

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 987 Public Lodging Establishments

SPONSOR(S): Commerce Committee, Business & Professions Subcommittee; Grant, J. and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 5 N, As CS	Thompson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	9 Y, 2 N	Helpling	Topp
3) Commerce Committee	13 Y, 11 N, As CS	Thompson	Hamon

SUMMARY ANALYSIS

A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state.

Currently, local governments may regulate vacation rentals as long as the regulations do not prohibit, or regulate the duration or frequency of, the use of the property as a vacation rental. The bill:

- Preempts to the state the regulation of vacation rentals, including, inspection, licensing, and occupancy limits, and allows local laws, ordinances and regulations that apply uniformly to all residential properties;
- Prohibits local vacation rental regulations regarding inspection, licensing, and occupancy limits;
- Clarifies that the court determines compliance when a local government is sued for an alleged violation of these prohibitions, and requires the local government to clearly establish compliance;
- Removes the exemption (grandfathering) for local government regulations adopted prior to June 1, 2011, which makes any regulation adopted prior to June 1, 2011, that conflicts with this act, void and unenforceable;
- Requires an applicant for a vacation rental license to register a contact person with the Division and make the person available to administer complaints;
- Requires the Division to make license information, and the contact person, available on its website;
- Clarifies that the bill does not supersede the statutory authority of condominiums, cooperatives, or homeowners' associations to govern the use of their properties;
- Requires the operator of a vacation rental to maintain certain liability insurance coverage;
- Requires a sexual offender staying in a public lodging establishment to register with the sheriff's office in the county where the public lodging establishment is located 48 hours prior to arrival;
- Requires an operator of a public lodging establishment to notify guests when a sexual offender is residing at the property;
- Requires public lodging establishment advertisements to provide their physical address, a link to the FDLE sexual predator/offender website, a link to the statute governing sexual offender registration, and a public notice statement;
- Requires the Division to fine, suspend, or revoke the license of public lodging establishment operators not in compliance with the sexual offender requirements; and
- Maintains the authority of locals to regulate advertising platforms provided by or through a company that is on the Scrutinized Companies that Boycott Israel List and any associated companies.

The bill has an indeterminate insignificant fiscal impact on state revenues and expenditures.

The effective date of the bill is July 1, 2019.

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

STORAGE NAME: h0987e.COM

DATE: 4/15/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.¹

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.²

The term “public lodging establishments” includes transient and nontransient public lodging establishments.³ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term “transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.⁴

The term “vacation rental” means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.⁵

Licensure

The Division is authorized to issue vacation rental licenses as follows:

- **Single license**: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- **Group license**: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.
- **Collective license**: issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.⁶

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.⁷ If no office or lobby is

¹ S. 509.241, F.S.

² S. 509.242(1), F.S.

³ S. 509.013(4)(a), F.S.

⁴ S. 509.013(4)(a)1., F.S.

⁵ S. 509.242(1)(c), F.S.

⁶ S. 509.241, F.S.

⁷ S. 509.241(3), F.S.

present on the premises of the licensed establishment, the license must be readily available for inspection upon request.⁸

As of July 1, 2018, there were 44,903 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 1,980 licenses;
- Motels: 2,556 licenses;
- Non-transient apartments: 18,260 licenses;
- Transient apartments: 920 licenses;
- Bed and Breakfast Inns: 260 licenses;
- Vacation rental condominiums: 6,032 licenses;
- Vacation rental dwellings: 14,874 licenses; and
- Vacation rental timeshare projects: 21 licenses.⁹

License Fees

The Division provides the following schedule of fees to conduct a vacation rental:¹⁰

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE ¹¹	TOTAL FEE
\$150	\$10	\$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	\$150	\$10	\$10	\$170
2-25	\$150	\$20	\$10	\$180
26-50	\$150	\$35	\$10	\$195
51-100	\$150	\$50	\$10	\$210
101-200	\$150	\$75	\$10	\$235
201-300	\$150	\$105	\$10	\$265
301-400	\$150	\$135	\$10	\$295
401-500	\$150	\$160	\$10	\$320
OVER 500	\$150	\$190	\$10	\$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period.

