

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 Committee on Health Policy

BILL: CS/CS/SB 772

INTRODUCER: Health Policy Committee; Community Affairs Committee; and Senators Hutson, Perry, and Flores

SUBJECT: The Department of Health's Regulation of Recreational Activities

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Williams</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 772 amends provisions of ch. 513, F.S., which governs mobile home parks, lodging parks, recreational vehicle parks, and recreational camps. The bill:

- Specifies that the Department of Health (DOH) is the exclusive regulatory and permitting authority for sanitary standards and operational matters in all mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps, and expands the scope of DOH's regulatory permitting and operational matters to specifically protect the health and well-being of Florida residents and visitors.
- Prohibits a local government from enacting a law or regulation that would restrict the density standards and setback distances in a recreational vehicle park beyond those initially authorized by the DOH and the local government.
- Reforms the procedures for removing or prohibiting a disorderly transient guest or visitor from park premises to mirror ejection provisions for public lodging establishments licensed under ch. 509, F.S.¹
- Revises the method by which park operators obtain ownership of unclaimed guest property.

The bill provides an additional exemption under s. 514.0115(7), F.S., such that specified surf pools are exempted from supervision by the DOH if the surf pool is constructed and operated

¹ See s. 509.141, F.S.

subject to a special use permit process whereby a local government asserts its regulatory authority in consultation with the DOH.

Specific to RV parks, park operators may see an indeterminate, positive fiscal impact from the bill, and local governments may see an indeterminate, negative fiscal impact from the bill. Specific to surf pools, any entity seeking to construct and operate a surf pool may have an alternative means for pursuing such a project under the bill, and the DOH has not yet analyzed the potential fiscal impact of the bill's surf pool provisions. See the **Fiscal Impact Statement** portion of this analysis for additional details.

The bill is effective July 1, 2020.

II. Present Situation:

Mobile Home and Recreational Vehicle Parks

Florida first began regulating recreational parks and camps in 1927 when the Legislature enacted statutes addressing the operation and maintenance of “tourist camps.” These establishments catered to transient guests by providing tent and cottage accommodations.² The substance of these original regulations is currently embodied in ch. 513, F.S. This chapter provides the regulatory requirements governing mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps in the state. Chapter 513, F.S., also contains standards and requirements for operators of these types of recreational facilities.

Chapter 513, F.S., has not undergone major changes since the 1993 Regular Session.³ Applicable rules adopted by the DOH have not been modified since 1996.⁴

Mobile home parks, lodging parks, RV parks, and recreational camps are similar to hotels in many respects. Like hotels, these parks and camps offer lodging accommodations to the public. Recreational park operators own the accommodations or a portion thereof and allow transient guests to purchase a revocable license to enter and remain on the property. The real difference between hotels and recreational parks are the nature of the facilities provided.

As of July 19, 2019, there were 5,392 licensed mobile home parks, lodging parks, RV parks, and recreational camps in Florida.⁵ In a June 2019 report, RVs Move America found that RV campgrounds and travel had a \$1.1 billion annual economic impact in Florida, which was the third-highest in the nation.⁶

² Chapter 12419, Laws of Fla. (1927)

³ *Id.*

⁴ Fla. Admin. Code R. 64E-15 (1996).

⁵ Florida Department of Health, *Mobile Home Parks* (last modified September 13, 2019), available at <http://www.floridahealth.gov/environmental-health/mobile-home-parks/index.html> (last visited Jan. 22, 2020).

