

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 1482

SPONSOR: Senator Fasano

SUBJECT: Mobile Home Park Lot Tenancies

DATE: March 28, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Unfavorable
2.			JU	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill provides that the court may refer an action between a mobile home park owner and a mobile home owner to binding arbitration and deletes the court's authority to refer the action to nonbinding arbitration.

The bill provides that if a mobile home park owner 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.

The bill provides that, to exercise its right to purchase under this section, homeowners' associations are only required to execute a contract for the mobile home park that the homeowners' association represents. It provides that if a contract between the park owner and the association is not executed within 45 days, the park owner has no further obligations to the homeowner's association, unless the park owner later elects to change the terms and conditions of the offer.

The bill provides that, if the park owner changes the terms and conditions of the offer of sale, the homeowners 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 the requirement that, if a mobile home park owner receives a bona fide offer to purchase the park that the owner intends to consider or make a counteroffer to, the owner's only obligation is to notify the officers of the homeowners' association that an offer was received, to disclose the price and material terms and conditions which the owner would consider selling the park, and to consider any offer made by the homeowners. It also 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 is 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 provides that, within 45 days after the owner mails the required notification of the receipt of a bona fide offer for purchase to the homeowners' association, the homeowners' association must be given the right of first refusal to meet the price and terms and conditions made in the unsolicited offer for the mobile home park. The bill encourages mobile home owners to organize as homeowners' associations for the purpose of negotiating a right of first refusal with a park owner. The bill defines the term "offer" to include any unsolicited offer to purchase the mobile home park.

The bill further provides that a transfer by a partnership to any of its partners may not be used to avoid a sale to the homeowners' association.

The bill requires that local governments, prior to approving a zoning change or other official action regarding relocation of mobile home owners, must determine that affordable and comparable, as well as adequate mobile home parks or other suitable facilities exist. These parks or facilities must be affordable for very low, low, and moderate income persons, as defined in s. 420.0004, F.S., and situated in the same county.

The bill would take effect July 1, 2006.

This bill substantially amends the following sections of the Florida Statutes: 723.0381, 723.071, and 723.083.

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.

Change in Land Use for Mobile Home Parks

Many mobile homes in Florida are located in mobile home parks for which the land use designation may change in the future and park residents will be forced to relocate. Mobile home parks often provide housing for those who are unable to afford site-built housing but no longer wish to be a renter. There are also many retirees living in mobile home parks. The active real estate market in Florida and more severe hurricane seasons have placed even greater pressure on mobile home park owners to redevelop or sell their parks.

In order to evict mobile home owners due to a change in the use of the land on which the mobile home park is located, the park owner is required to give the tenants affected by the change at least six-months' notice of the projected change in land use in order to give tenants time to find other accommodations.¹ The notice of a change in land use must be in writing and posted on the premises and sent to the mobile home tenant or occupant.² The mobile home park owner does not have to disclose the proposed land use designation for the park.³

In addition to the notice required for a proposed change in the use of land, a park owner must provide notice of filing for a zoning change to each mobile home owner or the directors of the homeowners' association, if one has been established, within five days after submitting the application to the zoning authority.⁴ Local governments and state agencies are prohibited from approving an application for rezoning or taking any other official action that results in the removal or relocation of homeowners from a mobile home park unless it is first determined whether adequate mobile home parks or other suitable facilities exist for the displaced homeowners.⁵ The term "or other suitable facilities" does not have a statutory definition.

Over the past three years, 70 mobile home parks have closed as recorded by the Division of Land Sales, Condominiums and Mobile Homes in the Department of Business and Professional Regulation. The Florida Manufactured Housing Association has estimated that between 3,000 to 4,000 lots have been eliminated in mobile home parks since 2004. There are currently no reporting requirements for park closings.

Florida Mobile Home Relocation Corporation

If a mobile home owner is required to move due to a change in the use of land for a mobile home park and the home owner meets certain conditions, there are statutory provisions in place to assist with relocation. The Florida Mobile Home Relocation Corporation (corporation), established in s. 723.0611, F.S., governs the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park. Specifically, s. 723.0612, F.S., provides for relocation expenses or a specified sum to be paid from the corporation to the mobile home owner.

¹ Section 723.061(1)(d), F.S. Section 6, ch. 2001-227, L.O.F., changed the notice provisions from one year to six months.

² Section 723.061(5), F.S.

