

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 219 Vacation Rentals  
**SPONSOR(S):** Regulatory Reform Subcommittee, Fischer and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	10 Y, 7 N, As CS	Thompson	Anstead
2) Ways & Means Committee		Berg	Aldridge
3) Commerce Committee			

### SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state. A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Adds to the scope of the express state preemption of vacation rentals, by prohibiting local laws, ordinances, or regulations that allow or require the inspection or licensure of vacation rentals.
- Allows local vacation rental regulations if applied uniformly to all residential properties.
- Specifies that certain prohibitions in the bill do not apply to local ordinances adopted on or before June 1, 2011, within areas of critical state concern, and clarifies that such ordinances may be amended if less restrictive.
- Defines the term “advertising platform,” preempts to the state the regulation of advertising platforms, and requires users of advertising platforms to provide license and tax identification information in a vacation rental listing and to the Division on a regular basis.
- Requires advertising platforms to collect and remit certain taxes, requires the Department of Revenue (DOR) and counties that self-administer tourist development taxes to allow advertising platforms to register, collect, and remit the taxes, and authorizes DOR to adopt emergency rules to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Specifies that the bill does not supersede the authority of condominiums, cooperatives, or homeowners’ associations to restrict the use of their properties.
- Requires vacation rental operators to display license and tax identification information.
- Requires sexual offenders and sexual predators who stay in a vacation rental to register with the local sheriff's office under certain circumstances.
- Requires advertising platforms to adopt an antidiscrimination policy.

The Revenue Estimating Conference has not estimated the revenue impacts of the bill. See the Fiscal Analysis and Economic Impact Statement in Section II of the analysis for details.

Except as otherwise provided, the bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Vacation Rentals**

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.<sup>1</sup>

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.<sup>2</sup>

The term “public lodging establishments” includes transient and nontransient public lodging establishments.<sup>3</sup> 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.

The term “transient public lodging establishment” means 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 one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.<sup>4</sup>

The term “vacation rental” means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.<sup>5</sup>

Current law exempts from licensing requirements living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment.<sup>6</sup> Currently, the classification for “vacation rental” only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.<sup>7</sup>

##### **Licensure**

The Division is authorized to issue vacation rental licenses as follows:

- **Single license**: issued to an individual person or entity, but not a licensed agent, and 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.
- **Group license**: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

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

<sup>2</sup> S. 509.242(1), F.S.

<sup>3</sup> S. 509.013(4)(a), F.S.

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

<sup>5</sup> S. 509.242(1)(c), F.S.

<sup>6</sup> S. 509.013(4)(b)9., F.S.

<sup>7</sup> DBPR, Agency Analysis of 2020 Senate Bill 1128, p.2 (Jan. 7, 2020). *See also* 18-06 Fla. Op.Att’y Gen. (2018).

- **Collective license:** issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.<sup>8</sup>

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.<sup>9</sup> If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.<sup>10</sup>

Currently, there are 50,344 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 2,159 licenses;
- Motels: 2,500 licenses;
- Non-transient apartments: 18,454 licenses;
- Transient apartments: 927 licenses;
- Bed and Breakfast Inns: 270 licenses;
- Vacation rental condominiums: 8,741 licenses;
- Vacation rental dwellings: 17,267 licenses; and
- Vacation rental timeshare projects: 26 licenses.<sup>11</sup>

### License Fees

The Division provides the following fee schedule relating to vacation rentals:<sup>12</sup>

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE <sup>13</sup>	TOTAL FEE
\$150	\$10	\$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	\$150	\$10	\$10	\$170
2-25	\$150	\$20	\$10	\$180
26-50	\$150	\$35	\$10	\$195
51-100	\$150	\$50	\$10	\$210
101-200	\$150	\$75	\$10	\$235
201-300	\$150	\$105	\$10	\$265
301-400	\$150	\$135	\$10	\$295
401-500	\$150	\$160	\$10	\$320
OVER 500	\$150	\$190	\$10	\$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period.

<sup>8</sup> S. 509.241, F.S.

<sup>9</sup> S. 509.241(3), F.S.

<sup>10</sup> R. 61C-1.002(1), F.A.C.

<sup>11</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2019-2020*,

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019\\_20.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019_20.pdf) (last visited Feb. 1, 2021).

