

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2032

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Clary

SUBJECT: Recreational Facilities

DATE: April 10, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	_____	_____	RI	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires the owners of a recreational facility that is located within a residential subdivision to give the homeowners’ association and then the owners of the lots within the subdivision the right of first refusal before such facilities may be sold, destroyed, or the use of the facility at issue changed.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Pursuant to s. 720.301(7), F.S., a homeowners’ association is defined as:

...a Florida corporation responsible for the operation of a community or a mobile home subdivision, which the voting membership is made up parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term “homeowners’ association” does not include a community development district or to other similar special taxing district created pursuant to statute.

Typically, a homeowners’ association created under this section is responsible for maintaining recreational and other types of amenities that are financed through the levy of maintenance assessments.

Section 720.31, F.S., governs the use of recreational leaseholds. Any recreational lease, which lease is entered into by the association or its members before control of the homeowners' association is turned over to the members other than the developer must provide:

- That the facilities may not be offered for sale unless the homeowners' association has the option to purchase the property, provided the homeowners' association meets the price and terms of the facility owner by executing a contract with the facility owner within 90 days;
- If a contract between the facility owner and the association is not executed within the 90-day period, the owner is not under an obligation to sell to the association unless the facility owner later elects to offer the facilities at a price lower than specified in the original notice to the homeowners' association;
- If the facility owner elects to offer the recreational facilities at a lower price, the homeowners' association has an additional 10 days to execute a contract with the facility owner; and
- If the facility owner receives a bona fide offer to purchase the facilities that he or she intends to consider or make a counteroffer to, he must notify the homeowners' association that he has received an offer, state the terms of such offer, and to consider any offer made by the homeowners' association.

III. Effect of Proposed Changes:

The bill prohibits the owner of recreational facilities located within a residential subdivision governed by a homeowners' association from selling, destroying, or changing the use of the recreational facility or other property unless first the homeowners' association and then the owners of the lots within the subdivision are given the opportunity to purchase the facilities. In the event of a desired sale, the owner of the recreational facilities must notify the officers of the homeowners' association by certified mail, stating the price, terms, and conditions of sale.

The homeowners' association has the right to purchase the recreational facility if the homeowners meet the price, terms, and conditions of the owner by executing a contract within 45 days, after receipt of the notice. If a contract between the owner and the association is not executed within the 45-day period, the residents of the subdivision may sign a contract within 10 days. If the owner of the recreational facilities subsequently decides to offer the facilities for sale at a lower price, the homeowners' association has an additional 10 days to execute a contract, and if the homeowners' association fails to do so, the individual property owners within the subdivision have 10 days to accept the offer.

The right of first refusal provision imposed on the owner of the recreational facilities does not apply where there is no destruction or change in use of the recreational facilities at issue and:

- The sale or transfer of the property is to a person included within the table of descent and distribution if the owner were to die intestate.
- The transfer is by gift, devise or operation of law.
- The transfer occurs between a corporation to its affiliate.
- The transfer occurs between a partnership to any of its partners.
- The transfer involves a conveyance of interest incidental to financing.

- The transfer involves a conveyance resulting from the foreclosure of a mortgage, deed or trust, or other instrument encumbering the facilities or any deed given in lieu of the foreclosure.
- The sale or transfer between or among joint tenants or tenants in common.
- The acquisition of a mobile home park by a governmental entity under its powers of eminent domain.

Subsection (3) of the bill provides that the requirements of the bill do not apply to any mobile home subdivision regulated by chapter 723, F.S.

The bill is effective 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 may be an unconstitutional restraint on the alienation of property. For example, where a similar right of first refusal has been afforded mobile home park residents in the event the mobile home park owner desires to sell the park, courts have raised the issue of restraint of alienation. In a case construing the original right of first refusal set forth in s. 723.071(1), F.S., the Second District, in the case of, *Brate v. Chulavista Mobile Home Park Owners Association Inc.*, 559 So.2d 1190 (Fla. 2nd DCA 1990), *rev. denied*, *Chulavista Mobile Home Park Owners Association, Inc.*, 574 So.2d 140 (Fla. 1990), raises in dicta the possibility that the right of first refusal afforded a mobile homeowners' association is unconstitutional:

We are not confronted in this proceeding with, nor do we purport to pass upon, any question of whether section 723.071(1), offends, either in a constitutional or common law setting, the right of mobile home park owners to enjoy unrestricted alienation of their real property. We must acknowledge, however, that most regulatory statutes affecting realty, which have withstood attack, focus on the use of the property and not its alienation.

In contrast to the situation where mobile home park owners' are granted a right of first refusal, the residents of a subdivision or a homeowners' association where a privately owned recreational facility is located, lack any preexisting contractual relationship with each other such as a recreation leasehold.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill affects the ability of a private owner of recreational facilities that are located geographically within a subdivision to sell, destroy, or change the use of such facilities without first complying with the terms of the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Many of the terms in the bill are undefined, including; recreational facilities, located within a residential subdivision and homeowners' association.

VII. Related Issues:

None.

VIII. Amendments:

None.