Regulatory Reform Subcommittee

Wednesday, February 10, 2021
1:00 PM – 2:30 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee
Regulatory Reform Subcommittee

Chris Sprowls
Speaker

Bob Rommel
Chair

AGENDA

Wednesday, February 10, 2021
Morris Hall (17 HOB)
1:00 PM – 2:30 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 55 by *Rep. Overdorf*
Building Design

HB 73 by *Rep. Tomkow*
Malt Beverage Advertising Agreements

HB 219 by *Rep. Fischer*
Vacation Rentals

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 410-0096

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Reform Subcommittee

Start Date and Time:	Wednesday, February 10, 2021 01:00 pm
End Date and Time:	Wednesday, February 10, 2021 02:30 pm
Location:	Morris Hall (17 HOB)
Duration:	1.50 hrs

Consideration of the following bill(s):

HB 55 Building Design by Overdorf
HB 73 Malt Beverage Advertising Agreements by Tomkow
HB 219 Vacation Rentals by Fischer

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, February 9, 2021, including amendments filed by Members of the Committee/Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Seating will be available on a first-come, first-served basis. The pass will indicate whether you will be seated in the main meeting room or in 12 HOB which has been made available for onsite virtual testimony. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 02/03/2021 4:15PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 55 Building Design
SPONSOR(S): Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead
2) Local Administration & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits. Some local governments have implemented regulations that require new residential dwellings in the community to have specific building design elements such as exterior paint color, exterior building material, architectural style of windows and doors, and location of windows and doors.

The bill:

- Prohibits local governments from adopting zoning and development regulations that require specific building design elements for residential dwellings, unless certain conditions are met.
- Provides that local governments may adopt zoning and development regulations requiring certain building design elements for residential dwellings when:
  - The dwelling is a historic property or a contributing property to a historic district; or
  - The regulations are adopted in order to implement the National Flood Insurance Program.
- Defines the term "building design elements" to mean exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows or doors, and number, type, and layout of rooms.
- Provides that the term "building design elements" does not include setback including the height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill has an indeterminate fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

It is the intent of Act is that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.[2]

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[3] Plans may include optional elements,[4] but must include the following nine elements:[5]

- Capital improvements;
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.[6]

Each county and municipality must adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.[7] All local government land development regulations must be consistent with the local government's comprehensive plan.[8]

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[1] Ch. 11-139, Laws of Fla.
[2] S. 163.3161(4), F.S.
[3] S. 163.3177(1), F.S.
[4] *Id.*
[5] Ss. 163.3177(3) & (6), F.S.
[6] Ss. 163.3164(26) & 163.3202(1), F.S.
[7] S. 163.3202(1), F.S.
[8] S. 163.3194(1)(b), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;[9]
- Architectural style of:[10]
  - Windows;
  - Doors, including garage doors;
  - Front porches; and
  - Roofs.
- Exterior building material;[11] and
- Location of windows and garage doors.[12]

Some local governments may be adopting ordinances related to building design elements because the local government is adopting the principles of "new urbanism." New urbanism is a land development policy that attempts to solve issues created by urban sprawl, such as traffic jams, ugliness, and lifeless downtowns, by establishing compact, mixed-use, and pedestrian friendly communities. The principles of new urbanism can be achieved through creating mixed-use areas with residential areas located within walking distance of commercial areas located in a town center, creating parks and civic spaces located near the town center, and building narrow streets with sidewalks and trees to promote walking.[13]

New urbanism also includes creating communities and neighborhoods that have a certain style of architecture and design and, thus, are more pleasant to live in and walk through. Local governments can accomplish this by requiring buildings, including single- and two- family buildings, within their jurisdictions too have specific building design elements.[14]

Opponents of the adoption of the building design element ordinances argue that these types of building design elements increase housing costs and prevent homeowners from choosing their own preferences or styles.[15] Local governments argue that the building design element ordinances ensure that poorly designed buildings do not lower the value of surrounding properties. Prohibiting such ordinances, they say, will prevent them from developing a plan for their own community.[16]

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[9] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; Orange County Code, § Chapter 38, Article VIII, Division 8.

[10] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67; Orange County Code, § Chapter 38, Article VIII, Division 8.

[11] Orange County Code, § Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67

[12] Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517.

[13] Doris S. Goldstein, *New Urbanism: Recreating Florida by Rewriting the Rules*, Florida Bar Journal, April 2006, at 63; Michigan Land Institute, 10 Principles of New Urbanism, http://www.mlui.org/mlui/news-views/articles-from-1995-to-2012.html?archive_id=678#.Xhd62ehKiUk (last visited Jan. 29, 2021); Congress for the New Urbanism, *What is New Urbanism?*, https://www.cnu.org/resources/what-new-urbanism (last visited Jan. 29, 2021).