A \$50 application fee is required when making the initial application or an application for change of ownership.

Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is most recent.

⁸ R. 61C-1.002(1), F.A.C.

⁹ Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2017-2018*, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2017_18.pdf (last visited Mar. 13, 2019).

¹⁰ R. 61C-1.008, F.A.C.

¹¹ S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than \$10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

A \$50 delinquency fee is required to renew a delinquent license filed with the division after the expiration date.

Sanitation and Safety

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.¹² These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

Ventilation and Fire Safety

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.¹³ Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.¹⁴

In addition, smoke alarms must be installed in every living unit¹⁵ and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.¹⁶ All local fire authority requirements must be met. Electrical wiring must be in good repair.

Conduct on Premises

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.¹⁷ Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.¹⁸

¹² See generally s. 509.221, F.S., and r. 61C-1&3, F.A.C.

¹³ S. 509.221(3), F.S.

¹⁴ Rule 61C-1.004, F.A.C.

¹⁵ S. 509.215(1)(b), F.S.

¹⁶ S. 509.215(1), F.S.

¹⁷ S. 509.142, F.S.

¹⁸ S. 509.141(1), F.S.

Such admission or removal cannot be based upon race, creed, color, sex, physical disability, or national origin.¹⁹

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.²⁰

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.²¹

Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. Each licensed public lodging establishment must be inspected at least biannually (twice per year), except for transient and non-transient apartments, which must be inspected at least annually.²²

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.²³

Registry

The licensee or operator must notify the Division of all houses or units represented in a license application. Anytime a change in the address or number of houses or units occurs, the licensee or operator must notify the Division at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.²⁴

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well as the rates charged to the occupants. This register must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.²⁵

Consumer Complaints

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2018-2019, the Division received 107 consumer complaints regarding vacation rentals. This is 350 complaints less than the 457 that were received in Fiscal Year 2016-2017.²⁶ Of the 107 complaints, there were 68 inspections, 677 violations, two administrative cases, and \$600 in fines issued.²⁷

¹⁹ S. 509.141(1), F.S.

²⁰ S. 509.141(3), F.S.

²¹ S. 509.143(1), F.S.

²² See generally s. 509.032, F.S., r. 61C-1.002, F.A.C.

²³ *Id.*

²⁴ *Id.*

²⁵ S. 509.101(2), F.S.

²⁶ Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2016-2017*, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2016_17.pdf (last visited Mar. 13, 2019).

²⁷ Email from Colton Madill, Deputy Legislative Affairs, Director Department of Business and Professional Regulation, RE: Vacation Rental Complaint/Inspection Data, Mar. 25, 2019.

Insurance for Residential Tenancies

Part II of ch. 83, F.S., entitled the “Florida Residential Landlord and Tenant Act” (Act), governs the relationship between landlords and tenants under a residential rental agreement. The Act contains certain mandatory or conditional provisions and disclosures that a landlord must provide to a tenant or prospective tenant. For example:

- If the landlord requires a security deposit, the Act requires a disclosure regarding the tenant’s rights and responsibilities with respect to the security deposit.²⁸
- The landlord must disclose his or her address.²⁹
- If there is a liquidated damages provision in the lease, the Act provides language that must be included in the lease.³⁰
- If the rental agreement provides for indemnity from the tenant to the the landlord for storage or disposition of personal property of the tenant after the tenant surrenders the dwelling, the Act requires language within the lease to notify the tenant to that effect.³¹

Renters insurance refers to an insurance product, purchased by tenants, that includes three basic types of protection: personal possession, liability, and additional living expenses. Standard renters insurance policies:

- Protect personal belongings against damage from fire, smoke, lightning, vandalism, theft, explosion, windstorm, water, and other disasters listed in the policy.
- Provide liability protection against lawsuits for bodily injury or property damage that the insured or the insured’s family members cause to other people. It also pays for damages caused by pets to others in the home.
- Cover additional living expenses. If the tenant’s home is destroyed by a disaster, which is covered by the policy, renters insurance covers the additional costs incurred for the insured to reside elsewhere.³²

Policies will generally reimburse the difference between additional living expenses and normal living expenses. Additional living expenses cover hotel bills, temporary rentals, restaurant meals and other expenses, incurred while the home is being rebuilt.

