

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 743 Mobile Homes

SPONSOR(S): Regulatory Affairs Committee; Business & Professions Subcommittee; Latvala and Burgess

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 826

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|-------------|--|
| 1) Business & Professions Subcommittee | 11 Y, 0 N, As CS | Brown-Blake | Anstead |
| 2) Civil Justice Subcommittee | 12 Y, 0 N | Malcolm | Bond |
| 3) Regulatory Affairs Committee | 13 Y, 0 N, As CS | Brown-Blake | Hamon |

SUMMARY ANALYSIS

The Florida Mobile Home Act (Act) regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes(Division) of the Department of Business and Professional Regulation (Department) enforces the Act. The bill makes the following changes to the Act:

- Revises the Division's notice requirements when a written complaint is filed with the Division;
- Provides that non-ad valorem assessments are considered a charge that a mobile home park owner may pass on to a mobile home owner;
- Provides that, if the park owner does not provide a notice of a lot rental increase 90 days before the renewal date of the rental agreement, the rental agreement remains under the same terms until a 90-day notice is given;
- Permits the purchaser of a mobile home to cancel or rescind a contract for the purchase of the mobile home if the park owner has not approved the purchaser's tenancy at least five days before the closing of the purchase.
- Provides that, upon incorporation, all consenting mobile homeowners may become members or shareholders of a homeowners' association and that upon incorporation and notification to the park owner, the association becomes the representative to all mobile homeowners in all matters related to the Act;
- Provides that owners of a jointly owned mobile home or subdivision lot are only permitted one vote.
- Authorizes members to vote in person or by secret ballot, including an absentee ballot.
- Prohibits members from recording meetings between the board of directors or an appointed committee and the park owner;
- Requires the Division to adopt rules implementing board member training and publish a notice of proposed rules by October 1, 2016; and
- Provides that board members will not be considered in violation for failure to comply with board member certification and education requirements until after October 1, 2017.

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

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 723, F.S., is known as the “Florida Mobile Home Act” (Act) and provides for the regulation of mobile homes by the Division. The Act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The Act provides in part that:

[O]nce 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.¹

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease. The Florida Supreme Court, in addressing mobile home park issues, has stated that “a hybrid type of property relationship exists between the mobile home owner and the park owner and that . . . 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

Notice of Complaint Process

The Division has the power to institute various enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners’ association or its assignee or agent if the Division has cause to believe a violation of any provision of ch. 723, F.S., has occurred. The permitted enforcement proceedings include:

- Allowing a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent agreement;
- Issuing a cease and desist order to a mobile home park owner and requiring him or her to take affirmative action to correct the violation, including:
 - Issuing refunds of rent increases, improper fees, charges and assessments;
 - Filing and using documents which correct a violation.
 - Reasonable action necessary to correct a violation.
- Bringing an action in circuit court on behalf of a class of mobile home owners, mobile home park owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution; and
- Imposing a civil penalty.

The Division often initiates enforcement proceedings based on complaints by mobile home owners, mobile home park owners, and homeowners’ associations. When the division receives a written complaint alleging a violation of ch. 723, F.S., or the rules, the Division is required to periodically notify, in writing, the person who filed the complaint of the status of the investigation whether probable cause has been found to believe a violation has occurred and the status of any administrative action, civil action, or appellate action. If the Division has found probable cause to believe that a violation has occurred, it is required to notify, in writing, the party complained against of the results of the investigation and the disposition of the complaint.³

¹ s. 723.004(1), F.S.

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

³ s. 723.006(6), F.S.

Pass-on Charges and Lot Rental Increases

In mobile home parks containing 26 or more lots, prior to entering into a rental agreement for a mobile home lot with a mobile homeowner, the park owner must deliver a prospectus or offering circular to the homeowner.⁴ The prospectus or offering circular in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park.⁵ The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.⁶

The prospectus or offering circular must include “[a]n explanation of the manner in which the lot rental amount will be raised, including disclosure of the manner in which pass-through charges will be assessed.”⁷ The term “pass-through charge” is defined as “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.”⁸

The rental agreement must contain the lot rental amount and included services. A lot rental amount may not be increased during the term of the lot rental agreement except:

- When the manner of the increase is disclosed in a lot rental agreement longer than 12 months and which provides for such increases not more frequently than annually;
- For pass-through charges; and
- That a charge may not be collected that results in payment of money for sums previously collected as part of the lot rental amount.⁹

However, the park owner may pass-on ad valorem property taxes, and utility charges, or increases of either, if they are not otherwise being collected with the rent and that the passing on of the property taxes or utility charges, or increases of either, was:

- Disclosed prior to tenancy;
- A matter of custom between the park owner and the mobile homeowner; or
- Authorized by law.¹⁰

The property taxes and utility charges are required to be part of the lot rental amount. Pass-on charges¹¹ may be passed on only within one year of the date a mobile home park owner remits payment of the charge. A park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner’s payment of the charge after the date such charges becomes delinquent. However, a park owner and a mobile homeowner may agree to an alternative manner of payment for the charges.¹²

⁴ s. 723.011(1)(a), F.S.

⁵ s. 723.011(3), F.S.

⁶ *Id.*

⁷ s. 723.012(9)(c), F.S.

⁸ s. 723.003(17), F.S.

⁹ s. 723.031(5), F.S.

¹⁰ s. 723.031(5)(c), F.S.

¹¹ Note: Pass-on charges are different than pass-through charges.

¹² *Id.* at note 8.

Rights of a Mobile Home Purchaser

The purchaser of a mobile home in a mobile home park may become a tenant of the park if the purchaser meets the requirements of entry into the park under the park's rules and regulations, subject to the park owner's approval. The park owner may not unreasonably withhold approval.¹³

Homeowners' Association Formation

Section 723.075, F.S., requires mobile homeowners to form a homeowners' association in order to exercise certain rights set forth in s. 723.071, F.S. In order to create a homeowners' association, no less than two-thirds of all the mobile homeowners must have consented, in writing, to become members and shareholders of the corporation. Upon consent by two-thirds of the homeowners, all consenting homeowners and their successors become members of the association and are bound by the provisions of the articles of incorporation, the bylaws of the association, and other properly promulgated restrictions. All members must be bona fide owners of a mobile home located in the park. Upon incorporation and notification to the park owner, the association becomes the representative of mobile homeowners in all matters related to ch. 723, F.S.

Homeowners' Association Voting Requirements and Meetings

Section 723.078, F.S. provides that, unless the bylaws state otherwise, a quorum consists of 30% of the total membership of the association. In order to reach a decision, the association must have a majority of members present at a meeting where a quorum is present.

Members may vote at homeowner association meetings in person or by limited proxy but may not vote by general proxy. However, both limited proxies and general proxies may be used to establish a quorum.¹⁴

Current law is silent as to how to count a member vote in cases where a mobile home or subdivision lot is jointly owned by two or more persons. Additionally, it is unclear in current law how many votes each mobile home or subdivision lot may have.

Section 723.078, F.S. was revised by the Legislature in 2015 to authorize any member to tape record or videotape meetings, and to require the division to adopt rules governing the tape recording and videotaping of meetings.¹⁵

Board Member Education Requirements

The 2015 changes also revise s. 723.006, F.S., to require the Division to approve training and educational programs for board members of mobile home owners' associations. The Division is required to review and approve educational criteria and training programs for board members and mobile home owners and to maintain a list of approved programs and providers.¹⁶ However, the Division has not promulgated rules approving training and education programs or providing curriculum.

Within 90 days of being elected, a member of a board directors is required to certify by affidavit that he or she:

- Has read the association's current articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies;
- Will work to uphold the documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the members.¹⁷

¹³ s. 723.059(1), F.S.

¹⁴ s. 723.078(2)(b)2., F.S.

¹⁵ ch. 2015-90, Laws of Fla.

¹⁶ s. 723.006(13), F.S.

¹⁷ s. 723.0781, F.S.

In lieu of the written certification, the board members may submit a certificate of completion of the educational curriculum approved by the Division within 1 year before or 90 days after the date of his or her election.¹⁸

Effect of the Bill

Notice of Complaint Process

When there are disputes between a mobile home owner and a mobile home park owner, either party can request enforcement of ch. 723, F.S., by the Division by filing a complaint. The bill amends the notice requirements in s. 723.006(6), F.S., that set out how the Division notifies the complainant and the person the complaint is filed against following the filing of a written complaint alleging a violation of ch. 723, F.S. The bill requires the Division to notify the complainant in writing within 30 days of receipt of the written complaint. Thereafter, the Division is required to notify the complainant of the investigation status within 90 days of receipt of the written complaint. When the investigation is complete, the Division is required to notify, in writing, both the complainant and the party complained against of the investigation's results.