[14] *Id.*

[15] Michael Bezruki, *Governor Signs Arkansas Housing Affordability Bill Into Law*, National Home Association of Home Builders, March 15, 2019, http://nahbnow.com/2019/03/governor-signs-arkansas-housing-affordability-bill-into-law/ (last visited Jan. 29, 2021); Doug Thompson, *Restrictions on home building barred in Arkansas*, Northwest Arkansas Democrat Gazette, March 17, 2019, https://www.nwaonline.com/news/2019/mar/17/restrictions-on-home-building-barred-in/ (last visited Jan. 29, 2021).

[16] Daniel Herriges, *Building Design Requirements Are Sometimes Bad for Cities. But Abolishing Them All Is Worse*, Strong Towns, April 11, 2019 https://www.strongtowns.org/journal/2019/4/11/design-standards-are-an-important-tool-for-cities-dont-do-away-with-them (last visited Jan. 29, 2021); Elaina Sauber, Housing design bill worries Franklin officials, Tennessean, April 18, 2017 https://www.tennessean.com/story/news/local/williamson/2017/04/18/housing-design-bill-worries-franklin-officials/100561994/ (last visited Jan. 29, 2021).

States That Prohibit Local Government Regulations For Building Design Elements

North Carolina and Arkansas prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.[17] Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.[18]

Passed in 2015, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district or conditional district unless voluntarily consented to by the owners of the all the properties subject to the proposed regulation.[19]

The North Carolina law defines "building design elements" to include the:[20]

- Exterior building color;
- Type or style of exterior cladding[21] material;
- Style or materials of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;
- Number and types of rooms; and
- Interior layout of rooms.

The phrase does not include:[22]

- A single- and two- family dwelling's:
  - Height;
  - Bulk;
  - Orientation; and
  - Location of a structure on a zoning lot.
- The use of buffering or screening to minimize visual impacts or impact of light and noise; and
- Regulations governing permitted uses of land.

The North Carolina law allows cities and counties to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:[23]

- The dwelling is located in an area designated as a local historic district;
- The dwelling is located in area designated as a historic district on the National Register of Historic Places;[24]
- The dwelling is individually designated as a local, state, or national historic landmark;

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[17] N.C. Gen. Stat. § 160D-702; Ark. Code Ann. § 14-17-212 & 14-56-204.

[18] Georgia General Assembly, 2019-2020 Regular Session - HB 302, http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302 (last visited Feb. 1, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110 (last visited Feb. 1, 2021).

[19] N.C. Gen. Stat. § 160D-702; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl) (last visited Feb. 1, 2021); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf (last visited Feb. 1, 2021).

[20] N.C. Gen. Stat. § 160D-702.

[21] The Florida Building Code and the North Carolina Building Code both define "cladding" as the material that covers the exterior surface of a building, and is directly affected by wind load. S. 202 of the Florida Building Code (Residential), Seventh Edition; S. 202 of the 2018 North Carolina Building Code (Residential).

[22] *Id.*

[23] *Id.*

[24] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Feb. 1, 2021).

- The regulations are directly and substantially related to the requirements of North Carolina's Building Code;
- The regulations are applied to manufactured housing in a manner consistent with state and federal law; and
- The regulations are adopted as a condition for participation in the National Flood Insurance Program.[25]

The prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.[26]

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require "building design elements" for single-family dwellings. The law defines "building design elements" the same as North Carolina except Arkansas also includes minimum square footage in its definition and the location and design of a dwelling's garage.[27]

In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations if:

- The dwelling is in a central business district, which can be created by a city to revitalize its urban center;
- The dwelling existed and was subject to the local regulation prior to the prohibition being enacted;
- An overlay district regulation if a majority of owners in the district approve the regulation and the district determines the regulation does not violate Arkansas' Private Property Protection Act; or
- The regulations are directly related to an immediate public health or safety hazard and the regulation is derived from the local government's police power.[28]

Arkansas also provides that the prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.[29]

Effect of the Bill

Community Planning Act — Effect of the Bill

The bill prohibits local governments from adopting zoning and development regulations that relate to building design elements for residential dwellings.

The bill defines the term "building design elements" to mean:

- Exterior building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors, including garage doors;
- Number and type of rooms; and

[25] The National Flood Insurance Program is administered by FEMA. The goal of the program is to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, and encouraging communities to adopt and enforce floodplain management regulations. FEMA, *The National Flood Insurance Program*, https://www.fema.gov/national-flood-insurance-program (last visited Feb. 1, 2021).

