

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 Committee on Community Affairs

BILL: SB 662

INTRODUCER: Senator Latvala

SUBJECT: Mobile Homes

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 662 relates to the Florida Mobile Home Act, which regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) enforces the act. The bill provides that:

- The division is required to provide training and educational programs for mobile home owners' associations;
- Mobile home owners must comply with all building permit and construction requirements. A mobile home owner is responsible for fines imposed for violating any local codes;
- A mobile home owner's right to notice of a rental increase or change in services may not be waived;
- A homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed rental increase or change in services or rules;
- Automatically renewable leases are assumable by the homeowner's spouse; however, this right of assumption may only be exercised once during the term of the lease;
- A member of the board of directors of the Florida Mobile Home Relocation Corporation must be removed immediately upon written request for removal from the association that originally nominated that member;
- A homeowners' association's bylaws must include specific provisions related to meetings, voting requirements, proxies, amending the articles of incorporation and bylaws, duties of officers and directors, vacancies on the board, and recall of directors;
- The division must promulgate rules to provide binding arbitration or recall election disputes;
- Board members must either certify that they have read the association's organizing documents, rules, and regulations and that they will faithfully discharge their fiduciary responsibility, or complete the division's educational program within one year of taking office; and

- The homeowners' association is required to retain and make available certain official records to the members of the association, but may not disclose specified information.

The department estimates that the creation of a mobile home arbitration program will have an anticipated fiscal impact of approximately \$176,071 in FY 2015-2016 and \$165,301 annually thereafter.

The bill has an effective date of July 1, 2015.

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 Florida Mobile Home Act was enacted in 1984.¹ 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.²

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.³

Section 723.003(6), F.S., defines the term “mobile home park” or “park” to mean:

a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(8), F.S., defines the term “mobile home subdivision” to mean:

¹ Chapter 84-80, L.O.F. Formerly ch. 720, F.S.

² Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

³ Section 723.002(1), F.S.

a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms “mobile home park,” “park,” and “mobile home subdivision” have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.⁴

Prospectus or Offering Circular

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.⁵

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division.⁶ The division maintains copies of each prospectus and all amendments to each prospectus that it has approved. The division must also provide copies of documents within 10 days of receipt of a written request.⁷

The park owner must furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.⁸

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.⁹ If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.¹⁰

The prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the specified circumstances.¹¹

⁴ See ch. 84-80, L.O.F. The definitions in s. 723.003, F.S., were formerly in s. 720.103, F.S. (1984).

⁵ Section 723.011(3), F.S.

⁶ Section 723.011(1)(a), F.S.

⁷ Section 723.011(1)(d), F.S.

⁸ Section 723.011(2), F.S.

⁹ Section 723.014(1), F.S.

¹⁰ Section 723.014(2), F.S.

¹¹ See rule 61B-31.001, F.A.C.

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and all fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least 10 lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

Mobile Home Park Rent Increases

The mobile home park owner has the right to increase rents "in an amount deemed appropriate by the mobile home park owner." The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least 90-day notice of a lot rental increase.¹²

A committee of up to five people, designated by a majority of the owners or by the board of directors, and the park owner must meet within 30 days of the notice of change to discuss the reasons for the changes.¹³ At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.¹⁴

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the homeowners may petition the division to initiate mediation.¹⁵ If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.¹⁶

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.¹⁷ A lot rental amount that exceeds market rent shall be considered unreasonable.¹⁸ Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.¹⁹

¹² Section 723.037(1), F.S.

¹³ Section 723.037(4)(a), F.S.

¹⁴ Section 723.037(4)(b), F.S.

¹⁵ Section 723.037(5)(a), F.S.

¹⁶ Section 723.0381, F.S.

¹⁷ Section 723.033(1), F.S.

¹⁸ Section 723.033(5), F.S.

¹⁹ Section 723.033(4), F.S.

