

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 647 Recreational Vehicle Parks

SPONSOR(S): Health Quality Subcommittee, Drake

TIED BILLS: **IDEN./SIM. BILLS:** SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	14 Y, 0 N, As CS	Guzzo	McElroy
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Department of Health (DOH) is responsible for the permitting of recreational vehicle (RV) parks and is the exclusive regulatory and permitting authority for establishing sanitary standards for these entities. This includes regulations relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and general health issues.

Local governments have the right to adopt ordinances that may affect the operation of a RV park within their jurisdiction. This includes regulation regarding the lot size, lot density, or separation or setback distance of a RV park. However, separation distances between RV sites within a RV park to remain unchanged since the time of the initial approval of the RV park by DOH and a local government.

The Florida Residential Landlord Tenant Act (Act) governs most traditional rental arrangements, including those for apartments and single family housing units. The Tenant Act also applies to a guest occupying an RV in an RV park for more than six months.

When property with an identifiable owner is left in an RV park by a transient guest (less than 6 months), the park operator must send written notice to the transient guest or the property's owner and hold the property for 90 days before disposing of it. There are no such requirements for abandoned property of a transient guest who has an outstanding account and vacates the RV park without notice.

The Florida Constitution grants counties and municipalities broad home rule authority. However, state legislation may preempt an area of law, precluding a local government from exercising authority in that particular area.

HB 647 preempts all permitting authority to DOH for RV parks, mobile home parks, lodging parks, and recreational camps. Additionally, the bill allows an RV park to be rebuilt on the same site using the same previously approved density standards if it is damaged or destroyed by a natural disaster.

The bill requires a RV park to notify owners and store and dispose of unclaimed property that is left by a transient guest with an outstanding balance who has vacated the premises without notice. This aligns the requirements for RV parks for abandon property irrespective of whether a guest had an outstanding balance at the time of he or she vacated the RV park.

The bill authorizes the operator of a RV park to have a transient guest removed by law enforcement if the transient guest is disturbing the peace, quiet enjoyment, or comfort of other guests.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0647a.HQS

DATE: 1/28/2020

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulation of Recreational Vehicle Parks

The Department of Health (DOH) is responsible for the permitting of recreational vehicle (RV) parks and is the exclusive regulatory and permitting authority for establishing sanitary standards for these entities.¹ This includes regulations relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and general health issues.

Before establishing or maintaining a RV park, mobile home park, lodging park, or recreational camp, a permit must be obtained from DOH.² The permit must be renewed annually and a new permit is required when a park or camp is sold or its ownership is transferred.³ If a person maintains or operates any of these entities without first obtaining a permit, he or she is guilty of a second degree misdemeanor.⁴

When applying to DOH for a permit, the park or camp must include the following information:⁵

- The type of camp or park;
- The number of mobile homes or RVs to be accommodated or the number of recreational campsites;
- The type of water supply; and
- The method of sewage disposal.

Parks and camps must also submit a valid set of plans to the county public health unit at the time of permit application. The plans must include:⁶

- A drawing of the park or camp that includes the area and dimensions of the tract of land;
- The space number or other designation of the space;
- The location and size of all mobile home spaces, RV spaces, and tent spaces; and
- The location of all roadways.

The drawing does not have to be drawn to scale or completed by an engineer if the space dimensions are shown. For permanent buildings located within the park or camp, a floor plan must also be submitted showing the number, types, and distribution of all plumbing fixtures.⁷

DOH will issue a permit if it determines that the park or camp complies with ch. 513, F.S., and that it is not a source of danger to the health of the general public.⁸ Currently, there are approximately 5,500 mobile home parks, lodging parks, RV parks, and recreational camps in Florida.⁹

Local Governments

¹ S. 513.051, F.S.

² S. 513.02(1), F.S.

³ S. 513.02(5), F.S.

⁴ S. 513.10(1), F.S.

⁵ S. 513.03(1), F.S.

⁶ Rule 64E-15.010(2)(b), F.A.C.

⁷ *Id.*

⁸ S. 513.03(2), F.S.

⁹ The Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, available at: <http://www.floridahealth.gov/environmental-health/mobile-home-parks/index.html> (last visited on January 26, 2020).

