HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Mobile Home Parks
SPONSOR(S): Lee, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 2 N	Brown-Blake	Luczynski
2) Civil Justice Subcommittee			
3) Finance & Tax Committee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Currently, s. 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." The bill amends the definition of "mobile home park" or "park" found in s. 723.003(6), F.S., to mean "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, ***regardless of the length of the rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space,*** and in which the primary use of the park is residential."

The bill reenacts and amends s. 73.072, F.S., which relates to compensation after the eminent domain taking of real property, for permanent improvements by mobile home owners. The bill incorporates the amendment made to the definition of "mobile home park" listed above.

Finally, the bill provides that the amendment to the definition of "mobile home park" is retroactive to the enactment of s. 723.003, F.S., on June 4, 1984. The bill provides that the amendment is intended to be remedial in nature in order to clarify existing law and to abrogate the interpretation of law set forth by the Department in a Litigation Memo regarding The Savanna Club, a subdivision located in St. Lucie County, Florida.

The bill appears to place Savanna Club under the definition of mobile home park and therefore retroactively places the rights, obligations, and restrictions associated with ch. 723, F.S., on the Savanna Club mobile home lot owners and the mobile home owners.

The bill is not expected to have a significant fiscal impact on the Department of Business and Professional Regulation or local governments. The bill may have a significant impact on the private sector.

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 723, F.S., is known as the "Florida Mobile Home 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 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:

> 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.[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.[2]

Section 723.003(3), F.S., defines the term "mobile home" to mean "a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein."

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.[3]

Section 723.031(4), F.S., provides that "no rental agreement shall be offered by a park owner for a term of less than 1 year, and if there is no written rental agreement, no rental term shall be less than 1 year from the date of initial occupancy; however, the initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms shall be for a minimum of 1 year."

Mobile Home Park Owner's Obligations

[1] s. 723.004(1), F.S.
[2] s. 723.002(1), F.S.
[3] *See* ch. 84-80, L.O.F. The definitions in s. 723.003, F.S., were formerly in s. 720.103, F.S. (1984).

For mobile home parks containing 26 or more lots, s. 723.011, F.S., requires the park owners to:

- File a prospectus with the Division for mobile home parks containing 26 or more lots. 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;[4]
- Deliver to the homeowner a prospectus approved by the Division prior to entering into an enforceable rental agreement for a mobile home lot;
- Furnish a copy of the prospectus with all attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at a 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; and
- Not increase the lot rental amount until an approved prospectus has been delivered.[5]

In cases where mobile home parks contain at least 10 lots but no more than 25 lots, the mobile home park owners are not required to provide a prospectus. Rather, s. 723.013, F.S., provides that when a park owner does not provide a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner shall give written notification of the following information prior to the purchaser's occupancy:

- The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he or she has for future changes in the use of the land comprising the mobile home park or a portion thereof;
- 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.

Finally, s. 723.022, F.S., requires all park owners to maintain buildings and improvements in common areas in a good state of repair and maintenance, maintain the common areas in a good state of appearance, safety, and cleanliness, and provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.

Additional mobile home park owner obligations found in ch. 723, F.S., provide the following:

- The mobile home park owner shall pay to the Division an annual fee of $4 for each mobile home lot within the mobile home park, plus a $1 surcharge to be deposited in the Florida Mobile Home Relocation Trust Fund;[6]
- The mobile home park owner must provide a 90 day notice prior to any lot rental amount increase;[7] and
- If a prospectus is not provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the receipt by the lessee of the prospectus;[8]

Savanna Club Litigation Memorandum

[4] s. 723.011(3), F.S.
[5] s. 723.031(7), F.S.
[6] s. 723.007, F.S.
[7] s. 723.037(1), F.S.
[8] s. 723.014(1), F.S.

On September 18, 2013, the Department issued a Litigation Memo regarding The Savanna Club, a subdivision located in St. Lucie County, Florida, on the questions of whether the Savanna Club was a "mobile home park" as defined in s. 723.003(6), F.S., or a "mobile home subdivision" as defined in s. 723.003(8), F.S. The Division determined the Savanna Club did not fit either definition.

The Savanna Club is a residential mobile home subdivision established in 1982, 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 of the lots were leased to mobile home owners under 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 transferred the deed for the common areas and recreational areas to the homeowners' association.[9]

Each individual 99-year lease provides 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 who is the developer. Therefore, the rent amount is not transferrable.

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.[10] Leaseholders of leases of 98 or more years are also entitled to claim a homestead exemption from ad valorem property taxes.[11]

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.

Since the creation of Savanna Club, mobile home owners who have their mobile homes on rented lots have paid rent according to their leases. The rent amount on those lots has increased based on increases set forth in the rental agreements, in some cases since 1982.

Effect of the Bill

The bill amends the definition of "mobile home park" or "park" found in s. 723.003(6), F.S., to mean:

> a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, ***regardless of the length of the rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space***, and in which the primary use of the park is residential.

