

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 650

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Mobile Home Park Lot Tenancies

DATE: March 9, 2011 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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 provides that local governments must cite the responsible party for violations of local codes or ordinances. It would also prohibit local governments from assessing a lien, penalty, or fine, or initiating an administrative or civil proceeding against the mobile home owner or park owner who does not have a duty or is not responsibility relating to the alleged violation.

The bill provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park in situations in which a mobile home park is subject to a change in land use. The bill also establishes notice procedures.

The bill would take effect upon becoming law.

This bill substantially amends section 723.061, Florida Statutes. The bill creates section 723.024, Florida Statutes.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the “Florida Mobile Home Act” (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act 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 exist 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.¹

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.²

Mobile Home Park Owner’s Obligations

Section 723.022, F.S., sets for the park owners obligations. Park owners must:

- (1) Comply with the requirements of applicable building, housing, and health codes.
- (2) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.
- (3) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
- (4) Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
- (5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

¹ Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

² Section 723.002(1), F.S.

Mobile Home Owner's Obligations

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner must:

- (1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
- (2) Keep the mobile home lot which he or she occupies clean and sanitary.
- (3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Eviction of A Mobile Home Owner by a Park Owner

Section 723.061(1), F.S., specifies the following grounds that a mobile home park owner may rely on to evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home:

- Nonpayment of lot rental amount;
- Conviction of a violation of a federal or state law or local ordinance, which violation may be deemed detrimental to the health, safety, or welfare of other residents of the mobile home park;
- Violation of a park rule or regulation, the rental agreement, or ch. 723, F.S.;
- Change in use of the land comprising the mobile home park; or
- Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

In order to evict mobile home owners due to a change in the use of the land where the mobile home park is located, the park owner is required to give all affected tenants at least six-month's written notice of the projected change in land use to provide tenants with enough time to secure other accommodations.³ The notice of a change in land use must be in writing, posted on the premises, and sent to the mobile home owner, tenant, or occupant by certified or registered mail.⁴ The mobile home park owner is not required to disclose the proposed land use designation for the park in the eviction notice.⁵

In addition to the notice required for a proposed change in land use, a park owner must provide written notice to the mobile home owner or the directors of the homeowners' association, if one has been established, of any application for a change in zoning of the mobile home park within five days after filing for such zoning change with the zoning authority.⁶

³ Section 723.061(1)(d), F.S.

⁴ Section 723.061(5), F.S.

⁵ See *Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 1296 (Fla. 1991) (recognizing that "the legislature did not intend to require the park owner to specify what the 'change in use' would be").

⁶ Section 723.081, F.S.

Sale of Mobile Home Park: Mobile Home Owner's Rights

A mobile home park owner who offers⁷ his or her park for sale to the general public must notify⁸ the officers of the homeowners' association of the offer, asking price, and terms and conditions of sale.⁹ The mobile home owner's right to purchase the park must be exercised by and through the 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 execute a contract with the park owner that meets the price and terms and conditions, as set forth in the notice. If the homeowners' association and the park owner fail to execute a contract within those 45 days, the park owner has no further obligation, unless he or she subsequently agrees to accept a lower price.¹⁰ However, if the park owner agrees to sell the park at a lower price than specified in the notice to the homeowners' association, then the homeowners' association will have an additional 10 days to meet the price and terms and conditions.¹¹

The mobile home park owner is also required to notify the homeowners' association of any unsolicited bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to, and allow the homeowners' association to purchase the park under the price and terms and conditions of the bona fide offer to purchase.¹² 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 if the offer is unsolicited.¹³

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.¹⁴ The Florida Mobile Home Relocation Corporation (corporation) is a public corporation that governs the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park.¹⁵

Moving Expenses Available to Mobile Home Owners

Under current law, a displaced mobile home owner is entitled to certain relocation expenses paid by the corporation.¹⁶ The amount of payment includes the lesser of 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 and \$6,000 for a multi-section mobile home. Moving

⁷ Section 723.071(3)(b), F.S., defines the term "offer" to mean any solicitation by the park owner to the general public.

⁸ Section 723.071(3)(a), F.S., defines the term "notify" to mean the placing of a notice in U.S. mail addressed to the officers of the homeowners' association. The notice is deemed to have been given upon the mailing.

⁹ Section 723.071(1)(a), F.S.

¹⁰ Section 723.071(1)(b), F.S.

¹¹ Section 723.071(1)(c), F.S.

¹² Section 723.071(2), F.S.

¹³ *Id.*

¹⁴ Chapter 2001-227, L.O.F.

¹⁵ Section 723.0611, F.S.

