

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 Regulated Industries Committee

BILL: CS/SB 362

INTRODUCER: Regulated Industries Committee and Senator Detert

SUBJECT: Mobile Home Park Lot Tenancies

DATE: April 7, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CA	
3.			JU	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill revises provisions related to mobile home park lot tenancies. The bill permits the courts to refer a dispute between affected homeowners and a mobile home park owner that is related to rent increases to binding arbitration with the consent of the parties. Current law authorizes the court to refer the dispute to nonbinding arbitration. The bill provides that the arbitration decision in a dispute between a homeowners association and a park owner may be disclosed to the judge before he or she enters his or her order on the merits in a subsequent trial. It deletes the provision in current law that limits disclosure of the arbitration decision to the judge only after he or she enters the order on the merits.

The bill deletes the current reimbursement amounts from the Florida Mobile Home Relocation Corporation (corporation) for mobile homeowners who are evicted from a mobile home park due to a change in land use. The current reimbursement payment amounts of \$3,000 for single wide homes and \$6,000 for multi-section homes, would be replaced with a payment equal to 60 percent of the lesser of three written estimates of moving expenses.

The bill also increases the amount of corporation payments to home owners who abandon the mobile home from \$1,375 to \$2,800 for a singlewide home and from \$2,750 to \$5,600 for a multi-section home. This would increase the park owner payment obligations to the corporation.

If a mobile home park owners receives a bona fide offer to purchase the park, the bill would provide the homeowners' association in the mobile home park with a right of first refusal. The homeowners' associations must execute the contract for sale within 45 days of the date the park owners notifies the association of an offer to purchase the park. If the park owner changes the terms and conditions of the offer, the association has an additional 10 days to meet the terms.

The bill provides that an offer to purchase the park includes any unsolicited offer to purchase the mobile home park. Current law defines an offer to mean any solicitation by the park owner to the general public.

If a mobile homes owner's application for reimbursement of moving expenses is approved by the corporation, the bill would not require the state or local governments to make the determination that affordable, adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners before approving an application for rezoning, or taking any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park. When determining whether there exists an affordable, adequate park or other suitable relocation facility, the local government must determine affordability based on the income of very-low-income, low-income, or moderate-income persons. The mobile home park or other suitable relocation facility must be in the same county as the park from which the persons are being relocated.

The bill provides an effective date of July 1, 2010.

This bill substantially amends the following sections of the Florida Statutes: 723.0381, 723.061, 723.0612, 723.071, 723.083.

II. Present Situation:

Mobile Home Act - Chapter 723, F.S., known as the Mobile Home Act, addresses 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.

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

Section 723.083, F.S., provides that 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. The term "or other suitable facilities" does not have a statutory definition. Section 723.061(3), F.S., provides that the provisions of s. 723.083, F.S., do not apply to evictions based on a change in land use under s. 723.061, F.S.⁵ Government's obligation to consider the adequacy of parks for relocation, as required pursuant to s. 723.083, F.S., is independent of the park owner's right to evict a tenant for change in use.⁶

Sale of a Mobile Home Park Mobile Home Owners' Rights - 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 conditions of sale.⁷ The homeowner's right to purchase the park must be exercised by and through a mobile homeowners association created pursuant to ss. 723.075-723.079, F.S.

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.⁸ 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.⁹

¹ Section 723.061(1)(d), F.S.

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 See *Gallo v. Celebration Pointe Townhomes, Inc.*, 972 So.2d 992 (Fla. 4th DCA 2008) and *DeFalco v. City of Hallandale Beach*, 18 So.3d 1126 (Fla. 2th DCA 2009), which applied the exemption in subsection (3) of s. 723.061, F.S., which referenced "this subsection" to all of s. 723.061, F.S.

⁶ *Gallo v. Celebration Pointe Townhomes, Inc.*, 972 So.2d 992 (Fla. 4th DCA 2008).

⁷ Section 723.071(1)(a), F.S.

⁸ Section 723.071(1)(b), F.S.

⁹ Section 723.071(1)(c), F.S.

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.¹⁰ 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.¹¹

Section 723.071(3)(a), F.S., defines the term "notify" to mean the placing of a notice in the United States mail addressed to the officers of the homeowners' association. The notice is deemed to have been given upon mailing.

Section 723.071(3)(b), F.S., defines the term "offer" to mean any solicitation by the park owner to the general public.

