

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: SB 2234

SPONSOR: Senator Fasano

SUBJECT: The sale of mobile home parks

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that if a mobile home park owner offers a mobile home park for sale or receives a bona fide offer for purchase, the officers of the homeowners' association shall be notified of the price and the terms and conditions of sale, notwithstanding any other provisions of law.

The bill includes that to exercise its right to purchase under this section, the homeowners' association shall be required to execute a contract for only the mobile home park which the homeowners' association represents. It includes that if a contract between the park owner and the association is not executed within 45 days as prescribed in the section, then, unless the park owner thereafter elects to change the terms and conditions of the offer, the park owner has no further obligations under the subsection.

The bill provides that if the park owner elects to change the terms and conditions of the offer of sale, the home owners, by and through the association, will have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

The bill deletes s. 723.071(2), F.S., that provides that if a mobile home park owner receives a bona fide offer to purchase the park that they intend to consider or make a counter offer, the park owner's only obligation is to notify the officers of the homeowners' association that they received an offer and disclose the price and material terms and conditions which the park owner would consider selling the park and consider any offer made by the homeowners, provided the home owners have complied with ss. 723.075-723.079, F.S. It deletes the provision that the park owner is under no obligation to sell to the home owners or to interrupt or delay other

negotiations and shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

This bill substantially amends section 723.071 of the Florida Statutes.

II. Present Situation:

Chapter 723, F.S., known as the “Mobile Home Act” was created in part due to the unique relationship between a mobile home owner and a mobile home park owner. Section 723.004, F.S., provides in part that:

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 exists 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.

Section 721.071(1), F.S., provides that if a mobile home park owner offers a mobile home park for sale, the park owner must notify the mobile home owners, through a homeowners’ association created under ss. 723.075-723.079, F.S., of the offer and the homeowners’ association shall have the right to purchase the park if it meets the price and terms and conditions of the offer. If a contract is not timely executed and the park owner elects to offer the park at a lower price, the home owners have an additional 10 days to meet the price and terms and conditions of the offer.

Section 723.071(2), F.S., provides that if a mobile home park owner receives a bona fide offer to purchase the park that they intend to consider or make a counteroffer to, the park owner’s only obligation is to notify the officers of the homeowners’ association that they received an offer and disclose the price and material terms and conditions which the park owner would consider selling the park and consider any offer made by the homeowners, provided the home owners have complied with ss. 723.075-723.079, F.S. It provides that the park owner is under no obligation to sell to the home owners or to interrupt or delay other negotiations and shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

III. Effect of Proposed Changes:

The bill amends s. 723.071(1)(a), F.S., to provide that if a mobile home park owner offers a mobile home park for sale or receives a bona fide offer for purchase, the officers of the homeowners’ association shall be notified of the price and the terms and conditions of sale, notwithstanding any other provisions of law.

The bill amends s. 723.071(1)(b), F.S., to include that to exercise its right to purchase under this section, the homeowners' association shall be required to execute a contract for only the mobile home park which the homeowners' association represents. It includes that if a contract between the park owner and the association is not executed within 45 days as prescribed in the section, then, unless the park owner thereafter elects to change the terms and conditions of the offer, the park owner has no further obligations under the subsection.

The bill amends s. 723.071(1)(c), F.S., to provide that if the park owner elects to change the terms and conditions of the offer of sale, the home owners, by and through the association, will have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

The bill deletes s. 723.071(2), F.S., that provides that if a mobile home park owner receives a bona fide offer to purchase the park that they intend to consider or make a counteroffer to, the park owner's only obligation is to notify the officers of the homeowners' association that they received an offer and disclose the price and material terms and conditions which they would consider selling the park and consider any offer made by the homeowners, provided the home owners have complied with ss. 723.075-723.079, F.S. It deletes the provision that the park owner is under no obligation to sell to the home owners or to interrupt or delay other negotiations and shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

The bill makes certain conforming statutory changes.

The bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Representatives from the Florida Manufactured Housing Association (FMHA) state that the proposed legislation will impair the right of private parties to contract and results in an unconstitutional taking.

As stated in the Florida Bar's *Florida Eminent Domain Practice and Procedure*:

A regulatory taking occurs when a regulation denies substantially all economically beneficial or reasonable use of land, even temporarily. The United States Supreme Court has recognized three factors that should be considered to identify a regulatory taking: (1) the economic impact on the plaintiff of the challenged rule, regulation, or statute; 2) the extent to which the regulation interferes with investment-backed expectation; and 3) the nature of the challenged action.¹

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation states that the bill may cause some additional complaints and consequently some additional calls to the call center.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹ *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211(1986)

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
