

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1537 Vacation Rentals

**SPONSOR(S):** Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Griffiths and others

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 280

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**FINAL HOUSE FLOOR ACTION:** 60 Y's      51 N's      **GOVERNOR'S ACTION:** Vetoes

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### SUMMARY ANALYSIS

CS/CS/HB 1537 passed the House on March 6, 2024, as CS/SB 280, as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 7, 2024.

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 state preemption of public lodging establishments and public food service establishments by preempting "licensing" regulations, and revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to amend local regulations to:
  - Be less restrictive; or
  - Comply with local registration requirements.
- Allows local governments to implement a local vacation rental registration program.
- Provides that the statutory provisions governing the local registration of vacation rentals do not apply to any county law, ordinance, or regulation initially adopted on or before January 1, 2016, that established county registration requirements for rental of vacation rentals, and any amendments thereto adopted before January 1, 2024.
- Provides that such county law, ordinance, or regulation may not be amended or altered except to be less restrictive or to adopt registration requirements as provided in such provisions.
- Authorizes local governments to charge a reasonable fee per unit for processing an individual registration application.
- Authorizes local governments to charge a reasonable fee for certain inspections.
- Allows local governments to fine vacation rental operators up to \$500, file and foreclose on a lien based on the fine, suspend registrations, and revoke or refuse to renew a registration, for violations of the local registration requirements.
- Preempts to the state the regulation of advertising platforms, requires users of advertising platforms to provide license and registration information in a vacation rental listing, requires advertising platforms to collect and remit certain taxes and adopt an antidiscrimination policy.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Requires the Division to create and maintain a vacation rental license information system to allow local governments and advertising platforms to verify the license and local registration status of a vacation rental, and registered users to subscribe to receive notification of changes to the license or registration of a vacation rental.
- Specifically, 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 registration information.
- Provides an appropriation to DBPR for the 2024-2025 fiscal year.

The bill may have an indeterminate fiscal impact on state and local government, and the private sector.

The effective date of this bill was July 1, 2024; however, this bill was vetoed by the Governor on June 27, 2024.

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

**STORAGE NAME:** h1537z1.DOCX

**DATE:** 7/8/2024

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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> See 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 63,690 public lodging establishments licensed by the Division. These licenses are distributed as follows:<sup>11</sup>

- Hotels: 2,308 licenses;
- Motels: 2,397 licenses;
- Non-transient apartments: 18,315 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 261 licenses;
- Vacation rental condominiums: 12,716 licenses;
- Vacation rental dwellings: 26,733 licenses; and
- Vacation rental timeshare projects: 47 licenses.

### 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

<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 2021-2022*, p. 8,

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021\\_22.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf) (last visited Jan. 26, 2024).

<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.

application is made 6 months or less before the renewal period. 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.

<sup>20</sup> S. 509.141(1), 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. The operator is required to call a law enforcement officer to the scene immediately after detaining a person under this provision.<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 railways 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 2021-2022, the Division received 325 consumer complaints related to vacation rentals, of which 34 were confirmed as a violation by the Division.<sup>27</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>28</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 in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.<sup>29</sup>

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<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, *supra* note 11, at 21.

<sup>28</sup> R. 61C-1.002, F.A.C.

<sup>29</sup> S. 509.101(2), F.S.

## 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>30</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>31</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>32</sup>

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.<sup>33</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>34</sup> Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.<sup>35</sup>

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

- Prohibit vacation rentals; or
- Regulate the duration or frequency of vacation rentals.

Thus, local governments can regulate vacation rentals to the extent those regulations do not prohibit vacation rentals, or restrict the duration or frequency of vacation rentals. The grandfather provision for regulations adopted on or before June 1, 2011, was retained.<sup>36</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>37</sup>

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<sup>30</sup> S. 509.261(1), F.S.

<sup>31</sup> Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.

<sup>32</sup> *Id.*

<sup>33</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>34</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>35</sup> Florida Today, *Explosion of vacation rentals in Cocoa Beach leaves residents frustrated and angry* (Oct. 5, 2023), <https://www.floridatoday.com/story/news/local/2023/10/05/cocoa-beach-impacts-vacation-rental-growth-airbnb-vrbo-brevard-florida/70767082007/> (last visited Jan. 26, 2024).

<sup>36</sup> Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

<sup>37</sup> S. 509.032(7)(c), F.S.

