

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 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.¹

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.

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

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) was created to provide financing and assistance for affordable housing projects throughout the state. The FHFC is public corporation owned by the state. The goal of the FHFC is to "help our fellow Floridians obtain safe, decent affordable housing that might otherwise be unavailable to them." The FHFC today operates a number of housing-related programs.²

This bill amends the legislative intent provisions regarding the FHFC at s. 420.502, F.S., to add that: "Mobile home parks are an essential element of providing affordable housing in the state."

This bill amends s. 420.0003, F.S., to require the FHFC to use its expertise to provide technical assistance to mobile home owners and their homeowners' associations regarding purchase of their mobile home park. The bill also authorizes the FHFC to assist in financing through bonds to be issued by a non-profit organization. If issued, such bonds would not be revenue bonds and would not be backed by the state.

Purchase of Mobile Home Park 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.

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).

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.

² Multifamily development programs (or rental housing program) include Multifamily Mortgage Revenue Bonds (MMRB), Florida Affordable Housing Guarantee (Guarantee Program), HOME Investment Partnerships, Elderly Housing Community Loan (EHCL) and Low Income Housing Tax Credit (LIHTC) program. Special programs include the State Housing Initiatives Partnership (SHIP), Predevelopment Loan Program (PLP), Demonstration Loans, and the Affordable Housing Catalyst Program (Catalyst). Affordable housing programs include the Rep. Mike Davis Community Workforce Housing Innovation Pilot (CWHIP). Homeownership programs include the First Time Homebuyer (FTHB) Program, down payment assistance programs and the Homeownership Pool (HOP) Program. Information from the corporation's website, on January 19, 2020, at: http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0001

- The written notice must be provided to the officers of the homeowners' association. The bill gives the homeowners' association the right to 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.

This bill also corrects s. 723.061, F.S., by removing subsection (3), which has no meaning.

B. SECTION DIRECTORY:

Section 1 amends s. 420.0003, F.S., regarding the state housing strategy, as implemented by the Florida Housing Finance Corporation.

Section 2 amends s. 420.502, F.S., amending the legislative findings related to the Florida Housing Finance Corporation Act.

Section 3 amends s. 723.061, F.S., regarding eviction from a mobile home park upon a change in land use.

Section 4 provides an effective date of July 1, 2010.

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:

The Florida Housing Finance Corporation provided the following fiscal comment as to the bill as first filed:³

³ Email from Sean Lacey, January 19, 2010, on file with committee staff.

At this time, the fiscal impact of HB 513 is indeterminate. We know that the bill would have an impact on Florida Housing but we don't know how many parks will be eligible, how many of those eligible parks would use the program, which of our programs would oversee the new mobile home program, or what the cost of managing/staffing the new program will be.

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:

On whether this bill 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."⁴ (*emphasis added*)

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 1, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill. The amendment substantially rewrote the provisions regarding the Florida Housing Finance Corporation and incorporated numerous grammatical and style improvements. The bill was then reported favorably as a committee substitute.

On April 6, 2010, the Criminal & Civil Justice Policy Council adopted one amendment to the bill, removing subsection (3) of s. 723.061, F.S. The bill was then reported favorably as a committee substitute.

⁴ *Aquarian Foundation, Inc. v. Sholom House, Inc.*, 448 So.2d 1166 (Fla. 3d DCA.1984).