

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 647 Regulation of Recreational Activities

**SPONSOR(S):** Health & Human Services Committee, Civil Justice Subcommittee, Health Quality Subcommittee, Drake

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/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	11 Y, 1 N, As CS	Mawn	Luczynski
3) Health & Human Services Committee	18 Y, 0 N, As CS	Guzzo	Calamas

### SUMMARY ANALYSIS

The Department of Health (DOH) regulates recreational vehicle (RV) parks and sets sanitary standards for these entities. However, local governments may adopt ordinances that may affect the operation of an RV park within their jurisdictions, including establishing lot and density size and separation or setback distances for an RV park. Current law requires separation and setback distances within an RV park to remain those distances established at the time of the RV park's initial approval. However, when an RV park is damaged or destroyed by a natural disaster and rebuilt, the density standards of the rebuilt park must be those prescribed under the current applicable ordinance, which may be smaller than the standards originally imposed.

An RV park is also subject to laws protecting tenants in the state. The Florida Residential Landlord Tenant Act (Act) applies to a guest occupying an RV in an RV park for more than six months, giving such tenant certain eviction and lost or abandoned property rights. The Act does not apply to a guest occupying an RV in the park for less than six months (transient guest). Thus, a transient guest may be ejected from the park without the need for an eviction, and property lost or abandoned by a transient guest becomes park property if certain conditions are met. However, Florida law does not specify a process for disposing of property left by a transient guest with an outstanding account who vacates an RV park without notice.

DOH is responsible for administering the permitting, safety, and sanitation regulations for public swimming pools.

CS/CS/HB 647:

- Preempts permitting authority to DOH for RV parks, mobile home parks, lodging parks, and recreational camps.
- Allows an RV park damaged or destroyed by a natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval.
- Creates a rebuttable presumption that an RV park guest is a transient guest.
- Provides a method for the disposal of property left by a transient guest with an outstanding account who vacates an RV park without notice.
- Adds a posted park rules and regulations violation to the list of reasons a park operator may eject a transient guest or visitor from park premises and provides notice of ejection requirements.
- Provides that a park operator may refuse a transient guest or visitor access to the premises for specified conduct and request that such person leave the premises.
- Modifies the duties of a law enforcement officer called to assist with a person illegally on an RV park's premises to allow removal of such a person in lieu of arrest and limits the officer's liability.
- Authorizes local governments to develop a special use permitting process for surf pools.
- Exempts surf pools that are larger than 4 acres and have obtained a local special use permit from DOH oversight until DOH passes rules for the regulation and supervision of surf pools.

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: h0647e.HHS

DATE: 2/14/2020

# 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 permitting recreational vehicle (RV) parks and is the exclusive regulatory and permitting authority for establishing sanitary standards for these entities.<sup>1</sup> 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 a mobile home park, RV park, or recreational vehicle camp, a person must obtain a permit from DOH.<sup>2</sup> The permit must be renewed annually and a new permit is required when a park or camp is sold or its ownership is transferred.<sup>3</sup> A person maintaining or operating a park or camp without first obtaining a permit commits a second degree misdemeanor.<sup>4</sup>

When applying to DOH for a permit, the application must state the:

- Location of the existing or proposed park or camp;
- Type of park or camp to be established;
- Number of mobile homes, RVs, or tents to be accommodated;
- Type of water supply;
- Method of sewage disposal; and
- Any other information DOH requires.<sup>5</sup>

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

- A drawing<sup>7</sup> 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, RV, and tents spaces; and
- The location of all roadways.<sup>8</sup>

Additionally, for permanent buildings located within the park or camp, a floor plan must be submitted showing the number, types, and distribution of all plumbing fixtures.<sup>9</sup>

DOH will issue a permit if it determines that the park or camp complies with requirements in chapter 513, F.S., and that it is not a source of danger to the health of the general public.<sup>10</sup> Currently, there are approximately 5,500 mobile home parks, lodging parks, RV parks, and recreational camps in Florida.<sup>11</sup>

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<sup>1</sup> S. 513.051, F.S.

<sup>2</sup> S. 513.02(1), F.S.

<sup>3</sup> S. 513.02(5), F.S.

<sup>4</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 513.10(1), 775.082, and 775.083, F.S.

<sup>5</sup> S. 513.03(1), F.S.

<sup>6</sup> Rule 64E-15.010(2)(b), F.A.C.

<sup>7</sup> The drawing does not have to be drawn to scale or completed by an engineer if the space dimensions are shown. *Id.*

<sup>8</sup> Rule 64E-15.010(2)(b), F.A.C.

<sup>9</sup> *Id.*

<sup>10</sup> S. 513.03(2), F.S.

<sup>11</sup> The Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, <http://www.floridahealth.gov/environmental-health/mobile-home-parks/index.html> (last visited Feb. 9, 2020).

## Local Governments

Local governments have the authority to adopt ordinances that may affect the operation of an RV park within their jurisdiction. This includes regulation regarding lot and density size and separation or setback distances for an RV park. Current law requires separation and setback distances within an RV park to remain those distances established at the time of the RV park's initial approval by DOH and the local government of the jurisdiction in which the RV park is located.<sup>12</sup> However, when an RV park is destroyed by a natural disaster and the park operator chooses to rebuild, the density standards of the rebuilt park must be those prescribed under the current applicable ordinance.<sup>13</sup> Such standards may be smaller than the standards originally imposed, causing the park to lose lots and the business that goes with them.<sup>14</sup> This, in turn, reduces the number of RV park lots available for Florida's visitors.<sup>15</sup>

## **Rights of Transient and Non-Transient Guests**

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 (tenant). However, a guest registered in an RV park for six months or less (transient guest) is subject only to the protections offered under ch. 513, F.S.<sup>16</sup>

## Ejectment & Eviction

A park operator can only recover possession of a lot without a tenant's consent through an eviction under the Act. A residential eviction begins when the park operator 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.<sup>17</sup> Such notice must state the reason for the eviction, which may include failure to pay rent,<sup>18</sup> lease violations,<sup>19</sup> and destruction of property,<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> An ejectment 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.<sup>24</sup> 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.<sup>25</sup> A transient guest who remains or attempts to remain in the park after receiving an ejection notice commits a second degree misdemeanor.<sup>26</sup>

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<sup>12</sup> S. 513.1115, F.S.

<sup>13</sup> Florida Department of Health, Agency Analysis of 2020 House Bill 647, p. 2 (Jan. 21, 2020).

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

<sup>15</sup> *Id.*

<sup>16</sup> A transient guest means any guest registered as provided in s. 513.112, F.S., for six 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 six 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. S. 513.01(12), F.S.

<sup>17</sup> S. 83.56(4), F.S.

<sup>18</sup> S. 83.56(3), F.S.

<sup>19</sup> S. 83.56(2)(b), F.S.

<sup>20</sup> S. 83.56(2)(a), F.S.

<sup>21</sup> S. 83.59, F.S.

<sup>22</sup> S. 83.62, F.S.

<sup>23</sup> S. 513.13(1), F.S.

<sup>24</sup> S. 513.13(2), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

If any person is on RV park premises illegally, the park operator may call upon any state law enforcement officer for help.<sup>27</sup> Such law enforcement officer has a duty, upon the park operator's request, to arrest the person illegally on RV park premises and take him or her into custody such a person, in the officer's presence:

- Illegally possess or deals in a controlled substance;
- Disturbs the peace and comfort of other persons;
- Causes harm to the physical park;
- Fails to pay rent at the agreed-upon rental rate by the agreed-upon time; or
- Remains in the park after being asked to leave.<sup>28</sup>

### Unclaimed Property

A park operator must send written notice to a tenant or the property's owner when a tenant leaves personal property in an RV park after vacating the premises.<sup>29</sup> 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.<sup>30</sup> 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 ten 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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 tenant's name, the property's description, and the time and place of the sale.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> If the property remains unclaimed after the 90-day holding period, it becomes park property.<sup>40</sup> However, 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.<sup>41</sup>

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<sup>27</sup> S. 513.13(4), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Ss. 715.101(1) and 715.104(1), F.S.

<sup>30</sup> Ss. 715.104(2) and 715.107, F.S.

<sup>31</sup> *Id.*

<sup>32</sup> S. 715.104(3), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> S. 715.108, F.S.

<sup>35</sup> S. 715.109(1), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> 715.109(2)-(3), F.S.

<sup>38</sup> S. 715.108(2), F.S.

<sup>39</sup> S. 513.115, F.S.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*; S. 513.115, F.S.