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>38</sup>

## Local Ordinances

Currently, many local jurisdictions in Florida regulate vacation rentals. These counties and cities typically require some type of registration or certification, along with certain other requirements, including, but not limited to, fees, occupancy limits, and parking, noise, and garbage restrictions that are separate from such requirements and restrictions for other residential properties.

### Flagler County

Flagler county has adopted an ordinance that regulates short term vacation rentals through a “certificate” program. The program allows such rentals in all residential zoning districts in the county. The ordinance defines such rentals as a “commercial business... of a single-family or a two-family dwelling...” Fees for initial certification are \$400, renewals are \$200, and inspections can be up to \$200.<sup>39</sup>

Vacation rental owners, in part, must obtain a certificate and business tax receipt from the county, a Department of Revenue (DOR) certificate of registration, and a DBPR license as a transient public lodging establishment. The ordinance provides minimum life/safety requirements such as swimming pool, smoke detection, and emergency lighting requirements. The ordinance provides parking and solid waste requirements, initial and routine compliance inspections, and a responsible party requirement.<sup>40</sup>

The maximum occupancy requirements are one person per 150 gross square feet of permitted, conditioned living space, or in accordance with the maximum occupancy of a septic tank permit, or two persons per sleeping room plus two additional persons in a common area.<sup>41</sup>

Penalties for violations, include warnings for first time violations, and up to \$500 per repeat violations. The ordinance also allows the county to seek other remedies such as injunctive relief, liens, and other civil and criminal penalties.<sup>42</sup>

### Sarasota

The City of Sarasota has adopted an ordinance that regulates short term vacation rentals through a “certificate of registration” program. The ordinance allows such rentals within residential zoning districts in the city limits. The ordinance defines “vacation rental” as a rental as defined in F.S. ss. 509.242(1)(c) and 509.013(4)(a)(1), F.S., excluding those vacation rentals in condominiums and cooperatives and which is located in a residential zone within the coastal islands overlay district. Fees for an initial certificate of registration are \$500, renewals are \$350, and inspections can be up to \$200.<sup>43</sup>

The ordinance requires vacation rental owners, in part, to obtain a copy of their business tax receipts from the city and county, evidence of an active account with the tax collector, a copy of the current DBPR vacation rental license, and a copy of the DOR certificate of registration. The ordinance provides

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<sup>38</sup> S. 509.032(7)(a), F.S.

<sup>39</sup> Flagler County Ordinance No. 2016-01.

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

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> City of Sarasota Ordinance No. 34.5.

minimum safety, minimum informational, parking, designated responsible party, and advertising requirements.<sup>44</sup>

The maximum occupancy in residential single-family zone districts is two persons per bedroom, plus two additional persons per property or ten persons, whichever is less. Maximum occupancy in residential multiple-family zone districts is two persons per bedroom, plus two additional persons per property or twelve persons, whichever is less. Children under six years of age are not included in the calculation of maximum occupancy. The ordinance also provides a minimum stay requirement of 7 days and 7 nights.<sup>45</sup>

The ordinance provides penalties that apply for each day a violation occurs, including fines and suspensions. The City's Code Compliance addresses complaints related to unsupervised vacation rentals, including but not limited to, over-occupancy, open and late-night parties, excessive noise, parking on public sidewalks and excessive trash and garbage accumulation. Fines for initial violations can be up to \$1,000 per day, repeat violations can be up to \$5,000 per day, and violations that are irreparable or irreversible in nature can be \$15,000. In addition to any fines and any other remedies provided by law, a special magistrate may, in his or her discretion, suspend an initial or renewed certificate of registration for a vacation rental upon request.<sup>46</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>47</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>48</sup>

### Anna Maria

In November 2015, the City of Anna Maria passed and adopted an ordinance that 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 relating to the ordinance have been filed that could amount to approximately \$38 million in damages. The City of Anna Maria website provides that the majority of these claims have been closed.<sup>49</sup>

### Holmes Beach

Recent reports indicate that the City of Holmes Beach in Anna Maria Island settled similar claims in 2021. According to reports, the city agreed to allow property owners to build homes with more bedrooms than current ordinances allow. One property owner will be permitted to build an eight bedroom house while the city ordinance limits bedrooms to four. Other claims related to occupancy were decided by the courts. Local ordinances limit two people per bedroom. Attorney fees for the city related to these claims were paid for by the Florida League of Cities.<sup>50</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</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 Jan. 26, 2024).

