

CS/SB 802 by **JU, Perry (CO-INTRODUCERS) Montford, Hutson;** (Similar to H 00733) Marketable Record Title Act

SB 1060 by **Thurston;** (Similar to H 00755) Public Records and Meetings/911 or E911 Communication System

814656 A S RCS IT, Thurston Delete L.97 - 118: 01/13 04:44 PM

SB 1170 by **Baxley (CO-INTRODUCERS) Hutson;** (Similar to H 00821) Public Records and Meetings/Division of State Technology

SB 818 by **Hooper;** (Compare to H 01339) Manufactured Housing

399384 A S RCS IT, Hooper Delete L.368 - 384: 01/14 09:07 AM

SB 1128 by **Diaz;** (Identical to H 01011) Vacation Rentals

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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

INNOVATION, INDUSTRY AND TECHNOLOGY

Senator Simpson, Chair

Senator Benacquisto, Vice Chair

MEETING DATE: Monday, January 13, 2020

TIME: 1:00—3:00 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Building*

MEMBERS: Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 802 Judiciary / Perry (Similar H 733)	Marketable Record Title Act; Revising rights that are not affected or extinguished by marketable record titles; revising what types of interests are extinguished by a marketable record title; providing that discriminatory restrictions are unlawful, unenforceable, and declared null and void; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests, etc. JU 12/10/2019 Fav/CS IT 01/13/2020 Favorable RC	Favorable Yeas 10 Nays 0
2	SB 1060 Thurston (Similar H 755)	Public Records and Meetings/911 or E911 Communication System; Providing an exemption from public records requirements for certain documents that depict the structural elements of certain 911 or E911 communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911 or E911 communication system infrastructure, structures, or facilities; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. IT 01/13/2020 Fav/CS GO RC	Fav/CS Yeas 8 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Innovation, Industry and Technology

Monday, January 13, 2020, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1170 Baxley (Similar H 821)	Public Records and Meetings/Division of State Technology; Revising a provision to reflect the abolishment of the Agency for State Technology; providing an exemption from public records requirements for portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption; providing an exemption from public meetings requirements for portions of meetings which would reveal certain records; providing for future legislative review and repeal under the Open Government Sunset Review Act of the exemptions; providing statements of public necessity, etc. IT 01/13/2020 Favorable GO RC	Favorable Yeas 9 Nays 1
4	SB 818 Hooper (Compare H 1339, S 998)	Manufactured Housing; Reducing the percentage of the sales price of certain mobile homes which is subject to sales tax; exempting certain recreational vehicle dealer applicants from a garage liability insurance requirement; exempting certain mobile home park and mobile home subdivision owners from regulation by the Florida Public Service Commission relating to water and wastewater systems; specifying a requirement for disclosing and agreeing to a mobile home lot rental increase; providing that a mobile home park damaged or destroyed due to natural forces may be rebuilt with the same density as previously approved, permitted, or built, etc. IT 01/13/2020 Fav/CS FT AP	Fav/CS Yeas 10 Nays 0
5	SB 1128 Diaz (Identical H 1011)	Vacation Rentals; Preempting the regulation of vacation rentals to the state; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of vacation rentals; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment, etc. IT 01/13/2020 Favorable CM RC	Favorable Yeas 8 Nays 2
6	Other Related Meeting Documents		

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 Innovation, Industry, and Technology

BILL: CS/SB 802

INTRODUCER: Judiciary Committee and Senators Perry and Montford

SUBJECT: Marketable Record Title Act

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.	Oxamendi	Imhof	IT	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 802 revises the Marketable Record Title Act to clarify an exception to its main provision, and to bolster current law's prohibition on discriminatory deed provisions.

The Marketable Record Title Act (MRTA) extinguishes most interests, claims, and other real property "rights" that were not created in or after a given property's "root of title," which is the most recent title transaction (such as a deed) that is more than 30 years old. The bill, in contrast to a recent court opinion, provides that the rights extinguished by MRTA include restrictive covenants that were recorded in connection with a zoning regulation.

The MRTA also includes a list of exceptions, i.e., interest rights created before the root of title that are not extinguished by the act. One category of exceptions includes rights that are "disclosed" in the root of title. The bill increases the specificity required for the disclosure in the root of title to qualify for an exception.

The bill, consistent with prohibitions currently set forth in the Fair Housing Act, extinguishes "discriminatory restrictions" from title transactions, such as deeds, and expressly states the restrictions are unlawful, unenforceable, and null and void. The bill provides for summary removal of discriminatory restrictions from the governing documents of a property owners' association.

Finally, the bill provides a grace period of one year for persons whose interests would otherwise be extinguished by the bill to file a notice and save their interests from extinguishment.

The provisions of the bill are intended to apply retroactively. The bill states that these sections are “remedial in nature” and are “intended to clarify existing law.”

The bill takes effect upon becoming law.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA)¹ was enacted in 1963 “to simplify conveyances of real property, stabilize titles, and give certainty to land ownership.”² To accomplish these goals, MRTA extinguishes most “rights” in real property that were not created in or after the “root of title.” The root of title is essentially the most recent title transaction (such as a deed) that is more than 30 years old.³

Applicability of the MRTA to Covenants Dependent on Local Land-Use Regulations

The statutes contain nine exceptions in which MRTA does not apply.⁴ MRTA extinguishes the following rights, subject to exceptions:

[A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.⁵

MRTA extinguishes these rights regardless of how they are denominated in a deed or other instrument creating the right.

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*,⁶ 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of “whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA.”⁷ The court held that the restrictive covenant was a governmental regulation, and not a title “interest” under MRTA, and thus was not subject to extinguishment by MRTA.

The court reasoned that the restrictive covenant was an inseparable part of a governmental action to rezone the property at issue. The issue thus became whether MRTA extinguishes zoning

¹ See ch. 712, F.S.

² *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).

³ Section 712.06, F.S., defines root of title as any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

⁴ See s. 712.03, F.S.

⁵ Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.

⁶ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016).

⁷ *Id.* at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

regulations.⁸ The court concluded that, based on MRTA’s language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.⁹

Exceptions to Extinguishment under the MRTA

As noted above, MRTA includes a long list of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument.

One exception is any right disclosed in a deed or other muniment of title¹⁰ recorded in the chain of title from the root title forward (including a right that arose prior to the root of title). The disclosure may not be made by a general reference unless specific book and page information is given. Section 712.03(1), F.S., provides:

Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title [such as a deed] on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests

The Real Property, Probate and Trust Law Section of The Florida Bar believes that this provision should be clearer, particularly as to how specific a disclosure of a right needs to be for it to fall within the exception.¹¹ For example, in 2015 the Third District Court of Appeal¹² held that a reference to a pre-root restrictive covenant in several deeds was more than a “general reference” and was otherwise specific enough to meet the statutory definition; thus, the restrictive covenant was not extinguished by MRTA.¹³ The references at issue did not include a book and page number.

The court’s stated reasoning as to why the references were nonetheless specific enough was brief. The court stated that it agreed with the trial court and a certain expert witness’s assessment. Beyond that, the court noted that the references were specific enough so that the covenants were not “hidden” such that the transferees/owners would have been surprised by them. Thus, the court noted, its decision was consistent with “the core concern” of MRTA that “no hidden

⁸ *Id.* at 915.

⁹ *Id.* at 915-16.

¹⁰ “Muniments of title” are instruments of writing and written evidences which the owner of lands, possessions, or inheritances has by which said owner is entitled to defend the title. Muniments of title need not be recorded to be valid, notwithstanding that recording statutes do give good-faith purchasers certain rights over the rights of persons. 42 FLA. JUR. 2D s. 16 *Proof of title or ownership—Muniments of title* (2019).

¹¹ Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Revisions to Chapter 712 (Commonly known as Florida’s Marketable Record Title Act)* (2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

¹² *Barney v. Silver Lakes Acres Property*, 159 So. 3d 181 (Fla. 3d DCA 2015).

¹³ *Id.* at 183.

interest in real property [would be able to be] asserted without limitation against a record property owner.”¹⁴

Discriminatory Real Estate Restrictions

Overview

Federal and state law prohibit discrimination on the basis of race and several other characteristics in the sale, lease, or use of real property. Nonetheless, discriminatory restrictive covenants and other instruments—relics of an era when real estate discrimination was legal—remain in the records of many, perhaps all, counties, and can still be found in a title search. Though these documents are not legally enforceable, their existence has troubled many people who have discovered that a property that they own or rent, or would like to own or rent, was once encumbered by a (enforceable) discriminatory restriction.¹⁵ However, current law does not appear to provide a way to strike or otherwise disavow these provisions in the public records.

Fair Housing Act

This state’s Fair Housing Act, which was closely modeled from the federal Act,¹⁶ broadly prohibits discrimination in the sale or rental of real property, including by way of racist restrictive covenants.

The Fair Housing Act’s main operative provisions relating to the sale, rental, and use of real estate are set forth in ss. 760.23(1) and (2), F.S.:

- (1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.
- (2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

Moreover, s. 760.23(3), F.S., specifically prohibits discriminatory “notices” and “statements”:

- (3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

¹⁴ *Id* at 183 (quoting *H & F Land, Inc. v. Panama City–Bay Cnty. Airport and Indus. Dist.*, 736 So.2d 1167, 1171 (Fla.1999)).

¹⁵ See, e.g., *Attorney wants outdated, racist covenant language in Betton Hills stripped*, TALLAHASSEE DEMOCRAT (July 1, 2019), <https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/>.

¹⁶ See 42 U.S.C. §§ 3601-19.

However, these provisions are subject to exceptions and exemptions, as set forth in s. 760.29, F.S. For instance, the prohibitions do not apply to the sale or rental of a single-family house by its owner, or to the rental of a small multi-unit building, such as a duplex, if the owner lives in one of the units. The Fair Housing Act also does not apply to prevent a religious organization from restricting the occupancy, sale, or rental of its facilities to members of its religion. Moreover, the act's prohibitions on discrimination on the basis of familial status "do not apply with respect to housing for older persons."

As for enforcement, the act authorizes a person who alleges that he or she has been injured by a discriminatory housing provision to pursue administrative and civil remedies. However, the act does not mention any opportunity for a homeowner to obtain a written determination that a discriminatory restriction on his or her own property is extinguished by the act or any other law. Similarly, the act does not allow a homeowners association, or a condominium or cooperative association, to forego its normal procedures for removing these provisions from a document affecting a parcel within the association.

Other States' Efforts to Erase or Otherwise Address Unenforceable Discriminatory Provisions in Public Records

At least a few states—California, Washington, and Ohio—have enacted statutes to address discriminatory real estate restrictions that, though they have long been unenforceable, linger in the public records as hurtful and shameful reminders of the past.

California's statutes address these discriminatory provisions in several ways. For instance, California requires a real estate agent, title insurance company, or county recorder, among others, to place a notice on each deed, declaration, or governing document provided to a person. The notice advises the recipient that any discriminatory provision in the document "violates state and federal housing laws and is void," and that the recipient may file a "modification document" with the "county recorder," along with a copy of the document containing the restriction, with the restriction stricken.¹⁷ If the county counsel agrees that the stricken provision is illegal and void, the modification document must be filed in the county records, and shall include a book and page reference to the original document.¹⁸

California also authorizes the expedited removal of any unlawful and void discriminatory provision from the governing documents of a condominium association or other "common interest development."¹⁹ Under this statute, the association must amend out the provision notwithstanding "any other provision of law or provision of the governing documents."²⁰

Washington's statutes contain a similar procedure, but also give a property owner, as well as an occupant or tenant, the option to file a declaratory action to have the provision "stricken."²¹

¹⁷ CAL. GOV'T CODE § 12956.1.

¹⁸ CAL. GOV'T CODE § 12956.2.

¹⁹ CAL. CIVIL CODE § 6606.

²⁰ *Id.*

²¹ WASH. REV. CODE § 49.60.227.

Additionally, Washington’s statutes contain a provision declaring a long list of discriminatory real estate provisions to be “void.”²²

In Ohio, when a county recorder processes a transfer of “registered land,” he or she is required to “delete” from the sectional indexes “all references” to any discriminatory restrictive covenant affecting the land.²³

III. Effect of Proposed Changes:

The bill revises the Marketable Record Title Act’s to clarify an exception to MRTA, and to bolster current law’s prohibition on discriminatory deed provisions.

Disclosure Required to Qualify for MRTA Exception

The bill amends s. 712.03(1), F.S., to require more specificity in the disclosure required for a restriction a deed or muniment to fall under the exception for rights disclosed before the 30-year root of title. The bill requires a specific reference to the official records book and page number, instrument number, or plat. Alternatively, there must be an affirmative statement in a muniment of title to preserve the estate, interests, easements, or use restrictions created before the root of title.

Interests Extinguished by MRTA

Zoning Restrictions

The bill amends s. 712.04, F.S., to include covenants or restrictions based on a zoning requirement or development permit among the types of interests extinguished by MRTA.

The bill may affect older deed restrictions that depend on a zoning requirement or development permit. The bill provides that s. 712.04, F.S., may not be construed to alter or invalidate a zoning ordinance, land development regulation, building code, or other law or regulation to the extent it operates independently of matters recorded in the official records.

Discriminatory Restrictions

The bill amends s. 712.065, F.S., to extinguish “discriminatory restrictions” from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. The bill, unlike the Fair Housing Act, provides no exceptions or exemptions from this provision. And though the bill “extinguishes” discriminatory restrictions as a matter of law, it does not require their redaction or removal from the official records of a county. Thus, documents containing these restrictions could be uncovered in a title search.

The bill provides for summary removal of discriminatory restrictions from the governing documents of a property owners’ association.

²² WASH. REV. CODE § 49.60.224.

²³ OHIO REV. CODE § 317.20(E)(2).

Finally, the bill provides a grace period of one year for persons whose interests would otherwise be extinguished by the bill to file a notice and save their interests from extinguishment.

Retroactive Application.

The bill includes three sections that are intended to apply retroactively. The bill states that these sections are “remedial in nature” and are “intended to clarify existing law.”

The bill requires any person with an interest in land which may potentially be extinguished by its terms, and whose interest has not been extinguished before July 1, 2020, to file a notice pursuant to s. 712.06, F.S.,²⁴ by July 1, 2021, to preserve such interest.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill includes three sections that are expressly intended to apply retroactively. The bill states that these sections are “remedial in nature” and are “intended to clarify existing law.” The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.²⁵ First, there must be “clear evidence of

²⁴ Section 712.06, F.S., sets forth the information that must be included in the notice required under s. 712.05, F.S., for persons whose interests are to be extinguished by the operation MRTA and who wish to preserve and protect such interest or right from extinguishment.

²⁵ See, e.g., *Florida Ins. Guar. Ass’n, Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

legislative intent to apply the statute retrospectively.”²⁶ If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”²⁷ Retroactive application is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.²⁸

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.²⁹ Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”³⁰ Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.³¹

Courts might determine that the bill’s retroactive provisions impair vested rights. By their nature and their terms, the provisions in question pertain to rights in real property. In fact, the bill acknowledges this in Section 6. However, Section 6 also provides a grace period for people whose rights would be affected by the bill to take steps to protect rights that would otherwise be extinguished by the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁶ *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999) (quoting *McCord v. Smith*, 43 So.2d 704, 708–09 (Fla.1949); cf. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

²⁷ *Id.*

²⁸ *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949).

²⁹ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

³⁰ *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n., Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

³¹ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.03, 712.04, and 712.12.

This bill creates section 712.065 of the Florida Statutes.

This bill creates unnumbered sections of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary Committee on December 10, 2019:

The committee substitute removes the bill's grant of an option for a property owner to request a written "determination" that a discriminatory provision in a previous title transaction is extinguished as a matter of law. Under the bill, a property owner could request this determination from the Department of Economic Opportunity.

- B. **Amendments:**

None.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: December 20, 2019

I respectfully request that **Senate Bill #802**, relating to Marketable Record Title Act, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

WHITE PAPER
REVISIONS TO CHAPTER 712
(Commonly known as Florida's Marketable Record Title Act)

I. SUMMARY

This legislation is designed to clarify the operation of the statute in light of (i) a common real estate practice to make specific reference to pre-root of title restrictions in deeds that are recorded post-root of title and that, arguably, may inadvertently extend the life of restrictions that the act would have otherwise extinguished and (ii) the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals.

The bill does not have a fiscal impact on state funds.

II. SECTION-BY-SECTION ANALYSIS

A. Section 712.03

Current Situation: A common practice among real estate practitioners in Florida is to except from the seller's warranties of title in a deed the matters identified as outstanding encumbrances or restrictions. This is frequently done by making the deed "subject to," not just all matters of record, but to instruments specifically identified by official record book and page. In these situations, it is rarely the intent of the parties to restart the act's 30 year marketability period on the encumbrance or restriction against the title by these "subject to" conveyances. Nevertheless, it could be argued that, by reciting by official records book and page a prior, existing restriction in a muniment of title such as a deed, the restriction is brought within the scope of one of the act's limited exceptions under s. 712.03(1). It is the intention of the statute to help clear title of ancient defects and not to inadvertently preserve them. This revision is thus designed to clarify the existing statute so that these "subject to" conveyances do not inadvertently restart the act's 30 year marketability period on encumbrances or restrictions against title.

Effect of Proposed Changes: The proposed revision is designed to clarify the existing statute so that conveyances "subject to" matters specifically identified by official records book and page do not restart the act's 30 year marketability period on encumbrances or restrictions against title unless the parties to the instrument also include an affirmative statement of the intent to do so.

B. Section 712.04 and 712.12

Current Situation: In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court found that a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is not a title interest subject to extinguishment by section 712.04.

The problem with this judicial exception to the operation of the statute is that, in many cases, there is no way to discern from the restrictive covenant recorded in the official records that it was “recorded in compliance with a government-imposed condition of a land use approval,” or not. The result is there is no way to discern from the face of the official records whether a restrictive covenant has been cut off by the operation of the statute or preserved from operation of the statute by this judicially created exception. This is contrary to the intent of the statute which is to clear of ancient defects, and threatens to undermine operation of the statute on such restrictions.

Effect of Proposed Changes: The proposed revision is designed to make clear that the intent of the statute is to cut off all “estates, interests, claims, covenants, restrictions, or charges,” even if they depend on any “zoning, building, or development approval,” but not to alter or invalidate any local government regulation operating independently of matters recorded in the official records. Additional revision to s. 712.12(1) providing a definition of “covenant or restriction” was required in order to remove the language that excluded limitations “required by a governmental agency as a condition of a development permit.”

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct negative economic impact on the private sector, but will more readily allow for the free and less expensive alienation of title to real property.

V. CONSTITUTIONAL ISSUES

Because the proposed revisions to s. 712.03(1), 712.04, and 712.12(1) are intended to clarify existing law and thus to be retroactive in effect, the proposed revision would give any person having an interest in land potentially extinguished by the act, and whose interest has not been extinguished prior to July 1, 2019, until July 1, 2020, to file a notice in accordance with s. 712.06 to preserve that interest.

VI. OTHER INTERESTED PARTIES

None.

July 28, 2018

From: [Koon, Lynn](#)
To: [Koon, Lynn](#)
Subject: FW: CS/SB 802: Marketable Record Title Act
Date: Monday, January 13, 2020 10:41:05 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

From: Lott, Kayla <Lott.Kayla@flsenate.gov>
Sent: Monday, January 13, 2020 10:12 AM
To: Imhof, Booter <Imhof.Booter@flsenate.gov>
Cc: Koon, Lynn <KOON.LYNN@flsenate.gov>
Subject: CS/SB 802: Marketable Record Title Act

Hello lovely people ☺

Just looping you in that Senator Hutson will be presenting CS/SB 802 for Senator Perry this afternoon.

Here if you have any questions or concerns – happy Session week!!

