



April 5, 2019

Action Alert: *Vacation Rentals Preemption Likely in Last House Committee Next Week*

[HB 987 \(Vacation Rentals\)](#) by Rep. Grant (J) passed the House Government Operations & Technology Appropriations Subcommittee on Monday, April 1. The bill turns back the clock on local regulation of vacation rentals.

Vacation Rentals are defined in Florida Statute (509.013) as “Public Lodging Establishments” and as a “private enterprise” that are subject to state licensure under the Department of Business and Professional Regulation. Vacation Rentals are usually located in single family residential areas, where permanent residents represent most of the homeowners.

In 2011, the Florida Legislature passed legislation blocking local governments from "regulating, restricting, or prohibiting" vacation rental properties, while allowing local regulations to exist if adopted before June 1, 2011. After recognizing that the 2011 legislation went too far, the Legislature passed HB 356 in 2014, restoring partial Home Rule authority to counties. In effect, current law allows counties to enact certain regulations (parking, occupancy standards, local registration) but precludes them from passing regulations that prohibit vacation rentals or limit the duration and frequency of stays.

HB 987 unravels any form of local vacation rental oversight and regulation by the following:

- Preempting to the state the regulation of vacation rentals, including, but not limited to, inspection, licensing, and occupancy limits;
- Removing the 2011 grandfathering clause;
- Adding occupancy limits, inspections, and licensing to the list of prohibited local laws, ordinances, or regulations;
- Allowing local laws, ordinances and regulations to apply to vacation rentals as long as they apply uniformly to all residential properties.

A copy of HB 987 and the staff analysis can be found [here](#).

HB 987 has one more committee stop, Commerce. The companion bill, [SB 824 \(Private Property Rights of Homeowners\)](#) by Sen. Diaz is scheduled to be heard in Innovation, Industry, and Technology Committee on **Wednesday, April 10 at 1:30 p.m.**

Also up Next Week...

Small Cell Infrastructure Preemption Bills Continue to Advance

This year's small cell bills continue to their steady advance through the legislative process. [HB 693 \(Communication Services\)](#) by Rep. Fischer passed the House Ways and Means Committee on Tuesday, April 2, with only one dissenting vote.

While the bill makes several changes to current law, FAC remains focused on three primary issues. First, for those counties that have adopted an undergrounding ordinance, wireless service providers would be exempt from complying. Second, counties would be unable to condition approval of a new pole by requiring the wireless service provider to demonstrate the collocation is not technically or legally feasible. Finally, the bill places all new utility poles under the 60-day “shot clock”, not just co-

locations.

The bill has one more committee stop in the House, while the Senate bill, [SB 1000 \(Communications Services\)](#) by Sen. Hutson, will be heard in the Senate Finance and Tax Committee on Monday, April 8.



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Finance, Tax & Administration

Attorney Fee Bill Passes 2nd Committee in House & Senate

[SB 1140 \(Attorney Fees and Cost\)](#) by Sen. Hutson would mandate that courts award attorneys' fees and damages in actions where an aggrieved party has brought an action against a local government alleging that a proposed or adopted local government ordinance is expressly preempted by state law. Fees and damages could also be sought in cases brought against existing ordinances. The bill does not enumerate statutes that constitute express preemptions for purposes of awarding fees and damages. As amended, only the prevailing party may be granted fees and damages. If the local government "withdraws" an ordinance from consideration or repeals the ordinance within 21 days from a court determining it was preempted, attorneys' fees cannot be granted.

This bill passed favorably through its second of three committees, Community Affairs, on Tuesday, April 2. It was amended again to allow prevailing challengers to recover fees and damages if an ordinance is determined to be preempted by s. 553.79(20), which prohibits local governments from imposing certain requirements on the signage advertising the retail price of gasoline or that conflict with or impair a corporate trademark or corporate branding identity. Aside from this exception, growth management ordinance challenges would not entitle parties to fees.

[HB 829 \(Attorney Fees and Cost\)](#) by Rep. Sabatini passed favorably through its second of three committees, House Local Affairs, on Tuesday, March 26 and is currently in the House Judiciary Committee. As amended, HB 829 only grants attorneys' fees and damages against local governments, and would not allow the local government to recover fees and damages if it is the prevailing party.

Taxation Transparency Passes Final House Committee, Postponed in Senate Committee

[HB 7053 \(Taxation Transparency\)](#) by the House Ways & Means Committee was heard in its final committee on Thursday, April 4. Companion bill, [SB 7104 \(Taxation Transparency\)](#), was scheduled to be heard in Senate Finance & Tax on Thursday, April 4 but was temporarily postponed. The bill would redesignate several state and local revenue sources, requiring the names of those sources to be changed from "fee" to "tax." The bill would require the following local revenue source redesignations:

- Special assessments or non-ad valorem assessments would be retitled "special benefit tax";
- Impact fees and mobility fees would be retitled "development impact tax";
- Franchise fees would be retitled "franchise tax";
- Charges to pay the cost of regulation must be titled "in a manner reasonably consistent with the type of regulation and change in question."

