

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL: SB 1128

INTRODUCER: Senator Diaz

SUBJECT: Vacation Rentals

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1128 preempts all regulation of vacation rentals to the state, including, but not limited to, the inspection and licensing of vacation rentals. A vacation rental is a unit in a condominium or cooperative or a single, two, three, or four family house that is rented to guests more than 3 times a year for periods of less than 30 days or one calendar month whichever is shorter.

Under the bill, a local government may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. Under current law, local governments may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals. A local law, ordinance, or regulation adopted on or before June 1, 2011, is exempt from this prohibition. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department).

The bill also preempts the regulation of advertising platforms to the state. The bill excludes from the term “advertising platform” a multiple listing service or an online or print advertisement for rental of a transient public lodging establishment by a licensed real estate broker or sales associate.

The bill requires the operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which taxes must be paid for each rental of the property as a vacation rental.

Additionally, the bill requires an advertising platform and a person who places an advertisement for the rental of a vacation rental to list the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers. The advertising platform must remove from public view any advertisement or listing that fails to display a valid

vacation rental license number. An advertising platform is a person that advertises electronically or in print a transient public lodging establishment for rent for transient occupancy. It also can include maintaining a marketplace or reservation or payment system.

The bill provides that it is the Legislature's intent that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' association.

The bill takes effect upon becoming law. However, the provisions relating to advertising platforms take effect January 1, 2021.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and nontransient public lodging establishments.¹ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "nontransient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

¹ Section 509.013(4)(a), F.S.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

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

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The department licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less

² Section 509.242(1), F.S.

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

units collectively.”⁴ The division does not license or regulate the rental of individual rooms within a dwelling unit under the roominghouse and boardinghouse exclusion from the definition of public lodging establishment under s. 509.013(b)9., F.S.⁵

The 48,226 public lodging establishments licensed by the division are distributed as follows:⁶

- Hotels – 2,104 licenses;
- Motels – 2,509 licenses;
- Nontransient apartments – 18,505 licenses;
- Transient apartments – 935 licenses;
- Bed and Breakfast Inns – 267 licenses;
- Vacation rental condominiums – 8,066 licenses;
- Vacation rental dwellings – 15,815 licenses; and
- Vacation rental timeshare projects – 20 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but transient and nontransient apartments must be inspected at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division.⁷ The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2018-2019, the division received 228 consumer complaints regarding vacation rentals. In response to the complaints, the division confirmed a violation for 14 of the complaints.⁸

The division’s inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁹

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

⁵ 2020 Agency Legislative Bill Analysis for SB 1128, Department of Business and Professional Regulation, January 7, 2020 at page 2.

⁶ Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, Jan. 1, 2020. A copy of the report is available at:

<http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf> (last visited Jan. 8, 2020).

⁷ Section 509.032(2)(a), F.S.

⁸ *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, Department of Business and Professional Regulation, at page 8. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf (last visited Jan. 8, 2020).

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at:

<https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Jan. 3, 2020).

The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.¹¹

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.¹²

Preemption

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹³

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.¹⁴

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.¹⁵

¹⁰ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹¹ Section 509.032(2)(d), F.S.

¹² See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at:

https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694 (last visited Jan. 3, 2020).

¹³ Section 509.032(7)(a), F.S.

¹⁴ See s. 163.3164(43), F.S., provides that the state land planning agency is the Department of Economic Opportunity.

¹⁵ Chapter 2011-119, Laws of Fla.

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁶

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁷ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use or occupancy.”¹⁸

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.¹⁹ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.²⁰

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.²¹ The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.²²

¹⁶ *Id.*

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

¹⁸ *Id.*

¹⁹ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013. On file with the Senate Committee on Innovation, Industry, and Technology.

²⁰ Florida Attorney General, AGO 2014-09, Vacation Rentals - Municipalities - Land Use, November 13, 2014, available at: <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Jan. 3, 2020).

