

STORAGE NAME: h1041.brc
DATE: March 24, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1041
RELATING TO: Florida Mobile Home Act
SPONSOR(S): Representative Bilirakis
TIED BILL(S): none

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

- (1) REAL PROPERTY & PROBATE
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (3) COMMUNITY AFFAIRS
- (4) FINANCE & TAXATION
- (5)

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I. SUMMARY:

This bill amends various provisions of Chapter 723, F.S., regarding Mobile Home Park Lot Tenancies, as follows:

- Modifies the definition of “pass-through charges” to provide that a mobile home park owner may not pass-through to mobile home owners that portion of actual direct costs and impact or hookup fees attributable to governmentally mandated capital improvements that serve or will serve empty lots, property of undeveloped phases, and any property used and maintained by the park owner which is not occupied by a mobile home owned by a mobile home owner;
- Provides that a mobile home park owner that receives an offer to purchase the mobile home park must give the homeowners’ association of the mobile home park a 45 day first right of refusal, subject to certain conditions; and
- Alters the quorum requirement for homeowners’ associations of a mobile home park by allowing the association to set a quorum of less than a majority of the members of the homeowners’ association.

This bill may modify the existing contractual relationship between mobile home park owners and mobile home owners. Accordingly, it may raise concerns regarding impairment of contracts. This bill may also raise concerns regarding restraint upon the alienation of real property. See Section “Constitutional Issues”.

This bill does not appear to have a fiscal impact on state or local government.

The Committee on Real Property & Probate adopted one amendment which is traveling with this bill. The amendment clarifies language regarding pass-through charges. See “Amendments or Committee Substitute Changes”.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

See "Section-by-Section Analysis" for present situation specific to each of the sections of this bill.

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in the mobile home park is a unique relationship. Because of the high cost of moving a mobile home, traditional landlord-tenant concepts are thought inapplicable. The relationship between mobile home park owners and mobile home owners is governed by Chapter 723, F.S., which 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. This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein. It recognizes that when such inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties, is required.¹

The Florida Supreme Court, in addressing mobile home park issues, states 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.²

¹ Section 723.004(1), F.S.

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

A mobile home park of 9 or fewer lots is not regulated by Chapter 723, F.S. In fiscal year 1998/1999, there were 315,991 mobile home lots in regulated mobile home parks in Florida.³

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 723.003(10), F.S., regarding the definition of "pass-through charges".

Present Situation: Mobile home park laws provide that a mobile home park owner owning 26 or more lots in a mobile home park must provide a prospectus to prospective tenants.⁴ The prospectus must contain certain information, including:

- A description of the mobile home park and its owner,
- A description of the recreational and other common facilities to be used by the mobile home owners,
- The arrangements for management of the park and maintenance and operation of the park property,
- A description of all improvements which are required to be installed by the mobile home owner,
- A description of the manner in which utility and other services will be provided to the mobile home owners,
- An explanation of the manner in which rents and other charges will be raised,
- *The manner in which tenants will be assessed pass-through charges,*
- User fees that may be charged, and
- A description of the zoning of the mobile home park property.⁵

A mobile home park owner who is not required to provide a prospectus must still provide a prospective tenant with notice of the park's zoning; the name and address of the park owner; and all fees and charges, assessments, or other financial obligations not included in the rental agreement.⁶

³ Information provided by the Department of Business and Professional Regulation, February 29, 2000.

⁴ Section 723.011, F.S.

⁵ Section 723.012, F.S.

⁶ Section 723.013, F.S.

A rental agreement must fully disclose to a mobile home owner all costs and fees to be charged to the mobile home owner in order for those costs and fees to be allowed. However, the amount of pass-through charges need not be disclosed,⁷ although the manner in which pass-through charges will be assessed, if charged, must be disclosed.⁸ When notifying tenants of a rent increase, the amount of any pass-through charge must be separately shown in the notice.⁹

A "pass-through charge" is "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."¹⁰

A governmentally mandated capital improvement is often for water or sewer hookups. If the costs for capital improvements for a water or sewer system are charged to or passed through to mobile home owners, or if such expenses are required of mobile home owners in a mobile home park owned all or in part by the residents, any such charge exceeding \$200 per mobile home owner may, at the option of the mobile home owner, be paid in full within 60 days from the notification of the assessment, or amortized with interest over the same duration and at the same rate as allowed for a single-family home under the local government ordinance. If no amortization is provided for a single house, then the period of amortization by the municipality, county, or special district cannot be not less than 8 years. The amortization requirement is binding upon any municipality, county, or special district serving the mobile home park.¹¹

Effect of Proposed Changes: This bill amends the definition of "pass-through charge" to provide that the mobile home park owner's proportionate share of a pass-through charge is that portion of actual direct costs and impact or hookup fees attributable to governmentally mandated capital improvements that serve or will serve empty lots, property of undeveloped phases, and any property used and maintained by the park owner which is not occupied by a mobile home owned by a mobile home owner. The effect of this change is to prohibit a mobile home park owner from including in pass-through charges assessed against mobile home owners that portion of the total pass-through charges representing vacant lots and property owned by the mobile home park owner.