<sup>12</sup> R. 61C-1.008, F.A.C.

<sup>13</sup> S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than \$10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

A \$50 application fee is required when making the initial application or an application for change of ownership.

Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is most recent.

A \$50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

### **Sanitation and Safety**

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.<sup>14</sup> These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

### **Ventilation and Fire Safety**

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.<sup>15</sup> Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.<sup>16</sup>

In addition, smoke alarms must be installed in every living unit,<sup>17</sup> and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.<sup>18</sup> All local fire authority requirements must be met. Electrical wiring must be in good repair.

### **Conduct on Premises**

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.<sup>19</sup> Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.<sup>20</sup>

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<sup>14</sup> See generally s. 509.221, F.S., and R. 61C-1&3, F.A.C.

<sup>15</sup> S. 509.221(3), F.S.

<sup>16</sup> R. 61C-1.004, F.A.C.

<sup>17</sup> S. 509.215(1)(b), F.S.

<sup>18</sup> S. 509.215(1), F.S.

<sup>19</sup> S. 509.142, F.S.

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.<sup>21</sup>

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.<sup>22</sup>

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.<sup>23</sup>

## Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. Each licensed public lodging establishment must be inspected at least biannually (twice per year), except for transient and non-transient apartments, which must be inspected at least annually.<sup>24</sup>

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.<sup>25</sup>

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 railings from a person competent to conduct such inspections.<sup>26</sup>

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2018-2019, the Division received 228 consumer complaints related to vacation rentals, of which 14 were confirmed as a violation by the Division.<sup>27</sup> In Fiscal Year 2019-2020, the Division received 1,391 consumer complaints related to vacation rentals, of which 38 were confirmed as a violation by the Division.<sup>28</sup> According to the department, the uptick in complaints was tied to the Governor's COVID-19 Executive Orders. Many complaints were received regarding vacation rentals operating when they were not supposed to be.<sup>29</sup>

## Registry

The licensee or operator of a vacation rental must notify the Division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator must notify the Division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.<sup>30</sup>

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well the rates charged to the occupants. This register must be maintained

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<sup>20</sup> S. 509.141(1), F.S.

<sup>21</sup> S. 509.141(1), F.S.

<sup>22</sup> S. 509.141(3), F.S.

<sup>23</sup> S. 509.143(1), F.S.

<sup>24</sup> See generally s. 509.032, F.S., r. 61C-1.002, F.A.C.

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

<sup>26</sup> See ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.

<sup>27</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, at 21.

<sup>28</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2019-2020*, at 21.

<sup>29</sup> Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 219 Vacation Rentals (Feb. 2, 2021).

<sup>30</sup> R. 61C-1.002, F.A.C.

in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.<sup>31</sup>

## Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed \$1,000 per offense; and
- Suspension, revocation, or refusal of a license.<sup>32</sup>

Licensees with a single license are responsible for all violations of ch. 509, F.S., or rules adopted by the Division. The authorized agent of the licensee is responsible for a violation for licensees holding a collective or group license if the dwelling or unit was listed under the agent or as otherwise reflected in records filed with the Division.<sup>33</sup>

## Preemption Authority

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

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.<sup>34</sup> The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption also “grandfathered” any local law, ordinance, or regulation of vacation rentals enacted on or prior to June 1, 2011.<sup>35</sup>

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.<sup>36</sup> As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.<sup>37</sup> Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.<sup>38</sup>

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations that:

- Prohibit; or
- Regulate:
  - duration, or
  - frequency.

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<sup>31</sup> S. 509.101(2), F.S.

<sup>32</sup> S. 509.261(1), F.S.

<sup>33</sup> Rule 61C-1.002, F.A.C.

<sup>34</sup> Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> See City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.

<sup>37</sup> City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).

<sup>38</sup> Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, THE PEW CHARITABLE TRUST (June, 6, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue> (last visited Feb. 1, 2021).

