

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Jones, Chair
Senator Sachs, Vice Chair

MEETING DATE: Tuesday, March 22, 2011

TIME: 1:15 —3:15 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Jones, Chair; Senator Sachs, Vice Chair; Senators Altman, Braynon, Dean, Diaz de la Portilla, Hill, Norman, Rich, Siplin, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 476 Evers (Similar CS/H 883)	Public Lodging Establishments; Provides that vacation rentals are residential property for purposes of provisions related to the treatment of such properties. Requires that the operator of a vacation rental retain any advance payment or deposit made for the vacation rental until the occupancy begins or is cancelled. Clarifies that vacation rentals are exempt from certain sanitary rules. Clarifies an exemption from licensure for condominium associations that do not own vacation rentals, etc.	
		RI 03/22/2011 JU BC	
2	SB 668 Ring (Link CS/S 666)	Florida Gaming Trust Fund/Dept. of Gaming Control; Creates the Florida Gaming Trust Fund within the Department of Gaming Control. Provides the funding sources and purpose of the trust fund. Requires funds to remain in the trust fund at the end of each fiscal year. Provides for future review and termination or re-creation of the trust fund.	
		RI 03/09/2011 Temporarily Postponed RI 03/22/2011 GO BC	
3	CS/SB 582 Community Affairs / Detert (Similar CS/H 311)	Local Business Taxes; Exempts an individual engaging in or managing a business in an individual capacity as an employee from requirements related to local business taxes. Specifies that an individual licensed and operating as a broker associate or sales associate is an employee. Prohibits a local governing authority from holding an exempt employee liable for the failure of a principal or employer to comply with certain obligations related to a local business tax or requiring an exempt employee to take certain actions related to a local business tax, etc.	
		CA 03/14/2011 Fav/CS RI 03/22/2011 BC	

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, March 22, 2011, 1:15 —3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1742 Thrasher (Compare H 393)	Regulation of Professions; Authorizes the Department of Business and Professional Regulation to require a person licensed by or applying for a license from the department to be governed by provisions providing programs for impaired practitioners under the jurisdiction of the Division of Medical Quality Assurance within the Department of Health. Redefines the term "health care practitioner" as it relates to the regulation of health care professions to include those persons certified or licensed to provide medical transportation services or radiological services, etc. RI 03/22/2011 HR BC	



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Norman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) and subsection
(7) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for
all inspections required by this chapter. The division has
responsibility for quality assurance. Each licensed
establishment shall be inspected at least biannually, except for



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transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals ~~resort condominiums or resort dwellings~~ are not subject to this requirement, but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, the inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted under this section, and the regulation of food



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safety protection standards for required training and testing of food service establishment personnel are preempted to the state. This paragraph ~~subsection~~ does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022.

(b) Notwithstanding any local law, ordinance, or regulation, a vacation rental, as described in s. 509.242(1)(c), is deemed residential property and may not be prohibited or treated differently than other residential property based solely on its classification, use, or occupancy.

Section 2. Subsection (9) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental or ~~resort condominium~~, nontransient apartment, ~~or resort dwelling~~ as described in s. 509.242(1)(c) and ~~(d) and (g)~~.

Section 3. Subsection (2) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals ~~resort condominiums~~ under



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s. 509.242(1)(c) is ~~shall~~ not be required to apply for or receive a public lodging establishment license.

Section 4. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, ~~resort condominium~~, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or vacation rental ~~resort dwelling~~ if the establishment satisfies the following criteria:

(a) *Hotel*.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) *Motel*.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) *Vacation rental* ~~*Resort condominium*~~.—A vacation rental ~~resort condominium~~ is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment ~~which is rented more than three times in a~~



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~~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.~~

(d) *Nontransient apartment or roominghouse.*—A nontransient apartment or roominghouse is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) *Transient apartment or roominghouse.*—A transient apartment or roominghouse is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) *Roominghouse.*—A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, ~~resort condominium,~~ nontransient apartment, bed and breakfast inn, vacation rental, or transient apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.

~~(g) *Resort dwelling.*—A resort dwelling is 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.~~

~~(g)~~ ~~(h)~~ *Bed and breakfast inn.*—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal



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services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

Section 5. Subsection (1) of section 509.251, Florida Statutes, is amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment shall not exceed \$1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental ~~Resort condominium~~ units within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~Resort dwelling units may be licensed in the same manner as condominium units.~~ The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.