Rent Increases - Dispute Resolution –Affected homeowners who dispute a rent increase may petition the Florida Division of Condominiums, Timeshares, and Mobile Homes, in writing, to mediate the dispute with the mobile home park owner pursuant to the procedures in s. 723.038, F.S.¹² The written petition for mediation from a majority of the affected homeowners must state that:

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

If a party requests mediation and the opposing party refuses to agree to a proper request for mediation, the party refusing to mediate is not be entitled to attorney's fees in any action relating to a rent increase dispute.¹³

If mediation of dispute with the mediation procedures in s. 723.038, F.S., does not resolve the dispute, either party may file an action in the circuit court.¹⁴ The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.¹⁵

Florida Mobile Home Relocation Corporation - In 2001, the Legislature created the Mobile Home Relocation Program in response to concerns associated with the closure of mobile home parks.¹⁶ The program, which was implemented with the support of the Florida Manufactured Housing Association and the Federation of Manufactured Home Owners of Florida, was codified in ch. 723, F.S.¹⁷

¹⁰ Section 723.071(2), F.S.

¹¹ Section 723.071(2), F.S.

¹² Section 723.037(5)(a), F.S.

¹³ Section 723.037(6), F.S.

¹⁴ Section 723.0381(1), F.S.

¹⁵ *Id.*

¹⁶ Chapter 2001-227, L.O.F.

¹⁷ See ss. 723.061-723.0612, F.S.

The Florida Mobile Home Relocation 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 to be paid from the corporation to the mobile home owner. 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 include the cost of taking down, moving, and setting up the mobile home in a new location.¹⁸

In lieu of collecting moving expenses from the corporation, a mobile home owner may elect to abandon the home and collect payment from the corporation in the amount of \$1,375 for a single section mobile home and \$2,750 for a multi-section mobile home.¹⁹ Upon election of abandonment, the mobile home owner must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.²⁰

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.²¹ These payments are due within 30 days after receipt of the invoice from the corporation. There are currently no provisions for late fees if the payments to the corporation are not timely submitted. Payments received by the corporation are deposited in the Florida Mobile Home Relocation Trust Fund.²² 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 home 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 in the park; 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.²³

In addition to the above payments, the mobile home park owners pay a \$1 surcharge on the annual fee that is remitted to the DBPR for each lot within a mobile home park that he or she owns.²⁴ The surcharge payments are deposited in the trust fund and may or may not be imposed depending on the balance in the trust fund. Mobile home owners also contribute to the trust fund through a \$1 surcharge on the decal fee that is remitted to the Department of Highway Safety and Motor Vehicles.

¹⁸ Section 723.0612(1), F.S.

¹⁹ Section 723.0612(7), F.S.

²⁰ *Id.*

²¹ Section 723.06116(1), F.S.

²² *Id.*

²³ Section 723.06116(2), F.S.

²⁴ Section 723.007(1), F.S.

Applications for Funding Moving Expenses - In order to obtain payment for moving expenses, the home owner is required to submit an application for payment to the Florida Mobile Home Corporation, which includes a copy of the notice of change in use and a contract with a moving company for relocation of the mobile home.²⁵ The corporation must approve payment within 45 days after receiving the information or the payment is deemed approved. Upon approval, the corporation will issue a voucher in the amount of the contract price for relocating the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.²⁶

A mobile home owner whose application for funding that has been approved by the corporation is barred from filing a claim or cause of action under ch. 723, F.S., directly relating to or arising from the proposed change in land use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest.²⁷ Also, the corporation may not approve an application for funding if the applicant has either filed a claim or cause of action, is actively pursuing such claim or cause of action, or has a judgment against the corporation, the park owner, or the park owner's successors in interest unless the claim or cause of action is dismissed with prejudice.²⁸

III. Effect of Proposed Changes:

Rent Increases – Dispute Resolution – The bill amends s. 723.0381(2), F.S., to provide that a court may refer a dispute related to rent increases between affected homeowners and a mobile home park owner to binding arbitration pursuant to s. 44.104, F.S. with the consent of the parties. Current law authorizes the court to refer the dispute to nonbinding arbitration pursuant to s. 44.103, F.S.

The bill also amends s. 723.0391(2), F.S., to provide that the arbitration decision may be made known to the judge enters his or her order on the merits in a subsequent trial. It deletes the provision that limits disclosure of the arbitration decision to the judge only after he or she enters the order on the merits.