Thus, local governments can regulate vacation rentals to the extent those regulations do not prohibit or restrict the duration or frequency of vacation rentals. The grandfather provision for regulations adopted on or before June 1, 2011, was retained.<sup>39</sup>

This preemption does not apply to local regulations exclusively relating to “property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern.”<sup>40</sup>

In addition, 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. However, local governments or local enforcement districts are still allowed to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.<sup>41</sup>

## Recent Activity

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.<sup>42</sup> The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a “taking” under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.<sup>43</sup>

In November 2015, the City of Anna Maria passed and adopted Ordinance No. 15-807. This ordinance provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city’s website, since April 2016, approximately 113 Bert Harris Act claims citing Ordinance No. 15-807 have been filed that could amount to approximately \$38 million in damages.<sup>44</sup>

In March 2016, Miami Beach passed an ordinance making the fine for a first violation for a resident caught renting short-term \$20,000. Each subsequent fine increases by \$20,000 and can be as high as \$100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.<sup>45</sup>

In June 2018, it was reported that Miami Beach had issued \$12.1 million in fines, only \$174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to \$60,000 in fines.<sup>46</sup> Since then, the Third District Court of Appeals invalidated the city’s fine structure after determining the regulations conflict with state law that caps violation fines between \$1,000 and \$5,000.<sup>47</sup> As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined \$1,000 a day, and repeat offenders are fined \$5,000 per day. According

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<sup>39</sup> Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

<sup>40</sup> S. 509.032(7)(c), F.S.

<sup>41</sup> S. 509.032(7)(a), F.S.

<sup>42</sup> Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, THE ISLANDER (Feb. 20, 2018), <https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/> (last visited Feb. 1, 2021).

<sup>43</sup> S. 70.001, F.S.

<sup>44</sup> CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, [http://www.cityofannamaria.com/residents/bert\\_harris\\_claim.php](http://www.cityofannamaria.com/residents/bert_harris_claim.php) (last visited Mar. 16, 2019).

<sup>45</sup> See Miami Beach City Code, Sec. 142-1111 and 142-905(b).

<sup>46</sup> Chabeli Herrera, *Miami Beach has the country’s highest short-term rental fines. It just got sued*, MIAMI HERALD (June 28, 2018), <https://www.miamiherald.com/news/business/article213954174.html>.

<sup>47</sup> Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban*, TheRealDeal South Florida Real Estate News (Oct. 8, 2019), <https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/> (last visited Feb. 1, 2021).

to a memo from the City Attorney, the new fine structure complies with the ruling against Miami Beach.<sup>48</sup>

## COVID-19

On March 1, 2020, the state of Florida officially reported its first two COVID-19 cases, in Manatee and Hillsborough counties.<sup>49</sup> Subsequently, the Governor issued a series of executive orders (EO) regarding vacation rentals. EO 20-87 was issued on March 27, 2020, to suspend vacation rental operations. The order prohibited vacation rentals from making new reservations or bookings and accepting new guests for check-in for the duration of the order. The order exempted:

- Hotels, motels, inns, resorts, non-transient public lodging establishments, or time share projects;
- Long-term rentals;
- Rentals where guests are already there or checked in before March 28, 2020;
- Rentals to people performing military, government, emergency, health, or infrastructure activities; and
- Travelers “engaged in non-vacation commercial activities”<sup>50</sup>

On April 29, 2020, EO 20-112 was issued to establish the Governor’s Phase 1 Recovery Plan to reopen Florida. This order maintained the vacation rental suspension. However, the order allowed certain services to begin operating responsibly except for Miami-Dade, Broward, and Palm Beach counties. Vacation rentals remained suspended.<sup>51</sup>

On May 14, 2020, EO 20-123 was issued to extend and modify EO 20-112 regarding the Governor’s Recovery Plan. The order brought all Florida counties into Full Phase 1 of the plan and allowed each county to seek approval to operate vacation rentals within the county’s jurisdiction by submitting a written request and the county’s safety plan to the Secretary of DBPR. The order became effective May 18, 2020.<sup>52</sup>

Pursuant to EO 20-123, effective May 18, 2020, DBPR issued recommended safety measures as minimum standards, and best practices, for vacation rentals that are accepting reservations and guests for any length of stay.<sup>53</sup>

On June 3, 2020, EO-139 was issued to begin Phase 2 of the Governor’s Recovery Plan for all Florida counties except Miami-Dade, Broward, and Palm Beach. The order continued to allow each county to seek approval to operate vacation rentals within the county’s jurisdiction by submitting a written request and the county’s safety plan to the Secretary of DBPR.<sup>54</sup>

On September 5, 2020, EO 20-244 was issued, which established the Phase 3 reopening measures for the state. In particular, the order rescinds all prior COVID-19 related restrictions regarding business operations while prohibiting local ordinances which prevent an individual from working or operating a

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<sup>48</sup> Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals*, TheRealDeal South Florida Real Estate News (Oct. 14, 2019), <https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/> (last visited Feb. 1, 2021).

