

STORAGE NAME: h0543s1z.rpp
DATE: May 15, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY AND PROBATE
FINAL ANALYSIS**

BILL #: CS/HB 543

RELATING TO: Mobile Home Park/Pass-Through Charge

SPONSOR(S): Committee on Real Property & Probate and Representative Posey

TIED BILL(S): None

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

- (1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3) FINANCE & TAXATION
 - (4)
 - (5)
-

I.

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 is not depreciated or amortized according to the rules and regulations of the Internal Revenue Service.

This bill may modify the existing contractual relationship between mobile home park owners and mobile home owners. Concerns regarding impairment of contracts is addressed in Section V. herein.

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

On May 5, 2000, CS/HB 543 died in the Committee on Community Affairs.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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

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.

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 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 is not depreciated or amortized according to the rules and regulations of the Internal Revenue Service.

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.

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:

This bill has no impact on state revenues.

2. Expenditures:

This bill has no impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has no impact on local government revenues.

2. Expenditures:

This bill has no impact on local government expenditures.

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.

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 of contracts.¹⁴ 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."¹⁵

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:

On March 15, 2000, the Committee on Real Property and Probate adopted one amendment to HB 543. As filed, HB 543 provides that a mobile home park owner may pass through a charge that "cannot be" depreciated or amortized. To the extent that a pass-through charge is the result of a governmentally mandated improvement to be constructed by, and owned by, the mobile home park owner, the effect of HB 543, as filed, 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 in HB 543, as filed, 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

¹⁴ 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."

¹⁵ *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).

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owner; yet the cost of the improvement cannot be depreciated under tax law if a pass-through charge is allowed. This language in HB 543, as filed, created a paradox or logical inconsistency.

The amendment changes "cannot be" to "is not", thereby alleviating the paradox and addressing the technical concerns with this bill. As amended, HB 543 disallows a pass-through charge 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.

This bill, as amended, was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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Thomas L. Hamby

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

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