

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

2. Lower taxes - The bill requires mobile home park owners to pay an additional \$1 per year per mobile home lot in the form of a surcharge to be used to partially fund the Florida Mobile Home Relocation Trust Fund. The bill requires home owners to pay an additional \$1 surcharge on each license to be collected by the county tax collector and deposited into the Florida Mobile Home Relocation Trust Fund.

The bill increases the amount that a park owner is required to pay into the Florida Mobile Home Relocation Trust Fund from \$2,000 to \$2,750 per single-section home and from \$2,500 to \$3,750 per multi-section home when a home owner makes application for payment of moving expenses when required to move due to a change in land use.

B. EFFECT OF PROPOSED CHANGES:

Florida Mobile Home Park Regulation – In General

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Because of the high cost of moving a mobile home, traditional landlord-tenant concepts are thought inapplicable. Chapter 723, F.S, governs the relationship between mobile home park owners and mobile home owners. Section 723.004(1), F.S, 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.

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.

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

A mobile home park of 9 or fewer lots is not regulated by Chapter 723, F.S. There are more than 330,400 mobile home lots filed with the division.

Currently, section 723.061(1)(d), F.S., provides that a mobile home park owner may evict a tenant upon a change in use of the land comprising the mobile home park, or a change in the portion upon which the tenant resides. The tenant must be given a minimum of six month's notice.

Section 723.0611, F.S., relates to the Florida Mobile Home Relocation Corporation. The corporation is administered by a board of directors made up of six members. Three members appointed by the Secretary of DBPR from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state and three members appointed by the Secretary from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state.

Section 723.0612, F.S., relates to change in land use, relocation expenses, and payments by a mobile home park owner. This section provides that, if a mobile home owner is required to move due to a change in use, and the mobile home owner meets certain conditions, the mobile home owner is entitled to payment from the corporation. The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or \$5,000 for a single-section mobile home, or \$10,000 for a multi-section home whichever is less. Moving expenses are defined to include the cost of taking down, moving, and setting up the mobile home in a new location.

A homeowner is not entitled to compensation for moving expenses if the park owner moves the homeowner to another space in the mobile home park or to another mobile home park at the park owner's expense, the homeowner gave notice of vacating the premises before the notice of a change in use was given, or if the homeowner abandons the mobile home.

In order to obtain payment from the corporation, the homeowner must submit to the corporation, and to the mobile home park owner, an application for payment. The corporation must approve payment from the fund within 45 days after receipt of the information or payment is deemed approved. A copy of the approval must be forwarded to the mobile home park owner with an invoice for payment. Upon approval, the corporation issues a voucher in the amount of the contract price for relocating the mobile home, which the moving company may redeem upon completion of the move and approval of the relocation by the mobile home owner.

In lieu of collecting a moving expense payment from the corporation, a homeowner may elect to abandon the mobile home in the mobile home park and collect from the corporation an amount equal to one-fourth of the allowable moving expense. Upon election of abandonment, the homeowner must deliver to the park owner the title to the mobile home. If the homeowner chooses this option, the park owner must make payment to the corporation in an amount equal to one-fourth of the allowable moving expenses.

The corporation is not liable to any person for recovery if the corporation does not have the money necessary to pay the amounts claimed. If the corporation does not have sufficient assets to pay the claimant, it must keep a record of the time and date of its determination for payment to a claimant. If money becomes available, the corporation must pay the claimant whose unpaid claim is the earliest by time and date of approval.

Effect of Proposed Changes

The bill amends s. 48.183, F.S., to cite landlord/tenant and mobile home statutes for purposes of service of process in actions for possession of premises. Additionally, the bill amends 715.101, F.S., to apply the disposition of personal property provisions of chapter 715, F.S., to mobile homes.

The bill amends chapter 320, F.S., to require home owners to pay an additional \$1 surcharge on each license that will be collected by the county tax collector and deposited into the Florida Mobile Home Relocation Trust Fund. This surcharge would be against any mobile home not considered real property whether or not the mobile home is placed in a mobile home park subject to Chapter 723, F.S. The estimated number of mobile home registrations with the Department of Highway Safety & Motor Vehicles is estimated to be 477,871.

Present Situation

The bill amends various provisions of chapter 723, F.S.