Local governments have the right to adopt ordinances that may affect the operation of a RV park within their jurisdiction. This includes regulation regarding the lot size, lot density, or separation or setback distance of a RV park. However, current law requires separation and setback distances within a RV park to remain unchanged since the time of the initial approval of the RV park by DOH and the local government.¹⁰

Rights of Transient and Non-Transient Guests

Resident rights in a RV park can be different for each lot within the park. The Florida Residential Landlord Tenant Act (Act) governs most traditional rental arrangements, including those for apartments and single family housing units. The Act also applies to a guest occupying an RV in an RV park for more than six months. However, a guest registered in an RV park for six months or less (transient guest¹¹) is subject only to the protections under ch. 513, F.S.

Ejection & Eviction

A landlord can only recover possession of a lot without the tenant's consent through an eviction under the Act. A residential eviction begins when the landlord serves the tenant notice to vacate the premises either by mailing or delivering a copy to the tenant, or if the tenant is not on the premises, by leaving a copy at the RV.¹² Such notice must state the reason for the eviction, which may include failure to pay rent,¹³ lease violations,¹⁴ and destruction of property,¹⁵ and the time by which the tenant must either cure the violation or vacate the premises. A landlord can bring an action for possession in the county court of the county where the park is located by filing a complaint describing the lot and stating the facts that authorize its recovery if a tenant does not vacate the premises after termination of the tenant's rental agreement.¹⁶ Should the landlord prevail, the court will issue a writ of possession to the sheriff, authorizing the sheriff to put the landlord in possession of the lot after a 24-hour notice period.¹⁷

However, an RV park operator may eject from the park any transient guest who illegally possesses or deals in a controlled substance, disturbs the peace and comfort of others, physically harms the park, or fails to timely pay rent at the agreed rate.¹⁸ An ejection begins when a RV park operator notifies a transient guest in writing that the park "no longer desires to entertain the [transient] guest" and asks him or her to leave immediately.¹⁹ If the transient guest paid advanced rent, the park must, at the time ejection notice is given, give the transient guest any unused portion of the advanced payment.²⁰ A transient guest who remains or attempts to remain in the park after receiving an ejection notice commits a second degree misdemeanor.²¹

Unclaimed Property

A landlord must send written notice to the tenant or the property's owner when a tenant leaves personal property in an RV park after vacating the premises.²² The notice must describe the property with enough detail that the property owner can identify it and, if not stored on park premises, state where the property is stored and that reasonable storage costs may be charged before the property is returned.²³

¹⁰ S. 513.1115, F.S.

¹¹ S. 513.01(12), F.S., transient guest means any guest registered as provided in s. 513.112, F.S., for 6 months or less. When a guest is permitted with the knowledge of the park operator to continuously occupy a RV in a RV park for more than 6 months, there is a rebuttable presumption that the occupancy is non-transient, and the eviction procedures of part II of ch. 83, F.S., apply.

¹² S. 83.56(4), F.S.

¹³ S. 83.56(3), F.S.

¹⁴ S. 83.56(2)(b), F.S.

¹⁵ S. 83.56(2)(a), F.S.

¹⁶ S. 83.59, F.S.

¹⁷ S. 83.62, F.S.

¹⁸ S. 513.13(1), F.S.

¹⁹ S. 513.13(2), F.S.

²⁰ *Id.*

²¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. *Id.*; Ss. 775.082 and 775.083, F.S.

²² Ss. 715.101(1) and 715.104(1), F.S.

²³ Ss. 715.104(2) and 715.107, F.S.

Additionally, the notice should specify where the property may be claimed and the date by which the claim must be made, which date must be at least 10 days away if the notice is personally delivered and, if the notice is sent by mail, at least 15 days from the date the notice is placed in the mail.²⁴ The notice must be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address.²⁵ However, if a park operator has reason to believe that the notice will not be received by the intended person, the notice must also be delivered or sent to any other address known to the park operator where the person to be notified may reasonably be expected to receive it.²⁶

A park operator must release the property if the property's owner pays the storage costs and acts to take possession of the property on or before the date specified in the notice.²⁷ However, a park operator may sell or dispose of the property if the property's owner does not respond in the timeframe specified in the notice.²⁸ Where the property's estimated value is less than \$500.00, the park operator can dispose of it in any manner, but where the property's estimated value is \$500.00 or more, the landlord must arrange for a public sale of the property at the nearest suitable place to where the property is held or stored.²⁹ A park operator must publish notice of the sale of the property once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held, and the advertisement must include the former guest's name, the property's description, and the time and place of the sale.³⁰ If the property's owner pays the reasonable storage costs and claims the property prior to its sale, the park owner must withdraw the property from sale and release it to the owner.³¹