Kayla Lott

Legislative Assistant
Office of State Senator Keith Perry
State Senate District 8
Alachua, Putnam & Marion Counties
352-264-4040 - District
850-487-5008 - Tallahassee

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

802

Bill Number (if applicable)

Topic Marketable Record Title Act

Amendment Barcode (if applicable)

Name FRENCH BROWN

Job Title Lobbyist

Address 118 S. MONROE ST. Suite 815

Phone 850-2459-0992

Street

TALLAHASSEE FL 32301

City

State

Zip

Email fbrown@dearneighbor.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Real Property, Probate, and Trust Law Section of the FL Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

802

Bill Number (if applicable)

Topic Marketable Records Title Act

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

Street

St Petersburg FL

City

State

33731

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Innovation, Industry, and Technology
ITEM: CS/SB 802
FINAL ACTION: Favorable
MEETING DATE: Monday, January 13, 2020
TIME: 1:00—3:00 p.m.
PLACE: 110 Senate Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
10	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Judiciary; and Senator Perry

590-02037-20

2020802c1

1 A bill to be entitled
2 An act relating to the Marketable Record Title Act;
3 amending s. 712.03, F.S.; revising rights that are not
4 affected or extinguished by marketable record titles;
5 amending s. 712.04, F.S.; revising what types of
6 interests are extinguished by a marketable record
7 title; providing construction; creating s. 712.065,
8 F.S.; defining the term "discriminatory restriction";
9 providing that discriminatory restrictions are
10 unlawful, unenforceable, and declared null and void;
11 providing that certain discriminatory restrictions are
12 extinguished and severed from recorded title
13 transactions; specifying that the recording of certain
14 notices does not reimpose or preserve a discriminatory
15 restriction; providing requirements for a parcel owner
16 to remove a discriminatory restriction from a covenant
17 or restriction; amending s. 712.12, F.S.; revising the
18 definition of the term "covenant or restriction";
19 providing applicability; requiring persons with
20 certain interests in land which may be extinguished by
21 this act to file a specified notice to preserve such
22 interests; providing a directive to the Division of
23 Law Revision; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (1) of section 712.03, Florida
28 Statutes, is amended to read:

29 712.03 Exceptions to marketability.—Such marketable record

590-02037-20

2020802c1

title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ~~+~~ provided, ~~however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however,~~ to the provisions of subsection (5).

Section 2. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.— Subject to s. 712.03, a marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or charges, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the

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2020802c1

effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. This section may not be construed to alter or invalidate a zoning ordinance, land development regulation, building code, or other law or regulation to the extent it operates independently of matters recorded in the official records.

Section 3. Section 712.065, Florida Statutes, is created to read:

712.065 Extinguishment of discriminatory restrictions.—

(1) As used in this section, the term "discriminatory restriction" means a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after the effective date of this act, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

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88 (2) A discriminatory restriction is not enforceable in this
89 state, and all discriminatory restrictions contained in any
90 title transaction recorded in this state are unlawful, are
91 unenforceable, and are declared null and void. Any
92 discriminatory restriction contained in a previously recorded
93 title transaction is extinguished and severed from the recorded
94 title transaction and the remainder of the title transaction
95 remains enforceable and effective. The recording of any notice
96 preserving or protecting interests or rights pursuant to s.
97 712.06 does not reimpose or preserve any discriminatory
98 restriction that is extinguished under this section.

99 (3) Upon request of a parcel owner, a discriminatory
100 restriction appearing in a covenant or restriction affecting the
101 parcel may be removed from the covenant or restriction by an
102 amendment approved by a majority vote of the board of directors
103 of the respective property owners' association, notwithstanding
104 any other requirements for approval of an amendment of the
105 covenant or restriction. Unless the amendment also changes other
106 provisions of the covenant or restriction, the recording of an
107 amendment removing a discriminatory restriction does not
108 constitute a title transaction occurring after the root of title
109 for purposes of s. 712.03(4).

110 Section 4. Paragraph (b) of subsection (1) of section
111 712.12, Florida Statutes, is amended to read:

112 712.12 Covenant or restriction revitalization by parcel
113 owners not subject to a homeowners' association.—

114 (1) As used in this section, the term:

115 (b) "Covenant or restriction" means any agreement or
116 limitation ~~imposed by a private party and not required by a~~

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2020802c1

~~governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.~~

Section 5. The amendments to ss. 712.03, 712.04, and 712.12, Florida Statutes, in this act are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the effective date of this act.

Section 6. A person with an interest in land which may potentially be extinguished by this act, and whose interest has not been extinguished before July 1, 2020, must file a notice pursuant to s. 712.06, Florida Statutes, by July 1, 2021, to preserve such interest.

Section 7. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 8. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL: CS/SB 1060

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Thurston

SUBJECT: Public Records and Meetings/911 or E911 Communication System

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 exempts certain documents and maps relative to 911 or E911 communication system infrastructure, structures, or facilities, which are owned and operated by a state agency from public records requirements. It also exempts the discussion of those records from public meetings requirements, but as a safeguard, requires that these discussions be recorded and transcribed; makes these recordings and transcripts confidential and exempt from disclosure; and provides a process for limited disclosure. The bill contains legislative findings of public necessity for the exemptions.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by public meetings requirements will invalidate any resolution, rule

(Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.³⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act³¹ (the act) prescribes a legislative review process for newly created or substantially amended³² public records or open meetings exemptions, with specified exceptions.³³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³⁴

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 286.0113, F.S.

³¹ Section 119.15, F.S.

³² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³³ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³⁴ Section 119.15(3), F.S.

³⁵ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁸

The act also requires specified questions to be considered during the review process.³⁹ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁰ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴¹

The 911 System

The purpose of the 911 system is to improve public safety by establishing one number to call to contact a nationwide, seamless communications infrastructure for all emergency services. 911 service is a vital part of our nation's emergency response and disaster preparedness system.⁴² While 911 operates nationwide, it is not a single, nationwide system. Instead, all voice communications service providers are required to route 911 calls to the nearest public safety answering point (PSAP), which is operated by local government, answers all 911 calls, and dispatches the appropriate local emergency first responders.⁴³ These locally owned and operated PSAPs and their infrastructure are the heart of the 911 emergency reporting system.

³⁶ Section 119.15(6)(b)1., F.S.

³⁷ Section 119.15(6)(b)2., F.S.

³⁸ Section 119.15(6)(b)3., F.S.

³⁹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁴⁰ See generally s. 119.15, F.S.

⁴¹ Section 119.15(7), F.S.

⁴² Federal Communications Commission, *911 and E911 Services*, <https://www.fcc.gov/general/9-1-1-and-e9-1-1-services> (last visited December 20, 2019).

⁴³ Julie Layton, *How 9-1-1 Works*, <https://people.howstuffworks.com/9-1-1.htm> (last visited December 20, 2019).

III. Effect of Proposed Changes:

The bill amends s. 119.071(3), F.S., which provides exemptions relating to security and firesafety from public records law requirements, to add exemptions for the following records:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure owned and operated by an agency, including towers and antennae; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure owned and operated by an agency.

These exemptions apply to building plans, blueprints, schematic drawings, and diagrams depicting the structural elements of 911 or E911 communication system infrastructure owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system infrastructure owned and operated by a state agency, before, on, or after the effective date of this act.

Information made exempt by the bill may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The entities or persons receiving such information must maintain the exempt status of the information.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also amends s. 286.0113, F.S., on general exemptions from public meetings law, to add an exemption for:

- Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 and E911 communication structures or facilities; and
- Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities.
- No portion of an exempt meeting may be off the record, and all exempt portions of such a meeting must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the exempt information made exempt. If such a judicial determination is made, only that portion of the

recording and transcript which reveals nonexempt information may be disclosed to a third party.

This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill sets out legislative findings that it is a public necessity that the records and information referred to in the bill be made exempt from public records law to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, it finds that it is a public necessity that any portion of a meeting revealing such records and information, and the recordings and transcripts of that portion of the meeting, be made exempt from public meetings law to protect this information.

These records include location, design, and security details depicting the structural elements of emergency communication facilities and structures which are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities.

Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cybercrime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or public meetings requirements. This bill enacts a new public records exemption for building plans, blueprints, schematic drawings, and diagrams depicting the structural elements of 911 or E911 communication system infrastructure, and for geographical maps indicating the location of 911 or E911 communication system infrastructure, owned and operated by an agency. It also enacts a new public meetings

records exemption for that portion of a public meeting where these records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect 911 or E911 communication system infrastructure from any disruption during an active shooter or other terror event, including cybercrime, arson, and terrorism. This bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, and geographic maps indicating the actual or proposed locations of such infrastructure from public records requirements, and only the discussion of those records from the public meetings requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On lines 39, 45, 52, 56, 68, and 108, the bill refers to documents relating to 911 or E911 communication infrastructure, structures, or facilities “owned and operated by an agency.” But in these contexts the bill also refers to some of these documents as draft, preliminary, and proposed, which suggests some of the relevant records will be prepared and held at a time when the infrastructure, etc., does not yet exist to be owned or operated.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 286.0113.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Innovation, Industry, and Technology on January 13, 2020:

The committee substitute:

- Provides for recording and transcribing exempt portions of a meeting, makes these recordings and transcripts confidential and exempt from disclosure, and provides a process for limited disclosure; and
- Sets out legislative findings of public necessity that the recordings and transcripts of that portion of the meeting discussing the exempt records also be confidential and exempt from disclosure.

B. Amendments:

None.



814656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 97 - 118
and insert:

(c) No portion of an exempt meeting under paragraph (a) or paragraph (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review,



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determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, and other 911 or E911 communication structures or facilities owned and operated by an agency, and geographic maps indicating the actual or proposed locations of such communication system infrastructure, structures, or facilities should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, the Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps that are held by an agency should be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution and that the recordings and transcripts of such an exempt meeting be confidential and exempt from disclosure under s. 119.07(1),



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Florida Statutes, and s. 24(a), Article I of the State
Constitution. Building plans,

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

 Delete line 22

and insert:

 facilities; requiring the recording and transcription
 of exempt portions of such meetings; providing an
 exemption from public records requirements for such
 recordings and transcripts; providing an exception;
 providing for future legislative review



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Vice Chair*
Appropriations
Banking and Insurance
Rules

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR PERRY E. THURSTON, JR.

33rd District

January 6, 2020

The Honorable Wilton Simpson
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson,

I am writing you this letter because my bill SB 1060: Public Records and Meetings/911 or E911 Communication System has been referred to the Senate Innovation, Industry, and Technology Committee. I am writing respectfully requesting you to place the bill on your committee's calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any question.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr.
State Senator, District 33

REPLY TO:

- ☐ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086
- ☐ 206 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

1060
Bill Number (if applicable)
814656

Topic Public Records + Meetings/911 or E911 comm. system Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE POLICY ADVISOR

Address 100 S. ANDREWS AVE.
Street

Phone 954-253-7320

FT. LAUDERDALE FL 33301
City State Zip

Email dsainvil@broward.org

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County Bd. of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	SB 1060
FINAL ACTION:	Favorable with Committee Substitute
MEETING DATE:	Monday, January 13, 2020
TIME:	1:00—3:00 p.m.
PLACE:	110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and
Senator Thurston

580-02213-20

20201060c1

A bill to be entitled

An act relating to public records and meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for certain documents that
depict the structural elements of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing an exemption from public records
requirements for geographical maps indicating the
actual or proposed locations of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing for retroactive application;
authorizing disclosure under certain circumstances;
providing for future legislative review and repeal of
the exemptions; amending s. 286.0113, F.S.; providing
an exemption from public meetings requirements for
portions of meetings which would reveal certain
documents depicting the structural elements of 911 or
E911 communication system infrastructure, structures,
or facilities, or geographic maps indicating the
actual or proposed locations of 911 or E911
communication system infrastructure, structures, or
facilities; requiring the recording and transcription
of exempt portions of such meetings; providing an
exemption from public records requirements for such
recordings and transcripts; providing an exception;
providing for future legislative review and repeal of
the exemptions; providing a statement of public
necessity; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) is added to subsection (3) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure or other 911 and E911 communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system

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59 infrastructure or other 911 or E911 communication structures or
60 facilities owned and operated by an agency, before, on, or after
61 the effective date of this act.

62 3. Information made exempt by this paragraph may be
63 disclosed:

64 a. To another governmental entity if disclosure is
65 necessary for the receiving entity to perform its duties and
66 responsibilities;

67 b. To a licensed architect, engineer, or contractor who is
68 performing work on or related to the 911 or E911 communication
69 system infrastructure, including towers, antennae, equipment or
70 facilities used to provide 911 or E911 communication services,
71 or other 911 or E911 communication structures or facilities
72 owned and operated by an agency; or

73 c. Upon a showing of good cause before a court of competent
74 jurisdiction.

75 4. The entities or persons receiving such information must
76 maintain the exempt status of the information.

77 5. This paragraph is subject to the Open Government Sunset
78 Review Act in accordance with s. 119.15 and shall stand repealed
79 on October 2, 2025, unless reviewed and saved from repeal
80 through reenactment by the Legislature.

81 Section 2. Subsection (4) is added to section 286.0113,
82 Florida Statutes, to read:

83 286.0113 General exemptions from public meetings.—

84 (4) (a) Any portion of a meeting that would reveal building
85 plans, blueprints, schematic drawings, or diagrams, including
86 draft, preliminary, and final formats, which depict the
87 structural elements of 911 or E911 communication system

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88 infrastructure, including towers, antennae, equipment or
89 facilities used to provide 911 or E911 communication services,
90 or other 911 and E911 communication structures or facilities
91 made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011
92 and s. 24, Art. I of the State Constitution.

93 (b) Any portion of a meeting that would reveal geographical
94 maps indicating the actual or proposed locations of 911 or E911
95 communication system infrastructure, including towers, antennae,
96 equipment or facilities used to provide 911 or E911
97 communication services, or other 911 or E911 communication
98 structures or facilities made exempt by s. 119.071(3)(e)1.b. is
99 exempt from s. 286.011 and s. 24, Art. I of the State
100 Constitution.

101 (c) No portion of an exempt meeting under paragraph (a) or
102 paragraph (b) may be off the record. All exempt portions of such
103 meeting shall be recorded and transcribed. Such recordings and
104 transcripts are confidential and exempt from disclosure under s.
105 119.07(1) and s. 24(a), Art. I of the State Constitution unless
106 a court of competent jurisdiction, after an in-camera review,
107 determines that the meeting was not restricted to the discussion
108 of the information made exempt by s. 119.071(3)(e)1. In the
109 event of such a judicial determination, only that portion of the
110 recording and transcript which reveals nonexempt information may
111 be disclosed to a third party.

112 (d) This subsection is subject to the Open Government
113 Sunset Review Act in accordance with s. 119.15 and shall stand
114 repealed on October 2, 2025, unless reviewed and saved from
115 repeal through reenactment by the Legislature.

116 Section 3. The Legislature finds that it is a public

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117 necessity that building plans, blueprints, schematic drawings,
118 and diagrams, including draft, preliminary, and final formats,
119 which depict the structural elements of 911 or E911
120 communication system infrastructure, including towers, antennae,
121 equipment or facilities used to provide 911 or E911
122 communication services, and other 911 or E911 communication
123 structures or facilities owned and operated by an agency, and
124 geographic maps indicating the actual or proposed locations of
125 such communication system infrastructure, structures, or
126 facilities should be made exempt from s. 119.07(1), Florida
127 Statutes, and s. 24(a), Article I of the State Constitution to
128 ensure the security of emergency communication infrastructure,
129 structures, and facilities. In addition, the Legislature finds
130 that it is a public necessity that any portion of a meeting
131 revealing such documents and maps that are held by an agency
132 should be made exempt from s. 286.011, Florida Statutes, and s.
133 24(b), Article I of the State Constitution and that the
134 recordings and transcripts of such an exempt meeting be
135 confidential and exempt from disclosure under s. 119.07(1),
136 Florida Statutes, and s. 24(a), Article I of the State
137 Constitution. Building plans, blueprints, schematic drawings,
138 and diagrams, including draft, preliminary, and final formats,
139 received and held by counties, municipalities, and other
140 governmental agencies that depict the structural elements of 911
141 or E911 communication system infrastructure, structures, and
142 facilities are currently subject to release as public records
143 upon request. Similarly, geographical maps showing the present
144 or proposed locations of such 911 or E911 communication system
145 infrastructure, structures, and facilities that are in the

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possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities and other governmental agencies may review the building plans or geographical maps to ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communication facilities and structures. 911 and E911 communication facilities, including towers and antennae, are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cybercrime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

Section 4. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL: SB 1170

INTRODUCER: Senator Baxley

SUBJECT: Public Records and Meetings/Division of State Technology

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 1170 amends two existing public records exemptions. While the bill makes numerous changes, the net effect is to: add “network schematics, hardware and software configurations, and encryption” records to an existing exemption; streamline and simplify the exemptions by deleting duplicative provisions and restructuring the remaining provisions to maintain the same effect; and provide for Open Government Sunset Review and automatic repeal of both amended exemptions.

The bill also creates a public meetings exemption for those portions of a public meeting which would reveal records that the above-discussed provisions makes exempt. No exempt portion of an exempt meeting may be off the record, but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public

not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

inspection.²⁴ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.³⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act³¹ (the act) prescribes a legislative review process for newly created or substantially amended³² public records or open meetings exemptions, with specified exceptions.³³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³⁴

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 286.0113, F.S.

³¹ Section 119.15, F.S.

³² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³³ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³⁴ Section 119.15(3), F.S.

³⁵ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁸

The act also requires specified questions to be considered during the review process.³⁹ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁰ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴¹

Security of State Agency Data and Information Technology

Section 282.318, F.S., is the Information Technology Security Act. It makes the Department of Management Services (department) responsible for the security of data and information technology for all state agencies.⁴² The department's responsibilities include:

- Developing and annually updating a statewide information technology security strategic plan that includes security goals and objectives, risk management, incident management, and disaster recovery planning;
- Establishing asset management procedures;
- Completing comprehensive risk assessments;

³⁶ Section 119.15(6)(b)1., F.S.

³⁷ Section 119.15(6)(b)2., F.S.

³⁸ Section 119.15(6)(b)3., F.S.

³⁹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁴⁰ See generally s. 119.15, F.S.

⁴¹ Section 119.15(7), F.S.

⁴² For these purposes, the term state agencies includes any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services; the Justice Administrative Commission; and the Public Service Commission,. The term does not include university boards of trustees or state universities. ss. 282.319(2) and 282.0041(27), F.S.

- Identifying protection procedures;
- Establishing agency computer security incident response teams for responding to security incidents;
- Developing agency strategic and operational information technology security plans; and
- Establishing the safeguards for protecting data and information technology resources.

Each state agency is required to conduct, and update every three years, a risk assessment to determine the security threats to data, information, and information technology resources. The risk assessment is confidential and exempt from s. 119.07(1), F.S., except that it is available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴³

Each state agency is required to develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department, and which must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), F.S., except that the information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁴

Each state agency is required to conduct periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency. The results of these audits and evaluations are confidential information and exempt from s. 119.07(1), F.S., except that such information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁵

Each state agency is required to develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Agency for State Technology. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement. Records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1), F.S., and

⁴³ Section 282.318(4)(d), F.S.

⁴⁴ Section 282.318(4)(e), F.S.

⁴⁵ Section 282.318(4)(g), F.S.

s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which includes:
 - Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

These records are available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁶

Finally, the portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which include:
 - Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

Such portions of records are available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁷

⁴⁶ Section 282.318(4)(j), F.S.

⁴⁷ Section 282.318(5), F.S.

III. Effect of Proposed Changes:

The bill amends s. 282.318, F.S., to make changes to the existing public records exemption provisions in s. 282.318(4)(j)3. and (5), F.S.

Subparagraph (4)(j)3. currently exempts from public record law records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information or information technology, including specified types of information. The bill renumbers this provision as subsection (5) and adds a provision exempting the portion of records containing network schematics, hardware and software configurations, and encryption. Subsection (5) is renumbered as subsection (6) and maintains the exemption for portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency, if disclosure of these records would have these same effects. Both exemptions: make the records available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General; make the exemption retroactive; and subject the exemption to the Open Government Sunset Review Act (OGSR).

The majority of the changes the bill makes to these two public records exemptions streamline and simplify the exemptions by deleting redundant provisions and restructuring the remaining provisions to maintain the same effect.

The bill also creates a public meetings exemption under s. 282.318(7), F.S., for those portions of a public meeting which would reveal records that the above provisions makes exempt. No exempt portion of an exempt meeting may be off the record, but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

The OGSR process for the exemptions provides for an automatic repeal on October 2, 2025 unless reviewed and saved by the Legislature before then.

The bill makes a legislative finding that both public records exemptions, as amended, are a public necessity for the following reasons.

- Network schematics, hardware and software configurations, encryption, and information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of portions of records held by a state agency which contain such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In

addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.

- An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.
- Disclosure of a record containing information that would reveal weaknesses in a state agency's data security, including a computer forensic analysis, could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.
- Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.
- The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.
- It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

The bill makes a legislative finding of a public necessity to exempt those portions of a public meeting which would reveal data and information that the bill makes exempt from public records law, and of a public necessity to exempt the resulting recordings and transcripts, for the following reasons.

