

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: SB 1400

INTRODUCER: Senator Steube

SUBJECT: Vacation Rentals

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Pre-meeting
2.			RI	
3.			AP	

I. Summary:

SB 1400 creates the “Florida Vacation Rental Act” within part III of Chapter 509, F.S., explicitly preempting the regulation of vacation rentals to the state and separating the regulation of vacation rentals from the regulation of hotels and motels. The Division of Hotels and Restaurants (division) is provided with the authority to implement the act, including licensure and enforcement.

II. Present Situation:

The Division of Hotels and Restaurants 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.

¹ Section 509.013(4)(a), F.S.

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.
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

² Section 509.242(1), F.S.

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 41,931 public lodging establishments licensed by the division are distributed as follows:⁵

- Hotels – 1,916 licenses;
- Motels – 2,600 licenses;
- Nontransient apartments – 18,008 licenses;
- Transient apartments – 895 licenses;
- Bed and Breakfast Inns – 259 licenses;
- Vacation rental condominiums – 5,037 licenses;
- Vacation rental dwellings – 13,196 licenses; and
- Vacation rental timeshare projects – 20 licenses.

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 2016-2017, the division received 457 consumer complaints regarding vacation rentals and inspected the vacation rentals.⁷

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 2016-2017*, Department of Business and Professional Regulation. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2016_17.pdf (Last visited January 24, 2018).

⁶ Section 509.032(2)(a), F.S.

⁷ See *supra* note 5, at 23.

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

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

⁸ See s. 163.3164(43), F.S., provides that the state land planning agency is the Department of Economic Opportunity.

⁹ Chapter 2011-119, Laws of Fla.

¹⁰ *Id.*

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.

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:

Section 1 creates part III of chapter 509 to be entitled “Vacation Rentals.”

Section 2 creates s. 509.601, F.S., to be named the Florida Vacation Rental Act.

Section 3 creates s. 509.603, F.S., consisting of the legislative findings and purpose for a vacation rental act. The section preempts the regulation of vacation rentals to the state. The division is granted rulemaking authority to implement this part.

Section 4 creates s. 509.604, F.S., requiring vacation rentals to obtain a nontransferable license. It shall be illegal to operate without a license. Licenses must be renewed annually, on a staggered schedule determined by the division. Licenses must be displayed prominently in the vacation rental. The division is authorized to deny licensure to applicants who have been adjudicated guilty of crimes reflecting poor professional character, including prostitution and pandering. The bill categorized unlicensed activity as a second degree misdemeanor. The existing licensure and annual renewal provisions from s. 509.241, F.S., are maintained. (509.604).

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 January 24, 2018).

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 January 24, 2018).

¹⁶ *Id.*

Section 5 creates 509.605, F.S., authorizing “licensed operators” to manage multiple units in a single license application. These units may be in separate buildings or locations. The division is directed to charge a fee for the application, though such fee is prohibited from exceeding \$1,000 per application. No geographic limitation or upper limitation on the number of units that may be included in a single license application is imposed in the bill. In addition, the term “licensed operator” is not defined in chapter 509 or within the bill. The existing license fee provisions from s. 509.251, F.S., are maintained. The fees collected shall be directed to fund the Hospitality Education Program. In addition, the division is authorized to promulgate a rule regarding application fees. The fee for an application may not exceed \$50 per application and shall be used to cover all costs associated with initiating regulation of vacation rentals.

Section 6 creates s. 509.606, F.S., specifying procedures for the revocation or suspension of licenses and fines. Fines may not exceed \$1,000 per offense, and the division is authorized to regard as a separate offense for each day or portion of day that a critical law or rule is violated. In addition, the division is required to post a prominent closed-for-operation sign on any vacation rental the license of which has been suspended or revoked. These procedures remain largely unchanged from s. 509.261, F.S., with the exception of removing the remedial food safety education penalty. All funds received by the division for administrative fines must be paid into the state treasury to the credit of the Hotel and Restaurant Trust Fund and may not be used for payment to any entity performing required inspections under contract with the division. The division may fine, suspend, or revoke the license of any vacation rental when the rental is not in compliance with the final order or other administrative action issued against the licensee by the division. The division may refuse to issue or renew a license until all outstanding fines are paid in full to the division. Revocable offenses include soliciting for prostitution, pandering, letting premises for prostitution, and dealing in controlled substances, or a determination by the division that a vacation rental is an imminent danger to the public health.

Section 7 creates s. 509.607, F.S., subjecting vacation rentals to chapter 212 (sales tax) in the same manner as transient rentals. Vacation rentals are exempt from chapter 83 (landlord/tenant law) in the same manner as transient rentals. The bill additionally exempts persons or entities that rent or advertise vacation rentals for rent for another and for compensation from possessing a real estate sales associate or broker license.

Section 8 creates s. 509.608, F.S., preempting the inspection of vacation rentals to the state. Inspections regarding vacation rentals are substantively unchanged from current law. The division has the right of entry and access to a vacation rental at any reasonable time. The division may not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any vacation rental. Vacation rentals must be made available to the division for inspections upon request. Upon discovery of a vulnerable adult appearing to be a victim of neglect, a building not equipped with automatic sprinkler systems, or tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants or clients, and other relevant organizations, to develop a plan that improves prospects for safety of affected residents.

Section 9 amends s. 509.013, F.S., adding vacation rentals to the definitions of “operator,” “guest,” and excludes them from the definition of either a transient or nontransient public lodging establishment. This section adds a definition of “vacation rental” as any unit in a condominium or cooperative or any individually or collectively owned single family, two family, three family, or four family house or dwelling unit that is rented to guests for periods of less than 6 months.

Section 10 amends s. 509.032, F.S., requiring that inspection of vacation rentals are to be done in accordance with the requirements in part III of chapter 509. This section also strikes language that local regulations may not prohibit vacation rentals or regulate the duration, or frequency of rental of vacation rentals.

Section 11 amends s. 509.072, F.S. adding vacation rentals to the list of establishments that use moneys from the Hotel and Restaurant Trust Fund.

Section 12 amends s. 509.091, F.S., adding vacation rentals to the list of establishments that must be served notice from the division.

Section 13 amends s. 509.095, F.S., adding vacation rentals to the list of establishments that may waive an age requirement for an individual currently on active duty as a member of the US military.

Section 14 amends s. 509.101, F.S., adding vacation rentals to the list of establishments that may establish reasonable rules and regulations for the management of the establishment and its guests and employees.

Section 15 amends s. 509.111, F.S., adding vacation rentals to the list of establishments in the “liability for property of guests” section of 509.

Section 16 amends s. 509.141, F.S., adding vacation rentals to the list of establishments in the section on refusal of admission and ejection of undesirable guests.

Section 17 amends s. 509.142, F.S., adding vacation rentals to the list of establishments that can refuse accommodations to any person whose conduct displays intoxication, profanity, lewdness, or brawling, and so on.

Section 18 amends s. 509.144, F.S., adding vacation rentals to the list of establishments where handbill distribution is prohibited.

Section 19 amends s. 509.162, F.S., adding vacation rentals to the list of establishments that are permitted to detain a suspected thief for a reasonable period.

Section 20 amends s. 509.2015, F.S., adding vacation rentals to the list of establishments that must post notice of a surcharge for telephone calls.

Section 21 amends s. 509.211, F.S., adding vacation rentals to the list of establishments that must follow certain safety regulations.

Section 22 amends s. 509.2112, F.S., regulating vacation rentals that are three stories or more in height and providing inspection rules.

Section 23 amends s. 509.215, F.S., subjecting vacation rentals to the same firesafety requirements as public lodging establishments.

Section 24 amends s. 509.221, F.S., subjecting vacation rentals to the sanitary regulations in s. 509.221, F.S., from which they were previously exempt. These include the public bathroom requirement, soap and towel requirements, and bedding requirements.

Section 25 amends s. 509.241, F.S., removing vacation rentals from certain license requirements due to inclusion of new requirements in part III of chapter 509.

Section 26 amends s. 509.242, F.S., removes vacation rental from the classification of a public lodging establishment. Also deletes the former definition of vacation rental in 509.242, F.S.

Section 27 amends s. 509.251, F.S., removes vacation rentals from the license fees section due to the creation of its own section in part III of chapter 509.

Section 28 amends s. 509.281, F.S., providing that if the division ascertains by inspection that a vacation rental is being operated contrary to the provisions of chapter 509, the division shall make a complaint and cause the arrest of the violator.

