

# 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 442

SPONSOR: Committee on Regulated Industries, Senator Latvala and others

SUBJECT: Florida Mobile Home Act

DATE: March 9, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.			CA	
3.			AG	
4.			AGG	
5.			AP	
6.				

## I. Summary:

The bill:

- Deletes from current statutes provisions on compensation to tenants evicted for a change in land use.
- Creates a new system of compensation for such tenants.
- Establishes an annual \$1 surcharge on each mobile home lot offered for lease within a mobile home park.
- Requires the Department of Business and Professional Regulation's Division of Florida Land Sales, Condominiums, and Mobile Homes (the division) to maintain a copy of each prospectus and all amendments to each prospectus that are considered adequate by the division, and to provide copies of such documents within 10 days of receipt of a written request.
- Revises the procedures for contesting as unreasonable a lot rental increase or a decrease in services.
- Defines "proportionate share" for purposes of pass-through charges.

The bill substantially amends the following sections of the Florida Statutes: 723.003, 723.007, 723.011, 723.012, 723.037, and 723.061. The bill also creates section 723.0610 of the Florida Statutes.

## II. Present Situation:

Chapter 723, F.S., provides for mobile home park lot tenancies. It applies to tenancies in mobile home parks offering 10 or more lots for rent, where mobile home owners rent lots on which to place their mobile homes. s. 723.002, F.S. The Legislature has recognized that both mobile home owners and mobile home park owners have property rights and other rights that must be

protected. s. 723.004, F.S. At the same time, there are unique factors in the relationship between the two groups that can affect the bargaining position of the parties and the market forces. *Id.* The chapter was created for the purpose of regulating these unique factors, recognizing that when inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation is required to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties. *Id.*

In August 1999, the Mobile Home Interagency Panel was formed by Cynthia Henderson, then-Secretary of the Department of Business and Professional Regulation (DBPR) in response to petitions sent to Governor Jeb Bush. The Panel met three times and submitted a report containing legislative recommendations, including:

- Requiring park owners to honor the right of mobile home purchasers to rely on the prospectus delivered to the initial recipient, as the park owners are not complying with the same requirement as currently set forth in s. 723.059(3), F.S.
- Requiring that a disclosure be made in the prospectus to indicate how lot rent will increase.
- Require park owners and DBPR to keep a copy of each prospectus.

### **III. Effect of Proposed Changes:**

#### **Section 1: Definition of “proportionate share”**

##### **Current Law**

Section 723.003(10), F.S., defines “pass-through charge” to mean “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.” Section 723.037, F.S., provides for lot rental increases based on pass-through charges for governmentally mandated capital improvements.

##### **Proposed Changes**

The bill defines “proportionate share” for purposes of the definition of pass-through charges to mean “an amount calculated by dividing equally among the affected developed lots in the park the total costs for the necessary and actual direct costs and impact or hookup fees incurred for governmentally mandated capital improvements serving the recreational and common areas and all affected developed lots in the park.”

#### **Section 2: Surcharge**

##### **Current Law**

Section 723.007, F.S., requires each mobile home park owner to pay to the division an annual fee of \$4 for each lot within a park he owns. The division may increase the fee up to \$5 by rule.

**Proposed Changes**

The bill deletes the authority for the division to increase the fee. It also creates a surcharge on the fee of \$1 on each lot, to be deposited into the Mobile Home Relocation Trust Fund, if it is created by law. If the balance in the trust fund exceeds \$10 million, the surcharge is not to be imposed the following year. If the balance subsequently falls below \$6 million, the surcharge is to be re-imposed.

**Section 3: Disclosures and record keeping****Current Law**

Section 723.011, F.S., requires a park owner of a park containing 26 or more lots to provide all prospective tenants with a prospectus before entering into a lot rental agreement. The division must approve each prospectus.

**Proposed Changes**

The bill changes the requirement that the division review and approve a prospectus to a requirement that it review a prospectus and find it to be adequate. The bill requires the division to maintain a copy of each prospectus and all amendments to each prospectus that are considered adequate by the division. The division must provide copies of documents within 10 days of receipt of a written request.

