

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1586

INTRODUCER: Senators Trumbull and Rodriguez

SUBJECT: Residential Tenancies

DATE: March 28, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Collazo | Cibula | JU | Pre-meeting |
| 2. | | | CA | |
| 3. | | | RC | |

I. Summary:

SB 1586 creates s. 83.425, F.S., to preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under part II, chapter 83, F.S. It also expressly supersedes any local government regulations on matters covered under part II, chapter 83, F.S. Consequently, the bill renders all existing local government ordinances throughout the state that purport to regulate residential tenancies, the landlord-tenant relationship, or any other matters covered under part II, chapter 83, F.S., null and void.

The bill amends s. 83.57, F.S., which governs the termination of tenancies without specific terms, to increase the number of days' written notice that a party in a month-to-month tenancy must give the other party before terminating the tenancy, from 15 days to 30 days prior to the end of the monthly period.

The bill also amends s. 83.575, F.S., which governs the termination of tenancies with specific durations. With respect to rental agreements that permit either the landlord or the tenant to terminate the agreement within a specified period at the end of the agreement, the bill revises the amount of notice that the agreement may require from *not more* than 60 days' notice, to *not less* than 60 days' notice.

II. Present Situation:

Landlord and Tenant Relationship

The Florida Residential Landlord and Tenant Act¹ governs the rights and responsibilities of both landlords and tenants in connection with the rental of dwelling units (i.e. residential tenancies).² For purposes of the Act, "dwelling unit" means:

¹ Part II, ch. 83, F.S.; *see also* s. 83.40, F.S. (providing the short title).

² Section 83.41, F.S.; *but see* s. 83.42, F.S. (excluding from the Act's scope certain kinds of residencies).

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.³

Significant provisions of the Act include provisions relating to:

- Unconscionable rental agreements⁴ or provisions.
- Rent and duration of tenancies.
- Prohibited provisions in rental agreements.
- The landlord's obligation to maintain the premises.
- The tenant's obligation to maintain the dwelling unit.
- The landlord's access to a dwelling unit.
- Termination of the tenancy.
- Enforcement, damages, and attorney fees.

Each of these provisions is separately addressed below.

Unconscionable Rental Agreements or Provisions

Under the Act, if a court finds that, as a matter of law, a rental agreement or any provision of a rental agreement was unconscionable at the time it was made, the court may:

- Refuse to enforce the rental agreement;
- Enforce the remainder of the rental agreement without the unconscionable provision; or
- Limit the application of any unconscionable provision so as to avoid any unconscionable result.⁵

If it is claimed, or it appears to the court, that the rental agreement or any provision in it may be unconscionable, the parties must be given a reasonable opportunity to present certain evidence to assist the court in making the determination.⁶

Rent and Duration of Tenancies

The Act provides that, unless the parties otherwise agree, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent may be apportioned on a day-to-day basis.⁷

If the rental agreement does not include a provision regarding the duration of the tenancy, then the duration is determined by the periods for which the rent is payable:

- If the rent is payable weekly, then the tenancy is from week to week.
- If the rent is payable monthly, then the tenancy is from month to month.

³ Section 83.43(2), F.S.; *but see* s. 83.42, F.S. (excluding certain facilities and occupancies).

⁴ The Act defines "rental agreement" to mean any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises. Section 83.43(7), F.S.

⁵ Section 83.45(1), F.S.

⁶ Section 83.45(2), F.S.

⁷ Section 83.46(1), F.S.

- If the rent is payable quarterly, then the tenancy is from quarter to quarter.
- If the rent is payable annually, then the tenancy is from year to year.⁸

If, on the other hand, a dwelling unit is furnished without rent as an incident of employment, and there is no agreement as to the duration of the tenancy, then the duration is determined by the periods for which wages are payable.

- If wages are payable weekly or more frequently, then the tenancy is from week to week.
- If wages are payable monthly or no wages are payable, then the tenancy is from month to month.⁹

Prohibited Provisions in Rental Agreements

A provision in a rental agreement is void and unenforceable to the extent that it:

- Purports to waive or preclude the rights, remedies, or requirements of the Act.
- Purports to limit or preclude any liability of the landlord to the tenant, or of the tenant to the landlord, arising under law.¹⁰

If a rental agreement includes such a void or unenforceable provision, and either party suffers damages due to it, then the aggrieved party may recover his or her damages.¹¹

Landlord's Obligation to Maintain the Premises

The Act provides that, at all times during a residential tenancy, a landlord must:

- Comply with the requirements of applicable building, housing, and health codes; or
- If there are no applicable building, housing, or health codes, maintain all structural components in good repair and the plumbing in reasonable working condition.¹²

The landlord must also:

- Make reasonable provision for:
 - The extermination of rats, mice, roaches, wood-destroying organisms, and bedbugs.
 - Locks and keys.
 - The clean and safe condition of common areas.
 - Garbage removal and receptacles for same.
 - Functioning facilities for heat during winter, running water, and hot water.
- Install working smoke detection devices.¹³

Tenant's Obligation to Maintain the Dwelling Unit

The Act provides that, at all times during the residential tenancy, a tenant must:

- Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.
- Keep that part of the premises which he or she occupies and uses clean and sanitary.

⁸ Section 83.46(2), F.S.

⁹ Section 83.46(3), F.S.

¹⁰ Section 83.47(1), F.S.

¹¹ Section 83.47(2), F.S.

¹² Section 83.51(1), F.S.

