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STORAGE NAME: h1299s2.ca
DATE. April 17, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL # CS/CS/HB 1299

RELATING TO: Florida Mobile Home Act

SPONSOR(S). Committee on Community Affairs, Committee on Real Property & Probate,
Representative Crow & others

STATUTE(S) AFFECTED: Amending sections 723.006, 732.021, 723 037, 723 0381, 723,063,
and 723.07, Florida Statutes

COMPANION BILL(S): SB 750 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 1
- (2) COMMUNITY AFFAIRS YEAS 6 NAYS 0
- (3)
- (4)
- (5)

I SUMMARY

This bill revises the Florida Mobile Home Act. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) are amended to:

- * Prohibit the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation;
- * Direct the Division to adopt rules for the implementation of all civil penalties or administrative actions; and
- * Authorize the Division to enter into consent orders.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel.

The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. The home owners' right of first refusal is extended to apply to bona fide offers to purchase the park under specified conditions.

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The bill should not have a fiscal impact on state or local governments

II. SUBSTANTIVE RESEARCH

A. PRESENT SITUATION:

Chapter 723, F.S., is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR).

Section 723.006, F.S., provides powers and duties of the Division. Included in such powers is the authority to issue an order requiring a mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as the Division judges will carry out the purposes of this chapter. The affirmative action may include

- * Refunds of rent increases, improper fees, charges and assessments;
- * Filing and utilization of documents which correct a statutory or rule violation,
- * Reasonable action necessary to correct a statutory or rule violation.

Section 723.021 provides provisions governing obligations of good faith and fair dealing. The section declares every rental agreement or duty within this chapter imposes an obligation of good faith and fair dealings in its performance or enforcement.

Section 723.035, F.S., governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from imposing a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to section 723.012, F.S., if required, and until the park owner has complied with the notice requirements of section 723.037, F.S.

Further, the Division has adopted Rule 61B-32.004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases.

Section 723.037, F.S., governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable, the rental increase has made the lot rental amount unreasonable; the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.0381, F.S., addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement, the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, F.S., authorizes the home owners and the park owner to initiate mediation by a request to the Division.

Section 723.063, F.S., authorizes home owners to raise the defense of material noncompliance with Chapter 723, F.S., in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after seven days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with Chapter 723, F.S. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, F.S., governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to section 723.075, F.S., through section 723.079, F.S. Paragraph (b) gives the association the right of first refusal on the park; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association, however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate,
- (b) Any transfer by gift, devise or operation of law,
- (c) Any transfer by a corporation to an affiliate, "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation, or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation,

- (d) Any transfer by a partnership to one of its partners,
- (e) Any conveyance of interest in the park incidental to the financing of the park;
- (f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;
- (g) Any sale or transfer between or among joint tenants or tenants in common owning the park,
- (h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot, or
- (l) Any purchase of the park by a government entity exercising its eminent domain powers.

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. See section 2, chapter 96-394, Laws of Florida. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the DBPR. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the Act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants. The report reveals that during consideration by the members of the circumstances under which a prospectus should be amended, they discussed amendments to allow used mobile homes in a park, as long as they are no older than the average age of other mobile homes in the park. See Final Report of the Mobile Home Study Commission, Report B, page 15, and Appendix C, Minutes of the October 31, 1996 meeting.

B EFFECT OF PROPOSED CHANGES

This bill revises the Florida Mobile Home Act, Chapter 723, F.S. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) are amended to:

- * Prohibits the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.

- * Directs the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.
- * Authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. This provision is nearly identical to an existing agency rule.

The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel.

The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

The bill extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions. If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

APPLICATION OF PRINCIPLES.

1 Less Government

- a Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

The Division is required to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations

In addition, this bill will allow a homeowner's association to litigate and have the same defenses as an individual homeowner in an action for rent or possession of a mobile home lot. The bill requires disclosure of all material factors resulting in a decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No

- b If an agency or program is eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a Does the bill increase anyone's taxes?

No.

- b Does the bill require or authorize an increase in any fees?

No

- c Does the bill reduce total taxes, both rates and revenues?

No

d Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3 Personal Responsibility

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4 Individual Freedom

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill makes changes in the Mobile Home Act. The inclusion of mobile home owners' associations as parties who may defend upon the ground of a material noncompliance with the provisions of Chapter 723, F.S., may provide home owners some assistance in seeking redress.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment.

a. If the bill purports to provide services to families or children

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. SECTION-BY-SECTION RESEARCH

Section 1. Subsection (5) of section 723 006, F S., 1996 Supplement, is amended, and present subsections (6), (7), and (8) are renumbered as subsections (8), (9), and (10), and new subsections (6) and (7) are added to the section.

Subsection (5) is amended to prohibit the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. The subsection is amended to provide that minor violations of the chapter will be limited to a fine of \$250.

New subsection (6) is created to direct the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations. A major violation is defined to mean a violation of this

chapter which endangers the public health, safety, and welfare or causes substantial economic harm to the mobile home park residents.

Subsection (7) authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

Section 2. Section 723.021, F.S., relating to obligation of good faith and fair dealings, is amended to allow either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance

Section 3. Section 723.037, F.S., relating to lot rental increases, reduction in services or utilities, change in rules and regulations, and mediation, is amended to create a new paragraph (b) regarding the disclosures required to be made by a park owner or subdivision developer to the home owners at meetings to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division's administrative rule, Rule 61B-32.004(1), F.A.C., with the exception of the last sentence. The last sentence requires the park owner to prepare a written summary of the material factors and retain a copy for 3 years. The park owner must provide the committee a copy of the summary, upon request.