<sup>48</sup> S. 70.001, F.S.

<sup>49</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 Jan. 26, 2024).

<sup>50</sup> Kristin Swain, *Bert Harris cases come to a close in Holmes Beach, Amisun* (Nov. 1, 2021), <https://www.amisun.com/2021/11/01/bert-harris-cases-come-to-a-close-in-holmes->

## Miami Beach

In March 2016, Miami Beach, which bans all short-term rentals, 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>51</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>52</sup>

Since then, the Third District Court of Appeal 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>53</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 to a memo from the city attorney, the new fine structure complies with the ruling against Miami Beach.<sup>54</sup>

### **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

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[beach/#:~:text=HOLMES%20BEACH%20E2%80%93%20After%20more%20than,were%20too%20generous%20to%20developers](#)  
(last visited Jan. 29, 2024).

<sup>51</sup> See Miami Beach City Code, Sec. 142-1111 and 142-905(b).

<sup>52</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> (last visited Jan. 26, 2024).

<sup>53</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 Jan. 26, 2024).

<sup>54</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 Jan. 26, 2024).

<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.

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.

## **Effect of the Bill**

### **Preemptions**

#### Scope

The bill adds to the scope of the state preemption of public lodging establishments and public food service establishments, by also preempting "licensing."

The bill revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to adopt local regulations:

- As long as the regulation is less restrictive; or
- To comply with local registration requirements.

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

#### Exemptions

The bill maintains the exemption to the preemption that allows only local ordinances adopted on or before June 1, 2011, to remain in effect. Additionally, the bill allows a local government to pass such regulations after June 1, 2011, if they are less restrictive than what was in effect on June 1, 2011.

The bill maintains the exemption to the preemption for areas of critical state concern so that these areas remain fully exempted from the preemption, and may have existing ordinances that were adopted after June 1, 2011.

The bill provides that:

- The statutory provisions governing the local registration of vacation rentals do not apply to any county law, ordinance, or regulation initially adopted on or before January 1, 2016, that established county registration requirements for rental of vacation rentals, and any amendments thereto adopted before January 1, 2024.
- Such county law, ordinance, or regulation may not be amended or altered except to be less restrictive or to adopt registration requirements as provided in such provisions.

### **Regulation of Vacation Rentals by Local Government**

#### Registration

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<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 Jan. 26, 2024).

The bill:

- Authorizes local laws, ordinances, or regulations to require the registration of vacation rentals with a local vacation rental registration program.
- Authorizes local governments to implement such a program and impose a fine for failure to register under the program.
- Requires local governments to prepare a business impact estimate in accordance with ss. 125.66(3) or 166.041(4), F.S.,<sup>60</sup> as applicable, before implementing a vacation rental registration program.

The bill specifies that it does not prohibit a local government from establishing a local law, ordinance, or regulation if it is uniformly applied without regard to whether the residential property is used as a vacation rental.

### Fees

The bill allows a local government to charge a reasonable fee per unit for processing a registration application.

The bill allows a local law, ordinance, or regulation to:

- Require annual renewal of a registration; and
- Charge a reasonable renewal fee per unit for processing of a registration renewal.

The bill specifies that if there is a change of ownership, the new owner may be required to submit a new application for registration.

The bill provides that subsequent to the registration of a vacation rental, a local government is authorized to charge a reasonable fee to inspect a vacation rental after registration for compliance with the Florida Building Code and the Florida Fire Prevention Code, described in ss. 553.80 and 633.206, F.S.

### Conditions for Registration

The bill provides that as a condition of registration or renewal of a vacation rental, a local law, ordinance, or regulation establishing a local vacation rental registration program may require the operator of a vacation rental to do the following:

- Submit identifying information about the owner and the operator, if applicable, and the subject vacation rental premises.
- Provide proof of a license with the unique identifier issued by the Division to operate as a vacation rental.
- Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue (DOR), a county, or a municipality.
- Update required information as necessary to ensure it is current.
- Pay in full all recorded municipal or county code liens against the subject vacation rental premises.
- Designate and maintain at all times a responsible party who is capable of responding to complaints or emergencies related to the vacation rental, including being available by telephone at a provided contact telephone number 24 hours a day, 7 days a week, and receiving legal notice of violations on behalf of the vacation rental operator.

