

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 423 Mobile Home Park Lot Tenancies

**SPONSOR(S):** Civil Justice Subcommittee; Nuñez and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Woodburn	Bond
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Mobile home parks are regulated by the state. Current law places various obligations on mobile home park owners including providing notices for eviction in the event of sale, following building codes and maintaining common areas. Due to the cost and difficulty in moving mobile homes, current law requires a mobile home park owner to give tenants at least six months notice before eviction can take place due to a change of land use. A change of land use is where the land the park is on will be redeveloped into something other than a mobile home park.

The bill requires that, at the beginning of the six months eviction period, and if the tenants have created a homeowners' association, the park owner must offer to sell the park to the association. The association has 45 days to agree to the owner's asking price and terms. The bill requires the state or local government to consider the adequacy of parks for relocation when a mobile home park owner gives notice of a change of land use.

Mobile home owners also have obligations by lease and by law that include the obligation to follow building codes and the obligation to keep the lot he or she rents sanitary and clean. Mobile home park owners report that they are being cited for offenses that were committed by their tenants. This bill requires a local government, when citing a violation of a local ordinance, to cite only the responsible party.

The bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Mobile Home Parks

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 ruled 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.<sup>1</sup>

Before the current downturn in real estate values, escalating property values, especially in the coastal areas, prompted a number of mobile home park owners to close their parks so that the land can be used for a different purpose (such as retail, office, apartments or condominiums). As the economy recovers, mobile home parks will likely again be slated for redevelopment.

##### Purchase of Mobile Home Parks by Tenants

Section 723.061, F.S., provides the grounds for eviction of a mobile home park resident. One ground for eviction is an eviction of all tenants upon a change in land use. A change in land use is an intent to redevelop the land into something other than a mobile home park. Tenants evicted under this provision must be given at least six months notice.

Section 723.071, F.S., requires that a mobile home park owner who offers a mobile home park for sale to the general public must notify the homeowners' association (tenant's association) of the price, terms and conditions of sale. The requirement only applies if the tenants have organized a homeowners' association under ch. 723, F.S. The mobile home owners, by and through the homeowners' association, may purchase the park at the price, terms and conditions in the notice if the homeowners execute a purchase contract within 45 days after mailing of the notice. If the park owner later elects to offer the park at a lower price, the home owners have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

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<sup>1</sup> *Stewart v. Green*, 300 So.2d 889, 892 (Fla. 1974).

The process in s. 723.071, F.S., gives the homeowners an opportunity to purchase the park in situations where the park owner is selling to a third party. Under current law, however, a park owner may elect to close the park and redevelop the land (a change in land use) without selling the land to a third party. In this situation, s. 723.071, F.S., does not apply, and current law does not require the park owner to give the homeowners an opportunity to purchase the park (and avoid having to move).

#### Adequate Mobile Home Parks

Section 723.083, F.S., provides that:

No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

Section 723.061(3), F.S., provides that:

The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply.

There is a note in the statute that provides:

The reference to 'this subsection

#### Effect of the Bill: Change in Land Use

This bill amends the eviction provisions of s. 723.061(1)(d), F.S., to provide mobile home owners with a process for purchase of the mobile home park from which they are to be evicted due to a change in land use. The purchase terms are similar to those in current law related to a park owner offering the park for sale. The park owner may not evict the homeowners from the park due to a change of land use unless the park owner first follows the process set forth in the bill. Specifically:

- If the homeowners have formed a homeowners' association pursuant to ss. 723.075-723.079, F.S., the bill requires the park owner to give written notice to the homeowners' association of the homeowners' right to purchase the mobile home park at the price, terms and conditions set forth in the notice. The park owner sets the price, terms and conditions.
- The written notice must be provided to the officers of the homeowners' association. The homeowners' association may then execute and deliver a contract for purchase of the park to the park owner within 45 days after the mailing of the written notice. The contract must be for the same price and terms and conditions set forth in the written notice. The park owner may not sell to another if the association agrees to a contract.
- If the park owner and the homeowners' association do not execute a contract within the 45 day period, the park owner may proceed with the eviction. If during the 6 month notice period prior to eviction the park owner elects to offer or sell the park at a price lower than in the initial notice, the park owner must notify the homeowners association and the association has an additional 10 days to agree to the revised offer terms. At the conclusion of the 6 month notice period, the park owner has no further obligation under the amended s. 723.061(1)(d), F.S., or under s. 723.071, F.S.

The bill deletes subsection (3) of s. 723.061, F.S. Currently, this subsection provides that the provisions of 723.083, F.S.,<sup>2</sup> do not apply to any park where the provisions of "this subsection" apply. There are no provisions governing parks under the subsection. Prior to its amendment in 2001, this provision was included in a paragraph within subsection (2) of 723.061, F.S.<sup>3</sup> The provisions in subsection (2) were deleted in 2001.<sup>4</sup> Therefore, the language in subsection (3) appears to have been mistakenly preserved after the 2001 amendment. However, courts have interpreted this provision as precluding the application of s. 723.083, F.S., when a mobile home park owner gives notice under s. 723.061, F.S.<sup>5</sup> The bill provides that the provisions of s. 723.083, F.S., which requires the government to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

### Park Owner and Home Owner Obligations

The unique relationship between the park owner and mobile home owner places various obligations on each party. Section 723.022, F.S., requires a mobile home park owner to:

- Comply with building, housing and health codes.
- Maintain the common areas in a good state of repair.
- Provide access to the common areas.
- Maintain utility connections and systems in proper operating conditions.
- Comply with park rules.

Section 723.023, F.S. requires a mobile home owner to:

- Comply with applicable building, housing and health codes.
- Keep the mobile home lot which he or she occupies clean and sanitary.
- Comply with park rules.

Some confusion may result when local city or county inspectors cite a mobile home park owner for a violation related to an issue that is the responsibility of a mobile home owner pursuant to s. 723.023, F.S. For example, if the mobile home owner does not keep the lot in which he or she occupies clean and sanitary, the local officials may cite the mobile home park owner even though current law provides that it is the mobile home owner's responsibility to keep the lot clean.<sup>6</sup>

### Effect of the Bill: Citations

The bill creates s. 723.024, F.S., which provides that if a unit of local government finds a violation of a local code or ordinance, the unit of local government may only cite the responsible party. The bill also provides that a lien, penalty, fine or other administrative or civil proceedings may not be brought against a mobile home park owner for a violation under s. 723.023, F.S. and that a lien, penalty, fine or other administrative or civil proceedings may not be brought against a mobile home owner or mobile home for a violation of s. 723.022, F.S.

## B. SECTION DIRECTORY:

Section 1 creates s. 723.024, F.S., regarding mobile home park owner's and mobile home owner's obligations.

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<sup>2</sup> Section 723.083, F.S., provides that no agency of municipal, local, county, or state government may approve any application for rezoning, or take other action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

<sup>3</sup> Section 6, ch. 2001-227, L.O.F.

<sup>4</sup> *Id.*

<sup>5</sup> *DeFalco v. City of Hallandale Beach*, 18 So. 3d 1126, 1128 (Fla. DCA 2009).

<sup>6</sup> Section 723.023(2), F.S., requires the mobile home owner to "Keep the mobile home lot which he or she occupies clean and sanitary."

Section 2 amends s. 723.061, F.S., regarding eviction from a mobile home park upon a change in land use.

Section 3 provides that the bill takes effect upon becoming a law.

## **II. 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:**

None.

### **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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

There is an argument that the portion of this bill regarding eviction and sale to the tenants may constitute an unreasonable restraint on alienation of real property. The Third District Court of Appeal has found that:

The basic premise of the public policy rule against unreasonable restraints on alienation, see 7 *Thompson On Real Property*, § 3161 (1962); 31 C.J.S. *Estates* 8(b)(2) (1964), is that free alienability of property fosters economic growth and commercial development. *Davis v. Geyer*, 151 Fla. 362, 9 So.2d 727 (1942); *Seagate Condominium Association, Inc. v. Duffy*, 330 So.2d 484. Because “[t]he validity or invalidity of a restraint depends upon its long-term effect on the improvement and marketability of the property,” *Iglehart v. Phillips*, 383 So.2d 610, 614 (Fla.1980), where the restraint, for whatever duration, does not impede the improvement of the property or its marketability, it is not illegal. *Id.* at 615. **Accordingly, where a restraint on alienation, no matter how absolute and encompassing, is conditioned upon the restrainer's obligation to purchase the property at the then fair market value, the restraint is valid.** *Id.* at 614-15, and cases collected.”<sup>7</sup> (*emphasis added*)

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment removes the references to a violation of s.723.022, F.S., and s. 723.023, F.S., to provide that the local government is to cite a violation of the local code or ordinance to the responsible party. The bill was then reported favorably.

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<sup>7</sup> *Aquarian Foundation, Inc. v. Sholom House, Inc.*, 448 So.2d 1166 (Fla. 3d DCA 1984).