Currently, an annual assessment of \$4.00 per lot is statutorily imposed on mobile home lots within mobile home parks. The fee is collected by mobile home park owners and is paid to the division. The division has the authority, by rule, to increase annual fees from \$4.00 to \$5.00 for each mobile home lot. These revenues are deposited into the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund in order to fund operations of the division.

Effect of Proposed Changes

The bill removes the authority of the division to increase annual fees charged to park owners by rule in an amount of \$1.00. It specifically provides for a \$1.00 per mobile home lot surcharge on mobile home park owners and a \$1.00 tax surcharge on mobile home licenses to be deposited into the Florida Mobile Home Relocation Trust Fund. The bill places a ceiling of \$10 million and a floor of \$6 million on the balance of the Florida Mobile Home Relocation Trust Fund.

Present Situation

If a mobile home owner is required to move due a change in land use and the mobile home owner has made application for payment of moving expenses, the park owner is required to make payment into the Florida Mobile Home Relocation Trust Fund in the amount of \$2,000 per single-section home and \$2,500 per multi-section home. Currently, there is no statutory provision exempting the park owner from payment into the Florida Mobile Home Relocation Trust Fund when the mobile home owner has an eviction action pending for non-payment of rent.

Effect of Proposed Changes

The bill increases the amount that a park owner is required to pay into the Florida Mobile Home Relocation Trust Fund from \$2,000 to \$2,750 per single-section home and from \$2,500 to \$3,750 per multi-section home when a home owner has made application for payment of moving expenses.

The bill provides for an exemption for a park owner from payment into the Florida Mobile Home Relocation Trust Fund when the mobile home owner has a pending eviction action against the home owner for non-payment of rent which was filed prior to the mailing date of the change in land use.

Present Situation

A mobile home owner, who is required to move due to a change in use of land comprising the mobile home park, is entitled to payment for moving expenses from the corporation in the amount of \$5,000 for a single-section home and \$10,000 for a multi-section home.

Effect of Proposed Changes

The bill reduces the amount a home owner is entitled to in payment from the corporation from \$5,000 to \$3,000 for a single-section home and from \$10,000 to \$6,000 for a multi-section home.

Present Situation

Under certain conditions, if a home owner elects to abandon the mobile home when there has been a change in land use comprising the mobile home park, the home owner is entitled to an amount equal to one fourth of the maximum allowable moving expenses from the corporation. In this case, the home owner is not required to submit documentation to the corporation in order to collect moving expenses. The park owner is required by statute to make payment to the corporation in an amount equal to one fourth of the maximum allowable moving expenses.

Effect of Proposed Changes

The bill changes the formula for payment to a home owner to delete the option of receiving one fourth payment of moving expenses. The bill specifies the amounts of the home owner's entitlement to be \$1,375 for a single section and \$2,750 for a multi-section home when the home owner abandons the mobile home when there has been a change in land use comprising the mobile home park.

The bill requires the home owner to submit a document to the corporation signed by the park owner stating that the home has been abandoned and that the park owner agrees to make payment to the corporation in the amount provided in the statute. If the home owner does not submit the documents to the corporation, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment.

Present Situation

Currently s. 723.0612(9), F.S., does not preclude any person, whose application for expenses has been approved by the corporation, from asserting a claim or cause of action arising out of the change in use of the mobile home park against the corporation or the park owner or successors in interest. There is no provision denying the home owner's application for funding moving expenses if the owner has either filed a claim or cause of action, or has a judgment, against the corporation or the park owner or successors in interest directly relating to or arising out of the change in use of the mobile home park.

Additionally s. 723.0611(2)(e), F.S., does not preclude a home owner from having a cause of action against the corporation or the park owner for any claim arising under the rights, duties, and obligations of the corporation or park owner if the home owner receives compensation from the corporation. There is no provision in the statute denying a home owner entitlement to moving expenses from the corporation when the home owner has an eviction action pending for nonpayment of rent which was filed prior to the notice of the change in land use. (see s. 723.0612(2)(d), F.S. (See Effect of Proposed Changes below)

Effect of Proposed Changes

The bill amends s. 723.0612(9) to provide that a person whose application for expenses has been approved by the corporation is prohibited from asserting a claim or cause of action arising out of the change in use of the mobile home park against the corporation or the park owner or successors in interest. The bill creates a provision denying the approval of a home owner's application for funding if the home owner has either filed a claim or cause of action, or has a judgment, against the corporation or the park owner or successors in interest directly relating to or arising out of the change in use of the mobile home park unless the claim or cause of action is dismissed with prejudice.