[26] *Id.*

[27] Ark. Code Ann. § 14-17-212 & 14-56-204; SB 170, 92nd Leg. Reg. Sess. (AR 2019).

[28] *Id.*

[29] *Id.*

- Interior layout of rooms.

The term does not include:

- A residential dwelling's:
  - Height;
  - Bulk;
  - Orientation;
  - Location on a zoning lot; or
- The use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to adopt and enforce regulations that require "building design elements" for residential dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

B. SECTION DIRECTORY:

Section 1. Amending s. 163.3202, F.S., prohibiting local governments from enacting certain regulations for certain residential buildings.

Section 2. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. Local governments may have additional expenditures because of an increase in legal challenges to zoning and other regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that zoning and development regulations may not relate to "building design elements." However, zoning and development regulations are not defined in the Community Planning Act. It is recommended that zoning and development regulations be changed to land development regulations, which is defined in the Community Planning Act, and includes zoning regulations.

Prohibiting local governments from requiring certain types of cladding or roofing material may weaken residential dwellings that are at a higher risk for hurricane damage. Local governments that are more at risk for hurricane damage may want to adopt regulations requiring a certain type of exterior cladding or roof material that is stronger than other types allowed by the Building Code. However, this bill will prohibit that. The sponsor may want to clarify that any properly adopted local amendment to the Building Code that may be related to cladding or roofing is not included in the bill's prohibitions.

North Carolina and Arkansas' laws prohibit local governments from adopting regulations that require certain building design elements for single- and two- family dwellings. However, the bill prohibits local governments from adopting regulations that require certain building design elements for any residential dwellings including multi-family dwellings.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; prohibiting certain regulations relating to building design elements from being applied to certain structures; providing exceptions; defining the term "building design elements"; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsection (5) of section 163.3202, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

163.3202 Land development regulations.—

(5)(a) Zoning and development regulations relating to building design elements may not be applied to any residential dwelling unless:

1. The structure is listed in the National Register of Historic Places, as defined in s. 267.021(5); is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance; or

2. The regulations are adopted in order to implement the National Flood Insurance Program.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(b) For purposes of this subsection, the term "building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors, including garage doors; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Overdorf offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsection (5) of section 163.3202, Florida Statutes, is renumbered as subsection (6), respectively, and subsection (5) is added to that section, to read:

163.3202 Land development regulations.—

(5)(a) Land development regulations relating to building design elements may not be applied to a single- or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is a located in a National Register Historic District; or is designated as a

historic property or located in a historic district, under the terms of a local preservation ordinance;

2. The regulations are adopted in order to implement the National Flood Insurance Program;

3. The regulations are adopted pursuant to and in compliance with chapter 553; or

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10).

(b) For purposes of this subsection, the term "building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 2. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 55 by Rep. Overdorf
Building Design

AMENDMENT SUMMARY
February 10, 2021

Amendment 1 by Rep. Overdorf (strike-all):
The amendment:

- Clarifies that residential dwellings are limited to single- and two- family dwellings.
- Adds additional types of dwellings that local governments may apply building design restrictions to, including:
    - Single- and two- family dwellings **located** in historic districts instead of only dwellings **that contribute** to historic districts.
    - Single- and two- family dwellings located in community redevelopment areas.
    - When the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Clarifies that building design restrictions include the location and orientation of a garage.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73 Malt Beverage Advertising Agreements
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Willson MW	Anstead La
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

The bill creates s. 561.42(15)(a), F.S., providing that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted;
- The premises are located within a theme park complex that is owned, managed, controlled, and operated by the vendor;
- If the theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities, the theme park complex has a controlled entrance to, and exit from, the enclosed area;
- At least 1 million visitors annually pay admission fees to the theme park complex;
- The agreement does not involve the sale or distribution of malt beverages between the vendor and the manufacturer or the importer and each distributor;
- The vendor, as a result of the agreement, does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Section 561.14, F.S., specifies license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[4]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition in 1933, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[5]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[6] are generally prohibited from holding a vendor's license.[7] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions exist, subject to certain conditions, such as the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[8]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 561.01(5), F.S.
[5] S. 561.14, F.S.
[6] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop
[7] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[8] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[9]

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Florida's Tied House Evil Law prohibits a licensed manufacturer or distributor from:

- having any direct or indirect financial interest in any vendor;
- assisting any vendor using gifts, loans, money or property of any description (except for bottles, barrels or other containers necessary for the transportation of beverages);
- giving any rebates of any kind whatsoever;
- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.[10]

Effect of the Bill

The bill creates s. 561.42(15)(a), F.S., providing that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted;
- The premises are located within a theme park complex that is owned, managed, controlled, and operated by the vendor;
- If the theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities, the theme park complex has a controlled entrance to, and exit from, the enclosed area;
- At least 1 million visitors annually pay admission fees to the theme park complex;
- The agreement does not involve the sale or distribution of malt beverages between the vendor and the manufacturer or the importer and each distributor;
- The vendor, as a result of the agreement, does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill provides an effective date of July 1, 2021.