According to the Insurance Information Institute, when a homeowner rents out the homeowner’s primary residence for short periods of time on a regular basis to “guests” it is considered a business. Standard homeowners’ insurance policies do not provide coverage for business activities conducted in the home. To be properly covered, the homeowner would need to purchase either a hotel or a bed and breakfast policy, which is a specific type of business insurance policy tailored to meet the needs to those operating hotels, motels, or bed and breakfasts.³³

Florida law does not require tenants or landlords to carry renters or business insurance coverage, respectively. The only type of insurance requirement in ch. 83, F.S., is waterbed insurance. If a tenant uses a floatation bedding system (waterbed), the tenant is required to carry flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. Such policy must carry a loss payable clause to the owner of the building.³⁴

²⁸ S. 83.49(2)(d), F.S.

²⁹ S. 83.50, F.S.

³⁰ S. 83.595(4), F.S.

³¹ S. 83.67(5), F.S.

³² Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/article/renters-insurance> (last visited Apr. 12, 2019).

³³ Insurance Information Institute, *Coverage for Renting Out Your Home*, <https://www.iii.org/article/coverage-for-renting-out-your-home> (last visited Apr. 12, 2019).

³⁴ S. 83.535, F.S.

Currently, Florida laws relating to insurance are similar for vacation rentals and long-term rentals. Neither landlords or tenants, nor vacation rental owners or their tenants, are required to carry business insurance or rental insurance.

Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed \$1,000 per offense; and
- Suspension, revocation, or refusal of a license.³⁵

Licensees with a single license are responsible for all violations of ch. 509, F.S., or rules adopted by the Division.³⁶ The authorized agent of the licensee is responsible for a violation for licensees holding a collective or group license if the dwelling or unit was listed under the agent or as otherwise reflected in records filed with the Division.³⁷

Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.³⁸ The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.

The legislation also grandfathered any local law, ordinance, or regulation of vacation rentals enacted on or before June 1, 2011, meaning that such local laws continue to be effective.

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.³⁹ As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.⁴⁰ Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.⁴¹

In 2014, the Legislature narrowed the scope of the preemption by preventing local governments from prohibiting or regulating the duration or frequency of vacation rentals.⁴² The amendment retained the grandfather provision, thereby allowing local regulations adopted before 2011 to continue in effect.

³⁵ S. 509.261(1), F.S.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.

³⁹ See City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.

⁴⁰ City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).

⁴¹ See Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, The Pew Charitable Trust, June, 6, 2013, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue> (last visited Mar. 16, 2019).

⁴² Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

Attorney General Opinion

The Attorney General (AG) released an opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance in light of the preemption regarding vacation rentals. The AG opined that the preemption allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the AG 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.⁴³

Recent Activity

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.⁴⁴ The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a “taking” under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.⁴⁵

In November 2015, the City of Anna Maria passed and adopted Ordinance No. 15-807. This ordinance provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city’s website, since April 2016, approximately 113 Bert Harris Act claims citing Ordinance No. 15-807 amounting to approximately \$38 million in damages have been filed.⁴⁶

In March 2016, Miami Beach passed an ordinance making the fine for a first violation for a resident caught renting short-term \$20,000. Each subsequent fine increases by \$20,000 and can be as high as \$100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.⁴⁷

It is reported that, as of June 2018, Miami Beach has issued \$12.1 million in fines, only \$174,000 have been paid, and the city’s fines are the highest in the country. Some owners have been fined \$60,000 and have stopped renting short-term altogether.⁴⁸

Sexual Offenders and Sexual Predators

Florida law requires registration of any person who has been designated as a sexual predator or sexual offender. The registration laws, which also require re-registration and provide for public and community notification of certain information about sexual predators and sexual offenders, span several different chapters and numerous statutes. Requirements for in-person registration and re-registration are similar for sexual predators and sexual offenders, but the frequency of reregistration depends on the qualifying offense.⁴⁹

⁴³ 2016-12 Fla. Op. Att’y Gen. (Oct. 5, 2016).

