

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2342

SPONSOR: Committee on Comprehensive Planning, Local and Military Affairs, Committee on Regulated Industries and Senator Latvala

SUBJECT: Mobile Home Parks

DATE: April 24, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute for the committee substitute:

- Provides a formula for calculating “proportionate share.”
- Authorizes the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) to charge a filing fee of up to \$100 for each prospectus amendment filing.
- Requires park owners to maintain each prospectus and any amendments and make a copy of the relevant records available to each mobile home or lot owner, and requires the division to maintain copies of each prospectus and any amendments that it has deemed adequate.
- Creates a procedure for a mobile home owner to declare the version of the prospectus he believes applies to his tenancy.
- Requires park owners to include a statement in the front cover of the prospectus or offering circular that the factors for adjusting the lot rental amount are located on which pages of the document.
- Provides that a mobile home owner, home owner’s association or park owner may seek injunctive relief to prohibit violations of the parks rules and regulations.
- Requires the division to keep notices of a lot rental amount increase in its active files for at least five years.

- Provides that in determining market rent, a mobile home park is comparable if it is in the same competitive area of the subject park and must include comparable parks within 25 miles of the subject park.
- Provides that where a committee of home owners is organized to evaluate a lot rental increase, the park owner shall deliver a written copy of the material factors on which the increase was based before the committee meeting and the committee, after its deliberations, must provide a written response to the park owner describing the factors on which it relied in concluding that the increase is unreasonable.
- Provides that if the purchaser of a mobile home assumes the remainder of the term of a lot rental agreement, the seller must provide the purchaser with a copy of the assumed rental agreement and prospectus and the park owner is prohibited from interfering with a contract between the seller and buyer of a mobile home.
- Adds real estate licensees to the definition of “mobile home broker” for purposes of licenses required of mobile home dealers.

The CS/CS substantially amends sections 723.003, 723.006, 723.011, 723.012, 723.021, 723.035, 723.037, 723.051, 723.059, 723.073, 723.076, 723.079, 719.106, and 320.77; creates s. 723.915; and repeals s. 723.0791 of the Florida Statutes (F.S.).

II. Present Situation:

In a mobile home park containing 26 or more lots, the park owner is required to provide a prospectus to prospective lessees. s. 723.011(2), F.S. Among other things, the prospectus must give the prospective lessee notice of the manner in which pass-through charges will be assessed. s. 723.012(9)(c), F.S. A mobile home park owner who is not required to provide a prospectus still must provide a prospective lessee notice of all fees and charges, assessments, or other financial obligations not included in the rental agreement. s. 723.013(3), F.S. The term “pass-through charge” is defined as “the mobile home owner’s proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.” s. 723.003(10), F.S.

Section 723.046, F.S., provides for capital costs of water or sewer systems. The section provides that if the costs for capital improvements for a water or sewer system are to be passed through to the mobile home owners (or if such expenses shall be required of mobile home owners in a mobile home park owned all or in part by the residents), any such charge exceeding \$200 per mobile home owner may, at the option of the mobile home owner, be paid in full within 60 days from the notification of the assessment, or amortized with interest over the same duration and at the same rate as allowed for a single-family home under the local government ordinance. If no amortization is provided for a single house, then the period of amortization by the municipality, county, or special district shall be not less than 8 years. This amortization requirement is binding on any municipality, county, or special district serving the mobile home park.

Section 723.006, F.S., establishes the powers and duties of the division in relation to mobile home park lot tenancies. Among the division's powers is the power to levy a civil penalty upon a determination of a minor violation. s. 723.006 (11), F.S. The statute specifically provides that this power does not include the power to require a refund of rent increases, fees, charges or assessments, including pass-through charges, collected from mobile home owners.

The Mobile Home Interagency panel was formed at the direction of the Secretary of the Department of Business and Professional Regulation in response to petitions sent by mobile home residents to the Governor. The panel met three times, taking public testimony and written information, and submitted its recommendations on March 1, 2000. See Effect of Proposed Changes for a discussion of the recommendations as they relate to specific provisions in the CS/CS.

III. Effect of Proposed Changes:

Section 1 adds references to manufactured homes in the definition of mobile home and manufactured home owner; creates a definition of "proportionate share" as used in s. 723.003(10), F.S., to provide that proportionate share is calculated by dividing equally among the developed lots in the park the total costs for the necessary and actual direct costs and impact or hookup fees incurred for capital improvements serving the recreational and common areas and all developed lots in the park.

Section 2 amends s. 723.006, F.S., which provides for regulation of mobile home park tenancies by the division. The CS/CS provides that the division may charge a filing fee of up to \$100 dollars for each prospectus amendment filing.

Section 3 amends s. 723.011, F.S., relating to disclosures to prospective lessees. The Interagency Panel on Mobile Homes (panel) found that residents complained that park owners do not keep accurate records of what prospectus and rental agreement applied to each mobile home lot. The panel found that this has impeded the residents' ability to sell their homes. The panel also found that there were complaints that there is no central repository of these records. The panel recommended that park owners be required to keep an accurate and current copy of the prospectus applying to each lot and submit each prospectus to the department, and that the department be required to keep a copy of these records, indexed by park and lot.

Based on these recommendations, the CS/CS requires that park owners maintain a list identifying the rental agreement, rules and regulations and prospectus that applies to each home owner or lot and maintain copies of each prospectus and amendments for the park found adequate by the division. It also requires that the division maintain copies of each prospectus, and any amendments, which it has deemed adequate.

Section 4 amends s. 723.012, F.S., relating to the prospectus. The panel found that mobile home owners expressed frustration with the lack of disclosure they received at the time of their initial lease. Mobile home owners complain that they did not understand that their rent would be increased according to the market and that they do not understand what market rent is. The panel recommended that a specific disclosure be made concerning lot rent increases.

The CS/CS requires the front cover prospectus or offering circular to contain a statement that the factors that will be considered for adjusting the lot rental amount are listed on enumerated pages of the prospectus.

Section 5 creates a new section 723.015, F.S., regarding notice requirements for the rental agreement and prospectus. Park owners are required, no later than January 1, 2001, and permanently thereafter, to maintain a copy of the applicable rental agreement, rules and regulations, and prospectus as to each home owner or lot. This information must be available for inspection in the park office, recreation hall or clubhouse. The home owner may request a copy of the rental agreement, rules and regulations, and prospectus applicable to his lot, but the park owner may charge the home owner for copying costs.

Within 14 days of receipt of the rental agreement, rules and regulations, and prospectus, the home owner must notify the park owner of any differences between these documents, and the documents which the home owner contends are applicable to the mobile home owner. Within 14 days of receipt of the home owner's written objections, the park owner must notify the home owner by certified mail, whether the documents provided by the home owner are the appropriate prospectus, rental agreement, and rules and regulations or that the park owner agrees in part or disagrees with the home owner's position.

The CS/CS provides that, prior to July 1, 2000, there is no liability attaching to the division, a park owner or mobile home owner for failing to provide, obtain, or receive another copy of the prospectus deemed adequate by the division which was previously delivered to the home owner.

Section 6 creates a new subsection (3) to s. 723.035, F.S., which provides that a mobile home owner, a mobile home owners' association, or a park owner may seek an injunction from the county court to prohibit a park owner, a mobile home owner, or a mobile homeowners' association from violating the park rules and regulations. In order to obtain injunctive relief, it is unnecessary to prove irreparable harm, and the court need not require the posting of a bond. The court may impose a civil penalty of up to \$100 for the failure of a party to comply with the injunction or find the party in contempt of court. A party seeking relief under this section is not precluded for seeking other civil or criminal remedies.

Section 7 amends s. 723.037, F.S., relating to lot rental increases. The section requires that a park owner file with the division a copy of any notice of a lot rental amount increase. The CS/CS requires the division to keep the notices in its active files for at least five years.

Existing law authorizes mobile home owners to appoint a committee to meet with the park owner, within 30 days after receipt by the home owners of the notice of change, and discuss the reasons for the lot rental amount increase. The CS/CS allows this 30 day time period to be extended beyond the 30 day period by mutual agreement between the committee and the park owner.

The CS/CS also provides that if a lot rental increase is based upon the lot rental amount charged by comparable mobile home parks, the park owner must disclose the facilities, services, amenities and management of such parks in addition to the name, address, and lot rental amount charged by these facilities. In addition, comparable mobile homes may include mobile home parks in the competitive area of the subject park and must include comparable parks within 25 miles of the

subject park. However, the park owner is not required to list more than 5 comparable parks within 25 miles of the subject park. The park owner must also deliver a written copy of the material factors on which the increase was based before the committee meeting.

If the committee disagrees with the park owner, it must provide a written response to the park owner stating the factors that it relied upon in determining that the lot rental increase is unreasonable, the change in the rules and regulations is unreasonable, or the reduction in the services or utilities is unreasonable. If the committee's decision is based on comparable mobile homes, it must state the name, address, lot rental amount, facilities, services, amenities, management and any other factors relevant to their decision.

Section 8 amends subsections (1) and (3) of s. 723.051, F.S., to include "guests" in provisions which define "invitee" for purposes of the section. Hence, the terms "invitee" or "guest" mean a person whose stay at the request of the mobile home owner does not exceed 15 consecutive days or 30 total days per year.

Section 9 amends s. 723.059, F.S., relating to rights of a purchaser of a mobile home which is subject to a mobile home park lot lease. Currently a purchaser may become a tenant of the park if the purchaser is otherwise qualified, but the park owner has a right of approval. The CS/CS provides that if the purchaser assumes the remainder of the term of the rental agreement, the seller must provide the purchaser with a copy of the assumed rental agreement and the prospectus.

Current law allows a park owner to increase the purchaser's lot rental amount upon expiration of the existing lease if the increase is disclosed to the purchaser prior to the purchase and is imposed in a manner consistent with the initial prospectus. The CS/CS requires that the increase must be disclosed to the purchaser in writing prior to his occupancy. In addition, the CS/CS prohibits the park owner from offering the buyer another mobile home for sale or interfere with a signed contract between the buyer and seller during the approval process.

Section 10 amends s. 723.073, F.S., to provide that if the assignee of an association, in addition to the association itself, acquires a mobile home park and intends to reconvey portions of the park to its members, it must record copies of its articles and bylaws with the clerk of the circuit court prior to conveyance of any portion of the property to a member of the association.

Section 11 changes the requirements for a newly incorporated homeowners' association to notify the park owner of its incorporation to require that the association must advise the park owner of the names and addresses of the board of directors, rather than the officers of the association. Where the homeowners' association is required to file a notice of its right to purchase the mobile home park, such notice must include the names and addresses of the officers of the association to receive notice under s. 723.071, F.S. While this notice must be recorded with the Clerk of the Circuit Court following a procedure set forth in current law, the CS/CS provides that any subsequent changes of the names and addresses of its officers identified in the court-filed notice must be provided to the park owner by certified mail, return receipt requested.

Section 12 amends s. 723.079, F.S., regarding the powers and duties of homeowners' associations to apply to assignees of the association.

Section 13 amends s. 719.106, F.S., to define the term “mobile home cooperative” to mean a residential cooperative that consists of real property at which ten or more mobile homes are located or to which they are affixed. The CS/CS provides that the election of board members in a mobile home cooperative homeowners’ association may be carried out as provided for in the by-laws of the association.

Section 14 amends s. 320.77(1)(b), F.S., which defines “mobile home broker” for purposes of licenses required of mobile home dealers. The definition includes any person who is engaged, in the business of procuring used mobile homes for the general public, who acts as an intermediary on behalf of the owner or seller of a used mobile home or who assists a seller in finding a buyer for a mobile home. The CS/CS adds to this any person who is licensed pursuant to chapter 475, F.S., the chapter on real estate brokers, salespersons, and appraisers.

Section 15 repeals s. 723.0791, F.S., relating to the election of board members in a mobile home cooperative homeowners’ association.

Section 16 provides that the CS/CS takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Department of Business and Professional Regulation indicates that the Bureau of Mobile Homes operated at a deficit of more than \$100,000 in fiscal year 1998-1999, and is projected to have a similar deficit for fiscal year 1999-2000, which will continue to deplete the Florida Land Sales, Condominiums and Mobile Homes Trust Fund balance. The fiscal impact discussed below in Government Sector Impact will exacerbate this situation. The department estimates that it would have to increase annual fees from \$4 per mobile home park lot to \$6 per mobile home park lot to fund the required additional expenses. Currently the department has authority to increase the fee only by \$1 (from \$4 to \$5).

The CS/CS grants the division the authority to levy a fee of up to \$100 for the filing of prospectus amendments. This fee should offset some of the costs described above, but the extent of this offset is unknown.

B. Private Sector Impact:

Mobile home owners who are lessees of mobile home park lots should realize an indeterminate benefit.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, the requirements that it investigate and enforce complaints relating to park owners' general obligations and good faith violations will result in a minimum of 1,200 additional complaints each year. The department says it will need approximately 11 new positions to implement these changes, along with associated expenses such as travel, equipment, and office space. It estimates that the fiscal impact will be approximately \$593,975 for fiscal year 2000-2001, \$560,118 for fiscal year 2001-2002, and \$576,921 for fiscal year 2002-2003.

There may also be increases in storage costs due to new requirements to maintain copies of prospectuses and amendments and notices of mobile home rent increases.

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VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.