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[9] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.

[10] S. 561.42, F.S.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.42, F.S., revising terms; creating exemptions and penalties relating to the Tied House Evil Law.

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will require DBPR to modify information technology systems to manage the new agreements. These modifications can be made with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR has sufficient rule-making authority to modify current rules to reflect the modifications provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether the "if" on line 29 is a typo.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to malt beverage advertising agreements; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting or providing specified items, moneys, or services to a licensed vendor; prohibiting a licensed vendor from accepting specified items, moneys, or services from certain entities or persons; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) is added to section 561.42, Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(15)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand naming rights and associated cooperative advertising in an arm's length transaction for no more than fair market value if all of the following conditions are met:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1. The vendor operates places of business at which consumption on the premises is permitted, the premises are located within a theme park complex that is owned, managed, controlled, and operated by the vendor, if the theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities, the theme park complex has a controlled entrance to, and exit from, the enclosed area, and at least 1 million visitors annually pay admission fees to the theme park complex.

2. The agreement does not involve, in whole or in part, the sale or distribution of malt beverages between the vendor and the manufacturer or the importer and each distributor.

3. The vendor, as a result of the agreement, does not provide preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into the agreement.

4. The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer, or distributor.

5. Within 10 days after execution of the agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

(b) A manufacturer or importer of malt beverages which is a party to a brand naming rights agreement may not, directly or

indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer or importer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 219 Vacation Rentals
SPONSOR(S): Fischer and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state.

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 rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.

Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Defines the term "advertising platform;"
- Preempts to the state the regulation of advertising platforms;
- Requires that users of advertising platforms include license and tax identification information in a vacation rental listing and provide certain information to the Division on a regular basis;
- Requires advertising platforms to collect and remit taxes due under chs. 212 and 125, F.S.;
- Grants the Division certain enforcement mechanisms relating to unlicensed activities;
- Clarifies the scope of the state preemption of vacation rentals, and prohibits local laws, ordinances, or regulations that allow or require the inspection or licensure of public lodging establishments, vacation rentals, and public food service establishments;
- Specifies that local regulations which apply uniformly to all residential properties are not subject to preemption;
- Specifies that the bill does not supersede the authority of condominiums, cooperatives, or homeowners' associations to restrict the use of their properties;
- Requires vacation rental operators to display license and tax identification information; and
- Requires advertising platforms to adopt an antidiscrimination policy.

The bill may have an indeterminate fiscal impact on state revenues and expenditures, and a negative fiscal impact on some local governments that currently regulate advertising platforms and vacation rentals. See *Fiscal Analysis and Economic Impact Statement.*

Except as otherwise provided, the bill takes effect upon becoming law.

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]

Current law exempts living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment.[6] Currently, the classification for "vacation rental" only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.[7]

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.

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[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 509.013(4)(b)9., F.S.
[7] DBPR, Agency Analysis of 2020 Senate Bill 1128, p.2 (Jan. 7, 2020). *See also* 18-06 Fla. Op.Att'y Gen. (2018).

- 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.[8]

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.[9] If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.[10]

Currently, there are 50,344 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 2,159 licenses;
- Motels: 2,500 licenses;
- Non-transient apartments: 18,454 licenses;
- Transient apartments: 927 licenses;
- Bed and Breakfast Inns: 270 licenses;
- Vacation rental condominiums: 8,741 licenses;
- Vacation rental dwellings: 17,267 licenses; and
- Vacation rental timeshare projects: 26 licenses.[11]

License Fees

The Division provides the following fee schedule relating to vacation rentals:[12]

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE[13]	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

[8] S. 509.241, F.S.
[9] S. 509.241(3), F.S.
[10] R. 61C-1.002(1), F.A.C.
[11] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2019-2020*, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019_20.pdf (last visited Feb. 1, 2021).
[12] R. 61C-1.008, F.A.C.
[13] 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.

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.

