

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 Innovation, Industry, and Technology

BILL: SB 818

INTRODUCER: Senator Hooper

SUBJECT: Manufactured Housing

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 818 revises provisions related to the taxation and regulation of mobile homes and mobile home parks, including the rights of park owners and mobile home owners who rent a lot in a mobile home park. The bill:

- Decreases the applicable sales tax on the sale of a mobile home by calculating the sales tax on 50 percent of the sales price.
- Exempts from the sales tax a mobile home intended to be permanently affixed to the land and intended to be used as residential property.
- Expands the current exemption from regulation by the Public Service Commission to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to a person leasing a lot, leasing a mobile home and a lot, or owning a lot in a mobile home subdivision.
- Permits a mobile home park owner to add lots to a mobile home park without homeowner consent and without amending an approved prospectus.
- Provides that a prospectus must include a disclosure of required improvements by an approved tenant upon purchase of a home.
- Requires the mobile home owner to receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- Permits a park owner to issue a 90-day lot rental increase notice to multiple tenants, within a single notice, regardless of the rental agreement anniversary date.
- Permits a mobile home park damaged or destroyed by wind, water, or other natural forces to be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.
- Requires a purchaser of a mobile home on a rented lot to enter into a new rental agreement, including the prospectus and rules and regulations, and removes the current right of a purchaser to assume the remainder of the seller's rental agreement.

- Revises the rights and obligations of the park owner and the tenant in a mobile home park in a legal action based on nonpayment of rent.

The bill takes effect upon becoming a law.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., the “Florida Mobile Home Act” (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.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

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home park” or “park” means 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.³
- “Mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.⁴

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns.⁵ If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.⁶

Additionally, a surcharge of \$1 is levied on each annual fee. The surcharge collected must be deposited in the Florida Mobile Home Relocation Trust Fund.⁷

¹ Section 723.004, F.S.

² Section 723.002(1), F.S.

³ Section 723.003(12), F.S.

⁴ Section 723.003(11), F.S.

⁵ Section 723.007(1), F.S.

⁶ *Id.*

⁷ Section 723.007(2), F.S.

III. Effect of Proposed Changes:

Sales Tax - Mobile Homes

Present Situation

The sales tax on tangible personal property is six percent of the sales price when sold at retail.⁸ Aircrafts, boats, mobile homes are also assessed a sales tax of six percent of the retail sale price.⁹

A mobile home may be taxed as real property and not as tangible property, if a taxpayer purchases a mobile home that is then affixed permanently to land owned by the taxpayer.¹⁰ The taxpayer must apply to the Department of Revenue (DOR) for a declaration of real property. As part of the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer.¹¹

The Department of Highway Safety and Motor Vehicles (DHSMV) must provide “RP” stickers to tax collectors for use by the registered owner of a mobile home or recreational vehicle to affix to such vehicle when the vehicle is taxed as real property. The “RP” sticker is used in lieu of a license plate.¹²

Improvements to real property may be considered when determining the tax assessed on real property.¹³ When determining whether a person has improved real property, the term “fixtures” means:

[I]tems that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.¹⁴

Effect of Proposed Changes

The bill amends s. s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent

⁸ Section 212.05(1)(a)1.a., F.S.

⁹ Section 212.05(1)(b)1.b., F.S.

¹⁰ Section 320.015, F.S.

¹¹ See ss. 212.06(14)(a) and 320.0815, F.S.

¹² Section 320.0815(2), F.S.

¹³ Section 212.06(14)(a), F.S., defines “real property” to mean the land and improvements thereto and fixtures and is synonymous with the terms “realty” and “real estate.”

¹⁴ Section 212.06(14)(b), F.S.

sales tax is calculated on 50 percent of the sales price of the mobile home rather than 100 percent of the sales price. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

Section 212.06(14)(b), F.S., is also amended by the bill to conform the sales tax exemption for mobile homes intended to be qualified and taxed as real property pursuant to s. 320.0815(2), F.S.

Mobile Home Dealers

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.¹⁵ The term “dealer” means “any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale.” The term includes a mobile home broker.¹⁶ Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more mobile homes in any 12-month period is prima facie presumed to be a dealer. The term “dealer” does not include banks, credit unions, or finance companies that acquire mobile homes as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes to dealers licensed under this section.¹⁷

The place of business of the mobile home dealer must be at a permanent location, not a tent or a temporary stand or other temporary quarters. The location of the place of business must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale.¹⁸

Effect of Proposed Changes

The bill amends s. 320.77(3)(h), F.S., to remove the requirement that a place of business of a mobile home dealer must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale. Under the bill, the place of business of a mobile home dealer must have sufficient space to display a manufactured home as a model home.

