

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 Regulated Industries

BILL: CS/SB's 1400 & 1640

INTRODUCER: Community Affairs Committee and Senators Steube and Simmons

SUBJECT: Vacation Rentals

DATE: February 7, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS Combined</u>
2.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB's 1400 & 1640 creates the "Florida Vacation Rental Act" within part III of Chapter 509, F.S., explicitly preempting the regulation of vacation rentals to the state and separating the regulation of vacation rentals from the regulation of public lodging establishments, such as hotels and motels. The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is authorized to implement the act, including licensing vacation rentals and enforcement. The bill requires license applications to include an emergency contact telephone number. The license number must be displayed in advertisements for a vacation rental. Multiple unit vacation rentals must be inspected biannually in the same manner as hotels and motels.

Under the bill, local governments only may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. However, the bill grandfathers local regulations adopted before June 1, 2011, which prohibit vacation rentals, or regulate the duration or frequency of vacation rentals.

CS/SB's 1400 & 1640 may have an indeterminate positive fiscal impact on state government and an indeterminate negative fiscal impact on local government. See Section V, Fiscal Impact Statement.

The effective date of the bill is July 1, 2018.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) 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.
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;

¹ Section 509.013(4)(a), F.S.

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 units collectively."⁴

The 41,931 public lodging establishments licensed by the division are distributed as follows:⁵

- Hotels – 1,916 licenses;
- Motels – 2,600 licenses;
- Nontransient apartments – 18,008 licenses;

² Section 509.242(1), F.S.

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

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 per license.

⁵ *Division of Hotels and Restaurants Annual Report for FY 2016-2017*, Department of Business and Professional Regulation. A copy of the report is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2016_17.pdf (Last visited January 24, 2018).

- Transient apartments – 895 licenses;
- Bed and Breakfast Inns – 259 licenses;
- Vacation rental condominiums – 5,037 licenses;
- Vacation rental dwellings – 13,196 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.⁶ The division conducts inspections of vacation rentals in response to a consumer complaint to ensure minimum sanitation and safety standards are met.⁷ In Fiscal Year 2016-2017, the division received 457 consumer complaints regarding vacation rentals and inspected the vacation rentals.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

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

⁶ Section 509.032(2)(a), F.S.

⁷ See 2018 Agency Legislative Bill Analysis issued by the DBPR for SB 1400, dated January 23, 2018 (on file with Senate Committee on Regulated Industries) at page 2.

⁸ See *supra* note 5, at 23.

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 February 1, 2018).

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 February 1, 2018).

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 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

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

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.

¹⁶ *Id.*

¹⁷ Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.

¹⁸ *Id.*

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.

A second advisory opinion was issued by the Attorney General on November 13, 2014, for 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 a third 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

III. Effect of Proposed Changes:

Section 1 creates part III of chapter 509, consisting of ss. 509.601-509.609, F.S., to be entitled “Vacation Rentals.”

Section 2 creates s. 509.601, F.S., to name part III of ch. 509, F.S., the “Florida Vacation Rental Act”.

Section 3 creates s. 509.603, F.S., consisting of the legislative findings and purpose for a vacation rental act. The section preempts the regulation of vacation rentals to the state unless otherwise provided in ch. 509, F.S. The Division of Hotels and Restaurants (division) of the

¹⁹ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013.

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 February 2, 2018).

²¹ Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, available at: <http://www.myfloridalegal.com/ago.nsf/printview/3AF7050D48068C10852580440051386C> (last visited February 2, 2018).

²² *Id.*

Department of Business and Professional Regulation (DBPR) is granted rulemaking authority to implement this part.

Section 4 creates s. 509.604, F.S., preempting all licensing of vacation rentals to the state. Under the bill, it is illegal to operate without a license. Licenses must be renewed annually, on a staggered schedule determined by the division, and must be displayed prominently in the vacation rental. Licenses are not transferrable. The division is authorized to deny licensure to applicants who have been adjudicated guilty of certain crimes reflecting poor professional character, including prostitution and pandering.