- Such meetings must be made exempt from open meetings requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and information technology resources. Such disclosure would significantly impair the administration of state programs.
- It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

The bill also makes a legislative finding that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or public meetings requirements. This bill expands an existing public records exemption to include portions of records which contain network schematics, hardware and software configurations, or encryption and creates a new public meetings exemption for the portion of a meeting at which specified exempt records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records or public meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains statements of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect state agency data and information technology. This bill expands existing provisions to exempt only portions of records which contain network schematics, hardware and software configurations, or encryption from the public records requirements and creates a public meetings exemption to exempt only those portions of meetings discussing the information relating to state agency data and information technology security which are already exempt or made exempt by the bill. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 282.318 of the 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.



THE FLORIDA SENATE

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

Chairman Wilton Simpson
Committee on Innovation, Industry, and Technology
404 S. Monroe Street
525 Knott Building
Tallahassee, FL 32399-1100
(850) 487-5957

Dear Chairman Simpson,

I would like to request that SB 1170, Public Records and Meetings/Division of State Technology be placed on committee agenda.

SB 1170 revises a provision to reflect the abolishment of the Agency for State Technology and provides an exemption from public records requirements for portions of records held by the state agency.

Your favorable consideration is appreciated, please do not hesitate to contact me if you have any questions or need additional information.

Thank you,

A handwritten signature in cursive script that reads "Dennis Baxley".

Senator Dennis Baxley
Florida State Senate – District 12

DKB/mm

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012

Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

01/13/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1170

Bill Number (if applicable)

Topic (S) Innovation, Industry, and Technology

Amendment Barcode (if applicable)

Name Andrew Forst

Job Title Deputy Director of Legislative Affairs

Address ~~5550~~ 4050 Esplanade Way

Phone 850-922-6535

Street

Jalapa

City

FL

State

32399

Zip

Email andrew.forst@dms.my.florida.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Dept. of Management Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

January 10, 2020

The Honorable Chairman Wilton Simpson
Innovation, Industry and Technology
420 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Simpson,

Senator Hutson has agreed to present SB 1170 Public Records and Meetings in the Innovation, Industry and Technology Committee on Monday, January 13, 2020, with your permission, due to my presence being needed in another committee during this same time.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

DKB/dd

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1170
FINAL ACTION: Favorable
MEETING DATE: Monday, January 13, 2020
TIME: 1:00—3:00 p.m.
PLACE: 110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Baxley

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1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 282.318, F.S.; revising a provision to
4 reflect the abolishment of the Agency for State
5 Technology; providing an exemption from public records
6 requirements for portions of records held by a state
7 agency which contain network schematics, hardware and
8 software configurations, or encryption; removing the
9 scheduled repeal of a certain public records
10 exemption; providing an exemption from public meetings
11 requirements for portions of meetings which would
12 reveal certain records; requiring the recording and
13 transcription of exempt portions of such meetings;
14 providing an exemption from public records
15 requirements for such recordings and transcripts;
16 providing an exception; revising applicability of
17 provisions requiring and authorizing certain records
18 to be made available to certain entities; providing
19 for future legislative review and repeal under the
20 Open Government Sunset Review Act of the exemptions;
21 providing for retroactive application of the
22 exemptions; providing statements of public necessity;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 282.318, Florida Statutes, is amended to
28 read:
29 282.318 Security of data and information technology.—

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(1) This section may be cited as the "Information Technology Security Act."

(2) As used in this section, the term "state agency" has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer who must have experience and expertise in security and risk management for communications and information technology resources.

(b) Develop, and annually update by February 1, a statewide information technology security strategic plan that includes security goals and objectives for the strategic issues of information technology security policy, risk management, training, incident management, and disaster recovery planning.

(c) Develop and publish for use by state agencies an information technology security framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the

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agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and information technology security audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency computer security incident response teams and describing their responsibilities for responding to information technology security incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to an information technology security incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing an information technology security incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of

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88 Law Enforcement of information technology security incidents.
89 The tiered reporting timeframes shall be based upon the level of
90 severity of the information technology security incidents being
91 reported.

92 10. Incorporating information obtained through detection
93 and response activities into the agency's information technology
94 security incident response plans.

95 11. Developing agency strategic and operational information
96 technology security plans required pursuant to this section.

97 12. Establishing the managerial, operational, and technical
98 safeguards for protecting state government data and information
99 technology resources that align with the state agency risk
100 management strategy and that protect the confidentiality,
101 integrity, and availability of information and data.

102 (d) Assist state agencies in complying with this section.

103 (e) In collaboration with the Cybercrime Office of the
104 Department of Law Enforcement, annually provide training for
105 state agency information security managers and computer security
106 incident response team members that contains training on
107 information technology security, including cybersecurity,
108 threats, trends, and best practices.

109 (f) Annually review the strategic and operational
110 information technology security plans of executive branch
111 agencies.

112 (4) Each state agency head shall, at a minimum:

113 (a) Designate an information security manager to administer
114 the information technology security program of the state agency.
115 This designation must be provided annually in writing to the
116 department by January 1. A state agency's information security

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manager, for purposes of these information security duties,
shall report directly to the agency head.

(b) In consultation with the department and the Cybercrime Office of the Department of Law Enforcement, establish an agency computer security incident response team to respond to an information technology security incident. The agency computer security incident response team shall convene upon notification of an information technology security incident and must comply with all applicable guidelines and processes established pursuant to paragraph (3) (c).

(c) Submit to the department annually by July 31, the state agency's strategic and operational information technology security plans developed pursuant to rules and guidelines established by the department.

1. The state agency strategic information technology security plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide information technology security strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational information technology security plan must include a progress report that objectively measures progress made towards the prior operational information technology security plan and a project plan that includes

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activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the

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Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data, information, and information technology resources of the agency.

(g) Ensure that periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Ensure that the information technology security and cybersecurity requirements in both the written specifications for the solicitation and service-level agreement of information technology and information technology resources and services meet or exceed the applicable state and federal laws, regulations, and standards for information technology security and cybersecurity. Service-level agreements must identify service provider and state agency responsibilities for privacy and security, protection of government data, personnel background screening, and security deliverables with associated frequencies.

(i) Provide information technology security and

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cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment concerning information technology security risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Division of State Technology within the department ~~Agency for State Technology~~.

1. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement and must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For information technology security breaches, state agencies shall provide notice in accordance with s. 501.171.

~~(5)3-~~ Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction

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of:

(a)~~a.~~ Data or information, whether physical or virtual; or

(b)~~b.~~ Information technology resources, which includes:

1.~~(I)~~ Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2.~~(II)~~ Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

~~Such records shall be available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(6)~~(5)~~ The portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state

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agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems. For purposes of this subsection, the term "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

(7) Those portions of a public meeting as specified in s. 286.011 which would reveal records that are confidential and exempt under subsection (5) or subsection (6) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the

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291 recording and transcript which reveals nonexempt data and
292 information may be disclosed to a third party.

293 (8) The ~~Such~~ portions of records made confidential and
294 exempt in subsections (5), (6), and (7) shall be available to
295 the Auditor General, the Cybercrime Office of the Department of
296 Law Enforcement, the Division of State Technology within the
297 department, and, for agencies under the jurisdiction of the
298 Governor, the Chief Inspector General. Such portions of records
299 may be made available to a local government, another state
300 agency, or a federal agency for information technology security
301 purposes or in furtherance of the state agency's official
302 duties. ~~For purposes of this subsection, "external audit" means~~
303 ~~an audit that is conducted by an entity other than the state~~
304 ~~agency that is the subject of the audit.~~

305 (9) The exemptions contained in subsections (5), (6), and
306 (7) apply ~~This exemption applies to such~~ records held by a state
307 agency before, on, or after the effective date of this
308 exemption.

309 (10) Subsections (5), (6), and (7) are ~~This subsection is~~
310 subject to the Open Government Sunset Review Act in accordance
311 with s. 119.15 and shall stand repealed on October 2, 2025 ~~2021~~,
312 unless reviewed and saved from repeal through reenactment by the
313 Legislature.

314 (11) ~~(6)~~ The department shall adopt rules relating to
315 information technology security and to administer this section.

316 Section 2. (1)(a) The Legislature finds it is a public
317 necessity that the following data or information held by a state
318 agency be made confidential and exempt from s. 119.07(1),
319 Florida Statutes, and s. 24(a), Article I of the State

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320 Constitution:

321 1. Portions of records held by a state agency which contain
322 network schematics, hardware and software configurations,
323 encryption, or which identify detection, investigation, or
324 response practices for suspected or confirmed information
325 technology security incidents, including suspected or confirmed
326 breaches, if the disclosure of such records would facilitate
327 unauthorized access to or the unauthorized modification,
328 disclosure, or destruction of:

329 a. Data or information, whether physical or virtual; or

330 b. Information technology resources, which include:

331 (I) Information relating to the security of the agency's
332 technologies, processes, and practices designed to protect
333 networks, computers, data processing software, and data from
334 attack, damage, or unauthorized access; or

335 (II) Security information, whether physical or virtual,
336 which relates to the agency's existing or proposed information
337 technology systems.

338 2. Portions of risk assessments, evaluations, external
339 audits, and other reports of a state agency's information
340 technology security programs, if the disclosure of such portions
341 of records would facilitate unauthorized access to or the
342 unauthorized modification, disclosure, or destruction of:

343 a. Data or information, whether physical or virtual; or

344 b. Information technology resources, which include:

345 (I) Information relating to the security of the state
346 agency's technologies, processes, and practices designed to
347 protect networks, computers, data processing software, and data
348 from attack, damage, or unauthorized access; or

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349 (II) Security information, whether physical or virtual,
350 which relates to the agency's existing or proposed information
351 technology systems.

352 (b) Such records must be made confidential and exempt from
353 public records requirements for the following reasons:

354 1. Portions of records held by a state agency which contain
355 network schematics, hardware and software configurations,
356 encryption, or which identify information technology detection,
357 investigation, or response practices for suspected or confirmed
358 information technology security incidents or breaches are likely
359 to be used in the investigations of the incidents or breaches.
360 The release of such information could impede the investigation
361 and impair the ability of reviewing entities to effectively and
362 efficiently execute their investigative duties. In addition, the
363 release of such information before an active investigation is
364 completed could jeopardize the ongoing investigation.

365 2. An investigation of an information technology security
366 incident or breach is likely to result in the gathering of
367 sensitive personal information, including identification numbers
368 and personal financial and health information. Such information
369 could be used to commit identity theft or other crimes. In
370 addition, release of such information could subject possible
371 victims of the security incident or breach to further harm.

372 3. Disclosure of a record, including a computer forensic
373 analysis, or other information that would reveal weaknesses in a
374 state agency's data security could compromise that security in
375 the future if such information were available upon conclusion of
376 an investigation or once an investigation ceased to be active.

377 4. Such records are likely to contain proprietary

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information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.

6. It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(2)(a)1. The Legislature also finds that it is a public necessity that those portions of a public meeting which would reveal data and information described in paragraph (1)(a) be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

2. Such meetings must be made exempt from open meetings

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requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and information technology resources. Such disclosure would significantly impair the administration of state programs.

(b)1. The Legislature further finds that it is a public necessity that the recordings and transcripts of the portions of meetings specified in subparagraph (a)1. be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

2. It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

(3) The Legislature further finds that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

Section 3. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL: CS/SB 818

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Hooper

SUBJECT: Manufactured Housing

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 818 revises provisions related to the taxation and regulation of mobile homes and mobile home parks, including the rights of park owners and mobile home owners who rent a lot in a mobile home park. The bill:

- Decreases the applicable sales tax on the sale of a mobile home by calculating the sales tax on 50 percent of the sales price.
- Exempts from the sales tax a mobile home intended to be permanently affixed to the land and intended to be used as residential property.
- Expands the current exemption from regulation by the Public Service Commission to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to a person leasing a lot, leasing a mobile home and a lot, or owning a lot in a mobile home subdivision.
- Permits a mobile home park owner to add lots to a mobile home park without homeowner consent and without amending an approved prospectus.
- Provides that a prospectus must include a disclosure of required improvements by an approved tenant upon purchase of a home.
- Requires the mobile home owner to receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- Permits a park owner to issue a 90-day lot rental increase notice to multiple tenants, within a single notice, regardless of the rental agreement anniversary date.

- Permits a mobile home park damaged or destroyed by wind, water, or other natural forces to be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.
- Requires a purchaser of a mobile home on a rented lot to enter into a new rental agreement, including the prospectus and rules and regulations, and removes the current right of a purchaser to assume the remainder of the seller's rental agreement.
- Revises the rights and obligations of the park owner and the tenant in a mobile home park in a legal action based on nonpayment of rent.

The bill takes effect upon becoming a law.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., the “Florida Mobile Home Act” (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.¹ The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.²

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home park” or “park” means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.³
- “Mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.⁴

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns.⁵ If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.⁶

Additionally, a surcharge of \$1 is levied on each annual fee. The surcharge collected must be deposited in the Florida Mobile Home Relocation Trust Fund.⁷

¹ Section 723.004, F.S.

² Section 723.002(1), F.S.

³ Section 723.003(12), F.S.

⁴ Section 723.003(11), F.S.

⁵ Section 723.007(1), F.S.

⁶ *Id.*

⁷ Section 723.007(2), F.S.

III. Effect of Proposed Changes:

Sales Tax - Mobile Homes

Present Situation

The sales tax on tangible personal property is six percent of the sales price when sold at retail.⁸ Aircrafts, boats, mobile homes are also assessed a sales tax of six percent of the retail sale price.⁹

A mobile home may be taxed as real property and not as tangible property, if a taxpayer purchases a mobile home that is then affixed permanently to land owned by the taxpayer.¹⁰ The taxpayer must apply to the local property appraiser for a declaration of real property. As part of the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer.¹¹

The Department of Highway Safety and Motor Vehicles (DHSMV) must provide “RP” stickers to tax collectors for use by the registered owner of a mobile home or recreational vehicle to affix to such vehicle when the vehicle is taxed as real property. The “RP” sticker is used in lieu of a license plate.¹²

Improvements to real property may be considered when determining the tax assessed on real property.¹³ When determining whether a person has improved real property, the term “fixtures” means:

[I]tems that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.¹⁴

Effect of Proposed Changes

The bill amends s. s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent

⁸ Section 212.05(1)(a)1.a., F.S.

⁹ Section 212.05(1)(b)1.b., F.S.

¹⁰ Section 320.015, F.S.

¹¹ See ss. 212.06(14)(a) and 320.0815, F.S.

¹² Section 320.0815(2), F.S.

¹³ Section 212.06(14)(a), F.S., defines “real property” to mean the land and improvements thereto and fixtures and is synonymous with the terms “realty” and “real estate.”

¹⁴ Section 212.06(14)(b), F.S.

sales tax is calculated on 50 percent of the sales price of the mobile home rather than 100 percent of the sales price. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

Section 212.06(14)(b), F.S., is also amended by the bill to conform the sales tax exemption for mobile homes intended to be qualified and taxed as real property pursuant to s. 320.0815(2), F.S.

Mobile Home Dealers

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.¹⁵ The term “dealer” means “any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale.” The term includes a mobile home broker.¹⁶ Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more mobile homes in any 12-month period is prima facie presumed to be a dealer. The term “dealer” does not include banks, credit unions, or finance companies that acquire mobile homes as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes to dealers licensed under this section.¹⁷

The place of business of the mobile home dealer must be at a permanent location, not a tent or a temporary stand or other temporary quarters. The location of the place of business must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale.¹⁸

Effect of Proposed Changes

The bill amends s. 320.77(3)(h), F.S., to remove the requirement that a place of business of a mobile home dealer must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale. Under the bill, the place of business of a mobile home dealer must have sufficient space to display a manufactured home as a model home.

Recreational Vehicle Dealers

Present Situation

A recreational vehicle dealer must hold a license issued by the DHSMV.¹⁹ The term “dealer” means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under this section.

¹⁵ Section 320.77(2), F.S.

¹⁶ See s. 320.77(1)(b), F.S., defining the term “mobile home broker.”

¹⁷ Section 320.77(1)(a), F.S.

¹⁸ Section 320.77(3)(h), F.S.

¹⁹ Section 320.771(2), F.S.

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.²⁰ The basic “entities” of a recreational vehicle include the “park trailer,” which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.²¹

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection.²²

Effect of Proposed Changes

The bill amends s. 320.771(3)(j), F.S., to exempt a recreational vehicle dealer from the requirement to be insured under a garage liability insurance policy, if the dealer sells only park trailers.

Uniform Repair and Remodeling Codes for Mobile and Manufactured Homes

Present Situation

Chapter 320, F.S., relates to the regulation and enforcement of motor vehicle standards and licenses by the DHSMV.

Section 320.01(2)(a), F.S., defines the term “mobile home” to mean:

[A] structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines the term “manufactured home” to mean:

a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site,

²⁰ See s. 320.01(1)(b), F.S.

²¹ Section 320.01(1)(b)7., F.S.

²² Section 320.771(3)(j), F.S.

with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Section 320.822(2), F.S., defines the term “code” to include the “Mobile Home Repair and Remodeling Code” and the “Used Recreational Vehicle Code.”

Section 320.8232(2), F.S., requires that the provisions of the “Repair and Remodeling Code” ensure safe and livable housing and that the code not be more stringent than those standards required to be met in the manufacture of mobile homes. Such provisions must include, but not be limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. Section 320.822(2), F.S., uses the term “Repair and Remodeling Code” and not the term “Mobile Home Repair and Remodeling Code.”

Subsection (1) of s. 320.822, F.S., requires compliance with the “Used Recreational Vehicle Code” for recreational vehicles manufactured after January 1, 1968, and sold or offered for sale in this state by a dealer or manufacturer.

Effect of Proposed Changes

The bill amends s. 320.822(2), F.S., to revise the term “Mobile Home Repair and Remodeling Code” to the “Mobile and Manufactured Home Repair and Remodeling Code,” and to require the code to be a uniform code. The term “uniform code” is not defined by statute. The bill does not specify that the code must be a statewide uniform code. However, the bill requires that all repairs and remodeling of mobile and manufactured homes must be performed in accordance with rules of the DHSMV.

Jurisdiction of the Public Service Commission

Present Situation

Section 367.022(5), F.S., exempts from regulation by the Public Service Commission “landlords providing [water or wastewater] service to their tenants without specific compensation for the service.”

Section 367.022(9), F.S., also exempts from regulation by the Public Service Commission any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of service.

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home subdivision” means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.²³
- “Mobile home lot rental agreement” or “rental agreement” means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park

²³ Section 723.003(14), F.S.

owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.²⁴

- “Lot rental amount” means all financial obligations, except user fees, which are required as a condition of the tenancy.²⁵
- “User fees” means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.²⁶

Effect of Proposed Changes

The bill creates s. 367.022(14), F.S., to expand the current exemption from regulation by the Public Service Commission to an owner of a mobile home park operating both a mobile home park and a mobile home subdivision who provides water or wastewater service to a combination of both tenants and lot owners, provided the service is without specific compensation.

The bill amends s. 367.022(9), F.S., to include the reselling of “wastewater” within the current exemption from regulation by the Public Service Commission.

Prospectus or Offering Circular and Rental Agreements

Present Situation

Prospectus

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner.²⁷ The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.²⁸

The prospectus must include the information specified in s. 723.012(4), F.S., including a description of the mobile home park property, including, but not limited to:

- The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.
- The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

Section 723.012(7), F.S., requires the prospectus to include a description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.

²⁴ Section 723.003(10), F.S.

²⁵ Section 723.003(6), F.S.

²⁶ Section 723.003(21), F.S.

²⁷ Section 723.012, F.S.

²⁸ Section 723.011(3), F.S.