⁶ RVs Move America, *Florida* (June 2019), available at <https://rvia.guerrillaeconomics.net/reports/e5b85c91-4f88-460c-9912-579c89f8d04e?> (last visited Jan. 22, 2020)

Applicability of Recreational Vehicle Park Provisions to Mobile Home Parks

Although mobile home parks are primarily regulated by ch. 723, F.S., a mobile home park that has five or more sites set aside for rent to transient RV guests must comply with the RV park requirements in ch. 513, F.S. Notwithstanding this requirement, mobile home parks licensed under ch. 723, F.S., are not required to obtain a second operational license under ch. 513, F.S.⁷

Department of Health Oversight

The DOH is the exclusive regulatory and permitting authority for sanitary standards in all mobile home parks, lodging parks, recreational vehicle parks, and recreational camps. The DOH also issues operational permits, provides and enforces administrative rules, performs routine premises inspections, prosecutes regulatory violations, and issues penalties for operator misconduct. Local governments are prohibited from enacting regulations for sanitary standards within a ch. 513, F.S., park or camp.⁸

Permitting

All parks and camps must apply for and receive an operating permit from the DOH to conduct business activities. Permits are not transferable from one place or person to another and must be renewed annually.⁹ The DOH may revoke or suspend a permit if a park or camp is not constructed or maintained according to law and DOH rule. When the ownership of a park or camp is transferred, and the new owner plans to continue recreational operations, the new owner must apply to the DOH for a permit before the date of transfer.¹⁰

The DOH may charge park and camp operators reasonable permitting fees, and such fees must be based on the actual costs incurred by the DOH in carrying out oversight of the particular facility

Placement of Recreational Vehicles on Lots in Permitted Parks

Under s. 513.1115, F.S., the separation distances between RV sites within an RV park must remain unchanged from the time the DOH initially approves a park's operational permit. Likewise, setback distances from the exterior park property boundary must be the setback distances established at the time of the initial approval of the park by the DOH and the local government.¹¹

Guest Register

Every park and camp operator that rents to transient guests¹² must maintain a current and signed registry of guests that occupy rental sites. The register must show the dates upon which the rental

⁷ Section 513.014, F.S.

⁸ Section 513.051, F.S.

⁹ Section 513.02, F.S.

¹⁰ *Id.*

¹¹ Section 513.1115(2), F.S.

¹² "Transient guest means any guest registered as provided in s. 513.112, F.S., for 6 months or less. When a guest is permitted with the knowledge of the park operator to continuously occupy a recreational vehicle in a recreational vehicle park for more than 6 months, there is a rebuttable presumption that the occupancy is nontransient, and the eviction procedures of part II of chapter 83 apply." Section 513.01(12), F.S.

sites were occupied by such guests and the rates charged for the guests' occupancy. This register must be maintained in chronological order and be available for inspection by the DOH at any time. An operator is not required to retain a register that is more than two years old.¹³

Unclaimed Guest Property

If a guest leaves property in a park and the property has an identifiable owner, the park operator may obtain ownership of the property by providing the guest written notice of the property and holding the property for 90 days without it being reclaimed. Alternatively, if the property belongs to a guest who has vacated the premises without notice to the operator and has an outstanding account with the park, the operator may obtain ownership of the property through the court and a writ of distress.¹⁴

Park Rules and Guest Conduct on Premises

Park and camp operators may establish reasonable rules and regulations for the management of the park, its guests, and employees. Under s. 513.117, F.S., such park and camp rules are deemed a special contract between operators, guests, and employees. Park rules may control the liabilities, responsibilities, and obligations of all parties, and must be posted (along with the provisions of ch. 513, F.S.) in the registration area of the park or camp.¹⁵ The operator of a park or camp may refuse accommodations or service to any person: whose conduct on the premises of the park displays intoxication, profanity, lewdness, or brawling; who indulges in such language or conduct as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; or whose conduct constitutes a nuisance.¹⁶

Guest Eviction

Park and camp operators may remove transient guests for certain violations of park rules and general law. A transient guest may be removed for illegal possession of a controlled substance, disturbing the peace and comfort of other persons, causing harm to the physical park, and failing to make payment of rent.¹⁷

To remove a guest, the operator of a park must notify the guest in writing that the park no longer desires to entertain the guest and request that such guest should immediately leave the park or camp. If the guest has paid in advance, the park must provide the guest with the unused portion of the payment with the written notification. If a guest remains in a park or camp after being requested to leave, the guest is considered guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S. (Conviction of a misdemeanor in the second degree results in a \$500 criminal fine.)¹⁸

In the event a guest owes a park operator an amount equivalent to three nights' rent, the operator may disconnect all utilities to the recreational vehicle or campsite and provide the guest written

¹³ Section 513.112, F.S.