Evictions Procedures for Change in Land Use- The bill amends s. 723.061(3), F.S., to provide that a person who is approved for payment of relocation expenses by the Florida Mobile Home Relocation Corporation is exempt from the provisions of s. 723.083, F.S.

The bill also deletes the provision in subsection (3) of s. 723.061, F.S., that exempts the local government from the requirement in s. 723.083, F.S., to make a determination that affordable, adequate housing exists before approving an application for rezoning.

The determination under s. 723.083, F.S., would not be required if every affected homeowner in the park applied and was approved for payment by the corporation. However, the state or local government would have to make the determination of affordable, adequate house for any person who is evicted from the mobile home park and who is not approved for payment from the

²⁵ Section 723.0612(3), F.S.

²⁶ Section 723.0612(3)-(4), F.S.

²⁷ Section 723.0612(9), F.S.

²⁸ *Id.*

corporation. If affordable, adequate housing does not exist, the park owner's request for re-zoning would not be approved.

Relocation Expenses for Change in Land Use – The bill amends s. 723.0612(1)(b), F.S., relating to payments by the corporation to homeowners for moving expenses, to delete the payment amounts of \$3,000 for single-wide homes and \$6,000 for multi-section homes. Instead, the bill requires payment in an amount equal to 60 percent of the lesser of three written estimates of moving expenses. According to the department, the effect of this change would be to increase the amount of money the corporation would have to provide to home owners applying for reimbursement.

The bill does not provide an increase in the amount of payments to the corporation that park owners would be required to make.

The bill also amends s. 723.0612(7), F.S., to increase the amount of corporation payments to home owners who abandon the mobile home. The bill increases the payment from \$1,375 to \$2,800 for a singlewide home and from \$2,750 to \$5,600 for a multi-section home. Because the park owner is required to pay the corporation an amount equal to the amount the mobile home owner is paid,²⁹ the bill would increase the park owner payment obligations to the corporation.

Sale of Mobile Home Parks – The bill amends s. 723.071(1)(a), F.S., to extend the homeowners association's right of first refusal to include bona fide offers to purchase the park.

The bill amends s. 723.071(1), F.S., to require the park owner to notify the homeowners' associations if he or she receives a bona fide offer for purchase of the park.

The bill provides that the homeowners association may exercise its right to purchase the park by executing a contract-to-purchase for only the mobile home park that the homeowners' association represents.

The bill also amends s. 723.071(1)(b), F.S., to extend the 45-day period that the association has to execute a contract for sale with the park owner. The bill extends the period if the park owner changes the terms and conditions of the offer. Current law only extends the period if the park owner offers a lower price than that offered in the notice to the homeowners' association.

The bill amends s. 723.071(1)(c), F.S., to also provide that, if the park owner changes the terms and conditions of the offer, the association has an additional 10 days to meet the terms.

The bill amends s. 723.071(2), to require the park owner to comply with the procedure in subsection (1) of s. 723.071, F.S., and deletes a similar notification provision in s. 723.071(2), F.S.

Section 723.071(2), F.S., provides that, within 45 days after the date the park owners mails to association the notice of a bona fide offer to purchase the park, the homeowners' association has

²⁹ Section 723.0612(7), F.S.

the right of first refusal to meet the price and terms and conditions required to execute a contract with identical price, terms and conditions made in the unsolicited offer.

The bill encourages mobile home owners to organize as homeowners' associations pursuant to s. 723.075, F.S., for the purpose of negotiating a right of first refusal with a park owner.

The bill further amends s. 723.071(2), F.S., to delete language that a park owner is under no obligation to sell to the home owners or to interrupt or delay other negotiations and that the park owner 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 amends s. 723.071(3), F.S., to redefine the terms "notify" and "offer" and clarify the definitions for the terms applying throughout s. 723.071, F.S.

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

The bill amends s. 723.071(4)(b), F.S., to provide that the exemption from the requirements of s. 723.071, F.S., for any transfers by a partnership to any of its partners cannot be used to avoid sale of the park to the homeowners' association.

Government Action Affecting the Removal of Mobile Home Owners - The bill amends s. 723.083, F.S., to provide that an adequate park or other suitable relocation facility must also be affordable based on the income of very-low-income, low-income, or moderate-income persons, as defined in s. 420.0004, F.S., and must also be located in the same county as the park from which the persons are being relocated. According to the department, this provision could create a dilemma for local governments, especially in smaller counties, where there may not be adequate and affordable relocation facilities within the county. The department has also represented that the bill precludes consideration of facilities in another county that may be closer than some relocation facilities in the same county as the park. The department expressed the concern that this may unintentionally increase relocation costs or force the park owner to continue operating a mobile home park.