³ See *Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 1296 (Fla. 1991).

⁴ Section 723.081, F.S.

⁵ Section 723.083, F.S.

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or \$3,000 for a single-section mobile home, or \$6,000 for a multi-section mobile home, whichever is less. Moving expenses are defined to include the cost of taking down, moving, and setting up the mobile home in a new location.⁶

The mobile home park owner is required to make payment to the corporation in the amount of \$2,750 per single-section mobile home and \$3,750 per multi-section mobile home for each application for moving expenses due to a change in land use.⁷ These payments are due within 30 days after receipt of the invoice from the corporation. Payments received by the corporation are deposited in the Florida Mobile Home Relocation Trust Fund.⁸ The mobile home park owner is not required to make the payments, nor is the mobile home owner entitled to compensation, if:

- The mobile home owner is moved to another space in the park or to another mobile park at the park owner's expense;
- The mobile home owner notified the mobile home park owner, before the notice of a change in land use, that he or she was vacating the premises;
- A mobile home owner abandons the home as provided for in s. 723.0612(7), F.S.; or
- The mobile home owner had an eviction action filed against him or her prior to the mailing date of the change in the use of land.⁹

The corporation has statutory authority to seek judicial enforcement of these provisions.¹⁰

In addition to the above payments, the mobile home park owners pay a \$1 surcharge on the annual fee that is remitted to the Division of Florida Land Sales, Condominiums, and Mobile Homes within the Department of Business and Professional Regulation for each lot within a mobile home park that he or she owns.¹¹ The surcharge payments are deposited in the Florida Mobile Home Relocation Trust Fund and may or may not be imposed depending on the balance in the trust fund. The thresholds for imposing the surcharge are found in s. 723.007(2), F.S.

The corporation received \$514,915 in total payments from park owners for fiscal year 2004-2005 and paid out a total of \$594,910 during that time. The corporation has paid out \$245,050 through December 2005 for this fiscal year.

Right of First Refusal and Mobile Home Parks

A mobile home park owner who offers his or her park for sale to the general public must notify the officers of the homeowners' association of the offer, asking prices, and the terms and

⁶ Section 723.0612(1), F.S.

⁷ Section 723.06116(1), F.S.

⁸ Section 723.06116(1), F.S.

⁹ Section 723.06116(2), F.S.

¹⁰ The corporation received \$514,915 in total payments from park owners for fiscal year 2004-2005. Twenty-five percent of those payments, or \$128,729, was received more than 30 days after the due date. This figure does not include 3 mobile home communities with whom the corporation is negotiating or litigating against for payment for the 2004-2005 fiscal year.

¹¹ Section 723.007(1), F.S.

conditions of sale.¹² The mobile homeowners' association must be given 45 days from the date the notice is mailed to meet the price and terms and conditions through the execution of a contract with the park owner. If the homeowners' association and the park owner fail to execute a contract within the 45-day timeframe, the park owner has no further obligation unless he or she agrees to accept a lower price.¹³ However, if the park owner agrees to sell the park at a lower price than specified in the notice to the association, then the homeowners' association has an additional 10 days to execute a contract.¹⁴

If a mobile home park owner receives an unsolicited offer to purchase the park that he or she wishes to consider or make a counteroffer to, the park owner is required to notify the mobile homeowners' association of the offer and disclose the price and material terms and conditions upon which the park owner would consider selling the park.¹⁵ Although the park owner must consider subsequent offers by the homeowners' association, he or she is free to execute a contract to sell the park to a party other than the association at any time.¹⁶

Nonbinding Arbitration Between Park Owner and Mobile Home Owners

Section 723.038, F.S., provides that either party in a dispute between a mobile home park owner and a mobile home owner may petition the division to appoint a mediator and initiate mediation proceedings. If mediation fails to resolve the dispute, either party may file an action in circuit court. Section 723.0381, authorizes the court to refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 723.0381, F.S., to provide that the court may refer an action to binding arbitration pursuant to s. 44.104, F.S. It deletes the reference to the court's authority to refer an action to nonbinding arbitration.¹⁷

It is not clear whether the intent of the bill is to limit the courts' mediation alternatives under ch. 44, F.S. A court may refer the parties to non-binding arbitration pursuant to the authority in s. 44.103, F.S.

Section 2. The bill amends s. 723.071(1)(a), F.S., to provide that, if a mobile home park owner 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.