Section 4. Section 723.0381, F.S., relating to civil actions, arbitration, is amended to allow, rather than require, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The section is further amended to require the court to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. Current language requiring referral to a panel of three arbitrators is deleted

Section 5. Section 723.063, F.S., relating to defenses to action for rent or possession, and procedure, is amended to extend to a home owners' association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The bill also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase. The section is further amended to provide for such defense to be made pursuant to Rule 1.220, Florida Rules of Civil Procedure (relating to class actions)

Section 6. Subsection (2) of section 723.071, F.S., relating to sale of mobile home parks, is amended to revise the existing exemption from the right of first refusal granted to a home owners' association when the park owner receives a bona fide offer to purchase the park.

The subsection is amended to provide that the mobile home park is free to execute a contract for the sale of the park to a party or parties other than the homeowners or the association, if:

- * It is clear from the face of the bona fide offer that the homeowners or homeowner's association could not match the terms and conditions contained in the bona fide offer by making an offer containing the same terms and conditions.

However, if the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

Section 7. An effective date of October 1, 1997, is provided

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1 Non-recurring Effects

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth

None.

4 Total Revenues and Expenditures:

None.

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1 Non-recurring Effects.

None

2. Recurring Effects

None.

3. Long Run Effects Other Than Normal Growth.

None.

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs

Unknown

2. Direct Private Sector Benefits.

Mobile home owners within parks could benefit from the changes in section 723.037, F.S., which foster better communication between the park owner and home owners prior to initiating an action based on rental increases, reduction of services or a change in the rules or regulations. Increased communication regarding these issues may reduce litigation, which would financially benefit both park owners and home owners.

3. Effects on Competition, Private Enterprise and Employment Market:

Unknown

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B REDUCTION OF REVENUE RAISING AUTHORITY

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V COMMENTS

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Comparison of CS/HB 1299 and CS/CS/HB 1299

The Committee on Community Affairs adopted two amendments that are incorporated into the CS/CS/HB 1299. The CS/CS/HB 1299 is substantially different from the CS/HB 1299.

CS/CS/HB 1299 includes several provisions not included in CS/HB 1299. These include:

- * Prohibiting the Division of Land Sales, Condominiums and Mobile Homes (Division) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.
- * Directing the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.
- * Authorizing the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.
- * Allowing either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

CS/HB 1299 defines the term "pass-on charge." This new definition is not included in CS/CS/HB.

The provision in CS/CS/HB 1299 providing for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations is substantially similar to that in CS/HB 1299. The provision in CS/CS/HB is revised to more accurately reflect an existing agency rule. The provision in CS/HB 1299 providing that any reasons not disclosed at the meeting by the park owner are not admissible into evidence in any subsequent administrative procedure or civil action between the parties is not included in CS/CS/HB 1299.

CS/HB 1299 deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners, and extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 also extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 does not delete this requirement. Rather, CS/CS/HB 1299 allows, rather than requires, a court to refer a pending rental

increase dispute to nonbinding arbitration pursuant to section 44.103, F.S , and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. CS/CS/HB 1299 also extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

CS/HB 1299 deletes exemptions to the home owners' right of first refusal, and extends the first right of refusal to apply to bona fide offers to purchase the park CS/CS/HB 1299 extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park

Comparison of HB 1299 and CS/HB 1299

The Committee on Real Property & Probate adopted the following amendments that are incorporated into the CS/HB 1299:

- 1) Technical amendment, correcting a reference,
- 2) Removed the language that provided for payment of pass-on charges to the park owner in reimbursement of the charges paid by the park owner,
- 3) Removed a provision prohibiting rules or regulations that would not allow previously owned mobile homes from being permanently located in a mobile home park, and,
- 4) Removed the section of the bill amending section 723.083, F.S This section currently requires governmental entities to determine that adequate mobile home parks or "other suitable facilities" exist for the relocation of the mobile home owners before approving any application for rezoning, or taking any other official action that would result in the removal or relocation of a mobile home park The original bill would have removed "other suitable facilities" from this section

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by

Legislative Research Director:

P K. Jameson

P K Jameson

STORAGE NAME: h1299s2.ca

DATE April 17, 1997

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AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS

Prepared by

Legislative Research Director:

Thomas L. Hamby, Jr.

Jenny Underwood Dietzel

STORAGE NAME h1299z rpp
DATE: May 7, 1997

****FAILED TO PASS THE LEGISLATURE****
****SEE FINAL ACTION SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY & PROBATE
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1299

RELATING TO: Florida Mobile Home Act

SPONSOR(S): Committee on Community Affairs, Committee on Real Property & Probate,
Representative Crow & others

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and 723.07, Florida Statutes

COMPANION BILL(S): SB 750 (s)

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- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 1
- (2) COMMUNITY AFFAIRS YEAS 6 NAYS 0
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I SUMMARY:

This bill revises the Florida Mobile Home Act. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) are amended to: Prohibit the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation, direct the Division to adopt rules for the implementation of all civil penalties or administrative actions, and authorize the Division to enter into consent orders.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance. The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. The home owners' right of first refusal is extended to apply to bona fide offers to purchase the park under specified conditions.

The bill should not have a fiscal impact on state or local governments.

The House took up CS/SB 750 in lieu of CS/CS/HB 1299. CS/SB 750 contains portions of CS/CS/HB 1299. The CS/SB 750 was enrolled and subsequently signed by the Governor. 97-290 L.O.F. See Final Action section for an outline of the contents of CS/SB 750.

II SUBSTANTIVE RESEARCH:

A PRESENT SITUATION

Chapter 723, F.S., is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR)

Section 723.006, F.S., provides powers and duties of the Division. Included in such powers is the authority to issue an order requiring a mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as the Division judges will carry out the purposes of this chapter. The affirmative action may include

- * Refunds of rent increases, improper fees, charges and assessments,
- * Filing and utilization of documents which correct a statutory or rule violation;
- * Reasonable action necessary to correct a statutory or rule violation

Section 723.021 provides provisions governing obligations of good faith and fair dealing. The section declares every rental agreement or duty within this chapter imposes an obligation of good faith and fair dealings in its performance or enforcement.

Section 723.035, F.S., governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from imposing a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to section 723.012, F.S., if required, and until the park owner has complied with the notice requirements of section 723.037, F.S.

