

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 565 CS Mobile Homes
SPONSOR(S): Farkas and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>16 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Civil Justice Committee</u>	<u>4 Y, 0 N</u>	<u>Billmeier</u>	<u>Billmeier</u>
3) <u>Commerce Council</u>	<u>10 Y, 0 N</u>	<u>Livingston</u>	<u>Bohannon</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 723, F.S., addresses various aspects of the relationship between a mobile home owner and a mobile home park owner. 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, is required to comply with various statutory requirements including specific information relating to the justification for the proposed changes to be provided to a committee composed of tenants from the mobile home park. Requirements for the exchange of information by the tenants are also addressed.

The bill states that the requirement for the committee to disclose rents charged by comparable parks is to encourage a dialogue concerning the reasons for the rent increase and to encourage the home owners to evaluate and discuss the reasons with the park owner. The bill specifies additional statutory purpose and intent that the current provisions are not intended to be enforced by civil or administrative action and that the meetings are intended to be conducted as settlement discussions prior to mediation or litigation. The bill specifically allows the park owner and the home owners to exchange new or additional information during the discussion process or to change positions relating to the rent increase. However, it prohibits the park owner and home owners from changing any information that was initially provided at the meetings.

Chapter 723, F.S., also provides that, if a mobile home owner is required to move due to a change in use of the mobile home park property, and the mobile home owner meets certain conditions, the owner is entitled to financial assistance to help offset certain moving expenses. Approval and payments are made by the Florida Mobile Home Relocation Corporation out of the Florida Mobile Home Relocation Trust Fund.

The bill prohibits compensation to be paid out of the Mobile Home Relocation Trust Fund to a home owner who is under an eviction action for nonpayment of rent. The action for nonpayment of rent must have been initiated by the park owner prior to issuing the notice of intent to change the use of the mobile home park. The bill allows for the payment of reasonable attorney's fees and costs to the prevailing party in an action to enforce payment from the Mobile Home Relocation Trust Fund.

The bill designates the Florida Mobile Home Relocation Corporation as an agency of the state and employees and directors as officers, employees, or agents of the state for purposes of the application of sovereign immunity provisions.

The bill is not anticipated to have a significant fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation – Rent increases; reduction in service; change in park rules

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. 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, has stated

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)

Chapter 723, F.S., addresses various aspects of the relationship between the mobile home owner and the mobile home park owner. 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.

The mobile home park owner is required to furnish information justifying the changes. Section 723.037(4), F.S., requires the information to be distributed to a committee created by a majority of affected home owners or created by the park home owners' 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.

The statutes require the meeting to occur within 30 days of the notice of the lot rental increase or other changes. Section 723.037(4)(b), F.S., requires good faith disclosures and explanations of material factors, not generalities, supporting the decision to propose the changes.

Section 723.037(4)(c), F.S., addresses lot rental increases. If the committee disagrees with the proposed rent increase, based on rental amounts charged at comparable mobile home parks, the committee has 15 days after the initial meeting to object to the lot rental increase. The committee is required to provide information to contradict the reasoning provided by the mobile home park owner at the first meeting. This objection triggers a second meeting between the mobile home park owner and representatives of the mobile home owners. The second meeting must be held within 30 days of when the committee notifies the mobile home park owner that the committee does not agree with the reasons for the rent increase.

Section 723.037(5), F.S., provides for a process of mediation of disputes relating to a lot rental increase, a reduction in services or utilities provided by the park owner, or a change in park rules and regulations.

Effect of proposed changes

The bill amends s. 723.037(4)(b), F.S., to include a statement of statutory intent or purpose to specify that the requirement for the home owner committee to disclose rents charged by comparable parks is to encourage a dialogue concerning the reasons for the rent increase and to encourage the home owners to evaluate and discuss the reasons with the park owner. This bill provides that, with four exceptions, the park owner may not limit the rent comparisons to parks that are also owned by the same owner who is proposing the rent increase. The exceptions allow the use of the same owner park for comparison purposes when:

- the market area for comparison purposes includes other parks that are owned by the same individual and they have similar facilities, services, and amenities among themselves;
- there are unique aspects of the park proposing the increase and other parks in the market area;
- there are few mobile home parks in the comparable market area; and
- a professional analyzing the comparable market would use parks that are owned by the same owner who is proposing the rent increase.

Subparagraph (c) is amended by the bill to allow the park owner to supply additional information or to change positions on the rent increase. However, it prohibits the park owner from changing the information that was provided to the committee at the first meeting.

The bill creates statutory intent language specifically pertaining to subsection (4). The language states that the provisions of this subsection are not intended to be enforced by civil or administrative action. It further states that the meetings are intended to be conducted as settlement discussions prior to mediation.

The bill amends the mediation provisions in subsection (5). At mediation, the bill allows the park owner and the home owners to exchange new or additional information or to change positions relating to the rent increase. However, it prohibits the park owner and home owners from changing the initial information that was provided during the settlement discussions.

The bill creates statutory intent language specifically pertaining to subsection (5). The language states that the purpose of the subsection is to encourage discussion and evaluation of comparable parks in the market area of a park that is proposing a rent increase. The language further states that the

provisions of this subsection are not intended to be enforced by civil or administrative action. It further states that the meetings are intended to be conducted as settlement discussions prior to litigation.