The bill was amended to more explicitly state that it does not affect a county's power under the constitution to impose non-tax levies and expresses the Legislature's intent that such levies only be "titled and represented to the public as taxes." It was also amended to clarify that the bill is not intended to affect existing case law and to require notices under s. 197.3635 to notice proposed or adopted "non-ad valorem assessments and special benefit taxes."

Amendment Filed on Bert Harris Bill Removing "Similarly Situated" Requirement

[SB 1720 \(Property Rights\)](#) by Sen. Lee is scheduled to be heard in the Senate Judiciary Committee, its

first committee of reference on Monday, April 8. It was previously temporarily postponed on April 1. Though an amendment has been filed by Senate Judiciary Chair Simmons to strip out the provision, as currently drafted, the bill would require local governments to treat similar property in the same way for settlements of Bert Harris claims and would have to offer "similarly situated" residential property within the same political subdivision the same terms.

Both versions of the bill shorten the timeframe under which the claimant must notify government from 150 days to 90 days. It also allows a factfinder to consider business damages and changes the process for attorney's fees awards by making it easier for claimants to receive fees and removing ability for government to receive fees.

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NEWS ARTICLES ON TAXATION

[Florida bill seeking to call a tax by any other name a tax teed up](#)

FLORIDA  WATCHDOG

Health & Safety

Needle Exchange Programs Passes on Senate Floor

[SB 366 \(Infectious Disease Elimination Programs\)](#) by Sen. Brayton successfully passed in the Senate on Wednesday, April 3. The bill establishes the Infectious Disease Elimination Act (IDEA). The bill allows county commissions to establish sterile needle and syringe exchange programs through the adoption of a county ordinance and satisfaction of the specified program requirements. Exchange programs must cooperate with the Department of Health (DOH) and the local county health department. Additionally, for local governments that participate, they should expect to see a reduction in other health care expenditures related to the treatment of blood-borne diseases associated with intravenous drug use.

Similar bill, [HB 171 \(Infectious Disease Elimination Programs\)](#) by Rep. Jones was reported favorably in Judiciary on Monday, April 1 and is now in its last committee of reference, Health & Human Services.

Texting While Driving Bill Passes Final House Committee, One More Committee Stop in the Senate

[HB 107 \(Texting While Driving\)](#) by Rep. Toledo and Rep. Slosberg unanimously passed its last committee stop, State Affairs, and has been placed on calendar for 2nd reading in the House. The Florida Ban on Texting While Driving Law no longer contains components related to distracted driving, instead including only texting while driving. The bill changes current enforcement of the ban from a secondary offense to a primary offense, which will allow a law enforcement officer to stop a vehicle solely for texting while driving. The bill does not change the existing penalties, nor does it create new penalties. It also maintains the current exceptions to the texting ban and maintains that the texting ban does not apply to a stationary motor vehicle.

In the Senate, [SB 76 \(Texting While Driving\)](#) by Sen. Simpson is in its final committee of reference, Rules.

Detention Facilities Bills Pass 2nd House & Senate Committees

[HB 1029 \(Detention Facilities\)](#) by Rep. Beltran was reported favorably in the Justice Appropriations Committee and has one final stop before heading to the House floor. The bill prohibits introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility.

HB 1029 reclassifies introduction of written or recorded communication, currency or coin, article of food or clothing, tobacco products, cigarette, or cigar, and intoxicating beverage or beverage into a county detention facility from a third-degree felony to a first-degree misdemeanor. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third-degree

felony, ranked as a Level 4 offense on the offense severity ranking chart.

The Senate companion, [SB 204 \(Detention Facilities\)](#) by Sen. Brandes passed its second of three committees of reference on March 4.

Incarcerated Women Bills in Final Committees in House & Senate

[HB 49 \(Incarcerated Women\)](#) by Rep. Jones successfully passed Justice Appropriations and is now in its final committee of reference, Judiciary. The bill designated as the "Dignity for Incarcerated Women Act" requires state correctional facilities to provide incarcerated women with certain healthcare products specifically tampons. Additionally, the bill provides requirements for male correctional employees and working group on standards for county detention facilities to adopt model standards for female prisoners.

The Senate companion, [SB 332 \(Incarcerated Women\)](#) by Sen. Pizzo is in its third and final committee, Appropriations.

Courthouse Security Bill to Include Counties

[SB 762 \(Duties and Obligations of Sheriffs\)](#) by Sen. Gruters passed the Infrastructure and Security Committee on Tuesday, April 2nd and is now in its third (Appropriations Subcommittee on Criminal and Civil Justice) of four committee stops.