¹⁴ Section 513.115, F.S.; *see also* s. 513.151, F.S.

¹⁵ Section 513.117, F.S.

¹⁶ Section 513.118, F.S.

¹⁷ Section 513.13, F.S.

¹⁸ *Id.* at (2)

demand for the amount owed. The operator must reconnect the utilities of the recreational vehicle if the guest agrees to satisfy the debt.¹⁹

If any person is illegally on the premises of a park or camp, the operator may call a law enforcement officer for assistance. A law enforcement officer, upon the request of an operator, must arrest and take into custody any guest who violates park rules, conduct requirements, or general law in the presence of the officer. A law enforcement officer may also serve an arrest warrant on any guest or person and take the person into custody. Upon arrest, with or without a warrant, the guest is deemed to have given up any right to occupancy of the park or camp premises. However, the operator of the park must refund the guest any unused payments and use all reasonable and proper means to care for personal property left on the premises by the guest.²⁰

In addition to the grounds for eviction established by law, the operator may establish grounds for eviction in any written lease agreement with a guest.²¹

Other Rights, Requirements, and Remedies for Operators; Writ of Distress

In addition to the rights and remedies described above, ch. 513, F.S., includes other procedures park and camp operators must follow when recovering a rental premise and removing or obtaining ownership of guest property to satisfy an outstanding debt. These procedures require park and camp operators to follow a civil procedure in court. Procedures include, but are not limited to:

- Sealing a recreational vehicle in the presence of at least one other person who is not an agent of the operator;
- Preparing an itemized inventory of any property belonging to the guest in the presence of a person who is not an agent;
- Petitioning a court for a writ of distress predicated on a lien created under s. 713.77, F.S., addressing property claims by third persons; and
- Storing property until a settlement or a final court judgment is obtained on the guest's outstanding account.²²

Public Swimming and Bathing Facilities

Chapter 514, F.S., governs public swimming and bathing facilities. The DOH and county health departments are jointly responsible for administering the permitting, safety, and sanitation regulations for public swimming pools set forth in this chapter.²³

¹⁹ *Id.* at (3)

²⁰ *Id.* at (4)

²¹ *Id.* at (5)

²² Section 513.151, F.S.

²³ Section 514.011, F.S., defines “public swimming pool” or “pool” as a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

Anyone wishing to construct, develop, or modify a public swimming pool in Florida must submit an application for an operating permit before filing an application for a building permit under s. 553.79, F.S. Applications must include:²⁴

- A description of the structure, its appurtenances, and its operation;
- A description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- The method and manner of water purification, treatment, disinfection, and heating;
- The safety equipment and standards to be used; and
- A copy of the final inspection from the local enforcement agency, as defined in s. 553.71, F.S.

The DOH is authorized to establish a schedule of fees for plan approval and permitting.²⁵ Operating permits must be renewed annually and may be transferred from one name or owner to another.²⁶

Public swimming pools must be equipped with an anti-entrapment system or device pursuant to s. 514.0315, F.S.