Effective Date – The bill provides an effective date of July 1, 2010.

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:

The bill amends s. 723.061, F.S., which provides for the eviction of a mobile home owner, tenant, or occupant. The bill amends s. 723.061(3), F.S., to provide that a person who is approved for payment of relocation expenses by the Florida Mobile Home Relocation Corporation (corporation), after being evicted due to a change in land use, is exempt from the provisions of s. 723.083, F.S., which requires state and local governments to make a determination that affordable, adequate housing exists before approving the park owner's application for rezoning. The bill would also require state or local governments to make the determination required under s. 723.083, F.S., that affordable adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners before approving an application for rezoning by a park owners, or taking any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park. The affordable, adequate housing must be in the same county as the mobile home park. In effect the determination under s. 723.083, F.S., would not be required if every affected homeowner in the park applied and was approved for payment by the corporation.

However, state or local government would have to make the determination of affordable, adequate house for any person who is evicted from the mobile home park and who is not approved for payment from the corporation. If affordable, adequate housing does not exist, the park owner's request for re-zoning would not be approved. 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."³⁰

In *Aspen-Tarpon Springs v. Stuart*, the First District Court of Appeals held that s. 723.061(2), F.S., was unconstitutional as a regulatory taking of property without compensation.³¹ This provision, since amended,³² 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.

³⁰ *Aspen-Tarpon Springs v. Stuart*, 635 So.2d 61 (Fla. 1st DCA 1994).

³¹ *Id.*

³² Section 6, ch. 2001-227, L.O.F.

Based on the analysis in *Aspen-Tarpon Springs*, it is not clear whether the requirement that state and local governments must make a determination that affordable, adequate housing exists within the county as the mobile home park for persons who are relocated as a result of the change in land use would be economically feasible. Particularly, if the state or local government cannot make a determination that affordable, adequate housing exists because to affordable, adequate mobile home park or other suitable facility exists in the county.³³ If this rezoning requirement makes the park owner's sale of the park not economically feasible, the requirement may be viewed as an unconstitutional taking under the Sixth Amendment of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the current reimbursement amounts from the Florida Mobile Home Relocation Corporation (corporation) for mobile homeowners who are evicted from a mobile home park due to a change in land use. The current reimbursement payment amounts of \$3,000 for single wide homes and \$6,000 for multi-section homes, would be replaced with a payment equal to 60 percent of the lesser of three written estimates of moving expenses.

The bill also increases the amount of corporation payments to home owners who abandon the mobile home from \$1,375 to \$2,800 for a singlewide home and from \$2,750 to \$5,600 for a multi-section home. This would increase the park owner payment obligations to the corporation.

If a mobile home park owners receives a bona fide offer to purchase the park, the bill would provide the homeowners' association in the mobile home park with a right of first refusal to purchase the park.

C. Government Sector Impact:

The bill requires local governments or the state to determine that an affordable, adequate park or other suitable relocation facility exists for the relocation of persons who are evicted from a park due to change in land use. The determination of affordability must be affordable based on the income of very-low-income, low-income, or moderate-income persons. The mobile home park or other suitable relocation facility must be in the same

³³ Section 420.0004(3), F.S., which relates to the state housing strategy, defines the term "affordable" as "monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households" for low-income, very-low-income, or moderate-income persons. Section 420.0004(10), F.S., provides that low-income is 80 percent of the median adjusted gross income for households in the state, metropolitan statistical area, or county, whichever is greater. Section 420.0004, F.S., provides that very-low-income is 50 percent, and s. 420.0004(11), F.S., provides that moderate-income is 120 percent.

county as the park from which the persons are being relocated. Local governments and the state may incur additional costs when making this determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on April 7, 2010:

The committee substitute (CS) amends s. 723.0391(2), F.S., to provide that the arbitration decision may be made known to the judge enters his or her order on the merits. It deletes the provision that limits disclosure of the arbitration decision to the judge only after he or she enters the order on the merits.

The CS does not amend s. 723.071(2), F.S., to require the homeowners' association to pay up to \$8,000 in due diligence costs incurred by a third party making a bona fide offer.

B. Amendments:

None.