If the tenancy was in existence on the effective date of ch. 723, F.S., (June 4, 1984),²⁹ “the prospectus or offering circular offered by the mobile home park owner shall contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and shall not require any mobile home owner to install any permanent improvements.” In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.³⁰ The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.³¹

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt.³²

By rule of the division, the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in certain specified circumstances.³³

Mobile Home Lot Rental Agreements

Rental agreements in a mobile home park must be consistent with ch. 723, F.S.³⁴ The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.³⁵

Park owners are prohibited from offering a rental agreement for a term of less than one year.³⁶ If there is no written rental agreement, the rental term may not be less than one year from the date of initial occupancy. The initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms must be for a minimum of one year.³⁷

Effect of Proposed Changes

The bill amends s. 723.011(3), F.S., to provide that the rental agreement, including the prospectus and park rules and regulations, establishes the terms and conditions of a homeowner’s tenancy. Under the bill, the tenancy must be for the duration of the tenant’s ownership of the

²⁹ See Chapter 84-80, Laws of Fla. The provisions that were to become ch. 723, F.S., were enacted under ch. 720, F.S., with an effective date of upon becoming law, unless otherwise provided. Chapter 84-80, Laws of Fla., was approved by the Governor and filed with the Secretary of State on June 4, 1984, and was codified under ch. 723, F.S. The provision codified in s. 723.011(4), F.S., was enacted by the Legislature under s. 720.302 (3), F.S., with an effective date of January 1, 1985, for mobile home parks containing 100 spaces or more and July 1, 1985, for mobile home parks containing less than 100 spaces.

³⁰ Section 723.011(1)(a), F.S.

³¹ Section 723.011(1)(d), F.S.

³² Sections 723.011(2) and 723.014(1), F.S.

³³ See Rule 61B-31.001, F.A.C.

³⁴ Section 723.031(1), F.S.

³⁵ *Id.* at (2).

³⁶ Section 723.031(4), F.S.

³⁷ *Id.*

mobile home, with a right of survivorship by the tenant's surviving spouse, unless terminated pursuant to s. 723.061, F.S.³⁸

The bill amends s. 723.011(4), F.S., to permit the park owner to require a tenant with a tenancy in existence on June 4, 1984, to install permanent improvements to the mobile home as disclosed in the prospectus.

Section 723.012(4)(c)2., F.S., is amended by the bill to permit the park owner to amend the prospectus to include additional property and mobile home lots and to increase the maximum number of lots that use the shared facilities of the park.

The bill amends s. 723.012(5), F.S., to permit the park owner to make improvements or changes to the facilities or services provided by the mobile home park without disclosing such improvements or changes in an amendment to the prospectus. Additionally, if property or lots are added to the mobile home park, the bill permits the park owner to amend the prospectus to provide additional facilities and services to the mobile home park of a type or kind determined by the park owner.

The bill amends s. 723.012(7), F.S., to require the prospectus to include improvements that are required upon purchase of the home to be performed by an approved tenant.

Mobile Home Owner's General Obligations

Present Situation

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner shall at all times:

- Comply with building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.
- Keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Effect of Proposed Changes

The bill amends s. 723.023, F.S., to require the mobile home owner to:

- Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

³⁸ Section 723.061, F.S., provides grounds for the termination of a rental agreement, including a termination due to nonpayment of rent, a violation of the park rules or of the rental agreement, or a change in land use.

Mobile Home Park Rent Increases

Present Situation

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller.³⁹ The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.⁴⁰

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement “in an amount deemed appropriate by the mobile home park owner.”⁴¹ The park owner must give affected mobile home owners and the board of directors of the homeowners’ association, if one has been formed, at least a 90-day notice of a lot rental increase.⁴²

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.⁴³ Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.⁴⁴ However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.⁴⁵

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.⁴⁶

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners’ association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations.⁴⁷ The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request.⁴⁸

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners’ association (if formed), and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase.⁴⁹ Current law does not specify that the five members of the committee must be mobile home

³⁹ Section 723.059(3), F.S.

⁴⁰ *Id.*

⁴¹ Section 723.059(4), F.S.

⁴² Section 723.037(1), F.S.

⁴³ Section 723.031(5), F.S.

⁴⁴ *Id.*

⁴⁵ Section 723.031(5)(c), F.S.

⁴⁶ *Id.*

⁴⁷ Section 723.037(1), F.S.

⁴⁸ *Id.*

⁴⁹ Section 723.037(4)(a), F.S.

owners in the park. At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.⁵⁰

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation.⁵¹ If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.⁵²

Effect of Proposed Changes

The bill amends s. 723.031(5), F.S., to require, upon the sale of a mobile home on a rented lot, the amount of a lot rental increase to be disclosed and agreed to by the purchaser by executing a rental agreement setting forth the new lot rental amount. Current law requires that such a disclosure and agreement must be in writing but does not specify that the written disclosure and agreement must be executed.

The bill amends s. 723.031(5)(c), F.S., to require ad valorem property taxes or non-ad valorem assessments be disclosed in the prospectus or rental agreement as a separate charge or a factor in order for a park owner to be deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments.

The bill amends s. 723.037(1), F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice.

The bill also amends s. 723.037(1), F.S., to provide that the requirement that the park owner must make available, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose.

The bill amends s. 723.037(4)(a), F.S., to provide that the committee designated to discuss a rent increase must consist of mobile home owners in the park. Under the bill, the committee must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

Replacing a Mobile Home

Present Situation

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner may not “site any size new or used mobile home and appurtenances on a mobile

⁵⁰ Section 723.037(4)(b), F.S.

⁵¹ Section 723.037(5)(a), F.S.

⁵² Section 723.0381, F.S.

home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park.”⁵³

Effect of Proposed Changes

The bill creates s. 723.041(5), F.S., to provide that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.

The bill creates s. 723.041(6), F.S., to provide that the regulation of the uniform firesafety standards established under s. 633.206, F.S., are not limited by this section. However, this section supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Park Owner Disclosures Prior to Residence

Present Situation

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S., which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.⁵⁴

In a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the division.⁵⁵ The prospectus must include a “description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.”⁵⁶

Effect of Proposed Changes

The bill amends s. 723.042, F.S., to provide that a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus as required under s. 723.012(7), F.S.

Purchasers of a Mobile Home within Mobile Home Park

Present Situation

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.⁵⁷

⁵³ Section 723.041(4), F.S.

⁵⁴ Section 723.011(2), F.S.

⁵⁵ Section 723.011(1), F.S.

⁵⁶ Section 723.012(7), F.S.

⁵⁷ Section 723.059(3), F.S.

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.⁵⁸

Effect of Proposed Changes

The bill amends s. 723.059(3), F.S., to provide that the purchaser of a mobile home on a rented lot must enter into a new rental agreement, including the prospectus and rules and regulations, with the park owner. The bill removes the right of a purchaser to assume the remainder of the seller's rental agreement as well as the right to rely on the terms of the prospectus delivered to the original recipient.

The bill amends s. 723.059(4), F.S., to require a mobile home park owner to disclose the lot rental amount to be charged for a new tenancy prior to the applicant paying a screening fee and applying for approval of the tenancy.

Termination of a Tenancy

Present Situation

Section 723.061, F.S., provides grounds for the termination of a rental agreement on the basis of:

- Nonpayment of rent;
- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Notice of an eviction must be posted on the premises and sent to the mobile home owner and tenant or occupant by certified or registered mail, return receipt requested.⁵⁹

Section 723.063, F.S., provides the process for a court action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof. The mobile homeowner may defend upon the grounds of a material noncompliance with any portion of ch. 723, F.S., or may raise any other defense, whether legal or equitable, which he or she may have.⁶⁰

If a park owner or a mobile home owner files a lawsuit based on the homeowner's nonpayment of rent, the mobile home owner must pay into the registry of the court that portion of the accrued rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court must notify the mobile home owner of this requirement. If the mobile home owner fails to pay the rent, or portion thereof, into the registry of the court, the mobile home owner waives the right to all defenses other than payment, and the park owner is entitled to an immediate default.⁶¹

⁵⁸ Section 723.059(4), F.S.

⁵⁹ Section 723.061(4), F.S.

⁶⁰ Section 723.063(1), F.S.

⁶¹ Section 723.063(2), F.S.

The court must advance a hearing on a park owner's claim of nonpayment of rent, if the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises. After a preliminary hearing, the court may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.⁶²

Effect of Proposed Changes

The bill amends s. 723.061(4), F.S., to delete the requirement that a notice of an eviction must be sent by certified or registered mail.

The bill creates s. 723.061(5), F.S., to provide that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's nonpayment of rent, conviction of a violation of a federal or state law or local ordinance that is detrimental to the health, safety, or welfare of other residents of the mobile home park, a violation of the park rules or of the rental agreement, or failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

However, a park owner's acceptance of any portion of a lot rental amount may constitute a waiver of the right to terminate the rental agreement or the right to bring a civil action for the noncompliance for any subsequent or continuing noncompliance. Any rent so received by the park owner must be accounted for at the final hearing.

The bill creates s. 723.061(6), F.S., to require a tenant who intends to defend against an action by the landlord for possession to comply with s. 723.063(2), F.S., and amends s. 723.063(2), F.S., to require the mobile home owner to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes. If the motion is not timely filed by the homeowner, the homeowner tenant is deemed to have waived all defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. If a motion to determine rent is filed, sworn documentation is required to support a tenant's allegation that the rental amount alleged in the complaint is erroneous.

The bill amends s. 723.063(3), F.S., to remove the condition that the park owner must be in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises before the park owner may apply to the court for disbursement of all or part of the funds or for a prompt final hearing. Under the bill, a park owner may file such a motion with the court when the home owner deposits the contested rent into the registry of the court.

⁶² Section 723.063(3), F.S.

Effective Date

The bill takes effect upon becoming a law.

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:**

The Revenue Estimating Conference has not performed a revenue impact conference for this bill.

The bill amends s. s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent sales tax is calculated on 50 percent of the sales price of the mobile home. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

B. Private Sector Impact:

Under the bill, a purchaser of a mobile home would pay a reduced sales tax, which would be calculated on 50 percent of the sales price instead of the actual sales price.

A mobile home dealer may also avoid the costs of having all mobile on the retail lot. The dealer is allowed under the bill to only have a model on the display lot.

A recreational vehicle dealer may avoid the costs of obtaining a garage insurance policy, if the dealer sells only park trailers.

C. Government Sector Impact:

The bill amends ss. 723.012(4) and (5), F.S., to permit a mobile home park owner to add lots to a mobile home park without homeowner consent and without amending an approved prospectus. According to the division, this would create uncertainty regarding the amount homeowners must pay in ad valorem taxes, as well as non-ad valorem assessments, since these costs are based on the proportionate share of affected mobile home lots.⁶³

The division collects annual fees on the number of mobile home spaces regulated by the division under ch. 723, F.S. If no amendment to the prospectus is required when adding property to the park, the division may not be able to correctly collect annual fees. This may impact proper fee collection, including the one dollar fee for the Florida Mobile Home Relocation Corporation.⁶⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Revenue, in order for a taxpayer to have their mobile home declared as real property, the local property appraiser must certify that the mobile home is permanently affixed to land owned by the taxpayer.⁶⁵

The department noted that the bill would allow a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating that they intend to permanently affix the mobile home to land and seek an “RP” sticker from the DHSMV for the mobile home in order for the mobile home to be taxed as real property. There is no process in the bill to verify that the purchaser has subsequently acted on that intention. If the mobile home is not permanently affixed to land and a “RP” sticker has not been obtained for it, the taxpayer will have failed to remit the sales tax on the mobile home and the property may not be properly assessed for local property taxes.⁶⁶

The bill amends ss. 723.012(4) and (5), F.S., to permit a park owner to add any improvement or change facilities or services provided by the park without amending the prospectus on file with the division and without disclosure to homeowners. In a park with more than one approved version of a prospectus, this could allow for inconsistencies in disclosures among the prospectuses in a mobile home park and confusion among homeowners.

⁶³ Department of Business and Professional Regulation, 2020 Bill Analysis for SB 818, Dec. 3, 2019 (on file with the Senate Committee on Innovation, Industry, and Technology).

⁶⁴ *Id.*

⁶⁵ Department of Revenue, 2020 Agency Legislative Bill Analysis, December 17, 2019 at page 4 (on file with the Committee on Innovation, Industry, and Technology).

⁶⁶ *Id.*

According to the department, adding lots without homeowner consent and without amending an approved prospectus may also make unclear the amount homeowners must pay in ad valorem taxes, as well as non-ad valorem assessments, because these costs are based on the proportionate share of affected mobile home lots. Additionally, the division collects annual fees on the number of mobile home spaces falling with the division's jurisdiction under ch. 723, F.S. If no amendment to the prospectus is required when adding property to the park or amending the prospectus to correctly disclose additional mobile home spaces, the division may not be able to correctly collect annual fees. This would have an impact on proper fee collection, and on the Florida Mobile Home Relocation Corporation, since \$1 of each mobile home space's annual fee is passed on to the Florida Mobile Home Relocation Corporation.⁶⁷

According to the department, the amendment to s. 723.042, F.S., is significant for non-prospectus parks, as it limits disclosure of required homeowner improvements to only parks requiring a prospectus, which conflicts with s. 723.013, F.S., requiring a written disclosure to mobile homeowners in parks that do not require a prospectus.⁶⁸

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.05, 212.06, 320.77, 320.771, 320.822, 320.8232, 367.022, 723.011, 723.012, 723.023, 723.031, 723.037, 723.041, 723.042, 723.059, 723.061, and 723.063.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/SB 818 by Innovation, Industry, and Technology on January 13, 2020:

The CS creates s. 367.022(14), F.S., to expand the current exemption from regulation by the Public Service Commission to an owner of a mobile home park operating both a mobile home park and a mobile home subdivision who provides water or wastewater service to a combination of both tenants and lot owners, provided the service is without specific compensation.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁷ *Supra*, note 64.

⁶⁸ *Id.*



399384

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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	.	
	.	

The Committee on Innovation, Industry, and Technology (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 368 - 384
and insert:

Section 7. Subsection (9) of section 367.022, Florida Statutes, is amended and subsection (14) is added to that section to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:



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(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

(14) The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in section 723.003, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 17 - 22

and insert:

manufactured homes; amending s. 367.022, F.S.;
revising an exemption from regulation for certain
water service resellers; exempting certain mobile home
park and mobile home subdivision owners from
regulation by the Florida Public Service Commission
relating to water and wastewater systems;



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER

16th District

COMMITTEES:

Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

December 9th, 2019

Honorable Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson,

I am writing to request that SB 818, Manufactured Housing, be placed on the agenda to be heard in the Innovation, Industry, and Technology Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a large, stylized circular flourish.

Ed Hooper

Cc: Staff Director, Booter Imhof
Administrative Assistant, Lynn Koon

REPLY TO:

- ☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



ANALYSIS

2020 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	<u>SB 818</u>
BILL TITLE:	<u>Manufactured Housing</u>
BILL SPONSOR:	<u>Sen. Hooper</u>
EFFECTIVE DATE:	<u>Upon becoming a law</u>

COMMITTEES OF REFERENCE

1) Innovation, Industry, and Technology
2) Finance and Tax
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	SB 998 (compare)
SPONSOR:	Sen. Hutson

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 3, 2019
LEAD AGENCY ANALYST:	Amelia Shekitka, CTMH
ADDITIONAL ANALYST(S):	Tom Coker, Technology Thomas Izzo, OGC Rules Tracy Dixon, Service Operations
LEGAL ANALYST:	Nick DuVal

FISCAL ANALYST:

Raleigh Close, Planning and Budget

POLICY ANALYSIS**1. EXECUTIVE SUMMARY**

The bill amends ch. 212 F.S., regarding sales tax on mobile home and the definition of fixtures, ch. 320, F.S., on mobile home dealer certification and standards for recreational vehicles repair, and ch. 367, F.S., exempting certain mobile home parks or subdivisions from regulation by the Florida Public Service Commission regarding wastewater systems and water service dealers. The bill also amends ch. 723, F.S., relating to mobile home tenancies, clarifying the significance of the rental agreement and the length of a tenancy, modifying required prospectus disclosures pertaining to increases in the number of lots in the park, the addition of park improvements, changes in services or facilities, and required homeowner improvements; codifying homeowner requirements regarding modifications to the home and removal of improvements when vacating the park; ending the assumption of tenancies by purchasers of homes from an existing homeowner in the park; clarifying the rental agreement to be signed by the purchaser seeking to become a tenant in the park; and modifying the eviction process.

2. SUBSTANTIVE BILL ANALYSIS**1. PRESENT SITUATION:**

The bill amends ch. 212, 320, and 367, F.S. An analysis is not provided as the Division of Condominiums, Timeshares, and Mobile Homes (division) does not have jurisdiction over these chapters.

Chapter 723, F.S., requires a park owner to deliver a prospectus with exhibits, which is a disclosure document, to homeowners and prospective homeowners. The prospectus includes disclosure of a future increase of lots that will share common facilities, a description of the common facilities and if the improvements are complete and if not the estimated date of completion. It also requires the prospectus to disclose improvements required to be installed by the homeowner as a condition of occupancy.

Chapter 723, F.S., requires homeowners to comply with health and building codes and park rules and regulations. It also requires mobile home purchasers to agree to lot rental amount increases in writing, with disclosures as to taxes and assessments.

A park owner is required to provide 90-day notices to existing homeowners regarding lot rental amount increases as well as any changes to park rules, or reduction of services. It also provides for meetings with the park owner to discuss lot rental increases or other changes.

Chapter 723, F.S., allows placement of any mobile home in accordance with zoning and other codes in effect at the time the park was established, unless expressly pre-empted by the DMV. It also requires a park owner to disclose required homeowner improvements.

Chapter 723, F.S., allows the purchaser of a home from an existing resident to assume the remainder of the seller's rental agreement and rely on the terms and conditions of the prospectus delivered to the original recipient at that lot.

Chapter 723, F.S., provides a process for noticing an eviction, as well as a process for a homeowner defense to the eviction.

2. EFFECT OF THE BILL:

The bill amends ch. 212, 320, and 367, F.S. An analysis is not provided as the division does not have jurisdiction over these chapters.

The bill provides that the rental agreement is the governing document of the tenancy and includes the prospectus and rules and regulations, as well as providing that tenancy is for the duration of the tenant's ownership of the mobile home.

The bill allows the park owner to amend the prospectus, without homeowner consent, to include additional property, as well as increase the number of lots to share the park facilities, add improvements, change facilities or services without amending the prospectus.

The bill provides that a prospectus must include a disclosure of required improvements by an approved tenant upon purchase of a home.

The bill requires that a homeowner must receive written approval from the park owner to make any exterior modification or addition to the home.

The bill provides that the increase of the lot rental amount is deemed agreed to by the execution of a new rental agreement.

Currently, ch. 723, F.S., provides that a notice of a lot rental increase can only be issued to a tenant within 90 days from the one year anniversary date for which the rental agreement was entered into. The bill amends this provision allowing a park owner to issue a 90-day lot rental increase notice to multiple tenants, within the same notice, regardless of the rental agreement anniversary date.

The bill allows the grandfathering of existing permitting and zoning requirements if the park was destroyed due to wind, water or other natural force. The bill also provides for increased fire safety standards in rebuilding a park with the exception of the existing permitting and zoning requirements.

The bill provides that the purchaser must enter into a new rental agreement, including the prospectus and rules and regulations, with the park owner and removes the right of a purchaser to assume the remainder of the seller's rental agreement as well as rely on the terms of the prospectus delivered to the original recipient.

The bill provides that a park owner does not waive the right to bring civil action if a park owner accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to eviction for conviction of certain crimes, violation of park rules, the rental agreement, or failure to qualify as a tenant.

The bill requires the tenant defending against eviction for the above reasons to pay into the court registry, or the failure to file a motion to determine the amount of rent to be paid within 5 days after the day of service, constitutes an absolute waiver of defense other than payment and the park owner is entitled to immediate default judgment.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	No, however the rules below will be impacted.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Rules 61B-30.001(4), 61B-30.002(4), (7) and (8), 61B-31.001(3) and (4), 61B-31.001(4), F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

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6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒

Revenues:	Possibly, annual fees paid to the division are based on the number of mobile home lots disclosed in a mobile home park. This bill allows the park owner to change the amount of lots without amending the prospectus which triggers notifying the division. See additional comments.
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A

Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

Division of Condominiums, Timeshares, and Mobile Homes: The change to s. 723.012(5), F.S., line 448, allows the park owner to add any improvement or change facilities or services provided by the park without being required to amend the prospectus on file with the division and without disclosure to homeowners. In a park with more than one approved prospectus, this could allow for inconsistencies in disclosures among the prospectuses.

Adding lots without homeowner consent and without amending an approved prospectus would also make unclear the amount homeowners would pay in ad valorem taxes, as well as non-ad valorem assessments, since these costs are based on the proportionate share of affected mobile home lots.