In determining market rent, the court may consider “rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.”²⁰ In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider “economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.”²¹ These same standards are to be employed by the arbitrator or mediator in any arbitration or mediation under ch. 723, F.S.²²

Homeowners’ Associations

Training and Educational Programs

The division is required to provide training and educational programs for condominium and cooperative association board members and owners.²³ The training may include web-based electronic media, and live training and seminars in various locations throughout the state. The division may also approve education and training programs and maintain a list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. Chapter 723, F.S., does not provide a comparable provision for mobile home homeowners’ associations and mobile homeowners.

Mobile Home Owner's General Obligations

Section 723.023, F.S., requires a mobile home owner to comply with all building, housing, and health codes; to keep the mobile home lot clean and sanitary; to comply with park rules and regulations and require others on the premises to comply with the rules and regulations; and to conduct themselves in a manner that does not unreasonably disturb other residents of the park.

Rights of Purchasers - Assumption of the Lease

Section 723.059(5), F.S., provides that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse. Automatically renewable leases are not assumable unless provided for in the lease agreement.

Florida Mobile Home Relocation Corporation

Section 723.0611, F.S., creates the Florida Mobile Home Relocation Corporation (corporation) to provide compensation to homeowners in mobile home parks who receive an eviction notice due to a change in land use of the mobile home park. The corporation provides compensation for relocation of the mobile home or its abandonment.²⁴ The corporation is administered by a board of directors made up of six members, three of whom are appointed by the Secretary of Business and Professional Regulation (secretary of the department) from a list of nominees submitted by

²⁰ Section 723.033(5), F.S.

²¹ Section 723.033(6), F.S.

²² Section 723.033(7), F.S.

²³ Sections 718.501(1)(j), and 719.501(1)(k), F.S.

²⁴ Section 723.0612, F.S.; Florida Mobile Home Relocation Corporation Website, <http://www.fmhrc.org/> (last visited Mar. 17, 2015).

the largest nonprofit association representing mobile home owners in Florida, and three of whom are appointed by the secretary of the department from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in Florida.²⁵

Homeowners' Association Bylaws – Required Provisions

Section 723.078, F.S., provides that in order for a mobile home owners' association to exercise its right to purchase the mobile home park pursuant to s. 723.071, F.S., the association's bylaws must contain a number of statutory provisions.

Administration

Section 723.078(2)(a), F.S., provides that a board of directors of a homeowners' association must have a president, secretary, and treasurer. It does not specify how those positions are to be filled. The board of directors may appoint and designate other officers. The Condominium Act and the Cooperative Act contain similarly worded provisions.²⁶

Quorum; Voting Requirements; and Proxies

Section 723.078(2)(b)1., F.S., provides that a majority of the association's members constitutes a quorum.

Section 723.078(2)(b)1., F.S., also provides that the association's bylaws must provide for the use of a proxy. Any proxy given must be effective only for the specific meeting for which originally given. A proxy may be valid for up to 120 days after the date of the first meeting for which it was given. Every proxy must also be revocable at any time.

Board of Directors' and Committee Meetings

Section 723.078(c), F.S., requires that meetings of the board of directors must be open to members, and notice of meetings must be posted in a conspicuous place on park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments are to be considered must contain a statement that assessments will be considered and the nature of such assessments.

Chapter 723, F.S., does not provide a procedure to fill vacancies on the association's board of directors.

Officer and Director Duties

Section 723.078(2)(i), F.S., provides that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members.

Member Meetings

Section 723.078(2)(d), F.S., requires annual member meetings during which members of the board of the directors are elected. The association's bylaws may not restrict any member desiring

²⁵ Section 723.0611(1), F.S.

²⁶ Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S.

to be a candidate for board membership from being nominated. Written notice of all meetings must be provided at least 14 days in advance of the meeting. Unless waived, the notice of the annual meeting must be sent by mail to each member.

Minutes of Meetings

Section 723.078(2)(e), F.S., requires the minutes of all meetings of members and of the board of directors to be maintained, available for inspection, and retained for at least 7 years.