When property with an identifiable owner is left in an RV park by a transient guest, a park operator must send written notice to the transient guest or the property's owner and hold the property for 90 days.³² If the property remains unclaimed after the 90-day holding period, it becomes park property.³³ However, Florida law does not specify a separate procedure for RVs, boats, motor vehicles, and other titled property left by a transient guest, title to which must be transferred by the Department of Highway Safety and Motor Vehicles for ownership to pass from one person to another.³⁴ Additionally, these procedures do not apply to property with an identifiable owner left by a transient guest who vacated the premises without notice to the park operator and with an outstanding account, and Florida law does not specify a procedure for such property.³⁵

Refusal of Accommodation & Services

A RV park operator may not cause the termination or interruption of any utility service furnished to a tenant, including water, electricity, and gas, whether or not the utility service is under the control of, or payment is made by, the park operator under the Act.³⁶ Further, a park operator may not prevent the tenant from obtaining reasonable access to his or RV and lot by any means,³⁷ and can only regain possession of the lot through the eviction process.

A RV park operator may refuse to provide accommodations or service to any transient guest or visitor whose conduct on the park's premises displays intoxication, profanity, lewdness, or brawling; who indulges in such language or conduct to in a manner that disturbs the peace or comfort of other guests;

²⁴ *Id.*

²⁵ S. 715.104(3), F.S.

²⁶ *Id.*

²⁷ S. 715.08, F.S.

²⁸ S. 715.09(1), F.S.

²⁹ *Id.*

³⁰ 715.109(2)-(3), F.S.

³¹ S. 715.108(2), F.S.

³² S. 513.115, F.S.

³³ *Id.*

³⁴ See generally chapter 513, F.S.; see also Florida Association of RV Parks and Campgrounds, *Abandoned RVs and Property*, <http://farvc.org/files/farvcdocument/AbandonedPropertySummaryMemo15021133817.pdf> (last visited Jan. 26, 2020).

³⁵ *Id.*; S. 513.115, F.S.

³⁶ S. 83.67(1), F.S.

³⁷ S. 83.67(2), F.S.

who engages in illegal or disorderly conduct; or whose conduct creates a nuisance.³⁸ However, chapter 513, F.S., does not expressly specify the process by which a park operator could require such a transient guest to immediately leave the premises.

Additionally, a park operator may not refuse to provide accommodations or service to any person, transient or otherwise, on the basis of a person's race, color, national origin, sex, physical disability, or creed. Such refusal violates Florida's Fair Housing Act, the federal Fair Housing Act, and the Fourteenth Amendment of the United States Constitution.³⁹

Local Government Authority

The Florida Constitution grants counties⁴⁰ and municipalities⁴¹ broad home rule authority. Non-charter county governments may exercise those powers of self-government provided by general or special law.⁴² Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.⁴³

Municipalities have those governmental, corporate, and proprietary powers necessary to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes,⁴⁴ except as otherwise provided by law.⁴⁵

Preemption

Counties and municipalities have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies to a particular topic, it precludes a local government⁴⁶ from exercising authority in that particular area.⁴⁷

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁴⁸ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁴⁹ In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.⁵⁰ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁵¹

Implied preemption actually is a decision by the courts to recognize state preemption in the absence of an explicit legislative directive.⁵² Preemption of a local government enactment is implied only where "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area," and

³⁸ S. 513.118, F.S.

³⁹ Ss. 513.118 and 760.23, F.S.; see also 42 U.S.C. §§ 3601-19.

⁴⁰ Counties are subdivisions of the state created by law. See art. VIII, s. 1(a), Fla. Const.

⁴¹ Municipalities are created by general or special law or recognized pursuant to art. VIII, s. 2 or s. 6, Fla. Const. See s. 165.031(3), F.S. The term "municipality" may be used interchangeably with the terms "city," "town," or "village."

⁴² Art. VIII, s. 1(f), Fla. Const.

⁴³ Art. VIII, s. 1(g), Fla. Const.

⁴⁴ A "municipal purpose" is any activity or power which may be exercised by the state or its political subdivisions. See s. 166.021(2), F.S.

⁴⁵ Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

⁴⁶ Including without limitation counties, municipalities, school districts, special districts, or any other subdivision of the state.