The division collects annual fees on the number of jurisdictional mobile home spaces under ch. 723, F.S. If no amendment is required when adding property to the park or amending the prospectus(s) to correctly disclose additional mobile home spaces, the division may not be able to correctly collect annual fees. This would have an impact on proper fee collection, but also on the Florida Mobile Home Relocation Corporation, since \$1 of each mobile home space's annual fee is passed on to the Florida Mobile Home Relocation Corporation.

The change to s. 723.042, F.S., line 639, is significant for non-prospectus parks, as it limits disclosure of required homeowner improvements to only parks requiring a prospectus, which conflicts with s. 723.013, F.S., requiring a written disclosure to mobile homeowners in parks that do not require a prospectus.

OGC Rules: No additional comments.

Division of Service Operations: The impact is indeterminate at this time because the Call Center may receive calls in reference to this issue.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No additional comment.
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2020 AGENCY LEGISLATIVE BILL ANALYSIS DEPARTMENT OF REVENUE

DL

BILL INFORMATION

BILL NUMBER:	SB 818
BILL TITLE:	Manufactured Housing
BILL SPONSOR:	Senator Hooper
EFFECTIVE DATE:	Upon becoming a law

COMMITTEES OF REFERENCE

1) Innovation, Industry, and Technology
2) Finance and Tax
3) Appropriations
4)
5)

CURRENT COMMITTEE

Innovation, Industry, and Technology

SIMILAR BILLS

BILL NUMBER:	None
SPONSOR:	

IDENTICAL BILLS

BILL NUMBER:	None
SPONSOR:	

PREVIOUS LEGISLATION

YEAR/BILL NUMBER/SPONSOR/LAST ACTION:
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BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 17, 2019
LEAD AGENCY ANALYST:	Debbie Longman (850) 617-8324

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.Section 1. Sales, storage, use tax. (pp. 3-10):**PRESENT SITUATION**

Mobile homes that are required to be registered, licensed, titled, or documented in Florida or by the U.S. Government are considered tangible personal property and are subject to sales tax at a rate of 6 percent of the sales price.

Currently, if a taxpayer purchases a mobile home and then has it affixed permanently to land owned by the taxpayer, they may apply to the Department for a declaration of real property (Form DR-402). As part of the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer. The Department of Highway Safety and Motor Vehicles issues "RP" (real property) decals after a mobile home has been declared real property.

If a taxpayer purchases land on which a mobile home is permanently affixed (i.e., already declared real property), then no sales tax is due on the mobile home as it was categorized as real property at the time of sale.

EFFECT OF THE BILL

The bill amends s. 212.05(1)(a)1.a., F.S., so that mobile homes considered tangible personal property will be assessed sales tax at a rate of 6 percent on 50 percent of the sales price of the mobile home.

The bill adds language stating that a mobile home is not subject to sales tax if it is intended to be permanently affixed to the land and the purchaser signs an affidavit stating they intend to seek a "RP" (real property) sticker pursuant to s. 320.0815(2), F.S.

Section 2. Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax. (pp. 10-11):**PRESENT SITUATION**

Mobile homes assessed as real property are exempt from sales tax. Mobile homes that are not qualified as real property are not exempt from sales tax.

EFFECT OF THE BILL

The bill adds language exempting mobile homes intended to be qualified and taxed as real property.

Section 3. through Section 17. (pp. 11-26): These sections do not affect the Department.Section 18. (p. 26): Provides that the bill becomes effective upon becoming law.

2. DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES? ☐ YES ☒ NO

If yes, explain:	
Rule(s) impacted (provide references to F.A.C., etc.):	

3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS? N/A

4. DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS? ☐ YES ☒ NO

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? ☐ YES ☒ NO

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

6. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government.
Expenditures: (<i>only expenditure impacts on the Department are identified</i>)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, BUT INSIGNIFICANT <input type="checkbox"/> UNABLE TO DETERMINE See Additional Comments section below if it is determined there is a significant operational impact to the Department.
Does the legislation contain an appropriation to the Department?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

8. **DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** The Department of Revenue does not conduct this analysis.
9. **DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. **STATUTE(S) AFFECTED:** Sections 212.05, 212.06, 320.77, 320.771, 320.822, 320.8232, 367.022, 723.011, 723.012, 723.023, 723.031, 723.037, 723.041, 723.042, 723.059, 723.061, 723.063, F.S.

11. **HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION?** ☐ YES ☒ NO

If no, go to #12. If yes:

A. Identify bill number or source.

B. Were issues/problems identified? ☐ YES ☐ NO

a. If yes, have they been resolved? ☐ YES ☐ NO If no, briefly explain.

C. Are new issues/problems created? ☐ YES ☐ NO If yes, briefly identify.

12. **DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT?** ☒ YES ☐ NO

If yes, describe administrative problems, technical errors, or other difficulties:

- Under current law, in order for a taxpayer to have their mobile home declared as real property, the local property appraiser must certify that the mobile home is permanently affixed to land owned by the taxpayer. This bill would allow a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating they intend to have the mobile home declared as real property after the initial purchase.
 - The bill provides no process for verification that the purchaser completes the required process necessary for the mobile home to be declared as real property.
 - If the mobile home is not declared as real property, and remains tangible personal property, then the purchaser has failed to remit sales/use tax on the mobile home. Additionally, the mobile home may not be properly assessed for local property taxes.

13. **OTHER:** None

Date: _____

Agency Affected: Public Service Commission
Program Manager: Katherine Pennington
Agency Contact: Katherine Pennington
Respondent: Adam Potts

Telephone: 413.6960
Telephone: 413.6960
Telephone: 413.6960
Telephone: 413.6596

RE: Section 7 of SB 818 and Section 10 of SB 998

I. SUMMARY:

This analysis addresses only Section 7 of SB 818 and Section 10 of SB 998, which are identical. This analysis is further limited to the portion of Section 7 of SB 818 and Section 10 of SB 998, which amend Subsection (5) of Section 367.022, F.S. Section 367.022 provides exemptions from the Public Service Commission's regulatory jurisdiction for certain providers of water and/or wastewater services. The amendment would expand the definition of landlord and tenant, creating confusion as to the meaning of those terms and creating an exemption that appears to be inconsistent with the in pari materia reading of Sections 367.011 (3), F.S. (declaring regulation of utilities to be in the public interest and a police power of the state for the protection of the public health, safety, and welfare), and 367.022, F.S. (setting out the exemptions from PSC regulation). When read together these statutes recognize unique circumstances that result in no apparent harm to the public health, safety, and welfare when there is no PSC regulatory oversight.

II. PRESENT SITUATION:

Currently, Subsection (5) of Section 367.022, F.S., exempts from the Commission's jurisdiction "[l]andlords providing [water and/or wastewater] service to their tenants without specific compensation for the service."

III. EFFECT OF PROPOSED CHANGES:

Section 7 of SB 818 and Section 10 of SB add the underlined language below to the current landlord-tenant exemption in Section 367.022(5), F.S.:

Landlords providing service to their tenants without specific compensation for the service. This exemption includes an owner of a mobile home park or a mobile home subdivision, as defined in s. 723.003, who is providing service to any person:

- (a) Leasing a lot;
- (b) Leasing a mobile home and a lot; or
- (c) Who owns a lot in a mobile home subdivision.

The proposed additional language would expand the application of the exemption to certain individuals, namely any person who owns a lot in a mobile home subdivision. There are three issues presented with the proposed language:

- (1) The proposed language is internally inconsistent with the plain and ordinary meaning of the terms landlord and tenant;
- (2) The proposed language does not reflect a circumstance, similar to the other exemptions contained within Section 367.022, F.S., which inherently results in no apparent harm to the public health, safety, and welfare of lot owners from naturally occurring monopolistic forces; and
- (3) The proposed language as drafted creates an internal ambiguity as to whether a mobile

home park or mobile home subdivision who is providing water and/or wastewater service to a lot owner has to provide the service without specific compensation (a requirement of the existing exemption).

The proposed additional language appears in part to conflict with the plain and ordinary definition of landlord and tenant, which forms the basis for the current exemption, language which remains unchanged. Black's Law Dictionary defines a landlord as "[s]omeone who rents a room, building, or piece of land to someone else." A lessor, which Black's deems a synonym to landlord, is "[s]omeone who conveys real or personal property by lease." A tenant is "[s]omeone who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement." Similarly, a lessee is "[s]omeone who has a possessory interest in real or personal property under a lease." Black's also defines the relationship between a landlord and a tenant. According to Black's, a "landlord-tenant relationship" is a relationship created by lease, either express or implied, and must include "a landlord's reversion, a tenant's estate, [and] transfer of possession and control of the premises." The underlying common feature of these definitions is that a landlord-tenant relationship is based on a lease agreement between two parties.

On the other hand, the relationship between the owner of a mobile home park or subdivision and the owner of a lot in that subdivision is not based on a lease. Nothing about owning a lot in a mobile home subdivision in itself creates a landlord-tenant relationship between the owner of the mobile home park or subdivision and the owner of a lot within a mobile home park or subdivision. Labeling this relationship as a landlord-tenant relationship, as the language in SB 818 and SB 998 does, creates an internal inconsistency within the current exemption. The current exemption exempts landlords providing service to their tenants without specific compensation for that service, but under this expansion it would expressly include parties that are neither landlords or tenants.

Secondly, the proposed additional language appears in part to be inconsistent with the other exemptions contained within Section 367.022, F.S., because it does not describe or contain unique inherent circumstances which in the absence of regulation pose no apparent harm to the public health, safety, and welfare.

As a general proposition, clean water and wastewater services are regulated under Chapter 367, F.S., because they are essential services and the Legislature has declared that the ability of Floridians to obtain these services at a reasonable price is necessary to maintain the public health, safety, and welfare. See Section 367.011(3), F.S. (declaring the regulation of water and wastewater utilities to be in the public interest as an exercise of the State's power to protect the public health, safety and welfare); see also Section 367.081, F.S. (giving the Commission authority to set rates for water and wastewater utilities); see also Section 367.0812, F.S. (pertaining to quality of water service as ratemaking criterion). The Legislature has chosen to regulate water and wastewater services because the free-market forces of competition between providers of similar services, which inherently incentivize those providers to offer quality services at competitive prices, are absent. This is due primarily to the prohibitively high level of investment required to provide those services. This leads to a naturally occurring monopolistic market where there is just one water and wastewater provider in any given area. Because water and wastewater services are essential (customers cannot forgo these services) and customers must purchase such services from a single provider, in the absence of regulation customers would be left to the mercy of the provider, who has little incentive to provide quality services at reasonable prices. In a naturally occurring monopolistic market, Commission regulation fills that void, substituting its regulatory oversight for the market forces that would normally exist in a free-market.

In Section 367.022, F.S., the Legislature has identified a number of limited and unique circumstances where there is no apparent harm to the public health, safety, and welfare resulting from the absence of regulation. In these circumstances, the Legislature has determined that Commission regulation is not required and has therefore exempted the water and/or wastewater

provider from Commission regulation. For example, the sale of bottled water is exempt from Commission regulation because it is regulated by another government agency—the United States Food and Drug Administration. See Section 367.022(1), F.S. Municipals and cooperatives are exempt because their customers exert control over the management of those organizations. See Section 367.022(2), (7), F.S. Also exempt from Commission regulation are “[l]andlords providing service to their tenants without specific compensation for the service.” See Section 367.022(5), F.S. Central to the definition of landlord and tenant and the landlord tenant relationship is the lease between the two of them; the lease is for a fixed period of time and finds its foundation in a mutual agreement between the parties. A tenant who voluntarily rents a lot along with certain services provided, which may include the provision of water and/or wastewater services, always retains the ability to change water and wastewater providers by moving out of a park at the end of the lease or by terminating the lease. This unique circumstance obviates the need for Commission regulation.

On the other hand, a mobile home park or subdivision owner and an owner of a lot within that subdivision do not have a lease agreement. The proposed additional language to expand this exemption to lot owners, as included in Section 7 of SB 818 and Section 10 of SB 998, is devoid of any unique or inherent circumstance that would result in no apparent harm to the public health, safety, and welfare to lot owners. Alternatively the proposed additional language would remove the Commission as a regulatory backstop for lot owners. In other words, in the absence of such an agreement or any Commission regulation, there is nothing to counteract the water and/or wastewater provider's natural monopolistic power. The lot owner essentially would be at the mercy of the mobile home park or subdivision owner and have no recourse for exorbitant rates, poor quality of service, or improper disconnections. Further, captive lot owners who have no recourse could find difficulty in being able to alienate or sell their property if property values decline as a result of exorbitant rates or poor quality of service. Without any built in unique circumstances contained within the exemption or any regulatory oversight to govern the monopolistic nature of the market forces that will be brought to bear on the provision of this essential service, the public health, safety, and welfare of lot owners are left unprotected. As such, it cannot be said that the proposed additional language would result in no apparent harm to the public health, safety, and welfare of lot owners.

Lastly, the proposed additional language creates an inherent internal inconsistency or ambiguity in the statute. The exemption, as it is currently written, requires the provision of services “without specific compensation,” but the proposed additional language as drafted creates an ambiguity as to whether a mobile home park or mobile home subdivision owner must provide the services “without specific compensation” to fit within the exception. This creates a question as to whether the specific inclusion of these mobile home park and mobile home subdivision owners subjects them to the “without specific compensation” clause or not. This question is an important one. The current requirement ensures that any provision of water and/or wastewater services is incidental to or part and parcel of the payment for other amenities lawfully provided by the landlord to the tenant as part of the landlord tenant agreement. The payment for these amenities, which may include the provision of water and/or wastewater services, is usually in the form of a flat fee. Under the current exemption, breaking out water and/or wastewater services for specific compensation would no longer qualify the provider for the current exemption and would then subject the landlord to Commission regulation of rates charged and quality of service. In other words, the provision of services without specific compensation ensures that compensation for water and wastewater services is part of the lease at the center of the landlord-tenant relationship, which creates the unique circumstance for the exemption that does no apparent harm to the public health, safety, and welfare.

For these three reasons, SB 818 and SB 998's changes to Section 367.022(5), F.S., will leave a group of Floridians—certain owners of lots in mobile home parks and/or subdivisions—with no meaningful protections when it comes to obtaining essential water and wastewater services.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

	<u>(FY 20-21)</u> <u>Amount / FTE</u>	<u>(FY 21-22)</u> <u>Amount / FTE</u>	<u>(FY 22-23)</u> <u>Amount / FTE</u>
A. Revenues			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
B. Expenditures			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

None.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

This change will likely generate litigation from current lot owners seeking to determine the applicability of the change in the law to their existing circumstances. For example, lot owners will likely litigate whether the without-specific-compensation clause applies to mobile home park or subdivision owners and whether the amended exemption is retroactive. These issues will have to be resolved by the courts absent further clarity from the Legislature.

D. Other:

None.

VIII. COMMENTS:

None.

Prepared by: Andrew King, Jennifer Crawford, Keith Hetrick

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

818
Bill Number (if applicable)

Topic Manufactured Housing

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy Dir

Address 126 N. Mills Ave
Street

Phone 407 376 4801

Orlando FL 32801
City State Zip

Email ida.eskamani@gnm.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

818
Bill Number (if applicable)

Topic Manufactured Housing

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title Attorney/lobbyist

Address 315 S. Calhoun St. Ste 830
Street

Phone 850 222 5702

Tallahassee FL 32308
City State Zip

Email lkillinger@lw-kw.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Manufactured Housing Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

818
Bill Number (if applicable)

Topic MANUFAC

Amendment Barcode (if applicable)

Name Jesse James

Job Title FMO POLITICAL ADVOCACY CHAIRMAN

Address 5506 PARADISE DR.
Street

Phone 727-271-9565

NEWPORT RICHEY FL 34653
City State Zip

Email jessejamesfmo@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FEDERATION OF MANUFACTURED HOMESOWNERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Speak First
Please

11/13/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

818

Bill Number (if applicable)

Topic Manufactured Home Bill

Amendment Barcode (if applicable)

Name Jerry Durham

Job Title President, Federation of Manufactured Home Owners of Florida, Inc.

Address 1101 S Belcher Ste B

Phone 727-530-7539

Street

Largo

City

FL

State

33777

Zip

Email jerryh.durham@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Homeowners in Land Leased Communities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-2020
Meeting Date

818
Bill Number (if applicable)

Topic MANUFACTURED HOUSING

Amendment Barcode (if applicable)

Name JIM AYOTTE

Job Title EXECUTIVE DIRECTOR

Address 1284 TYBERLONE ROAD
Street

Phone 850-907-9111

TALLAHASSEE FL 32312
City State Zip

Email JAYOTTE@FMHA.ORG

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA MANUFACTURED HOUSING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	SB 818
FINAL ACTION:	Favorable with Committee Substitute
MEETING DATE:	Monday, January 13, 2020
TIME:	1:00—3:00 p.m.
PLACE:	110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and
Senator Hooper

580-02224-20

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A bill to be entitled

An act relating to manufactured housing; amending s. 212.05, F.S.; reducing the percentage of the sales price of certain mobile homes which is subject to sales tax; providing a sales tax exemption for certain mobile homes; amending s. 212.06, F.S.; revising the definition of the term "fixtures" to include certain mobile homes; amending s. 320.77, F.S.; revising a certification requirement for mobile home dealer applicants relating to the applicant's business location; amending s. 320.771, F.S.; exempting certain recreational vehicle dealer applicants from a garage liability insurance requirement; amending s. 320.822, F.S.; revising the definition of the term "code"; amending s. 320.8232, F.S.; revising applicable standards for the repair and remodeling of mobile and manufactured homes; amending s. 367.022, F.S.; revising an exemption for certain water service resellers from regulation by the Florida Public Service Commission relating to water and wastewater systems; exempting certain mobile home park and mobile home subdivision owners from such regulation; amending s. 723.011, F.S.; providing construction relating to rental agreements and tenancies; providing that a mobile home owner, to become an approved tenant, may be required to install permanent improvements as disclosed in the mobile home park owner's prospectus; amending s. 723.012, F.S.; authorizing mobile home park owners to make certain prospectus amendments;

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30 providing that certain improvements and changes may
31 be, but are not required to be, disclosed by amendment
32 to the prospectus; authorizing park owners to amend
33 prospectuses to provide certain additional facilities
34 and services to the mobile home park under certain
35 circumstances; conforming a provision to changes made
36 by the act; amending s. 723.023, F.S.; adding general
37 obligations for mobile home owners; amending s.
38 723.031, F.S.; specifying a requirement for disclosing
39 and agreeing to a mobile home lot rental increase;
40 revising construction relating to a park owner's
41 disclosure of certain taxes and assessments; amending
42 s. 723.037, F.S.; authorizing mobile home park owners
43 to give notice of lot rental increases for multiple
44 anniversary dates in one notice; providing
45 construction; specifying the composition of a certain
46 negotiating committee; specifying the lot rental
47 amount increases the committee must address in
48 meetings with the park owner or subdivision developer;
49 amending s. 723.041, F.S.; providing that a mobile
50 home park damaged or destroyed due to natural forces
51 may be rebuilt with the same density as previously
52 approved, permitted, or built; providing construction;
53 amending s. 723.042, F.S.; conforming a provision to
54 changes made by the act; amending s. 723.059, F.S.;
55 deleting certain purchasers' rights to assume the
56 remainder of a rental agreement term; requiring
57 certain purchasers to enter into a new lot rental
58 agreement with the park owner; revising requirements

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for the disclosure of lot rental amounts for new tenancies; amending s. 723.061, F.S.; revising a requirement for mailing eviction notices; specifying the waiver and nonwaiver of certain rights of the park owner under certain circumstances; requiring the accounting at final hearing of rents received; requiring a tenant defending certain actions by a landlord to comply with certain requirements; amending s. 723.063, F.S.; revising procedures and requirements for mobile home owners, and revising construction, relating to actions for rent or possession; revising conditions under which a park owner may apply to a court for disbursement of certain funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on

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each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type ~~that~~ which is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this paragraph. A mobile home shall be assessed sales tax at a rate of 6 percent on 50 percent of the sales price of the mobile home, if subject to sales tax as tangible personal property. However, a mobile home is not subject to sales tax if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek an "RP" series sticker pursuant to s. 320.0815(2). The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price ~~that~~ which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the

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117 parties to the sale have provided to the tax collector an
118 affidavit signed by each party, or other substantial proof,
119 stating the actual sales price. Any party to such sale who
120 reports a sales price less than the actual sales price is guilty
121 of a misdemeanor of the first degree, punishable as provided in
122 s. 775.082 or s. 775.083. The department shall collect or
123 attempt to collect from such party any delinquent sales taxes.
124 In addition, such party shall pay any tax due and any penalty
125 and interest assessed plus a penalty equal to twice the amount
126 of the additional tax owed. Notwithstanding any other provision
127 of law, the Department of Revenue may waive or compromise any
128 penalty imposed pursuant to this subparagraph.