Further, the Division has adopted Rule 61B-32.004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases

Section 723.037, F.S., governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable, the rental increase has made the lot rental amount unreasonable, the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable, or the change in the rules or regulations is unreasonable.

Section 723.0381, F.S., addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement, the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, F.S., authorizes the home owners and the park owner to initiate mediation by a request to the Division.

Section 723.063, F.S., authorizes home owners to raise the defense of material noncompliance with Chapter 723, F.S., in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after seven days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with Chapter 723, F.S. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, F.S., governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to section 723.075, F.S., through section 723.079, F.S. Paragraph (b) gives the association the right of first refusal on the park; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association, however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate,
- (b) Any transfer by gift, devise or operation of law,
- (c) Any transfer by a corporation to an affiliate, "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation, or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation,

- (d) Any transfer by a partnership to one of its partners,
- (e) Any conveyance of interest in the park incidental to the financing of the park,
- (f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;
- (g) Any sale or transfer between or among joint tenants or tenants in common owning the park,
- (h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot, or
- (l) Any purchase of the park by a government entity exercising its eminent domain powers.

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. See section 2, chapter 96-394, Laws of Florida. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the DBPR. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the Act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants. The report reveals that during consideration by the members of the circumstances under which a prospectus should be amended, they discussed amendments to allow used mobile homes in a park, as long as they are no older than the average age of other mobile homes in the park. See Final Report of the Mobile Home Study Commission, Report B, page 15, and Appendix C, Minutes of the October 31, 1996 meeting.

B. EFFECT OF PROPOSED CHANGES

This bill revises the Florida Mobile Home Act, Chapter 723, F.S. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) are amended to

- * Prohibits the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.
- * Directs the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.

- * Authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. This provision is nearly identical to an existing agency rule.

The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel.

The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

The bill extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions. If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

APPLICATION OF PRINCIPLES:

1 Less Government

- a Does the bill create, increase or reduce, either directly or indirectly

- (1) any authority to make rules or adjudicate disputes?

The Division is required to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.

In addition, this bill will allow a homeowner's association to litigate and have the same defenses as an individual homeowner in an action for rent or possession of a mobile home lot. The bill requires disclosure of all material

factors resulting in a decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

- (3) any entitlement to a government service or benefit?

No

- b If an agency or program is eliminated or reduced

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes

- a. Does the bill increase anyone's taxes?

No.

- b Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d Does the bill reduce total fees, both rates and revenues?

No

e Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility

a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom

a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill makes changes in the Mobile Home Act. The inclusion of mobile home owners' associations as parties who may defend upon the ground of a material noncompliance with the provisions of Chapter 723, F.S., may provide home owners some assistance in seeking redress.

b Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment

a. If the bill purports to provide services to families or children

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. SECTION-BY-SECTION RESEARCH

Section 1. Subsection (5) of section 723.006, F S., 1996 Supplement, is amended, and present subsections (6), (7), and (8) are renumbered as subsections (8), (9), and (10), and new subsections (6) and (7) are added to the section.

Subsection (5) is amended to prohibit the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. The subsection is amended to provide that minor violations of the chapter will be limited to a fine of \$250

New subsection (6) is created to direct the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations. A major violation is defined to mean a violation of this chapter which endangers the public health, safety, and welfare or causes substantial economic harm to the mobile home park residents

Subsection (7) authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

Section 2. Section 723.021, F.S., relating to obligation of good faith and fair dealings, is amended to allow either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

Section 3. Section 723.037, F.S., relating to lot rental increases, reduction in services or utilities, change in rules and regulations, and mediation, is amended to create a new paragraph (b) regarding the disclosures required to be made by a park owner or subdivision developer to the home owners at meetings to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division's administrative rule, Rule 61B-32.004(1), F.A.C., with the exception of the last sentence. The last sentence requires the park owner to prepare a written summary of the material factors and retain a copy for 3 years. The park owner must provide the committee a copy of the summary, upon request.

Section 4. Section 723.0381, F.S., relating to civil actions, arbitration, is amended to allow, rather than require, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The section is further amended to require the court to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. Current language requiring referral to a panel of three arbitrators is deleted.

Section 5. Section 723.063, F.S., relating to defenses to action for rent or possession, and procedure, is amended to extend to a home owners' association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The bill also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase. The section is further amended to provide for such defense to be made pursuant to Rule 1.220, Florida Rules of Civil Procedure (relating to class actions).

Section 6. Subsection (2) of section 723.071, F.S., relating to sale of mobile home parks, is amended to revise the existing exemption from the right of first refusal granted to a home owners' association when the park owner receives a bona fide offer to purchase the park.

The subsection is amended to provide that the mobile home park is free to execute a contract for the sale of the park to a party or parties other than the homeowners or the association, if:

- * It is clear from the face of the bona fide offer that the homeowners or homeowner's association could not match the terms and conditions contained in the bona fide offer by making an offer containing the same terms and conditions

However, if the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

Section 7. An effective date of October 1, 1997, is provided

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT.

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

1. Non-recurring Effects

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects

None

2. Recurring Effects

None

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR.

1. Direct Private Sector Costs:

Unknown

2. Direct Private Sector Benefits:

Mobile home owners within parks could benefit from the changes in section 723.037, F.S , which foster better communication between the park owner and home owners prior to initiating an action based on rental increases, reduction of services or a change in the rules or regulations. Increased communication regarding these issues may reduce litigation, which would financially benefit both park owners and home owners

3. Effects on Competition, Private Enterprise and Employment Market:

Unknown

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION.

