

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 Community Affairs Committee

BILL: SB 292

INTRODUCER: Senator Dean

SUBJECT: Mobile Home and Recreational Vehicle Parks

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Spalla</u>	<u>TR</u>	Favorable
2.	<u>Fernandez/O'Callaghan</u>	<u>Stovall</u>	<u>HR</u>	Fav/ 1 amendment
3.	<u>Gizzi</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
4.	_____	_____	<u>BC</u>	_____
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 bill specifies the sections of law within chapter 513, F.S., for which the Department of Health is responsible for establishing uniform laws. The bill also establishes a department review and approval process for construction of a new mobile home park, lodging park, recreational vehicle park, or recreational camp; or certain changes to an existing park or camp. The bill creates standards for separation distances between recreational vehicles and setback distances from the exterior property boundary of recreational vehicle parks.

The bill also revises the responsibilities of a recreational vehicle park operator in relation to personal property that is left on the premises and provides that an additional criminal act occurs when a person fails to depart from a recreational vehicle park under certain conditions.

The bill substantially amends the following sections of the Florida Statutes: 513.01; 513.012; 513.014; 513.02; 513.03; 513.045; 513.05; 513.054; 513.055; 513.10; 513.112; 513.115; and 513.13.

The bill repeals s. 513.111 of the Florida Statutes.

II. Present Situation:

The Department of Health (department) is the exclusive regulatory and permitting authority for sanitary standards for all mobile home parks, lodging parks, recreational vehicle parks and recreational camps under ch. 513, F.S.¹ Pursuant to s. 513.05, F.S.,² the department has adopted rules in Ch. 64E-15, Florida Administrative Code (F.A.C.), pertaining to: minimum area requirements, water supply, sewage disposal, sanitary facilities, plumbing, garbage and refuse disposal, insect and rodent control, recreational camp standards, permits and fees, and owner's and operator's responsibilities.³

The Mobile Home and Recreational Vehicle Parks Program is administered within the department by the Division of Environmental Health. The program's primary objective is to minimize the risk of injury and illness by focusing on "safe drinking water supply, proper sewage disposal, a safe and disease free swimming pool (where provided), and assurances that the establishment is free from garbage, harmful insects, and rodent infestations." The county health departments are responsible for receiving and investigating environmental health and sanitation complaints; they also conduct routine inspections, plan reviews, educational programs, investigations, complaints, and enforcement actions.⁴

Currently, there are approximately 5,600 mobile home parks, lodging parks, recreational vehicle parks, and recreational camps in Florida.⁵ Permits for mobile home and/or recreational vehicle parks and camps are issued annually by the department under s. 513.02, F.S. Permit fees are set by department rule at \$4 per space and cumulatively not less than \$100 or more than \$600 annually.⁶ Section 513.045, F.S., sets the permissible statutory range for permit fees at \$3.50-\$6.50 per space, and the total assessed fee at no less than \$50 or more than \$600, annually.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 513.01, F.S., to revise the definition of "mobile home" and to define "occupancy." The definition of "mobile home" is modified to exclude a structure originally sold as a recreational vehicle. The term "occupancy" is defined to mean the length of time that a recreational vehicle is occupied by a transient guest and not the length of time that such a vehicle is located on the leased recreational site. Part of the current definition of "recreational vehicle" is added to the definition of "occupancy".

¹ Section 513.051, F.S.

² See s. 513.05, F.S., "The department may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational vehicle camps... as necessary to administer this chapter."

³ See 64E-15.002-15.008, F.A.C.

⁴ The Department of Health, Division of Environmental Health website, *Mobile Home and Recreational Vehicle Park Program*, located at: <<http://www.doh.state.fl.us/environment/community/mobile/index.html>> (Last visited on February 3, 2011).

⁵ *Mobile Home/RV Park Listing*, Department of Health, Division of Environmental Health website, *Mobile Home and Recreational Vehicle Park Program*, located at: <http://www.doh.state.fl.us/environment/community/mobile/index.html>. (Last visited April 6, 2011).

⁶ Rule 64E-15.010, F.A.C.

⁷ Section 513.045, F.S.

