

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287 Vacation Rental Units
SPONSOR(S): Moraitis, Jr.; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 1568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler	Anstead
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

A vacation rental is a residential property that is operated as a public lodging establishment similar to a hotel or motel. Vacation rentals are required to be licensed by the Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (Department).

The bill amends the required documentation and information that must be submitted to the Division upon application for a vacation rental license and amends the types of licenses that the Division may issue for vacation rentals.

The bill prohibits the Division from issuing group licenses for vacation rentals. The bill provides that vacation rental applicants must provide proof of registration with the Department of Revenue for the collection and remittance of state sales tax, proof of registration with the county for the collection and remittance of tourist development taxes, proof that all applicable local licenses are held, and proof that the property has been inspected by the local firesafety authority.

The bill requires vacation rental licensees to display their license number on all property rental advertisements and requires that they provide a valid phone number and e-mail address to the Division.

The bill requires licensees to conform to the requirements and submit the additional documents by October 1, 2016. If the licensee does not, their license will be suspended until the required documents are submitted to the Division.

The bill is likely to have an insignificant fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Division within the 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 Division licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.¹

A vacation rental is defined as:

[A]ny 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.²

A transient public lodging establishment is defined as:

[A]ny unit, group of units, dwelling, building, or group 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.³

The Division requires each vacation rental to be readily available for inspection, but vacation rentals are not subject to the same routine inspection requirements of other transient public lodging establishments and the Division only inspects a vacation rental if there is a complaint.⁴ Vacation rentals are not required to be inspected prior to offering accommodations as a public lodging establishment.

Prior to June 1, 2011, local governments held the authority to regulate vacation rentals (also referred to as resort dwellings in many local laws). Local governments could restrict or prohibit vacation rentals, including banning the use of residential properties as vacation rentals. Several municipalities created such regulations.⁵ One ordinance prohibited owners of single-family residences in residential zones from renting their properties for less than 30 days, while grandfathering certain existing vacation rentals.⁶

Chapter 2011-119, Laws of Florida, preempted vacation rental regulation to the State, and prevented local governments from enacting any new law, ordinance, or regulation that restricted or prohibited the use of vacation rentals based on classification, use, or occupancy. This legislation exempted any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011.

Until 2014, local governments were able to pass laws or ordinances of general applicability that could affect vacation rentals; however, due to the preemption, a local government could not differentiate a residential property that was being used as a vacation rental from other residential properties in a similarly zoned residential area.

¹ s. 509.241, F.S.

² s. 509.242(c), F.S.

³ s. 509.013(4)(a)(1.), F.S.

⁴ See 61C-1.002(3), F.A.C; Section 509.032(2)(a), F.S. (stating “[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request”).

⁵ See City of Venice, Fla., Code of Ordinances, ch. 86, art. V, Div. 3 (2009). See also Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Ordinance No. 2011-549 (2011).

⁶ City of Venice, Fla., Code of Ordinances, §§ 86-81(d), 86-151. See also *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2d DCA 2011) (noting the constitutionality of the Venice provision).

Chapter 2014-71, Laws of Florida, amended the state preemption to allow local governments to restrict certain characteristics of vacation rentals based on their classification as vacation rentals, to a greater degree than other homes in the same residentially zoned area. This legislation permitted local governments to create local laws and ordinances to regulate vacation rentals, so long as the regulations did not prohibit vacation rentals or regulate the duration or frequency of renting.

License Classifications

The Division has created three different classifications for vacation rentals, single, group and collective licenses.⁷ A single license may include one single home or townhome, or a unit or group of units within a single building that are operated by the owner. A group license covers all units within a building or group of buildings in a single complex that are licensed to a licensed agent. Multiple group licenses may be issued to different licensed agents for units located on the same property. A collective license may be issued to a group of houses or units found in separate locations that are represented by the same licensed agent.

The Division has divided up the State into seven districts, which each cover several counties. Under the current rule, one license can be issued for up to 75 vacation rentals if they are located in the same district, as determined by the Division.