The bill amends s. 723.0611(2)(e) to create a prohibition against a home owner from having a cause of action against the corporation or the park owner for any claim arising under the rights, duties, and obligations of the corporation or park owner if the home owner receives compensation from the corporation. The bill creates a provision denying a home owner entitlement to moving expenses from

the corporation when the home owner has a pending eviction action for nonpayment of rent which was filed prior to the notice of the change in land use. (See Present Situation above, s.723.0612(2)(d), F.S.)

Present Situation

There is no current statutory allowance for a park owner to charge a fee for the cost of cleanup or repair when a home owner fails to meet their general obligation of keeping the mobile home lot clean and sanitary, including the exterior of the home, appurtenances and improvements.

Effect of Proposed Changes

The bill allows the park owner to charge a fee for the cost of cleanup or repair of the exterior of a mobile home, the appurtenances to the mobile home, or any improvements to the mobile home lot. The bill requires the maintenance charge would have to be specified by a rule or regulation, the rental agreement, or the prospectus. The bill requires the park owner to mail a notice of the park owners' intent to clean up the property to the home owner at least 14 days prior to cleanup or repair. The bill provides that the park owner's remedy against a home owner who fails to pay the fee is by action in circuit court.

Present Situation

Either a park owner or a home owner may petition the division for mediation based upon factors set forth in s. 723.037(5)(a), F.S. There is no requirement that either party must have petitioned for mediation prior to filing an action in circuit court.

Effect of Proposed Changes

The bill limits both park owners and home owners from filing an action in circuit court when neither party has requested mediation of matters addressed in s. 723.037(5)(a), F.S.

Present Situation

Chapter 723 does not address the issue of a mobile home owner or park owner placing a new or used mobile home on a mobile home lot except for the general requirement that park owners comply with the requirements of applicable building, housing, and health codes.

Effect of Proposed Changes

The bill provides for the placement, by a home owner or park owner, of any size new or used mobile home and appurtenance on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the initial approval and creation of the mobile home park. The bill specifies that requirements of the Department of Highway Safety and Motor Vehicles, if any, would preempt this provision.

Present Situation

Chapter 723, F.S., addresses the ability of a park owner to evict a mobile home owner upon certain statutorily defined grounds. The chapter does not address the ability of the park owner to evict mobile home tenants, occupants or whoever is responsible for the lot rental payments. Chapter 723, F.S., does not provide a deadline by which the home owner or tenant must vacate the premises after conviction of a violation of a federal or state law or local ordinance which may be deemed detrimental to the health, safety, or welfare of other residents in the mobile home park. The statute does not specifically grant the park owner the right to deny initial tenancy to a purchaser of a mobile home situated in the park due to one of the convictions noted above. Section 723.059(1), F.S. provides that such a purchaser "may become a tenant of the park if such purchaser would otherwise qualify with the requirements of entry

into the park under the park rules and regulations and subject to the approval of the park owner, but such approval may not be unreasonably withheld.” There is no specific deadline by which the purchaser or prospective tenant or occupant of a mobile home situated in the park must vacate the premises upon failing to be approved for tenancy.

Effect of Proposed Changes

The bill allows a park owner to evict mobile home tenants, occupants or whoever is responsible for lot rental payment, in addition to the home owner, based upon those grounds set forth in s. 723.061, F.S. The bill provides a 7-day deadline for a mobile home owner or mobile home tenant to vacate the premises when the owner or tenant has been convicted of a violation of a federal or state law or local ordinance which may be deemed detrimental to the health, safety, or welfare of other residents on the mobile home park. The bill further provides that the purchaser of a home situated in the park may be denied initial tenancy in the park based on these convictions.

The bill provides for a 7-day deadline for a purchaser, prospective tenant or occupant to vacate the premises when they have failed to qualify for tenancy in the park when they have taken occupancy prior to obtaining approval. The bill adds tenant or occupant to mobile home eviction notice requirements.

C. SECTION DIRECTORY:

Section 1. Amends s. 48.183, F.S., to cite landlord/tenant and mobile home statutes for purposes of service of process in actions for possession of premises.

Section 2. Creates s. 320.08015, F.S., to impose a new surcharge of \$1.00 to be levied in addition to the current license tax imposed on mobile homes; the revenues are to be deposited in the Florida Mobile Home Relocation Trust Fund; it places a cap of \$10 million and a floor of \$6 million on the balance of the trust fund.

