

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 613 Mobile Home Park Lot Tenancies

SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Stark and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 1 N, As CS	Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner, and applies 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. The Division of Condominiums, Timeshares, and Mobile Homes (CTMH) under the Department of Business and Professional Regulation (DBPR) has the power and duty to enforce and ensure certain compliance with the Florida Mobile Home Act, which includes running a mediation program.

The bill:

- Provides that, after the last meeting to resolve a dispute regarding a rent increase, the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.
- Requires home owners to provide the following documents to the park owner upon filing a petition with CTMH:
 - The homeowners' petition for mediation on a form adopted by CTMH rule;
 - The written designation with lot identification for each signature;
 - The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
 - The records that verify the selection of the homeowners' committee.
- Requires CTMH to appoint a qualified mediator to conduct mediation proceedings, if the parties have not selected their own mediator, and notify the parties within 20 days after receipt of a mediation petition.
- Provides that a civil action may not be filed until the dispute has been submitted to mediation.
- Provides that a live-in health care aide must have ingress and egress to and from the mobile home owner's site without additional rent, fee, or any charge whatsoever, except the cost of a background check if one is required.
- Provides that the live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.

The bill does not likely have an impact on state government revenues or expenditures.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation regulates and licenses various businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes (CTMH),
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.¹

CTMH provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.² CTMH has limited regulatory authority over the following business entities and individuals:³

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Mobile Home Parks

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner.⁴ 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.⁵

CTMH has the power and duty to enforce and ensure compliance with the Florida Mobile Home Act relating to the rental, development, and sale of mobile home parks. However, CTMH does not have the power or duty to enforce mobile home park rules and regulations or to enforce certain provisions related to park maintenance and infrastructure, homeowner code compliance and maintenance, and certain unreasonable lot rental agreements.⁶

CTMH may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or

¹ S. 20.165, F.S.

² Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Mar. 19, 2021).

³ *Id.*

⁴ S. 723.004, F.S.

⁵ S. 723.002(1), F.S.

⁶ As outlined in ss. 723.022, 723.023, and 723.033, F.S.

offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant thereto.⁷ CTMH may also adopt rules for mediation procedures.⁸

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.⁹
- “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.¹⁰

Mobile Home Park Rent Increases

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement “in an amount deemed appropriate by the mobile home park owner.”¹¹ 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.¹²

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.¹³ A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges¹⁴ may also be increased during the term of the rental agreement.¹⁵

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.¹⁶ 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.¹⁷

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 the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations.¹⁸ 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 must make the names and addresses available upon request.¹⁹

A committee of homeowners 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. The homeowners’ committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners’ association if formed as

⁷ See ss. 723.006(7), (8), (9), and (10), F.S.

⁸ S. 723.038, F.S.

⁹ S. 723.003(12), F.S.

¹⁰ S. 723.003(11), F.S.

¹¹ S. 723.059(4), F.S.

¹² S. 723.037(1), F.S.

¹³ S. 723.031(5), F.S.

¹⁴ S. 723.003(17), F.S., defines the term “pass-through charge” to mean “the mobile home owner’s proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.”

¹⁵ S. 723.031(5)(b), F.S.

¹⁶ S. 723.031(5), F.S.

¹⁷ S. 723.031(5)(c), F.S.

¹⁸ S. 723.037(1), F.S.

¹⁹ *Id.*

provided under s. 723.075, F.S.²⁰ 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.²¹

Dispute Resolution

If the meeting regarding a rent increase does not resolve the issue, then additional meetings may be requested. Section 723.037(4), F.S., provides that, if subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition CTMH to initiate mediation if a majority of the affected have designated, in writing, that:²²

- The rental increase is unreasonable;
- The rental increase has made the lot rental amount unreasonable;
- The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition CTMH for mediation of the dispute.²³

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.²⁴ The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, CTMH must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify CTMH in writing that they have selected a mediator.

The person appointed by CTMH to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, CTMH may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.²⁵

Within 20 days of receiving a petition to mediate a dispute, CTMH must notify the parties that a mediator has been appointed by FTMH. The parties may accept the mediator appointed by CTMH or, within 30 days, select a mediator to mediate the dispute.²⁶

The parties may agree to select their own mediator to be governed by the rules of procedure established by CTMH. The parties may agree to waive mediation, or the petitioning party may withdraw the petition prior to mediation. Upon the conclusion of the mediation, the mediator must notify CTMH that the mediation has been concluded.²⁷

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider

²⁰ S. 723.037(4)(a), F.S.

²¹ S. 723.037(4)(b), F.S.

²² S. 723.037(5)(a), F.S.

²³ S. 723.037(5)(b), F.S.

²⁴ Ss. 723.038 and 723.0381, F.S.