⁴⁷ Wolf, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited January 26, 2020).

⁴⁸ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

⁴⁹ *Mulligan*, *supra* at 934 So. 2d at 1243.

⁵⁰ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

⁵¹ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

⁵² *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

strong public policy reasons exist for finding preemption.⁵³ Implied preemption is found where the local legislation would present a danger of conflicting with the state's pervasive regulatory scheme.⁵⁴

Effects of the Bill

HB 647 preempts all permitting authority to DOH for RV parks, mobile home parks, lodging parks, and recreational camps. The bill also allows an RV park to be rebuilt on the same site using the same previously approved density standards if it is damaged or destroyed by a natural disaster. Further, the bill provides that DOH regulations relating to placement of RVs on lots in RV parks supersede any other county, municipality, or special district ordinance or regulation regarding the lot size, density, or separation or setback distance of a RV park which goes into effect after the initial permitting and construction of the park. These changes eliminate or significantly reduce local governments' authority to adopt ordinances that may affect the operation of a RV park within their jurisdiction.

The bill requires a RV park to notify owners and store and dispose of unclaimed property that is left by a transient guest with an outstanding balance who has vacated the premises without notice. This aligns the requirements for RV parks for abandon property irrespective of whether a guest had an outstanding balance at the time of he or she vacated the RV park.

The bill provides a rebuttable presumption for the occupancy of a transient resident. Specifically, the bill provides that when a guest occupies a RV in a RV park for less than 6 months, as evidenced by the length of stay shown in the guest register, there is a rebuttable presumption that the occupancy is transient.

The bill authorizes the operator of a RV park to request a transient guest or visitor to leave the premises immediately if they display intoxication, profanity, lewdness, or brawling, or indulge in such language or conduct as to disturb the peace, quiet enjoyment, or comfort of other guests, or engage in illegal or disorderly conduct, or if their conduct constitutes a nuisance or safety hazard. The bill provides that a person who refuses to leave the premises has committed a trespassing offense and the operator may call a law enforcement officer. The bill provides immunity from liability for a law enforcement officer involved in the removal of a person from a RV park. Further, if the conditions do not allow for immediate removal of the person's property, they may arrange a time to pick up the property from the operator, within 48 hours, and they must be accompanied by a law enforcement officer.

Current law requires the operator of a RV park to notify a guest in writing when the park no longer desires to entertain the guest. The bill requires the written notice to say "you are hereby notified that this RV park no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state." Current law also provides that any guest who remains or attempts to remain in a RV park after being requested to leave is 'guilty' of a misdemeanor of the second degree. The bill revises the provision to find such a resident has 'committed' a misdemeanor of the second degree instead of finding such resident guilty.

Current law requires a law enforcement officer, upon the request of a park operator, to place under arrest and take into custody, an individual who is illegally on the premises of a RV park, who commits one of the prohibited violations detailed above in the presence of the officer. In addition, the bill specifically requires the officer to remove the individual from the premises. The bill removes the requirement that the individual be taken into custody and the requirement that the violation be committed in the presence of the officer. For a resident who is arrested, if conditions do not allow for immediate removal of the guest's property, they may arrange a time to pick up the property from the operator, within 48 hours, and they must be accompanied by a law enforcement officer. Current law requires grounds for "eviction" to be established in a written lease agreement between a RV park operator and a RV park occupant. The bill revises the requirement to instead require grounds for "ejection" to be established in such a lease agreement because ejection is the correct term to be used in reference to a transient guest.

⁵³ *Id.*, quoting *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826, 831 (Fla. 1st DCA 1996), citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984).

⁵⁴ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 513.012, F.S., relating to public health laws; enforcement.

Section 2: Amends s. 513.02, F.S., relating to permit.

Section 3: Amends s. 513.051, F.S., relating to preemption.

Section 4: Amends s. 513.112, F.S., relating to maintenance of guest register and copy of laws.

Section 5: Amends s. 513.1115, F.S., relating to placement of recreational vehicles on lots in permitted parks.

Section 6: Amends s. 513.115, F.S., relating to unclaimed property.

Section 7: Amends s. 513.118, F.S., relating to conduct on premises; refusal of service.

Section 8: Amends s. 513.13, F.S., relating to recreational vehicle parks; eviction; grounds; proceedings.

Section 9: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities 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:

DOH has sufficient rule-making authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the term “local government law” to “county, municipality, or special district ordinance”. The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.