STORAGE NAME: h0543a.rpp
DATE: March 13, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
ANALYSIS

BILL #: HB 543

RELATING TO: Mobile Home Park/Pass-Through Charge

SPONSOR(S): Representative Posey

TIED BILL(S): None

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

(1) REAL PROPERTY & PROBATE
(2) COMMUNITY AFFAIRS
(3) FINANCE & TAXATION
(4)
(5)

I. SUMMARY:

The owner of a mobile home park may be required by a local government to construct, or pay for constructing, certain improvements. The mobile home park owner may pass through the costs of such improvements to the mobile home owners in the mobile home park.

This bill provides that a pass-through charge may only include that portion of the total capitalized expense that cannot be depreciated or amortized according to the rules and regulations of the Internal Revenue Service. However, federal tax law does not allow the costs of an improvement to be depreciated if a pass through charge is allowed. Whether mobile home park owners are in compliance with federal tax law is uncertain. Concerns have been raised that mobile home park owners pass through charges and depreciate the cost of the improvement.

This bill may modify the existing contractual relationship between mobile home park owners and mobile home owners. Accordingly, it may raise concerns regarding impairment of contracts. See Section V. herein.

This bill does not appear to have a fiscal impact on state or local government.

The sponsor has filed an amendment that would disallow pass-throughs only if the improvement is actually being depreciated; not if it could be depreciated. Accordingly, if a mobile home park owner depreciates an improvement as well as assesses the cost of the improvement as a pass-through charge, the mobile home park owner would not only be in violation of federal tax law, but Florida law as well.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida Mobile Home Park Regulation

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in the mobile home park is a unique relationship. Because of the high cost of moving a mobile home, traditional landlord-tenant concepts are thought inapplicable. The relationship between mobile home park owners and mobile home owners is governed by Chapter 723, F.S., which provides:

> The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected. This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein. It recognizes that when such inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties, is required.[1]

The Florida Supreme Court, in addressing mobile home park issues, states that

> a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.[2]

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[1] Section 723.004(1), F.S.

[2] Stewart v. Green, 300 So.2d 889, 892 (Fla. 1974).

Mobile home park laws provide that a mobile home park owner owning 26 or more lots in a mobile home park must provide a prospectus to prospective tenants.[3] The prospectus must contain certain information, including:

- A description of the mobile home park and its owner,
- A description of the recreational and other common facilities to be used by the mobile home owners,
- The arrangements for management of the park and maintenance and operation of the park property,
- A description of all improvements which are required to be installed by the mobile home owner,
- A description of the manner in which utility and other services will be provided to the home owners,
- An explanation of the manner in which rents and other charges will be raised,
- *The manner in which tenants will be assessed pass-through charges,*
- User fees that may be charged, and
- A description of the zoning of the park property.[4]

A mobile home park owner who is not required to provide a prospectus must still provide a prospective tenant with notice of the park's zoning; the name and address of the park owner; and all fees and charges, assessments, or other financial obligations not included in the rental agreement.[5]

A rental agreement must fully disclose to a mobile home owner all costs and fees to be charged to the mobile home owner in order for those costs and fees to be allowed. However, the amount of pass-through charges need not be disclosed,[6] although the manner in which pass-through charges will be assessed, if charged, must be disclosed.[7] When notifying tenants of a rent increase, the amount of any pass-through charge must be separately shown in the notice.[8]

A "pass-through charge" is "the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital

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[3] Section 723.011, F.S.

[4] Section 723.012, F.S.

[5] Section 723.013, F.S.

[6] Section 723.031(6), F.S.

[7] Section 723.031(5)(b), F.S.

[8] Section 723.037, F.S. The Bureau of Mobile Homes has promulgated a specific form for notice to tenants of a rent increase due to a pass-through charge. DBPR Form MH 6000-11.

improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities."[9]

A governmentally mandated capital improvement is often for water or sewer hookups. If the costs for capital improvements for a water or sewer system are charged to or passed through to mobile home owners, or if such expenses are required of mobile home owners in a mobile home park owned all or in part by the residents, any such charge exceeding $200 per mobile home owner may, at the option of the mobile home owner, be paid in full within 60 days from the notification of the assessment, or amortized with interest over the same duration and at the same rate as allowed for a single-family home under the local government ordinance. If no amortization is provided for a single house, then the period of amortization by the municipality, county, or special district cannot be not less than 8 years. The amortization requirement is binding upon any municipality, county, or special district serving the mobile home park.[10]

Federal Tax Code

A business owner, including a for-profit mobile home park owner, is allowed as a depreciation deduction a reasonable allowance for the exhaustion, and wear and tear, of property used in the trade or business.[11] However, no allowance or deduction for depreciation is allowed for any amount paid out for permanent improvements or betterments made to increase the value of any property, such amounts are a capital cost.[12] Where a mobile home park owner pays a utility company for the cost of installing a utility system, and that system is owned by the utility company and maintained by the utility company, the amount paid for the installation is a capital cost that may not be depreciated.[13] As for an improvement that a government mandates but that must be owned and operated by the mobile home park owner, that improvement might be depreciable. However, the amount depreciated is based on the cost of the item to the mobile home park owner, and if the mobile home park owner has no cost because the cost has been passed through to tenants, then it does not appear that any depreciation would be allowed.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that a pass-through charge may only include that portion of the total capitalized expense that cannot be depreciated or amortized according to the rules and regulations of the Internal Revenue Service.