There is a concern that this provision is perhaps unclear. The amendment travelling with this bill clarifies the language and addresses this concern.

Section 2. Amends s. 723.071, F.S., regarding sale of mobile home parks.

⁷ Section 723.031(6), F.S.

⁸ Section 723.031(5)(b), F.S.

⁹ Section 723.037, F.S. The Bureau of Mobile Homes has promulgated a specific form for notice to tenants of a rent increase due to a pass-through charge. DBPR Form MH 6000-11.

¹⁰ Section 723.003(10), F.S.

¹¹ Section 723.046, F.S.

Present Situation: The mobile home owners in a mobile home park have a statutory right of first refusal to purchase the mobile home park under certain circumstances. In a mobile home park where the mobile home owners have created a homeowners' association that complies with the provisions of ss. 723.075-.079, F.S., if the mobile home park owner "offers [the] mobile home park for sale", the mobile home park owner must notify the homeowners' association of the offer. The homeowners' association has the right to purchase the mobile home park provided the homeowners' association executes an agreement to purchase the mobile home park at the price and terms of the offer within 45 days from the date that the mobile home park owner mailed notice of the offer to the homeowners' association. If the homeowners' association does not agree to purchase the mobile home park at the price and terms offered within the 45 days, the mobile home park owner is free to sell the mobile home park to any purchaser, except that if the mobile home park owner later reduces the offer price, the homeowners' association will have an additional 10 days to meet the lowered price by executing a contract.

If the mobile home park owner receives an offer after the expiration of the 45 day period, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms. The term "offer" means "any solicitation by the park owner to the general public." The statutory right of first refusal only applies when the mobile home park is offered for sale to the general public; accordingly, a mobile home park owner who receives an unsolicited offer to purchase the mobile home park is under no duty to offer the mobile home park to the homeowners' association.¹² Certain other exclusions to the statutory right of first refusal are also applicable,¹³ and include transfer of the mobile home park to any shareholder of the transferring corporation or any entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation. Notice may be delivered by regular U.S. Mail.

Effect of Proposed Changes: This bill expands the right of first refusal for mobile home owner associations by providing that if the mobile home park owner "receives a bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to",¹⁴ the mobile home park owner must notify the homeowners' association and allow the homeowners' association to purchase the park under the same terms and conditions as the offer.¹⁵ This bill also provides that, if the offer to purchase includes property other than the mobile home park, the mobile home park owner must separately state the price, terms, and conditions of each mobile home park

¹² *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190 (Fla. 2nd DCA 1990), review denied, 574 So.2d 140 (Fla. 1990).

¹³ Other exceptions to the statutory right of first refusal are: sale or transfer to a descendant as if the park owner had died intestate; any transfer by gift, devise, or operation of law; 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; any transfer by a partner to one of its partners; any conveyance of interest in the park incidental to financing the park; any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property; any sale or transfer between or among joint tenants or tenants in common owning the park; and any purchase of the park by a government entity exercising its eminent domain powers.

¹⁴ This language would include the receipt of an unsolicited offer.

¹⁵ This bill also removes the provision which provides that, if the mobile home park owner receives an offer after the expiration of the 45 day period, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms.

that is a part of the offer; and the residents of a park contained in that offer to purchase may separate out their park and purchase it under the first right of refusal. This bill further provides that notice must be by certified mail. This bill also deletes the exceptions to the statutory right of first refusal for transfer of the mobile home park to any shareholder of the transferring corporation or to any entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

Section 3. Amends s. 723.072, F.S., correcting cross-references only.

Section 4. Amends s. 723.078, F.S., regarding bylaws of a homeowners' association for mobile home owners in a mobile home park.

Present Situation: In order for a homeowners' association to utilize the statutory right of first refusal, the homeowners' association must be formed under, and operate under, the provisions of ss. 723.075-.079, F.S. Section 723.078, F.S., provides requirements for the bylaws of a homeowners' association that is eligible to utilize the statutory right of first refusal at s. 723.071, F.S. Section 723.078(2)(b), F.S., provides that a majority of the members of the homeowners' association constitutes a quorum.

Effect of Proposed Changes: This bill provides that a homeowners' association of a mobile home park may provide in the bylaws that a quorum may be less than a majority of the members of the association.¹⁶

Section 5. Provides an effective date.

III. 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

¹⁶ Similarly, s. 617.0701(1), F.S., currently provides that the bylaws of a non-profit Florida corporation may designate a quorum of less than a majority.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the operating expenses of mobile home park owners who cannot pass on certain costs and impact fees associated with “governmentally mandated capital improvements” to current mobile home owners, and thus may impact profitability of owning a mobile home park. It is possible that mobile home park owners may seek to raise rents to offset any financial loss caused by an inability to assess a pass-through charge.

D. FISCAL COMMENTS:

none

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 counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

Pass-Through Charges

The financial relationship between a mobile home park owner and a mobile home owner is governed by the rental agreement between the parties; and, in many parks, by the prospectus. These documents form a contract between the mobile home park owner and mobile home owner; a contract that must state how pass-through charges are calculated and billed in order for a mobile home park owner to charge them to mobile home owners.

