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 Regulated Industries

BILL:	SB 356
INTRODUCER:	Senator Thrasher and others
SUBJECT:	Regulation of Public Lodging Establishments and Public Food Service Establishments
DATE:	January 6, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	

I. Summary:

SB 356 repeals the provision in s. 509.032(7), F.S., that prohibits local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

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.

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.

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.

[1] Section 509.013(4)(a), F.S.

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 facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services 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.
> 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, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Public lodging establishment are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, or bed and breakfast inn.[2]

[2] Section 509.242(1), F.S.

Section 509.242(1)(c), F.S., defines the term "vacation rental" 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.

The 37,1155 public lodging establishments licensed by the division are distributed as follows:[3]

- Hotels – 1,676 licensees;
- Motels – 2,751 licensees;
- Nontransient apartments – 17,515 licenses;
- Transient apartments – 981 licenses;
- Bed and Breakfast Inns – 262 licenses;
- Vacation rental condominiums – 3,608 licenses; and
- Vacation rental dwellings – 10,362 licenses.

The department licenses vacation rentals either as condominiums or dwellings.[4] A vacation rental license will be issued 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."[5]

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." This section was amended in 2011 to add the provisions relating to local government zoning of vacation rentals.[6]

Section 509.032(7)(b), F.S., provides that local laws, ordinances, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. However, this prohibition does not apply to any local law, ordinance, or rule adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that prohibition in s. Section 509.032(7)(b), F.S., does not apply prohibition local laws, ordinances, or regulations exclusively relating to property valuation

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[3] *Division of Hotels and Restaurants Annual Report for FY 2012-2013*, Department of Business and Professional Regulation, A copy of the report is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2012_13.pdf (Last visited January 6, 2014).
[4] Rule 61C-1.002(4)(a)1., F.A.C.
[5] Vacation rental dwellings are divided into single - 9,459, group - 91, and collective – 812. 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.
[6] *See* s. 2, ch. 2011-119, L.O.F.

as a criterion for vacation rental if it is required to be approved by the Department of Community Affairs (DCA) pursuant to an area of critical state concern designation.[7]

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, as defined in ch. 509, F.S., in private homes that were zoned, prior to June 1, 2011, for single-family residential use.[8] 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 before the June 1, 2011, grandfather date in s. 509.032(7)(b), F.S. The Attorney General concluded that the fact that the county had a local zoning ordinance for single-family homes existing on or before June 1, 2011, did not restrict the rental of such property as a vacation rental and that such zoning ordinances could not now be interpreted to restrict vacation rentals.

III. Effect of Proposed Changes:

The bill repeals s. 509.032(7)(b) and (c), F.S. The repeal of these provisions would allow local government to enact local laws, ordinances, or regulations restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

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.

[7] 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 grandfather provision in s. 509.032(7)(b), F.S., would not be sufficient.

[8] Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding "Vacation Rental Operation-Local Ordinances," dated October 22, 2013.

B. Private Sector Impact:

The bill does not directly impact the operation of vacation rentals. However, the owners of vacation rentals may be affected by the bill to the extent that local governments amend their laws, ordinances, or regulations to restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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 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.