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(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed \$50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed \$50, in addition to the renewal fee and any other fees required by law. A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed \$100, in addition to the renewal fee and any other fees required by law.

Section 6. Subsection (1) of section 509.291, Florida Statutes, is amended to read:

509.291 Advisory council.—

(1) There is created a 10-member advisory council.

(a) The Secretary of Business and Professional Regulation shall appoint six ~~seven~~ voting members to the advisory council. Each member appointed by the secretary must be an operator of an establishment licensed under this chapter and shall represent the industries regulated by the division, except that one member appointed by the secretary must be a layperson representing the general public and one member must be a hospitality education administrator from an institution of higher education of this state. Such members of the council shall serve staggered terms of 4 years.

(b) The Florida Restaurant and Lodging Association shall



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designate one representative to serve as a voting member of the council. The Florida Vacation Rental Managers Association shall designate one representative to serve as a voting member of the council. The Florida Apartment Association and the Florida Association of Realtors shall each designate one representative to serve as a voting member of the council.

(c) Any member who fails to attend three consecutive council meetings without good cause may be removed from the council by the secretary.

Section 7. Paragraph (c) of subsection (8) of section 381.008, Florida Statutes, is amended to read:

381.008 Definitions of terms used in ss. 381.008-381.00897.—As used in ss. 381.008-381.00897, the following words and phrases mean:

(8) "Residential migrant housing"—A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(c) A hotel or, motel, ~~or resort condominium~~, as described ~~defined~~ in chapter 509, that is furnished for transient occupancy.

Section 8. Subsection (4) of section 386.203, Florida Statutes, is amended to read:

386.203 Definitions.—As used in this part:

(4) "Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen



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areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, vacation rentals ~~resort condominiums~~, transient apartments, transient lodging establishments, rooming houses, boarding houses, ~~resort dwellings~~, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

Section 9. This act shall take effect July 1, 2011.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public lodging establishments;
amending s. 509.032, F.S.; conforming provisions to
changes made by the act; providing that vacation
rentals are residential property for purposes of
provisions related to the treatment of such
properties; amending ss. 509.221 and 509.241, F.S.;
conforming provisions to changes made by the act;
amending s. 509.242, F.S.; providing that public
lodging establishments formerly classified as resort
condominiums and resort dwellings are classified as
vacation rentals; defining the term "vacation rental";
amending s. 509.251, F.S.; conforming provisions to
changes made by the act; amending s. 509.291, F.S.;
revising membership of the advisory council of the



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245 Division of Hotels and Restaurants of the Department
246 of Business and Professional Regulation; requiring the
247 Florida Vacation Rental Managers Association to
248 designate a member to serve on the advisory council;
249 amending ss. 381.008 and 386.203, F.S.; conforming
250 provisions to changes made by the act; providing an
251 effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Norman) recommended the following:

Senate Amendment to Amendment (501282) (with title amendment)

Delete lines 36 - 54

and insert:

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, ~~the inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards, inspections, adopted under this section, and the regulation of food safety protection standards for required~~



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training and testing of ~~food service establishment~~ personnel,
and matters related to the nutritional content and marketing of
foods offered in such establishments, are preempted to the
state. This paragraph ~~subsection~~ does not preempt the authority
of a local government or local enforcement district to conduct
inspections of public lodging and public food service
establishments for compliance with the Florida Building Code and
the Florida Fire Prevention Code, pursuant to ss. 553.80 and 21
633.022.

(b) Notwithstanding any local law, ordinance, or
regulation, a vacation rental, as described in s. 509.242(1)(c),
is deemed residential property and may not be prohibited or
treated differently than other residential property based solely
on its classification, use, or occupancy.

Between lines 171 and 172
insert:

Section 6. Subsection (1) of section 509.261, Florida
Statutes, is amended to read:

509.261 Revocation or suspension of licenses; fines;
procedure.—

(1) Any public lodging establishment or public food service
establishment that has operated or is operating in violation of
this chapter or the rules of the division, operating without a
license, or operating with a suspended or revoked license may be
subject by the division to:

(a) Fines not to exceed \$1,000 per offense;

(b) Mandatory completion ~~attendance~~, at personal expense,



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42 of a remedial at an educational program administered sponsored
43 by a food safety training program provider whose program has
44 been approved by the division, as provided in s. 509.049 the
45 Hospitality Education Program; and

46 (c) The suspension, revocation, or refusal of a license
47 issued pursuant to this chapter.