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.[14] 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.[15] Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.[16]

In addition, smoke alarms must be installed in every living unit,[17] 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.[18] 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.[19] Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;

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[14] *See generally* s. 509.221, F.S., and R. 61C-1&3, F.A.C.
[15] S. 509.221(3), F.S.
[16] R. 61C-1.004, F.A.C.
[17] S. 509.215(1)(b), F.S.
[18] S. 509.215(1), F.S.
[19] S. 509.142, F.S.

- 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.[20]

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.[21]

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.[22]

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.[23]

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.[24]

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.[25]

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.[26]

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 228 consumer complaints related to vacation rentals, of which 14 were confirmed as a violation by the Division.[27] In Fiscal Year 2019-2020, the Division received 1,391 consumer complaints related to vacation rentals, of which 38 were confirmed as a violation by the Division.[28] According to the department, the uptick in complaints was tied to the Governor's COVID-19 Executive Orders. A lot of complaints were received regarding vacation rentals operating when they were not supposed to be.[29]

Registry

The licensee or operator of a vacation rental must notify the Division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit

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[20] S. 509.141(1), F.S.
[21] S. 509.141(1), F.S.
[22] S. 509.141(3), F.S.
[23] S. 509.143(1), F.S.
[24] *See generally* s. 509.032, F.S., r. 61C-1.002, F.A.C.
[25] *Id.*
[26] *See* ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.
[27] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, at 21.
[28] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2019-2020*, at 21.
[29] Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 219 Vacation Rentals (Feb. 2, 2021).

address or number of houses or units included under the license, the licensee or operator must notify the Division of any and all houses or units included in the license 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.[30]

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well 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.[31]

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.[32]

Licensees with a single license are responsible for all violations of ch. 509, F.S., or rules adopted by the Division. 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.[33]

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.[34] 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 2011 preemption also grandfathered any local law, ordinance, or regulation of vacation rentals enacted prior to the effective date of the preemption.[35]

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.[36] 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

[30] R. 61C-1.002, F.A.C.
[31] S. 509.101(2), F.S.
[32] S. 509.261(1), F.S.
[33] Rule 61C-1.002, F.A.C.
[34] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[35] *Id.*
[36] *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.

and permits.[37] Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.[38]

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations that prohibit vacation rentals or regulate the duration or frequency of vacation rentals. This enabled local governments to regulate vacation rentals to the extent those regulations do not prohibit or restrict the duration or frequency of vacation rentals. The amendment retained the grandfather provision for regulations adopted before 2011.[39]

Current law specifies that the preemption of local regulations which prohibit vacation rentals or regulate the duration or frequency of vacation rentals does not apply to local regulations exclusively relating to property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.[40]

In addition, 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. However, local governments or local enforcement districts are still allowed to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[41]

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.[42] 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.[43]

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.[44]

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

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[37] 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).
[38] 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 Feb. 1, 2021).
[39] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.
[40] s. 509.032(7)(c), F.S.
[41] S. 509.032(7)(a), F.S.
[42] 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 Feb. 1, 2021).
[43] S. 70.001, F.S.
[44] CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Mar. 16, 2019).

resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[45]

In June 2018, it was reported that Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to $60,000 in fines.[46] Since then, the Third District Court of Appeals invalidated the city's fine structure after determining the regulations conflict with state law that caps violation fines between $1,000 and $5,000.[47] As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined $1,000 a day, and repeat offenders are fined $5,000 per day. According to a memo from the City Attorney, the new fine structure complies with the ruling against Miami Beach.[48]

COVID-19

On March 1, 2020, the state of Florida officially reported its first two COVID-19 cases, in Manatee and Hillsborough counties.[49] Subsequently, the Governor issued a series of executive orders (EO) regarding vacation rentals. EO 20-87 was issued on March 27, 2020, to suspend vacation rental operations. The order prohibited vacation rentals from making new reservations or bookings and accepting new guests for check-in for the duration of the order. The order exempted:

- Hotels, motels, inns, resorts, non-transient public lodging establishments, or time share projects;
- Long-term rentals;
- Rentals where guests are already there or checked in before March 28, 2020;
- Rentals to people performing military, government, emergency, health, or infrastructure activities; and
- Travelers "engaged in non-vacation commercial activities"[50]

On April 29, 2020, EO 20-112 was issued to establish the Governor's Phase 1 Recovery Plan to reopen Florida. This order maintained the vacation rental suspension. However, the order allowed certain services to begin operating responsibly except for Miami-Dade, Broward, and Palm Beach counties. Vacation rentals remained suspended.[51]