⁴⁴ Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, The Islander, (Feb. 20, 2018), <https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/> (last visited Mar. 16, 2019).

⁴⁵ S. 70.001, F.S.

⁴⁶ *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, City of Anna Maria, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Mar. 16, 2019).

⁴⁷ See Miami Beach City Code Sec. 142-1111 and 142-905(b).

⁴⁸ Chabeli Herrera, *Miami Beach has the country’s highest short-term rental fines. It just got sued.*, Miami Herald, (June 29, 2018), <https://www.miamiherald.com/news/business/article213954174.html> (last visited Mar. 20, 2019).

⁴⁹ Ss 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

The Florida Department of Law Enforcement (FDLE) provides a searchable database that contains information about sexual predators and sexual offenders.⁵⁰ Local law enforcement agencies provide access to this information. The National Sex Offender Public Website, coordinated by the Department of Justice, enables every citizen to search the latest information from all 50 states, the District of Columbia, Puerto Rico, Guam, and numerous Indian tribes for the identity and location of known sex offenders.⁵¹

Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is in or out of custody or supervision. Generally, the registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the Department of Corrections or the custody of a private correctional facility (sexual offenders).⁵²

Sexual predators and sexual offenders are required to provide specific information at the time of initial registration. This includes personal identifying information, and location information, including their current, known, temporary, transient, or future legal residences.⁵³

The Florida Sexual Predators Act defines a "temporary residence" as a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of three or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

The act defines a "transient residence" as a county where a person lives, remains, or is located for a period of three or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

Prohibited Investments in Companies that Boycott Israel

Section 215.4725, F.S., requires the State Board of Administration (SBA) to create a list composed of companies that participate in a boycott of Israel, including actions that limit commercial relations with Israel or Israeli controlled territories, called the Scrutinized Companies that Boycott Israel List (Israel List). The SBA is prohibited from acquiring direct holdings of the companies on this list. The law requires the SBA to use best efforts in identifying companies that boycott Israel, publish the list on a quarterly basis, send written notice to the companies, engage with the SBA's external managers concerning holdings of the companies on the list, and publish a list of the SBA's directly held securities.

The SBA is required to review publicly available information, including from non-governmental organizations, non-profits, government entities and research firms, and/or contact asset managers or other institutional investors. The SBA staff must contract with external research providers to obtain preliminary lists of potential scrutinized companies and evaluate the evidence to make a final determination of scrutinized status.

⁵⁰ Florida Department of Law Enforcement, *Sexual Offenders and Predators Search*, <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited Mar. 16, 2019).

⁵¹ Federal Bureau of Investigation, *Sex Offender Registry Websites*, <https://www.fbi.gov/scams-and-safety/sex-offender-registry> (last visited Mar. 16, 2019).

⁵² Ss. 775.21(6)(e) and 943.0435(2)(a), F.S.

⁵³ Ss. 775.21(6)(a), (6)(g)(5) and 943.0435(2)(a), (2)(b), (4)(e), F.S.

Prohibition against Contracting with Companies that Boycott Israel

Section 287.135, F.S., prohibits a company that is on the Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services in any amount. A company that submits a bid or proposal for, enters into, or renews such a contract must certify that the company is not participating in a boycott of Israel. The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.

The law also requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Israel List or is engaged in a boycott of Israel.⁵⁴

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List if all of the following occur:

- The boycott of Israel was initiated before October 1, 2016.
- The company certifies in writing that it has ceased its boycott of Israel.
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations⁵⁵ and to refrain from engaging in any new scrutinized business operations.⁵⁶

An agency or local governmental entity is also authorized to make an exception to the contracting prohibition for a company on the Israel List if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.⁵⁷

Condominiums, Cooperatives, and Homeowners' Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.⁵⁸ A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.⁵⁹ A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended

⁵⁴ S. 287.135(3)(b), F.S.