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V COMMENTS:

None

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

Comparison of CS/HB 1299 and CS/CS/HB 1299

The Committee on Community Affairs adopted two amendments that are incorporated into the CS/CS/HB 1299. The CS/CS/HB 1299 is substantially different from the CS/HB 1299

CS/CS/HB 1299 includes several provisions not included in CS/HB 1299. These include

- * Prohibiting the Division of Land Sales, Condominiums and Mobile Homes (Division) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.
- * Directing the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.
- * Authorizing the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.
- * Allowing either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

CS/HB 1299 defines the term "pass-on charge." This new definition is not included in CS//CS/HB

The provision in CS/CS/HB 1299 providing for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations is substantially similar to that in CS/HB 1299. The provision in CS/CS/HB is revised to more accurately reflect an existing agency rule. The provision in CS/HB 1299 providing that any reasons not disclosed at the meeting by the park owner are not admissible into evidence in any subsequent administrative procedure or civil action between the parties is not included in CS/CS/HB 1299

CS/HB 1299 deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners, and extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 also extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 does not delete this requirement. Rather, CS/CS/HB 1299 allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. CS/CS/HB 1299 also extends the

defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

CS/HB 1299 deletes exemptions to the home owners' right of first refusal, and extends the first right of refusal to apply to bona fide offers to purchase the park CS/CS/HB 1299 extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions. If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

Comparison of HB 1299 and CS/HB 1299

The Committee on Real Property & Probate adopted the following amendments that are incorporated into the CS/HB 1299.

- 1) Technical amendment, correcting a reference;
- 2) Removed the language that provided for payment of pass-on charges to the park owner in reimbursement of the charges paid by the park owner,
- 3) Removed a provision prohibiting rules or regulations that would not allow previously owned mobile homes from being permanently located in a mobile home park; and,
- 4) Removed the section of the bill amending section 723.083, F.S. This section currently requires governmental entities to determine that adequate mobile home parks or "other suitable facilities" exist for the relocation of the mobile home owners before approving any application for rezoning, or taking any other official action that would result in the removal or relocation of a mobile home park. The original bill would have removed "other suitable facilities" from this section.

VII. FINAL ACTION

The House took up CS/SB 750 in lieu of CS/CS/HB 1299. CS/SB 750 contains the following provisions:

*Section 723.021, Florida Statutes, is amended to provide that either party to a dispute may seek an order finding the other party has not complied with the obligations of good faith and fair dealings. The court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

*Section 723.037, Florida Statutes, is amended to require the park owner or subdivision developer to 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. The park owner or subdivision developer cannot limit the discussions on these issues to generalities. In addition, the park owner must prepare a written summary of the material factors and retain a copy for 3 years. A copy of the summary must be provided the committee at the meeting.

*Section 723 0381, Florida Statutes, is amended to make referral to arbitration within discretion of the court. Currently, arbitration is required. The court is directed to order arbitration hearings be held informally and that testimony be kept to a minimum

Section 723 006, Florida Statutes, is amended to require the division to adopt rules establishing a category of minor violations of this chapter or department rules

A minor violation means a violation which does not endanger the health, safety or welfare of mobile home residents, which does not involve the failure to make full and fair disclosure, or which does not cause economic harm to mobile home park residents

The division is authorized to require disclosures to fully and fairly disclose all matters required by ch. 723 If a park owner or operator, in good faith, has attempted to comply with the requirements of law, and has substantially complied with the disclosure requirements, any non-material errors or omissions in the disclosure materials is not actionable

Current enforcement procedures will continue until the division has adopted new rules Upon adoption of new rules establishing minor violations, and upon a determination that the violation is a minor violation, the division may levy a civil penalty of up to \$250. The division shall not require, for minor violations, a refund of rent increases, fees, charges or assessments, including pass-through and pass-ons collected from mobile home owners

VIII SIGNATURES

COMMITTEE ON REAL PROPERTY & PROBATE

Prepared by

Legislative Research Director:

P.K. Jameson

P.K. Jameson

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS

Prepared by

Legislative Research Director.

Thomas L. Hamby, Jr.

Jenny Underwood Dietzel

FINAL RESEARCH PREPARED BY COMMITTEE ON REAL PROPERTY & PROBATE

Prepared by

Legislative Research Director.

P K Jameson

P.K Jameson

Florida House of Representatives - 1997

By the Committees on Community Affairs, Real Property & Probate and Representatives Crow, Kelly, Spratt, Safley, Culp, Fasano, Sindler, Brown and Byrd

A bill to be entitled

An act relating to the Florida Mobile Home Act; amending s. 723.006, F.S.; revising language with respect to the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes; directing the division not to require refunds under certain circumstances; providing a fine for minor violations; providing for certain rules; authorizing the division to enter into certain consent orders; amending s. 723.021, F.S.; providing for reasonable costs and attorney's fees when the obligation of good faith and fair dealing is breached; amending s. 723.037, F.S.; revising language with respect to lot rental increases; amending s. 723.0381, F.S.; revising arbitration procedures; amending s. 723.063, F.S.; authorizing mobile home owners' associations to defend actions for rent or possession; amending s. 723.071, F.S.; revising language with respect to the sale of mobile home parks; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 723.006, Florida Statutes, 1996 Supplement, is amended, present subsections (6), (7), and (8) are renumbered as subsections (8), (9), and (10), respectively, and new subsections (6) and (7) are added to said section, to read:

1 723.006 Powers and duties of division.--In performing
2 its duties, the division has the following powers and duties:

3 (5) Notwithstanding any remedies available to mobile
4 home owners, mobile home park owners, and homeowners'
5 associations, if the division has reasonable cause to believe
6 that a violation of any provision of this chapter or any rule
7 promulgated pursuant hereto has occurred, the division may
8 institute enforcement proceedings in its own name against a
9 developer, mobile home park owner, or homeowners' association,
10 or its assignee or agent, as follows:

11 (a) The division may permit a person whose conduct or
12 actions may be under investigation to waive formal proceedings
13 and enter into a consent proceeding whereby orders, rules, or
14 letters of censure or warning, whether formal or informal, may
15 be entered against the person.

