

STORAGE NAME: h3245s1.rpp

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3245

RELATING TO: Florida Mobile Home Act

SPONSOR(S): Representative Livingston

COMPANION BILL(S): SB 452 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) REAL PROPERTY & PROBATE 7 YEAS 0 NAYS

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I. SUMMARY:

CS/HB 3245 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill:

defines the term "pass-through charge" to exclude the cost of governmentally mandated capital improvements upon certain property;

permits mobile home park owners to pass through the impact and hookup fees to a rentor of a vacant lot or a lot in an undeveloped phase as specified;

allows the prospectus for the mobile home park to be amended so park owners can pass through the proportionate share of any pass-through charges under certain conditions;
and

provides the bylaws may specify a quorum of less than a majority of the members of the association.

The bill will take effect October 1, of the year in which it is enacted.

This bill may result in a fiscal impact on state government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Constitution

Article 1, Section 10 of the Florida Constitution, prohibits the state legislature from passing laws impairing the obligation of contracts. In Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974), the court recognized that mobile home park owners and mobile home owners are in an unequal bargaining position, making certain restrictions of contract agreements reasonable, fair and just, therefore, the fundamental right to contract as guaranteed by the constitution of the United States and the constitution of Florida may be restrained.

Florida Statutes

Chapter 723, Florida Statutes, is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division), Department of Business & Professional Regulation (DBPR). Regulation of the landlord and tenant is recognized as unique with park owner property rights that must be protected and the unique factors that create an inequality in bargaining power between the park owner and the mobile home owner, s. 723.004, F.S.

Section 723.003 Florida Statutes, provides definitions of terms used in this chapter. Subsection (10) defines the term pass-through charges to mean the mobile home owners' proportionate share of the necessary and actual direct costs, and impact or hookup fees for a governmentally mandated capital improvement required for public or private regulated utilities. For example, a mobile home park owner may be assessed the necessary and actual direct costs, and impact, or hookup fees charged by local government for capital improvements to a water or sewer system as a portion of the lot rental. Section 723.003 Florida Statutes, defines "lot rental amount" as all financial obligations, except user fees, which are required as a condition of the tenancy.

Prospectus or offering circulars are required by s. 723.011, F.S., and must contain the information specified in s. 723.012, F.S. Section 723.012(9), F.S., requires that the prospectus contain an explanation of the manner in which the lot rental amount will be raised, including, notification to the mobile home owner at least 90 days in advance of the increase, and disclosure of the factors affecting the lot rental increase. Additionally, paragraph (9)(c) requires the prospectus contain a disclosure of the manner in which the pass-through charges will be assessed.

Section 723.031(5)(b), Florida Statutes, provides an exception for pass-through charges to the provision that disallows a lot rental increase by the park owner during the term of the lot rental agreement.

If home owners believe a lot rental increase is unreasonable, the Statutes provide options for remedy either through arbitration, mediation, or court procedures pursuant to s. 723.033, F.S. Section 723.033, Florida Statutes, provides in subsection (1) if the court, finds a mobile home lot rental amount, rent increase, or change, or any provision of the rental agreement, to be unreasonable, the court may: (a) refuse to enforce the lot rental agreement; (b) refuse to enforce the rent increase or change; (c) enforce the remainder of the lot rental agreement without the unreasonable provision; (d) limit the application of the unreasonable provision so as to avoid any unreasonable result; (e)

award a refund or a reduction in future rent payments; or (f) award such other equitable relief as deemed necessary. Subsection (2) allows the parties an opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination, and subsection (3) states, a lot rental amount that is in excess of market rent shall be considered unreasonable. Market rent is defined in subsection (4) as, rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners. This section specifies criteria to be considered in determining market rent, including comparable mobile home parks in subsection (5), and economic or other factors in subsection (6). Subsection (7) provides an arbitrator or mediator is to comply with the standards of this section.

In the event a park owner intends to increase the lot rental amount, reduce services or utilities, or change the park rules or regulations, s. 723.037, F. S., requires notice be provided to mobile home owners by the park owner. The park owner must give written notice to each affected mobile home owner, or the homeowners' association, if applicable, at least 90 days prior to any such changes. Subsection (4)(a) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (4)(b), as created by 97-291, Laws of Florida, requires the park owner or subdivision developer to disclose and explain, in good faith, all material factors resulting in decisions to increase the lot rental amount, reduce utility services, or change the rules and regulations at the meeting.

The park owner is required to disclose the specific reason for an increase in the lot rental amount. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable; the rental increase has made the lot rental amount unreasonable; the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.078(2)(b), Florida Statutes, provides that the homeowners' association bylaws will include, and if they do not include, will be deemed to include a majority of the members of the association constitutes a quorum. Decisions may be made by a majority of the members present for association meetings at which there is a quorum. In addition, proxies are permitted and are subject to certain provisions in this section.