⁵⁵ Section 215.473(1)(u), F.S., defines "scrutinized business operations" to mean business operations that result in a company becoming a scrutinized company.

⁵⁶ Section 287.135(4), F.S.

⁵⁷ *Id.*

⁵⁸ S. 718.103(11), F.S.

⁵⁹ S. 718.104(2), F.S.

may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.⁶⁰ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using “cooperative documents” which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners’ association (HOA) is an association of residential property owners where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.⁶¹ Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners’ associations have enacted provisions that govern the ability of the property owners to rent their properties. Certain condominium, cooperative, and homeowners’ associations have taken actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Effect of the Bill

Preemption Authority

The bill preempts to the state the regulation of vacation rentals, including, but not limited to, inspection, licensing, and occupancy limits.

The bill allows local laws, ordinances and regulations to apply to vacation rentals as long as they also apply uniformly to all residential properties. Such law, ordinance, or regulation must apply uniformly to all residential properties without regard to whether the residential property is used as a vacation rental, a long-term rental, or whether a property owner chooses not to use his or her residential property as a vacation rental.

The bill adds occupancy limits, inspections, and licensing to the list of prohibited local vacation rental laws, ordinances, or regulations. As a result, locals would be prohibited from:

- Prohibiting vacation rentals;
- Regulating the duration of vacation rentals;
- Regulating the frequency of vacation rentals;
- Imposing occupancy limits on vacation rentals;
- Requiring inspections of vacation rentals; and
- Requiring licensure of vacation rentals.

The bill provides that the court must determine whether a contested local law is compliant when a local government is sued for an alleged violation of these prohibitions. In addition, the bill requires the local

⁶⁰ S. 719.103(2)(26), F.S.

⁶¹ S. 720.301(9), F.S.

government that enacted the contested local law, ordinance, or regulation to establish by clear and convincing evidence that the local law, ordinance, or regulation is compliant with these provisions.

The bill requires an applicant for a public lodging establishment license for a vacation rental as described in s. 509.242(1)(c), F.S., to provide the name, mailing address, telephone number, and email address of a person the Division can contact when a complaint related to a vacation rental is reported.

The bill requires the Division to make vacation rental license information, including the contact person, available to the public on its website.

The bill removes the grandfather provision that currently allows a local law, ordinance, or regulation of vacation rentals enacted on or before June 1, 2011, to be maintained. As a result, any local law, ordinance, or regulation of vacation rentals adopted on or before June 1, 2011, will be void and unenforceable, unless the regulation applies uniformly to all residential properties and does not:

- Prohibit vacation rentals;
- Regulate the duration of vacation rentals;
- Regulate the frequency of vacation rentals;
- Impose occupancy limits on vacation rentals;
- Require inspections of vacation rentals; and
- Require licensure of vacation rentals.

The bill provides the following Legislative findings:

- Property owners who use their residential property as a 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.
- Vacation rentals play a significant, unique, and critical role in the state's tourism industry, and that role, including the factors related to the ownership and operation of such rentals, is different from other types of public lodging establishments.
- Vacation rentals are residential in nature, residential in use, and allowed in residential neighborhoods.

The bill does not preempt the authority of a local government to regulate any advertising platform provided by or through a company that is on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725, F.S., or by or through any company that is under common ownership or control with a scrutinized company.

Condominiums, Cooperatives, and Homeowners' Associations

The bill maintains the ability of condominiums, cooperatives, and HOAs govern the use and occupancy of properties in their communities, including restrictions regarding vacation rentals. Specifically, the bill provides that nothing in the subsection on preemption authority shall supersede any current or future:

- Articles of incorporation, declaration or bylaws adopted pursuant to ch. 718, F.S.;
- Cooperative documents adopted pursuant to ch. 719, F.S.; or
- Governing documents adopted pursuant to ch. 720, F.S.

Sexual Offenders

The bill requires a sexual offender staying in a public lodging establishment to register with the sheriff's office in the county where the public lodging establishment is located 48 hours prior to arrival regardless of the length of stay.

An operator who has been notified that a sexual offender is staying within 1,000 feet of the public lodging establishment property must notify all other guests residing at the property.

The bill requires any online advertisement or posting of a public lodging establishment to:

- prominently display the actual physical street address of the public lodging establishment;
- prominently display a link to the Florida Department of Law Enforcement (FDLE) sexual predator and offender information website;
- prominently display a link to the statute requiring sexual offenders to register with FDLE; and
- provide the following statement:

“Every sexual offender and sexual predator intending to temporarily reside at a public lodging establishment located in Florida is required by Florida law to register in accordance with s. 509.245, Florida Statutes.”

The bill requires the Division to fine, suspend, or revoke the license of any public lodging establishment operator not in compliance with these requirements.

Insurance Requirements

The bill requires the operator of a vacation rental to maintain liability insurance coverage equal to the insurance requirements for long-term rentals covered by ch. 83, F.S.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 509.032, F.S., relating to preempting to the state the regulation of vacation rentals; providing an exception; providing applicability.
- Section 2.** Amends s. 509.111, F.S., relating to liability for property of public lodging establishment guests.
- Section 3.** Amends s. 509.241, F.S., relating to application requirements for licensure as a vacation rental.
- Section 4.** Creates s. 509.245, F.S., relating to sexual offenders in public lodging establishments.
- Section 5.** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not modify state licensing requirements for vacation rentals, which are currently required. However, there may be an insignificant increase in license revenues to DBPR as a result of preempting local regulation of vacation rentals.

2. Expenditures:

DBPR currently makes vacation rental information available on their website.⁶² There may be insignificant costs related to updating the license information with a contact person for complaints, if that person is different than the person holding the current license. However, any expenditures related to implementation of the bill can be handled within existing resources.

⁶² Florida Department of Business and Professional Regulation, *DBPR Online Services*, <https://www.myfloridalicense.com/wl11.asp?mode=2&search=LicTyp&SID=&brd=&typ=> (last visited Mar. 28, 2019)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Preempting local governments from regulating vacation rentals will prevent a local government from imposing and collecting fines relating to regulation and enforcement. The amount is indeterminate and will vary on each local government's current practice of vacation rental regulation and enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals seeking a vacation license will not have to contemplate local regulations, making licensure of a vacation rental easier. In addition, local governments will not be able to impose fines related to regulations as outlined in the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Sexual Offender Registration

Section 4 of the bill requires a sexual offender to register with the sheriff's office, but references the process for the registration of sexual predators. As such, this cross-reference may need to be changed to reflect the process for registering as a sexual offender.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Business & Professions Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute maintains the authority of a local government to regulate any advertising platform provided by or through a company that is on the Scrutinized Companies that Boycott Israel List and any company that is under common ownership or control with a scrutinized company.

On April 10, 2019, the Commerce Committee adopted four amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that the bill does not supersede the authority of condominiums, cooperatives, or homeowners' associations to govern the use and occupancy of their properties;
- Requires the operator of a vacation rental to maintain liability insurance coverage equal to the insurance requirements for long-term rentals covered by ch. 83, F.S.;
- Requires a sexual offender staying in a public lodging establishment to register with the sheriff's office in the county where the public lodging establishment is located 48 hours prior to arrival;
- Requires an operator of a public lodging establishment to notify the guests when a sexual offender is residing at the property;
- Requires public lodging establishments to provide their physical address, a link to the FDLE sexual predator and offender information website, a link to the statute governing sexual offender registration, and a public notice statement; and
- Requires the Division to fine, suspend, or revoke the license of any public lodging establishment operator not in compliance with the sexual offender requirements.

The staff analysis is drafted to the committee substitute as passed by the Commerce Committee.