

STORAGE NAME: h1299.rpp

DATE: March 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1299

RELATING TO: Florida Mobile Home Act

SPONSOR(S): Representative Crow & others

STATUTE(S) AFFECTED: Amending sections 723.003, 723.035, 723.037, 723.0381, 723.063, 723.071, 723.083, and 723.031, Florida Statutes

COMPANION BILL(S): SB 750

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1299 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill:

--defines the term "pass-on charge";

--prohibits a mobile home park from excluding previously-owned homes which meet certain criteria;

--provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations;

--deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners;

--extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association;

--deletes exemptions to the home owners' right of first refusal;

--extends the first right of refusal to apply to bona fide offers to purchase the park; and

--deletes the requirement that a governmental agency consider "other suitable facilities" for relocating mobile home owners prior to taking an action resulting in the relocation or removal of those owners.

The bill will take effect October 1, 1997.

This bill may have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 723, Florida Statutes, is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR).

Section 723.003, Florida Statutes, provides definitions of terms used in this chapter.

Section 723.031(5)(c), Florida Statutes, (1996 Supp.), permits a park owner to pass on to home owners ad valorem property taxes and utility charges, and increases therein, if there has been prior disclosure of the pass-on, the charges have been passed on as a matter of custom, or if the pass-on was specifically authorized by law. The pass-ons shall be a part of the lot rental amount. The mobile home park owner must pass on such charges within one year of payment of those charges, and is prohibited from passing on any fine, interest, fee or increase in a charge resulting from late payment by the park owner.

Section 723.035, Florida Statutes, governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from imposing a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to section 723.012, Florida Statutes, if required, and until the park owner has complied with the notice requirements of section 723.037, Florida Statutes.

Further, the Division has adopted Rule 61B-32.004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases.

Section 723.037, Florida Statutes, governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable; the rental increase has made the lot rental amount unreasonable; the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.0381, Florida Statutes, addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement,

the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, Florida Statutes, authorizes the home owners and the park owner to initiate mediation by a request to the Division.

Section 723.063, Florida Statutes, authorizes home owners to raise the defense of material noncompliance with Chapter 723, Florida Statutes, in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with Chapter 723, Florida Statutes. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, Florida Statutes, governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to section 723.075, Florida Statutes, through section 723.079, Florida Statutes. Paragraph (b) gives the association the right of first refusal on the park; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association; however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate;
- (b) Any transfer by gift, devise or operation of law;
- (c) Any transfer by a corporation to an affiliate; "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation;
- (d) Any transfer by a partnership to one of its partners;
- (e) Any conveyance of interest in the park incidental to the financing of the park;

(f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;

(g) Any sale or transfer between or among joint tenants or tenants in common owning the park; and

(l) Any purchase of the park by a government entity exercising its eminent domain powers.

Finally, section 723.083, Florida Statutes, prohibits any municipal, local, county, or state government agency from taking rezoning or other action which would result in the removal or relocation of mobile home owners residing in mobile home parks, unless it first determines that there are adequate mobile home parks or other suitable facilities in existence for relocating the mobile home owners. In an informal opinion issued to Pinellas County, the Attorney General advised that the phrase "adequate mobile home parks or other suitable facilities" means the local government must consider all facilities suitable for the relocation of the mobile home owners, not their mobile homes. See Informal Opinion of Atty.Gen. Jim Smith (January 3, 1986). The opinion includes apartments, trailer parks, and boarding houses as examples of "other suitable facilities" which a government may consider for the relocation of owners.

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. See section 2, Chapter 96-394, Laws of Florida. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the department. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the Act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants. The report reveals that during consideration by the members of the circumstances under which a prospectus should be amended, they discussed amendments to allow used mobile homes in a park, as long as they are no older than the average age of other mobile homes in the park. See Final Report of the Mobile Home Study Commission, Report B, page 15; and Appendix C, Minutes of the October 31, 1996 meeting.

B. EFFECT OF PROPOSED CHANGES:

HB 1299 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill defines the term "pass-on charge" to mean a charge for ad valorem property taxes and utility charges, or increases of either, to be paid by a mobile home owner to the park owner in reimbursement of the charges paid by the park owner. Provided, however, that the ad valorem property taxes and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided that the pass on of the ad valorem taxes or utility charges, or increases of either, was

disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or was authorized by law.

The bill prohibits a mobile home park from excluding previously-owned homes which meet certain criteria. The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. This is substantially similar to an existing agency rule, however, the bill further provides that any reasons not disclosed at the meeting by the park owner are not admissible into evidence in any subsequent administrative procedure or civil action between the parties.

HB 1299 deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners, and extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

The bill deletes exemptions to the home owners' right of first refusal, and extends the first right of refusal to apply to bona fide offers to purchase the park.

Finally, the bill deletes the requirement that a governmental agency consider "other suitable facilities" for relocating mobile home owners prior to taking an action resulting in the relocation or removal of those owners.

The bill will take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill removes an existing arbitration requirement, thereby removing one of the prerequisites to a trial de novo. In addition, this bill will allow a homeowner's association to litigate and have the same defenses as an individual homeowner in an action for rent or possession of a mobile home lot.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

According to the DBPR, there is a question of retroactivity regarding the new provision which would not permit a rule or regulation prohibiting previously owned mobile home from being permanently located in a mobile home park. This may create some regulatory problems and resulting litigation for the department.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill makes changes in the Mobile Home Act. Arguably, the provision precluding a rule or regulation that prohibits a previously owned mobile home from being permanently located in a mobile home park may provide additional options to home owners. In addition, the inclusion of mobile home owners' associations as parties who may defend upon the ground of a material noncompliance with the provisions of Chapter 723, may provide home owners some assistance in seeking redress.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill would preclude a rule or regulation that prohibits a previously owned mobile home from being permanently located in a mobile home park.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 723.003, Florida Statutes, by adding a definition of the term "pass-on charge" and tracts the language in section 723.031(5)(c), Florida Statutes, regarding charges for ad valorem taxes and utility charges. However, this definition differs in that it specifies the add-on charge be a reimbursement to the park owner for payments made by him or her.