The licensing and renewal provisions in s. 509.604, F.S., are comparable to the existing licensure and annual renewal provisions in the current s. 509.241, F.S.

Operation of an unlicensed vacation rental is a second degree misdemeanor under the bill, which is identical to the criminal prohibition against operation of an unlicensed public lodging establishment.²³

Section 509.604, F.S., requires a license application to include the operator's emergency contact telephone number.

The division must immediately issue a temporary license upon receipt of an application in order to allow the property to begin use as a vacation rental while the application is pending. The license must be displayed in the vacation rental.

Section 5 creates s. 509.605, F.S., to establish the license fees for vacation rentals. It authorizes one "licensed operator" to manage multiple units (to a maximum of 75 units) under a single license. These units may be in separate buildings or locations. The division is directed to charge a fee for the application, which may not exceed \$1,000 per application.

The bill and ch. 509., F.S., do not define the term "licensed operator" or provide for such a license; however, existing s. 509.013(2), F.S., defines "operator" to mean "the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment."

The fees collected shall be directed to fund the Hospitality Education Program. In addition, the division is authorized to promulgate a rule regarding application fees. The fee for an application may not exceed \$50 per application and shall be used to cover all costs associated with initiating regulation of vacation rentals.

The license fee provisions in s. 509.605, F.S., are comparable to the existing license fee provisions in current s. 509.251, F.S.

Section 6 creates s. 509.6051, F.S., to set a maximum occupancy limit for vacation rentals. The occupancy limit is the lesser of a) four persons plus two additional persons for each sleeping room, or b) one person for each 150 square feet of finished area.

²³ See s. 509.241(1), F.S.

Section 7 creates s. 509.606, F.S., to specify the procedures and grounds for the revocation or suspension of licenses and the issuance of fines. Fines may not exceed \$1,000 per offense, and the division is authorized to regard as a separate offense for each day or portion of day that a critical law or rule is violated. In addition, the division is required to post a prominent closed-for-operation sign on any vacation rental the license of which has been suspended or revoked. All funds received by the division for administrative fines must be paid into the state treasury to the credit of the Hotel and Restaurant Trust Fund and may not be used for payment to any entity performing required inspections under contract with the division.

The division may fine, suspend, or revoke the license of any vacation rental when the rental is not in compliance with the final order or other administrative action issued against the licensee by the division. The division may refuse to issue or renew a license until all outstanding fines are paid in full to the division.

A license may be revoked for specified offenses, including soliciting for prostitution, pandering, letting premises for prostitution, and dealing in controlled substances, or a determination by the division that a vacation rental is an imminent danger to the public health.

Additionally, the division can fine, suspend, or revoke the license of any vacation rental when an advertisement for the vacation rental does not display the vacation rental license number.

The procedures and disciplinary grounds in s. 509.606, F.S., are comparable to the provision in the current s. 509.261, F.S., for public lodging establishments, with the exception of removing penalties related to remedial food safety education.

Section 8 creates s. 509.607, F.S., exempting vacation rentals from ch. 83, F.S., relating to landlord and tenant law, in the same manner as transient rentals.²⁴ The bill also exempts persons or entities that rent or advertise vacation rentals for rent for another person for compensation from licensure requirements for a real estate sales associate or broker under ch. 475, F.S.

Section 9 creates s. 509.608, F.S., to preempt the inspection of vacation rentals to the state. Under the bill, the division is solely responsible for all inspections and for quality assurance.

Currently s. 509.032(2), F.S., exempts vacation rentals from inspection requirements. However, under the bill, the division has the right of entry and access to a vacation rental at any reasonable time.

The division may not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any vacation rental.