Section 29 amends s. 509.302, F.S., providing that all vacation rentals licensed under chapter 509 shall pay an annual fee to be used for funding the Hospitality Education Program.

Section 30 amends s. 509.4005, F.S., applying ss. 509.401-509.417, F.S., to guests in vacation rentals.

Section 31 amends s. 509.401, F.S., giving an operator of a vacation rental the right to lockout a guest if payment has not been made on the account.

Section 32 amends s. 509.402, F.S., giving an operator of a vacation rental the right to recover premises if the guest vacates without notice.

Section 33 amends s. 509.405, F.S., prescribing requirements for a complaint an operator must file when seeking a writ of distress.

Section 34 amends s. 509.409, F.S., requiring an officer to inventory a property when seizing distrainable property on the premises of a vacation rental.

Section 35 amends s. 509.417, F.S., allowing property levied to be sold on the premises of the vacation rental.

Section 36 provides an effective date of July 1, 2018.

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:

Operators that were previously exempt from licensure may now be required to obtain a license based on the new definition of vacation rental. Vacation rental operators may need to incur the cost of meeting requirements that weren't previously applicable.¹⁷

C. Government Sector Impact:

Revenue may decrease if local governments were charging a vacation rental license or registration fee, which will now be preempted to the state. Revenue may increase with increased vacation rental licenses generating bed tax or other tourism taxes.¹⁸ There may be an indeterminate increase in fines due to more vacation rental units being licensed and more sanitation and safety requirements being applicable to vacation rental units.

The DBPR estimates one additional licensing staff member will be needed for every 15,000 new applications. More FTEs may also be required for an anticipated increase in consumer complaints. Additionally, for every 16,700 calls received, an additional Regulatory Specialist III FTE position is needed.¹⁹

VI. Technical Deficiencies:

None.

¹⁷ Department of Business and Professional Regulation, Senate Bill 1400 Analysis (January 23, 2018).

¹⁸ *Id.*

¹⁹ *Id.*

VII. Related Issues:

The DBPR notes that there may not be sufficient time to complete the rulemaking required by the bill due to the effective date of July 1, 2018. The bill may not provide the division with sufficient rulemaking authority to impose geographical or numerical limits for group and collective licenses. The absence of a geographical or numerical limit could result in one license covering 1,000 or more units throughout the state.²⁰

Additionally, DBPR points out that the term “licensed operator” is not defined in chapter 509 or within the bill.²¹

Existing s. 509.261, F.S., and newly created s. 509.606, F.S., do not specify how long the signage must remain posted. This could result in an establishment that had its license revoked, or was determined to be operating without a license having to display the sign in perpetuity. Additionally, existing s. 509.261, F.S., and newly created s. 509.606, F.S., would create differing results based on the division’s staggered license renewal schedule because a revoked establishment can apply for a new license after their next renewal date.²²

The bill may potentially conflict with s. 509.221(2)(a), F.S., which directs the division to adopt a rule establishing categories of establishments that are not subject to the s. 509.221(2), F.S., public bathroom requirement and with Section 455.3.2.2, 2017 Florida Building Code – Building, Sixth, which exempts resort condominiums and resort dwellings (now called vacation rentals) from public bathroom requirements. Rule 61C-1.004, F.A.C., currently excludes nontransient establishments, vacation rentals, and timeshare projects from the requirement. Given that vacation rental units are typically private residences, and thus restricted from access to the general public, it is difficult to comply with the requirement for publicly accessible bathrooms. Vacation rentals can also be private residences when not being rented out, and having to comply with the requirement on a year round basis may also cause issues during times the unit is not open to the public.²³

As the term “public lodging facility” is not defined in Chapter 509 or within the bill, it is unclear whether a vacation rental is a public lodging facility. If not, the five hearing impaired smoke detector minimum would not apply and vacation rentals would be required to have one per 50 units.²⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.072, 509.091, 509.095, 509.101, 509.111, 509.141, 509.142, 509.144, 509.162, 509.2015, 509.211, 509.2112, 509.215, 509.221, 509.241, 509.242, 509.251, 509.281, 509.302, 509.4005, 509.401, 509.402, 509.405, 509.409, 509.417

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

This bill creates the following sections of the Florida Statutes: 509.601, 509.603, 509.604, 509.605, 509.606, 509.607, and 509.608.

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.