Recreational Vehicle Dealers

Present Situation

A recreational vehicle dealer must hold a license issued by the DHSMV.¹⁹ The term “dealer” means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under this section.

¹⁵ Section 320.77(2), F.S.

¹⁶ See s. 320.77(1)(b), F.S., defining the term “mobile home broker.”

¹⁷ Section 320.77(1)(a), F.S.

¹⁸ Section 320.77(3)(h), F.S.

¹⁹ Section 320.771(2), F.S.

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.²⁰ The basic “entities” of a recreational vehicle include the “park trailer,” which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.²¹

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection.²²

Effect of Proposed Changes

The bill amends s. 320.771(3)(j), F.S., to exempt a recreational vehicle dealer from the requirement to be insured under a garage liability insurance policy, if the dealer sells only park trailers.

Uniform Repair and Remodeling Codes for Mobile and Manufactured Homes

Present Situation

Chapter 320, F.S., relates to the regulation and enforcement of motor vehicle standards and licenses by the DHSMV.

Section 320.01(2)(a), F.S., defines the term “mobile home” to mean:

[A] structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines the term “manufactured home” to mean:

a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site,

²⁰ See s. 320.01(1)(b), F.S.

²¹ Section 320.01(1)(b)7., F.S.

²² Section 320.771(3)(j), F.S.

with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Section 320.822(2), F.S., defines the term “code” to include the “Mobile Home Repair and Remodeling Code” and the “Used Recreational Vehicle Code.”

Section 320.8232(2), F.S., requires that the provisions of the “Repair and Remodeling Code” ensure safe and livable housing and that the code not be more stringent than those standards required to be met in the manufacture of mobile homes. Such provisions must include, but not be limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. Section 320.822(2), F.S., uses the term “Repair and Remodeling Code” and not the term “Mobile Home Repair and Remodeling Code.”

Subsection (1) of s. 320.822, F.S., requires compliance with the “Used Recreational Vehicle Code” for recreational vehicles manufactured after January 1, 1968, and sold or offered for sale in this state by a dealer or manufacturer.

Effect of Proposed Changes

The bill amends s. 320.822(2), F.S., to revise the term “Mobile Home Repair and Remodeling Code” to the “Mobile and Manufactured Home Repair and Remodeling Code,” and to require the code to be a uniform code. The term “uniform code” is not defined by statute. The bill does not specify that the code must be a statewide uniform code. However, the bill requires that all repairs and remodeling of mobile and manufactured homes must be performed in accordance with rules of the DHSMV.

Jurisdiction of the Public Service Commission

Present Situation

Section 367.022(5), F.S., exempts from regulation by the Public Service Commission “landlords providing [water or wastewater] service to their tenants without specific compensation for the service.”

Section 367.022(9), F.S., also exempts from regulation by the Public Service Commission any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of service.

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home subdivision” means 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.²³
- “Mobile home lot rental agreement” or “rental agreement” means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park

²³ Section 723.003(14), F.S.

owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.²⁴

- “Lot rental amount” means all financial obligations, except user fees, which are required as a condition of the tenancy.²⁵
- “User fees” means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.²⁶

Effect of Proposed Changes

The bill amends s. 367.022(5), F.S., to expand the current exemption from regulation by the Public Service Commission to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to any person:

- Leasing a lot;
- Leasing a mobile home and a lot; or
- Who owns a lot in a mobile home subdivision.

The bill amends s. 367.022(9), F.S., to include the reselling of “wastewater” within the current exemption from regulation by the Public Service Commission.

The bill expands the existing exemption for landlords who provide tenants with water and wastewater services to include mobile home park owners who are not in a landlord-tenant relationship with the mobile home owners. Under the bill, a person who owns a mobile home and the lot to which the home is affixed is a “tenant” for the purpose of exempting the park owner from regulation by the Public Service Commission. The bill retains the current condition that the park owner does not receive specific compensation for the service in order qualify for the exemption.

In the absence of a lot rental agreement specifying the payment of rent for the mobile home lot, it is not clear how a mobile home park owner may provide water and wastewater services or establishes a user fee for such service without receiving specific compensation for the service.

Prospectus or Offering Circular and Rental Agreements

Present Situation

Prospectus

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.²⁷ The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of

²⁴ Section 723.003(10), F.S.

²⁵ Section 723.003(6), F.S.

²⁶ Section 723.003(21), F.S.