The bill reenacts and amends s. 73.072, F.S., which relates to compensation after the eminent domain taking of real property, for permanent improvements by mobile home owners. The bill incorporates the amendment made to the definition of "mobile home park" listed above.

Finally, the bill provides that the amendment to the definition of "mobile home park" is retroactive to the enactment of s. 723.003, F.S., on June 4, 1984. The amendment of the definition is not intended to

[9] Department of Business and Professional Regulation, *Litigation Memo re: Savanna Club*, Case No. 2007065818, Sept. 18, 2013.
[10] *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005).
[11] *See* s. 196.041(1), F.S.

affect assessments or liability for, or exemptions from ad valorem taxation on a lot or space upon which a mobile home is placed. The bill provides that the amendment is intended to be remedial in nature in order to clarify existing law and to abrogate the interpretation of law set forth by the Department in the Litigation Memo.

The bill appears to place the homes on lots with a 99-year lease at Savanna Club under the definition of mobile home park and therefore retroactively places the rights, obligations, and restrictions associated with ch. 723, F.S., on the Savanna Club mobile home lot owners and the mobile home owners.

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 723.003, F.S., revising the definition of the term “mobile home park” to clarify that it includes certain lots or spaces regardless of the rental or lease term’s length or person liable for ad valorem taxes.

Section 2 reenacts and amends s. 73.072, F.S., to incorporate the amendment made to s. 723.003, F.S.

Section 3 provides that the bill takes effect upon becoming law.

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:

Unknown. The bill language expands the coverage of ch. 723, F.S., to entities previously not covered. Chapter 723, F.S., provides requirements on entities and individuals that carry costs. The retroactive nature of the bill leaves unclear how ch. 723, F.S., will be enforced on these entities with regards to costs that the entities would have incurred in the past.

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:

The retroactive application of ch. 723, F.S., to mobile home lots or spaces that are held under long-term lease, i.e., 99-year leases may violate the Contract Clause,[12] the prohibition against ex post facto laws,[13] and the Due Process clauses[14] of the U.S. Constitution. 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 common law also provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[15] Generally, courts will refuse to apply a statute retroactively if it "impairs vested rights, creates new obligations, or imposes new penalties."[16]

The Contract Clause prohibits states from passing laws which impair contract rights. It only prevents substantial impairments of contracts.[17] The courts use a balancing test to determine whether a particular regulation violates the contract clause. The courts measure the severity of contractual impairment against the importance of the 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.[18] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[19] However, courts scrutinize the impairment of public contracts in a stricter fashion. They exhibit less deference to findings of the Legislature, because the Legislature may stand to gain from the outcome.[20]

Although the retroactive application of condominium laws to preexisting lease agreements between condominium associations and third parties may be constitutionally applied,[21] 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.*,[22] 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

[12] Article I, s. 10, U.S. Constitution.
[13] Article I, s. 9, U.S. Constitution.
[14] Fifth and Fourteenth Amendments, U.S. Constitution.
[15] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).
[16] *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).
[17] *Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398 (1923).
[18] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[19] *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945).
[20] *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).
[21] *Century Village, Inc. v. Wellington*, 361 So.2d 128 (Fla. 1978).
[22] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).

- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[23]

In *United States Fidelity & Guaranty Co.*,[24] 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."[25] 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 legislation upon the same topic.[26]
- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.[27]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 723.031(4), F.S., requires that rental agreements have a term of not less than 1 year from the date of initial occupancy. Section 723.031, F.S., is not amended in this bill. The bill provides that a "mobile home park" is "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, regardless of the length of the rental or lease term…" This language conflicts with the minimum 1-year term requirement of s. 723.031(4), F.S.

The effect of the bill is unclear as applied to the 99-year lease lots of the Savanna Club or similar situations as to whether:

- The new mobile home park owner will be found in violation of ch. 723, F.S., for failure to file a prospectus with the Division;
- The new mobile home park owner will be found in violation of ch. 723, F.S., for failing to deliver a prospectus or appropriate notice to the homeowner prior to entering into the rental agreement;
- The failure to provide a prospectus invalidates the previous rental agreements;
- Any rental amount increases or decreases imposed subsequent to 1984 are invalid;
- All parties would be required to enter new rental agreements following the enactment of the bill; however, how the rental amounts would be determined is unclear;
- Previous rental agreements are void;
- Mobile home park owners owe the Division past-due annual dues dating back to 1984 totaling $4 per lot, for each year since 1984;
- All rental agreements are voidable if a prospectus was not originally provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy;

[23] *Pomponio,* 378 So. 2d at 779.
[24] *United States Fidelity & Guaranty Co. v. Department of Insurance,* 453 So.2d 1355 (Fla. 1984).
[25] *United States Fidelity & Guaranty Co.*, 453 So.2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).
[26] *Id.* (citing *Allied Structural Steel Co.,* 438 U.S. at 242, n. 13).
[27] *Id*.

- The mobile home park owner is now responsible for buildings and improvements in common areas, even if they do not own the common areas.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.