## Refusal of Accommodation & Services

An 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.<sup>42</sup> Further, a park operator may not prevent the tenant from obtaining reasonable access to his or her RV and lot by any means,<sup>43</sup> and can only regain possession of the lot through the eviction process.

An 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 in a manner that disturbs the peace or comfort of other guests; who engages in illegal or disorderly conduct; or whose conduct creates a nuisance.<sup>44</sup> However, ch. 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, and law enforcement may be confused about whether such a transient guest can be trespassed without the park operator going through the eviction process.

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.<sup>45</sup>

## **Local Government Authority**

The Florida Constitution grants counties<sup>46</sup> and municipalities<sup>47</sup> broad home rule authority. Non-charter county governments may exercise those powers of self-government provided by general or special law.<sup>48</sup> 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.<sup>49</sup>

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,<sup>50</sup> except as otherwise provided by law.<sup>51</sup>

## 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 government<sup>52</sup> from exercising authority in that particular area.<sup>53</sup>

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<sup>42</sup> S. 83.67(1), F.S.

<sup>43</sup> S. 83.67(2), F.S.

<sup>44</sup> S. 513.118, F.S.

<sup>45</sup> Ss. 513.118 and 760.23, F.S.; *see also* 42 U.S.C. §§ 3601-19.

<sup>46</sup> Counties are subdivisions of the state created by law. *See* art. VIII, s. 1(a), Fla. Const.

<sup>47</sup> 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."

<sup>48</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>49</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>50</sup> 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.

<sup>51</sup> Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

<sup>52</sup> Including without limitation counties, municipalities, school districts, special districts, or any other subdivision of the state.

<sup>53</sup> 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 Feb. 9, 2020).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>54</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>55</sup> In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.<sup>56</sup> 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.<sup>57</sup>

Implied preemption is a decision by the courts to recognize state preemption in the absence of an explicit legislative directive.<sup>58</sup> 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 strong public policy reasons exist for finding preemption.<sup>59</sup> Implied preemption is found where the local legislation would present a danger of conflicting with the state’s pervasive regulatory scheme.<sup>60</sup>

## Public Swimming Pools

Chapter 514, F.S., governs public swimming and bathing facilities. DOH and county health departments are jointly responsible for administering the permitting, safety, and sanitation regulations for public swimming pools set forth in this chapter.<sup>61</sup>

Those wishing to construct, develop, or modify a public swimming pool in Florida must submit an application for an operating permit before filing an application for a building permit under s. 553.79, F.S., which must include:<sup>62</sup>

- A description of the structure, its appurtenances, and its operation;
- A description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- The method and manner of water purification, treatment, disinfection, and heating;
- The safety equipment and standards to be used; and
- A copy of the final inspection from the local enforcement agency.

DOH is authorized to establish a schedule of fees for plan approval and permitting.<sup>63</sup> Operating permits must be renewed annually and may be transferred from one name or owner to another.<sup>64</sup> DOH may deny an application for a permit and may suspend or revoke a permit, or impose an administrative fine upon an existing licensee.<sup>65</sup>

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool’s sanitary and safety conditions.<sup>66</sup> Any public swimming pool that presents a significant risk to public health by failing to meet sanitation and safety standards can be declared a public nuisance. DOH or a county health department can seek an injunction to stop these types of violations.<sup>67</sup>

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<sup>54</sup> 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).

<sup>55</sup> *Mulligan*, *supra* at 934 So. 2d at 1243.

<sup>56</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>57</sup> See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>58</sup> *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

<sup>59</sup> *Id.*, quoting *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826, 831 (Fla. 1<sup>st</sup> DCA 1996), citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984).

<sup>60</sup> *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

<sup>61</sup> A “public swimming pool” or “pool” is a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee.

<sup>62</sup> S. 514.03 and s. 514.031, F.S.

<sup>63</sup> S. 514.033, F.S.

<sup>64</sup> S. 514.031(2) and (3), F.S.

<sup>65</sup> S. 514

<sup>66</sup> S. 514.04, F.S.

<sup>67</sup> S. 514.06, F.S.

Current law provides several exemptions from regulatory oversight by DOH for several types of pools including:<sup>68</sup>

- Private pools and water therapy facilities connected with facilities such as hospitals, medical doctors' offices, and licensed physical therapy establishments;
- Pools serving condominium or cooperative associations of more than 32 units and which are not rented for less than 60 days;
- A private pool used for private swimming lessons;
- Any pool serving a residential child care agency registered and exempt under s. 409.176, F.S.;
- A portable pool used for swimming lessons; and
- A temporary pool.

DOH may also grant variances from its own rules under certain circumstances and grant variance under the Florida Building Code under certain circumstances.<sup>69</sup>

DOH also adopted rules specific to its public swimming and bathing places responsibilities. Pool water must be free of coliform bacteria contamination, and must be kept free from sediment, floating debris, visible dirt and algae.<sup>70</sup> All pools must be equipped with safety drain outlet covers, a shepherd's hook securely attached to a one piece pole, at least one lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck, and safety lines.<sup>71</sup>

For water recreation attractions and special purpose pools, the recirculation-filtration system must achieve a minimum of one turnover every two hours for pools over two feet deep.<sup>72</sup> Interactive water features require maintenance of chemical feeders and an automatic skimmer system.<sup>73</sup>

## Wave and Surf Pools

The first wave pool originated in the 19<sup>th</sup> Century, in which a lake was electrified in order to create breaking waves.<sup>74</sup> Today, wave pools artificially generate waves through a variety of techniques, including compressed air, levers and paddles, plunger, and submerged blocks pulled along a track.<sup>75</sup> Wave pools can be found throughout the world, including in the United Kingdom, Australia, Spain, Brazil, Germany, and the United States. In the United States, wave pools are located in Texas, California, North Carolina, and Florida.

Wave pools are typically designed for swimming but some are expressly designed for surfing.<sup>76</sup> Surf pools can range in size from 1.5 to 6 acres<sup>77</sup> and generate much larger and consistent waves than a standard wave pool.<sup>78</sup>

## Effects of the Bill

### Local Government Authority

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<sup>68</sup> S. 514.0115, F.S.

<sup>69</sup> See s. 514.0115, F.S.

<sup>70</sup> See Fla. Admin. Code R. 64E-9.004.

<sup>71</sup> See Fla. Admin. Code R. 64E-9.008.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *A Brief History of Artificial Wave Pools*, SURFER TODAY, <https://www.surfertoday.com/surfing/a-brief-history-of-artificial-wave-pools>.

<sup>75</sup> Bryan Dickerson, *Guide to All the World's Wave Pool Technology*, WAVEPOOL MAG (Sept. 4, 2019), <https://wavepoolmag.com/learn-the-nuts-and-bolts-behind-todays-crop-of-wave-pools/>; See generally *Map of Wave Pools, River Waves and Indoor Surfing Machines*, SURFER TODAY, <https://www.surfertoday.com/wave-pools>.; See also POLIN WAVE PARKS, *Wave Pools*, <https://www.polinwaveparks.com/wave-pools/detail.aspx> (last visited Feb. 13, 2020).

<sup>76</sup> *Id.*

<sup>77</sup> *American Dream's Indoor Wave Pool Opens Soon. Check Out Surfers Testing It Out.*, NJ.com, November 17, 2019, available at <https://www.nj.com/bergen/2019/11/american-dreams-indoor-wave-pool-opens-soon-check-out-surfers-testing-it-out.html> (last visited on February 14, 2020); see also *World's largest PerfectSwell to open in Richmond Virginia*, WAVEPOOL MAG, available at <https://wavepoolmag.com/worlds-largest-perfectswell-to-open-in-richmond-virginia/> (last visited on February 14, 2020).

<sup>78</sup> See footnote 75 *supra*.

CS/CS/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 damaged or destroyed by a natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval. 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 an 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 affecting the operation of an RV park within their jurisdiction.

### **Rights of Transient and Non-Transient Guests**

The bill creates a rebuttable presumption that a guest is a transient guest. Specifically, the bill provides if the guest registry shows that a length of stay under 6 months, the guest is presumed to be transient. Unless rebutted by the guest, this will allow an RV park operator to eject or evict a transient guest in accordance with the eviction requirements for RV parks in s. 513.13, F.S., instead of potentially having to go through the lengthy eviction process in accordance with landlord-tenant law if the transient guest claims to have occupied an RV in the RV park for more than six months.

### Unclaimed Property

The bill provides a method for handling property left in an RV park by a transient guest who has vacated the premises without notice to the operator and who has an outstanding account, specifying that such property is abandoned property and must be disposed of under the Disposition of Personal Property Landlord and Tenant Act. Thus, the bill makes the property disposal process the same for a transient guest and a tenant vacating the premises without notice and who have outstanding accounts.

The bill provides a separate method for handling property left in an RV park that is located within a theme park or entertainment complex, a zoo, a museum, or an aquarium. Specifically, the operator is required to make a record of the date the property was found. If the property is not claimed by its owner within 30 days after it is found, the operator must dispose of the property or donate it to a charitable institution, but the operator is not permitted to sell it. The rightful owner of the property may reclaim the property from the operator before the operator disposes of or donates the property.

### Refusal of Accommodation & Services

The bill authorizes an RV park operator to refuse to provide accommodations, service, or access to the premises to any transient guest or visitor who:

- Displays intoxication, profanity, lewdness, or brawling;
- Indulges in language or conduct that disturbs the peace, quiet enjoyment, or comfort of other guests; or
- Engages in illegal or disorderly conduct or conduct constituting a nuisance or safety hazard.

Under the bill, a transient guest or visitor who refuses to leave after being asked to do so by the park operator commits trespass, and the operator may call a law enforcement officer to have the person and his or her property removed from the premises. The bill provides immunity from liability, except for tort liability,<sup>79</sup> for a law enforcement officer involved in the removal of a transient guest or visitor from an RV park under these circumstances, and provides that, if conditions do not allow for immediate removal of the person's property, he or she may arrange a time to pick up the property, in the company of a law enforcement officer, within 48 hours of his or her removal.

### Ejection and Eviction

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<sup>79</sup> The state waives sovereign immunity for tort liability for itself and its agencies and subdivisions. Thus, the bill provides that a law enforcement officer removing a person illegally on RV park premises does not have sovereign immunity where such an officer would not normally have sovereign immunity, i.e., for tort liability. S. 768.28, F.S.



The bill adds a posted park rules and regulations violation to the list of reasons for which a park operator may eject a transient guest from park premises. The bill also requires that, when a park operator sends a transient guest written notice of his her ejection from the premises, such notice must state: "You are hereby notified that this recreational vehicle 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".

Additionally, the bill gives a law enforcement officer called by a park owner to help with a person illegally on RV park premises the option to remove the person from the premises or arrest the person if the park operator requests such action and indicates that such a person:

- Illegally possessed or dealt in a controlled substance;
- Disturbed the peace and comfort of other persons;
- Caused harm to the physical park;
- Failed to pay rent at the agreed-upon rental rate by the agreed-upon time; or
- Remained in the park after being asked to leave.<sup>80</sup>

Thus, the officer no longer has to witness an offense before taking the person into custody, and may remove the offending person from the premises in lieu of making an arrest. Additionally, a person arrested or removed by a law enforcement officer under this section who cannot immediately remove his or her property may arrange a time to pick up the property in the company of a law enforcement officer within 48 hours of arrest or removal.

Finally, the bill changes references from "eviction" to "ejection" in the context of removing a transient guest, as such a guest is not protected by the Act and its eviction process.

### **Wave and Surf Pools**

The bill authorizes local governments to develop a special use permitting process for surf pools. Surf pools that are larger than 4 acres that have obtained a local special use permit are exempt from DOH oversight. This exemption will exist until DOH passes rules for the regulation and supervision of surf pools. The bill distinguishes surf pools from wave pools for the purposes of this exemption. It defines a surf pool as a pool designed to generate waves dedicated to the activity of surfing on a surfboard or an analogous surfing device commonly used in the ocean and intended for sport, as opposed to general play intent for wave pools, other large-scale public swimming pools, or other public bathing places.

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:**

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<sup>80</sup> *Id.*

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 rulemaking authority under existing law.

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".

On February 4, 2020, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Specified that the density standards at which an RV park damaged or destroyed by a natural disaster may rebuild are those standards that were both approved and permitted before the park was damaged or destroyed, rather than those standards that were either approved or permitted.

- Provided that a law enforcement officer removing a person illegally on recreational vehicle park premises is not immune from tort liability, as the state waives sovereign immunity for itself and its agencies and subdivisions for such liability.

On February 12, 2020, the Health & Human Services Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Authorized local governments, in consultation with DOH, to develop a special use permitting process for certain surf pools, and exempts such pools from DOH permitting.
- Established requirements for the disposal of property that has been lost or abandoned at a recreational vehicle park.

The analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.