees.<sup>77</sup>

An applicant for a qualifier certificate must:

- Be employed by a category I dealer, category II dispenser, or category V installer licensee;
- Submit to DACS a nonrefundable \$20 examination fee; and
- Pass a competency examination with a grade of 70 percent or above in each area tested.<sup>78</sup>

Qualifier registration expires three years after the date of issuance. Qualifiers must renew their qualification 30 calendar days before expiration, upon:

- Application to DACS;
- Payment of a \$20 renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by DACS rule, during the previous three-year period.<sup>79</sup>

Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish qualifier status.<sup>80</sup>

<sup>72</sup> S. 527.03, F.S.

<sup>73</sup> S. 527.055(1)(b), F.S.

<sup>74</sup> S. 527.06

<sup>75</sup> Florida Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Nov. 23, 2019).

<sup>76</sup> S. 527.0201(1), F.S.

<sup>77</sup> S. 527.0201(1)-(4), F.S.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

## **Master Qualifiers**

In addition to the qualifier requirements, each category I dealer and category V installer licensee is required to have a manager, owner, or employee at each licensed location who has received a master qualifier certificate from DACS. The master qualifier must be a manager, owner, or someone otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to DACS.<sup>81</sup>

An applicant for a master qualifier certificate must:

- Be employed by a category I dealer or category V installer licensee;
- Submit to DACS a nonrefundable \$30 examination fee;
- Have been a registered qualifier for at least three years immediately preceding the application; and
- Pass a master qualifier competency examination with a grade of 70 percent or above in each area tested.<sup>82</sup>

Master qualifier registration expires three years after the date of issuance<sup>83</sup> and may be renewed by submitting to DACS:

- Proof of employment;
- Payment of a \$30 certificate renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous three-year period.<sup>84</sup>

## **Insurance**

Prior to receiving a license, LP gas license applicants, other than category IV dealers in appliances and equipment and category III LP gas cylinder exchange unit operators, must provide DACS with proof of bodily injury and property damage liability insurance coverage of at least \$1 million. However, the Commissioner of Agriculture may accept a \$1 million bond in lieu of the coverage requirement.<sup>85</sup>

For a class III license, coverage of at least \$300,000 is required, and the Commissioner of Agriculture may accept a bond of at least \$300,000 in lieu of the coverage requirement.<sup>86</sup>

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<sup>80</sup> *Id.*

<sup>81</sup> S. 527.0201(5), F.S.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> S. 527.04(1), F.S.

<sup>86</sup> S. 527.04(2), F.S.

## **Recreational Vehicle Dealers or Installers**

Propane is widely used in recreational vehicles (RVs) to regulate temperature, cook meals, provide hot water, and refrigerate food. Typically, motorized RVs have a fixed propane tank and towable RVs have a removable propane tank.<sup>87</sup> In Florida, the refilling, repairing, or replacing of propane gas and equipment must be completed by a properly trained employee of a licensed LP gas-related business.<sup>88</sup> These individuals are referred to by DACS as RV dealers/installers.<sup>89</sup>

Prior to July 2018, RV dealers/installers were classified separately in Florida law as a “category IV LP gas dispenser and recreational vehicle servicer” and were defined as:

any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment.<sup>90</sup>

RVs were defined as “a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.”<sup>91</sup>

In order to engage in LP gas-related activities, category IV businesses were required to obtain licensure from DACS by meeting all applicable requirements within the chapter of law governing the LP gas industry, including training, examination, initial and renewal license fees, insurance coverage, and qualifiers.<sup>92</sup>

However, legislation passed during the 2018 Legislative Session that became effective July 2018, resulted in the category IV license type being deleted from statute.<sup>93</sup> According to DACS, the changes were sought to meet current business practices, to simplify the registration process and to streamline the regulatory structure. DACS collaborated with the Florida LP Gas Association and other industry leaders to modernize the LP gas statute.<sup>94</sup>

Since July 2018, depending on the type of work being performed, a RV dealer/installer is required to obtain either a category I dealer, II dispenser, or V installer license and is required to meet all applicable licensing and examination requirements in order to operate lawfully in the state. Current law does not provide a separate LP gas license category specifically for RV dealers/installers.

According to DACS, RV dealers/installers are required to obtain a category V installer license, and if the RV dealer/installer also dispenses LP gas, a category II dispenser license must be obtained as well. In lieu of multiple licenses, RV dealers/installers may obtain a category I dealer license that allows them to perform both service and dispensing functions.<sup>95</sup>

According to DACS, there are 50 licensed RV dealers/installers in the state.<sup>96</sup>

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<sup>87</sup> Winnebagolife, *An Easy Guide to Finding Propane for Your RV*, <https://winnebagolife.com/2019/05/finding-propane-for-your-rv> (last visited Nov. 23, 2019).