Amendment of Articles of Incorporation and Bylaws

Section 723.078(2)(h), F.S., requires that the bylaws of associations provide a method of amendment. If the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of the membership.

Recall of Board Members

Section 723.08(2), F.S., provides a limited procedure for the recall of members of a mobile homeowners' association board of directors. Any member of the board of directors may be recalled and removed from office by the vote or written agreement of a majority of all members.

The division provides nonbinding arbitration of recall election disputes in condominium and cooperative associations.²⁷

Board Member Training Programs

Chapter 723, F.S., does not require board members to attend training related to the association's organizing documents, rules, and statutes.

Maintenance of Records

Section 723.079(4), F.S., requires mobile homeowners' associations to maintain and make available for inspection basic accounting records, such as records of all receipts and expenditures and records of assessments and payments by each member.

III. Effect of Proposed Changes:

Definitions

The bill amends s. 73.072, F.S., relating to compensation for permanent improvements by mobile homeowners, to correct the cross-reference to the definition of "mobile home park" in s. 723.003, F.S.

The bill amends s. 723.003, F.S., to define the terms "electronic transmission," "homeowners' association," and "mediation."

²⁷ See s. 718.1255, F.S., for the division's dispute resolution authority; and ss. 718.112(2)(j) and 719.106(1)(f), F.S., for the arbitration of recall election disputes in condominium and cooperative associations, respectively.

The bill defines the term "homeowners' committee" as a committee, not to exceed five persons, that is designated by the majority of affected homeowners in a mobile home park for the purpose of meeting with the park owner or subdivision developer to discuss rental increases, reduction in services or utilities, or changes in rules and regulations and other matters authorized by the association. The committee is also authorized to enter into a binding agreement with the park owner, or a subdivision developer, on behalf of the association, its members, and all other mobile homeowners in the mobile home park.

The bill amends s. 723.003(9), F.S., to define the term "mobile home lot" to mean a lot described by a park owner pursuant to the requirements of s. 723.012, F.S., or in a disclosure statement pursuant to s. 723.013, F.S., as a lot intended for the placement of a mobile home.

The bill defines the term "offering circular" as having the same meaning as the term "prospectus."

The bill defines "mobile home owner" to include "mobile homeowner" and "homeowner."

Education and Training of HOA Board Members and Homeowners - Providers

The bill creates s. 723.006(12), F.S., to require the division to approve training and education programs for board members and mobile homeowners. The training may include web-based electronic media and live training and seminars in various locations throughout the state.

The bill creates s. 723.006(13), F.S., to require the division to maintain a list of currently approved providers and programs. It requires that the cost of the training and educational programs must be borne by the providers of the programs. The bill requires that the division establish a fee structure for the training programs sufficient to recover any costs incurred by the division in operating the program.

These education and training provisions for mobile homeowners are comparable to the training and education program offered to homeowners' associations and homeowners in condominium and cooperative associations under ss. 718.501(1)(j), and 719.501(1)(k), F.S., respectively.

The bill creates s. 723.006(14), F.S., to specify the information that must be included in the required education curriculum for mobile home owners and associations. The bill provides that the required information provided to board member and home owners must include the provider of the training programs, including the price, physical location if not web-based, dates, and curriculum for the programs. The curriculum must provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities. The educational programs may not contain editorial comments. The bill provides that the division has the right to approve and require changes to the education and training programs.

Mobile Home Owners' General Obligations

The bill amends s. 723.023, F.S., to provide additional obligations for mobile home owners. It provides that they must comply with all building permit and construction requirements and keep

the mobile home lot neat and maintained in compliance with all local codes. It provides that the homeowner is responsible for all fines imposed by the local government for noncompliance with any local codes.

The bill also requires that other persons on the premises with the mobile home owner's consent must conduct themselves, and other persons on the premises with his or her consent, in a manner which does not reasonably disturb other residents or constitute a breach of the peace.

Lot Rental Increases and Homeowners' Committee Negotiations

The bill amends s. 723.037(1), F.S., to provide that a mobile home owner's right to the 90-day notice may not be waived or precluded by agreement with the park owner. It amends s. 723.037(4)(a), F.S., to require that the homeowners' committee and the park owner must meet no later than 60 days before the effective date of the change rather than within 30 days after receipt of the notice of change as currently required. The bill requires that the homeowners' committee must also make a written request for a meeting with the park owner to discuss the matters in the 90-day notice and may include in the request a list of any other issues the committee intends to discuss at the meeting.

The bill creates s. 723.037(7), F.S., to define term "parties" for the purposes of mediation pursuant to ss. 723.037, F.S., to mean a park owner and the homeowners' committee.

Rights of Purchasers - Assumption of the Lease

The bill amends s. 723.059(5), F.S., to provide that automatically renewable leases are not assumable unless the transferee is the homeowner's spouse. The right to assume the lease by a spouse may only be exercised once during the term of the lease.

The bill deletes the provision that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse, and are not assumable unless provided for in the lease agreement.

Florida Mobile Home Relocation Corporation - Removal of Members

The bill amends s. 723.0611, F.S., to provide that a member of the board of directors must be removed by the secretary of the department, with or without cause, immediately after a written request for removal from the association that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the secretary must immediately fill the vacancy created by the removal. This removal process may not occur more than once in a calendar year.

Homeowners' Association Bylaws

Required Bylaw Provisions

The bill amends s. 723.078, F.S., to remove the requirement that the bylaws contain the enumerated provisions for the association in order to exercise its right to purchase a mobile home park.

Administration

The bill amends s. 723.078(2)(a), F.S., to provide that the board of directors must elect a president, secretary, and treasurer, and that the board of directors may elect and designate other officers.

Quorum; Voting Requirements; and Proxies

The bill amends s. 723.078(2)(b)1., F.S., to provide that, unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum.

The bill amends s. 723.078(2)(b)1., F.S., to reduce the number of days a proxy may be valid from 120 days to 90 days. The bill also incorporates a number of proxy provisions found in chs. 718 and 719, F.S., relating to condominiums and cooperatives, respectively.²⁸ The bill provides that:

- A member may not vote by general proxy;
- A member of the association may only vote by limited proxies that conform to a limited proxy form adopted by the division;
- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

The bill also provides that a member of the board of directors or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. However, a written agreement or disagreement may not be used as a vote for or against an action or to establish a quorum.

Board of Directors' and Committee Meetings

The bill creates s. 723.078(c)1., F.S., to provide that the requirement that board and committee meetings must be open to the members does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney with respect to seeking or rendering legal advice and where the contents of the discussion would be governed by the attorney-client privilege.

The bill creates s. 723.078(c)2., F.S., to provide that members of the board of directors may participate in a meeting via telephone, real-time videoconferencing, or similar communication and that such participation may count towards a quorum. A member who participates electronically may vote as if physically present. A speaker must be used so that the board or committee members and association members attending in person may hear the person who is participating electronically.

²⁸ Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S. See *Sample Limited Proxy Form*, DBPR Form CO 6000-7, Rule 61B-23.002, F.A.C.

The bill creates s. 723.078(c)3., F.S., to provide that the board of directors may use email as a means of communication. However, members of the board may not cast a vote on an association matter via email.

The bill creates s. 723.078(c)4., F.S., to provide that the right to attend meetings of the board and its committees includes the right to speak at such meetings. It provides that the association may adopt reasonable written rules governing members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action must be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings, and the division must adopt rules governing the tape recording and videotaping of meetings.

These provisions relating to quorum, voting and the administration of meetings are comparable to the board and committee meeting requirements for condominium, cooperative, and homeowners' associations.²⁹

The bill creates ss. 723.078(2)(c)5., F.S., to provide a procedure to fill vacancies on the association's board of directors. It provides that except in cases of a recall vote, a vacancy occurring on the board of directors may be filled by:

- The affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum;
- By the sole remaining director;
- If no director remains, by the members; or
- By the circuit court of the county in which the registered office of the corporation is located.

The bill creates s. 723.078(2)(c)6., F.S., to provide that the term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

The bill creates s. 723.078(2)(c)7., F.S., to provide that a vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

Officer and Director Duties

The bill creates s. 723.078(2)(c)8., F.S., to expand the duties of officers and directors. In addition to providing that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members, as provided in current law, the bill requires a director and committee member to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

²⁹ See ss. 718.112(2)(b) and (c), 719.106(1)(c), and 720.303(2), F.S.

The bill creates s. 723.078(2)(c)9., F.S., to provide that, in discharging his or her duties, a director may rely on information, opinions, reports, statements, or if prepared by officers, employees, and any other professional, such as legal counsel or accountants, who the director reasonably believes to be reliable and competent in the matters presented.

The bill creates s. 723.078(2)(c)10., F.S., to provide that a director is not acting in good faith if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

The bill creates s. 723.078(2)(c)11., F.S., to provide that, if a director has performed the duties of his or her office in compliance with this provision, he or she is not liable for any action taken as a director, or any failure to take any action.

These provisions are comparable to the fiduciary responsibilities for boards and committees in condominium associations and cooperative associations.³⁰

Member Meetings

The bill amends s. 723.078(2)(d), F.S., to provide that all nominations must be made from the floor at a meeting of the members held at least 30 days before the annual meeting. It permits the notice of the annual meeting to be mailed, hand delivered, or electronically transmitted. These provisions are comparable requirements for delivery of the notice of the annual meeting for condominium associations and cooperative associations.³¹

Minutes of Meetings

The bill amends s. 723.078(2)(e), F.S., to require that the minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. It also requires that a vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. These provisions are comparable to the vote recording requirements for boards in condominium, cooperative, and homeowners' associations.³²

Amendment of Articles of Incorporation and Bylaws

The bill amends s. 723.078(2)(h), F.S., to require that the articles of incorporation as well as the bylaws must provide a method of amendment. The bill provides that, if the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present rather than a majority of the membership as is currently required. It provides that, notwithstanding any other provision of s. 723.078, F.S., if an amendment to the articles of incorporation or the bylaws is required by any federal, state, or local governmental authority or agency, or any law, ordinance, or rule, the board of directors may, by a majority vote, amend the articles of incorporation or bylaws without a vote of the membership.

³⁰ See ss. 718.111(1)(d), F.S., and 719.104(8), F.S.

³¹ See ss. 718.112(2)(c) and 719.106(1)(c), F.S.

³² See ss. 718.111(1)(b), 719.104(8)(b), 720.303(5), F.S.

These provisions are not comparable to the amendment of articles of incorporation and bylaws in condominium associations and cooperative associations.³³

Recall of Board Members

The bill amends s. 723.08(2)(i), F.S., to provide for the recall of elected board members. The bill prohibits the use of electronic transmission as a method of giving notice of a meeting called in whole or in part for a recall vote.

The bill requires that a recall may be approved by a majority vote of all members at a meeting or by a written agreement by a majority of all members. If a recall is approved by the members, the board must duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to determine whether to certify the recall. If the board does not certify a recall, the members may file a petition for binding arbitration with the division. The bill also provides a process for recall using a written agreement signed by a majority of all members.

The bill requires that a board member who has been recalled must return all records and property of the association in his or her possession within 5 business days. A board member who has been recalled may file a petition for binding arbitration with the division to challenge the validity of the recall. The petition must be filed within 60 days after the recall.

The bill provides that if a board fails to hold a meeting to certify a recall vote within 5 days after a meeting of the members or after a written agreement, the member's representative may file a petition with the division, as provided in s. 723.1255, F.S., which requires the division to provide binding arbitration of recall disputes. The petition must be filed within 60 days of the expiration of the 5-day period.