129 2. This paragraph does not apply to the sale of a boat or
130 aircraft by or through a registered dealer under this chapter to
131 a purchaser who, at the time of taking delivery, is a
132 nonresident of this state, does not make his or her permanent
133 place of abode in this state, and is not engaged in carrying on
134 in this state any employment, trade, business, or profession in
135 which the boat or aircraft will be used in this state, or is a
136 corporation none of the officers or directors of which is a
137 resident of, or makes his or her permanent place of abode in,
138 this state, or is a noncorporate entity that has no individual
139 vested with authority to participate in the management,
140 direction, or control of the entity's affairs who is a resident
141 of, or makes his or her permanent abode in, this state. For
142 purposes of this exemption, either a registered dealer acting on
143 his or her own behalf as seller, a registered dealer acting as
144 broker on behalf of a seller, or a registered dealer acting as
145 broker on behalf of the purchaser may be deemed to be the

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selling dealer. This exemption shall not be allowed unless:

a. The purchaser removes a qualifying boat, as described in sub-subparagraph f., from the state within 90 days after the date of purchase or extension, or the purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The purchaser removes the aircraft from the state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in the state solely to remove it from the state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

b. The purchaser, within 30 days from the date of departure, provides the department with written proof that the purchaser licensed, registered, titled, or documented the boat or aircraft outside the state. If such written proof is unavailable, within 30 days the purchaser shall provide proof that the purchaser applied for such license, title, registration, or documentation. The purchaser shall forward to

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the department proof of title, license, registration, or documentation upon receipt;

c. The purchaser, within 10 days of removing the boat or aircraft from Florida, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of Florida. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 5 days of the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the purchaser attesting that he or she has read the provisions of this section;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. ~~Unless~~ The nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the boat is repaired or altered, and within 20 days after completion of the repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in

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advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the extension decal shall cost \$425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from the state, or defaces, changes, modifies, or alters a decal in a manner

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affecting its expiration date before its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce the provisions of this subparagraph.

If the purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months from the date of departure, except as provided in s. 212.08(7)(fff), or if the purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the purchaser shall be liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2).

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The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

Section 2. Paragraph (b) of subsection (14) of section 212.06, Florida Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(14) For the purpose of determining whether a person is improving real property, the term:

(b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner:

1. Property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except the term includes mobile homes assessed as real property or intended to be qualified and taxed as real property pursuant to s. 320.0815(2).

2. ~~or~~ Industrial machinery or equipment.

For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property

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to which it is attached.

Section 3. Paragraph (h) of subsection (3) of section 320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(h) Certification by the applicant:

1. That the location is a permanent one, not a tent or a temporary stand or other temporary quarters.

2. ~~and~~, Except in the case of a mobile home broker, that the location affords sufficient ~~unoccupied~~ space to display ~~store all mobile homes offered and displayed~~ for sale. A space to display a manufactured home as a model home is sufficient to satisfy this requirement. ~~and that~~ The location must be ~~is~~ a suitable place in which the applicant can in good faith carry on business and keep and maintain books, records, and files necessary to conduct such business, which must ~~will~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees.

This paragraph does ~~subsection shall~~ not preclude a licensed mobile home dealer from displaying and offering for sale mobile homes in a mobile home park.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the

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applicant until it is satisfied that the facts set forth in the application are true.

Section 4. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 5. Paragraph (c) of subsection (2) of section 320.822, Florida Statutes, is amended to read:

320.822 Definitions; ss. 320.822-320.862.—In construing ss. 320.822-320.862, unless the context otherwise requires, the following words or phrases have the following meanings:

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(2) "Code" means the appropriate standards found in:

(c) The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code.

Section 6. Subsection (2) of section 320.8232, Florida Statutes, is amended to read:

320.8232 Establishment of uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.—

(2) The Mobile and Manufactured Home ~~provisions of the~~ Repair and Remodeling Code must be a uniform code, must ~~shall~~ ensure safe and livable housing, and may ~~shall~~ not be more stringent than those standards required to be met in the manufacture of mobile homes. Such code must ~~provisions shall~~ include, ~~but not be limited to,~~ standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. All repairs and remodeling of mobile and manufactured homes must be performed in accordance with department rules.

Section 7. Subsection (9) of section 367.022, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

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378 (14) The owner of a mobile home park operating both as a
379 mobile home park and a mobile home subdivision, as those terms
380 are defined in s. 723.003, who provides service within the park
381 and subdivision to a combination of both tenants and lot owners,
382 provided that the service to tenants is without specific
383 compensation.

384 Section 8. Subsections (3) and (4) of section 723.011,
385 Florida Statutes, are amended to read:

386 723.011 Disclosure prior to rental of a mobile home lot;
387 prospectus, filing, approval.—

388 (3) The prospectus or offering circular, together with its
389 exhibits, is a disclosure document intended to afford protection
390 to homeowners and prospective homeowners in the mobile home
391 park. The purpose of the document is to disclose the
392 representations of the mobile home park owner concerning the
393 operations of the mobile home park. The rental agreement,
394 including the prospectus and rules and regulations, establishes
395 the terms and conditions of a homeowner's tenancy. The tenancy
396 must be for the duration of the tenant's ownership of the mobile
397 home, with a right of survivorship by the tenant's surviving
398 spouse, unless terminated pursuant to s. 723.061.

399 (4) With regard to a tenancy in existence on the effective
400 date of this chapter, the prospectus or offering circular
401 offered by the mobile home park owner must ~~shall~~ contain the
402 same terms and conditions as rental agreements offered to all
403 other mobile home owners residing in the park on the effective
404 date of this act, excepting only rent variations based upon lot
405 location and size, and may ~~shall~~ not require any mobile home
406 owner to install any permanent improvements, except that the

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mobile home owner, to become an approved tenant, may be required
to install permanent improvements to the mobile home as
disclosed in the prospectus.

Section 9. Paragraph (c) of subsection (4) and subsections
(5) and (7) of section 723.012, Florida Statutes, are amended to
read:

723.012 Prospectus or offering circular.—The prospectus or
offering circular, which is required to be provided by s.
723.011, must contain the following information:

(4) Beginning on the first page of the text, the following
information:

(c) A description of the mobile home park property,
including, but not limited to:

1. The number of lots in each section, the approximate size
of each lot, the setback requirements, and the minimum
separation distance between mobile homes as required by law.

2. The maximum number of lots that will use shared
facilities of the park; and, if the maximum number of lots will
vary, a description of the basis for variation. A mobile home
park owner may amend the prospectus to include additional
property and mobile home lots and to increase the maximum number
of lots that use the shared facilities of the park.

(5) A description of the recreational and other common
facilities, if any, that will be used by the mobile home owners,
including, but not limited to:

(a) The number of buildings and each room thereof and its
intended purposes, location, approximate floor area, and
capacity in numbers of people.

(b) Each swimming pool, as to its general location,

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approximate size and depths, and approximate deck size and capacity and whether heated.

(c) All other facilities and permanent improvements that ~~which~~ will serve the mobile home owners.

(d) A general description of the items of personal property available for use by the mobile home owners.

(e) A general description of the days and hours that facilities will be available for use.

(f) A statement as to whether all improvements are complete and, if not, their estimated completion dates.

Any improvement or change to the facilities or services provided by the mobile home park may be, but is not required to be, disclosed by the park owner in an amendment to the prospectus. If the park owner adds property or lots to the mobile home park which were not disclosed in the owner's prospectus, the park owner may amend the prospectus to provide additional facilities and services to the mobile home park of a type or kind determined by the park owner.

(7) A description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park, including improvements that are required upon purchase of the home by an approved tenant.

Section 10. Section 723.023, Florida Statutes, is amended to read:

723.023 Mobile home owner's general obligations.—A mobile home owner shall ~~at all times~~:

(1) At all times comply with all obligations imposed on

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mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

(2) At all times keep the mobile home lot ~~that~~ ~~which~~ he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.

(3) At all times comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

(4) Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.

(5) When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

Section 11. Subsection (5) of section 723.031, Florida Statutes, is amended to read:

723.031 Mobile home lot rental agreements.—

(5) The rental agreement must ~~shall~~ contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement must ~~shall~~ be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable; ~~it~~ provided that, pursuant to s. 723.059(4), the amount of the lot rental increase is

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disclosed and agreed to by the purchaser by executing a rental
agreement setting forth the new lot rental amount, ~~in writing~~.

An increase in lot rental amount shall not be arbitrary or
discriminatory between similarly situated tenants in the park. A
lot rental amount may not be increased during the term of the
lot rental agreement, except:

(a) When the manner of the increase is disclosed in a lot
rental agreement with a term exceeding 12 months and which
provides for such increases not more frequently than annually.

(b) For pass-through charges as defined in s. 723.003.

(c) That a charge may not be collected which results in
payment of money for sums previously collected as part of the
lot rental amount. The provisions hereof notwithstanding, the
mobile home park owner may pass on, at any time during the term
of the lot rental agreement, ad valorem property taxes, non-ad
valorem assessments, and utility charges, or increases of
either, provided that the ad valorem property taxes, non-ad
valorem assessments, and utility charges are not otherwise being
collected in the remainder of the lot rental amount and provided
further that the passing on of such ad valorem taxes, non-ad
valorem assessments, or utility charges, or increases of either,
was disclosed prior to tenancy, was being passed on as a matter
of custom between the mobile home park owner and the mobile home
owner, or such passing on was authorized by law. A park owner is
deemed to have disclosed the passing on of ad valorem property
taxes and non-ad valorem assessments if ad valorem property
taxes or non-ad valorem assessments were disclosed as a separate
charge or a factor for increasing the lot rental amount in the
prospectus or rental agreement. Such ad valorem taxes, non-ad

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valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term "non-ad valorem assessments" has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner's payment of the charge after the date such charges become delinquent. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

(d) If a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

Section 12. Subsection (1) and paragraph (a) of subsection (4) of section 723.037, Florida Statutes, are amended to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-

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day notice. The notice must ~~shall~~ identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. However, this requirement does not authorize the release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose. The home owner's right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge must ~~shall~~ state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(4) (a) A committee, not to exceed five in number, consisting of mobile home owners in the park and designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the

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581 park owner shall meet, at a mutually convenient time and place
582 no later than 60 days before the effective date of the change to
583 discuss the reasons for the increase in lot rental amount,
584 reduction in services or utilities, or change in rules and
585 regulations. The negotiating committee shall make a written
586 request for a meeting with the park owner or subdivision
587 developer to discuss those matters addressed in the 90-day
588 notice, and may include in the request a listing of any other
589 issue, with supporting documentation, that the committee intends
590 to raise and discuss at the meeting. The committee shall address
591 all lot rental amount increases that are specified in the notice
592 of lot rental amount increase, regardless of the effective date
593 of the increase.

594
595 This subsection is not intended to be enforced by civil or
596 administrative action. Rather, the meetings and discussions are
597 intended to be in the nature of settlement discussions prior to
598 the parties proceeding to mediation of any dispute.

599 Section 13. Subsections (5) and (6) are added to section
600 723.041, Florida Statutes, to read:

601 723.041 Entrance fees; refunds; exit fees prohibited;
602 replacement homes.—

603 (5) A mobile home park that is damaged or destroyed due to
604 wind, water, or other natural force may be rebuilt on the same
605 site with the same density as was approved, permitted, or built
606 before being damaged or destroyed.

607 (6) This section does not limit the regulation of the
608 uniform firesafety standards established under s. 633.206, but
609 supersedes any other density, separation, setback, or lot size

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610 regulation adopted after initial permitting and construction of
611 the mobile home park.

612 Section 14. Section 723.042, Florida Statutes, is amended
613 to read:

614 723.042 Provision of improvements.—A ~~No~~ person may not
615 ~~shall~~ be required by a mobile home park owner or developer, as a
616 condition of residence in the mobile home park, to provide any
617 improvement unless the requirement is disclosed pursuant to s.
618 723.012(7) ~~s. 723.011~~ prior to occupancy in the mobile home
619 park.

620 Section 15. Section 723.059, Florida Statutes, is amended
621 to read:

622 723.059 ~~Rights of Purchaser of a mobile home within a~~
623 mobile home park.—

624 (1) The purchaser of a mobile home within a mobile home
625 park may become a tenant of the park if such purchaser would
626 otherwise qualify with the requirements of entry into the park
627 under the park rules and regulations, subject to the approval of
628 the park owner, but such approval may not be unreasonably
629 withheld. The purchaser of the mobile home may cancel or rescind
630 the contract for purchase of the mobile home if the purchaser's
631 tenancy has not been approved by the park owner 5 days before
632 the closing of the purchase.

633 (2) Properly promulgated rules may provide for the
634 screening of any prospective purchaser to determine whether or
635 not such purchaser is qualified to become a tenant of the park.

636 (3) The purchaser of a mobile home who intends to become
637 ~~becomes~~ a resident of the mobile home park in accordance with
638 this section shall enter a new tenancy by entering into a new

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lot rental agreement, including the prospectus and rules and regulations, with the park owner ~~has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.~~

(4) The mobile home park owner shall disclose the lot rental amount to be charged for a new tenancy prior to the applicant paying a screening fee and applying for approval for the tenancy ~~However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and this act.~~

(5) Lifetime leases and the renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the mobile home lot rental agreement or unless the transferee is the home owner's spouse. The right to an assumption of the lease by a spouse may be exercised only one time during the term of that lease.

Section 16. Subsection (4) of section 723.061, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

723.061 Eviction; grounds, proceedings.—

(4) Except for the notice to the officers of the

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homeowners' association under subparagraph (1)(d)1., any notice required by this section must be in writing~~7~~, and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by United States ~~certified or registered~~ mail, ~~return receipt requested~~, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice is ~~shall be~~ deemed given 5 days after the date of postmark.

(5) If the park owner accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e), the park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at final hearing.

(6) A tenant who intends to defend against an action by the landlord for possession for noncompliance under paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) shall comply with s. 723.063(2).

Section 17. Section 723.063, Florida Statutes, is amended to read:

723.063 Defenses to action for rent or possession; procedure.—

(1) (a) In any action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof, the mobile home owner may defend upon the ground of a material noncompliance with any portion of this chapter or may raise any

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697 other defense, whether legal or equitable, which he or she may
698 have.

699 **(b)** The defense of material noncompliance may be raised by
700 the mobile home owner only if 7 days have elapsed after he or
701 she has notified the park owner in writing of his or her
702 intention not to pay rent, or a portion thereof, based upon the
703 park owner's noncompliance with portions of this chapter,
704 specifying in reasonable detail the provisions in default. A
705 material noncompliance with this chapter by the park owner is a
706 complete defense to an action for possession based upon
707 nonpayment of rent, or a portion thereof, and, upon hearing, the
708 court or the jury, as the case may be, shall determine the
709 amount, if any, by which the rent is to be reduced to reflect
710 the diminution in value of the lot during the period of
711 noncompliance with any portion of this chapter. After
712 consideration of all other relevant issues, the court shall
713 enter appropriate judgment.

714 (2) In any action by the park owner or a mobile home owner
715 brought under subsection (1), the mobile home owner shall pay
716 into the registry of the court that portion of the accrued rent,
717 if any, relating to the claim of material noncompliance as
718 alleged in the complaint, or as determined by the court. The
719 court shall notify the mobile home owner of such requirement.
720 The failure of the mobile home owner to pay the rent, ~~or portion~~
721 ~~thereof~~, into the registry of the court or to file a motion to
722 determine the amount of rent to be paid into the registry within
723 5 days, excluding Saturdays, Sundays, and legal holidays, after
724 the date of service of process constitutes an absolute waiver of
725 the tenant's defenses other than payment, and the landlord is

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726 entitled to an immediate default judgment for removal of the
727 tenant with a writ of possession to issue without further notice
728 or hearing thereon. If a motion to determine rent is filed, the
729 movant must provide sworn documentation in support of his or her
730 allegation that the rent alleged in the complaint is erroneous
731 ~~as required herein constitutes an absolute waiver of the mobile~~
732 ~~home owner's defenses other than payment, and the park owner is~~
733 ~~entitled to an immediate default.~~

734 (3) When the mobile home owner has deposited funds into the
735 registry of the court in accordance with ~~the provisions of this~~
736 ~~section and the park owner is in actual danger of loss of the~~
737 ~~premises or other personal hardship resulting from the loss of~~
738 ~~rental income from the premises,~~ the park owner may apply to the
739 court for disbursement of all or part of the funds or for prompt
740 final hearing, whereupon the court shall advance the cause on
741 the calendar. The court, after preliminary hearing, may award
742 all or any portion of the funds on deposit to the park owner or
743 may proceed immediately to a final resolution of the cause.

744 Section 18. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL: SB 1128

INTRODUCER: Senator Diaz

SUBJECT: Vacation Rentals

DATE: January 13, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2. _____	_____	<u>CM</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 1128 preempts all regulation of vacation rentals to the state, including, but not limited to, the inspection and licensing of vacation rentals. A vacation rental is a unit in a condominium or cooperative or a single, two, three, or four family house that is rented to guests more than 3 times a year for periods of less than 30 days or one calendar month whichever is shorter.

Under the bill, a local government may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. Under current law, local governments may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals. A local law, ordinance, or regulation adopted on or before June 1, 2011, is exempt from this prohibition. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department).

The bill also preempts the regulation of advertising platforms to the state. The bill excludes from the term “advertising platform” a multiple listing service or an online or print advertisement for rental of a transient public lodging establishment by a licensed real estate broker or sales associate.

The bill requires 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 taxes must be paid for each rental of the property as a vacation rental.

Additionally, the bill requires an advertising platform and a person who places an advertisement for the rental of a vacation rental to list the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers. The advertising platform must remove from public view any advertisement or listing that fails to display a valid

vacation rental license number. An advertising platform is a person that advertises electronically or in print a transient public lodging establishment for rent for transient occupancy. It also can include maintaining a marketplace or reservation or payment system.

The bill provides that it is the Legislature's intent that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' association.

The bill takes effect upon becoming law. However, the provisions relating to advertising platforms take effect January 1, 2021.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and nontransient public lodging establishments.¹ 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.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "nontransient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

¹ Section 509.013(4)(a), F.S.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

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

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

any unit or group of units in a condominium, cooperative, or timeshare plan 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 is not a timeshare project.

The department licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less

² Section 509.242(1), F.S.

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

units collectively.”⁴ The division does not license or regulate the rental of individual rooms within a dwelling unit under the roominghouse and boardinghouse exclusion from the definition of public lodging establishment under s. 509.013(b)9., F.S.⁵

The 48,226 public lodging establishments licensed by the division are distributed as follows:⁶

- Hotels – 2,104 licenses;
- Motels – 2,509 licenses;
- Nontransient apartments – 18,505 licenses;
- Transient apartments – 935 licenses;
- Bed and Breakfast Inns – 267 licenses;
- Vacation rental condominiums – 8,066 licenses;
- Vacation rental dwellings – 15,815 licenses; and
- Vacation rental timeshare projects – 20 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but transient and nontransient apartments must be inspected at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division.⁷ The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2018-2019, the division received 228 consumer complaints regarding vacation rentals. In response to the complaints, the division confirmed a violation for 14 of the complaints.⁸

The division’s inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁹

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license 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. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

⁵ 2020 Agency Legislative Bill Analysis for SB 1128, Department of Business and Professional Regulation, January 7, 2020 at page 2.

⁶ Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, Jan. 1, 2020. A copy of the report is available at:

<http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf> (last visited Jan. 8, 2020).

⁷ Section 509.032(2)(a), F.S.

⁸ *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, Department of Business and Professional Regulation, at page 8. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf (last visited Jan. 8, 2020).

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at:

<https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Jan. 3, 2020).

The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.¹¹

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.¹²

Preemption

Section 509.032(7)(a), F.S., provides that “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.”

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹³

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.¹⁴

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any 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.¹⁵

¹⁰ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹¹ Section 509.032(2)(d), F.S.

¹² See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at:

https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694 (last visited Jan. 3, 2020).