¹³ Section 83.51(2)(a)-(b), F.S.

- Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.
- Keep all plumbing fixtures, in the dwelling unit or used by the tenant, clean and sanitary and in repair.
- Use and operate, in a reasonable manner, all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.
- Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord, nor permit any person to do so.
- Conduct himself or herself, and require other persons on the premises to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.¹⁴

Landlord's Access to A Dwelling Unit

Under the Act, a tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit to:

- Inspect the premises.
- Make necessary or agreed repairs, decorations, alterations, or improvements.
- Supply agreed services.
- Exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.¹⁵

With respect to these listed purposes, the landlord may enter the dwelling unit under any of the following circumstances:

- With the consent of the tenant.
- In case of emergency.
- When the tenant unreasonably withholds consent.
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments; but if the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may only enter with the tenant's consent or for the protection or preservation of the premises.¹⁶

The landlord may also enter the dwelling unit:

- At any time for the protection or preservation of the premises.
- At a reasonable time for the purpose of premises repair, with notice given at least 24 hours before entry, between the hours of 7:30 a.m. and 8 p.m.¹⁷

The landlord must not abuse the right of access nor use it to harass the tenant.¹⁸

¹⁴ Section 83.52, F.S.

¹⁵ Section 83.53(1), F.S.

¹⁶ Section 83.53(1)-(2), F.S.

¹⁷ Section 83.53(2), F.S.

¹⁸ Section 83.53(3), F.S.

Termination of the Tenancy

With respect to rental agreements *without* a specific duration,¹⁹ the Act provides that it may be terminated by either the landlord or the tenant by giving written notice as follows:

- When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period.
- When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period.
- When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period.
- When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.²⁰

On the other hand, rental agreements *with* a specific duration may include a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision also requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed. But in either case, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.²¹

Enforcement, Damages, and Attorney Fees

Any right or duty declared in the Act is enforceable by filing a civil action.²² In any such civil action, the prevailing party may generally recover reasonable attorney fees and costs from the non-prevailing party, and this right may not be waived in a rental agreement.²³ Further, a person aggrieved by a violation of the Act may recover the damages caused by the noncompliance.²⁴

Local Government Authority

The State Constitution grants local county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.²⁵ Those counties operating under a county charter have all powers of self-government not inconsistent with general or with special law approved by the vote of the electors.²⁶ Likewise, municipalities²⁷ have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.²⁸

¹⁹ See s. 83.46(2) or (3), F.S. (providing for the calculation of durations in such cases).

²⁰ Section 83.57, F.S.; see also s. 83.56(4), F.S. (providing additional notice requirements).

²¹ Section 83.575(1), F.S.

²² Section 83.54, F.S.

²³ Section 83.48, F.S.

²⁴ Section 83.55, F.S.

²⁵ FLA. CONST. art. VIII, s. 1(f).

²⁶ FLA. CONST. art. VIII, s. 1(g).

²⁷ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

²⁸ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

There are two ways that a local enactment can be inconsistent with state law and therefore unconstitutional. First, a local government cannot legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government cannot enact an ordinance that directly conflicts with the state statute.²⁹

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.³⁰ In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.³¹ Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.³²

The Act does not currently preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, or any other matters covered by the Act. Local governments may therefore regulate these areas to the extent such regulations do not conflict with state statutes or applicable federal law.

III. Effect of Proposed Changes:

SB 1586 creates s. 83.425, F.S., entitled “Preemption,” to preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under part II, chapter 83, F.S.

The new statute created by the bill expressly supersedes any local government regulations on matters covered under part II, chapter 83, F.S., including, but not limited to:

- The screening process used by a landlord in approving tenancies.
- Security deposits.
- Rental agreement applications and fees associated with such applications.
- Terms and conditions of rental agreements.
- The rights and responsibilities of the landlord and tenant.
- Disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant.
- Fees charged by the landlord.
- Notice requirements.

²⁹ *Orange County v. Singh*, 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)); see also James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 FLA. BAR J. 92 (2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (discussing these concepts).

³⁰ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

³¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³² See, e.g., *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted s. 790.33, F.S.).

Consequently, the bill renders all existing local government ordinances throughout the state that purport to regulate residential tenancies, the landlord-tenant relationship, or any other matters covered under part II, chapter 83, F.S., null and void.

The bill amends s. 83.57, F.S., which governs the termination of tenancies without specific terms, to increase the number of days' written notice that a party in a month-to-month tenancy must give the other party before terminating the tenancy, from 15 days to 30 days prior to the end of the monthly period.

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The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill preempts and expressly supersedes any local government regulations on residential tenancies, the landlord-tenant relationship, and all other matters covered under

part II, chapter 83, F.S. Accordingly, to the extent local government regulations validly imposed more expensive terms and conditions on the landlord-tenant relationship that did not conflict with state law, the bill will have a positive fiscal impact on the private sector. Lower regulatory costs, along with competition among landlords for tenants, may result in lower rents or create incentives for landlords to make more rental units available.

C. Government Sector Impact:

Because the bill preempts and expressly supersedes any local government regulations on residential tenancies, the landlord-tenant relationship, and all other matters covered under part II, chapter 83, F.S., the bill will have both positive and negative fiscal impacts on local governments. To the extent such local ordinances required enforcement by local governments, they will no longer incur costs associated with same. On the other hand, to the extent such local ordinances generated revenue for local governments, they will no longer collect those revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.57, 83.575.

This bill creates section 83.425, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.