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50 ===== T I T L E A M E N D M E N T =====

51 And the title is amended as follows:

52 Delete line 243

53 and insert:

54 changes made by the act; amending s. 509.261, F.S.;
55 revising mandatory education requirements for certain
56 violations; amending s. 509.291, F.S.;

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 establishment 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Sachs) recommended the following:

Senate Amendment

Delete line 30
and insert:
666, or similar legislation creating the Gaming Commission and

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 668

INTRODUCER: Senator Ring

SUBJECT: Florida Gaming Trust Fund

DATE: March 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The bill provides that money in the fund shall be used for the regulation of skill-based machine gaming and slot machine gaming. The bill is linked to CS/SB 666, which creates the Department of Gaming Control.

This bill creates an unnumbered section of law.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.¹ Section 19(f), Art. III, of the Florida Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;

¹ Section 215.32(2)(b)1., F.S.

- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.²

The Chief Financial Officer is directed to invest all trust funds and all agency funds of each state agency.³ Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for reappropriation by the Legislature.⁴ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the House and the Senate.

Slot Machine Gaming

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is responsible for the regulation of slot machine gaming.⁶

Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.⁷ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.⁸ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.⁹

All license fees and taxes paid by slot machine licensees are deposited into the Pari-mutuel Wagering Trust Fund.¹⁰ Slot machine license fees are accounted for separately from other taxes

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(d), F.S.

⁶ See, ch. 551, F.S.

⁷ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

⁹ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

¹⁰ See, s. 551.106(1)(a), F.S.

and fees from other pari-mutuel gaming activities and are used solely for investigations of slot machine facilities, slot machine regulation, and enforcement of slot machine regulations.¹¹

Arcade Games

Numerous arcade games are currently in operation throughout the State of Florida. Unfortunately, no concrete information may be formulated as these machines are not required to be registered or regulated by any specific state entity.

Section 849.161, F.S., provides an exception to the slot machine prohibition in ch. 849, F.S.¹² Amusement games and machines are authorized in an arcade amusement center¹³ that operate by means of the insertion of a coin and which, by application of skill, the person playing the game receives points or coupons redeemable for merchandise only, excluding cash and alcoholic beverages. The value of the prize cannot exceed 75 cents on any game played.¹⁴

Similar provisions govern retail dealers who operate truck stops with a minimum of six functional diesel fuel pumps. The merchandise for these machines is limited to “noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.”¹⁵

III. Effect of Proposed Changes:

The bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The money deposited into the fund shall be from sources designated by law. In a related bill, CS/SB 666, the Department of Gaming Control is created. In CS/SB 666, the new department does not regulate or impose any taxation on skill-based arcade amusement games. In CS/SB 666, no monies are deposited into the Florida Gaming Trust Fund. However, this bill provides that the fund will be utilized by the department to fund the regulation of skill-based machine gaming and slot machine gaming. The balance of the trust fund at the end of any fiscal year is to remain in the trust fund for use in subsequent years.

The trust fund must be terminated on July 1, 2015, unless terminated sooner, in accordance with the Florida Constitution.¹⁶ State trust funds shall terminate within four years after the effective date of the act authorizing the trust fund unless a shorter time period is set by the legislature.

The bill provides a contingent effective date of July 1, 2011, if legislation creating the Gaming Commission and Department of Gaming Control is adopted in the same legislative session or an extension thereof and becomes law.

¹¹ *Id.*

¹² See ss. 849.15 and 849.16, F.S.

¹³ Amusement center is defined in s. 849.161(2), F.S. as “a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.”

¹⁴ Section 849.161(1)(a)1., F.S.

¹⁵ Section 849.161(1)(a)2., F.S.

¹⁶ Section 19(f)(2), Art. III, Florida Constitution.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

In accordance with s. 19(f)(2), Art. III of the Florida Constitution, the trust fund shall be terminated on July 1, 2015. Before its scheduled termination, the fund shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

In addition, s. 19(f)(1), Art. III of the Florida Constitution provides that “[n]o trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Gaming Control, as provided in CS/SB 666, will regulate pari-mutuel wagering, slot machines, cardrooms, and game promotions. Revenues received from taxation and fees for every regulated entity of the department are deposited into the Pari-mutuel Wagering Trust Fund. Nothing in CS/SB 666 requires any funds to be deposited into the Florida Gaming Trust Fund.

