

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Regulation Of Public Lodging Establishments & Public Food Service Establishments

SPONSOR(S): Hutson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 3 N	Butler	Luczynski
2) Local & Federal Affairs Committee	18 Y, 0 N, as CS	Flegiel	Rojas
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In 2011, the Legislature passed CS/CS/CS/HB 883 that preempted to the state the power to regulate vacation rentals and prevented local governments from enacting any law, ordinance, or regulation that restricted or prohibited the use of vacation rentals based on classification, use, or occupancy. CS/CS/CSHB 883 exempted any local law, ordinance, or regulation enacted on or before June 1, 2011, from this preemption.

Thus, after June 1, 2011, local governments could no longer enact a local law, ordinance, or rule to ban or restrict vacation rentals and could only adopt legislation or regulations that treated vacation rentals the same as any other residential property.

CS/HB 307 revises the permitted scope of local laws, ordinances and regulations regarding vacations rentals. The bill allows local governments to restrict and regulate vacation rentals, provided the regulation does not concern the duration or frequency of rental of vacation rentals. The bill also allows local governments to regulate vacation rentals based on their classification, use or occupancy.

The bill has no fiscal impact on state funds.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The department licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.¹

A vacation rental is defined as:

[A]ny 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.²

A transient public lodging establishment is defined as:

[A]ny unit, group of units, dwelling, building, or group 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

The department requires each vacation rental to be readily available for inspection, but vacation rentals are not subject to the inspection requirements of other transient public lodging establishments and the division only inspects a vacation rental if there is a complaint.⁴

Prior to June 1, 2011, local governments held authority to regulate vacation rentals (also referred to as resort dwellings in many local laws) based on their classification as vacation rentals. Local governments could restrict or prohibit vacation rentals, up to and including banning the use of residential properties as vacation rentals.

In 2011, the Legislature passed CS/CS/CS/HB 883 which preempted vacation rental regulation to the State, and prevented local governments from enacting any new law, ordinance, or regulation that restricted or prohibited the use of vacation rentals based on classification, use, or occupancy. This legislation exempted any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011.

Several municipalities created regulations specifically relating to vacation rentals prior to June 1, 2011.⁵ One such ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.⁶ This ordinance effectively prevented new vacation rentals from opening within the city.⁷

¹ Section 509.241, F.S.

² Section 509.242(c), F.S.

³ Section 509.013(4)(a)(1.), F.S.

⁴ See Rule 61C-1.002(3), F.A.C.; Section 509.032(2)(a), F.S. (stating “[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request”).

⁵ See City of Venice, Fla., Code of Ordinances, ch. 86, art. V, Div. 3 (2009). See also Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Ordinance No. 2011-549 (2011).

⁶ §§ 86-81(d), 86-151. See also *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2d DCA 2011).

⁷ *Gwynn*, 76 So. 3d at 403 (noting the constitutionality of the Venice provision).

The preemption has made it difficult for municipalities who have regulations on vacation rentals predating the Legislature's action from amending those regulations without invalidating them. One town reports that despite having regulations for vacation rentals in place, the town cannot consider addressing new issues caused by vacation rentals for fear of invalidating their existing ordinances.⁸ Under the current law, vacation rentals cannot be regulated in a manner that would single out a vacation rental for more onerous restrictions than residential properties.

After the passing of CS/CS/CS/HB 883 in 2011, businesses have reportedly bought foreclosed or distressed residential properties and converted them into vacation rentals. In some cases, new houses have been built or are being built for the sole purpose of being used as vacation rentals.

Effect of the Bill

CS/HB 307 revises the permitted scope of local laws, ordinances and regulations regarding vacations rentals. The bill allows local governments to restrict and regulate vacation rentals, provided the regulation does not concern the duration or frequency of rental of vacation rentals. The bill also allows local governments to regulate vacation rentals based on their classification, use or occupancy.

B. SECTION DIRECTORY:

Section 1 Amends s. 509.032(7)(b), F.S., revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals.

Section 2 Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on businesses or individuals who currently participate in the vacation rental industry in Florida is indeterminate.

A report prepared by Robinson & Cole outlines many options for local jurisdictions to apply regulations that could curtail the complained effect vacation rentals have on a community.⁹ It is possible for a local government to create regulations of the vacation rental industry in a way that could have a beneficial

⁸ Letter from Gary L. Smith, Mayor of Ponce Inlet, Re: Support for legislation that repeals the State preemption of the regulation of vacation rental properties in order to allow local governments to regulate such properties (Nov. 25, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁹ Robinson & Cole, *Short-Term Rental Housing Restrictions: White Paper*, pp. 7-9, National Association of Realtors (2012).

impact on both local property values and keep the vacation rental market relatively intact.¹⁰ In these instances, the economic impact on the private sector could be minimal.

It is also possible that a local government could prohibit vacation rentals, thus eliminating the vacation rental industry within the jurisdiction of the local government. In that case, the economic impact on the private sector could be significant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

A local government law, ordinance, or regulation that prohibits the use of residential property as a vacation rental when previously this use was permitted could potentially raise the issue of a regulatory taking. Florida courts have traditionally held that such a regulation is constitutional, insofar, as to prevent new vacation rentals.¹¹ Additionally, the Supreme Court of the United States has held that zoning ordinances, for example, do not result in a taking so long as they do not extinguish a fundamental attribute of ownership and advance a legitimate state interest.¹²

This potential issue is most likely if a prohibition of vacation rentals results in the affected property having no other economic value. This case is unlikely, because even if a property is prevented from being a vacation rental, it likely will have at least some other economic value. But, so far no Florida court has reached this issue on the merits and it is unlikely that such a scenario will occur that deprives a residential property of all economic value absent its use as a vacation rental.¹³

Traditionally, local governments have grandfathered non-conforming uses to avoid this issue, but there is no mandate that exists to require a local government to grandfather current vacation rentals.¹⁴

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁰ *Id.* at 22-29.

¹¹ *See Gwynn*, 76 So. 3d at 403 (explaining that the economic test from *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978), requires a weighing not just of the loss of potential rental income from short term rentals, but must weigh this against the continued value of the property as a long-term rental or sale as investment property).

¹² *See generally Penn Central*, 438 U.S. at 145.

¹³ *See Neumont v. Florida*, 610 F.3d 1249, 1252 (11th Cir. 2010).

¹⁴ *See generally Gwynn v. City of Venice*, 6 2009 CA 17007 NC (Fla. 12th Cir. Ct. 2009) (informing that although most ordinances will grandfather existing nonconforming uses, those jurisdictions are not mandated to do so).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2014, the Local & Federal Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The amendment allows local governments to restrict and regulate vacation rentals, provided the regulation does not concern the duration or frequency of rental of vacation rentals. The amendment also allows local governments to regulate vacation rentals based on their classification, use or occupancy.

The amendment reinserts language currently in statute that was previously removed by the bill that restricts local governments from prohibiting vacation rentals. The amendment also reinserts language that grandfathers local laws regarding vacation rentals that were in existence before June 1, 2011. The amendment also reinserts language that the state preemption of vacation rental regulation does not apply to certain matters relating to property valuation.