¹³ Section 509.032(7)(a), F.S.

¹⁴ See s. 163.3164(43), F.S., provides that the state land planning agency is the Department of Economic Opportunity.

¹⁵ Chapter 2011-119, Laws of Fla.

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁶

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁷ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use or occupancy.”¹⁸

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.¹⁹ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.²⁰

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.²¹ The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.²²

¹⁶ *Id.*

¹⁷ Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.

¹⁸ *Id.*

¹⁹ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013. On file with the Senate Committee on Innovation, Industry, and Technology.

²⁰ Florida Attorney General, AGO 2014-09, Vacation Rentals - Municipalities - Land Use, November 13, 2014, available at: <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Jan. 3, 2020).

²¹ Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, on file with the Senate Committee on Innovation, Industry, and Technology.

²² *Id.*

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.²³ The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt all regulation of vacation rentals and advertising platforms to the state.

Section 509.032(7)(b)1., F.S., provides legislative findings, including the finding that vacation rentals play a significant, unique, and critical role in Florida’s tourism industry, a role that is different from other types of public lodging establishments.

Under the bill, the regulation of vacation rentals, including inspections and licensing, is expressly preempted to the state.

The bill allows a local government to regulate activities that arise when a property is used as a vacation rental, if the regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental or as a long-term rental under ch. 83, F.S.

The bill specifically prohibits a local law, ordinance, or regulation that requires the inspection or licensing of vacation rentals.

The bill amends the definition “vacation rental” in s. 509.242(1)(c), F.S., to replace the term “any” with the terms “a” and “in an”. According the department, the revised definition would include the rental of a single, bedroom, or group of rooms within a single house or dwelling, and would require units previously exempt from division licensing to now obtain a vacation rental license.²⁴

Definition of the term “Advertising Platform”

The bill creates s. 509.013(17), F.S., to define the term “advertising platform.” Under the bill, an advertising platform:

- Provides an online application, software, website, system, or print advertisement through which a transient public lodging establishment 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; or

²³ Florida Attorney General, AGO 2019-07, Vacation rentals, municipalities, grandfather provisions, August 16, 2019, available at: <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited January 8, 2020).

²⁴ See note 5, *supra* at page 7.

- 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.

The term “advertising platform” does not include a multiple listing service or an online or print advertisement for rental of a transient public lodging establishment by a licensed real estate broker or sales associate. However, a licensed real estate broker or sales associate must comply with s. 509.243(3), F.S., which requires the removal from public view of a listing for the rental of a vacation rental that fails to display a valid license number issued by the division.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require 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.

Requirements for Advertising Platforms

Effective January 1, 2021, the bill creates s. 509.243, F.S., to provide requirements, including a reporting requirement, for an advertising platform. Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental include in the advertisement:
 - The vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers.
 - 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.
- Display the license number and applicable tax numbers, but the advertising platform is not required to verify such information.
- 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 specified information, including the Internet 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.

The bill provides a process for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the department is required to seek enforcement of the

notice for a penalty pursuant to s. 120.569, F.S.,²⁵ it is entitled to collect its attorney fees and costs, together with any cost of collection.

Community Associations

The bill provides that it is not the Legislature's intent that the application of vacation rental provisions created by the bill supersede any current or future declaration or declaration of condominium, cooperative documents, or declaration of covenants or declaration in a homeowners' association.

Effective Date

The bill takes effect upon becoming law. However, the provisions of s. 509.243, F.S., relating to advertising platforms, take effect January 1, 2021.

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:

Local governments may see an increase in local tourist development taxes.²⁶

State government may see an increase in sales taxes and an indeterminate amount of licensing revenue due to the new definition of vacation rentals.²⁷

²⁵ Section 120.569, F.S., provides the administrative procedures for resolution of agency decisions which affect substantial interests before the Division of Administrative Hearings.

²⁶ See note 5, *supra* at page 7.

²⁷ *Id.*

B. Private Sector Impact:

According to the department, rental properties previously exempt from licensure as a vacation rental under the s. 509.013(4)(b)9, F.S., for roominghouse, boardinghouses or other living or sleeping facilities, would now require a vacation rental license.²⁸

C. Government Sector Impact:

A local government may have an indeterminate decrease of revenue if the local government currently requires a vacation rental license or registration fee. Under the bill, a local government may not require a vacation rental to register or obtain such a license.

The department estimates a cost of \$448,926 (\$412,005 recurring) for 6 FTE. Indeterminate possible additional costs.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.241, and 509.242.

This bill creates section 509.243 of the 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁸ *Id.*

²⁹ *Id.*



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/13/2020	.	
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The Committee on Innovation, Industry, and Technology (Farmer) recommended the following:

Senate Amendment (with title amendment)

Between lines 201 and 202
insert:

Section 6. Section 509.245, Florida Statutes, is created to read:

509.245 Certain registration for public lodging establishments.—A sexual offender as defined in s. 944.606(1), at least 48 hours before arrival at a public lodging establishment as defined in s. 509.242, shall register at the



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sheriff's office in the county where the sexual offender is
temporarily residing in accordance with the process set forth in
s. 775.21, regardless of his or her planned length of stay at
the public lodging establishment. A property owner or operator
who has been notified that a sexual offender is staying at his
or her property or is staying within 1,000 feet of his or her
property must notify all other guests staying at the property of
the presence of a sexual offender. The division may fine,
suspend, or revoke the license of any public lodging
establishment owner when the rental is not in compliance with
the requirements of this section. Each online advertisement or
posting of a public lodging establishment as defined in s.
509.242 must prominently display the complete physical street
address of the public lodging establishment accompanied by a
link to the website created by the Department of Law Enforcement
pursuant to s. 943.043 to notify the public of information
regarding sexual predators and sexual offenders. Such
advertisement or posting must also prominently display a link to
s. 943.0435, and substantially the following statement: "Every
sexual offender and sexual predator intending to stay at a
location in Florida is required by Florida law to register in
accordance with s. 509.245, Florida Statutes."

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 39

and insert:

circumstances; creating s. 509.245, F.S.; requiring
sexual offenders to register with the local sheriff's



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40 office within a specified timeframe before arrival at
41 a public lodging establishment, regardless of the
42 duration of the stay; requiring public lodging
43 establishment operators to notify other guests of the
44 presence of a sexual offender on the premises;
45 authorizing the division to fine, suspend, or revoke
46 the license of a public lodging establishment that
47 fails to comply; requiring online advertisements for
48 and posting of public lodging establishments to
49 include certain information; providing applicability;
50 providing



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: December 13, 2019

I respectfully request that **Senate Bill # 1128**, relating to Vacation Rentals, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in cursive script, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

**State of Florida
Office of the Attorney General
Informal Legal Opinion**

Number: INFORMAL
Date: October 22, 2013
Subject: Vacation Rental Operations -- Local Ordinances

Mr. Albert J. Hadeed
Flagler County Attorney
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Dear Mr. Hadeed:

Thank you for contacting this office for assistance in determining whether Flagler County may intercede and stop vacation rental operations, as defined in Chapter 509, Florida Statutes, in private homes that were zoned, prior to June 1, 2011, for single-family residential use. Due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood. You state that Flagler County has no regulations governing vacation rentals which predate the 2011 legislation.

In sum, absent the existence of a local ordinance on or before June 1, 2011, regulating the rental of vacation homes in Flagler County, section 509.032(7), Florida Statutes, preempts local regulation of lodging establishments and public food establishments to the state and precludes a local ordinance or regulation enacted after June 1, 2011, restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

A number of county residents have argued that transient vacation rentals are a commercial activity which is a non-conforming use of a house constructed under a permit for a single-family residence and located in an area zoned for single-family residences. The county has considered this argument and concluded that a residential zoning category, in and of itself, is not sufficient to serve as a pre-existing prohibition of vacation rentals in private homes.

Section 509.032(7)(a), Florida Statutes, preempts the regulation of lodging establishments and public food establishments to the state. Subsection (b) of the statute states:

"A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." [1] (e.s.)

A "vacation rental" is defined as "any unit or group of units in a condominium, cooperative, or time-share plan or any individual or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment." [2] (e.s.) Thus, the plain language of the statute recognizes that a single-family house or dwelling may be a "vacation rental" which is used as a transient public lodging establishment subject to regulation by the state. As this office has previously recognized, with the enactment of section 509.032(7)(b), Florida Statutes, the ability of a local government to regulate vacation rentals by enactment of an ordinance after June 1, 2011, has been preempted to the state. [3] While you have premised your question on the existence of a single-family zoning regulation in existence prior to June 1, 2011, you have also indicated that no county regulations of vacation rentals existed on that date.

This office agrees with the county's conclusion that a local zoning ordinance for single-family homes existing on or before June 1, 2011, that did not restrict the rental of such property as a vacation rental, cannot now be interpreted to do so. The clear language in section 509.032(7), Florida Statutes, prohibits any local regulation on or after June 1, 2011, based upon the use of a residence as a vacation rental.

Sincerely,

Lagran Saunders
Attorney General

ALS/tshr

[1] Section 509.032(7)(c), Fla. Stat., provides:

"Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation."

[2] Section 509.242(1)(c), Fla. Stat. See s. 509.013(4), Fla. Stat., defining "[p]ublic lodging establishment" for purposes of Ch. 509, Fla. Stat.:

"(4)(a) 'Public lodging establishment' includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. '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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests."

[3] Informal Op. to Marino, dated August 3, 2012. Cf. City of Venice v. Gwynn, 76 So. 3d 401 (Fla. 2d DCA 2011), in which a city's code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of times; the court affirmed the city's

administrative determination that owner's non-conforming use of property as a vacation rental violated city's ordinance regarding short-term rentals.

Florida Attorney General Advisory Legal Opinion

Number: AGO 2016-12

Date: October 5, 2016

Subject: Municipalities -- Vacation Rentals -- Zoning

Mr. Kerry L. Ezrol, City Attorney
Ms. Farah L. Nerette, Assistant City Attorney
Goren Cherof Doody & Ezrol P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308

RE: MUNICIPALITIES - VACATION RENTALS - PREEMPTION - ZONING - whether the city could limit vacation rentals through a proposed ordinance (1) imposing distance separation requirements or (2) limiting the percentage or number of vacation rentals, in light of the preemption language regarding vacation rentals in s. 509.032(7), Fla. Stat.

Dear Mr. Ezrol and Ms. Nerette:

On behalf of the City Commission of the City of Wilton Manors, you have asked for an opinion on the following question:

Does section 509.032(7), Florida Statutes, prohibit the city from: (A) Implementing distance separation requirements between vacation rentals; or (B) Limiting the percentage or number of vacation rentals on city streets or in city neighborhoods?

In sum:

Section 509.032(7)(b), Florida Statutes, allows some regulation of vacation rentals, but prevents local government from enacting a law, ordinance, or regulation that prohibits vacation rentals. Therefore, the city may not impose spacing or proportional regulations that would have the effect of preventing eligible housing as defined in section 509.242, Florida Statutes, from being used as a vacation rental.

You state that Wilton Manors is considering enacting a zoning ordinance that would set distance separation requirements between vacation rentals or would limit the percentage or number of vacation rentals on city streets or in city neighborhoods. You represent that the ordinance would implement various health, safety, and welfare goals, such as reducing vehicle traffic; reducing the need for additional parking; reducing noise detrimental to surrounding residential uses; reducing the need for

additional police, fire, emergency services, utilities, and neighborhood watch programs; and maintaining the residential character of neighborhoods. Although municipalities are permitted to enact zoning ordinances to accomplish such legitimate goals, an ordinance may not conflict with a controlling provision of state law.[1] You believe that the proposed ordinance would not forbid vacation rentals and thus would not run afoul of section 509.032(7)(b), Florida Statutes, which states that a local government may not enact an ordinance that "prohibit[s] vacation rentals." You have not provided this office with the language of your proposed ordinance (nor would this office interpret such an ordinance if you had), thus, my comments must be general in nature.

To answer your question, it is necessary to review the Legislature's treatment of preemption in relation to vacation rentals in section 509.032, Florida Statutes.[2] Part I of Chapter 509, Florida Statutes, contains laws affecting public lodging and public food service establishments. In 1993, the Legislature amended section 509.032, Florida Statutes, adding paragraph (7) to preempt all regulation of public lodging[3] and public food service establishments to the state. The provision stated, in pertinent part: "The regulation and inspection of public lodging establishments and public food service establishments ... are preempted to the state." [4]

In 2011, the Legislature combined two types of public lodgings - "resort condominiums" and "resort dwellings" - under the new term "vacation rentals," and added a provision to specifically address an issue regarding vacation-rental regulation. According to the final staff analysis:

"The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[5] However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance." [6]

To address this issue, the Legislature added a new provision, (7)(b), which stated:

"(b) A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." [7]

In 2014, the Legislature amended paragraph (7)(b), "revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals." [8] The provision now allows limited new regulation subject to the following limitations:

"(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or

regulation adopted on or before June 1, 2011."

The final staff analysis for the legislation stated: "The bill removes the total preemption to the state for the regulation of vacation rentals, and permits local governments to regulate vacation rentals, provided those regulations do not prohibit vacation rentals or restrict the duration or frequency of vacation rentals." [9]

That same year, the City of Wilton Manors asked this office whether the 2014 amendment permitted the city to use zoning ordinances to regulate the location of vacation rentals. In Attorney General Opinion 2014-09, this office concluded:

"[W]hile a local government may regulate vacation rentals, it may not enact a local law, ordinance, or regulation which would operate to prohibit vacation rentals. *To the extent a zoning ordinance addresses vacation rentals in an attempt to prohibit them in a particular area where residences are otherwise allowed*, it would appear that a local government would have exceeded the regulatory authority granted in section 509.032(7)(b), Florida Statutes." (e.s.)

Section 509.242(1)(c), Florida Statutes, defines "vacation rental" as "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." Section 509.013(4)(a)1., Florida Statutes, defines "transient public lodging establishment" as "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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests."

It appears from these definitions that any unit, group of units, or house as enumerated in section 509.242(1)(c), Florida Statutes, is eligible to be used as a transient public lodging establishment and, hence, a vacation rental. There are no statutory provisions that impose restrictions against owners from offering eligible housing as vacation rentals. Nor have you identified any municipal law, ordinance, or regulation enacted prior to the grandfathering date in the statute, June 1, 2011, that restricted any such housing from being offered as a vacation rental in Wilton Manors. [10] An ordinance requiring certain distances between vacation rentals or limiting their numbers in areas within the city could result in a prohibition against using eligible units as vacation rentals when other existing units have already satisfied the spacing or percentage formulae. Although the proposed ordinance would not absolutely forbid vacation rentals in the City of Wilton Manors, a distance separation requirement and a numerical or percentage limitation have the express purpose of prohibiting units above a certain threshold from being used as vacation rentals, which is contrary to section 509.032(7)(b), Florida Statutes. [11] When there is any doubt as to whether a municipal ordinance may impair the operation of a statute, the

doubt must be resolved in favor of the statute and against the ordinance. [12]

In *Moore v. Thompson*, [13] the Florida Supreme Court discussed the propriety of legislation that prohibited a class of businesses from operating, in the guise of regulating it. A blue law made it unlawful for businesses to sell motor vehicles on Sunday and legal holidays. Although the Court acknowledged that the Legislature had clear statutory authority to regulate automobile dealerships, this law exceeded such authority.

"While the act is one purporting to regulate this particular business, it is much more than a regulation. Chapter 318, 319 and 320, Florida Statutes, F.S.A., are illustrations of regulations of a particular industry while the object of this act is not to regulate but to prohibit such business on designated days.

The power to regulate does not encompass the power to prohibit." [14] (e.s.)

The Court concluded that the state had failed to provide a valid and substantial reason to single out automobile dealerships, and ruled that the law was unconstitutional. The Court cited an earlier case involving legislation in 1938 requiring all persons conducting auctions to post a bond of \$2,000.00 and pay a license tax of \$1,000.00 every fifteen days, regardless of the character or amount of the sale. [15] The Court had concluded in that case that the law was improper because the unreasonably high fees made it prohibitive rather than regulative. "Such an imposition amounts to a prohibition of large numbers from engaging in a legitimate business and is beyond all the necessities for the legislation." [16] Similarly, the proposed Wilton Manors ordinance might prohibit certain vacation rentals, when section 509.032(7) only permits local governments to regulate them.

The two circuit court orders you provided to this office do not support the proposed Wilton Manors ordinance. In one case, the Flagler County Circuit Court was asked to consider an ordinance prescribing the documentation that must be provided to the county for short-term vacation rentals, and a maximum occupancy limit for all vacation rentals. [17] In the other, the Manatee County Circuit Court considered an ordinance setting a maximum occupancy limit for each vacation rental unit in the City of Ana Maria. [18] The court in each case determined that the ordinance at issue did not prohibit vacation rentals or regulate their duration or frequency in violation of section 509.032(7)(b), Florida Statutes. Those ordinances are distinguishable from what Wilton Manors proposes, because they merely added regulatory requirements for existing and new vacation rentals and did not limit the number of vacation rentals that would be allowed in a geographic area.

Indeed, in the final staff analysis of the 2014 legislation, the section entitled "Effect of the Bill" stated:

"The bill permits local governments to create regulation that distinguishes

vacation rentals from other residential property. In the past [prior to June 1, 2011], local government regulations have included noise, parking, registration, and signage requirements for vacation rentals." [19]

These matters and those addressed in the circuit court cases you cited are the kinds of regulations that are now permitted under the 2014 amendment to paragraph (7) (b) as exceptions to state preemption.

Accordingly, to the extent that the ordinance you are considering could have the effect of prohibiting a statutorily-eligible housing unit from being used as a vacation rental, it is my opinion that the City of Wilton Manors would be exceeding the regulatory authority granted in section 509.032(7) (b), Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tebg

[1] See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246-47 (Fla. 2006); *City of Casselberry v. Orange County Police Benevolent Ass'n*, 482 So. 2d 336, 340 (Fla. 1986).

[2] See *Massey v. David*, 979 So. 2d 931, 942 (Fla. 2008) (legislative history can be an "invaluable tool" in determining the meaning of statutory language); *Kasischke v. State*, 991 So. 2d 803, 810 (Fla. 2008) (although staff analyses do not determine legislative intent, they provide "one touchstone of the collective legislative will").

[3] Public lodging establishments included hotels, motels, resort condominiums, nontransient and transient apartments, rooming houses, resort dwellings, and bed and breakfast inns. Section 509.242, Fla. Stat. (2010).

[4] Section 2, Ch. 93-53, Laws of Fla.

[5] The Legislature had amended s. 509.032, Fla. Stat., in 2000, and added to paragraph (7): "This subsection does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022." Section 47, Ch. 2000-141, Laws of Fla.

[6] House of Representatives Final Bill Analysis, CS/CS/CS/HB 883, dated June 28, 2011.

[7] See s. 2, Ch. 2011-119, Laws of Fla.

[8] See Preamble, Ch. 2014-71, Laws of Fla.

[9] House of Representatives Final Bill Analysis, Local & Federal Affairs Committee, CS/HB 307, dated June 19, 2014.

[10] See Inf. Op. to County Attorney Albert J. Hadeed, Flagler County, dated October 22, 2013 (concluding under the plain language of s. 509.242(1)(c) that a single-family house could be used as a vacation rental, subject to regulation by the state, when there were no zoning ordinances in effect prior to June 1, 2011, that would have prevented such use).

[11] The definitions of "prohibit" in Black's Law Dictionary (10th ed. 2014), are: "1. To forbid by law[,] and, "2. To prevent, preclude, or severely hinder."

[12] See *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 504 (Fla. 1999).

[13] 126 So. 2d 543 (Fla. 1960).

[14] *Id.* at 550.

[15] *Id.* at 551 (citing *State ex rel. James v. Gerell*, 188 So. 812 (Fla. 1938)).

[16] *Gerell*, 188 So. at 814.

[17] *30 Cinnamon Beach Way, LLC v. Flagler County*, 2015-CA-167 (Fla. 7th Cir. Ct. June 1, 2015), *aff'd*, 183 So. 3d 373 (Fla. 5th DCA 2016) (*per curiam*).

[18] *Fla. Gulf Coast Vacation Homes, LLC v. City of Anna Maria*, 2016-CA-629 (Fla. 12th Cir. Ct. April 11, 2016).

[19] See *supra* n. 9.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

SB 1128

Bill Number (if applicable)

Topic SHORT TERM RENTALS

Amendment Barcode (if applicable)

Name CHARLIE LATHAM

Job Title MAYOR, JACKSONVILLE BEACH

Address 11 N. THIRD ST.