**Section 4: Prospectus****Current Law**

Section 723.012, F.S., requires that the prospectus make certain disclosures, including the manner in which the lot rental amount may be increased, the lot rental amount or user fees charged for utilities and other services, and the user fees for optional services. The prospectus must also contain specified statements, in conspicuous type, including the following: THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN LEASING A MOBILE HOME LOT.

**Proposed Changes**

The bill revises the disclosure statement above to read: THIS PROSPECTUS CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND YOUR FIINANCIAL OBLIGATIONS IN LEASING A MOBILE HOME LOT. MAKE SURE THAT YOU READ THE ENTIRE DOCUMENT AND SEEK LEGAL ADVICE IF YOU HAVE ANY QUESTIONS REGARDING THE INFORMATION SET FORTH IN THIS DOCUMENT.

## **Section 5: Lot rental increases or other changes**

### **Current Law**

Section 723.037, F.S., provides the method for making and contesting lot rental increases, reductions in services, or changes in rules and regulations. As a part of this process, mobile home owners may appoint a committee to meet with the park owner, within 30 days after receipt by the homeowners of the notice of change, and discuss the reasons for the lot rental amount increase. If an increase is based upon the lot rental amounts charged by comparable parks, the park owner must disclose the name, address, lot rental amount, and any other relevant factors concerning the mobile home parks relied upon by the owner.

### **Proposed Changes**

The bill provides that if an increase is based upon the lot rental amounts charged by comparable parks, the park owner must disclose, and provide a written statement of, the name, address, lot rental amount, and any other relevant factors relied upon by the park owner such as facilities, services, and amenities concerning the comparable mobile home parks.

If the committee disagrees with the park owner's lot rental amount increase based upon comparable mobile home parks, it must disclose to the park owner the name, address, lot rental amount, and any other relevant factors relied upon by the committee such as facilities, services, and amenities concerning the comparable mobile home parks. The committee must provide the disclosure to the park owner, in writing, within 15 days after the meeting with the park owner, together with a request for a second meeting.

The committee and the park owner may agree in writing to extend or continue any meetings required under the section.

Either party may prepare and use additional information to support its position during or subsequent to the meetings.

## **Section 6: Eviction for change in land use**

### **Current Law: Statute**

Subsection 723.61(2), F.S., provides for eviction of tenants for a change in the use of the land on which the mobile home park is situated. If the park owner decides to use the land, or a portion of the land, for another purpose, he must give the affected tenants at least one year's notice of the projected change and of their need to secure other accommodations. The park owner must buy the mobile home, relocate it or pay to relocate it in another mobile home park, or reach a mutually agreed to settlement between the park owner and the homeowner, giving the homeowner notice of which of these options he has selected within 90 days after the date of the change in land use notice.

If the park owner elects to relocate the mobile home, he must pay the actual cost, including setup fees, to move the evicted mobile home, with comparable and any required appurtenances, to a

comparable mobile home park within a 50-mile radius of the mobile home park or other distance agreed upon by the park owner and mobile home owner.

If the park owner elects to purchase the mobile home, he must purchase the mobile home and all appurtenances at a value to be determined as follows:

- A mutually agreed upon appraiser is to assess the book value of the mobile home and cash value of all appurtenances. The appraiser is also to assess the market value of the mobile home as situated immediately prior to the notice of change in land use.
- The homeowner is entitled to the book value of the mobile home and cash value of the appurtenances.
- The homeowner is also entitled to the following portion of the difference between the book value and cash value of the appurtenances and the market value of the mobile home. If the homeowner has resided in the mobile home at the time of notice of land use change by the park owner:
  - 0 years up to 5 years -- 40 percent
  - 5 years up to 15 years -- 60 percent
  - 15 years up to 20 years -- 80 percent
  - 20 years or more -- 100 percent
- If a homeowner has become a resident of the park within 0-5 years of the notice of change in land use, in addition to the compensation set forth above, he is also entitled to 60 percent of the difference between the book value and the market value of the mobile home.