<sup>88</sup> See ch. 527, F.S.

<sup>89</sup> DACS, Agency Analysis of 2019 House Bill 343 (Oct. 21, 2019).

<sup>90</sup> See ch. 527, F.S. (2017).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Ch. 2018-84, Laws of Fla.

<sup>94</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).

<sup>95</sup> *Id.* at 1.

<sup>96</sup> *Id.* at 3.

## **Effect of Proposed Changes**

### ***Recreational Vehicle Dealers or Installers***

The bill requires DACS to specify by rule the requirements for agents qualified to administer written competency examinations required for LP gas licensure.

The bill requires DACS to establish by rule a separate test for persons applying for a license to engage in category I activities solely related to the service or repair of RVs.

The bill requires the category I RV dealer/installer test to include and ensure competency in the following activities as they relate to RVs:

- Operating a LP gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;
- Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of LP gas; and
- Installing, servicing, or repairing RV LP gas appliances and equipment.

The bill also defines an RV as:

- “a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle.”

### ***Master Qualifiers***

The bill limits a qualifier or master qualifier who has passed the category I RV dealer/installer test to category I activities solely related to the service and repair of RVs.

In addition, the bill replaces the requirement that master qualifier applicants have at least three years of experience as a registered qualifier to instead require such applicants to:

- Have a minimum of three years of verifiable LP gas experience; or
- Hold a professional certification by an LP gas manufacturer.

## **B. SECTION DIRECTORY:**

Section 1: Amends s. 513.012, F.S., relating to public health laws; enforcement.

Section 2: Amends s. 513.02, F.S., relating to permits.

Section 3: Amends s. 513.051, F.S., relating to preemption.

Section 4: Amends s. 513.112, F.S., relating to maintenance of guest register and copy of laws.

Section 5: Amends s. 513.1115, F.S., relating to placement of recreational vehicles on lots in permitted parks.

Section 6: Amends s. 513.115, F.S., relating to unclaimed property.

Section 7: Amends s. 513.118, F.S., relating to conduct on premises; refusal of service.

Section 8: Amends s. 513.13, F.S., relating to recreational vehicle parks; eviction; grounds; proceedings.

Section 9. Amends s. 527.01, F.S., defining the term “recreational vehicle.”

Section 10. Amends s. 527.0201, F.S., relating to qualifiers; master qualifiers; examinations.

Section 11. Provides an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

The bill allows RV parks to more easily eject unwanted guests, which may result in a positive fiscal impact to park owners who can rent spaces to other guests and allow current guests to have a more enjoyable stay.

Authorizing a separate and distinct category I RV dealer/installer licensure test and allowing applicants to use experience or professional certification to be eligible to apply for certification as a master qualifier may remove unnecessary barriers to professional licensure and employment in the category I RV dealer/installer industry, which may allow more workers to practice their chosen profession.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

## B. RULE-MAKING AUTHORITY:

The bill authorizes DOH to administer and enforce rules relating to permitting and operational matters. It appears that DOH has sufficient rulemaking authority under existing law.

The bill requires DACS to adopt rules specifying the requirements for agents qualified to administer written competency examinations and establishing a separate test for persons applying for a license to engage in category I activities solely related to the service or repair of RVs. It appears that DACS has sufficient rulemaking authority under existing law.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Requires DACS to establish by rule the requirements for agents qualified to administer LP gas examinations;
- Requires DACS to establish by rule a specific test for RV dealers/installers;
- Requires DACS to ensure that test content is specific to RV dealer/installer activities;
- Limits those who pass the category I RV dealer/installer test to category I activities solely related to the service and repair of RVs; and
- Clarifies that in order to be eligible to apply for certification as a master qualifier, “verifiable LP gas experience” or “professional certification” is required.

On February 13, 2020, the Commerce Committee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Specifies that DOH is the exclusive regulatory and permitting authority for sanitary and permitting standards and operational matters for RV parks, mobile home parks, lodging parks, and recreational camps;
- Allows an RV park damaged or destroyed by a natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park’s initial approval;
- Creates a rebuttable presumption that an RV park guest is a transient guest;
- Provides a method for the disposal of property left by a transient guest with an outstanding account who vacates an RV park without notice;
- Adds a posted park rules and regulations violation to the list of reasons a park operator may eject a transient guest or visitor from park premises and provides notice of ejection requirements;
- Provides that a park operator may refuse a transient guest or visitor access to the premises for specified conduct and request that such person leave the premises; and
- Modifies the duties of a law enforcement officer called to assist with a person illegally on an RV park’s premises to allow removal of such a person in lieu of arrest and limits the officer’s liability.

The analysis is drafted to the committee substitute as approved by the Commerce Committee.