On May 14, 2020, EO 20-123 was issued to extend and modify EO 20-112 regarding the Governor's Recovery Plan. The order brought all Florida counties into Full Phase 1 of the plan and allowed each county to seek approval to operate vacation rentals within the county's jurisdiction by submitting a written request and the county's safety plan to the Secretary of DBPR. The order became effective May 18, 2020.[52]

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[45] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).
[46] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued,* MIAMI HERALD (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html.
[47] Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban,* TheRealDeal South Florida Real Estate News (Oct. 8, 2019), https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/ (last visited Feb. 1, 2021).
[48] Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals,* TheRealDeal South Florida Real Estate News (Oct. 14, 2019), https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/ (last visited Feb. 1, 2021).
[49] Justine Griffin, *CDC confirms Florida's first two cases of coronavirus; more are expected,* Tampa Bay Times (Mar. 3, 2020), https://www.tampabay.com/news/health/2020/03/03/cdc-confirms-floridas-first-two-cases-of-coronavirus-more-are-expected/ (last visited Feb. 1, 2021).
[50] Executive Order Number 20-87, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-87.pdf (last visited Feb. 1, 2021).
[51] Executive Order Number 20-112, http://www.myfloridalicense.com/dbpr/os/documents/EO_20-112.pdf (last visited Feb. 1, 2021).
[52] Executive Order Number 20-123, http://www.myfloridalicense.com/dbpr/os/documents/2020.05.15%20EO%2020-123%20Full%20Phase%201%20Plan%20for%20FL%20Recovery.pdf (last visited Feb. 1, 2021).

Pursuant to EO 20-123, effective May 18, 2020, DBPR issued recommended safety measures as minimum standards, and best practices, for vacation rentals that are accepting reservations and guests for any length of stay.[53]

On June 3, 2020, EO-139 was issued to begin Phase 2 of the Governor's Recovery Plan for all Florida counties except Miami-Dade, Broward, and Palm Beach. The order continued to allow each county to seek approval to operate vacation rentals within the county's jurisdiction by submitting a written request and the county's safety plan to the Secretary of DBPR.[54]

On September 5, 2020, EO 20-244 was issued, which established the Phase 3 reopening measures for the state. In particular, the order rescinds all prior COVID-19 related restrictions regarding business operations while prohibiting local ordinances which prevent an individual from working or operating a business. Vacation rentals are allowed to resume normal operating procedures but continue to thoroughly clean and disinfect the property between rentals.

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 elements.[55] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[56] 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 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., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[57] 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, created pursuant to ch. 720, F.S., 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.[58] 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

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[53] Department of Business and Professional Regulation, Information for Vacation Rentals Pursuant to Executive Order 20-123 as issued May 15, 2020, http://www.myfloridalicense.com/dbpr/os/documents/2020.05.15%20Posted%20Recommended%20Safety%20Measures%20and%20Best%20Practices%20for%20Vacation%20Rentals.pdf (last visited Feb. 2, 2021).
[54] Executive Order Number 20-139, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-139.pdf (last visited Feb. 1, 2021).
[55] S. 718.103(11), F.S.
[56] S. 718.104(2), F.S.
[57] S. 719.103(2)(26), F.S.
[58] S. 720.301(9), F.S.

those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.[59] This includes 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

Preemptions

The bill amends s. 509.032(7), F.S., relating to the preemption of vacation rentals by the state.

The bill clarifies that the regulation of public lodging establishments, and public food service establishments is expressly preempted to the state, and specifies that the regulation of vacation rentals is also expressly preempted to the state.

In addition to the prohibition in current law that local regulations may not prohibit or regulate the duration or frequency of rentals, the bill specifies that local regulations also may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments.

The bill also preempts the regulation of advertising platforms to the state.

The bill does not preempt local regulations affecting vacation rentals if the regulation applies uniformly to all residential properties, regardless of whether:

- The property is used as a vacation rental;
- The property is used as a long-term rental; or
- The property owner chooses not to rent the property.

The bill maintains the "grandfathering" provision found in current law allowing local governments to continue enforcing regulations that "prohibit rentals or regulate the frequency or duration of rentals" for regulations that were adopted on or before June 1, 2011. Furthermore, the bill clarifies that such grandfathered local regulations may be amended to be less restrictive if the amendment makes the local law, ordinance, or regulation less restrictive with regard to a prohibition or a duration or frequency regulation.

Vacation Rental License Display

Effective January 1, 2022, the bill amends s. 509.241(3), F.S., to require:

- Any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby;" and
- 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.

[59] Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/# (last visited Feb. 2, 2021).

Advertising Platforms Definition

The bill creates s. 509.013(17), F.S., defining the term "advertising platform" as an entity that:

- **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.

