

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 425 Vacation Rentals  
**SPONSOR(S):** La Rosa  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	9 Y, 6 N	Thompson	Smith
2) Careers & Competition Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. The Department of Business and Professional Regulation licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.

In 2011, 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 prohibited, restricted the use of, or regulated vacation rentals based on classification, use, or occupancy. The legislation exempted (grandfathered) any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011.

In 2014, chapter 2014-71, Laws of Florida, narrowed the preemption authority to the state. As a result, current law allows local governments to regulate vacation rentals, provided those regulations do not prohibit, or regulate the duration or frequency of, the vacation rental. The grandfather provision is maintained.

The bill returns the preemption authority back to what was enacted during the 2011 Legislative Session. Specifically, the bill prevents local governments from enacting any new law, ordinance, or regulation that prohibits, restricts the use of, or regulates vacation rentals based on classification, use, or occupancy. The bill keeps the grandfather provision relating to local regulations enacted prior to June 1, 2011. Any local regulation adopted after June 1, 2011, including those adopted pursuant to the standards under the 2014 law, will be preempted, and will be void and unenforceable.

The bill is not anticipated to have a significant fiscal impact on state or local government.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### ***Vacation Rentals Generally***

The Division of Hotels and Restaurants within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of Chapter 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 Department licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.<sup>1</sup>

DBPR requires each vacation rental to be readily available for inspection, but vacation rentals are not subject to the inspection requirements of other transient public lodging establishments and the Division only inspects a vacation rental if there is a complaint.<sup>2</sup>

A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit, not a timeshare project<sup>3</sup>, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests.<sup>4</sup>

###### ***Preemption Authority<sup>5</sup>***

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local laws) based on their classification as vacation rentals. Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

In 2011, chapter 2011-119, Laws of Florida, preempted vacation rental regulation to the state. The preemption prevented local governments from enacting any new 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.<sup>6</sup>

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011.<sup>7</sup>

Prior to the enactment of the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.<sup>8</sup> One such ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although

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<sup>1</sup> s. 509.241, F.S.

<sup>2</sup> See Rule 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”)

<sup>3</sup> s. 509.242(1)(c), F.S.

<sup>4</sup> s. 509.013(4)(a)1., F.S.

<sup>5</sup> s. 509.032(7), F.S.

<sup>6</sup> Chapter 2011-119, Laws of Fla.; codified in s. 509.032(7), F.S.

<sup>7</sup> Id.

<sup>8</sup> 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).

it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.<sup>9</sup> This ordinance effectively prevented new vacation rentals from opening within the city.<sup>10</sup>

Subsequent to the enactment of the 2011 legislation, the vacation rental market grew. Some businesses had reportedly bought foreclosed or distressed residential properties and converted them into vacation rentals. In some cases, new houses were built for the purpose of being used as vacation rentals.

In 2014, chapter 2014-71, Laws of Florida, narrowed the scope of the preemption by preventing local governments from prohibiting, or regulating the duration or frequency of, vacation rentals.<sup>11</sup> This in effect authorizes local governments to regulate vacation rentals, provided those regulations do not prohibit, or restrict the duration or frequency of, the vacation rental. As a result, local governments may create regulations that distinguish vacation rentals from other residential properties. The grandfather provision was maintained.<sup>12</sup>

### ***Attorney General Opinion***

The Attorney General released an opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance in light of the preemption regarding vacation rentals.<sup>13</sup>

The Attorney General opined that the preemption 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.<sup>14</sup>

### ***Recent Activity***

Local ordinances continue to be adopted that regulate vacation rentals. Fines for violations in some areas can be upwards of \$20,000, and can double and triple for subsequent violations.<sup>15</sup> Homeowners in conflict with such ordinances have begun taking legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.<sup>16</sup> The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action<sup>17</sup> of a governmental entity that may not rise to the level of a “taking” under the State or Federal Constitutions.<sup>18</sup> The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.<sup>19</sup>

In November 2015, the City of Anna Maria passed and adopted Ordinance No. 15-807. This ordinance provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city’s website, since April of 2016, approximately 82 Bert Harris Act

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<sup>9</sup> §§ 86-81(d), 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2d DCA 2011).

<sup>10</sup> *Gwynn*, 76 So. 3d at 403 (noting the constitutionality of the Venice provision).

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

<sup>12</sup> s. 509.032(7)(c), F.S.

<sup>13</sup> AGO 2016-12, Municipalities -- Vacation Rentals – Zoning October 5, 2016.

<sup>14</sup> *Id.*

<sup>15</sup> *See Code of the City of Miami Beach, Fla., Sec. 142-1111(d)1. - Short-term rental of apartment units or townhomes, Enforcement.*

<sup>16</sup> s. 70.001, F.S.

<sup>17</sup> s. 70.001(3)(d), F.S., provides that the “term ‘action of a governmental entity’ means a specific action of a governmental entity which affects real property, including action on an application or permit.”

<sup>18</sup> s. 70.001(1) and (9), F.S.

<sup>19</sup> s. 70.001(2), F.S.

claims citing Ordinance No. 15-807 amounting to approximately \$30 million have been filed.<sup>20</sup> Some of these cases have been settled, while others are ongoing.

### **Effect of the Bill**

The bill returns the preemption back to what was enacted during the 2011 Legislative Session. Specifically, a local government may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. As a result, local governments will be precluded from creating regulations that would distinguish vacation rentals from other residential properties.

In addition, the grandfather provision that is in current law is maintained, thereby exempting any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011. Any local regulation adopted after June 1, 2011, including those adopted pursuant to the standards under the 2014 law, will be preempted, and will be void and unenforceable.

#### **B. SECTION DIRECTORY:**

**Section 1** amends s. 509.032, F.S., revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals.

**Section 2** provides an effective date of upon becoming law.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill has no fiscal impact on state revenues.

2. Expenditures:

The bill has no fiscal impact on state expenditures.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill has no fiscal impact on local government revenues.

2. Expenditures:

The fiscal impact on local government expenditures is indeterminate.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The direct economic impact on businesses or individuals who participate in the vacation rental industry in Florida is indeterminate.

#### **D. FISCAL COMMENTS:**

None.

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<sup>20</sup> City of Anna Maria, Bert Harris Claim Filings can be accessed at the city's website available here: [http://www.cityofannamaria.com/residents/bert\\_harris\\_claim.php](http://www.cityofannamaria.com/residents/bert_harris_claim.php) (last viewed January 19, 2017).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**