To the extent that a pass-through charge is for an impact fee, current law remains and the cost is an allowed pass-through charge. To the extent that a pass-through charge is the result of a governmentally mandated improvement to be constructed by, and owned by, the

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[9] Section 723.003(10), F.S.

[10] Section 723.046, F.S.

[11] 26 USC § 167(a).

[12] 26 USC § 263(a). A capital cost is not depreciable, nor is it a current deduction, but it will increase the property owner's taxable basis in the land, which affects the capital gain or loss on the property when the property is sold.

[13] Revenue Ruling 80-93.

mobile home park owner, the effect of this bill is unclear. The cost of an improvement is depreciable if the mobile home park owner pays for the improvement and is not directly reimbursed. A mobile home park owner receiving pass-through charges would probably be considered "reimbursed" by these payments. The changed definition of a pass-through charge provides that a pass-through charge cannot be assessed against mobile home owners if the cost of the improvement can be depreciated by the mobile home park owner; yet the cost of the improvement cannot be depreciated under tax law if a pass-through charge is allowed. Whether mobile home park owners are in compliance with federal tax law is uncertain. Concerns have been raised that mobile home park owners pass through charges and depreciate the cost of the improvement.[14]

The effect of this bill when a mobile home park is owned by a non-profit entity, including a non-profit homeowner's association, is unclear, as the concept of depreciation is generally not applicable to non-profit entities.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes"

III. 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:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the operating expenses of mobile home park owners who cannot pass on certain costs and impact fees associated with "governmentally mandated capital improvements" to current mobile home owners, and thus may impact profitability of owning a mobile home park. It is possible that mobile home park owners may seek to raise rents to offset any financial loss caused by an inability to assess a pass-through charge.

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[14] Testimony of Peter Dunbar, Esquire, at the meeting of the Committee on Real Property & Probate, March 8, 2000.

The apparent intent of this bill is to prohibit at least some pass-through charges. In the 1992 Legislative Session, HB 395 was introduced, which would have prohibited most pass-through charges. The Department of Business Regulation's[15] analysis of the fiscal impact of HB 395 on the private sector was as follows:

> The impact of this bill to the industry could be devastating; the long term effect of an absolute prohibition on pass-throughs could decrease the profitability of mobile home park operations. . . . To current residents in mobile home parks, it would produce something of an immediate windfall . . . [the] long term potential impact, however, will affect homeowners who are required to relocate [if mobile home parks go out of business].[16]

Although this bill is not as broad in scope as HB 395, the effect on a particular mobile home park owner of prohibiting a pass-through charge may be the same.

D. FISCAL COMMENTS:

none

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The financial relationship between a mobile home park owner and a mobile home owner is governed by the rental agreement between the parties, and, in many parks, by the prospectus. These documents form a contract between the mobile home park owner and mobile home owner, a contract that must state how pass-through charges are calculated and billed in order for a mobile home park owner to charge them to mobile home owners.

This bill may modify the contractual relationship between mobile home park owners and mobile home owners, and thus gives rise to a constitutional concern regarding impairment

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[15] Now the Department of Business and Professional Regulation.

[16] Department of Business Regulation, 1992 Session / Legislative Impact Statement, October 22, 1991, page 3.

of contracts.[17] However, the relationship between mobile home parks and mobile home owners is already regulated, and the Florida Supreme Court has stated that the regulations enacted in Chapter 723, F.S., do not violate the prohibition on impairment of contracts: "It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract, which may be done by a State without impairing contract obligations."[18]

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

It is possible that a pass-through charge prohibited by this bill may be re-classified by a mobile home park owner as a "pass on" charge allowed by s. 723.031(5)(c), F.S. It is also possible that a pass-through charge prohibited by this bill may be used by a mobile home park owner as grounds for a rent increase.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	J. Marleen Ahearn, Ph.D., J.D.

[17] Fla.Const. Article I, Section 10, which provides: "**Section 10. Prohibited Laws. --** No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."

[18] Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881, 887 (Fla. 1974), quoting from Mahood v. Bessemer Properties, Inc., 18 So.2d 775 (Fla. 1944).