<sup>49</sup> Justine Griffin, *CDC confirms Florida’s first two cases of coronavirus; more are expected*, Tampa Bay Times (Mar. 3, 2020), <https://www.tampabay.com/news/health/2020/03/03/cdc-confirms-floridas-first-two-cases-of-coronavirus-more-are-expected/> (last visited Feb. 1, 2021).

<sup>50</sup> Executive Order Number 20-87, [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-87.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-87.pdf) (last visited Feb. 1, 2021).

<sup>51</sup> Executive Order Number 20-112, [http://www.myfloridalicense.com/dbpr/os/documents/EO\\_20-112.pdf](http://www.myfloridalicense.com/dbpr/os/documents/EO_20-112.pdf) (last visited Feb. 1, 2021).

<sup>52</sup> Executive Order Number 20-123, <http://www.myfloridalicense.com/dbpr/os/documents/2020.05.15%20EO%20-123%20Full%20Phase%20Plan%20for%20FL%20Recovery.pdf> (last visited Feb. 1, 2021).

<sup>53</sup> Department of Business and Professional Regulation, Information for Vacation Rentals Pursuant to Executive Order 20-123 as issued May 15, 2020, <http://www.myfloridalicense.com/dbpr/os/documents/2020.05.15%20Posted%20Recommended%20Safety%20Measures%20and%20Best%20Practices%20for%20Vacation%20Rentals.pdf> (last visited Feb. 2, 2021).

<sup>54</sup> Executive Order Number 20-139, [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-139.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-139.pdf) (last visited Feb. 1, 2021).



business. Vacation rentals are allowed to resume normal operating procedures but continue to thoroughly clean and disinfect the property between rentals.

## **Condominiums, Cooperatives, and Homeowners' Associations**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common elements.<sup>55</sup> A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.<sup>56</sup> A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.<sup>57</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using "cooperative documents" which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners, created pursuant to ch. 720, F.S., where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.<sup>58</sup> Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.<sup>59</sup> This includes actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

## **Florida Sexual Predators Act**

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.<sup>60</sup>

A sexual predator must register:

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<sup>55</sup> S. 718.103(11), F.S.

<sup>56</sup> S. 718.104(2), F.S.

<sup>57</sup> S. 719.103(2)(26), F.S.

<sup>58</sup> S. 720.301(9), F.S.

<sup>59</sup> Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, <https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/#> (last visited Feb. 2, 2021).

<sup>60</sup> S. 943.0435(2)(a)1., F.S.

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility;<sup>61</sup>
  - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;<sup>62</sup>
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;<sup>63</sup>
- In person at the sheriff's office in the county where:
  - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;<sup>64</sup> or
  - The sexual predator was designated a sexual predator within 48 hours after such finding is made.<sup>65</sup>

### *Residence*

Residence, for the purposes of registration for both sexual offenders and sexual predators, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.<sup>66</sup>

### *Continuing Reporting Requirements*

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.<sup>67</sup>

## **Effect of the Bill**

### **Preemptions**

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<sup>61</sup> S. 775.21(6)(b), F.S.

<sup>62</sup> Id.

<sup>63</sup> S. 775.21(6)(c), F.S.

<sup>64</sup> S. 775.21(6)(e)a., F.S.

<sup>65</sup> S. 775.21(6)(2)b., F.S.

<sup>66</sup> S. 775.21, F.S.

<sup>67</sup> SS. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

The bill amends s. 509.032(7), F.S., relating to the preemption of vacation rentals by the state.

The bill clarifies that the regulation of public lodging establishments, including vacation rentals, and public food service establishments is expressly preempted to the state.

In addition to the prohibition in current law that local regulations may not prohibit or regulate the duration or frequency of rentals, the bill specifies that local regulations also may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments.

The bill also preempts the regulation of advertising platforms to the state.

The bill does not preempt local regulations affecting vacation rentals if the regulation applies uniformly to all residential properties, regardless of whether:

- The property is used as a vacation rental;
- The property is used as a long-term rental; or
- The property owner chooses not to rent the property.