16 (b) The division may issue an order requiring the
17 mobile home park owner, or its assignee or agent, to cease and
18 desist from an unlawful practice and take such affirmative
19 action as in the judgment of the division will carry out the
20 purposes of this chapter. The affirmative action may include
21 the following:

22 1. Refunds of rent increases, improper fees, charges
23 and assessments, including pass-throughs and pass-ons
24 collected in violation of the terms of this chapter.

25 2. Filing and utilization of documents which correct a
26 statutory or rule violation.

27 3. Reasonable action necessary to correct a statutory
28 or rule violation.

29 (c) The division shall not require a refund of rent
30 increases, improper fees, charges and assessments, including
31 pass-throughs and pass-ons, unless there is evidence of a

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1 major violation. Minor violations of the chapter shall be
2 limited to a fine of \$250.

3 (d)(c) In determining the amount of civil penalty or
4 affirmative action to be imposed under this section, if any,
5 the division must consider the following factors:

- 6 1. The gravity of the violation.
- 7 2. Whether the person has substantially complied with
- 8 the provisions of this chapter.
- 9 3. Any action taken by the person to correct or
- 10 mitigate the violation of this chapter.

11 (e)(d) The division may bring an action in circuit
12 court on behalf of a class of mobile home owners, mobile home
13 park owners, lessees, or purchasers for declaratory relief,
14 injunctive relief, or restitution.

15 (f)(e)1. The division may impose a civil penalty
16 against a mobile home park owner or homeowners' association,
17 or its assignee or agent, for any violation of this chapter, a
18 properly promulgated park rule or regulation, or a rule or
19 regulation promulgated pursuant hereto. A penalty may be
20 imposed on the basis of each separate violation and, if the
21 violation is a continuing one, for each day of continuing
22 violation, but in no event may the penalty for each separate
23 violation or for each day of continuing violation exceed
24 \$5,000. All amounts collected shall be deposited with the
25 Treasurer to the credit of the Division of Florida Land Sales,
26 Condominiums, and Mobile Homes Trust Fund.

27 2. If a violator fails to pay the civil penalty, the
28 division shall thereupon issue an order directing that such
29 violator cease and desist from further violation until such
30 time as the civil penalty is paid or may pursue enforcement of
31 the penalty in a court of competent jurisdiction. If a

1 homeowners' association fails to pay the civil penalty, the
2 division shall thereupon pursue enforcement in a court of
3 competent jurisdiction, and the order imposing the civil
4 penalty or the cease and desist order shall not become
5 effective until 20 days after the date of such order. Any
6 action commenced by the division shall be brought in the
7 county in which the division has its executive offices or in
8 which the violation occurred.

9 (6) The division shall adopt rules for the
10 implementation of all civil penalties or administrative
11 actions, including, but not limited to, establishing major and
12 minor violations. A major violation means a violation of this
13 chapter which endangers the public health, safety, and welfare
14 or causes substantial economic harm to the mobile home park
15 residents.

16 (7) The division is authorized to enter into consent
17 orders in which the violator does not admit nor deny the
18 factual matters or the conclusions of law reached by the
19 division, solely for the purpose of entering into the consent
20 order, which consent order shall not be admitted into a court
21 of law for the purpose of proving any fact or violation of law
22 set forth therein.

23 Section 2. Section 723.021, Florida Statutes, is
24 amended to read:

25 723.021 Obligation of good faith and fair
26 dealings.--Every rental agreement or duty within this chapter
27 imposes an obligation of good faith and fair dealings in its
28 performance or enforcement. Either party to a dispute under
29 this chapter may seek an order finding the other party has not
30 complied with the obligations of good faith and fair dealings.
31 Upon such a finding, the court shall award reasonable costs

1 ~~and attorney's fees to the prevailing party for proving the~~
2 ~~noncompliance.~~

3 Section 3. Subsection (4) of section 723.037, Florida
4 Statutes, is amended to read:

5 723.037 Lot rental increases; reduction in services or
6 utilities; change in rules and regulations; mediation.--

7 (4)(a) A committee, not to exceed five in number,
8 designated by a majority of the affected mobile home owners or
9 by the board of directors of the homeowners' association, if
10 applicable, and the park owner shall meet, at a mutually
11 convenient time and place within 30 days after receipt by the
12 homeowners of the notice of change, to discuss the reasons for
13 the increase in lot rental amount, reduction in services or
14 utilities, or change in rules and regulations.

15 (b) At the meeting, the park owner or subdivision
16 developer shall in good faith disclose and explain all
17 material factors resulting in the decision to increase the lot
18 rental amount, reduce services or utilities, or change rules
19 and regulations, including how these factors justify the
20 specific change proposed. The park owner or subdivision
21 developer may not limit the discussion of the reasons for the
22 change to generalities only, such as, but not limited to,
23 increases in operational costs, changes in economic
24 conditions, or rents charged by comparable mobile home parks.
25 For example, if the reason for an increase in lot rental
26 amount is an increase in operational costs, the park owner
27 must disclose the item or items which have increased, the
28 amount of the increase, any similar item or items which have
29 decreased, and the amount of the decrease. If an increase is
30 based upon the lot rental amount charged by comparable mobile
31 home parks, the park owner shall disclose the name, address,

1 lot rental amount, and any other relevant factors concerning
2 the mobile home parks relied upon by the park owner. The park
3 owner shall prepare a written summary of the material factors
4 and retain a copy for 3 years. Upon request, the park owner
5 shall provide the committee a copy of the summary.