Pass-through Charges and Lot Rental Increases

The bill amends s. 723.031(5)(c), F.S., to provide that non-ad valorem assessments, which are currently charged to mobile home owners, are considered a pass-on charge and thus may be passed on to homeowners in the same manner as ad valorem assessments and utility charges. The homeowners already pay these assessments, but by listing the assessments in the pass-on charges, the assessments would be itemized in the bill submitted to the homeowners by the park owners. This provides clearer notice to homeowners of what taxes and assessments they are paying.

The bill further provides that, if the park owner does not provide a notice of lot rental increase 90 days before the renewal date of the rental agreement, the rental agreement remains under the same terms until a 90-day notice of lot rental increase is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

Rights of a Mobile Home Purchaser

The bill provides that the purchaser of a mobile home may cancel or rescind a contract for the purchase of the mobile home if the park owner has not approved the purchaser's tenancy at least 5 days before the closing of the purchase.

Homeowners' Association Formation

The bill maintains the requirement that two-thirds of the homeowners must consent to create the homeowners' association. However, the bill provides that, upon incorporation, all consenting mobile homeowners may become members or shareholders. The bill defines the terms "member" and "shareholder" to mean "a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and policies of the incorporated homeowners' association," thus requiring that consent be provided by a homeowner prior to being bound by the association's governing documents. The bill removes the provision providing that the homeowners' successors are members of the association.

Homeowners' Association Voting Requirements and Meetings

The bill provides that owners of a jointly owned mobile home or subdivision lot are only permitted one vote per lot or mobile home. Additionally, the bill provides that any number greater than 50 percent of the total number of votes cast at a meeting constitutes a majority for the purposes of determining

¹⁸ *Id.*

whether an action passes at a homeowners' association member meeting. The bill provides that members may vote in person or by secret ballot, including an absentee ballot.

Additionally, the bill provides that any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners' committee and the park owner.

Board Member Education Requirements

The bill requires the Division to adopt the rules implementing board member training, including course content for such training, and publish a notice of proposed rule by October 1, 2016. Furthermore, the bill provides that s. 723.0781, F.S., regarding the certification and education of board members, becomes effective October 1, 2016, but the board members will not be considered in violation for failure to comply until after October 1, 2017.

B. SECTION DIRECTORY:

Section 1 amends s. 723.006, F.S., revising certain notice requirements for written complaints.

Section 2 amends s. 723.031, F.S., authorizing a mobile home park owner to pass on non-ad valorem assessments to a tenant under certain circumstances, and providing other requirements regarding non-ad valorem assessments.

Section 3 amends s. 723.059, F.S., authorizing a mobile home purchaser to cancel or rescind the contract to purchase under certain circumstances.

Section 4 amends s. 723.075, F.S., revising the rights that mobile home owners exercise if they form an association and the manner in which it is formed.

Section 5 amends s. 723.078, F.S., specifying voting requirements for homeowners' associations.

Section 6 amends s. 723.0781, F.S., relating to board member training programs.

Section 7 provides an effective date of July 1, 2016.

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:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires the division to adopt rules regarding board member training requirements and sets deadlines for implementation and enforcement.
- Provides that the term non-ad valorem assessments has the same meaning as in s. 197.3632(1)(d), F.S.
- Clarifies that the homeowners' associations controls all mobile home parcels located within the mobile home park, rather than just those owns who agreed to join the homeowners' association.
- Requires the Division to adopt a rule defining "secret ballot."
- Prohibits the tape recording or video taping of meetings between the board or a committee and the park owner.

On February 17, 2016, the Regulatory Affairs Committee considered and adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that the homeowners' associations must form an association in compliance with s. 723.075, F.S., in order to exercise the rights of a homeowners' association pursuant to ch. 723 F.S.

The staff analysis has been updated to reflect the committee substitute.