The bill maintains the “grandfathering” provision found in current law allowing local governments to continue enforcing regulations that “prohibit rentals or regulate the frequency or duration of rentals” for regulations that were adopted on or before June 1, 2011. Furthermore, the bill clarifies that such grandfathered local regulations may be amended to be less restrictive if the amendment makes the local law, ordinance, or regulation less restrictive with regard to a prohibition or a duration or frequency regulation.

The bill also maintains and clarifies the exclusion from the preemption provisions for areas of critical state concern designated by s. 380.0552, F.S. or ch. 28-36, F.A.C.<sup>68</sup> Furthermore, the bill clarifies that such grandfathered local regulations may be amended so long as the amendment is not more restrictive than the existing local law, ordinance, or regulation.

### **Vacation Rental License Display**

Effective January 1, 2022, the bill amends s. 509.241(3), F.S., to require:

- Any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of “in the office or lobby;” and
- The operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

### **Advertising Platforms Definition**

The bill creates s. 509.013(17), F.S., defining the term “advertising platform” as an entity that:

- Provides an online application, software, website, or system: through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace: for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system: that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

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<sup>68</sup> Section 380.0552, F.S. relates to the designation of the Florida Keys Area as an area of critical state concern, the boundaries of which are described in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984. Chapter 28-36, F.A.C. relates to the designation of the City of Key West Area of Critical State Concern.

## Advertising Platforms Requirements

Effective January 1, 2022, the bill creates s. 509.243, F.S., to provide requirements relating to advertising platforms. An advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers in the vacation rental's advertisement; and
  - Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.
- Verify and display the vacation rental property's license number, the verification must occur before the platform publishes the rental property's advertisement, and re-occur on a quarterly basis.
- Display the vacation rental property's applicable Florida sales tax registration and tourist development tax numbers.
- Provide to the Division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rental listings in this state on its platform, including the Internet address of the listing, the physical address of the listing, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the Division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the Division.
- Adopt an anti-discrimination plan to help prevent discrimination, and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

## Advertising Platform Tax Requirements

The bill specifies that, if a guest uses a payment system on or through an advertising platform to pay for a vacation rental located in this state, the advertising platform must collect and remit all taxes imposed under s. 205.044 and chs. 125 and 212, F.S., on the total rental amount charged by the owner or operator for the use of the vacation rental under ss. 125.0104, F.S. (tourist development tax), 205.044, F.S. (municipal business tax measured by gross receipts<sup>69</sup>) and 212.03, F.S. (transient rental tax). In order to facilitate the remittance of such taxes, the bill requires DOR and counties that have elected to self-administer the tourist development taxes to allow advertising platforms to register, collect, and remit such taxes.

## Division Requirements

The bill requires the Division to maintain vacation rental license information in a readily accessible electronic format.

The bill provides enforcement processes for the Division to issue a cease and desist order for any person who violates ch. 509, F.S., the chapter of law governing "lodging and food service establishments." The bill authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

## Condominiums, Cooperatives, and Homeowners' Associations

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<sup>69</sup> Sections 205.043 and 205.044, F.S., allow the cities of Panama City and Panama City Beach to levy separate license taxes on the gross sales of all retail and wholesale merchants within the municipal jurisdiction. They are the only jurisdictions to do so. *See* Office of Economic and Demographic Research, 2020 Local Government Financial Information Handbook at 146, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf> (last visited 02/09/2021).

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration or declaration of covenants adopted pursuant to ch. 720, F.S.

### **Department of Revenue Rulemaking**

The bill grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes. The emergency rules will be effective for 6 months after adoption and may be renewed while DOR adopts permanent rules. The section of the bill authorizing the emergency rules will expire January 1, 2024.

### **Sexual Offenders and Predators**

The bill amends s. 775.21, F.S., to require sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more (currently set at stays of 3 days or more).

### **Effective Date**

The bill becomes effective upon becoming law, except for the provisions otherwise expressly provided in the bill. The requirements for vacation rental owners or operators to display license and tax information becomes effective January 1, 2022. The framework of provisions governing advertising platforms becomes effective January 1, 2022.