¹⁶ *Id.*

expenses incorporate the cost of taking down, moving, and setting up the mobile home in a new location.¹⁷

In order to obtain payment for moving expenses, the mobile home owner must submit an application for payment to the corporation along with a copy of the notice of a change in use and a contract with a moving company for relocating the mobile home.¹⁸ If the corporation does not approve payment within 45 days of receipt, it is deemed approved. Upon approval, the corporation issues a voucher in the amount of the contract price to relocate the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.¹⁹

Once a mobile home owner's application for funding has been approved by the corporation, he or she 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.²⁰ Likewise, 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, park owner, or the park owner's successors in interest – unless the claim or cause of action is dismissed with prejudice.²¹

In lieu of collecting moving expenses from the corporation, a mobile home owner can elect to abandon the home and collect payment from the corporation in the amount of \$1,375 for a single section mobile home or \$2,750 for a multi-section mobile home. If the mobile home owner chooses to abandon the mobile home, he or she must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.²²

Payments to the Florida Mobile Home Relocation Corporation²³

A mobile home park owner is required to contribute \$2,750 per single-section mobile home and \$3,750 per multi-section mobile home to the corporation for each application that is submitted for moving expenses due to a change in land use.²⁴ These payments must be made within 30 days after receipt of the invoice from the corporation, and they are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S.²⁵

¹⁷ Section 723.0612(1), F.S.

¹⁸ Section 723.0612(3), F.S.

¹⁹ Section 723.0612(3)-(4), F.S.

²⁰ Section 723.0612(9), F.S.

²¹ *Id.*

²² Section 723.0612(7), F.S.

²³ Payments made to the corporation are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S., to be used by the Department of Business and Professional Regulation to carry on the purposes of the corporation.

²⁴ Section 723.06116(1), F.S.

²⁵ *Id.*

The mobile home park owner is not required to make payments, nor is the mobile home owner entitled to compensation, if:

- The mobile home owner is moved to another location in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the park owner, prior to the notice of a change in land use, that he or she was vacating the premises;
- The mobile home owner abandoned the mobile home, as stated in s. 723.0612(7), F.S.; or
- The mobile home owner had an eviction action filed against him or her for nonpayment of the lot rental amount under s. 723.061(1)(a), F.S., prior to the date that the notice of a change in land use was mailed.²⁶

In addition to the above payments, the Florida Mobile Home Relocation Trust Fund receives revenue from mobile home park owners through a \$1 annual surcharge levied on the annual fee the park owners remit to the department for each lot they own within the mobile home park. Mobile home owners also contribute to the trust fund through a \$1 annual surcharge on the decal fee remitted to the Department of Highway Safety and Motor Vehicles.²⁷

III. Effect of Proposed Changes:

Enforcement

The bill creates s. 723.024, F.S., to that local governments must cite the responsible party for violations of local codes or ordinances. The bill also provides that a lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or park owner for any duty or responsibility of the park owner or against a mobile home park owner for any duty or responsibility of a mobile home owner.

Eviction for Change in Land Use

The bill amends s. 723.061(1)(d), F.S., relating to eviction due to change in land use. Section 723.061(1)(d)1., F.S., requires the park owner to provide written notice to the officers of the homeowners' association of the right to purchase the mobile home park at the price and terms and conditions set forth in the notice.

Section 723.061(1)(d)1.a., F.S., requires that the notice be delivered to the officers of the homeowners' association by United States mail. It gives the homeowners' association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the written notice was mailed. The contract must be for the same price and terms and conditions set forth in the notice, which may also require the purchase of other real estate that is contiguous or adjacent to the mobile home park.

Section 723.061(1)(d)1.b., F.S., provides that, if the park owner and the homeowners' association do not execute a contract within 45 days, the park owner is no longer obligated to

²⁶ Section 723.06116(2), F.S.

²⁷ Section 723.06115(1), F.S.

comply with the process in s. 723.061(1)(d), F.S., and may proceed with the eviction. However, if the park owner elects to offer or sell the park at a price less than the price specified in the written notice to the homeowners' association, then the homeowners' association has an additional 10 days to meet the revised price and terms and conditions.

The provision in s. 723.061(1)(d)1.b., F.S., is identical to the provision in s. 723.071(1)(c), F.S. Although these provisions imply that the park owner would be required to provide the homeowners' association with some form of notice that the price has been reduced, there is no actual requirement that the park owner provide notice. Because no notice is required, it is unclear when the 10-day period to meet the revised price begins. If it is the intent of the Legislature that actual written notice of a reduced price be provided to the homeowners' association, the Legislature could include this requirement and specify that the homeowners' association would have 10 days from the receipt of notice of the reduced price to purchase the park.

The bill creates s. 723.061(1)(d)1.c., F.S., to clarify that the park owner has no obligation under ss. 723.061(1)(d) or 723.071, F.S., to provide any further notice to, or to negotiate with, the homeowners' association for the sale of the mobile home park after six months from the date of mailing the initial notice.