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<sup>60</sup> Sections 125.66 and 166.041, F.S., requires counties and municipalities, respectively, before enactment of a proposed ordinance to prepare a business impact estimate that includes an identification of any new charge or fee on businesses subject to the proposed ordinance, or for which businesses will be financially responsible, and an estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs.

- State and comply with the maximum overnight occupancy of the vacation rental which does not exceed either two persons per bedroom, plus an additional two persons in one common area; or more than two persons per bedroom if there is at least 50 square feet per person, plus an additional two persons in one common area, whichever is greater.

### Review and Acceptance

The bill requires within 15 business days after receiving an application for registration of a vacation rental, a local government to review the application for completeness and accept the registration of the vacation rental or issue a written notice of denial.

The bill provides that a vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes, particularly in the event of a force majeure or other extraordinary circumstance.

The bill provides that:

- If the local government fails to accept the registration within the timeframes provided, the application is deemed accepted.
- If a local government denies a registration of a vacation rental, the local government must give written notice to the applicant. Such notice:
  - May be provided by United States mail or electronically.
  - Must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of the ordinance, rule, statute, or other legal authority for the denial of the registration.
- A local government may not prohibit an applicant from reapplying if the applicant cures the identified deficiencies.

The bill requires, upon an accepted vacation rental registration, a local government **to assign** a unique registration number to the vacation rental unit and provide the registration number or other indicia of registration to the vacation rental operator in writing or electronically.

The bill requires local governments to, within 5 days after acceptance of a vacation rental registration, provide the registration number to the Division.

## **Local Government Enforcement and Remedies**

### Fines and Liens

The bill allows a local government to fine a vacation rental operator up to \$500 if he or she:

- Fails to continue to meet the registration requirements; or
- Is operating a vacation rental without registering with the local government as a vacation rental.

Regarding the process for a local government to fine a vacation rental operator, the bill:

- Requires local governments, before issuing a fine for a violation of the conditions of registration, to issue written notice of such violation and provide a vacation rental operator 15 days to cure the violation. If the vacation rental operator has not cured the violation within the 15 days, the local government is authorized to issue a fine.
- Allows a certified copy of an order imposing a fine to be recorded in the public records and thereafter constitutes a lien against the real property on which the violation exists.
- Specifies that upon petition to the circuit court, such order is enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order may not be deemed to be a court judgment except for enforcement purposes.

- Requires the fine to continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this provision, whichever occurs first.
- Provides that a lien arising from such a fine runs in favor of the local government, and the local government is required to execute a satisfaction or release of lien upon full payment.
- Provides that three months or more after the filing of the lien, the local government is authorized to foreclose on the lien against the real property on which the violation occurred or sue to recover a money judgment for the amount of the lien, plus accrued interest.
- Provides that a lien created pursuant to this part may not be foreclosed on real property that is a homestead under s. 4, Art. X of the State Constitution.
- Specifies that the money judgment provisions of this provision do not apply to real property or personal property that is covered under s. 4(a), Art. X of the State Constitution.<sup>61</sup>

### Registration Suspensions

The bill provides that if a code violation related to the vacation rental is found by the code enforcement board or special magistrate to be a material violation of a local law, ordinance, or regulation that does not solely apply to vacation rentals and the violation is directly related to the vacation rental premises:

- The local government must issue a written notice of such violation.
- The code enforcement board or special magistrate must make a recommendation to the local government as to whether a vacation rental registration should be suspended.
- The code enforcement board or special magistrate must recommend the suspension of the vacation rental registration, if there are:
  - One or more violations on 5 separate days during a 60-day period;
  - One or more violations on 5 separate days during a 30-day period; or
  - One or more violations after two prior suspensions of the vacation rental registration.
- If the code enforcement board or special magistrate recommends suspension of a vacation rental registration, the local government is authorized to suspend such registration for a period of:
  - Up to 30 days for one or more violations on 5 separate days during a 60-day period;
  - Up to 60 days for one or more violations on 5 separate days during a 30-day period; or
  - Up to 90 days for one or more violations after two prior suspensions of an owner's vacation rental registration.
- The local government is prohibited from suspending a vacation rental registration for violations of a local law, ordinance, or regulation which are not directly related to the vacation rental premises.
- The local government is required to provide notice of the suspension of a vacation rental registration to the vacation rental operator and the Division within 5 days after the suspension.
  - The notice must include the start date of the suspension, which must be at least 21 days after the suspension notice is sent to the operator and the Division.