Effect of the Bill

The bill amends the required documentation and information that must be submitted to the Division upon application for a vacation rental license and amends the types of licenses that the Division may issue for vacation rentals.

The bill prohibits the Division from issuing group licenses for vacation rentals. In order to obtain a license for a vacation rental, an applicant must provide proof of:

- Registration with the county collector of tourist development taxes (often called a 'bed tax');
- Registration with the Department of Revenue to collect and remit state sales tax;
- Receipt of all applicable local licenses to operate a vacation rental; and,
- Inspection by the local firesafety authority for compliance with Rule 69A-43, F.A.C., as adopted by the State Fire Marshal.

If a state vacation rental license is required as a prerequisite to any local license to operate a vacation rental, the Division may grant a provisional license that expires 60 days after issuance if the required local licenses are not obtained and submitted to the Division.

A vacation rental licensee must have a valid phone number and e-mail address on file with the division.

The bill requires that all vacation rental licensees must display their license number on all property rental advertisements, and failure to do so is an unlicensed practice, which may be disciplined pursuant to s. 455.228, F.S.

Current licensees must submit the additional requirements in accordance with this bill by October 1, 2016, or the Division must suspend the license. The bill provides that a vacation rental unit operating without a license or with a license expired for more than 60 days is subject to disciplinary action pursuant to the disciplinary guidelines applicable to public lodging establishments, adopted by rule under s. 455.2273, F.S., or s. 509.032, F.S.

B. SECTION DIRECTORY:

⁷ 61C-1.002(4)(a), F.A.C.
STORAGE NAME: h1287.BPS
DATE: 2/1/2016

Section 1 amends s. 509.241, F.S., to provide additional documents that must be submitted by an applicant for a vacation rental license and requires licensees to display their license number on all advertisements.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The Division may possibly receive additional revenue due to new vacation rental applications for persons who are currently providing public accommodations as a vacation rental without being licensed by the Division. It is unknown to what extent this may increase the number of license applications.

2. Expenditures:

Indeterminate. The Division will likely have to devote additional resources to processing the applications of vacation rentals. The cost of this increase in workload is unknown, and it is unknown if the Division can absorb the additional workload with current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill requires all vacation rentals be inspected by the local firesafety authority prior to being granted a license by the Division. This may provide additional revenue for local governments, although the actual amount is likely to be insignificant positive fiscal impact.

2. Expenditures:

Indeterminate. The bill requires all vacation rentals be inspected by the local firesafety authority prior to being granted a license by the Division. This may increase the workload of the local Firesafety authority, although this is likely insignificant and should be offset by revenues generated by inspection fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require all vacation rental licensees to arrange a firesafety inspection of each vacation rental unit and pay any fees required by the local firesafety authority to perform this inspection.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that failure to provide a vacation rental license number on any property rental advertisements is an unlicensed practice, pursuant to s. 455.228, F.S. Section 455.228, F.S., currently does not apply to licensees under the Division, and applies generally to the practice of professions of the Department.⁸ Professions, under ch. 455, F.S., refer only to the activities and practices regulated by the Department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ As such, this provision would be more appropriately enforced through s. 509.261, F.S., which enforces the regulation of public lodging licensees. The sponsor has indicated that a forthcoming amendment addresses this concern.

The bill provides that the Division may no longer issue group licenses for vacation rentals, and that further, current licensees shall have their licenses suspended if they do not meet the new requirements for applicants of vacation rental licenses by October 1, 2016. It is unclear if this would also prohibit collective licenses, and what affect this bill would have group or collective vacation rental licensees whose renewal cycle lands in the period before the bill becomes effective, but after October 1, 2016. The sponsor has indicated that a forthcoming amendment addresses this concern.

The bill's provision prohibiting group vacation rental licenses directly conflicts with s. 509.251, F.S., which states "[v]acation rental units or timeshare projects 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." It is likely that the bill would prohibit the Division from issuing group licenses, and abrogate this provision of s. 509.251, F.S.; however, this provision may cause confusion among licensees. The sponsor has indicated that a forthcoming amendment addresses this concern.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁸ s. 455.017, F.S.

⁹ s. 455.01, F.S.