Section 2 amends s. 513.012, F.S., to specify that the department is responsible for administering and enforcing uniform laws under ch. 513, F.S., creating subsection (2) to provide the specific instances when the department shall establish uniform standards to include:

- The design, location, and site sizes for sites in parks and camps;
- Sanitary standards for permitting and the operation of parks and camps;
- Occupancy standards for transient rentals in recreational vehicle parks and camps;
- Permitting of parks and camps as required by this chapter;
- Inspection of parks and camps to enforce compliance with this chapter;
- Permit requirements; and
- The maintenance of guest registers.

The bill also creates subsection (3) to establish that ch. 513, F.S., provides the uniform standards pertaining to:

- The liability for property of guests left on sites;
- Separation and setback distances established at the time of approval;
- Unclaimed property;
- Conduct of transient guests;
- Theft of personal property;
- Evictions of transient guests; and
- Writs of distress.⁸

The bill requires that local government actions, ordinances and resolutions be consistent with the provisions of this chapter and the department's uniform standards, providing an exception for the authority of local governments to adopt and enforce local land use, building, fire safety, and other regulations.

Section 3 amends s. 513.014, F.S., to remove a redundant provision that a mobile home park that rents spaces to recreational vehicles for long term leases, must comply with the laws and rules relating to mobile home parks in ch. 723, F.S.

Section 4 amends s. 513.02, F.S., to require a person who maintains a mobile home park, lodging park, recreational vehicle park, or recreational camp who is going to construct a new park or camp, or change an existing park or camp that requires construction of new sanitary facilities or additional permitted sites to receive review and approval from the department prior to beginning construction or changes. The department shall identify by rule the procedures and items required to be submitted for review and approval. The terminology related to a permit and permitting requirements is modified to designate the permit as an *operating* permit. Inconsistent references to transferring permits are eliminated since permits are not transferrable. The bill requires the purchaser of a park or camp to apply for an operating permit within 30 days after the date of sale, rather than before the date of the sale.

⁸ Section 83.12, F.S. Defines a writ of distress—"A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders."

Section 5 amends s. 513.03, F.S., to add information that must be submitted in an application for an operating permit to include the number of buildings and sites set aside for group camping, including barracks, cabins, cottages, and tent spaces. The department shall issue the necessary approval or operating permit, after reviewing the application, conducting an inspection, and determining that the park or camp is not a source of danger to the health of the general public, within the criteria established under this law.

Section 6 amends s. 513.045, F.S., to clarify language related to the fees imposed for the operating permit. Obsolete language is repealed inasmuch as rules have been adopted by the department.

The bill authorizes a person to submit plans related to a proposed park or camp to the department for review for an assessment of whether the plans meet the requirements of this chapter. A person constructing a new park or camp or adding spaces or renovating an existing park or camp is required to submit plans to the department for review and approval.

Section 7 amends s. 513.05, F.S., to clarify the department's authority to adopt rules related to reviewing plans that consolidate or expand space or capacity.

Section 8 amends s. 513.054, F.S., to clarify that a person who does not obtain an *operating* permit for a mobile home park, lodging park, recreational vehicle park, or recreational camp or refuses to pay the *operating* permit fee commits a misdemeanor of the second degree.

Section 9 amends s. 513.055, F.S., to clarify that the permit referred to in this section related to the revocation or suspension of a permit applies to an *operating* permit.

Section 10 amends s. 513.10, F.S., to clarify that a person who maintains or operates a mobile home park, lodging park, recreational vehicle park, or recreational camp without first obtaining an *operating* permit or who maintains or operates a park or camp after revocation of the operating permit commits a misdemeanor of the second degree.

Section 11 repeals s. 513.111, F.S., relating to posting or publishing site rates for a recreational vehicle park that rents by the day or week and the criminal penalties associated with this activity.

Section 12 creates s. 513.1115, F.S., to require the separation distances between recreational vehicles and the setback distances from the exterior property boundary of a recreational vehicle park to be maintained at the distances and setback distances established at the time of the initial approval of the recreational vehicle park by the department and local government. The bill specifies that both of these sections do not limit the regulation of the uniform fire safety standards under s. 633.022, F.S.

Section 13 amends s. 513.112, F.S., to eliminate the requirement that the guest registry of a recreational vehicle park must be made available to the department for inspection.

Section 14 amends s. 513.115, F.S., to authorize an operator of a recreational vehicle park to dispose of property unclaimed for 90 days by a guest who has vacated the premises without notice to the operator and who has an outstanding account. An owner of a park is no longer

required to provide written notice to any guest or owner of property left at the park prior to disposing of the property. However, the property still must be held by the park for 90 days prior to disposal. The bill specifies that any titled property, including a boat, recreational vehicle, or other vehicle, shall be disposed of in accordance with the requirements of ch. 715, F.S.

Section 15 amends s. 513.13, F.S., to provide that if an operator of a recreational vehicle park notifies a person to leave the park for a permissible reason, by either posting or personal delivery, in the presence of a law enforcement officer, and the person fails to depart from the park immediately, the person commits a misdemeanor of the second degree. Pursuant to current subsection (1) of s. 513.13, F.S., permissible reasons for removal include: possessing or dealing in controlled substances, disturbing the peace and comfort of other persons, causing harm to the physical park, or failing to pay the rental rate as agreed.

A recreational vehicle park operator is not liable for damages to personal property left on the premises by a guest who has been removed from the park or arrested for the failure to leave the park after being notified to leave for a permissible reason.

Section 16 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Separation of Powers Doctrine

Article II, section 3 of the Florida Constitution, is also known as the Separation of Powers Doctrine. The constitution provides that:

The powers of state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided therein.

An unconstitutional delegation of power from one branch of government to another branch of government violates the Separation of Powers Doctrine. The Supreme Court

has held that there is an unconstitutional delegation of legislative power when the criteria provided in a statute is not sufficient to give adequate guidance.⁹

The Florida Department of Health has raised the following constitutional concern in their agency analysis:

The proposed bill authorizes the department to pass a rule establishing occupancy standards for transient rentals in RV parks and camps but fails to provide ascertainable minimal standards and guidelines for the agency to base its rulemaking efforts. Such excessively broad discretion may be viewed as an unconstitutional delegation of authority from the legislative to the executive branch of government, and thus a violation of the doctrine of separation of powers. *citing Sloban v. Florida Bd. of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008).¹⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill removes obsolete language pertaining to interim fees and clarifies that the existing fee structure applies to *an annual operating* permit. There are no provisions for the late payment of the annual operating permit fee.

B. Private Sector Impact:

The bill affects newly constructed parks and camps, existing parks or camps that will be expanded, and parks and camps that do not submit the required fees in a timely manner. The uniform standards related to design, operation, and occupancy imposed by the bill could minimize negative fiscal impacts to the industry which result from existing inconsistent local government rules.

C. Government Sector Impact:

The bill requires the department to adopt administrative rules and implement new requirements. The department states that this bill will have a fiscal impact on the department associated with rule amendments and implementing requirements. The department is unable to estimate the fiscal impact at this time. However, the department noted that the bill does not authorize the department to assess fees sufficient to cover costs for plan reviews, approval of new construction, expansive remodeling, reinspection fees, or late fees.¹¹

⁹ *Askew v. Cross Keys Waterways*, 372 So. 2d 913, (Fla. 1978)(stating that “[t]he constitutional doctrine prohibiting delegation of legislative power rests on the premise that the Legislature may not abdicate its responsibility to resolve the ‘truly fundamental issues; by delegating that function to others or by failing to provide adequate directions for the implementation of its declared policies.’”).

¹⁰ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 292*, 9 (Jan. 12, 2011) (on file with the Senate Committee on Transportation).

¹¹ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 292*, 7 (Jan. 12, 2011) (on file with the Senate Committee on Transportation).

VI. Technical Deficiencies:

Section 6 of the bill amends s. 513.045, F.S., which relates to permit fees. The two new provisions located in s. 513.045(b)2. and 3., F.S., do not provide for, or relate to fees. Instead, these subparagraphs authorize and require the submission of a plan for the department to review. If fees are not contemplated for the department's review, these two provisions should be moved to a more applicable section of the bill.

Amendment 664890 by Health Regulation, adopted on March 28, 2011, addresses this issue by moving these subparagraphs to section 4 of the bill which addresses permits.

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:**Barcode 664890 by Health Regulation on March 28, 2011:**

Clarifies that the Legislature, not the Department of Health, is establishing uniform standards and:

- Sets parameters for Department rulemaking authority;
- Assigns certain standards for recreational vehicle parks and camps only;
- Moves the authority for plan reviews to a more applicable section; and
- Makes technical changes.