Vacation rentals must be made available to the division for inspections upon request. Upon discovery of a vulnerable adult appearing to be a victim of neglect, a building not equipped with

²⁴ Section 83.42(3), F.S., exempts transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park from the application of the requirements in part II of ch. 83, F.S., the Florida Residential Landlord and Tenant Act.

automatic sprinkler systems, or tenants or clients who may be unable to self-preserve in an emergency, the division must convene meetings with the following agencies as appropriate to the individual situation: Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants or clients, and other relevant organizations, to develop a plan that improves prospects for safety of affected residents.

Vacation rentals must also be inspected whenever necessary to respond to an emergency or epidemiological condition.

These provision are comparable to the inspection requirements in s. 509.032(2), F.S., for a public lodging establishment that is not a vacation rental.

Section 10 creates s. 509.609, F.S., to provide additional inspection requirements for multiple unit vacation rentals. When five or more vacation rentals in multifamily dwellings are under common ownership and any such vacation rental is rented out more than 180 days per year, the vacation rental is subject to the additional requirements of this section. These types of rentals are subject to the same inspection requirements as public lodging establishments under s. 509.032(2), F.S., when an operator of a vacation rental applies for an initial license and renews the license. An operator must identify to the division the intent to operate a vacation rental for more than 180 days during the term of the license.

Additionally, each year the division must audit at least one percent of operators who are subject to this section to ensure compliance.

The additional inspection requirement does not apply to single-family houses.

Section 11 amends s. 509.013, F.S., to include vacation rentals in the definitions of “operator,” “guest,” and exclude vacation rentals from the definition of transient or nontransient public lodging establishment.

The bill expands the current definition of “vacation rental” to define a “vacation rental” as any unit 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 rented to guests for periods of less than 180 days but that is not a timeshare project.²⁵

Section 12 amends s. 509.032(2)(d), F.S., to include vacation rentals in the current provision which requires the division to notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S., relating to fire safety and control.

The bill amends s. 509.032(7), F.S., to limit the authority of local government to regulate vacation rentals. 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. The division must make vacation rental license information available to the public

²⁵ Timeshare projects are regulated under ch. 721, F.S., by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

and local governments, and local governments may only use the information for informational purposes.

The bill maintains the existing provision which permits local laws, ordinances, or regulations adopted before June 1, 2011, to prohibit vacation rentals, or regulate the duration or frequency of vacation rentals.

Sections 13, 14, 15, 16, and 17 amend the following provisions to correct cross-references:

s. 159.27(12), F.S., revising the definition of “public lodging or restaurant facility”,
s. 212.08(7)(jj), F.S., relating to a sale tax exemption for complimentary meals, s. 316.1955(4), F.S., relating to parking requirements for persons with disabilities, s. 404.056(5), F.S., relating to a requirement for radon gas notification in rental agreements, and s. 477.0135(6), F.S., relating to a reference to “theme park or entertainment complex” in the context of an exception for cosmetology licensure.

Section 18 amends s. 509.072, F.S., to add vacation rentals to the list of establishments that use moneys from the Hotel and Restaurant Trust Fund.

Section 19 amends s. 509.091, F.S., to add vacation rentals to the division’s requirements for providing notice to licensees.

Section 20 amends s. 509.092, F.S., to add vacation rentals to the current provision which provides that public lodging establishments and public food service establishments are private enterprises and have the right to refuse accommodations or service to anyone who is objectionable or undesirable to the operator, but refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin.

Section 21 amends s. 509.095, F.S., to add vacation rentals to the current provision permitting public lodging establishments to waive an age requirement for an individual currently on active duty as a member of the U.S. military.

Section 22 amends s. 509.101, F.S., to add vacation rentals to the current provision permitting public lodging establishments and public food service establishments to establish reasonable rules and regulations for the management of the establishment and its guests and employees. The section requires operators of transient establishments or vacation rentals to maintain a register of guests who occupy rental units within the establishment, showing the dates and rates charged. The register shall be maintained in chronological order and available for inspection by the division at any time.

Section 23 amends s. 509.111, F.S., to add vacation rentals to the existing provision relating to a public lodging establishment’s liability for loss of a guest’s property.