Florida Administrative Code

Rule 61B-31.001, F.A.C., provides that the prospectus may be amended in the following circumstances: by consent to by both parties; to reflect new rules or changes in rules; to reflect a change in the name of the park; to reflect a change in zoning; to reflect a change in the utility provider; as required by the Division; as required by amendments to chapter 723; and to revise user fees for prospective homeowners.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3245 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill amends the definition of the term "pass-through charge" to require a mobile home park owner to pay the proportionate share of pass-through charges for empty lots, property of undeveloped phases, and any property used and maintained by the park owner not occupied by a mobile home. This amendment should result in a reduction in the proportionate share of pass-through charges paid by mobile home owners who may currently pay governmentally mandated capital improvements that benefit empty lots, undeveloped phases, and property used and maintained by the owner.

Section 723.003, Florida Statutes, is amended to require that a mobile home park owner incur the proportionate share of costs, and impact or hookup fees, for governmentally mandated capital improvements that serve empty lots, property of undeveloped phases, and any property used and maintained by the park owner that is not occupied by a mobile home owner. Current law does not specifically prohibit owners from passing through the costs associated with the aforementioned property that is not occupied by mobile home owners. By excluding the park owners proportionate share of the costs, the amendment may preclude the park owner from recovering the costs which cannot be passed through in a lot rental increase during the term of the lease according to s. 723.031(5)(b), F.S.

Section 723.012(9)(c), Florida Statute, is revised to require disclosure of the park owners ability to pass-through charges to any person who rents a vacant lot or a lot in an undeveloped phase that was the obligation of the park owner when initially assessed on the property.

Section 723.012(9)(c), Florida Statutes, would allow the park owner to amend the prospectus to require that the homeowner pay the proportionate share of the pass-through charges as defined in this section. The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes is authorized by s. 723.006(8), F.S., to promulgate rules to authorize amendments permitted by this chapter to an approved prospectus or offering circular. Administrative Rule 61B-31.001, F.A.C., lists nine specific circumstances under which the prospectus may currently be amended. Section 723.012(9)(c), Florida Statutes, is revised to create a statutory provision to amend the prospectus.

The bill revises s. 723.078, F.S., to allow an association to provide in its bylaws that a number less than the majority of the members of the association may constitute a quorum.

The bill will take effect October 1 of the year in which it is enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill prevents passing through charges assessed on vacant lands to homeowners currently residing on other lots in the park, thus reducing the proportionate share of impact or hookup fees to current residents.

The bill allows pass-through charges that were the obligation of the mobile home park owner to be passed through to the renters of lots that were vacant at the time of the assessment.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill precludes mobile home park owners from passing through certain costs of governmentally mandated capital improvements assessed on empty lots, property of undeveloped phases, and property not occupied by a mobile home to current residents.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 723.003, 723.012, and 723.078, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. amends s. 723.003(10), F.S., to provide that the mobile home park owner will be responsible for the necessary and actual direct costs, and impact, or hookup fees for governmentally mandated capital improvements for empty lots, undeveloped phases, and any property maintained and used by the park owner not occupied by a mobile home.

Section 2. amends s. 723.012(9)(c), F.S., to allow mobile home park owners to pass through charges to any person who rents a vacant lot or a lot in an undeveloped phase. The mobile home owner may be required to pay the charges that were initially assessed and were the obligation of the park owner. In addition, the park owner may amend the prospectus and pass through the proportionate share of charges as defined in this act, if the prospectus or rental agreement did not disclose the obligation to the homeowner in accordance with the new definition.

Section 3. amends s. 723.078(2), F.S., to allow the bylaws to provide that a number less than the majority of the members of the association may constitute a quorum.

Section 4. provides the effective date will be October 1, of the year in which the bill is passed.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Application of Principles, C.4.b. above.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

According to the Department of Business & Professional Regulation, this bill would cause an increase in complaints in the area of pass-through charges. It is not currently known if an increase would be in an amount that requires additional staffing.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The Department of Business & Professional Regulation reports, they are concerned the language in the bill is unclear. If the intent of the bill is to prevent pass-through charges for certain improvements and assessments, the park owner may circumvent the requirement by using the cost to justify a lot rental increase.

Permitting the mobile home park owner to make a unilateral alteration to a bilateral contract, i.e. the prospectus, may be subject to challenge pursuant to Article 1, Section 10 of the Florida Constitution.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment 1 deleted section 2 from the bill, which would have revised ss. 723.071, and 723.072, F.S., to provide homeowners' association's with a first right of refusal to purchase the mobile home park if the park owner made an offer to sell or received a bona fide offer or counteroffer for purchase of the mobile home park.

Amendment 2 added section 2 to the bill to amend s. 723.012(9)(c), F.S., to allow park owners to pass-through charges to any person who rents a vacant lot or a lot in an undeveloped phase. In addition, s. 723.012(9)(c), F.S., allows the park owner to amend the prospectus to pass-through charges to the home owner as specified by this section.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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