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

- Section 1:** Amends s. 212.03, F.S., relating to transient rentals tax collection and remittance by advertising platforms.
- Section 2:** Amends s. 509.013, F.S., defining the term "advertising platform."
- Section 3:** Amends s. 509.032, F.S., revising preemption authority, making conforming changes.
- Section 4:** Amends s. 509.241, F.S., revising display of vacation rental license requirements.
- Section 5:** Creates s. 509.243, F.S., governing advertising platforms.
- Section 6:** Amends s. 775.21, F.S., revising "The Florida Sexual Predators Act."
- Section 7:** Amends s. 159.27, F.S., conforming a cross reference.
- Section 8:** Amends s. 212.08, F.S., conforming a cross reference.
- Section 9:** Amends s. 316.1955, F.S., conforming a cross reference.
- Section 10:** Amends s. 404.056, F.S., conforming a cross reference.
- Section 11:** Amends s. 477.0135, F.S., conforming a cross reference.
- Section 12:** Amends s. 509.221, F.S., conforming a cross reference.
- Section 13:** Amends s. 553.5041, F.S., conforming a cross reference.

**Section 14:** Amends s. 705.17, F.S., conforming a cross reference.

**Section 15:** Amends s. 705.185, F.S., conforming a cross reference.

**Section 16:** Amends s. 705.1355, F.S., conforming a cross reference.

**Section 17:** Amends s. 877.24, F.S., conforming a cross reference.

**Section 18:** Creates an unnumbered section providing for applicability.

**Section 19:** Creates an unnumbered section authorizing DOR emergency rulemaking authority.

**Section 20:** Provides for effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the revenue impacts of this bill. However, in 2020, the REC estimated first-year revenue impacts of -\$226.6m cash and -\$556.3m recurring on General Revenue and a negative insignificant cash and -0.1m recurring impact on state trust funds on identical language in CS/CS/HB 1011.

#### 2. Expenditures:

DBPR has indicated that an increase in staff and costs will be needed to implement the bill. The Division estimates an additional 3 FTE and 7 OPS will be required to implement the provisions of the bill. Additional costs are anticipated to be \$370,185 (\$194,042 recurring).<sup>70</sup>

FDLE has indicated that an increase in staff and costs will be needed to implement the bill. FDLE estimates an additional 4 FTE positions will be required, along with significant training, programming, and communications costs to implement the changes in the bill to the sexual predator registry system. Additional costs are anticipated to be \$648,187 (\$276,807 recurring).

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The REC has not estimated the revenue impacts of this bill. However, in 2020, the REC estimated first-year local government revenue impacts of -\$242.9m cash; -1,325.0m recurring on identical language in CS/CS/HB 1011.

#### 2. Expenditures:

None.

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

The bill will provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

### D. FISCAL COMMENTS:

None.

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<sup>70</sup> *Id.*

### 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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides emergency rulemaking authority for DOR to implement the bill's provisions.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 120.569, F.S., could be an incorrect reference to s. 120.69, F.S., which is the section allowing an agency to enforce an action in circuit court. This possibility is supported by s. 120.69(2), F.S., referencing a penalty. Otherwise, it is unclear what penalty is being referenced as the bill language does not specifically provide for imposing fines against advertising platforms, s. 120.569, F.S., does not specifically reference a penalty, and the existing language in ch. 509, F.S., only provides for fines against licensed and unlicensed public lodging and public food service establishments. Additionally, line 196 uses the term "department" while lines 186, 187, 188, and 193 use the term "division", making the terminology inconsistent."<sup>71</sup>

"The bill requires vacation rental owners or operators to display the rental's division license number, Florida sales tax number and tourist development tax account numbers. The language is unclear regarding whether this requirement is subject to the same display standard as the actual license (must be conspicuously displayed to the public inside the establishment) or a different display standard."<sup>72</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2021, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Revises the tax requirement language for advertising platforms, moving it into chapter 212, F.S., specifying collection and remittance of municipal business taxes, and specifying that the tax is imposed on the amount charged by the owner for use of the rental.
- Requires DOR and counties that have elected to self-administer the tourist development taxes to allow advertising platforms to register, collect, and remit such taxes.
- Grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes.
- Specifies that certain prohibitions in the bill do not apply to grandfathered ordinances within areas of critical state concern, and clarifies that such grandfathered ordinances may be amended if the amendment is less restrictive.
- Requires sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more.
- Conforms cross-references.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

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<sup>71</sup> *Id.*

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