Section 24 amends s. 509.141, F.S., to add vacation rentals to the current provision permitting, with conditions, a public lodging establishment to refuse admission to and eject an undesirable guest.

Section 25 amends s. 509.142, F.S., to add vacation rentals to the current provision permitting, with conditions, a public lodging establishment to refuse accommodations to any person whose conduct displays intoxication, profanity, lewdness, brawling, or other disturbing or disorderly conduct.

Section 26 amends s. 509.144, F.S., to add vacation rentals to the current provision prohibiting handbill distribution at or in a public lodging establishment.

Section 27 amends s. 509.162, F.S., to add vacation rentals to the current provision permitting, with conditions, a public lodging establishment to detain a suspected thief for a reasonable period.

Section 28 amends s. 509.191, F.S., to add vacation rentals to the current requirements relating to unclaimed property at a public lodging establishment or public food service establishment.

Section 29 amends s. 509.2015, F.S., adding vacation rentals to the current requirement for a public lodging establishment to post notice of a surcharge for telephone calls.

Section 30 amends s. 509.211, F.S., to add vacation rentals to the current safety regulations applicable to public lodging establishments.

Section 31 amends s. 509.2112, F.S., to add vacation rentals to the current regulations and inspection requirements for a public lodging establishment located in a building three or more stories in height.

Section 32 amends s. 509.215, F.S., to add vacation rentals to the current subjecting vacation firesafety requirements applicable to a public lodging establishment.

Section 33 amends s. 509.221, F.S., to apply to vacation rentals the current sanitary regulations applicable to public lodging establishments, including requirements for a public restroom, and providing guests with soap and towels, clean bedding, potable water, and ventilation.

Section 34 amends s. 509.241, F.S., to remove vacation rentals from license requirements under part I of ch. 509, F.S. Under the bill, vacation rental licensure is subject to the requirements in part III of ch. 509, F.S.

Section 35 amends s. 509.242, F.S., to remove vacation rentals from the classification of a public lodging establishment. The bill also deletes the current definition of "vacation rental".

Section 36 amends s. 509.251, F.S., to remove vacation rentals from the license fees provisions for public lodging establishments. The license fee provisions for vacation rentals are in s. 509.605, F.S., of the bill.

Section 37 amends s. 509.281, F.S., to add vacation rentals to the inspection and enforcement authority of the division currently applicable to public lodging establishments.

Section 38 amends s. 509.302, F.S., to include vacation rentals in the current requirement for public lodging establishments and public food service establishments to pay an annual fee to be used for funding the Hospitality Education Program.

Section 39 amends s. 509.4005, F.S., to include vacation rentals in the provisions in ss. 509.401-509.417, F.S., dealing with the process for a public lodging establishment to lockout a guest due to an outstanding payment and to recover an outstanding payment.

Section 40 amends s. 509.401, F.S., to include vacation rentals in the current authority of a public lodging establishment to lockout a guest if payment has not been made on an account.

Section 41 amends s. 509.402, F.S., to include vacation rentals in the current authority of a public lodging establishment to recover the premises if the guest vacates without notice.

Section 42 amends s. 509.405, F.S., to include vacation rentals in the current requirements for the complaint an operator of a public lodging establishment must file in court when seeking a writ of distress from a court.

Section 43 amends s. 509.409, F.S., to include guest of a vacation rental in the current requirement for a city or county officer to inventory the guest's property when seizing distrainable²⁶ property.

Section 44 amends s. 509.417, F.S., to include vacation rentals in the current authority of a public lodging establishment to sell distrained (or levied) property.

Section 45, 46, and 47 amend the following provisions to correct cross-references: s. 553.5041, F.S, relating to parking spaces for persons with disabilities, and to ss. 717.1355 and 877.24, F.S, relating to the definition of "theme park and entertainment complex".