²⁷ Section 723.012, F.S.

the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.²⁸

The prospectus must include the information specified in s. 723.012(4), F.S., including a description of the mobile home park property, including, but not limited to:

- The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.
- The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

Section 723.012(7), F.S., requires the prospectus to include a description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.

If the tenancy was in existence on the effective date of ch. 723, F.S., (June 4, 1984),²⁹ “the prospectus or offering circular offered by the mobile home park owner shall contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and shall not require any mobile home owner to install any permanent improvements.” In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.³⁰ The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.³¹

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt.³²

By rule of the division, 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 certain specified circumstances.³³

Mobile Home Lot Rental Agreements

Rental agreements in a mobile home park must be consistent with ch. 723, F.S.³⁴ The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.³⁵

²⁸ Section 723.011(3), F.S.

²⁹ See Chapter 84-80, Laws of Fla. The provisions that were to become ch. 723, F.S., were enacted under ch. 720, F.S., with an effective date of upon becoming law, unless otherwise provided. Chapter 84-80, Laws of Fla., was approved by the Governor and filed with the Secretary of State on June 4, 1984, and was codified under ch. 723, F.S. The provision codified in s. 723.011(4), F.S., was enacted by the Legislature under s. 720.302 (3), F.S., with an effective date of January 1, 1985, for mobile home parks containing 100 spaces or more and July 1, 1985, for mobile home parks containing less than 100 spaces.

³⁰ Section 723.011(1)(a), F.S.

³¹ Section 723.011(1)(d), F.S.

³² Sections 723.011(2) and 723.014(1), F.S.

³³ See Rule 61B-31.001, F.A.C.

³⁴ Section 723.031(1), F.S.

³⁵ *Id.* at (2).

Park owners are prohibited from offering a rental agreement for a term of less than one year.³⁶ If there is no written rental agreement, the rental term may not be less than one year from the date of initial occupancy. 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 must be for a minimum of one year.³⁷

Effect of Proposed Changes

The bill amends s. 723.011(3), F.S., to provide that the rental agreement, including the prospectus and park rules and regulations, establishes the terms and conditions of a homeowner's tenancy. Under the bill, the tenancy must be for the duration of the tenant's ownership of the mobile home, with a right of survivorship by the tenant's surviving spouse, unless terminated pursuant to s. 723.061, F.S.³⁸

The bill amends s. 723.011(4), F.S., to permit the park owner to require a tenant with a tenancy in existence on June 4, 1984, to install permanent improvements to the mobile home as disclosed in the prospectus.

Section 723.012(4)(c)2., F.S., is amended by the bill to permit the park owner to amend the prospectus to include additional property and mobile home lots and to increase the maximum number of lots that use the shared facilities of the park.

The bill amends s. 723.012(5), F.S., to permit the park owner to make improvements or changes to the facilities or services provided by the mobile home park without disclosing such improvements or changes in an amendment to the prospectus. Additionally, if property or lots are added to the mobile home park, the bill permits the park owner to amend the prospectus to provide additional facilities and services to the mobile home park of a type or kind determined by the park owner.

The bill amends s. 723.012(7), F.S., to require the prospectus to include improvements that are required upon purchase of the home to be performed by an approved tenant.

Mobile Home Owner's General Obligations

Present Situation

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner shall at all times:

- Comply with building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

³⁶ Section 723.031(4), F.S.

³⁷ *Id.*

³⁸ Section 723.061, F.S., provides grounds for the termination of a rental agreement, including a termination due to nonpayment of rent, a violation of the park rules or of the rental agreement, or a change in land use.

- Keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Effect of Proposed Changes

The bill amends s. 723.023, F.S., to require the mobile home owner to:

- Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

Mobile Home Park Rent Increases

Present Situation

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller. The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement.³⁹ The mobile home park owner has the right to increase rent “in an amount deemed appropriate by the mobile home park owner.”⁴⁰ The park owner must give affected mobile home owners and the board of directors of the homeowners’ association, if one has been formed, at least a 90-day notice of a lot rental increase.⁴¹

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.⁴² Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.⁴³ However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.⁴⁴

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.⁴⁵

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners’ association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or

³⁹ Section 723.059(3), F.S.

⁴⁰ Section 723.059(4), F.S.

⁴¹ Section 723.037(1), F.S.

⁴² Section 723.031(5), F.S.

⁴³ *Id.*

⁴⁴ Section 723.031(5)(c), F.S.