Between the date of the appraisals and the delivery to the park owner of title and possession of the mobile home and all appurtenances, the mobile home and the appurtenances are to be maintained by the homeowner in the condition existing on the date of the appraisals, ordinary wear and tear excepted.

### **Current Law: Case Law**

Subsection 723.61(2), F.S., has been held unconstitutional on the grounds that it constitutes an unconstitutional taking of property without compensation. *Aspen-Tarpon Springs Limited Partnership v. Stuart*, 635 So.2d 61 (Fla. 1<sup>st</sup> DCA 1994). The court found that the statute went far beyond the legitimate goal of reasonably accommodating conflicting interests, and that once the park owners have rented their property to mobile home owners, they are required to continue doing so unless they buy all the mobile homes or pay to have them moved. *Id.*, at 68. The court said that the evidence presented to the trial court demonstrated that neither the “buy out” option nor the “relocation” option is economically feasible, and that, as a practical matter, the statute authorizes a permanent physical occupation of the park owner's property and effectively extinguishes a fundamental attribute of ownership, the right to physically occupy one's land. *Id.* The court also found that the statute 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. *Id.*

**Proposed Changes**

The bill deletes from the existing statutes the unconstitutional compensation provisions. It also changes the notice requirement, requiring at least 6 month's notice of an eviction for a change in land use instead of the current 1 year. Finally, it provides that a park owner may not give notice of an increase in lot rental 90 days before giving a notice of a change in land use.

**Section 7: Payment of relocation expenses due to change in land use****Current Law**

See above discussion of s. 723.061, F.S.

**Proposed Changes**

The bill creates s. 723.0610, F.S., to provide a new system of compensation for tenants evicted for a change in land use. A mobile home owner who is evicted for a change in land use is entitled to payment from the Mobile Home Relocation Trust Fund, if created by law. The payment is to be the lesser of:

- Actual moving expenses to move the home to another park within a 50-mile radius of the vacated park, with moving expenses including the cost of taking down, moving, and setting up the mobile home in the new location, or
- A payment of \$5,000 for a single-section mobile home or \$10,000 for a multi-section home.

This payment is not to be made if:

- The park owner moves a home owner to another space in the mobile home park or to another park at the owner's expense,
- A homeowner is vacating the premises and has informed the park owner of this prior to the notice of a change in land use, or
- The homeowner abandons the home by leaving it in the park and conveying title to the park owner, in which case the mobile home owner will collect one-fourth of the maximum allowable moving expense.

When there is a change in land use, the park owner must pay into the Mobile Home Relocation Trust Fund, if created by law, \$2,000 for each single-section home and \$2,500 for each multi-section home for which a homeowner has made application for payment from the fund.

To obtain payment from the fund, a homeowner must submit an application to the Florida Mobile Home Relocation Corporation, if created by law. The application must include a copy of the notice of eviction for change in land use and a copy of a contract with a moving or towing contractor for the moving expenses to move the mobile home. The corporation must approve payment within 15 days of receipt of the application or payment is deemed approved. Upon approval, the corporation is to make payment immediately.

Neither the corporation nor the trust fund is liable to any person for recovery if the trust fund does not have sufficient funds to pay amounts claimed. If there are insufficient funds, the corporation is to keep records of the time and date of all determinations for payments to claimants. If money becomes available, payments are to be made in order of the earliest time and date of determination.

It is unlawful for any person to file any notice, statement, or other required document that is false or contains any material misstatement of fact. A violation is a second degree misdemeanor, punishable by imprisonment not exceeding 60 days and a fine not exceeding \$500.

#### **Section 8: Effective date**

The bill takes effect July 1, 2001.

#### **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:**

None.

##### **B. Private Sector Impact:**

Mobile home owners will be compensated for relocation costs when evicted for a change in land use, with park owners required to make payments into the trust fund. Park owners will also be required to pay a surcharge of \$1 per mobile home park lot.

##### **C. Government Sector Impact:**

The bill requires the division to maintain a copy of each prospectus and all amendments to each prospectus that are considered adequate by the division. The division must provide copies of documents within 10 days of receipt of a written request. The costs of performing these duties are not known.

**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.

---