

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 Innovation, Industry, and Technology

BILL: SB 824

INTRODUCER: Senator Diaz

SUBJECT: Private Property Rights of Homeowners

DATE: March 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 824 preempts the regulation of all vacation rentals to the state, including, but not limited to, the inspection and licensing of vacation rentals. Under the bill, a local government may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties.

Current law prohibits local governments from prohibiting vacation rentals, or regulating the duration or frequency of rental of vacation rentals. Additionally, under current law, a local law, ordinance, or regulation adopted on or before June 1, 2011, is also not subject to this prohibition.

The bill expands the current prohibition against a local law, ordinance, or regulation that prohibits or regulates the duration or frequency of vacation rentals to also prohibit local governments from imposing occupancy limits. The bill repeals the exemption for a local law, ordinance, or regulation adopted before June 1, 2011.

The bill requires a vacation rental license applicant to provide the name, address, phone number and email address of a contact person the division may notify when a complaint is received. The division must make vacation rental license information, including the contact person, available to the public on the division's website.

The effective date of the bill is July 1, 2019.

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, F.S.;
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, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
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; and
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, F.S.

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

- Hotels – 1,980 licenses;
- Motels – 2,556 licenses;
- Nontransient apartments – 18,260 licenses;
- Transient apartments – 920 licenses;
- Bed and Breakfast Inns – 260 licenses;
- Vacation rental condominiums – 6,032 licenses;
- Vacation rental dwellings – 14,874 licenses; and
- Vacation rental timeshare projects – 21 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 2017-2018*, Department of Business and Professional Regulation, at page 8. A copy of the report is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2017_18.pdf (Last visited Mar. 20, 2019).

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 conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2017-2018, the division received 244 consumer complaints regarding vacation rentals. In response to the complaints, the division inspected 108 vacation rentals and confirmed a violation for 23 of the complaints.⁷

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁸

The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,⁹ which relates to a public lodging establishment.¹⁰

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.¹¹

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.”

⁶ Section 509.032(2)(a), F.S.

⁷ See *supra* note 5, at page 25. Regarding the division's response to complaints did not lead to an inspection, the agency may have made follow-up phone calls, sent letters or e-mails, or referred the complaint to another agencies. The data in the report may also reflect open investigations.

⁸ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at:

<https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Mar. 20, 2019).

⁹ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹⁰ Section 509.032(2)(d), F.S.

¹¹ See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at:

https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694 (last visited Mar. 20, 2019).

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹²

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.¹³

Legislative History

In 2011, the Legislature preempted certain 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.¹⁴

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁵

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁶ 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.”¹⁷

Attorney General Opinions

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.¹⁸ 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

¹² Section 509.032(7)(a), F.S.

¹³ See s. 163.3164(43), F.S., provides that the state land planning agency is the Department of Economic Opportunity.

¹⁴ Chapter 2011-119, Laws of Fla.

¹⁵ *Id.*

¹⁶ Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.

¹⁷ *Id.*

¹⁸ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013.

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 that 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.¹⁹

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.²⁰ 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.²¹

III. Effect of Proposed Changes:

The bill amends s. 509.032(7), F.S., to preempt the regulation of all vacation rentals to the state.

Section 509.032(7)(b)1., F.S., provides legislative findings, including the finding that vacation rentals play a significant, unique, and critical role in Florida’s tourism industry, a role that is different from other types of public lodging establishments.

Section 509.032(7)(b)2., F.S., provides that the regulation of vacation rentals, including, but not limited to, inspection, licensing, and occupancy limits, is expressly preempted to the state.

The bill:

- Prohibits a local government from licensing or inspecting vacation rentals.
- Allows a local government to regulate activities that arise when a property is used as a vacation rental, if the regulation applies uniformly to all residential properties.
- Repeals the exemption for a local law, ordinance, or regulation adopted before June 1, 2011.
- Expands the prohibition against a local law, ordinance, or regulation that prohibits or regulates the duration or frequency of vacation rentals to also prohibit local governments from imposing occupancy limits.

Additionally, the bill provides that, if a local law, ordinance or regulation is challenged in a court, the political subdivision that enacted the local law, ordinance or regulation at issue must

¹⁹ 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 Mar. 20, 2019).

²⁰ 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 Mar. 20, 2019).

²¹ *Id.*

establish by clear and convincing evidence²² that the challenged local law, ordinance, or regulation does not violate preemption of such regulation to the state.

The bill amends s. 509.241(2), F.S., relating to the license application process for public lodging establishments, to require a vacation rental license applicant to provide the name, address, telephone number, and email address of a contact person the division may notify when a complaint is received. The division must make vacation rental license information, including the associated contact person, available to the public on the division's website.

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, a property owner currently subject to a local vacation licensing or registration requirement and related fee, may not be required to pay any such fee.

²² The standard of proof is the level of evidence a person needs to prove in order to prevail on their claim. In most civil cases the standard is "preponderance of the evidence," in which a particular fact of event is more likely to have occurred than not to have occurred. "Clear and convincing evidence" is a higher standard that requires proof that the fact or event has a high probability that the fact or event occurred. See <https://www.justia.com/trials-litigation/evidentiary-standards-burdens-proof/> (last visited March 24, 2019).

C. Government Sector Impact:

A local government may have an indeterminate decrease of revenue if the local government currently requires a vacation rental license or registration fee. Under the bill, a local government may not require a vacation rental to register or obtain such a license.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires an applicant for a vacation rental license to provide the division with the name, address, telephone number and email address of a contact person. It is not clear if this requirement applies to initial license applicants and license renewals. Currently, the license renewal process only requires the renewal applicant to pay a renewal fee. According to the division, if the contact information is required, the division will need to give licensees notice of the additional requirement and instructions on how to provide the information. The division also expressed the concern that the collection of deficient contact person information may delay the approval of new applications and renewals.²³

The division also notes that the bill does not provide specific rulemaking authority in the event the agency determines that rulemaking is necessary to implement the provisions of the bill.²⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.032 and 509.241.

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.

²³ See Department of Business and Professional Regulation, *2019 Agency Legislative Bill Analysis for SB 824*, dated Feb. 26, 2019 (on file with Senate Committee on Innovation, Industry, and Technology) at page 5.

²⁴ *Id.*