VI. Technical Deficiencies:

The bill provides that the money in the trust fund will be used for the regulation of slot machine gaming and skill-based machine gaming. Under ch. 551, F.S., slot machine gaming regulation is funded from an annual slot machine license fee per facility. The slot machine license fee is deposited in the Pari-mutuel Wagering Trust Fund, and not the Florida Gaming Trust Fund.

Line 30 of the bill needs to be amended to include the tied bill number, SB 666. An amendment has been prepared to insert the cross reference.

VII. Related Issues:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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: CS/SB 582

INTRODUCER: Community Affairs Committee and Senator Detert

SUBJECT: Local Business Taxes

DATE: March 17, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Young	Imhof	RI	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person (i.e., an employee) is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The CS removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

For purposes of the application of the provisions relating to local business taxes, the CS specifies that an employee does not include an independent contractor. An employee does include an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. The CS specifies that “independent contractor” means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the CS. Additionally, the CS further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent

contractor and not an employee based on consideration of 7 specified work conditions created in the CS. The CS adds clarifying language to capture any business that is regulated, and explicitly allow certification renewals to be done online.

This CS substantially amends the following sections of the Florida Statutes: 205.022 and 205.194.

This CS creates s. 205.066 of the Florida Statutes.

II. Present Situation:

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the “Local Occupational License Act.”¹

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.² Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of profession and business qualification to engage in a specified activity.³ Chapter 2006-152, L.O.F., renamed the act as the “Local Business Tax Act” to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.⁴ The legislation removed the term “occupational license” and added the terms “local business tax” and “local business tax receipt.”

Based on financial data contained in Annual Financial Reports (AFR) submitted by local governments to the Department of Financial Services, 35 counties reported local business tax revenues totaling \$31.5 million and 265 municipalities reported local business tax revenues totaling \$118.1 million in 2009.⁵

Currently, “local business tax” means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.⁶ It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.⁷ Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of ch. 205, F.S.⁸

¹ FLORIDA REVENUE ESTIMATING CONFERENCE, 2010 FLORIDA TAX HANDBOOK at 227.

² 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.

³ *Id.*

⁴ *Id.*

⁵ OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH, *available at* <http://edr.state.fl.us/Content/conferences/revenueimpact/pdf/impact0311.pdf>.

⁶ Section 205.022(5), F.S.

⁷ *Id.*

⁸ *Id.*

“Business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.⁹

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.¹⁰ The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company’s permanent business location or branch office is maintained.¹¹

Section 205.194, F.S., prohibits local governments from imposing a “local business tax” for professions regulated by the DBPR without the local government verifying that the person has satisfied the DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by the DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

This section does not apply to certified or registered contractors,¹² the qualifying agents for the contracting business organizations,¹³ certified or registered electrical and alarm system contractors,¹⁴ or the qualifying agents for the electrical and alarm system business organizations.¹⁵ The municipality or county may collect inspection fees for engaging in contracting or examination fees pursuant to local examination requirements.¹⁶

Several other sections of ch. 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

Attorney General Opinion 2010-41

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?

⁹ Section 205.022(1), F.S.

¹⁰ Sections 205.032 and 205.042, F.S.

¹¹ Section 205.065, F.S.

¹² Sections 489.113 and 489.117, F.S.

¹³ Section 489.119, F.S.

¹⁴ Sections 489.511 and 489.513, F.S.

¹⁵ Section 489.521, F.S.

¹⁶ Section 489.131, F.S.

- May a municipality amend its local business tax ordinance ... to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations addressed [exempted or allowed to be exempted] in Chapter 205.
- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Ch. 205, F.S., or other applicable general law.
- A city may apply only the exemptions set forth in Ch. 205, F.S., to exclude individuals or entities from its local business tax.

There is no exemption in ch. 205, F.S., for individuals who are employees of another person.

III. Effect of Proposed Changes:

Section 1 amends s. 205.022, F.S., to create a definition for "independent contractor." An independent contractor is a person who meets **at least four** of the following criteria:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;
- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;
- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

If four of these criteria listed are not met, an individual may still be presumed to be an independent contractor based on full consideration of the nature of the individual situation with regard to satisfying **any** of the following conditions:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.
- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.
- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.
- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.
- The independent contractor may realize a profit or suffer a loss in connection with performing work or services.
- The independent contractor has continuing or recurring business liabilities or obligations.
- The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Section 2 creates s. 205.066, F.S., to exempt employees from having to pay a local business tax in their individual capacity. The CS specifies that independent contractors are not employees. An employee does include an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. Employees are not to be held liable for failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. Employees cannot be required to apply for an exemption.