Present situation – financial assistance for relocation expenses

Section 723.0612, F.S., relates to change in use of the land comprising a mobile home park, or a change in the portion upon which the tenant resides. It also addresses 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 of the mobile home park property, and the mobile home owner meets certain conditions, the mobile home owner is entitled to financial assistance to help offset certain moving expenses.

Section 723.06115, F.S., establishes the Florida Mobile Home Relocation Trust Fund (trust fund) within the Department of Business and Professional Regulation (DBPR). The trust fund was created to provide revenues for payments to mobile home owners under the relocation program and for the administrative costs associated with managing the trust fund.

Section 723.007, F.S., imposes an annual assessment of \$4.00 per lot on mobile home lots located within mobile home parks. The fee is collected by the mobile home park owner and is paid to the Division of Land Sales, Condominiums, and Mobile Homes (division). These revenues are deposited into the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to partially fund operations of the division. Additionally, this section imposes a one dollar surcharge on the annual assessment for deposit in the relocation trust fund. Section 320.08015, F.S., relating to motor vehicles, imposes an additional one dollar annual license tax on mobile homes for deposit in the relocation trust fund.

Section 723.0611, F.S., relates to the Florida Mobile Home Relocation Corporation (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 (mobile homes) in this state. The corporation is authorized to manage the relocation trust fund.

Currently, as a result of being required to relocate due to a change in the use of the mobile home park, an owner of a mobile home has the option of being reimbursed for moving expenses or under subsection (7) of s. 723.0612, F.S., a mobile home owner may elect to sell the mobile home rather than move it. When the mobile home owner makes application for payment and it is approved by the corporation, the mobile home owner is then authorized to receive compensation from the corporation which is paid out of the relocation trust fund.

Subsection (7) also provides an alternate procedure for approval of payment under the abandonment option. If the mobile home owner does not have complete documentation in the application for payment, such as when the park owner refuses to agree to pay for the abandonment, then the corporation can initiate an evaluation of the facts and circumstances surrounding the abandonment of the mobile home to determine if the mobile home owner should receive the abandonment payment.

Effect of proposed changes

The bill prohibits compensation to be paid out of the Mobile Home Relocation Trust Fund to a home owner who is under an eviction action for nonpayment of rent. The action for nonpayment of rent must have been initiated by the park owner prior to issuing the notice of intent to change the use of the mobile home park.

The bill allows for the payment of reasonable attorney's fees and costs to the prevailing party in an action to enforce payment from the Mobile Home Relocation Trust Fund.

The bill designates the Florida Mobile Home Relocation Corporation as an agency of the state and employees and directors as officers, employees, or agents of the state for purposes of the application of sovereign immunity provisions in section 768.28, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 723.037, F.S., to allow comparable mobile home park disclosures between mobile home park owners and tenants under specified circumstances; provides statutory statements of intent and purpose.

Section 2. Amends s. 723.0611, F.S., to authorize the adoption of administrative rules by the Mobile Home Relocation Corporation pursuant to provisions of the Administrative Procedure Act.

Section 3. Amends s. 723.0612, F.S., to prohibit payment from the Mobile Home Relocation Trust Fund when a mobile home owner is subject to a pending eviction action for delinquent rent payments; to allow for payment of attorney's fees in actions to enforce payment from the relocation trust fund.

Section 4. Effective date - upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None anticipated.
2. Expenditures:
None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None anticipated.
2. Expenditures:
None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill classifies certain employees of the Florida Mobile Home Relocation Corporation as agents of the state for purposes of s. 768.28, F.S. For the state to classify someone as an agent of the state for purposes of section 768.28, F.S., the state must exercise control over the person. See Stoll v. Noel, 694 So. 2d 701 (Fla. 1997). Here, it can be argued that the state controls the corporation employees. The state collects the moneys administered by the corporation¹ and provides for the duties of the corporation.² This bill provides that the corporation must adopt specific rules, pursuant to chapter 120, F.S., to carry out its duties.

B. RULE-MAKING AUTHORITY:

The bill specifically amends s. 723.0611, F.S., to authorize the adoption of administrative rules by the Mobile Home Relocation Corporation pursuant to subsections 120.536 and 120.54, F.S., of the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See **Section IV.** below.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The original bill specifically provided that the Board of Directors of the Florida Mobile Home Relocation Corporation “Adopt a plan of operation and articles, bylaws, and operating rules pursuant to the provisions of chapter 120 to administer the provisions of this section and ss. 723.06115, 723.06116, and 723.0612.”

Staff of the Administrative Procedure Committee suggest the preferred reference to chapter 120, F.S., for purposes of authorizing the adoption of administrative rules is as follows:

...“pursuant to the provisions of ss. 120.536 and 120.54, F.S.”

The CS differs from the original bill as follows:

Reference to rule authority of the Florida Mobile Home Relocation Corporation is changed from “chapter 120” to “ss. 120.536 and 120.54, F.S.”

Changes the effective date from “July 1, 2005” to “upon becoming law.”

¹ See s. 723.06115, F.S.

² See s. 723.0612, F.S.