Section 3. Amends s. 320.081, F.S., to address the procedures for the collection and distribution of the tax surcharge and to correct references.

Section 4. Amends 715.101, F.S., to apply the disposition of personal property provisions of chapter 715, F.S., to mobile homes.

Section 5. Amends s. 723.007, F.S., to impose a surcharge of \$1.00 to be levied in addition to the current annual fee of \$4.00 assessed against mobile home lots; the revenues are to be deposited in the Florida Mobile Home Relocation Trust Fund; it places a cap of \$10 million and a floor of \$6 million on the balances of the trust fund.

Section 6. Amends 723.023, F.S., to allow a park owner to collect certain clean up fees.

Section 7. Amends s. 723.037, F.S., to restrict filing actions in circuit court unless mediation is requested.

Section 8. Amends s. 723.041, F.S., to provides for the placement, by a home owner or park owner, of any size new or used mobile home and appurtenance on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park.

Section 9. Amends s. 723.061, F.S., to limit the circumstances under which a park owner may evict mobile home tenants or occupants and the procedures for eviction.

Section 10. Amends s. 723.0611, F.S., to limit a cause of action for persons receiving compensation by the Mobile Home Relocation Corporation.

Section 11. Amends s. 723.06115, F.S., to provide for the deposit of the new surcharges in the Florida Mobile Home Relocation Trust Fund.

Section 12. Amends s. 723.06116, F.S., to increase the amount of payment to the Trust Fund by the park owner when mobile home owners are forced to relocated due to a change in the use of the park property.

Section 13. Amends s. 723.0612, F.S., to decrease the amount of payment by the Florida Mobile Home Relocation Corporation to a mobile home owner when relocated due to a change in the use of the park property and to limit a cause of action for persons receiving compensation.

Section 14. Effective date - Upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

REVENUE			
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
Lot Surcharge Fees	\$333,175	\$330,175	\$330,175
Registration Surcharge	477,794	477,794	477,794
Other:			
TOTAL:	\$810,969	\$810,969	\$810,969

2. Expenditures:

The total of \$810,969 per year is to be deposited into the Florida Mobile Home Relocation Trust Fund. These revenue balances are anticipated to be reduced as expenditures against the Florida Mobile Home Relocation Trust Fund are applied for and approved in order to pay claims to home owners.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

NA

2. Expenditures:

NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR estimates the following impacts.

The bill will require park owners to pay an additional \$1 per year per mobile home lot in the form of a surcharge to be used to fund the Florida Mobile Home Relocation Trust Fund. As of December 2002,

there were 330,390 mobile home lots filed with the division. Based on this information, this surcharge should annually generate approximately \$330,390 for deposit into the trust fund.

The bill will require home owners to pay an additional \$1 surcharge on each license that will be collected by the county tax collector and deposited into the Florida Mobile Home Relocation Trust Fund. This surcharge would be against any mobile home not considered real property whether or not the mobile home is placed in a mobile home park subject to chapter 723, F.S. Based on the estimated number of mobile home registrations with the Department of Highway Safety & Motor Vehicles, an estimated \$477,871 will be collected through the county tax collectors and distributed to the Mobile Home Relocation Trust Fund.

D. FISCAL COMMENTS:

The DBPR notes that there is an increase in the amount of revenue collected, however, the DBPR anticipates there will be no budgetary fiscal impact. They further note, the division may experience a slight increase in the number of complaints filed and number of amendments filed for review as park owners adopt new park rules to include the obligation to maintain the exterior of the home, appurtenances and improvements and to include a fee. They estimate that the division is able to handle the increased workload within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DBPR anticipates that the division will need to amend rule 61B-32.004(4)-(5), F.A.C. to prevent the procedural aspects of the rule from becoming a substantive bar to a court proceeding. Presently, rule 61B-32.004(4)-(5), F.A.C., requires a petition to meet certain filing requirements. If it does not, the division denies the petition for mediation. Presently, the parties have the right to proceed to court if the division denies the petition. Under the amendment, a denial by the division for timeliness or failure to meet the filing requirements would preclude the parties from filing in court on the substantive issues provided in section 723.037, FS. The division currently has rulemaking authority and the division feels there is sufficient guidance in the bill to amend the existing rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES