

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1124

SPONSOR: Committee on Regulated Industries and Senator Haridopolos

SUBJECT: Mobile Homes

DATE: April 25, 2005

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|------------------|
| 1. Sumner | Imhof | RI | Fav/CS |
| 2. Siebert | Cooper | CM | Favorable |
| 3. Sumner | Maclure | JU | Favorable |
| 4. _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ |
| 6. _____ | _____ | _____ | _____ |

I. Summary:

This committee substitute includes a statement of statutory intent that provides that the information concerning comparable mobile home parks to be exchanged by the parties is to encourage a dialogue between the mobile home owner and the park owner regarding the park owner's reasons for increasing the lot rental amount.

This committee substitute prohibits a mobile home park owner from limiting the comparable mobile home park disclosures to those parks owned or operated by the same owner as the subject park when seeking to increase rents or reduce services except in certain circumstances.

This committee substitute encourages settlement discussions prior to mediating disputes regarding rental increases. It provides that at mediation, the park owner and the homeowners' committee may supplement the information provided to each other at the meetings described in the section and may modify their position, but they may not change the information provided to each other at the first and second meetings.

This committee substitute provides that agents, employees, members of the board of the Florida Mobile Home Relocation Corporation (FMHRC) or representatives of the Division of Florida Land Sales, Condominiums, and Mobile Homes shall be considered officers, employees, or agents of the state for the purposes of s. 768.28, F.S.

This committee substitute provides that a mobile home owner is not entitled to receive compensation under s. 723.0612, F.S., if there is a pending eviction for nonpayment of lot rent, which was filed prior to the mailing date of the notice of change in land use pursuant to s. 723.061(1)(d), F.S.

This committee substitute substantially amends the following sections of the Florida Statutes: 723.037, 723.0611, and 723.0612.

II. Present Situation:

Chapter 723, F.S., known as the “Mobile Home Act” was created in part due to the unique relationship between a mobile home owner and a mobile home park owner. Section 723.004, F.S., provides in part that:

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 exists 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.

Section 723.037, F.S., requires a mobile home park owner, who has given notice of a lot rental increase, a reduction in services or utilities provided by the park owner, or a change in park rules and regulations, to comply with various statutory requirements. Section 723.037(4), F.S., requires the information be distributed to a committee created by a majority of affected home owners or created by the park homeowners’ association to be comprised of no more than five individuals who are tenants in the park. The information is required to be available in order for the parties to discuss the proposed changes at an initial meeting.

Section 723.037(4)(c), F.S., provides that if the committee disagrees with a park owner’s lot rental amount increase based upon comparable mobile home parks, the committee shall disclose to the park owner the name, address, lot rental amount, and any other relevant factors relied upon by the committee.

Florida Mobile Home Relocation Corporation

Section 723.0611, F.S., establishes the Florida Mobile Home Relocation Corporation administered by a six-member board of directors. Three members are appointed by the Secretary of the Department of Business and Professional Regulation 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., provides for relocation expenses, and payments by a mobile home park owner. If a mobile home owner is required to move due to a change in use, and the mobile home owner submits an application with the required documentation to the corporation, 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 \$3,000 for a single-section mobile home, or \$6,000 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.¹

Section 723.06116(1), F.S., requires a park owner to make payment into the Florida Mobile Home Relocation Trust Fund in the amount of \$2,700 per single-section home and \$3,750 per multi-section home when there is a change in land use that requires relocation of mobile homes. The park owner is exempt from payment into the trust fund when the mobile home owner has an eviction action pending for non-payment of rent.²

A home owner is not entitled to compensation for moving expenses if the park owner moves the home owner to another space in the mobile home park or to another mobile home park at the park owner's expense, the home owner gave notice of vacating the premises prior to receiving the notice of a change in use, or if the home owner abandons the mobile home.³

In order to obtain payment from the corporation, the home owner is required to submit an application for payment to the corporation and to the mobile home park owner. 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 will issue a voucher in the amount of the contract price for relocating the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.⁴

In lieu of collecting moving expenses from the corporation, a home owner may elect to abandon the mobile home and collect from the corporation moving expenses in the amount \$1,375 for a single-section mobile home and \$2,750 for a multiple-section mobile home. If the home owner chooses the abandonment option, the park owner must make payment to the corporation in an amount equal to the amount the mobile home owner is entitled to under the section.

Upon election of the abandonment moving expense, the home owner must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home. The home owner is required to submit documentation to the corporation in order to collect a moving expense for an abandoned home. Section 723.0612(7), F.S., requires that the home owner provide a signed statement from the park owner stating that the mobile home has been abandoned and that the park owner agrees to make payment to the corporation in the amount provided under this section.

The corporation is not liable to any person for recovery if the corporation does not have sufficient funds to pay the claims, but must keep a record of the time and date of its approval of payment even if the funds are not available. When funds do become available, the corporation must pay the claimant whose unpaid claim is the earliest by time and date of approval.⁵

¹ Section 723.0612(1), F.S.

² Section 723.06116(2)(d), F.S.

³ Section 723.0612(2), F.S.

⁴ Section 723.0612(4), F.S.

⁵ Section 723.0612(8), F. S.

A home owner 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, the park owner or successors in interest.⁶

Florida Mobile Home Relocation Trust Fund

Section 723.06115, F.S., establishes the Florida Mobile Home Relocation Trust Fund (trust fund) within the Department of Business and Professional Regulation (department). The Legislature established this trust fund in 2001 to provide funds for the administration costs of the corporation and payments to mobile home owners under the relocation program. This trust fund received a one-time General Revenue Appropriation of \$500,000. According to the department, \$162,212 is still available through the corporation and the trust fund, which is a decrease from the approximately \$260,000 that was available in FY 2003-2004.

Section 723.007, F.S., imposes an annual assessment of \$4.00 per lot on mobile home lots within mobile home parks. The fee is collected by the mobile home park owner and is paid to the division. These revenues are deposited into the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund in order to fund operations of the division. Section 723.007, F.S., also imposes a one dollar surcharge on the annual assessment for deposit in the trust fund. Section 320.08015, F.S., imposes an additional one dollar license tax on mobile homes registrations and renewals for deposit in the trust fund.

Sovereign Immunity

Florida generally follows the rule, under the law of sovereign immunity, that a suit may not be maintained against the State of Florida without its consent.⁷ Article X, s. 13, Florida Constitution provides that

Section 13. Suits against the state.—Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

The state and its subdivisions have absolute sovereign immunity unless the Legislature waives that immunity or unless the Florida Constitution is amended.⁸ The Legislature waived the state's immunity from tort liability in prescribed circumstances and subject to specified conditions in s. 768.28, F.S. Section 768.28(5), F.S., provides:

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments

⁶ Section 723.0612(9), F.S.

⁷ 48A Fla. Jur. 2d, State of Florida, s. 295.

⁸ *Id.*

paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000.

Any amount of judgment in excess of the amounts provided in this subsection must be submitted to the Legislature to be paid through the enactment of a Claim Bill.

III. Effect of Proposed Changes:

Section 1.

Section 723.037(4)(b), F.S., is amended to include a statement of statutory intent that provides that the information concerning comparable mobile home parks to be exchanged by the parties is to encourage a dialogue between the mobile home owner and the park owner regarding the park owner's reasons for increasing the lot rental amount.

Section 723.037(4)(b)2., F.S., is created to provide that the park owner shall not limit the comparable mobile home park disclosure to mobile home parks that are owned or operated by the same owner or operated as the subject park except in certain circumstances, which include, but are not limited to:

- The market area for comparable mobile home parks includes mobile home parks owned or operated by the same entity that have similar facilities, services, and amenities;
- The subject mobile home park has unique attributes that are shared with similar mobile home parks;
- The mobile home park is located in a geographic or market area that contains few comparable mobile home parks; or
- There are similar considerations or factors that would be considered in such a market analysis by competent professional and would be considered in determining the valuation of the market rent.

Section 723.037(4)(c), F.S., is amended to allow that the park owner may provide supplemental information at the second meeting and may modify their positions, but not change the information provided at the first meeting.

Section 723.037(4)(e), F.S., is amended to that the purpose of the subsection is to encourage settlement discussions prior to the parties proceeding to mediation of any dispute. The subsection is not intended to be enforced by civil or administrative action.

Section 723.037(5)(d), F.S., is created to provide that, at mediation, the park owner and the homeowners' committee may supplement the information provided to each other at the meetings described in subsection (4) and may modify their position, but they may not change the information provided to each other at the first and second meetings.

It further provides that the purpose of the subsection is to encourage discussion and evaluation by the parties of comparable mobile homes in the market area. The requirements of the subsection are not intended to be enforced by civil or administrative action but are for settlement purposes prior to the parties proceeding to litigation of any dispute.

Section 2.

Section 723.0611(2), F.S., is amended to provide that agents, employees, members of the board of the Florida Mobile Home Relocation Corporation (FMHRC) or representatives of the Division of Florida Land Sales, Condominiums, and Mobile Homes shall be considered officers, employees, or agents of the state for the purposes of s. 768.28, F.S. Actions against the agents and the corporation shall be governed by s.768.28, F.S.

Subsection (3) is amended to provide that FMRHC's adoption of a plan of operation, articles and bylaws, and operating rules will be in accordance with ss. 120.536 and 120.54, F.S, ss. 723.06115, 723.06116, and 723.0612, F.S. Section 723.06115, F.S., provides for the Florida Mobile Home Trust Fund, s. 723.06116, F.S., provides for payments to the fund, and s. 723.0612, F.S., provides for the relocation expenses and payments.

Section 3.

Section 723.0612, F.S., is amended to provide that a mobile home owner is not entitled to receive compensation under this section if there is a pending eviction for nonpayment of lot rent, which was filed prior to the mailing date of the notice of change in land use pursuant to s. 723.061(1)(d), F.S.

Subsection (11) is created to provide that in an action to enforce the provisions of this section and ss. 723.0611, 723.06115, and 723.06116, F.S., the prevailing party is entitled to reasonable attorney's fees and costs. Section 723.0611, F.S., establishes the Florida Mobile Home Relocation Corporation.

Section 4.

This committee substitute goes into effect upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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