²¹ Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, on file with the Senate Committee on Innovation, Industry, and Technology.

²² *Id.*

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.²³ The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt all regulation of vacation rentals and advertising platforms to the state.

Section 509.032(7)(b)1., F.S., provides legislative findings, including the finding that vacation rentals play a significant, unique, and critical role in Florida’s tourism industry, a role that is different from other types of public lodging establishments.

Under the bill, the regulation of vacation rentals, including inspections and licensing, is expressly preempted to the state.

The bill allows a local government to regulate activities that arise when a property is used as a vacation rental, if the regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental or as a long-term rental under ch. 83, F.S.

The bill specifically prohibits a local law, ordinance, or regulation that requires the inspection or licensing of vacation rentals.

The bill amends the definition “vacation rental” in s. 509.242(1)(c), F.S., to replace the term “any” with the terms “a” and “in an”. According the department, the revised definition would include the rental of a single, bedroom, or group of rooms within a single house or dwelling, and would require units previously exempt from division licensing to now obtain a vacation rental license.²⁴

Definition of the term “Advertising Platform”

The bill creates s. 509.013(17), F.S., to define the term “advertising platform.” Under the bill, an advertising platform:

- Provides an online application, software, website, system, or print advertisement through which a transient public lodging establishment located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; or

²³ Florida Attorney General, AGO 2019-07, Vacation rentals, municipalities, grandfather provisions, August 16, 2019, available at: <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited January 8, 2020).

²⁴ See note 5, *supra* at page 7.

- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

The term “advertising platform” does not include a multiple listing service or an online or print advertisement for rental of a transient public lodging establishment by a licensed real estate broker or sales associate. However, a licensed real estate broker or sales associate must comply with s. 509.243(3), F.S., which requires the removal from public view of a listing for the rental of a vacation rental that fails to display a valid license number issued by the division.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require the operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

Requirements for Advertising Platforms

Effective January 1, 2021, the bill creates s. 509.243, F.S., to provide requirements, including a reporting requirement, for an advertising platform. Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental include in the advertisement:
 - The vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers.
 - Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.
- Display the license number and applicable tax numbers, but the advertising platform is not required to verify such information.
- Provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rental listings in this state on its platform specified information, including the Internet address of the listing, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

The bill provides a process for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the department is required to seek enforcement of the

notice for a penalty pursuant to s. 120.569, F.S.,²⁵ it is entitled to collect its attorney fees and costs, together with any cost of collection.

Community Associations

The bill provides that it is not the Legislature's intent that the application of vacation rental provisions created by the bill supersede any current or future declaration or declaration of condominium, cooperative documents, or declaration of covenants or declaration in a homeowners' association.

Effective Date

The bill takes effect upon becoming law. However, the provisions of s. 509.243, F.S., relating to advertising platforms, take effect January 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Local governments may see an increase in local tourist development taxes.²⁶

State government may see an increase in sales taxes and an indeterminate amount of licensing revenue due to the new definition of vacation rentals.²⁷

²⁵ Section 120.569, F.S., provides the administrative procedures for resolution of agency decisions which affect substantial interests before the Division of Administrative Hearings.

²⁶ See note 5, *supra* at page 7.

²⁷ *Id.*

B. Private Sector Impact:

According to the department, rental properties previously exempt from licensure as a vacation rental under the s. 509.013(4)(b)9, F.S., for roominghouse, boardinghouses or other living or sleeping facilities, would now require a vacation rental license.²⁸

C. Government Sector Impact:

A local government may have an indeterminate decrease of revenue if the local government currently requires a vacation rental license or registration fee. Under the bill, a local government may not require a vacation rental to register or obtain such a license.

The department estimates a cost of \$448,926 (\$412,005 recurring) for 6 FTE. Indeterminate possible additional costs.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.241, and 509.242.

This bill creates section 509.243 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

²⁸ *Id.*

²⁹ *Id.*