Section 2 amends section 723.035, Florida Statutes, by creating a new subsection (2) to prevent park rules or regulations from prohibiting the placement of previously owned mobile homes in the park if the age and condition of the mobile home is comparable to those already in the existing park. This section renumbers the subsequent subsection as (3) and makes a technical change therein.

Section 3 amends section 723.037, Florida Statutes, by creating a new paragraph (b) regarding the disclosures required to be made by a park owner to the home owners to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division's

administrative rule, Rule 61B-32.004(1), F.A.C., with the exception of the last sentence. The new language prohibits the admission of evidence, in any subsequent administrative or civil action between the parties, relating to reasons not disclosed to the home owners at the requested meeting.

Section 4 amends section 723.0381, Florida Statutes, by deleting all provisions relating to nonbinding arbitration of rental increase disputes between park owners and home owners. This amendment removes one of the prerequisites to filing an action in circuit court. The parties may still seek mediation of the dispute, pursuant to section 723.038, Florida Statutes.

Section 5 amends section s. 723.063, Florida Statutes, to extend to a home owners' association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The bill also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase.

Section 6 amends section 723.071, Florida Statutes, by removing the exemption from the right of first refusal granted to a home owners' association when the park owner receives a bona fide offer to purchase the park. The bill also amends this section to require the park owner to segregate the individual park from any bona fide offer to purchase the park along with other properties for purposes of notifying the association of the price, terms and conditions on which the park owner will consider selling the park. The bill deletes another exemption to the first right of refusal by amending the definition of the term "affiliate" used in subsection (4). Shareholders of the transferring corporation and any entity controlled directly or indirectly by a shareholder of the transferring corporation, are deleted from that definition.

Section 7 amends section 723.083, Florida Statutes, by deleting the requirement that the governmental unit consider "other suitable facilities" for the relocation of mobile home owners. This change limits the facilities which can be considered by a governmental unit for relocation of mobile home owners to other mobile home parks.

Section 8 provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Recurring Effects below.

2. Recurring Effects:

The Department of Business and Professional Regulation, Division of Land Sales, Condominiums, and Mobile Homes, reports that Section 2 may impact the department due to increased litigation and possible rulemaking. That section of the bill prevents a park from prohibiting previously-owned mobile homes which are of "comparable age and condition" to the homes already located in the park. The Division expects this provision to generate litigation, especially concerning the subjective determination of "comparable age and condition" of a mobile home. The Division also indicates this provision may require rulemaking in order to implement those exceptions.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Recurring Effects below.

2. Recurring Effects:

This bill may have a negative fiscal impact on local governments relating to their inability, pursuant to the bill, to determine that "other suitable facilities" exist for mobile home owners when taking action affecting removal of mobile home owners.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Mobile home park owners could be negatively impacted by the following provisions:

Section 1, which defines pass-on charge as a reimbursement, could require additional up-front expenses by park owners.

Section 2, which prevents a park owner from refusing to accept previously-owned homes of "comparable age and condition," will likely subject park owners to lawsuits by home owners who are denied entry into the park,

as well as by existing residents who challenge the location of previously-owned homes within the park.

2. Direct Private Sector Benefits:

Mobile home owners within parks could benefit from the changes in Section 3, which foster better communication between the park owner and home owners prior to initiating an action based on rental increases, reduction of services or a change in the rules or regulations. Increased communication regarding these issues may reduce litigation, which would financially benefit both park owners and home owners.

3. Effects on Competition, Private Enterprise and Employment Market

See 1. and 2. above.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Both the United States and the State Constitutions prohibit the Legislature from passing any law impairing the obligations of contracts. U.S. Const. art. I, s. 10; Fla. Const. art I, s. 10. Section 2 of the bill, which prevents a park owner from adopting rules or regulations prohibiting the placement of used mobile homes in the park if they meet certain criteria, may be subject to constitutional challenge if it is applied so as to impair an obligation of the contract between park owner and home owners. Section 723.012(11), Florida Statutes, requires that park rules and regulations be

included in the prospectus which is provided to prospective purchasers of lots in the park. The prospectus has been defined as "the disclosure document provided to tenants," *Herrick v. Florida Dept. of Business Regulation*, 595 So.2d 148 (Fla. 1st DCA 1992), the purpose of which is "to disclose to prospective lessees certain information regarding the future operation of the mobile home park." *Village Park Mobile Home Assoc'n v. State, Dept. of Business*, 506 So.2d 426, 428 (Fla. 1st DCA 1987). This construction has now been codified by the Legislature at section 723.011(3), Florida Statutes. According to the Division, many, if not most, mobile home parks already have rules restricting the location of used mobile homes within the park. Therefore, the bill may be construed to interfere with an obligation of the parties to a contract, i.e., restructure the obligations set forth in the prospectus given by park owner to mobile home owner.

There is 1 technical problem with the bill. Page 7, line 17 makes reference to subsection (2) under the current law. This section is being stricken in the bill. Since the new subsection (2) does not contain the term "notify", the reference should be removed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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P.K. Jameson

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