⁴⁵ *Id.*

change in rules and regulations.⁴⁶ The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request.⁴⁷

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners' association (if formed), and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase.⁴⁸ Current law does not specify that the five members of the committee must be mobile home owners in the park. At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.⁴⁹

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation.⁵⁰ If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.⁵¹

Effect of Proposed Changes

The bill amends s. 723.031(5), F.S., to require, upon the sale of a mobile home on a rented lot, the amount of a lot rental increase to be disclosed and agreed to by the purchaser by executing a rental agreement setting forth the new lot rental amount. Current law requires that such a disclosure and agreement must be in writing but does not specify that the written disclosure and agreement must be executed.

The bill amends s. 723.031(5)(c), F.S., to require ad valorem property taxes or non-ad valorem assessments be disclosed in the prospectus or rental agreement as a separate charge or a factor in order for a park owner to be deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments.

The bill amends s. 723.037(1), F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice.

The bill also amends s. 723.037(1), F.S., to provide that the requirement that the park owner must make available, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose.

⁴⁶ Section 723.037(1), F.S.

⁴⁷ *Id.*

⁴⁸ Section 723.037(4)(a), F.S.

⁴⁹ Section 723.037(4)(b), F.S.

⁵⁰ Section 723.037(5)(a), F.S.

⁵¹ Section 723.0381, F.S.

The bill amends s. 723.037(4)(a), F.S., to provide that the committee designated to discuss a rent increase must consist of mobile home owners in the park. Under the bill, the committee must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

Replacing a Mobile Home

Present Situation

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner may not “site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park.”⁵²

Effect of Proposed Changes

The bill creates s. 723.041(5), F.S., to provide that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.

The bill creates s. 723.041(6), F.S., to provide that the regulation of the uniform firesafety standards established under s. 633.206, F.S., are not limited by this section. However, this section supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Park Owner Disclosures Prior to Residence

Present Situation

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S., which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.⁵³

In a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the division.⁵⁴ The prospectus must include a “description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.”⁵⁵

Effect of Proposed Changes

The bill amends s. 723.042, F.S., to provide that a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus as required under s. 723.012(7), F.S.

⁵² Section 723.041(4), F.S.

⁵³ Section 723.011(2), F.S.

⁵⁴ Section 723.011(1), F.S.

⁵⁵ Section 723.012(7), F.S.

Purchasers of a Mobile Home within Mobile Home Park

Present Situation

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.⁵⁶

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.⁵⁷

Effect of Proposed Changes

The bill amends s. 723.059(3), F.S., to provide that the purchaser of a mobile home on a rented lot must enter into a new rental agreement, including the prospectus and rules and regulations, with the park owner. The bill removes the right of a purchaser to assume the remainder of the seller's rental agreement as well as the right to rely on the terms of the prospectus delivered to the original recipient.

The bill amends s. 723.059(4), F.S., to require a mobile home park owner to disclose the lot rental amount to be charged for a new tenancy prior to the applicant paying a screening fee and applying for approval of the tenancy.

Termination of a Tenancy

Present Situation

Section 723.061, F.S., provides grounds for the termination of a rental agreement on the basis of:

- Nonpayment of rent;
- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Notice of an eviction must be posted on the premises and sent to the mobile home owner and tenant or occupant by certified or registered mail, return receipt requested.⁵⁸

Section 723.063, F.S., provides the process for a court action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof. The mobile homeowner may defend upon

⁵⁶ Section 723.059(3), F.S.

⁵⁷ Section 723.059(4), F.S.

⁵⁸ Section 723.061(4), F.S.

the grounds of a material noncompliance with any portion of ch. 723, F.S., or may raise any other defense, whether legal or equitable, which he or she may have.⁵⁹

If a park owner or a mobile home owner files a lawsuit based on the homeowner's nonpayment of rent, the mobile home owner must pay into the registry of the court that portion of the accrued rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court must notify the mobile home owner of this requirement. If the mobile home owner fails to pay the rent, or portion thereof, into the registry of the court, the mobile home owner waives the right to all defenses other than payment, and the park owner is entitled to an immediate default.⁶⁰

The court must advance a hearing on a park owner's claim of nonpayment of rent, if the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises. After a preliminary hearing, the court may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.⁶¹

Effect of Proposed Changes

The bill amends s. 723.061(4), F.S., to delete the requirement that a notice of an eviction must be sent by certified or registered mail.

The bill creates s. 723.061(5), F.S., to provide that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's nonpayment of rent, conviction of a violation of a federal or state law or local ordinance that is detrimental to the health, safety, or welfare of other residents of the mobile home park, a violation of the park rules or of the rental agreement, or failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

However, a park owner's acceptance of any portion of a lot rental amount may constitute a waiver of the right to terminate the rental agreement or the right to bring a civil action for the noncompliance for any subsequent or continuing noncompliance. Any rent so received by the park owner must be accounted for at the final hearing.