Section 48 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁶ Distrainable property is property that is seized to satisfy a debt. BLACKS LAW DICTIONARY (14th ed. 2014) defines the term "distrain" as "to force (a person, usually a tenant), by the seizure and detention of personal property, to perform an obligation (such as paying overdue rent)", and as "to seize (goods) by distress, a legal remedy entitling the rightful owner to recover property wrongfully taken".

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vacation rental operators that were previously exempt from licensure may incur costs to satisfy licensure and sanitation, safety, and firesafety requirements not previously applicable.²⁷

C. Government Sector Impact:

Revenue may increase with increased vacation rental licenses generating bed tax or other tourism taxes.²⁸ There may be an indeterminate increase in fines due more sanitation and safety requirements being applicable to vacation rental units.

The Department of Business and Professional Regulation (DBPR) estimates one additional licensing staff member will be needed for every 15,000 new applications. More FTEs may also be required for an anticipated increase in consumer complaints. Additionally, the DBPR estimates that for every 16,700 calls received, an additional Regulatory Specialist III FTE position is needed.²⁹

An indeterminate increase in fines could be expected due to more sanitation and safety requirements being applicable to vacation rental units.³⁰

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.

Section 509.032(3), F.S., of the bill prohibits the division from establishing rules governing the design, construction, erection, alteration, modification, repair, or demolition of any vacation rental. This provision is identical to the current prohibition in s. 509.032(2)(d), F.S., as to public lodging establishments. The bill does not explicitly preempt that function to the Florida Building Commission and the State Fire Marshal, as provided in s. 509.032(2)(d), F.S. However, by removing vacation rentals from the definition of public lodging establishment, the bill may remove vacation rentals from the portion of the Florida Building Code governing public lodging establishments and

²⁷ See 2018 Agency Legislative Bill Analysis issued by the DBPR for SB 1400, dated January 23, 2018 (on file with Senate Committee on Regulated Industries) at page 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

consequently the authority for the division to enforce those provisions of the Florida Building Code with respect to vacation rentals.³¹

VI. Technical Deficiencies:

The bill (at lines 553-557) amends s. 509.013, F.S., to expand the definition of a vacation rental to include:

any unit 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 rented to guests for periods of less than 180 days but that is not a timeshare project.

The bill does not provide a time period during which the property must have been rented less than 180 days to qualify as a vacation rental. This provision may be interpreted to apply the term “for periods less than 180 days” to each individual rental, or alternatively, the term “for periods less than 180 days” may mean the total number of days the property is or has been rented. Under the latter interpretation, a property may cease to qualify as a “vacation rental” when the property is rented for a total of 180 or more days, regardless of whether each individual rental is for less than 180 days and regardless of the time period over which those rentals occurred.

Section 509.609, F.S., provides additional inspection requirements for multiple unit vacation rentals. To qualify as a multiple unit vacation rental, five or more multifamily dwellings under common ownership and any such “vacation rental” must be rented out more than 180 days per year. This provision is inconsistent with the definition of a “vacation rental” in s. 509.013, F.S., which requires a property to be rented for periods less than 180 days and does not provide a time period during which such rentals must occur.

VII. Related Issues:

Section 509.607, F.S., exempts vacation rentals from the landlord and tenant provisions of ch. 83, F.S. Section 509.4005, F.S., also applies to vacation rentals the provisions of ss. 509.401-509.417, F.S., relating to the authority of a public lodging establishment to lockout a guest if payment has not been made on an account. The bill amends s. 509.013, F.S., to expand the definition of a “vacation rental” to include:

any unit 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 rented to guests for periods of less than 180 days but that is not a timeshare project.

As a result, this definition may include the renting of property which may not currently qualify as a vacation rental and is subject to the landlord and tenant requirements in ch. 83, F.S., especially part II of ch. 83, F.S., the Florida Residential Landlord and Tenant Act. Consequently, the bill may affect the rights and obligations of a landlord or tenant.

³¹ *Supra* note 27, at page 3.

The Department of Business and Professional Regulation (DBPR) notes that there may not be sufficient time to complete the rulemaking required by the bill due to the effective date of July 1, 2018. The bill may not provide the division with sufficient rulemaking authority to impose geographical limits for group and collective licenses. The absence of a geographical limit could result in one license covering 1,000 or more units throughout the state.³²

Additionally, DBPR states that the term “licensed operator”, as used in s. 509.605(1), F.S., in connection with the licensure of vacation rental units within separate buildings or at separate locations but managed by one licensed operator, is not defined in ch. 509, F.S., or within the bill.³³

Existing s. 509.261, F.S., and newly created s. 509.606, F.S., do not specify how long the signage must remain posted. This could result in an establishment that had its license revoked, or was determined to be operating without a license, having to display the sign in perpetuity. Additionally, existing s. 509.261, F.S., and newly created s. 509.606, F.S., create differing results based on the division’s staggered license renewal schedule because a revoked establishment can apply for a new license after their next renewal date.³⁴

The bill may potentially conflict with s. 509.221(2)(a), F.S., which directs the division to adopt a rule establishing categories of establishments that are not subject to the s. 509.221(2), F.S., public bathroom requirement and with Section 455.3.2.2, 2017 Florida Building Code – Building, Sixth Edition, which exempts resort condominiums and resort dwellings (now called vacation rentals) from public bathroom requirements. Rule 61C-1.004, F.A.C., currently excludes nontransient establishments, vacation rentals, and timeshare projects from the requirement. Given that vacation rental units are typically private residences, and thus restricted from access to the general public, complying with the requirement for publicly accessible bathrooms could be difficult. Vacation rentals can also be private residences when not being rented out, and having to comply with the requirement on a year round basis may also cause issues during times the unit is not open to the public.³⁵

Currently, s. 509.215, F.S., uses the term “public lodging facility” in the context of public firesafety requirements applicable to public lodging establishments. The bill amends this section to include vacation rentals in the requirements, but only refers in s. 509.215(6), F.S., to a “public lodging facility” without referring to vacation rentals. Under the bill, a vacation rental is not a public lodging facility. As a result, it is unclear how this requirement would apply to vacation rentals. One interpretation is that a vacation rental would be required to have one such smoke detector per 50 units.³⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.013, 509.032, 509.072, 509.091, 509.092, 509.095, 509.101,

³² *Supra* note 27, at page 6.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Supra* note 27, at page 7.

509.111, 509.141, 509.142, 509.144, 509.162, 509.191, 509.2015, 509.211, 509.2112, 509.215, 509.221, 509.241, 509.242, 509.251, 509.281, 509.302, 509.4005, 509.401, 509.402, 509.405, 509.409, 509.417, 553.5041, 717.1355, and 877.24.

This bill creates the following sections of the Florida Statutes: 509.601, 509.603, 509.604, 509.605, 509.6051, 509.606, 509.607, 509.608, and 509.609.

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 Community Affairs on January 30, 2018:

- Creates a section preempting all licensing of vacation rentals to the state.
- Requires a license application to contain the operator's emergency contact number. Also allows a temporary license to be issued and allows vacation rental to begin use while application is pending.
- Allows the division to fine, suspend, or revoke the license of any vacation rental when the advertisement for the vacation rental does not display the vacation rental license number.
- Regulates multiple unit vacation rentals. When five or more vacation rentals in multifamily dwellings are under common ownership and are rented out more than 180 days per year, such rental is subject to additional requirements, including biannual inspections.
- Defines a vacation rental as any unit 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 rented to guests for periods of less than 180 days but that is not a timeshare project.
- Requires the division to make the vacation rental license information required under chapter 509 to be available to the public, and allows local governments to use this license information for informational purposes only.
- Grandfathers local ordinances adopted on or before June 1, 2011.
- Sets maximum occupancy limits for vacation rentals.

- B. Amendments:

None.