

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Local & Federal Affairs Committee; Hutson; Campbell 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	14 Y, 4 N	Butler	Hamon

### SUMMARY ANALYSIS

Chapter 2011-119, Laws of Florida, 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. It also 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.

The bill removes the preemption to the state for the regulation of vacation rentals. Local governments may regulate vacation rentals, provided those regulations do not prohibit vacation rentals or restrict the duration or frequency of vacation rentals. The grandfather provision exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained.

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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.

Chapter 2011-119, Laws of Florida, 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.<sup>5</sup> 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.<sup>6</sup> This ordinance effectively prevented new vacation rentals from opening within the city.<sup>7</sup>

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

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

<sup>3</sup> Section 509.013(4)(a)(1.), F.S.

<sup>4</sup> 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”).

<sup>5</sup> 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).

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

<sup>7</sup> *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.<sup>8</sup> 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.

Subsequent to the enactment of Chapter 2011-119, Laws of Florida, businesses have reportedly bought foreclosed or distressed residential properties and converted them into vacation rentals.<sup>9</sup> 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**

The bill removes the preemption to the state for the regulation of vacation rentals.

The bill allows a local government to create regulations that distinguish between vacation rentals and other residential properties. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulations remain preempted to the state.

The grandfather provision exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulation passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced.

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

**Section 1** amends s. 509.032, 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:

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<sup>8</sup> 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).

<sup>9</sup> Jim Turner, *Legislation could limit growth of Florida vacation rentals*, Jacksonville Business Journal (Feb. 18, 2014) <http://www.bizjournals.com/jacksonville/blog/morning-edition/2014/02/legislation-could-limit-growth-of.html?page=all>.

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 by Robinson & Cole outlines many options for local jurisdictions to apply regulations that could curtail the complained effect vacation rentals have on a community.<sup>10</sup> It is possible for a local government to create regulations of the vacation rental industry in a way that could have a beneficial impact on both local property values and keep the vacation rental market relatively intact.<sup>11</sup> In these instances, the economic impact on the private sector could be minimal.

It is also possible that a local government could create onerous regulations on vacation rentals, thus harming 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### 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 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

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<sup>10</sup> Robinson & Cole, *Short-Term Rental Housing Restrictions: White Paper*, pp. 7-9, National Association of Realtors (2012).

<sup>11</sup> *Id.* at 22-29.

amendment also reinserts language that the state preemption of vacation rental regulation does not apply to certain matters relating to property valuation.

The staff analysis is drafted to reflect the committee substitute.