Effective January 1, 2026, local governments are required to use the vacation rental information system described in s. 509.244, F.S., created by the bill, to provide notice of the suspension of a vacation rental registration to the Division.

### Registration Revocations

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<sup>61</sup> Article X, s. 4(a), of the Florida Constitution provides “there shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner’s consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner’s family; (2) personal property to the value of one thousand dollars.

The bill allows a local government to revoke or refuse to renew a vacation rental registration, if:

- The vacation rental registration has been suspended three times;
- There is an unsatisfied recorded municipal lien or county lien on the real property of the vacation rental, provided local governments give a vacation rental operator at least 60 days before revocation to satisfy a recorded municipal or county code lien before terminating a local registration because of the unsatisfied lien;
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill also requires local governments to provide notice within 5 days after the revocation of, or refusal to renew, a vacation rental registration to the vacation rental operator and the Division. The notice must include the start date of the revocation or nonrenewal, which must be at least 21 days after the date such notice is sent to the vacation rental operator and the Division.

Effective January 1, 2026, local governments are required to use the vacation rental information system described in s. 509.244, F.S., to provide notice of the revocation of or refusal to renew a vacation rental registration to the Division.

### Appeals

The bill authorizes a vacation rental operator to appeal a denial, suspension, revocation, or nonrenewal of a vacation rental registration to the circuit court, as follows:

- The appeal must be filed within 30 days after the issuance of the denial, suspension, or revocation.
- The court may assess and award reasonable attorney fees and costs and damages to the prevailing party.<sup>62</sup>

## **Regulation of Vacation Rentals by the Division**

### Licensing

Effective January 1, 2025, the bill:

- Authorizes the Division, upon receiving an application for a vacation rental license, to grant a temporary license to permit the operation of the vacation rental while the license application is pending.
  - The temporary license becomes permanent upon final agency action regarding the license application.
- Requires any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Requires the vacation rental's local registration number, if applicable, to be conspicuously displayed inside the vacation rental unit in a visible location.
- Requires the Division to assign a unique identifier on each vacation rental license which identifies each individual vacation rental dwelling or unit.

### Suspensions and Revocations of Vacation Rental Licenses

The bill authorizes the Division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days, or the period of suspension provided in the local registration provision, a vacation rental license when:

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<sup>62</sup> S. 162.11, F.S., provides for the appeal of a final administrative order of a local government enforcement board to the circuit court. This provision does not provide for the awarding of attorney fees and costs to the prevailing party.

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined by a final order of a court or an arbitrator's written decision;<sup>63</sup>
- The registration of the vacation rental is suspended or revoked by a local government as provided in s. 509.032(8), F.S.; or
- The vacation rental premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

When revoking, suspending, or refusing to renew a vacation rental license, the bill requires the Division to specify the license number with the associated unique identifier of the vacation rental dwelling or unit that has been suspended, revoked or not renewed. The Division must also input such status into the vacation rental information system described in s. 509.244, F.S.

The bill requires that any suspension of a vacation rental license based on the suspension of a local registration must run concurrently with the local registration suspension.

### **Requirements for Advertising Platforms**

Effective January 1, 2025, the bill provides requirements for an advertising platform, including tax collection and remittance requirements. Under the bill, an advertising platform must:

- Require that a person who places an advertisement or a listing of a vacation rental to:
  - Include the vacation rental license number with the associated unique identifier, and if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number with the associated unique identifier and, if applicable, the local registration number, are current and valid and that all related information is accurately stated in the advertisement.
- Display the vacation rental license number with the associated unique identifier and, if applicable, the local registration number.

Effective January 1, 2026, the bill requires advertising platforms to:

- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after notification that a vacation rental license:
  - Has been suspended, revoked, or not renewed; or
  - Fails to display a valid license number with the associated unique identifier and, if applicable, the local registration number.
- Provide to the Division on a quarterly basis, in a manner compatible with the vacation rental information system, a list of all vacation rentals located in this state which are advertised on its platform, which must include:
  - The uniform resource locator for the Internet address of the vacation rental advertisement; and
  - The vacation rental license number associated with the vacation rental.