²⁵ S. 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University “to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building.” See Florida Conflict Resolution Consortium at <https://consensus.fsu.edu/index.html> (last visited Jan. 23, 2024).

²⁶ S. 723.038(4), F.S.

²⁷ S. 723.038(5), F.S.

such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.²⁸

If mediation does not resolve the dispute, either party may file an action in the circuit court.²⁹

Invitees

An invitee³⁰ of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.³¹

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an "invitee" is a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

Live-in Aides

The Fair Housing Act requires owners and landlords to make reasonable accommodations if the accommodation may be necessary to ensure that a person with a disability has equal opportunity to use and enjoy the dwelling. An example of a reasonable accommodation is not counting a live-in aide as an additional tenant or guest.³²

A reasonable accommodation is a change, exception, adaptation or modification to a policy, program or service that allows a person with a disability to use and enjoy a dwelling. The term also applies to public and common use spaces.

In general, a live-in aide is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:³³

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

²⁸ S. 723.038(6), F.S.

²⁹ S. 723.0381(1), F.S.

³⁰ Black's Law Dictionary (11th ed. 2019) defines the term "invitee" to mean "someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions."

³¹ S. 723.051(1), F.S.

³² Disability Rights Florida, *Fair Housing Act*, <https://disabilityrightsflorida.org/disability-topics/disability-topic-info/fair-housing-act> (last visited Jan. 30, 2024).

³³ For example, see 24 C.F.R § 5.403

Effect of the Bill

The bill provides that, if the home owners file a petition for mediation with CTMH within 30 days of the last meeting to resolve a dispute regarding a rent increase, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of the following:

- The homeowners' petition for mediation on a form adopted by CTMH rule;
- The written designation with lot identification for each signature;
- The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
- The records that verify the selection of the homeowners' committee.

The bill clarifies that a park owner, within 30 days after the last meeting to resolve a dispute regarding a rent increase, may also petition CTMH to initiate mediation of the dispute.

The bill requires that a petition for mediation must be filed with CTMH in all cases for a determination of adequacy and conformance of the petition requirements.

The bill requires CTMH to dismiss a petition for mediation in the event that the park owner and mobile home owners fail to comply with required petition procedures.

The bill allows the park owner, within 10 days after receipt of the petition from the homeowners, to file objections to the petition with CTMH. If a mediator has not been selected, CTMH must assign a mediator within 10 days after receipt of the petition by the park owner.

The bill provides that the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.

The bill provides that a mediator selected by the parties:

- Must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium.
- Has judicial immunity in the same manner and to the same extent as a judge.

The bill clarifies that CTMH is required to appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after receipt of a petition, if the parties have not selected their own mediator.

The bill provides that a civil action may not be initiated unless the dispute has been submitted to mediation.

Related to live-in aides and their assistants, the bill provides that:

- A live-in health care aide or the aide's assistant, as provided for in the federal Fair Housing Act, must have ingress and egress to and from the mobile home owner's site without the mobile home owner, live-in health care aide, aide's assistant, or invitee being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide or the aide's assistant if one is required.
- The live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.
- The mobile home owner must provide the name of the live-in health care aide or the aide's assistant to the park owner or park manager and the information required to conduct the background check if one is required.
- The mobile home owner is responsible for removing the live-in health care aide or the aide's assistant and covering the costs associated with such removal.

The bill requires CTMH to adopt rules to enforce the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 723.037, F.S.; relating to options for mediation.

- Section 2: Amends s. 723.038, F.S.; providing requirements and procedures for mediation.
- Section 3: Amends s. 723.0381, F.S.; limiting when certain actions may be filed in circuit court.
- Section 4: Amends s. 723.051, F.S.; relating to live-in health aides.
- Section 5: Requires CTMH to adopt rules.
- Section 6: Provides an effective date.

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:

The bill may allow more mobile home owners to have a live-in aide without an additional charge.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires CTMH to adopt rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear if a requirement that DBPR appoint a mediator is within 10 days after the park owner files objections to the home owner's petition, within 10 days after the home owners have filed their petition, or within 10 days after the park owner files a petition.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes provisions giving DBPR jurisdiction over certain park and owner maintenance and certain unreasonable lot rental agreements.
- Provides that a civil action may not be filed until the dispute has been through mediation.
- Clarifies when the parties may immediately file a petition and select a mediator.
- Requires DBPR to assign a mediator upon receipt of a petition, if one has not already been selected by the parties and notify the parties of a filed petition within 20 days of receiving the petition.
- Provides requirements for what information and documents must be in a petition submitted to DBPR.
- Requires DBPR to dismiss a deficient petition.

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the language clarifying the purpose of the Florida Mobile Home Relocation (Corporation).
- Removed the increase in relocation payments to mobile home owners from the Corporation.
- Removed authorization for a moving contractor to redeem vouchers from the Corporation up to 2 years after the date of issuance.

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.