The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 168
INTRODUCER:	Senator Negron
SUBJECT:	Mobile Home Parks
DATE:	March 3, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.			JU	

I. Summary:

SB 168 revises the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill would subject mobile home lots or spaces that are held under long term leases, i.e., 99-year leases, to the mobile home park requirements in ch. 723, F.S., which includes procedures and limitations on rent amount increases for mobile home lots or spaces.

The bill is intended to apply the amendment retroactively to the enactment of s. 723.003, F.S., on June 4, 1984. It provides that the amendment is remedial in nature and intended to clarify existing law. It is intended to abrogate a prior interpretation of the definition of the term "mobile home park" by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in which the division concluded that a subdivision consisting of lots subject to 99-year leases could not be considered a "mobile home park" because the lots or spaces are offered for rent or lease under 99-year leases with an automatic renewal clause and that is the equivalent of an equitable interest and not a leasehold interest. The bill also provides that the amendment is not intended to affect assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the "Florida Mobile Home Act" (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The Florida Mobile Home Act was enacted in 1984.[1] 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:

> 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.[2]

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.[3]

Section 723.003(6), F.S., defines the term "mobile home park" or "park" to mean:

> a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(8), F.S., defines the term "mobile home subdivision" to mean:

> a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms "mobile home park," "park," and "mobile home subdivision" have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.[4]

Savanna Club Litigation Memorandum

The department issued a "Litigation Memo" dated September 18, 2013, regarding whether the Savanna Club community in Port St. Lucie, Florida, was a mobile home park as defined in s. 723.003(6), F.S. It also considered whether the community was a "mobile home subdivision" as defined by s. 723.003(8), F.S. The division concluded that the community was not a "mobile home park" or a "mobile home subdivision."[5]

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[1] Chapter 84-80, L.O.F. Formerly ch. 720, F.S.
[2] Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.
[3] Section 723.002(1), F.S.
[4] *See* ch. 84-80, L.O.F. The definitions in s. 723.003, were formerly in s. 720.103, F.S. (1984).
[5] *See* Litigation Memo re: Savanna Club, Case No. 2007065818, Sept. 18, 2013. (on file with the Regulated Industries Committee).

The Savanna Club is a residential mobile home subdivision consisting of approximately 2,560 mobile homes and a recreation complex. An unspecified number of the lots were sold in fee simple and the remainder were sold with 99-year leases that have an automatic renewal clause. All of the lots held in fee simple or through a 99-year lease are subject to a declaration of covenants and restrictions that requires membership in the homeowners' association. All members of the association, including members whose lots are held through a 99-year lease, have one vote in the association with no distinction in membership rights or obligations. The developer has transferred the deed for the common areas and recreational areas to the homeowners' association.

The 99-year leases provide the terms for rent increases. The adjusted monthly rental of the previous lease year is used as a base for the current lease year, plus the greater of a percentage increase based on the U.S. Consumer Price Index or three percent. When an original tenant transfers his or her interest in a lot subject to a 99-year lease, the new rent is based on the fair market value as determined by the landlord, i.e., the developer.

The division found that the subdivision did not meet the definition of "mobile home subdivision" in s. 723.003(8), F.S., because the developer had not retained an interest in any common areas in the subdivision and because the 99-year leaseholders were the equitable owners of the lots.

Leaseholders of 99-year leases are considered equitable owners and the leased property is not exempt from the payment of property taxes.[6] Leaseholders of leases of 98 or more years are also entitled to claim a homestead exemption from ad valorem property taxes.[7]

The division also found that Savanna Club could not be considered a "mobile home park" under s. 723.003(6), F.S., because the lots or spaces are not offered for rent or lease in the way that this provision contemplates. It noted that 99-year leases with an automatic renewal clause are the equivalent of an equitable interest and not a leasehold interest.

Prospectus or Offering Circular

The prospectus 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. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.[8]

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division. [9] The division maintains copies of each prospectus and all amendments to each

[6] *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005).
[7] *See* s. 196.041(1), F.S.
[8] Section 723.011(3), F.S.
[9] Section 723.011(1)(a), F.S.

prospectus that it has approved. The division must also provide copies of documents within 10 days of receipt of a written request.[10]

The park owner must furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.[11]

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.[12] If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.[13]

The prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the specified circumstances.[14]

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and all fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least 10 lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

Mobile Home Park Rent Increases

Section 723.059(4), F.S., provides that the mobile home park owner has the right to increase rents "in an amount deemed appropriate by the mobile home park owner." The park owner must give mobile home lot tenants 90-day notice of a lot rental increase.[15]

However, the park owner must disclose the increase to the purchaser prior to his or her occupancy and the increase must be imposed in a manner consistent with the initial offering

[10] Section 723.011(1)(d), F.S.
[11] Section 723.011(2), F.S.
[12] Section 723.014(1), F.S.
[13] Section 723.014(2), F.S.
[14] *See* rule 61B-31.001, F.A.C.
[15] Section 723.037(1), F.S.

circular or prospectus. The homeowners also have the right to have a meeting with the park owner at which the park owner must explain the factors that led to the increase.[16]

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.[17] A lot rental amount that exceeds market rent shall be considered unreasonable.[18] Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 723.003(6), F.S., to revise the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill would subject mobile home lots or spaces that are held under 99-year leases to the requirements of ch. 723, F.S.

Section 2 amends s. 73.072, F.S., which relates to compensation for permanent improvements by mobile home owners after the eminent domain taking of real property, to incorporate the amendment to s. 723.003, F.S.

Section 3 specifies that the bill applies retroactively to the enactment of s. 723.003, F.S., on June 4, 1984. It provides that the amendment is remedial in nature and intended to clarify existing law. It provides that the amendment is intended to abrogate the division's interpretation of law provided in the litigation memorandum dated September 18, 2013. It also provides that the amendment is not intended to affect assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

The effect of this bill is unclear in a circumstance in which mobile home lots are subject to the terms of a long-standing, 99-year lease, i.e., as described in the division's litigation memo regarding the Savanna Club subdivision. Specifically, it is not clear whether the amendment to s. 723.003(6), F.S., would subject lots that are under a preexisting, long-term lease agreement to the rent increase provision in ch. 723, F.S., for any past or future rent increases, particularly when there is no division-approved prospectus.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[16] Section 723.037, F.S.
[17] Section 723.033(1), F.S.
[18] Section 723.033(5), F.S.
[19] Section 723.033(4), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 723.003(6), F.S., to revise the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill retroactively applies the requirements of ch. 723, F.S., to mobile home lots or spaces that are held under a long-term lease, i.e., 99-year leases. To the extent the retroactive or prospective application of the requirements of ch. 723, F.S., conflict with the terms and conditions of affected long-term leases, including rent increase requirements, these provisions appear to implicate constitutional concerns relating to the impairment of contract.

The retroactive application of these provisions may violate the Contract Clause,[20] the prohibition against ex post facto laws,[21] and the Due Process clauses[22] of the U.S. Constitution. The common law also provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[23] Generally, courts will refuse to apply a statute retroactively if it "impairs vested rights, creates new obligations, or imposes new penalties."[24]

The Contract Clause prohibits states from passing laws which impair contract rights. It only prevents substantial impairments of contracts.[25] The courts use a balancing test to determine whether a particular regulation violates the Contract Clause. The courts measure the severity of the contractual impairment against the importance of the state interest advanced by the regulation. Also, courts look at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.[26] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[27] However, courts scrutinize the impairment of public contracts in a stricter fashion, exhibiting less deference to findings of the Legislature, because the Legislature may stand to gain from the outcome.[28]

[20] Article I, s. 10, U.S. Constitution.
[21] Article I, s. 9, U.S. Constitution.
[22] Fifth and Fourteenth Amendments, U.S. Constitution.
[23] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).
[24] *Essex Insurance, Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947 at 951 (Fla. 2nd DCA 2013), *quoting State Farm Mut. Auto. Ins., Co. v. Laforet*, 658 So.2d 55 at 61 (Fla. 1995).
[25] *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1923).
[26] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[27] *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945).
[28] *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). *See generally*, Leo Clark, *The Contract Clause: A Basis for Limited Judicial Review of State Economic Regulation*, 39 U. MIAMI L. REV. 183 (1985).

Although the retroactive application of condominium laws to preexisting lease agreements between condominium associations and third parties may be constitutionally applied,[29] it is not clear whether mobile home park laws may be retroactively applied to pre-existing, long-term lease agreements between a homeowner lessee and the developer lessor.

In *Pomponio v. Claridge of Pompano Condominium, Inc*.,[30] the court stated that some degree of flexibility has developed over the last century in interpreting the Contract Clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated as an unconstitutional impairment of contract a statute that provided for the deposit of rent into a court registry during litigation involving obligations under a contract lease. In *Pomponio*, the court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized, economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[31]

In *United States Fidelity & Guaranty Co.*,*[32]* the U.S. Supreme Court adopted the method used in *Pomponio.* The court stated that the method required a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power. The court outlined the main factors to be considered in applying this balancing test.

- The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[33] The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further regulation upon the same topic.[34]

[29] *Century Village, Inc. v. Wellington*, 361 So.2d 128 (Fla. 1978).
[30] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).
[31] *Id.* at 779.
[32] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).
[33] *Id.* at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).
[34] *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.[35]
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties is appropriate to the public purpose justifying the legislation.[36]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners with a long-term lease on a lot or space in a community with 10 or more leased mobile home lots or spaces may be entitled to utilize the rent increase procedures in ch. 723, F.S., which limits lot increases to market rent. If the market rent is less than the percentage increase stated in the long-term lease agreement, the homeowner may incur a savings. However, if the market rate is greater than the percentage increase stated in the long-term lease agreement, the homeowner's rent cost may be greater.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 723.003 and 73.072.

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

[35] *Id.* at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).
[36] *Id*.

B. Amendments:

None.