SB 762 requires each sheriff to coordinate with specified entities to develop a comprehensive plan for security of trial court facilities; specifies that sheriffs & chief judges retain certain authority; specifies that sheriffs & their deputies, employees, & contractors are officers of court under specified circumstances. The bill also requires each county sheriff to coordinate with the board of county commissioners and the chief judge of the judicial circuit to develop a comprehensive security plan for trial court facilities. The sheriff retains authority over the implementation and provision of law enforcement services under the plan. The chief judge retains decision making authority to protect due process rights, such as in the scheduling and conduct of judicial proceedings. The bill explains that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for court facilities.

Identical bill, [HB 639 \(Security in Trial Court Facilities\)](#) by Rep. Perez was heard in the Justice Appropriations Subcommittee on Tuesday, April 2 and is currently in its last committee of reference, Judiciary.

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NEWS ARTICLES ON TEXTING WHILE DRIVING

[Tougher texting-while-driving ban moves forward in Florida House](#)

Orlando Sentinel

Growth Management, Agriculture, Transportation, and Environment

Tree Trimming Bill Amended in the Senate to Address Some County Concerns While House Bill Still Contains Original Language

[SB 1400 \(Private Property Rights\)](#) by Sen. Albritton passed its first committee of reference, Senate Community Affairs, after being amended in an attempt to address some of the local government concerns with the bill as filed. As amended, the bill creates a March 1 – June 1 time period during which local governments are prohibited from enforcing ordinances regulating the trimming or pruning of specimen, heritage, or patriarch trees or ordinances requiring a permit, fee, or notice for tree trimming or removal of trees on residential properties. The amended bill also states that local governments may not authorize the removal of specimen, heritage, or patriarch trees during the

specific period. Additionally, the bill would allow local governments to require replanting of trees removed per the new provisions. The bill's provisions would not apply to local governments with delegated mangrove protection authority.

While this bill is moving in the right direction, additional changes and clean-up language are necessary. SB 1400 has already been added to the Senate Judiciary Committee agenda for Monday, April 8 at 4:00 p.m.

[HB 1159 \(Private Property Rights\)](#) by Rep. LaRosa passed its second committee, House Commerce, this week. The bill still contains the problematic language prohibiting local governments from enforcing tree trimming or removal ordinances if the property owner determines that a tree is damaged, diseased, pest infested, or presents a danger as a result of a storm watch or warning or declared state of emergency (not limited to weather related emergency declarations). The bill would also prohibit local governments from requiring any replanting of trees removed per the section. Additionally, the bill would require each county property appraiser to post on its website a "property owner bill of rights" to identify certain existing rights. Rep. LaRosa indicated that he was working on amendments that would be considered at the bill's final committee stop, House State Affairs.

Water Quality Improvements Bill Amended to Remove Fiscal Penalties on Non-compliant Counties

[SB 1758 \(Water Quality Improvements\)](#) by Sen. Mayfield – the "Clean Waterways Act" – passed its second committee of reference, Senate Community Affairs, unanimously this week. The bill contains various provisions making significant changes to current law relating to water quality improvement, wastewater facilities, septic tanks, sewage spills, and BMAP requirements.

As originally filed, the bill would have required local governments to develop plans for advanced wastewater treatment, and would have imposed penalties for failure to comply; however, the bill was amended in committee to remove the penalties and instead provide that non-complying local governments would not be allowed to participate in DEP wastewater grant program (established in the bill). The bill has also been amended to delete the transfer of the Onsite Sewage Treatment and Disposal Program (septic tanks) from DOH to DEP and instead direct the agencies to study the potential transfer and develop a report.

The companion bill, [HB 1395 \(Water Quality Improvements\)](#) by Rep. Raschein, has not yet been heard; however, FAC will continue to monitor these issues as the chambers begin negotiating the budget.

Zoning Restriction on Affordable Housing Passes First Committee in Both Senate & House

[HB 7103 \(Property Development\)](#) by Rep. Fischer aims to overturn current law that authorizes local governments to "adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances." HB 7103 prohibits local governments from implementing any form of "inclusionary zoning" to address affordable housing.

Specially, it prohibits a local government from:

1. mandating or establishing a maximum sales price or lease rental for privately produced dwelling units;
2. requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants;
3. requiring the provision of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.

The bill also creates a "shot clock" for all development permits and development orders, forcing local governments to approve or deny applications within 90 days.

HB 7103 passed by a vote of 11 to 7 in the House Judiciary Committee on Wednesday, April 3. The Senate companion, [SB 1730 \(Community Development and Housing\)](#) by Sen. Lee, passed the Senate Community Affairs Committee on March 20. The bill will be heard on Tuesday, April 9 in the Senate Infrastructure and Security Committee, which is chaired by Sen. Lee.

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NEWS ARTICLES ON ENVIRONMENTAL POLICY

'Science is helping us drive these decisions' on clean waterways bill, sponsor Mayfield says

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