This bill may modify the contractual relationship between mobile home park owners and mobile home owners, thus it may perhaps give rise to a constitutional concern that the bill impairs the obligation of contracts.¹⁷ However, the relationship between mobile home parks and mobile home owners is already regulated, and the Florida Supreme Court has stated that the regulations enacted in Chapter 723, F.S., do not unconstitutionally impair contract

¹⁷ Fla.Const. Article I, Section 10, provides: “**Section 10. Prohibited Laws.** -- No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

obligations: "It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract, which may be done by a State without impairing contract obligations."¹⁸

Sale of Mobile Home Park

This bill expands the statutory right of first refusal that mobile home owners have regarding the sale of the mobile home park in which they reside. The Second District Court of Appeal has raised the possibility that the current form of statutory right of first refusal is perhaps an unconstitutional restraint upon alienation of property.¹⁹ There is, however, no specific reference in the state or federal constitutions regarding restrictions upon the alienation of property, and it is clear that statutory law takes priority over common law concepts. Additionally, the courts have stated:

Where mobile homes are concerned, substantial constitutional property rights are implicated on both sides of the debate.²⁰ The ancient rule against restraints on alienation is founded entirely upon considerations of public policy, specifically, the idea that the free alienation of property fosters economic and commercial development The rule has long been recognized as precluding only Unlimited or Absolute restraints upon alienation.²¹

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

It is possible that a pass-through charge prohibited by this bill may be re-classified by a mobile home park owner as a "pass on" charge allowed by s. 723.031(5)(c), F.S. It is also possible that a pass-through charge prohibited by this bill may be used by a mobile home park owner as grounds for a rent increase.

This bill, as amended, is identical to SB 846, as amended.

This bill is similar to HB 3245 filed in the 1998 Legislative Session. HB 3245 died on the calendar after passing the Committee on Real Property & Probate; however, the provisions regarding the first right of refusal were removed by amendment prior to passage by the Committee on Real Property & Probate.

¹⁸ *Palm Beach Mobile Homes, Inc. v. Strong*, 300 So.2d 881, 887 (Fla. 1974), quoting from *Mahood v. Bessemer Properties, Inc.*, 18 So.2d 775 (Fla. 1944).

¹⁹ *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190, 1192 (Fla. 2nd DCA 1990), *review denied*, 574 So.2d 140 (Fla. 1990). The court said: "We are not confronted in this proceeding with, nor do we purport to pass upon, any question of whether section 723.071(1) offends, either in a constitutional or common law setting, the right of mobile home park owners to enjoy unrestricted alienation of their real property. We must acknowledge, however, that most regulatory statutes affecting realty, which have withstood attack, focus upon the use of property, and not its alienation."

²⁰ *Harris v. Martin Regency, Ltd.*, 576 So.2d 1294 (Fla. 1991).

²¹ *Seagate Condominium Association, Inc. v. Duffy*, 330 So.2d 484, 485 (Fla. 4th DCA 1976).

Positions of Interested Parties

The Federation of Mobile Home Owners of Florida, Inc. (FMHO) "strongly supports" this bill.²² At the meeting of the Committee on Real Property & Probate on March 22, 2000, FMHO noted that a similar bill, HB 3245, died on the calendar in the 1998 session after passing the Committee on Real Property & Probate.

The Florida Manufactured Housing Association (FMHA) "strongly opposes" this bill.²³ At the meeting of the Committee on Real Property & Probate on March 22, 2000, FMHA expressed the following concerns:

- The first right of refusal unconstitutionally impairs the free alienation of property, citing *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190, 1192 (Fla. 2nd DCA 1990), *review denied*, 574 So.2d 140 (Fla. 1990).
- An expanded first right of refusal is unnecessary. In the 15 years since the current law was passed, approximately 500 parks have changed to resident owned parks.
- The pass-through provisions set forth in this bill will be difficult to administer because it will be difficult to prorate the amount that represents the park owner properties (for example, clubhouse and recreation areas).
- The provision requiring that a single park in a contract for multiple parks be separated out for purposes of the first right of refusal may cause the contract for the remaining parks to fail, thereby interfering with a mobile home park owner's right to free alienation of his or her property.

The Department of Business and Professional Regulation has declined to take a position on this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate met on March 22, 2000, and adopted one amendment to this bill. The amendment clarifies that the mobile home park owner's proportionate share of a pass-through charge is that portion of actual direct costs and impact or hookup fees attributable to governmentally mandated capital improvements that serve or will serve empty lots, property of undeveloped phases, and any property used and maintained by the park owner which is not occupied by a mobile home owned by a mobile home owner. The effect of this section, as amended, is to prohibit a mobile home park owner from including in pass-through charges assessed against mobile home owners that portion of the total pass-through charges representing vacant lots and property owned by the mobile home park owner.

This bill, as amended, was then reported favorably with one amendment traveling with the bill.

²² Telephone conference with Peter M. Dunbar, Esquire, March 1, 2000.

²³ Telephone conference with Linda C. Cox, Esquire, March 3, 2000.

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VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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Rebecca R. Everhart