

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 Rules

BILL: CS/SB 1128

INTRODUCER: Commerce and Tourism Committee and Senator Diaz

SUBJECT: Vacation Rentals

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 three times a year for periods of less than 30 days or 1 calendar month, whichever is shorter. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department).

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 vacation rentals. A local law, ordinance, or regulation adopted on or before June 1, 2011, is exempt from this prohibition, and a local government may maintain this exemption if their future amendment to a grandfathered regulation results in a less restrictive regulation of the prohibition, duration, or frequency of vacation rentals.

The bill also preempts the regulation of advertising platforms to the state. An advertising platform is a person who electronically advertises a vacation rental for rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to state the property's vacation rental license number and the

applicable Florida sales tax registration and tourist development tax account numbers on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are current, valid, and accurate. The vacation rental property owner or operator must display this tax and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number and the Florida sales tax registration and tourist development tax account numbers of each property that advertises on its platform. The advertising platform must verify the validity of the vacation rental's license number before it can publish the advertisement and must perform ongoing checks every calendar quarter thereafter. To facilitate this verification, the division must maintain vacation rental license information in a readily accessible electronic format. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Under the bill, advertising platforms must provide to the division on a quarterly basis information that assists the division with identification and verification of the vacation rental property's compliance with the bill's requirements.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chs. 212 and 125, F.S., that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable basis.

Additionally, advertising platforms must adopt anti-discrimination policies and inform users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The bill provides that its terms 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 duration of the rentals.

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

¹ Section 509.013(4)(a), F.S.

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;
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 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(4)(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 must inspect transient and nontransient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a

² Section 509.242(1), F.S.

³ Rule 61C-1.002(4)(a)1, F.A.C.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. *See* Rule 61C-1.002(4)(a)1, F.A.C. 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 Department of Business and Professional Regulation, *2020 Agency Legislative Bill Analysis for SB 1128* at page 2 (January 7, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).

⁶ Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, (Jan. 1, 2020) available at <http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf> (last visited Feb. 11, 2020).

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 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.

⁷ Section 509.032(2)(a), F.S.

⁸ Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2018-2019* at page 8-12, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf (last visited Feb. 11, 2020).

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Rule 61C-1.002, F.A.C.; *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 Feb. 11, 2020).

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 Feb. 11, 2020).

¹³ Section 509.032(7)(a), F.S.

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

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

¹⁴ See s. 163.3164(43), F.S., which 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.*

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

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

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.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.²⁴

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, and specifically prohibits local laws, ordinances, or regulations that require the inspection or licensure of public lodging establishments, including vacation rentals.

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. Any local law, ordinance, or regulation adopted on or before June 1, 2011, is not affected by this preemption, and any such regulation may be amended without affecting its grandfathered status

²⁰ Op. Att’y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 13, 2014), available at <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Feb. 11, 2020).

²¹ Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals - Zoning* (October 5, 2016) (on file with the Senate Committee on Innovation, Industry, and Technology).

²² *Id.*

²³ Op. Att’y Gen. Fla. 2019-07, *Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) available at <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited Feb. 11, 2020).

²⁴ See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Feb. 11, 2020).

if the amendment makes the local law, ordinance, or regulation less restrictive with regard to its prohibition of, or duration or frequency regulation of, vacation rentals.

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, or system through which a vacation rental 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; and
- 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.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require the owner or 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 within the vacation rental property.

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 to:
 - Include the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers in the vacation rental’s advertisement; and
 - 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.
- Verify and display the vacation rental property’s license number; the verification must occur before the platform publishes the rental property’s advertisement, and re-occur on a quarterly basis.
- Display the vacation rental property’s applicable tax numbers.
- 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 physical 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.

- Collect and remit taxes due under chs. 212 and 125, F.S., that result from the reservation of a vacation rental property and payment therefor through an advertising platform; service fees assessed by the advertising platform are not subject to these taxes.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The division must maintain vacation rental license information in a readily accessible electronic format.

The bill provides processes 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 the application of vacation rental provisions created by the bill do not 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.

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.

E. Other Constitutional Issues:

None identified.

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

B. Private Sector Impact:

Indeterminate.

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 six full-time employees and indeterminate possible additional costs.²⁸

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, and 509.241.

This bill creates section 509.243 of the Florida Statutes.

²⁶ See note 5, *supra* at page 7.

²⁷ *Id.*

²⁸ *Id.*

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 Commerce and Tourism on February 11, 2020:**

- Clarifies the definition of an advertising platform and narrows it by removing print advertisements from its scope;
- Permits a local government to amend a grandfathered vacation rental regulation, while preserving its exemption from preemption, if the amendment makes the regulation less restrictive;
- Deletes a provision amending the definition of the term “vacation rental;”
- Requires the department to maintain vacation rental property license information in an accessible electronic format;
- Requires advertising platforms to verify a property’s license number prior to publishing its advertisement on its platform, and every quarter thereafter;
- Requires advertising platforms to quarterly provide the department with the physical address of the vacation rental properties that advertise on their platforms;
- Imposes a duty on advertising platforms to collect and remit taxes in relation to the rental of a vacation rental property through its platform;
- Establishes requirements that advertising platforms adopt an anti-discrimination policy and inform their users of the public lodging discrimination prohibition found in s. 509.092, F.S.; and
- Clarifies that the bill shall not supersede any current or future community association governing document.

B. Amendments:

None.