

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/SB 2342

SPONSOR: Committee on Regulated Industries and Senator Latvala

SUBJECT: Mobile Home Parks

DATE: April 14, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Guthrie	RI	Favorable/CS
2.	_____	_____	CA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill:

- Provides a formula for calculating “proportionate share.”
- Authorizes the Division of Florida Land Sales, Condominiums, and Mobile Homes to enforce and ensure compliance with a mobile home park owner's general obligations.
- Requires park owners to maintain each prospectus and any amendments and make a copy of the relevant records available to a mobile home owner, and requires the Division to maintain copies of each prospectus and any amendments that it has deemed adequate.
- Requires park owners to give prospective tenants a form disclosure stating that the prospective tenant should expect the lot rent to increase and referring the tenant to the page of the prospectus that sets forth the method of making lot rental increases.
- Authorizes the Division to take action if it determines that a party has not acted in good faith and allows a homeowner or park owner to petition the Division to investigate whether a party has failed to meet its obligation of good faith.
- Provides that in determining market rent, a mobile home park is not comparable unless it is in the same geographical region not more than 25 miles from the park for which rental amount is at issue.
- Requires the Division to keep notices of a lot rental amount increase in its active files for at least five years.
- Provides that a park owner’s written summary of factors used in establishing a lot rental amount increase is binding on the park owner during the pendency of any dispute regarding the rental increase and prohibits any amendment of the summary after it is provided to the committee.
- Provides that if a lot rental increase is proposed pursuant to any prospectus other than the one in effect on the date of sale of a mobile home, the park owner must give a copy of both prospectuses to the new tenant.
- Adds real estate licensees to the definition of “mobile home broker” for purposes of licenses required of mobile home dealers.

The bill substantially amends the following sections of the Florida Statutes: 723.003, 723.005, 723.011, 723.012, 723.021, 723.033, 723.037, 723.059, and 320.77.

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 of Florida Land Sales, Condominiums, and Mobile Homes 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 bill.

III. Effect of Proposed Changes:

Section 1 creates a definition of “proportionate share” 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. 723.005, F.S., which provides for regulation of mobile home park tenancies by the Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division). Currently the statute provides that the Division has the power and duty to enforce and ensure compliance with the provisions of the chapter and related rules, with specified exclusions. Among these exclusions is s. 723.022, F.S., which provides a mobile home park owner's general obligations, including such obligations as complying with the requirements of applicable building, housing, and health codes, maintaining buildings and improvements in common areas and maintaining the common areas themselves, maintaining utility connections and systems for which the park owner is responsible in proper operating condition, and complying with properly promulgated park rules and regulations.

The bill deletes the reference to s. 723.022, F.S., and so grants the Division regulatory authority to enforce park owners' general obligations.

Section 3 amends s. 723.011, F.S., relating to disclosures to prospective lessees. The Interagency Panel on Mobile Homes 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 bill requires that park owners maintain each prospectus and any amendments and make a copy of the relevant records available to a mobile home owner. 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 Interagency Panel on Mobile Homes 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 bill adopts the form disclosure recommended by the Panel. This disclosure states that the lessee should expect the lot rent to increase and refers the tenant to the page on the prospectus which sets forth the method of making lot rental increases.

Section 5 amends s. 723.021, F.S., relating to the obligation of good faith and fair dealings imposed by the chapter on every rental agreement or duty arising within the chapter. The bill authorizes the Division to take any action authorized by s. 723.006, F.S., if it determines that a party has not acted in good faith. That section authorizes the Division to conduct investigations and, if the Division has reasonable cause to believe that a violation has occurred, to institute enforcement proceedings. The Division may issue a cease and desist order and may order the violator to take affirmative action, which may include refunds of rent increases or improper fees,

charges and assessments, including pass-throughs and pass-ons collected in violation of the terms of this chapter. Additionally, the Division may impose a civil penalty not to exceed \$5,000.

Section 6 amends s. 723.033, F.S., which prohibits unreasonable lot rental agreements or lot rental increases. Current law provides that a lot rental amount that is in excess of market rent is considered unreasonable, defining market rent to mean “that rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.” In determining market rent, the court may consider economic factors, such as increases or decreases in the consumer price index, increases or decreases in operating costs or taxes, and prior disclosures, as well as 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.

The bill adds to this list an additional requirement that a comparable mobile home park be in the same geographical region not more than 25 miles from the park. The bill also provides that a rental increase that is not authorized by the section is deemed to be unreasonable

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 bill requires the Division to keep the notices in its active files for at least five years.

The section authorizes mobile home owners to appoint a committee to meet with the park owner and discuss the reasons for the lot rental amount increase. The park owner must prepare a written summary of the material factors in deciding the lot rental amount increase and provide a copy to the committee. The bill provides that the written summary is binding on the park owner during the pendency of any dispute regarding the rental increase and prohibits any amendment of the summary after it is provided to the committee.

The bill also allows a homeowner or park owner to petition the Division to investigate whether a park owner or homeowner has failed to meet its obligation of good faith and to take appropriate action.

Section 8 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 bill deletes this right of approval.

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 bill requires that if the increase is proposed pursuant to a prospectus other than the one in effect on the date of the sale, the park owner must give the purchaser copies of both prospectuses.

Section 9 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 bill adds to this any person who is licensed pursuant to chapter 475, the chapter on real estate brokers, salespersons, and appraisers.

Section 10 provides that the bill 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).

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