The bill amends s. 723.061(1)(d)2., F.S., to clarify that the six-months notice of an eviction due to a projected change in land use must be provided by the park owner to the affected mobile home owners instead of to the affected tenants.

The bill deletes subsection (3) of s. 723.061, F.S. Currently, this subsection provides that the provisions of 723.083, F.S.,²⁸ do not apply to any park where the provisions of "this subsection" apply. There are no provisions governing parks under the subsection. Prior to its amendment in 2001, this provision was included in a paragraph within subsection (2) of 723.061, F.S.²⁹ The provisions in subsection (2) were deleted in 2001.³⁰ Therefore, the language in subsection (3) appears to have been mistakenly preserved after the 2001 amendment. However, courts have interpreted this provision as precluding the application of s. 723.083, F.S., when a mobile home park owner gives notice under s. 723.061, F.S.³¹ Therefore, the bill clarifies that the provisions of s. 723.083, F.S., which requires the government to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

The bill amends s. 723.061(4), F.S., to exempt the notice provided to officers of the homeowners' association under s. 723.061(1)(d)1., F.S., from the notice requirements provided under s. 723.061(4), F.S. The notice requirements under s. 723.061(4), F.S., require that the notice be posted on the premises, and sent and addressed to the mobile home owner, tenant, or occupant by certified or registered mail, return receipt requested at his or her last known address.

²⁸ Section 723.083, F.S., provides that no agency of municipal, local, county, or state government may approve any application for rezoning, or take other action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

²⁹ Section 6, ch. 2001-227, L.O.F.

³⁰ *Id.*

³¹ *DeFalco v. City of Hallandale Beach*, 18 So. 3d 1126, 1128 (Fla. DCA 2009).

Effective Date

The bill would take effect upon becoming law.

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 provides that the mobile home park owner must offer to sell the park to the home owners if the park owner intends to change to use of the land comprising the mobile home park and the home owners meet the price and terms and conditions of the park owner for the sale of the mobile home park. The bill does not require that a park owner intend to sell the park as a prerequisite to requiring the park owner to offer to sell the park to the homeowners' association. This may implicate situations in which the park owner does not intend to sell the land. For example, a situation in which the park owner plans to personally develop the land for a different use and does not plan to sell the property to another developer. 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. 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."³²

A private taking to benefit a private party without any public purpose is void under the 5th Amendment of the U.S. Constitution.³³ A park owner may raise a takings claim under the Fifth and Fourteenth Amendments to the U.S. Constitution. However, in *Kelo v. City of New London Conn.*, the U.S. Supreme Court found that a city's taking of private residences to allow redevelopment under the city's multiuse plan for sale for private development satisfied the public use test and did not violate the 5th Amendment.³⁴ The property owner may not prevail if the legislature finds and states a clear public purpose and provides a due process mechanism. For example, in *Hawaii Housing Auth. v. Midkiff*, the U.S. Supreme Court held that a Hawaiian statute that permitted a housing authority to

³² *Aspen-Tarpon Springs v. Stuart*, 635 So.2d 61 (Fla. 1st DCA 1994).

³³ *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).

³⁴ *Kelo v. City of New London Conn.*, 545 U.S. 469 (2005).

take private land under eminent domain proceedings and to sell it to the tenant in fee simple did not violate the 5th or 14th amendments of the U.S. Constitution because the public purpose was to end the evil of land oligopoly.³⁵

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.³⁶ This provision, since amended,³⁷ 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*, it is not clear whether the requirement that the home park owner offer to sell the park to the home owners if they meet his or her price, terms, and conditions of sale, especially in circumstances in which the park owner does not intend to sell the property to effectuate the change in use of the land, would be economically feasible, and if not economically feasible, whether the requirement would be 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:

See the “Effect of Proposed Changes” section of this bill analysis for a discussion of the rights of mobile home owners and the responsibilities for mobile home park owners created by the bill, which may affect them financially through the purchase and sale of property in a mobile home park.

C. Government Sector Impact:

The bill would require that local governments to cite the responsible party for violations of local codes or ordinances. It would also prohibit local governments from assessing a lien, penalty, or fine, or initiating an administrative or civil proceeding against the mobile home owner or park owner who does not have a duty or responsibility relating to the alleged violation.

VI. Technical Deficiencies:

None.

³⁵ *Supra* at n. 35.

³⁶ *Supra* at n. 34.

³⁷ Section 6, ch. 2001-227, L.O.F.

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 March 9, 2011:

The committee substitute amends s. 723.024(1), F.S., to require local governments to cite the responsible party for violations of local codes or ordinances instead of authorizing local governments to enforce the statutory obligations in ss. 723.022 and 723.023, F.S., through local government ordinances.

- B. **Amendments:**

None.