A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for employees in order to obtain a local business tax receipt.

Section 3 amends s. 204.194, F.S., to delete language stating that only persons applying to the DBPR for the first time for a tax receipt must exhibit their certification, registration, or license. The CS further deletes the requirement that DBPR supply the appropriate local official with a current list of the professions it regulates and information regarding those persons for whom receipts should not be renewed. The CS deletes the requirement that the local official review the list. The CS requires persons applying for or renewing a local business receipt from any state regulating agency to exhibit an active state certificate, registration, or license. The CS authorizes online renewals for this purpose.

Section 4 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists

on February 1, 1989. However, if the fiscal impact of this bill is greater than \$1.9 million then none of the exemptions provided in s. 18(d), Art. VII of the Florida Constitution apply, and the bill will require a two-thirds vote of the membership of each house.

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:

Professionally licensed employees would be exempt from local business taxes.

C. Government Sector Impact:

The Revenue Estimating Conference Impact Conference estimated that local governments would experience an indeterminate negative fiscal impact from their reduced authority to raise revenues, on March 11, 2011.¹⁷ The Revenue Estimating Conference Impact Conference noted that licensed professionals are handled differently by different local government and for this reason the fiscal impact cannot be determined.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Community Affairs Committee on March 14, 2011:

- Adds clarifying language to capture any business that is regulated, and explicitly allow certification renewals to be done online.

¹⁷ *Supra*, at n. 5.

¹⁸ *Supra*, at n. 5.

- Adds a line specifying that an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. is an employee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 1742

INTRODUCER: Senator Thrasher

SUBJECT: Regulation of Professions

DATE: March 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			HR	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill authorizes the Department of Business and Professional Regulation (DBPR) to require a person licensed by or applying for a license from DBPR to be governed by the provisions providing programs for impaired practitioners under the jurisdiction of the Medical Quality Assurance within the Department of Health (DOH).

The bill amends the definition of “health care practitioner” to include persons certified or licensed to provide medical transportation services or radiological services.

The bill creates an exception to disqualification for licensure for persons who have committed a felony related to drug abuse if the person enrolls in and successfully completes an impaired practitioner program. The bill authorizes the State Surgeon General to issue an emergency order to suspend a health care practitioner’s license for not progressing satisfactorily in a treatment program when the impairment affects his or her practice and constitutes an immediate and serious danger to the public health, safety, and welfare.

In addition, the bill amends the requirements for the impaired practitioner consultant. It provides that the consultant may be an entity that employs a registered nurse as its executive director. It provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The bill provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board’s designee, or DOH shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The bill provides an effective date of July 1, 2011.

This bill amends the following sections of the Florida Statutes: 20.165, 456.001, 456.0635, 456.074, and 456.076.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹

Professional Boards

Section 20.165(4)(a), F.S., establishes the following professional boards within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

¹ Chapter 93-220, L.O.F.

The Florida State Boxing Commission,² the Board of Pilot Commissioners,³ and the Pilot Rate Review Board⁴ are also housed within DBPR. DBPR also has regulatory oversight responsibilities over the following professions:

- Farm labor contractors under part III of ch. 450, F.S.; and
- Talent agencies under part VII of ch. 468.

In addition to administering the professional boards, DBPR processes applications for licensure and license renewal. DBPR also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of DBPR and sets forth the procedural and administrative frame-work for all of the professional boards housed under DBPR, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Impaired Practitioner Provisions - DBPR

Currently, both the Board of Veterinary Medicine and the Board of Pilot Commissioners provide impaired practitioner treatment programs for licensees within those practice acts.

Section 474.221, F.S., provides that veterinarians licensed under ch. 474, F.S., shall be governed by the treatment of impaired practitioner provisions of s. 456.076, F.S., as if they were under the jurisdiction of the Division of Medical Quality Assurance. Currently, DBPR has a contract with Professional Resources Network, Inc. (PRN) to provide consultant services for impaired veterinarians. The contract provides for compensation of \$48,132 per year to PRN. During FY 2009-2010, an average of 29 licensees participated in the program.⁵

Section 310.102, F.S., provides an impaired treatment program for pilots licensed under ch. 310, F.S. The impaired practitioner treatment program for pilots requires DBPR to retain one or more impaired practitioner consultants; the consultant must be licensed under the jurisdiction of the Division of Medical Quality Assurance. The program provides information about when the consultant assists the board,⁶ when the pilot may seek treatment,⁷ and how the information obtained by the consultant is confidential.⁸ Currently, DBPR has a contract with PRN to provide consultant services for impaired pilots and deputy pilots. The contract provides for compensation of \$2,500 per year to PRN. Currently, there are approximately four licensed participants in the program.⁹

²Section 548.003, F.S.