Advertising Platforms Requirements

Effective January 1, 2022, the bill creates s. 509.243, F.S., to provide requirements relating to advertising platforms. 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 Florida sales tax registration and tourist development 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, 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 through an advertising platform payment system; service fees assessed by the advertising platform are not subject to these taxes.
- Adopt an anti-discrimination plan to help prevent discrimination, and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The bill requires the Division to maintain vacation rental license information in a readily accessible electronic format.

The bill provides enforcement processes for the Division to issue a cease and desist order for any person who violates ch. 509, F.S., the chapter of law governing "lodging and food service establishments." The bill authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

Condominiums, Cooperatives, and Homeowners' Associations

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration or declaration of covenants adopted pursuant to ch. 720, F.S.

Department of Revenue Rulemaking

The bill authorizes DOR to adopt rules for the purpose of implementing the provision in the bill that requires advertising platforms to collect and remit all taxes imposed under chapters 125 and 212 from payments from guests who use a payment system on or through an advertising platform.

Effective Date

The bill becomes effective upon becoming law, except for the provisions otherwise expressly provided in the bill. The requirements for vacation rental owners or operators to display license and tax information becomes effective January 1, 2022. The framework of provisions governing advertising platforms becomes effective January 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 509.013, F.S., defining the term "advertising platform."

Section 2: Amends s. 509.032, F.S., revising preemption authority.

Section 3: Amends s. 509.241, F.S., revising display of license requirements.

Section 4: Creates s. 509.243, F.S., governing advertising platforms.

Section 5: Provides for applicability.

Section 6: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an indeterminate increase in revenues due to additional license fees, tourism and sales taxes, and fines.

2. Expenditures:

   The bill requires advertising platforms to list specific tax information relating to rentals and send the information to DBPR, but does not require the platforms to verify the information. This could create an expenditure for DBPR to verify and enforce this requirement.

   Vacation rental operators will be required to display additional information including the rental's license in all units and the license number in all advertisements. The additional requirements and licenses may result in additional complaints from local jurisdictions, tax collectors, vacation rentals guests, license holders, and concerned homeowners that DBPR must adjudicate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Preempting local governments from regulating vacation rentals and advertising platforms will prevent a local government from imposing and collecting fees and fines relating to regulation and enforcement, which will have an indeterminate negative fiscal impact on local revenues, depending on each local government's current practice of such regulation and enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

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 authorizes DOR to adopt rules for the purpose of implementing the provision in the bill that requires advertising platforms to collect and remit taxes imposed under chapters 125 and 212 from payments from guests who use a payment system on or through an advertising platform.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to vacation rentals; amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; preempting the regulation of vacation rentals to the state; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of public lodging establishments, including vacation rentals, or public food service establishments; authorizing a local law, ordinance, or regulation to regulate certain activities under certain circumstances; providing an exemption; expanding an exemption to allow certain ordinances adopted on or before a certain date to be amended to be less restrictive; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable tax account numbers; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

vacation rentals include certain information in the advertisements; requiring advertising platforms to display and verify such information; requiring the division to maintain certain information in a readily accessible electronic format; requiring advertising platforms to quarterly provide the division with certain information regarding vacation rentals in this state listed on the platforms; requiring advertising platforms to remove an advertisement or a listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes imposed under chs. 125 and 212, F.S., for certain transactions; authorizing the Department of Revenue to adopt rules; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings and to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the collection of attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination plan and to inform their users of the policy's provisions; providing applicability; providing

effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (17) is added to section 509.013, Florida Statutes, to read:

509.013 Definitions.—As used in this chapter, the term:

(17) "Advertising platform" means an entity that:

(a) Provides an online application, software, a website, or a 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;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

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

Section 2. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service

establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242(1)(c), the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1,

2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition or a duration or frequency regulation.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 3. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also 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.

Section 4. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement 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 before the advertisement may be listed; and

2. Attest to the best of his or her knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and applicable Florida sales tax registration and tourist development tax numbers. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format which is sufficient to facilitate prompt compliance with the requirements

of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state which are advertised on its platform, along with the following information for each vacation rental:

(a) The uniform resource locator for the Internet address of the vacation rental advertisement; and

(b) Unless otherwise stated in the vacation rental advertisement at the Internet address provided pursuant to paragraph (a), the physical address of the vacation rental, including any unit designation, the vacation rental license number provided by the owner or operator, and the applicable Florida sales tax registration and tourist development tax account numbers under which taxes will be remitted for the rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an advertisement or a 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.