6 Section 4. Subsection (2) of section 723.0381, Florida
7 Statutes, is amended to read:

8 723.0381 Civil actions; arbitration.--

9 (2) The court ~~may~~ shall refer the action to a panel of
10 three arbitrators for court-annexed nonbinding arbitration
11 pursuant to s. 44.103 and the Florida Rules of Civil
12 Procedure; ~~except that compensation for the arbitrators shall~~
13 ~~be in accordance with the authorized rate for circuit court~~
14 ~~mediators in that judicial circuit. The court shall order the~~
15 ~~hearing to be held informally with presentation of testimony~~
16 ~~kept to a minimum and matters presented to the arbitrators~~
17 ~~primarily through the statements and arguments of counsel.~~ The
18 court shall assess the parties equally to pay the compensation
19 awarded to the arbitrators if neither party requests a trial
20 de novo. If a party has filed for a trial de novo, the party
21 shall be assessed the arbitration costs, court costs, and
22 other reasonable costs of the opposing party, including
23 attorney's fees, investigation expenses, and expenses for
24 expert or other testimony or evidence incurred after the
25 arbitration hearing if the judgment upon the trial de novo is
26 not more favorable than the arbitration decision. If
27 subsequent to arbitration a party files for a trial de novo,
28 the arbitration decision may be made known to the judge only
29 after he has entered his order on the merits.

30 Section 5. Section 723.063, Florida Statutes, is
31 amended to read:

723.063 Defenses to action for rent or possession;
2 procedure.--

3 (1) In any action based upon nonpayment of rent or
4 seeking to recover unpaid rent, or a portion thereof, or a
5 rent increase, the mobile home owner or mobile home owners'
6 association pursuant to Rule 1.220, Florida Rules of Civil
7 Procedure, may defend upon the ground of a material
8 noncompliance with any portion of this chapter or may raise
9 any other defense, whether legal or equitable, which he may
10 have. The defense of material noncompliance may be raised by
11 the mobile home owner or mobile home owners' association only
12 if 7 days have elapsed after he has notified the park owner in
13 writing of his intention not to pay rent, or a portion
14 thereof, based upon the park owner's noncompliance with
15 portions of this chapter, specifying in reasonable detail the
16 provisions in default. A material noncompliance with this
17 chapter by the park owner is a complete defense to an action
18 for possession based upon nonpayment of rent, or a portion
19 thereof, and, upon hearing, the court or the jury, as the case
20 may be, shall determine the amount, if any, by which the rent
21 is to be reduced to reflect the diminution in value of the lot
22 during the period of noncompliance with any portion of this
23 chapter. After consideration of all other relevant issues,
24 the court shall enter appropriate judgment.

25 (2) In any action by the park owner or a mobile home
26 owner or mobile home owners' association brought under
27 subsection (1), the mobile home owner or mobile home owners'
28 association shall pay into the registry of the court that
29 portion of the accrued rent, if any, relating to the claim of
30 material noncompliance as alleged in the complaint, or as
31 determined by the court. The court shall notify the mobile

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1 home owner or mobile home owners' association of such
2 requirement. The failure of the mobile home owner or mobile
3 home owners' association to pay the rent, or portion thereof,
4 into the registry of the court as required herein constitutes
5 an absolute waiver of the mobile home owner's or mobile home
6 owners' association's defenses other than payment, and the
7 park owner is entitled to an immediate default.

8 (3) When the mobile home owner or mobile home owners'
9 association has deposited funds into the registry of the court
10 in accordance with the provisions of this section and the park
11 owner is in actual danger of loss of the premises or other
12 personal hardship resulting from the loss of rental income
13 from the premises, the park owner may apply to the court for
14 disbursement of all or part of the funds or for prompt final
15 hearing, whereupon the court shall advance the cause on the
16 calendar. The court, after preliminary hearing, may award all
17 or any portion of the funds on deposit to the park owner or
18 may proceed immediately to a final resolution of the cause.

19 Section 6. Subsection (2) of section 723.071, Florida
20 Statutes, is amended to read:

21 723.071 Sale of mobile home parks.--

22 (2) If a mobile home park owner receives a bona fide
23 offer to purchase the park that he intends to consider or make
24 a counteroffer to, his only obligation shall be to notify the
25 officers of the homeowners' association that he has received
26 an offer and disclose the price and material terms and
27 conditions upon which he would consider selling the park and
28 consider any offer made by the homeowners, provided the
29 homeowners have complied with ss. 723.075-723.079. The park
30 owner shall be under no obligation to sell to the homeowners
31 or to interrupt or delay other negotiations, and he shall be

1 free at any time to execute a contract for the sale of the
2 park to a party or parties other than the homeowners or the
3 association, if it is clear from the face of the bona fide
4 offer that the homeowners or homeowners' association could not
5 match the terms and conditions contained in the bona fide
6 offer by making an offer containing the same terms and
7 conditions. If, however, the bona fide offer contains terms
8 and conditions that the homeowners could match, the mobile
9 home park owner shall negotiate in good faith with the
10 homeowners or the association for the sale of the park. The
11 same terms and conditions means that the consideration is the
12 same and that the seller of the property or properties will be
13 eligible for deferral of all federal and state income taxes to
14 the same extent as if the unsolicited offer were accepted, and
15 that the seller's business and personal estate planning
16 objectives can be met by a sale to the homeowners or the
17 homeowners' association.

18 Section 7. This act shall take effect October 1, 1997.
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By the Committee on Real Property & Probate and
Representatives Crow, Kelly, Spratt, Safley, Culp, Fasano,
Sindler, Brown and Byrd

A bill to be entitled

An act relating to the Florida Mobile Home Act;
amending s. 723.003, F.S.; defining the term
"pass-on charge"; amending s. 723.037, F.S.;
revising language with respect to lot rental
increases; amending s. 723.0381, F.S.; deleting
reference to arbitration; amending s. 723.063,
F.S.; authorizing mobile home owners'
associations to defend actions for rent or
possession; amending s. 723.071, F.S.; revising
language with respect to the sale of mobile
home parks; amending s. 723.031, F.S.;
correcting a cross reference, to conform;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (10) through (14) of section
723.003, Florida Statutes, are renumbered as subsections (11)
through (15), respectively, and a new subsection (10) is added
to said section to read:

723.003 Definitions.--As used in this chapter, the
following words and terms have the following meanings unless
clearly indicated otherwise:

(10) The term "pass-on charge" means a charge for ad
valorem property taxes and utility charges, or increases of
either, to be paid by a mobile home owner provided that the ad
valorem property taxes and utility charges are not otherwise
being collected in the remainder of the lot rental amount and
provided further that the pass on of such ad valorem taxes or
utility charges, or increases of either, was disclosed prior

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1 to tenancy, was being passed on as a matter of custom between
2 the mobile home park owner and the mobile home owner, or such
3 passing on was authorized by law.