³Chapter 310, F.S.

⁴*Id.*

⁵According to DBPR on March 21, 2011.

⁶The consultant must assist the probable cause panel of the board and the department to determine whether the practitioner is impaired. Section 310.102(2), F.S.

⁷See s. 310.102(3), F.S., providing when an impaired practitioner may voluntarily enroll in a treatment program and the requirements for enrollment in treatment in lieu of disciplinary action against the practitioner's license.

⁸Section 310.102(5), F.S.

⁹According to DBPR on March 21, 2011.

Department of Health

The Department of Health (DOH) is created in s. 20.43, F.S. The purpose of the Department of Health is to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.¹⁰

Section 20.43(3)(g), F.S., provides that the Division of Medical Quality Assurance is responsible for the following boards and professions within DOH:

- Board of Acupuncture, created under ch. 457.
- Board of Medicine, created under ch. 458.
- Board of Osteopathic Medicine, created under ch. 459.
- Board of Chiropractic Medicine, created under ch. 460.
- Board of Podiatric Medicine, created under ch. 461.
- Naturopathy, created under ch. 462.
- Board of Optometry, created under ch. 463.
- Board of Nursing, created under part I of ch. 464.
- Nursing Assistances, created under part II of ch. 464.
- Board of Pharmacy, created under ch. 465.
- Board of Dentistry, created under ch. 466.
- Midwifery, as provided under ch. 467.
- Board of Speech-Language Pathology and Audiology, created under ch. part I of ch. 468.
- Board of Nursing Home Administrators, created under part II of ch. 468.
- Board of Occupational Therapy, created under part III of ch. 468.
- Respiratory Therapy, as provided in part IV of ch. 468.
- Dietetics and Nutrition Practice, as provided in part X of ch. 468.
- Board of Athlete Training, created under XIII of ch. 468.
- Board of Orthotics and Prosthetics, created under part XIV of ch. 468.
- Electrolysis, as provided under ch. 478.
- Board of Massage Therapy, created under ch. 480.
- Board of Clinical Laboratory Personnel, created under part III of ch. 483.
- Medical physicists, as provided under part IV of ch. 483.
- Board of Opticianry, created under part I of ch. 484.
- Board of Hearing Aid Specialists, created under part II of ch. 484.
- Board of Physical Therapy Practice, created under ch. 486.
- Board of Psychology, created under ch. 490.
- School psychologists, as provided under ch. 490.
- Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491.

¹⁰ Section 20.43(1), F.S.

State Surgeon General

The head of the DOH is the State Surgeon General and the State Health Officer.¹¹ The State Surgeon General must be a physician licensed under chapter 458 or chapter 459 who has advanced training or extensive experience in public health administration.

Definition of Health Care Practitioner

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the DOH. Section 456.001(4), F.S., defines “health care practitioner” to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S. (psychotherapy).

Medicaid Fraud

Medicaid fraud in the practice of a health care profession is prohibited.¹² Licensed health care practitioners must report any allegation of Medicaid fraud to the DOH.¹³ Each board within the jurisdiction of the DOH, or the DOH if there is no board, shall refuse to issue or renew a license, certificate, or registration if the applicant has been:

- Convicted of, entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S.,¹⁴ ch. 817, F.S.,¹⁵ ch. 893, F.S.,¹⁶ 21 U.S.C. ss. 801-970,¹⁷ or 42 U.S.C. ss. 1395-1396,¹⁸ unless the sentence and any subsequent probation ended more than 15 years prior to the date of application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or

¹¹ Section 20.43(2)(a), F.S.

¹² Section 456.0635(1), F.S.

¹³ Section 456.0635(3), F.S.

¹⁴ Chapter 409, F.S., pertains to social and economic assistance issues.

¹⁵ Chapter 817, F.S., pertains to fraudulent practices.

¹⁶ Chapter 893, F.S., pertains to drug abuse prevention and control issues.

¹⁷ Pertaining to controlled substances.

¹⁸ Pertaining to public health, welfare, and Medicare issues.

the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

Impaired Practitioners' Treatment Programs

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness, or use of alcohol, drugs, narcotics, chemicals or any other type of material, or as the result of any mental or physical condition. The impaired practitioners' treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse. By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program. To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioners' treatment program consultant. The impaired practitioners' treatment program is only available to health care practitioners regulated by the DOH.

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist the department in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director licensed under these provisions. Consultants must refer impaired practitioners to department-approved treatment programs and providers.¹⁹ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.165, F.S., creating subsection (10), which provides that the Department of Business and Professional Regulation may require a person licensed by or applying for a license from DBPR to be governed by the provisions of s. 456.076, F.S., as if the person was under the jurisdiction of the Division of Medical Quality Assurance. The bill provides that DBPR may exercise any of the powers granted to the Department of Health by s. 456.076, F.S.

¹⁹ See s. 456.076, F.S.

Section 2. Amends the definition of “health care practitioner” in s. 456.001, F.S.,²⁰ to include any person licensed under part III of ch. 401, F.S., and any person licensed under part IV of ch. 468, F.S.,²¹ which includes persons certified or licensed to provide medical transportation services or radiological services.

Section 3. Creates an exception for disqualification for licensure for any person who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony related to drug abuse under ch. 893, F.S. A person who is determined to have been suffering from an addiction or impairment at the time of the conduct for which the person was convicted, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 893, F.S., and subsequently enrolled in and continues to successfully participate in or has successfully completed an impaired practitioner program as set out in s. 456.076(1), F.S., or an equivalent program in another jurisdiction, qualifies to the exception for disqualification.

The bill provides that this exception for disqualification for licensure does not prohibit or require action against the license, certificate, or registration of such person pursuant to any relevant disciplinary provisions.

Section 4. Amends s. 456.074, F.S., providing that the State Surgeon General shall review any matter within 10 business days after receiving disclosure that a licensed health care practitioner is not progressing satisfactorily in an impaired practitioner treatment program when the impairment affects his or her practice and constitutes an immediate and serious danger to the public health, safety, and welfare. If warranted, the State Surgeon General is authorized to issue an emergency order suspending or restricting the health care practitioner’s license.

Section 5. Amends the requirements for an impaired practitioner consultant under s. 456.076, F.S. The bill provides that the consultant may also be an entity employing a registered nurse as an executive director, who must be a practitioner or recovered practitioner licensed under chs. 458, 459, or part I of ch. 464, F.S.

The bill provides that an entity that is retained as a consultant and employs a medical director or registered nurse as an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider if the entity employs or contracts with licensed professionals to perform or appropriately supervise any specific treatment or evaluation that requires individual licensing or supervision.

The bill provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The bill further provides that the school who refers such student to the consultant is not liable in any civil action against the student for the referral or for any resulting disciplinary action that affects the status of the student.

The bill provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the

²⁰ Part III of ch. 401, F.S., includes all persons licensed in medical transportation services.

²¹ Part IV of ch. 468, F.S., includes all persons licensed as radiological personnel.

appropriate board, the board's designee, or the Department of Health shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The bill clarifies that the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant.

The bill provides that the impaired practitioner consultant is the official custodian of records concerning any impaired licensee monitored by that consultant. The consultant may not disclose to the impaired licensee any information that is disclosed to or retained by the consultant and is confidential. Instead, the impaired licensee must obtain such information from the Department of Health if a disciplinary proceeding is pending.

Section 6. Provides that this act shall take effect 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 provides that all persons licensed by DBPR may be required to be participate in the impaired practitioner program under the jurisdiction of the Division of Medical Quality Assurance. As a result, more licensed professionals may be eligible for assistance.

C. Government Sector Impact:

According to the DOH, this bill adds the professions of emergency medical technicians, paramedics and radiological personnel to the professions administered under the Division of Medical Quality Assurance, and will require additional contracts for services with

PRN. The DOH estimates that it will cost approximately \$94,480 per year to cover those other professions.

According to DBPR, the bill would require additional contracts for services with the Professional Resources Network, Inc. Based on their current contracts, DBPR estimates that the cost per year, per profession, for consultant services for impaired licensees ranges from \$2,500 per year (pilots) to \$48,000 per year (veterinarians). As a result, the total costs for DBPR could range from \$35,000 (14 boards times \$2,500) to \$672,000 (14 boards times \$48,000).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.