(4) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013(17), to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes imposed under chapters 125 and 212 resulting from the rental. When calculating taxes imposed under chapters 125 and 212, an advertising platform may exclude the amount of any fees directly attributable to the service provided by the advertising platform. The Department of Revenue may adopt rules to implement this subsection.

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect attorney fees and costs, together with any cost of collection.

(6) Advertising platforms must adopt an antidiscrimination

plan to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 5. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenants adopted pursuant to chapter 720, Florida Statutes.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Fischer offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Effective January 1, 2022, subsection (2) of section 212.03, Florida Statutes is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said

rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes imposed under s. 205.044 and chapters 125 and 212 on the total rental amount charged by the owner or operator for the use of the vacation rental under ss. 125.0104 and 205.044 and this section. In order to facilitate the remittance of such taxes, the department and jurisdictions that require such taxes to be remitted must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:

509.013 Definitions.—As used in this chapter, the term:

(1) "Advertising platform" means a person who:

(a) 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;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) 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.

(2) ~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(3) ~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(4) ~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(5) ~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

(6) ~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7) ~~(15)~~ "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(8) ~~(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(9)(a) ~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is

inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.

Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(10)(a) ~~(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient 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 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.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the

purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

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.

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.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

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.

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.

(11) ~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12)~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13)~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(14)~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(15)~~(13)~~ "Transient" means a guest in transient occupancy.

(16)~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17)~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

Section 3. Paragraph (c) of subsection (3) and subsection (7) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor

must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public

food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition, duration, or frequency regulation.

(c) Paragraph (b) and the provisions of paragraph (a) relating to the licensing of vacation rentals do ~~does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, in any jurisdiction within ~~exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to~~ an area of

critical state concern, as designated by s. 380.0552 or chapter 28-36, Florida Administrative Code. Any such local law, ordinance, or regulation may be amended so long as the amendment is not more restrictive than the existing local law, ordinance, or regulation.

(d) The regulation of advertising platforms is preempted to the state and advertising platforms shall be regulated under this chapter ~~designation~~.

Section 4. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also 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.

Section 5. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement 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 before the advertisement may be listed; and

2. 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.

(b) An advertising platform must display the vacation rental license number and applicable Florida sales tax registration and tourist development tax numbers. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state that are advertised on its platform, along with the following information for each vacation rental:

(a) The uniform resource locator for the Internet address of the vacation rental advertisement.

(b) Unless otherwise stated in the vacation rental advertisement at the Internet address provided pursuant to paragraph (a), the physical address of the vacation rental, including any unit designation, the vacation rental license number provided by the owner or operator, and the applicable Florida sales tax registration and tourist development tax account numbers under which taxes will be remitted for the rentals commenced through the advertisement.

(3) An advertising platform must 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.

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant to this chapter, the division may

issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect its attorney fees and costs, together with any cost of collection.

(5) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 6. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(n) "Temporary residence" means a place where a ~~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 3 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 term also includes a place where a person lodges in a vacation rental, as defined in s. 509.242, for 24 hours or more.

Section 7. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 8. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) Complimentary meals.—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown.

Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 9. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 10. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification shall contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 11. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or

entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 12. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 13. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest

accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 14. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 15. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be

delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 16. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s.~~

~~509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 17. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 18. The application of this act shall not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 19. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of

procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2024.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes imposed under chs. 125 and 212, F.S., for certain transactions; reordering and amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; conforming a cross-reference; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the operator of certain vacation rentals to also display its vacation

rental license number and applicable tax account numbers; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; providing that advertising platforms are required to verify such information; requiring advertising platforms to quarterly provide the division with certain information regarding vacation rentals in this state listed on the platforms; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the division to file certain proceedings; authorizing the collection of attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-

references and provisions to changes made by the act; providing that certain residential association declarations and documents may not be superseded; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules; providing effective dates.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 219 by Rep. Fischer
Vacation Rentals

AMENDMENT SUMMARY
February 10, 2021

Amendment 1 by Rep. Fischer (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Revises the tax requirement language for advertising platforms, moving it into chapter 212, F.S., specifying collection and remittance of municipal business taxes, and specifying that the tax is imposed on the amount charged by the owner for use of the rental.
- Requires the Department of Revenue (DOR) and counties that have elected to self-administer the tourist development taxes to allow advertising platforms to register, collect, and remit such taxes.
- Grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes.
- Clarifies that certain prohibitions in the bill do not apply to grandfathered ordinances within areas of critical state concern, and clarifies that such grandfathered ordinances may be amended if the amendment is less restrictive.
- Requires sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more.
- Conforms cross-references.