The bill requires that a vacancy on a board due to a recall may be filled by a vote of a majority of the remaining directors. If a vacancy occurs on a board due to a recall and a majority of the board members are removed, the vacancies will be filled in accordance with rules to be adopted by the division.

These provisions are comparable to the recall requirements in condominium associations and cooperative associations.³⁴

The bill creates s. 723.1255, F.S., to require the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

Board Member Training Programs

The bill creates s. 723.0781, F.S., to provide a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

³³ See ss. 718.110 and 719.1055(4)(a), F.S.

³⁴ Sections 718.112(2)(j) and 719.106(1)(f), F.S.

- Has read the association's articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.³⁵ The curriculum must be administered by a condominium education provider approved by the division.³⁶ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.³⁷ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for 5 years after a director's election or appointment. The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.

The training requirement is comparable to training and certification required for board members of condominium, cooperative, and homeowners' associations.³⁸

Maintenance of Records

The bill amends s. 723.079(4), F.S., to require an association to retain and make available specified records. The records that must be retained include articles of incorporation, bylaws and rules, meeting minutes, current roster of members, insurance policies, contracts, tax documents, and financial statements. The records must be retained for at least 7 years within the state and be available for inspection or photocopying. The email addresses and numbers of members who elect not to receive electronic transmission of notices must have email addresses and numbers removed from the association records.

The bill specifies the information that must be included in the association's financial records, which must be accurate, itemized, and detailed records of all receipts and expenditures and reflect the current assessment due from the members.

If the association has a photocopy machine available where the records are maintained, it must provide homeowners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The association may impose fees to cover the cost of providing copies

³⁵ *Id.* The department's Internet site provides a listing of approved educational providers for condominium associations under ch. 718, F.S., and homeowners' associations under ch. 720, F.S. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited March 17, 2015).

³⁶ Section 718.112(2)(d)3.b., F.S.

³⁷ *Id.*

³⁸ See ss. 718.112(2)(d)4.b., 719.106(1)(d)1.b., and 720.3033(1), F.S.

of the official records, including, without limitation, the cost of copying. The association may also charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs.

If the association fails to provide a member an opportunity to inspect the records within 10 days after a request to inspect the records, the association may be assessed a fine of \$10 per day up to 10 days. The association may develop reasonable rules related to the inspection of documents, including charging fees for copies, and may not allow inspection of documents that is protected by lawyer-client privilege or would reveal personal identifying information other than a person's name and address.

The bill also specifies the information that are not accessible to members or homeowners, including records protected by attorney-client privilege, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a homeowner other than that provided for association notice requirements, other person identifying information of any person, electronic security measures, and software and operating systems.

The bill requires that the outgoing board establish a system for relinquishing control of the records within 5 days after an election or removal.

This official records provision is comparable to that required for condominium, cooperative, and homeowners' associations.³⁹

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁹ Sections 718.111(12), 719.104(2), and 720.303(5), F.S.

B. Private Sector Impact:

Members of a board of directors of a mobile home owners' association who choose to complete the required educational training in lieu of certifying that they have read the association's organizing documents, rules, and regulations may incur costs for such training. The cost for similar educational requirements in the newly elected members of the board of a condominium or cooperative association ranges from no fee to \$200.⁴⁰

C. Government Sector Impact:

The department estimates that the creation of mobile home arbitration program will have an anticipated fiscal impact of approximately \$176,071 in FY 2015-2016 and \$165,301 annually thereafter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 73.072, 723.003, 723.006, 723.023, 723.031, 723.037, 723.059, 723.0611, 723.078, 723.1255, 723.0781, and 723.079.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁰ List of division approved educational curriculums, Division of Florida Condominiums, Timeshares, and Mobile Homes, Florida Department of Business and Professional Regulation (April 24, 2014) (available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/BoardMemberEducation.html> (last visited March 17, 2015)).