The bill amends s. 723.071(1)(b), F.S., to provide that, in order to exercise its right to purchase the mobile home park under this section, the homeowners' association are only required to execute a contract for the mobile home park which the homeowners' association represents. It

¹² Section 723.071(1)(a), F.S.

¹³ Section 723.071(1)(b), F.S.

¹⁴ Section 723.071(1)(c), F.S.

¹⁵ Section 723.071(2), F.S.

¹⁶ Section 723.071(2), F.S.

¹⁷ Section 44.104, F.S., sets forth the procedures for voluntary binding arbitration. Section 44.104(10), F.S., provides for the appeal of a voluntary binding arbitration decision to the circuit court. Such a review would be on the record and not de novo.

provides that if a contract between the park owner and the association is not executed within the 45 days prescribed in this section, the park owner has no further obligations under the subsection, unless the park owner later elects to change the terms and conditions of the offer.

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 their 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., which provides that if a mobile home park owner receives a bona fide offer to purchase the park to which the owner intends to consider or make a counteroffer, the park owner's only obligation is to notify the officers of the homeowners' association that an offer was received, to disclose the price and material terms and conditions which the owner would consider selling the park, and to 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 is 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 further provides that, within 45 days after the park owner mails the required notification of the receipt of a bona fide offer for purchase to the homeowners' association, the homeowners' association must be given the right of first refusal to meet the price and terms and conditions made in the unsolicited offer for the mobile home park. The bill encourages mobile home owners to organize as homeowners' associations for the purpose of negotiating a right of first refusal with a park owner.

The bill defines the term "offer" to include any unsolicited offer to purchase the mobile home park.

Section 723.071(4), F.S., provides several exceptions to the mobile home park sale requirements in s. 723.071, F.S. The bill includes an exception for any transfer by a partnership to any of its partners. The bill further provides that this exception in s. 723.071(4), F.S., may not be used to avoid a sale to the homeowners' association.

Section 3. The bill amends s. 723.083, F.S., to require that local governments, prior to approving a zoning change or other official action regarding relocation of mobile home park owners, must determine that affordable and comparable, as well as adequate mobile home parks or other suitable facilities exist, which must be affordable for very low, low, and moderate income persons, as defined in s. 420.0004, F.S., and situated in the same county.

Section 4. The bill would take effect July 1, 2006.

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:

Section 723.083, F.S., requires that local governments, prior to approving a zoning change or other official action regarding relocation of mobile home park owners, determine that affordable and comparable, as well as adequate mobile home parks or other suitable facilities exist, which must be affordable for very low, low, and moderate income persons, as defined in s. 420.0004, F.S., and situated in the same county. This requirement may implicate prohibitions contained in the Sixth Amendment of the U.S. Constitution if applied to deny an application for a change in land use because there are no affordable and comparable, adequate mobile home parks or other suitable facilities existing within the same county. The Sixth Amendment prohibits the taking of private property for public use without just compensation. A regulatory taking may occur when government regulation “does not substantially advance a legitimate state interest, but instead singles out mobile home park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property.”¹⁸

In *Aspen-Tarpon Springs v. Stuart*, the First District Court of Appeals held that s. 723.061(2), F.S., constituted an unconstitutional as a regulatory taking of property without compensation.¹⁹ This provision, since amended,²⁰ required a mobile home park owner who wished to change the land use of a park to either pay to have the tenants moved to another comparable park within 50 miles or purchase the mobile home from the tenants at a statutorily determined value. In *Aspen-Tarpon Springs*, the court found that neither the “buy” or “relocation” options were economically feasible, and were, as a practical matter, confiscatory because it authorized a permanent physical occupation of the owner’s property. This issue has not been addressed by the Florida Supreme Court.

Based on the analysis in *Aspen-Tarpon Springs*, if a local government denies an application for a change in land use because there are no affordable and comparable, adequate mobile home parks or other suitable facilities in existence within the same county, s. 723.083, F.S., as amended by the bill, may constitute a regulatory taking without compensation.

¹⁸ *Aspen-Tarpon Springs v. Stuart*, 635 So.2d 61 (Fla. 1st DCA 1994).

¹⁹ *Id.*

²⁰ Section 6, ch. 2001-227, L.O.F.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.

VIII. Summary of Amendments:

Barcode 11180 by Regulated Industries:

The amendment provides a severability provision. (WITH TITLE AMENDMENT)

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