The DOH is authorized to deny an application for a permit, suspend or revoke a permit, or impose an administrative fine upon the failure to comply with the provisions of ch. 514, F.S. The DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.²⁷ Any public swimming pool that presents a significant risk to public health by failing to meet sanitation and safety standards is declared a public nuisance. Such nuisances may be abated in an action brought by the DOH or a county health department.²⁸

If a county health department is staffed with qualified engineering personnel, the DOH is required to assign that county health department the functions of: (1) reviewing applications and plans for the construction, development, or modification of public swimming pools, (2) conducting inspections, and (3) issuing all permits. County health departments are also responsible for the routine surveillance of water quality in all public swimming pools.²⁹

Exemptions that currently exist include those specific to: private pools and water therapy facilities connected with facilities such as hospitals, medical doctors' offices, and licensed physical therapy establishments; pools serving condominium or cooperative associations of more than 32 units and which are not rented for less than 60 days; a private pool used for private swimming lessons; any pool serving a residential child care agency registered and exempt under s. 409.176, F.S.; a portable pool used for swimming lessons; and a temporary pool. Further, the

²⁴ Sections 514.03 and 514.031, F.S.

²⁵ Section 514.033, F.S.

²⁶ Section 514.031(2) and (3), F.S.

²⁷ Section 514.04, F.S.

²⁸ Section 514.06, F.S.

²⁹ Section 514.025, F.S.

DOH may grant variances from its own rules under certain circumstances and grant variance under the Florida Building Code under certain circumstances.³⁰

As a supplement to the statutory provisions, the DOH has adopted rules specific to its public swimming and bathing places responsibilities. The rules address: general provisions; exemptions; operational requirements; supervision and safety; bathing places; fees; variances; enforcement; and technician certification.³¹

III. Effect of Proposed Changes:

Recreational Vehicle Parks

Sections 1 and 3 amend ss. 513.012 and 513.051, F.S., respectively, to clarify that the DOH is the exclusive regulatory and permitting authority for sanitary standards and operational matters in all mobile home parks, lodging parks, recreational vehicle parks, and recreational camps. Section 1 of the bill also expands the scope of the DOH's regulatory permitting and operational matters to specifically protect the health and well-being of Florida residents and visitors.

Section 2 amends s. 513.02, F.S., to provide park and camp purchasers 60 days to apply for an operational permit from the DOH after the ownership interest in a park is transferred. (Under current law, a park operator must apply to the DOH *before* the date of transfer.)

Section 4 amends s. 513.112, F.S., to provide a rebuttable presumption that a guest who occupies an RV in a park for less than six months, as evidenced by the length of stay shown in the guest registry, is a transient occupant. This change supports the right of operators to eject transient guests and helps avoid property interest considerations in landlord-tenant law.³²

Section 5 amends s. 513.1115, F.S., to allow RV parks to use the same density standards originally permitted by the DOH and local government when rebuilding a site after it was damaged or destroyed by wind, water, or natural disasters. The bill also states that the initial density standards and setback distances permitted by the DOH and local government will supersede any subsequent local government law or regulation on lot size, lot density, lot separation, or setback distance.

Section 6 amends s. 513.115, F.S., to categorize property left by a guest with an outstanding account with the operator as abandoned property. The disposition of this abandoned property will be governed by the requirements specified in the Landlord and Tenant Act under s. 715.10, F.S.

Section 7 amends s. 513.118, F.S., to broaden the ability of park and camp operators to deny transient guests and visitors access to the park premises. The bill allows operators to remove guests and visitors for conduct that disturbs the quiet enjoyment of other guests, or conduct that constitutes a safety hazard. Guests and visitors who do not leave park premises commit the

³⁰ See s. 514.0115, F.S.

³¹ See Fla. Admin. Code R. 64E-9

³² Compare s. 509.141, F.S. (public lodging--refusal of admission and ejection of undesirable guests; notice; procedure; penalties for refusal to leave), with s. 83.20, F.S. (rental housing--causes for removal of tenants), and s. 513.13, F.S. (recreational vehicle parks--eviction; grounds; proceedings).

offense of trespass as provided in s. 810.08, F.S.³³ The bill authorizes operators to rely on a law enforcement officer to supervise guest removal. The bill provides that a removed guest, accompanied by a law enforcement officer, may return to park premises to reclaim left personal property within 48 hours of removal.

Section 8 amends s. 513.13, F.S., to add disturbing quiet enjoyment and a violation of posted park rules as causes for removal of park guests. The bill provides standardized language, mirroring s. 509.141, F.S.,³⁴ that park operators may use to request a guest to leave park premises. If a guest committed a removable offense according to a park operator and remains on park premises after receiving the notice, the bill requires a law enforcement officer to remove the guest from the premises. The bill allows removed guests to recollect personal property from the park within 48 hours. The bill changes eviction³⁵ terminology to ejection,³⁶ clarifying that an operator may remove a transient guest without the process of law. This ejection process will be similar to guest removal in hotels, motels, and lodging establishments.³⁷

Swimming and Bathing Facilities

Section 9 creates a provision in s. 514, 0115, F.S., regarding exemptions from supervision or regulation of public swimming and bathing facilities by the DOH, to authorize a supervisory exemption for surf pools. Under the bill, a surf pool that is larger than 4 acres would be exempt from supervision under ch. 514, F.S., provided that it is permitted by a local government pursuant to a special use permit process. Through the special use permitting process, the local government asserts regulatory authority over the construction of the surf pool, and in consultation with the DOH, establishes the conditions for the surf pool's operation, water quality, and necessary lifesaving equipment. These provisions do not affect the DOH's ability to enter any and all premises of public swimming pools to examine sanitary and safety conditions, or its authority to seek an injunction to restrain the operation of a surf pool if it presents significant public health risks.

The bill defines the term "surf pool" to mean a pool designed to generate waves dedicated to the activity of surfing on a surfboard or analogous surfing device commonly used in the ocean and intended for sport, as opposed to general play intent for wave pools, other large-scale public swimming pools, or other public bathing places.

Section 10 amends s. 553.77(7), F.S., to incorporate a conforming cross-reference revision.

Section 11 provides that the bill takes effect on July 1, 2020.

³³ Criminal trespass in a structure or conveyance is a misdemeanor of the second degree. *See* s. 810.08(2)(a), F.S.

³⁴ *Relating to* refusal of admission and ejection of undesirable guests in public lodging establishments.

³⁵ Eviction is defined as dispossession by process of law; the act of depriving a person of the possession of land or rental property he has held or leased. *See* Black's Law Dictionary 555 (6th ed. 1991).

³⁶ Ejection is defined as a turning out of possession. Ejectment is an action to restore possession of property to the person entitled to it. *See* Black Law Dictionary 516 (6th ed. 1991).

³⁷ *Supra* note 34.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 772 prevents a local government from utilizing land use regulations to restrict the occupancy of a park beyond the provisions of an initial permit issued by the DOH and a local government.

Any entity seeking to construct and operate a surf pool may have an alternative means under the bill for pursuing such a project.

C. Government Sector Impact:

The bill may cause an indeterminate, negative fiscal impact on the local governments. The bill requires state and local law enforcement officers to be more involved in the removal of guests. This involvement may cause state and local law enforcement offices to incur additional costs.

The Department of Health has not yet analyzed potential fiscal impact of the bill's surf pool provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 513.012, 513.02, 513.051, 513.112, 513.1115, 513.115, 513.118, 513.13, 514.0115, and 553.77.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on February 11, 2020:

The Committee Substitute:

- Provides an additional means by which an RV park owner may dispose of abandoned property under specified circumstances, under s. 705.185, F.S.; and
- Adds provisions specific to surf pools:
 - Provides that certain surf pools are exempt from supervision established in ch. 514, F.S., if a local government has permitted the construction and operation of such a surf pool through a special use permit processes in conjunction with the DOH;
 - Defines “surf pool”; and
 - Provides a conforming cross-reference revision.

CS by Community Affairs on January 27, 2020:

The committee substitute references the appropriate law, s. 768.28, F.S., to govern when a law enforcement officer would be liable for tortious acts committed while removing persons or property from a recreational vehicle park.

B. Amendments:

None.