Street

JAX BEACH, FL 32250

City

State

Zip

Phone 904-910-4004

Email CLATHAM@JAXBEACHFL.ORG

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CITY OF JACKSONVILLE BEACH

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

SB 1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020
Street

Phone 727.421.6902

St. Petersburg FL 33731
City State Zip

Email travis@moore-relations.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Community Associations Institute + First Service Residential

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1/13/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Christina Candler

Job Title General manager

Address 320 High tide Drive Ste 101

Street

Phone 904 637 1808

St. Augustine FL 32080

City

State

Zip

Email christina.candler@turnkeyvr.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/13/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1128

Bill Number (if applicable)

Topic

Vacation Rentals

Amendment Barcode (if applicable)

Name

Michael Southerland

Job Title

Home Owner

Address

141 ONEIDA STREET

Phone

352 256 5957

Street

ST AUGUSTINE

FL

32084

City

State

Zip

Email

MSOUTH32085@gmail.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020

Meeting Date

SB 1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Steve Mito

Job Title CEO

Address 561 Ponte Vedra Blvd.

Phone 904-707-1487

Street

Ponte Vedra, FL 32082

Email SteveMito@yahoo.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1128
Bill Number (if applicable)

Meeting Date _____

Topic Vac. Rents 15

Amendment Barcode (if applicable) _____

Name Eric Poole

Job Title _____

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-20

Meeting Date

1128

Bill Number (if applicable)

Topic SB 1128

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 913-205-0658

Email mark@consultanderson.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CEOMC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/13/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1128

*Bill Number (if applicable)*Topic Vacation Rentals*Amendment Barcode (if applicable)*Name Martha Edenfield

Job Title _____

Address 215 S. Monroe Street Suite 815*Street*Tallahassee*City*FL*State*32301*Zip*Phone 850-999-4100Email medenfield@deanmead.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing The City of Holmes BeachAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13
Meeting Date1128
Bill Number (if applicable)Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Christopher EmmanuelJob Title Policy DirectorAddress 136 S Bronough St.
StreetPhone 850 245 1200TLH FL 32301
City State ZipEmail Cemmanuel@flchamberSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Chamber of CommerceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Cesar Fernandez

Job Title _____

Address 480 NE 30th St, #802

Phone 786 262 6092

Street Miami FL 33137

City State Zip

Email cesar@convergegov.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

1128
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Thomas Hobbs

Job Title Lobbyist

Address 120 S Monroe St
Street

Phone _____

TLH FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Town of Longboat Key

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1128

Meeting Date _____

Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/19
Meeting Date

1128
Bill Number (if applicable)

Topic VACATION FUND

Amendment Barcode (if applicable)

Name BRIAN BAPTISTA

Job Title LOBBYIST

Address 123 S. ADAMS ST.
Street

Phone 850-671-4401

TALLAH. FL 32301
City State Zip

Email baptista@tresp.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AIRBNB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

JAN 13, 2020

Meeting Date

SB 1128

Bill Number (if applicable)

Topic VACATION RENTALS

Amendment Barcode (if applicable)

Name PAUL SEAGO

Job Title GOV. AFFAIRS MANAGER, SE REGION

Address 111 EXPEDIA GROUP WAY

Street

Phone 407 222 7796

SEATTLE

City

WA

State

98119

Zip

Email PSEAGO@EXPEDIAGROUP.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing EXPEDIA GROUP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020

Meeting Date

SB 1128

Bill Number (if applicable)

Topic

SB 1128 - Short Term/Vacation Rentals

Amendment Barcode (if applicable)

Name

Mark Ryan

Job Title

City Manager City of Indian Harbour Beach

Address

2055 South Patrick Dr.

Phone

321 773-3181

Street

City

Indian Harbour Beach

State

Zip

FL 32937

Email

mryan@indianharbour.org

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

City of Indian Harbour Beach

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-2020

Meeting Date

1128

Bill Number (if applicable)

Topic VACATION RENTALS

Amendment Barcode (if applicable)

Name ^{Glen}
CLYNN BARNES

Job Title PROPERTY OWNER (RETIRED)

Address 796 N. W. HAMBURG RD.
Street

Phone 904-504-5332

MADISON FL 32340
City State Zip

Email lbarnes-2@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing OWNERS PROPERTY RIGHTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1-13-2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1128

Bill Number (if applicable)

Topic SB 1128 - Vacation Rentals, by Diaz

Amendment Barcode (if applicable)

Name Natalie Fausel

Job Title _____

Address 201 West Park Ave., Suite 100

Phone 561-317-0889

Street

Tallahassee

FL

32301

Email natalie@anfieldflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Polk County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

1128
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St.
Street

Phone 850-224-1400

Tallahassee FL 32301
City State Zip

Email andyg@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-20

Meeting Date

1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Brian Sullivan

Job Title Legislative Affairs Manager

Address 1801 27th Street

Phone 810-335-0150

Vero Beach FL 32960

City State Zip

Email bsullivan@rcgov.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 13 2020
Meeting Date

SB 1128
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Diego A. Echeverri

Job Title Legislative Liaison

Address 200 W College Ave
Street

Phone 813-767-2086

Tallahassee FL
City State Zip

Email decheverri@afphg.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

SB1128
Bill Number (if applicable)

Topic SB1128 - Vacation Rentals

Amendment Barcode (if applicable) _____

Name Jean Hulse

Job Title _____

Address 1892 Withtree Acres

Phone 509-4747

Tallahassee FL 32312
City State Zip

Email jeanhulse@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

1128

Bill Number (if applicable)

Topic Vacation Rental

Amendment Barcode (if applicable)

Name Matt Forest

Job Title Partner

Address 201 East Park Ave, 5th Floor

Phone 850-577-0444

Street

Tallahassee

FL

32301

Email mat@ballardpartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing American Hotel & Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/13/2020

Meeting Date

SB 1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee, FL 32302

Email _____

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20

Meeting Date

1128

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

Tallahassee FL 32302
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	SB 1128
FINAL ACTION:	Favorable
MEETING DATE:	Monday, January 13, 2020
TIME:	1:00—3:00 p.m.
PLACE:	110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Diaz

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A bill to be entitled

An act relating to vacation rentals; amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; preempting the regulation of vacation rentals to the state; providing legislative findings; authorizing a local law, ordinance, or regulation to regulate certain activities under certain circumstances; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of vacation rentals; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the operator of certain vacation rentals to also display its vacation rental license number and applicable tax account numbers; amending s. 509.242, F.S.; revising the criteria for a public lodging establishment to be classified as a vacation rental; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; providing that the advertising platform is not required to verify such information; requiring each advertising platform to quarterly provide the division with certain information regarding vacation rentals in this state

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30 listed on the platform; requiring an advertising
31 platform to remove an advertisement or listing under
32 certain conditions and within a specified timeframe;
33 authorizing the division to issue and deliver a notice
34 to cease and desist for certain violations; providing
35 that such notice does not constitute agency action for
36 which a certain hearing may be sought; authorizing the
37 division to file certain proceedings; authorizing the
38 collection of attorney fees and costs under certain
39 circumstances; providing applicability; providing
40 effective dates.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Subsection (17) is added to section 509.013,
45 Florida Statutes, to read:

46 509.013 Definitions.—As used in this chapter, the term:

47 (17) "Advertising platform" means a person who:

48 (a) Provides an online application, software, website,
49 system, or print advertisement through which a transient public
50 lodging establishment located in this state is advertised or
51 held out to the public as available to rent for transient
52 occupancy;

53 (b) Provides or maintains a marketplace for the renting by
54 transient occupancy of a vacation rental; or

55 (c) Provides a reservation or payment system that
56 facilitates a transaction for the renting by transient occupancy
57 of a vacation rental and for which the person collects or
58 receives, directly or indirectly, a fee in connection with the

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reservation or payment service provided for such transaction.

The term does not include the multiple listing service or an online or print advertisement of a transient public lodging establishment by a real estate broker or sales associate licensed under chapter 475; however, a real estate broker or sales associate licensed under chapter 475 must comply with s. 509.243(3).

Section 2. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) Public lodging establishments and public food service establishments.—

1. Preemption.—The regulation of public lodging establishments, including vacation rentals, 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. This subparagraph ~~paragraph~~ does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

2. ~~(b)~~ Vacation rentals.—

a. The Legislature finds that:

(I) Property owners who choose to use their property as a

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vacation rental have constitutionally protected property rights and other rights that must be protected, including the right to use their residential property as a vacation rental;

(II) Vacation rentals play a significant, unique, and critical role in this state's tourism industry, and that role is different from other types of public lodging establishments;

(III) There are factors unique to the ownership and operation of a vacation rental; and

(IV) Vacation rentals are residential in nature, a residential use, and thus permitted in residential neighborhoods.

b. Except as provided under this subparagraph, the regulation of vacation rentals, including inspection and licensing, is expressly preempted to the state.

c. A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This sub-subparagraph paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

d. A local law, ordinance, or regulation may not allow or require the inspection or licensing of vacation rentals.

~~e. (e)~~ This subparagraph paragraph ~~(b)~~ does not apply to any

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117 local law, ordinance, or regulation exclusively relating to
118 property valuation as a criterion for vacation rental if the
119 local law, ordinance, or regulation is required to be approved
120 by the state land planning agency pursuant to an area of
121 critical state concern designation.

122 (b) Advertising platforms.—The regulation of advertising
123 platforms is preempted to the state and shall be regulated under
124 this chapter.

125 Section 3. Effective January 1, 2021, subsection (3) of
126 section 509.241, Florida Statutes, is amended to read:

127 509.241 Licenses required; exceptions.—

128 (3) DISPLAY OF LICENSE.—Any license issued by the division
129 must ~~shall~~ be conspicuously displayed to the public inside in
130 ~~the office or lobby of the~~ licensed establishment. Public food
131 service establishments that ~~which~~ offer catering services must
132 ~~shall~~ display their license number on all advertising for
133 catering services. The operator of a vacation rental offered for
134 transient occupancy through an advertising platform must also
135 display the vacation rental license number and the applicable
136 Florida sales tax registration and tourist development tax
137 account numbers under which such taxes must be paid for each
138 rental of the property as a vacation rental.

139 Section 4. Paragraph (c) of subsection (1) of section
140 509.242, Florida Statutes, is amended to read:

141 509.242 Public lodging establishments; classifications.—

142 (1) A public lodging establishment shall be classified as a
143 hotel, motel, nontransient apartment, transient apartment, bed
144 and breakfast inn, timeshare project, or vacation rental if the
145 establishment satisfies the following criteria:

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(c) *Vacation rental.*—A vacation rental is a ~~any~~ unit or group of units in a condominium or cooperative or in an ~~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.

Section 5. Effective January 1, 2021, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1) (a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement 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 before the advertisement may be listed; and

2. 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.

(b) An advertising platform must display the license number and applicable Florida sales tax registration and tourist development tax numbers, but the advertising platform is not required to verify such information.

(2) An advertising platform must 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 and all of the following information for each listing:

(a) The uniform resource locator for the Internet address

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175 of the listing.

176 (b) The vacation rental license number provided by the
177 owner or operator.

178 (c) The applicable Florida sales tax registration and
179 tourist development tax numbers under which taxes will be
180 remitted for rentals commenced through the advertisement.

181 (3) An advertising platform must remove from public view an
182 advertisement or listing from its online application, software,
183 website, or system within 15 business days after being notified
184 by the division in writing that the subject advertisement or
185 listing for the rental of a vacation rental located in this
186 state fails to display a valid license number issued by the
187 division.

188 (4) If the division has probable cause to believe that a
189 person not licensed by the division has violated this chapter,
190 or any rule adopted pursuant thereto, the division may issue and
191 deliver to such person a notice to cease and desist from the
192 violation. The issuance of a notice to cease and desist does not
193 constitute agency action for which a hearing under ss. 120.569
194 and 120.57 may be sought. For the purpose of enforcing a cease
195 and desist notice, the division may file a proceeding in the
196 name of the state seeking the issuance of an injunction or a
197 writ of mandamus against any person who violates any provision
198 of the notice. If the department is required to seek enforcement
199 of the notice for a penalty pursuant to s. 120.569, it is
200 entitled to collect its attorney fees and costs, together with
201 any cost of collection.

202 Section 6. The Legislature does not intend for the
203 application of this act to supersede any current or future

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declaration or declaration of condominium adopted pursuant to
chapter 718, Florida Statutes, cooperative documents adopted
pursuant to chapter 719, Florida Statutes, or declaration of
covenants or declaration adopted pursuant to chapter 720,
Florida Statutes.

Section 7. Except as otherwise expressly provided in this
act, this act shall take effect upon becoming a law.

CourtSmart Tag Report

Room: EL 110

Case No.:

Caption: Senate Innovation, Industry and Technology Committee

Type:

Judge:

Started: 1/13/2020 1:04:54 PM

Ends: 1/13/2020 2:49:58 PM **Length:** 01:45:05

1:04:53 PM Meeting called to order by Chair Simpson
1:04:57 PM Roll call by AA Lynn Koon
1:05:02 PM Quorum present
1:05:22 PM Pledge of Allegiance
1:05:55 PM Comments from Chair Simpson
1:06:14 PM Introduction of Tab 5 by Chair Simpson
1:06:28 PM Explanation of SB 1128, Vacation Rentals by Senator Diaz
1:10:06 PM Introduction of Late-filed Amendment by Chair Simpson
1:10:24 PM Senator Farmer withdraws Amendment
1:10:39 PM Question from Senator Gibson
1:10:45 PM Response from Senator Diaz
1:12:08 PM Question from Senator Brandes
1:12:20 PM Response from Senator Diaz
1:12:58 PM Follow-up question from Senator Brandes
1:13:05 PM Response from Senator Diaz
1:13:08 PM Additional question from Senator Brandes
1:13:15 PM Response from Senator Diaz
1:13:46 PM Question from Senator Braynon
1:13:51 PM Response from Senator Diaz
1:14:47 PM Question from Senator Passidomo
1:15:26 PM Response from Senator Diaz
1:15:49 PM Follow-up question from Senator Passidomo
1:16:50 PM Response from Senator Diaz
1:17:42 PM Follow-up question from Senator Passidomo
1:17:49 PM Response from Senator Diaz
1:18:40 PM Question from Senator Hutson
1:18:45 PM Response from Senator Diaz
1:19:17 PM Question from Senator Gibson
1:19:22 PM Response from Senator Diaz
1:20:41 PM Follow-up question from Senator Gibson
1:20:48 PM Response from Senator Diaz
1:21:21 PM Question from Senator Braynon
1:21:54 PM Response from Chair Simpson
1:21:59 PM Speaker Casey Cook, Legislative Advocate, Florida League of Cities in opposition
1:25:49 PM Question from Senator Braynon
1:25:53 PM Response from Mr. Cook
1:26:37 PM Question from Senator Brandes
1:26:51 PM Response from Mr. Cook
1:27:23 PM Speaker Warren Husband, Florida Restaurant & Lodging Association in opposition
1:33:45 PM Matt Forest, American Hotel & Lodging Association waives in opposition
1:33:55 PM Speaker Jean Hulse in opposition
1:38:05 PM Diego Echeverri, Americans for Prosperity waives in support

1:38:14 PM Brian Sullivan, Indian River County waives in opposition
1:38:20 PM Andy Gonzalez, Florida Realtors waives in support
1:38:27 PM Natalie Fausel, Polk County waives in opposition
1:38:31 PM Glynn Barnes in support
1:38:36 PM Speaker Mark Ryan, City Manager, City of Indian Harbour Beach in opposition
1:41:31 PM Paul Scaco, Government Affairs Manager, Expedia Group waives in support
1:41:39 PM Brian Bradtista, AIRBNB waives in support
1:41:41 PM Jess McCarty, Assistant County Attorney, Miami-Dade County waives in opposition
1:41:46 PM Thomas Hobbs, Town of Longboat Key waives in opposition
1:41:50 PM Cesar Fernandez, Palm Beach County waives in opposition
1:41:53 PM Christopher Emmanuel, Policy Director, Florida Chamber of Commerce waives in support
1:41:58 PM Martha Edenfield, CEOMC waives in opposition
1:42:04 PM Speaker Mark Anderson in opposition
1:44:28 PM Eric Poole, Florida Association Counties waives in opposition
1:44:32 PM Speaker Steve Milo, CEO in Support
1:46:37 PM Speaker Michael Southerland in support
1:48:37 PM Speaker Christina Candler, General Manager in support
1:51:37 PM Speaker Travis Moore, Community Associations Institute & First Service Residential
1:52:39 PM Speaker Charlie Latham, Mayor, City of Jacksonville Beach in opposition
1:54:24 PM Senator Braynon in debate
1:57:27 PM Senator Gibson in debate
1:59:13 PM Senator Benacquisto in debate
2:01:34 PM Senator Passidomo in debate
2:05:04 PM Senator Brandes in debate
2:08:38 PM Senator Farmer in debate
2:11:06 PM Senator Diaz in closure
2:11:52 PM Roll call by AA
2:11:56 PM SB 1128 reported favorably
2:12:14 PM Introduction of Tab 2 by Chair Simpson
2:12:41 PM Explanation of SB 1060, Public Records and Meetings/911 or E911 Communication Systems by Senator Thurston
2:13:14 PM Introduction of Amendment Barcode No. 814656 by Chair Simpson
2:13:31 PM Explanation of Amendment by Senator Thurston
2:13:48 PM Closure waived
2:13:51 PM Amendment adopted
2:13:58 PM Question from Senator Brandes
2:14:05 PM Response from Senator Thurston
2:14:47 PM Daphnee Sainvil, Legislative Policy Advisor waives in support
2:15:01 PM Senator Braynon in debate
2:15:42 PM Senator Thurston in closure
2:15:53 PM Roll call by AA
2:16:02 PM CS/SB 1060 reported favorably
2:16:23 PM Introduction of Tab 1 by Chair Simpson
2:16:31 PM Explanation of CS/SB 802, Marketable Record Title Act by Senator Hutson
2:17:16 PM Travis Moore, Community Associations Institute waives in support
2:17:23 PM French Brown, Real Property, Probate and Trust Law Section of the FL Bar waives in support
2:17:37 PM Closure waived
2:17:41 PM Roll call by AA
2:17:43 PM CS/SB 802 reported favorably
2:18:03 PM Introduction of Tab 3 by Chair Simpson

2:18:14 PM Explanation of SB 1170, Public Records and Meetings/Division of State Technology by Senator Hutson

2:18:54 PM Andrew Forst, Deputy Director of Legislative Affairs, Department of Management Services waives in support

2:19:04 PM Closure waived

2:19:07 PM Roll call by AA

2:19:11 PM SB 1170 reported favorably

2:19:28 PM Introduction of Tab 4 by Chair Simpson

2:19:36 PM Explanation of SB 818, Manufactured Housing by Senator Hooper

2:22:55 PM Introduction of Amendment Barcode No. 399384 by Chair Simpson

2:23:06 PM Explanation of Amendment by Senator Hooper

2:23:34 PM Amendment adopted

2:23:43 PM Question from Senator Gibson

2:23:56 PM Response from Senator Hooper

2:24:20 PM Question from Senator Passidomo

2:24:38 PM Response from Senator Hooper

2:27:07 PM Question from Senator Farmer

2:28:20 PM Response from Senator Hooper

2:29:21 PM Follow-up question from Senator Farmer

2:29:29 PM Response from Senator Hooper

2:31:14 PM Question from Senator Farmer

2:31:28 PM Response from Senator Hooper

2:32:11 PM Speaker Jerry Durham, President, Federation of Manufactured Homeowners of Florida, Inc.

2:43:14 PM Speaker Jesse James, Political Advocacy Chairman, Federation of Manufactured Homeowners in opposition

2:45:16 PM Lori Killinger, Florida Manufactured Housing Association waives in support

2:45:22 PM Speaker Ida V. Eskamani, Public Policy Director, Organize Florida in opposition

2:46:22 PM Speaker Jim Alette, Executive Director, Florida Manufactured Housing Association in support

2:46:57 PM Senator Bradley in debate

2:47:23 PM Senator Hooper in closure

2:48:05 PM Roll call by AA

2:49:07 PM CS/SB 818 reported favorably

2:49:28 PM Comments from Chair Simpson

2:49:37 PM Senator Benacquisto moves to adjourn, meeting adjourned