The bill creates s. 723.061(6), F.S., to require a tenant who intends to defend against an action by the landlord for possession to comply with s. 723.063(2), F.S., and amends s. 723.063(2), F.S., to require the mobile home owner to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes. If the motion is not timely filed by the homeowner, the homeowner tenant is deemed to have waived all defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to

⁵⁹ Section 723.063(1), F.S.

⁶⁰ Section 723.063(2), F.S.

⁶¹ Section 723.063(3), F.S.

issue without further notice or hearing. If a motion to determine rent is filed, sworn documentation is required to support a tenant's allegation that the rental amount alleged in the complaint is erroneous.

The bill amends s. 723.063(3), F.S., to remove the condition that the park owner must be in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises before the park owner may apply to the court for disbursement of all or part of the funds or for a prompt final hearing. Under the bill, a park owner may file such a motion with the court when the home owner deposits the contested rent into the registry of the court.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not performed a revenue impact conference for this bill.

The bill amends s. s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent sales tax is calculated on 50 percent of the sales price of the mobile home. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

B. Private Sector Impact:

Under the bill, a purchaser of a mobile home would pay a reduced sales tax, which would be calculated on 50 percent of the sales price instead of the actual sales price.

A mobile home dealer may also avoid the costs of having all mobile on the retail lot. The dealer is allowed under the bill to only have a model on the display lot.

A recreational vehicle dealer may avoid the costs of obtaining a garage insurance policy, if the dealer sells only park trailers.

C. Government Sector Impact:

The bill amends ss. 723.012(4) and (5), F.S., to permit a mobile home park owner to add lots to a mobile home park without homeowner consent and without amending an approved prospectus. According to the division, this would create uncertainty regarding the amount homeowners must pay in ad valorem taxes, as well as non-ad valorem assessments, since these costs are based on the proportionate share of affected mobile home lots.⁶²

The division collects annual fees on the number of mobile home spaces regulated by the division under ch. 723, F.S. If no amendment to the prospectus is required when adding property to the park, the division may not be able to correctly collect annual fees. This may impact proper fee collection, including the one dollar fee for the Florida Mobile Home Relocation Corporation.⁶³

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Revenue, in order for a taxpayer to have their mobile home declared as real property, the local property appraiser must certify that the mobile home is permanently affixed to land owned by the taxpayer.⁶⁴

The department noted that the bill would allow a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating that they intend to permanently affix the mobile home to land and seek an “RP” sticker from the DHSMV for the mobile home in order for the mobile

⁶² Department of Business and Professional Regulation, 2020 Bill Analysis for SB 818, Dec. 3, 2019 (on file with the Senate Committee on Innovation, Industry, and Technology).

⁶³ *Id.*

⁶⁴ Department of Revenue, 2020 Agency Legislative Bill Analysis, December 17, 2019 at page 4 (on file with the Committee on Innovation, Industry, and Technology).

home to be taxed as real property. There is no process in the bill to verify that the purchaser has subsequently acted on that intention. If the mobile home is not permanently affixed to land and a “RP” sticker has not been obtained for it, the taxpayer will have failed to remit the sales tax on the mobile home and the property may not be properly assessed for local property taxes.⁶⁵

Section 367.022(5), F.S., currently exempts from regulation by the Public Service Commission “landlords providing [water or wastewater] service to their tenants without specific compensation for the service.” The bill amends s. 367.022(5), F.S., to expand the current exemption from regulation by the Public Service Commission to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to certain persons, including a person who owns a lot in a mobile home subdivision. The bill also amends s. 367.022(9), F.S., to include the reselling of “wastewater” within the current exemption from regulation by the Public Service Commission.

In the absence of a lot rental agreement specifying the payment of rent for the mobile home lot, it is not clear how a mobile home park owner may provide water and wastewater services or establishes a user fee for such service without receiving specific compensation for the service.

The bill amends ss. 723.012(4) and (5), F.S., to permit a park owner to add any improvement or change facilities or services provided by the park without amending the prospectus on file with the division and without disclosure to homeowners. In a park with more than one approved version of a prospectus, this could allow for inconsistencies in disclosures among the prospectuses in a mobile home park and confusion among homeowners.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.05, 212.06, 320.77, 320.771, 320.822, 320.8232, 367.022, 723.011, 723.012, 723.023, 723.031, 723.037, 723.041, 723.042, 723.059, 723.061, and 723.063.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁶⁵ *Id.*