

**STORAGE NAME:** h3245.rpp  
**DATE:** March 2, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REAL PROPERTY & PROBATE  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3245  
**RELATING TO:** Florida Mobile Home Act  
**SPONSOR(S):** Representative Livingston  
**COMPANION BILL(S):** SB 452 (Similar)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REAL PROPERTY & PROBATE
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 3245 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill:

defines the term "pass-through charge" to exclude the cost of governmentally mandated capital improvements upon certain property;

deletes exemptions to the homeowners' association's first right of refusal to purchase the mobile home park if the park owner makes an offer to sell or receives a bona fide offer or counteroffer to purchase;

requires the mobile home park owner who receives a bona fide offer for multiple properties to segregate the park from other offers; and

provides the bylaws may provide for a quorum less than a majority of the members of the association.

The bill will take effect October 1, of the year in which it is enacted.

This bill may result in a fiscal impact on state government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 723, Florida Statutes, is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division), Department of Business & Professional Regulation (DBPR).

Section 723.003 Florida Statutes, provides definitions of terms used in this chapter. Subsection (10) defines the term pass-through charges to mean the mobile home owners' proportionate share of the necessary and actual direct costs, and impact, or hookup fees for a governmentally mandated capital improvement required for public or private regulated utilities. For example, a mobile home park owner may be assessed the necessary and actual direct costs, and impact, or hookup fees charged by local government for capital improvements to a water or sewer system.

Section 723.031(5)(b), Florida Statutes, provides an exception to the provision that no lot rental amount is increased during the term of the lot rental agreement, to allow an increase in the lot rental amount during the term of the lease for pass-through charges. This provision allows the mobile home park owner to pass-through the charges and increase the lot rental amount paid by the home owners during the lease period.

If home owners believe a lot rental increase is unreasonable, the Statutes contemplate options for remedy either through arbitration, mediation, or court procedures pursuant to s. 723.033, F.S. Section 723.033, Florida Statutes provides in subsection (1) if the court, finds a mobile home lot rental amount, rent increase, or change, or any provision of the rental agreement, to be unreasonable, the court may: paragraph (a) refuse to enforce the lot rental agreement; paragraph (b) refuse to enforce the rent increase or change; paragraph (c) enforce the remainder of the lot rental agreement without the unreasonable provision; paragraph (d) limit the application of the unreasonable provision so as to avoid any unreasonable result; paragraph (e) award a refund or a reduction in future rent payments; or paragraph (f) award such other equitable relief as deemed necessary. Subsection (2) allows the parties an opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination, and subsection (3) states, a lot rental amount that is in excess of market rent shall be considered unreasonable. Market rent is defined in subsection (4) as, rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners. This section specifies criteria to be considered in determining market rent, including comparable mobile home parks in subsection (5), and economic or other factors in subsection (6). Subsection (7) provides an arbitrator or mediator is to comply with the standards of this section.

In the event a park owner intends to increase the lot rental amount, reduce services or utilities, or change the park rules or regulations, s. 723.037, F. S., requires notice be provided to mobile home owners by the park owner. The park owner must give written notice to each affected mobile home owner, or the homeowners' association, if applicable, at least 90 days prior to any such changes. Subsection (4)(a) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (4)(b), as

created by 97-291, Laws of Florida, requires the park owner or subdivision developer to disclose and explain, in good faith, all material factors resulting in decisions to increase the lot rental amount, reduce utility services, or change the rules and regulations at the meeting. The park owner is required to disclose the specific reason for an increase in the lot rental amount. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that 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 decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.071, Florida Statutes, governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the mobile homeowners' association of the offer, including the terms and conditions of the offer. The homeowners' association must be created pursuant to s. 723.075, F.S. through s. 723.079, F.S. Subsection (1)(b) gives the association the first right of refusal; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association; however subsection (1)(c) provides the association with an additional 10 days to meet the price and terms of the park owner if the owner elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides the park owner has no obligations to sell the property to the association. Therefore, the first right of refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and material terms and conditions under which he or she would consider selling the park to the association. In addition, this section allows the park owner to sell at any time with no obligation to the association, contrary to the provisions in subsection (1)(b) allowing the association 45 days to exercise their option to purchase the property. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by the homeowners' association:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate;
- (b) Any transfer by gift, devise or operation of law;
- (c) Any transfer by a corporation to an affiliate; "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation;
- (d) Any transfer by a partnership to one of its partners;
- (e) Any conveyance of interest in the park incidental to the financing of the park;

- (f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;
- (g) Any sale or transfer between or among joint tenants or tenants in common owning the park;
- (h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot, or
- (l) The purchase of a mobile home park by a governmental entity under its powers of eminent domain.

Section 723.072, Florida Statutes, provides a park owner may record, in the official records of the county in which the park is located, an affidavit that certifies the owner has complied with certain provisions relating to the Mobile Home Park Act. Subsection (1)(a) provides the park owner may certify an offer has been received for the purchase of the park, to show compliance with the provisions in s. 723.071(1), F.S. Subsection (1)(b) provides the park owner may certify an offer has been received, when the owner intends to make or has made a counteroffer, to show compliance with the provisions in s. 723.071(2), F.S. Subsection (1)(c) provides the park owner may certify no contract has been executed for the sale of the park between the owner and the association without complying with s. 723.071(1) and (2), F.S. Subsection (1) paragraph (d) provides the owner may certify inapplicability of the provisions to the sale or transfer of the property, and paragraph (e) provides the owner may certify the sale or transfer of the park is exempted from the provisions of s. 723.071, F.S. In addition, subsection (1)(e) provides any party acquiring an interest in the park, and title insurance companies and attorneys, may rely on the affidavits, and are under no obligation to inquire further into the matter or facts relating to compliance with the provisions in s. 723.071, F.S. Section 723.071(2), provides the intent of this section is to preserve the marketability of title to mobile home parks.

Section 723.078(2)(b), Florida Statutes, provides the homeowners' association bylaws will include, and if they do not include, will be deemed to include a majority of the members of the association constitutes a quorum. Decisions may be made by a majority of the members present for association meetings at which there is a quorum. In addition, proxies are permitted and are subject to certain provisions in this section.

**B. EFFECT OF PROPOSED CHANGES:**

HB 3245 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill amends the definition of the term "pass-through charge" to require a mobile home park owner to pay a proportionate share for empty lots, property of undeveloped phases, and any property used and maintained by the park owner not occupied by a mobile home. This amendment may result in a reduction in the proportionate share paid by mobile home owners who may currently pay governmentally mandated capital improvements that benefit empty lots, undeveloped phases, and property used and maintained by the owner.

Section 723.003, Florida Statutes, is amended to require that a mobile home park owner incur the proportionate share of costs, and impact or hookup fees, for governmentally mandated capital improvements that serve empty lots, property of undeveloped phases, and any property used and maintained by the park owner that is not occupied by a mobile home owner. Current law does not specifically prohibit owners from passing-through the costs associated with the aforementioned property that is not occupied by mobile home owners. By excluding the park owners proportionate share of the costs, the amendment may not preclude the park owner from recovering the costs which cannot be passed through in a lot rental increase during the term of the lease according to s. 723.031(5)(b), F.S. The park owner is required, pursuant to s. 723.037, F.S., to separately list the pass-through charges, the amount, and the terms in which the additional amounts will be paid. Section 723.037(1), Florida Statutes, provides the homeowners' association may challenge the increase, if the majority of all affected homeowners agree, in writing.

Section 723.071(2), Florida Statutes, is amended to provide the mobile homeowners' association the first right of refusal, in the event the home owners can meet the price, terms, and conditions of a bona fide offer. Subsection (1) is amended to require the park owner to give notice to the association in the event a bona fide offer or counter offer is made or received. Subsection (1)(c) requires the park owner to segregate the terms and conditions of an offer, if the offer includes more than one mobile home park. This section is reorganized and rewritten to establish the park owner is obligated to provide the home owners with a first right of refusal, with no exception. In addition, the term affiliate, in subsection (4)(c), is redefined to mean any corporation or entity owned or controlled by the transferring corporation. Currently, the term includes any shareholder of the transferring corporation and any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

Technical changes are made to s. 723.072, F.S., as a result of renumbering and reorganizing the section.

The bill revises s. 723.078, F. S., to allow an association to provide in its bylaws that a number less than the majority of the members of the association may constitute a quorum.

The bill will take effect October 1 of the year in which it is enacted.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Mobile home park owners will be obligated to notify the homeowners' association of any bona fide offer or counteroffer made or received and provide the association with the first right of refusal to purchase the property.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill allows mobile home owners, by and through the association, the first right of refusal to purchase the park in which they live.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill prohibits the mobile home park owner from passing through the necessary and actual direct costs of governmentally mandated capital improvements on empty lots, property of undeveloped phases, and property not occupied by a mobile home. Refer to comments under Application of Principles, 1.a.2.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 723.003, 723.071, 723.072, and 723.078, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

**Section 1.** amends s. 723.003(10), F.S., to provide that the mobile home park owner will be responsible for the proportionate share of the necessary and actual direct costs, and impact, or hookup fees for governmentally mandated capital improvements for empty lots, undeveloped phases, and any property maintained and used by the park owner not occupied by a mobile home.

**Section 2.** amends s. 723.071, F. S., by removing the exemption from the first right of refusal granted to a homeowners' association when the park owner receives a bona fide offer to purchase the park. The bill also adds subsection (1)(c) to require the park owner to segregate the individual park from any bona fide offer to purchase the park along with other properties for purposes of notifying the association of the price, terms and conditions on which the park owner will consider selling the park. By deleting "any shareholder of the transferring corporation," from the definition of the term "affiliate" in subsection (4)(c), the bill removes another exemption to the first right of refusal.

**Section 3.** amends s. 723.072(1), F.S., and ss. 723.071(1) and (2), F.S. This is a technical change due to renumbering within the section.

**Section 4.** amends s. 723.078(2), F.S., to allow the bylaws to provide that a number less than the majority of the members of the association may constitute a quorum.

**Section 5.** provides the effective date will be October 1, of the year in which the bill is passed.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Application of Principles, C.4.b. above.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

According to the Department of Business & Professional Regulation, this bill would cause an increase in complaints in the area of pass-through charges and sale of parks. It is not currently known if an increase would be in an amount that requires additional staffing.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

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V. COMMENTS:

The Department of Business & Professional Regulation reports, they are concerned the language in the bill is unclear. If the intent of the bill is to prevent pass-through charges for certain improvements and assessments, the park owner may circumvent the requirement by using the cost to justify a lot rental increase.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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