

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 188

INTRODUCER: Regulated Industries Committee and Senators Steube and Perry

SUBJECT: Vacation Rentals

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 188 permits a local law, ordinance, or regulation that regulates activities that arise when a property is used as a vacation rental. However, such regulation must apply uniformly to all residential properties without regard to whether the property is used as a vacation rental or a long-term rental under ch. 83, F.S., or is rented by the property owner. The bill retains the current requirement that local governments cannot prohibit vacation rentals or regulate the duration or frequency of vacations rentals. The bill also retains the grandfather provision in current law that exempts from the prohibition any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011, and seeks to also permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011, to be less restrictive.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term “public lodging establishments” includes transient and nontransient public lodging establishments.¹ 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.

A “transient public lodging establishment” is defined in s. 509.013(4)(a)1., F.S., as:

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.

A “nontransient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

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 facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.
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.
6. Any establishment inspected by the Department of Health and regulated by chapter 513.
7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.

¹ Section 509.013(4)(a), F.S.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.²

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

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 house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The department licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively."⁴

The 40,341 public lodging establishments licensed by the division are distributed as follows:⁵

- Hotels – 1,834 licenses;
- Motels – 2,609 licenses;
- Nontransient apartments – 17,772 licenses;
- Transient apartments – 981 licenses;
- Bed and Breakfast Inns – 256 licenses;
- Vacation rental condominiums – 4,402 licenses;
- Vacation rental dwellings – 12,539 licenses; and
- Vacation rental timeshare projects- 17 licenses.

² Section 509.242(1), F.S.

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.

⁵ *Division of Hotels and Restaurants Annual Report for FY 2015-2016*, Department of Business and Professional Regulation. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2015_16.pdf (Last visited March 22, 2017).

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but transient and nontransient apartments must be inspected at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division.⁶ The division inspects a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2015-2016, the division received 113 consumer complaints regarding vacation rentals and inspected the vacation rentals.⁷

Preemption

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.⁸

Legislative History

In 2011, the Legislature preempted vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.⁹

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁰

⁶ Section 509.032(2)(a), F.S.

⁷ See *supra* note 5, at 20.

⁸ This exemption relates to the Village of Islamorada. According to a representative for the village, its housing ordinance is regularly amended at the DCA's direction, and without this provision they were concerned that the grandfather provision in s. 509.032(7)(b), F.S., would not be sufficient.

⁹ Chapter 2011-119, Laws of Fla.

¹⁰ *Id.*

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹¹ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use or occupancy.”¹²

Attorney General Opinion

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.¹³ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

A second advisory opinion was issued by the Attorney General on November 13, 2014, for the City of Wilton Manors concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals which fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.¹⁴

In addition, the Attorney General issued a third advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.¹⁵ The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 509.032(7)(b), F.S., to permit a local law, ordinance, or regulation that regulates activities that arise when a property is used as a vacation rental. However, such regulation must apply uniformly to all residential properties without regard to whether the

¹¹ Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.

¹² *Id.*

¹³ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013.

¹⁴ Florida Attorney General, AGO 2014-09, Vacation Rentals - Municipalities - Land Use, November 13, 2014, available at: <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E>. (last visited March 29, 2017).

¹⁵ Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, available at: <http://www.myfloridalegal.com/ago.nsf/printview/3AF7050D48068C10852580440051386C> (last visited March 29, 2017).

¹⁶ *Id.*

property is used as a vacation rental or a long-term rental under ch. 83, F.S.,¹⁷ or is rented by the property owner. The bill retains the current requirement that local governments cannot prohibit vacation rentals or regulate the duration or frequency of vacations rentals.

The bill also retains the grandfather provision in current law that exempts from the preemption any local law, ordinance, or regulation that was adopted by a local government on or before June 1, 2011, and seeks to also permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011, to be less restrictive.

The bill takes effect upon becoming law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill retains the grandfather provision in s. 509.032(7)(b), F.S., that exempts from the preemption in this paragraph any local law, ordinance, or regulation that was adopted by a local government on or before June 1, 2011, and seeks to permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011.

¹⁷ Part II, of ch. 83, F.S., which relates to the rental of residential dwellings, does not define the term “long-term rental.”

As written, the bill language at line 26 provides that the grandfather clause applies “*except when*” the grandfathered law, ordinance, or regulation is amended to be less restrictive. Consideration should be given to replacing the text at lines 26-27 of the bill with “including any amendment of such law, ordinance, or regulation to be less restrictive.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 509.032 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries Committee on March 21, 2017:

- Permits a local law, ordinance, or regulation that regulates activities that arise when a property is used as a vacation rental. However, such regulation must apply uniformly to all residential properties without regard to whether the property is used as a vacation rental or a long-term rental under ch. 83, F.S., or is rented by the property owner.
- Removes from the bill a prohibition against a local law, ordinance, or regulation that restricts the use, prohibits, or regulates vacation rentals based solely on their classification, use, or occupancy.
- Retains the current requirement that local governments cannot prohibit vacation rentals or regulate the duration or frequency of vacations rentals.
- Retains the grandfather provision in current law that exempts from the preemption any local law, ordinance, or regulation that was adopted by a local government on or before June 1, 2011, and seeks to also permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011, to be less restrictive. See Section VI, Technical Deficiencies.

B. Amendments:

None.