4 Section 2. Subsection (4) of section 723.037, Florida
5 Statutes, is amended to read:

6 723.037 Let rental increases; reduction in services or
7 utilities; change in rules and regulations; mediation.--

8 (4)(a) A committee, not to exceed five in number,
9 designated by a majority of the affected mobile home owners or
10 by the board of directors of the homeowners' association, if
11 applicable, and the park owner shall meet, at a mutually
12 convenient time and place within 30 days after receipt by the
13 homeowners of the notice of change, to discuss the reasons for
14 the increase in lot rental amount, reduction in services or
15 utilities, or change in rules and regulations.

16 (b) At the meeting, the park owner shall in good faith
17 disclose and explain all material factors resulting in the
18 decision to increase the lot rental amount, reduce services or
19 utilities, or change rules and regulations, including those
20 factors used to justify the specific change proposed. The park
21 owner may not limit the discussion of the reasons for the
22 changes to generalities only, such as, but not limited to,
23 increases in operational costs, changes in economic
24 conditions, or rents charged by comparable mobile home parks.
25 A written summary of all material factors disclosed by the
26 park owner shall be delivered to the homeowners at the
27 meeting. Any such reasons not disclosed at the meeting by the
28 park owner shall not be admissible into evidence in any
29 subsequent administrative procedure or civil action between
30 the parties.

31

1 Section 3. Section 723.0381, Florida Statutes, is
2 amended to read:

3 723.0381 Civil actions;-arbitration.--

4 (1) After mediation of a dispute pursuant to s.
5 723.038 has failed to provide a resolution of the dispute,
6 either party may file an action in the circuit court.

7 (2)--~~The court shall refer the action to a panel of~~
8 ~~three arbitrators for court-annexed nonbinding arbitration~~
9 ~~pursuant to s. 44.103 and the Florida Rules of Civil~~
10 ~~Procedure; except that compensation for the arbitrators shall~~
11 ~~be in accordance with the authorized rate for circuit court~~
12 ~~mediators in that judicial circuit.-- The court shall assess~~
13 ~~the parties equally to pay the compensation awarded to the~~
14 ~~arbitrators if neither party requests a trial de novo.-- If a~~
15 ~~party has filed for a trial de novo, the party shall be~~
16 ~~assessed the arbitration costs, court costs, and other~~
17 ~~reasonable costs of the opposing party, including attorney's~~
18 ~~fees, investigation expenses, and expenses for expert or other~~
19 ~~testimony or evidence incurred after the arbitration hearing~~
20 ~~if the judgment upon the trial de novo is not more favorable~~
21 ~~than the arbitration decision.-- If subsequent to arbitration a~~
22 ~~party files for a trial de novo, the arbitration decision may~~
23 ~~be made known to the judge only after he has entered his order~~
24 ~~on the merits.~~

25 Section 4. Section 723.063, Florida Statutes, is
26 amended to read:

27 723.063 Defenses to action for rent or possession;
28 procedure.--

29 (1) In any action based upon nonpayment of rent or
30 seeking to recover unpaid rent, or a portion thereof, or a
31 rent increase, the mobile home owner or mobile home owners'

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1. between the park owner and the association is not executed
 2. within such 45-day period, then, unless the park owner
 3. thereafter elects to offer the park at a price lower than the
 4. price specified in his notice to the officers of the
 5. homeowners' association, he has no further obligations under
 6. this subsection, and his only obligation shall be as set forth
 7. in subsection (2).

8. (a) If the bona fide offer of purchase includes other
 9. property or more than one mobile home park, the mobile home
 10. owners shall have the right to purchase the park in which they
 11. reside for the price and terms and conditions as they exist
 12. for said park separately and apart from the other properties. The
 13. park owner shall notify the homeowners' association as
 14. required in paragraph (a) and shall separately state the
 15. price, terms, and conditions of each park which is a part of
 16. an offer consisting of more than one park.

17. (2)(c) If the park owner thereafter elects to offer
 18. the park at a price lower than the price specified in his
 19. notice to the home owners, the home owners, by and through the
 20. association, will have an additional 10 days to meet the price
 21. and terms and conditions of the park owner by executing a
 22. contract.

23. ~~(2) -- If a mobile home park owner receives a bona fide~~
 24. ~~offer to purchase the park that he intends to consider or make~~
 25. ~~a counteroffer to, his only obligation shall be to notify the~~
 26. ~~officers of the homeowners' association that he has received~~
 27. ~~an offer and disclose the price and material terms and~~
 28. ~~conditions upon which he would consider selling the park and~~
 29. ~~consider any offer made by the home owners, provided the home~~
 30. ~~owners have complied with ss. 723.075-723.079. The park owner~~
 31. ~~shall be under no obligation to sell to the home owners or to~~

~~interrupt or delay other negotiations; and he shall be free at~~
2 ~~any time to execute a contract for the sale of the park to a~~
3 ~~party or parties other than the home owners or the~~
4 ~~association:~~

5 (3)(a) As used in subsection (1) ~~subsections (1) and~~
6 ~~(2)~~, the term "notify" means the placing of a notice in the
7 United States mail addressed to the officers of the
8 homeowners' association. Each such notice shall be deemed to
9 have been given upon the deposit of the notice in the United
10 States mail.

11 (b) As used in subsections ~~subsection~~ (1) and (2), the
12 term "offer" means any solicitation by the park owner to the
13 general public.

14 (4) This section does not apply to:

15 (a) Any sale or transfer to a person who would be
16 included within the table of descent and distribution if the
17 park owner were to die intestate.

18 (b) Any transfer by gift, devise, or operation of law.