The bill requires advertising platforms, or the operator, as defined in s. 509.013, F.S., listing a property with an advertising platform to collect and remit taxes due under ss. 125.0104,<sup>64</sup> 125.0108,<sup>65</sup> 205.044,<sup>66</sup> 212.03,<sup>67</sup> 212.0305,<sup>68</sup> and 212.055, F.S.,<sup>69</sup> resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

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<sup>63</sup> Chapters 718, 719, or 720, F.S., relate to the regulation and governance of condominium, cooperative, and homeowners' associations, respectively.

<sup>64</sup> Section 125.0104, F.S., relates to the local option tourist development tax.

<sup>65</sup> Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.

<sup>66</sup> Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.

<sup>67</sup> Section 212.03, F.S., relates to the transient rentals tax.

<sup>68</sup> Section 212.0305, F.S., relates to convention development taxes.

<sup>69</sup> Section 212.055, F.S., relates to discretionary sales taxes.

The bill also:

- Provides processes for the Division to issue a cease and desist order to any person who violates ch. 509, F.S.
- Authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order.
- Provides that, if the Division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.
- Authorizes the Division to fine an advertising platform an amount not to exceed \$1,000 per offense for a violation of the provisions in the bill or rules of the Division.
- Provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms.

### **Vacation Rental Information System**

The bill requires the Division to create and maintain, by July 1, 2025, a vacation rental information system readily accessible through an application program interface to:

- Facilitate prompt compliance with ch. 509, F.S., relating in pertinent part to public lodging establishments, by licensees and advertising platforms;
- Allow advertising platforms to search by vacation rental license number with the associated unique identifier, applicable local registration number, and a listing status field that indicates whether the premises is compliant with applicable license and registration requirements to allow a platform to determine whether it may advertise the vacation rental;
- Allow local government users to notify the Division of a revocation or failure to renew, or the period of suspension of, a local registration, if applicable;
- Allow local governments and advertising platforms to verify the status of a vacation rental license and local registration of a vacation rental; and
- Allow the registered user to subscribe to receive notification of changes to the license or registration of a vacation rental.

### **Community Associations**

The bill provides that the application of vacation rental provisions created by the bill do 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 of covenants or declaration for a homeowners' association adopted pursuant to ch. 720, F.S.

### **Appropriation**

The bill provides an appropriation for the 2024-2025 fiscal year, of \$327,170 in recurring funds and \$53,645 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$645,202 in recurring funds and \$3,295,884 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Business and Professional Regulation, and nine full-time equivalent positions with a total associated salary rate of 513,417 are authorized, for the purposes of implementing the provisions in the bill.

### **Effective Date**

Except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. According to DBPR, “there is an indeterminate increase in licensing revenue, but it is unknown how many rental advertisements currently exempt from licensing would require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.”<sup>70</sup>

2. Expenditures:

According to DBPR, it will incur the following “increase in staff and costs needed to implement the bill.”<sup>71</sup>

- “Hotels and Restaurants – 4 FTE with a \$ 196,279 salary rate and \$380,815 budget authority (\$53,645 nonrecurring).
- Office of the General Counsel – 2 FTE with a 150,154 salary rate and \$244,421 of budget authority (\$16,922 nonrecurring).
- Division of Service Operations – 1 FTE with a 46,984 salary rate and \$88,158 of budget authority (\$9,040 nonrecurring).
- Information Technology – 2 FTE with 120,000 of salary rate and \$3,608,507 of budget authority (\$3,269,922 nonrecurring).”

“TOTAL FISCAL IMPACT of \$4,318,901 of budget authority (\$972,371 recurring and \$3,346,529 nonrecurring).”<sup>72</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. According to DBPR, there is a potential increase in tourism taxes and revenue if local registration fees are required.<sup>73</sup>

Allowing local governments to administer and enforce a vacation rental registration program may create a positive fiscal impact resulting from collection of program fees and fines.

2. Expenditures:

Indeterminate. Allowing local governments to administer and enforce a vacation rental registration program will create costs to those local governments that choose to participate. However, these costs may be offset by the revenues generated from the collection of program fees and fines.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

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<sup>70</sup> Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 7 (Dec. 1, 2023).

<sup>71</sup> Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 7 (Dec. 1, 2023).

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

<sup>73</sup> Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 6 (Dec. 1, 2023).