19 (c) Any transfer by a corporation to an affiliate. As
20 used herein, the term "affiliate" means any shareholder of the
21 transferring corporation; any corporation or entity owned or
22 controlled, directly or indirectly, by the transferring
23 corporation; or any other corporation or entity owned or
24 controlled, directly or indirectly, by any shareholder of the
25 transferring corporation.

26 (d) Any transfer by a partnership to any of its
27 partners.

28 (e) Any conveyance of an interest in a mobile home
park incidental to the financing of such mobile home park.

(f) Any conveyance resulting from the foreclosure of a
31 mortgage, deed of trust, or other instrument encumbering a

1 mobile home park or any deed given in lieu of such
2 foreclosure.

3 (g) Any sale or transfer between or among joint
4 tenants or tenants in common owning a mobile home park.

5 (h) Any exchange of a mobile home park for other real
6 property, whether or not such exchange also involves the
7 payment of cash or other boot.

8 (i) The purchase of a mobile home park by a
9 governmental entity under its powers of eminent domain.

10 Section 6. Paragraph (b) of subsection (5) of section
11 723.031, Florida Statutes, is amended to read:

12 723.031 Mobile home lot rental agreements.--

13 (5) The rental agreement shall contain the lot rental
14 amount and services included. An increase in lot rental
15 amount upon expiration of the term of the lot rental agreement
16 shall be in accordance with ss. 723.033 and 723.037 or s.
17 723.059(4), whichever is applicable, provided that, pursuant
18 to s. 723.059(4), the amount of the lot rental increase is
19 disclosed and agreed to by the purchaser, in writing. An
20 increase in lot rental amount shall not be arbitrary or
21 discriminatory between similarly situated tenants in the park.
22 No lot rental amount may be increased during the term of the
23 lot rental agreement, except:

24 (b) For pass-through charges as defined in s.
25 723.003~~(1)~~(4).

26 Section 7. This act shall take effect October 1, 1997.

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Florida House of Representatives - 1997

By Representatives Crow, Kelly, Spratt, Safley, Culp,
Fasano, Sindler and Brown

1 A bill to be entitled

2 An act relating to the Florida Mobile Home Act;
3 amending s. 723.003, F.S.; defining the term
4 "pass-on charge"; amending s. 723.035, F.S.;
5 prohibiting certain rules or regulations;
6 amending s. 723.037, F.S.; revising language
7 with respect to lot rental increases; amending
8 s. 723.0381, F.S.; deleting reference to
9 arbitration; amending s. 723.063, F.S.;
10 authorizing mobile home owners' associations to
11 defend actions for rent or possession; amending
12 s. 723.071, F.S.; revising language with
13 respect to the sale of mobile home parks;
14 amending s. 723.083, F.S.; revising language
15 with respect to governmental actions affecting
16 the removal of mobile home owners; amending s.
17 723.031, F.S.; correcting a cross reference, to
18 conform; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (10) through (14) of section
23 723.003, Florida Statutes, are renumbered as subsections (11)
24 through (15), respectively, and a new subsection (10) is added
25 to said section to read:

26 723.003 Definitions.--As used in this chapter, the
27 following words and terms have the following meanings unless
28 clearly indicated otherwise:

29 (10) The term "pass-on charge" means a charge for ad
30 valorem property taxes and utility charges, or increases of
31 either, to be paid by a mobile home owner to the park owner in

1 reimbursement of such charges paid by the park owner, provided
2 that the ad valorem property taxes and utility charges are not
3 otherwise being collected in the remainder of the lot rental
4 amount and provided further that the pass on of such ad
5 valorem taxes or utility charges, or increases of either, was
6 disclosed prior to tenancy, was being passed on as a matter of
7 custom between the mobile home park owner and the mobile home
8 owner, or such passing on was authorized by law.

9 Section 2. Subsection (3) is added to section 723.035,
10 Florida Statutes, to read:

11 723.035 Rules and regulations.--

12 (3) No rule or regulation shall prohibit a previously
13 owned mobile home from being permanently located in a mobile
14 home park, provided that such home shall be of comparable age
15 and comparable condition to homes already existing in the
16 park.

17 Section 3. Subsection (4) of section 723.037, Florida
18 Statutes, is amended to read:

19 723.037 Lot rental increases; reduction in services or
20 utilities; change in rules and regulations; mediation.--

21 (4)(a) A committee, not to exceed five in number,
22 designated by a majority of the affected mobile home owners or
23 by the board of directors of the homeowners' association, if
24 applicable, and the park owner shall meet, at a mutually
25 convenient time and place within 30 days after receipt by the
26 homeowners of the notice of change, to discuss the reasons for
27 the increase in lot rental amount, reduction in services or
28 utilities, or change in rules and regulations.

29 (b) At the meeting, the park owner shall in good faith
30 disclose and explain all material factors resulting in the
31 decision to increase the lot rental amount, reduce services or

1 utilities, or change rules and regulations, including those
2 factors used to justify the specific change proposed. The park
3 owner may not limit the discussion of the reasons for the
4 changes to generalities only, such as, but not limited to,
5 increases in operational costs, changes in economic
6 conditions, or rents charged by comparable mobile home parks.
7 A written summary of all material factors disclosed by the
8 park owner shall be delivered to the homeowners at the
9 meeting. Any such reasons not disclosed at the meeting by the
10 park owner shall not be admissible into evidence in any
11 subsequent administrative procedure or civil action between
12 the parties.

13 Section 4 Section 723.0381, Florida Statutes, is
14 amended to read:

15 723.0381 Civil actions;-arbitration.--

16 (1) After mediation of a dispute pursuant to s.
17 723.038 has failed to provide a resolution of the dispute,
18 either party may file an action in the circuit court.

19 (2)--~~The court shall refer the action to a panel of~~
20 ~~three arbitrators for court-annexed nonbinding arbitration~~
21 ~~pursuant to s. 44:103 and the Florida Rules of Civil~~
22 ~~Procedure; except that compensation for the arbitrators shall~~
23 ~~be in accordance with the authorized rate for circuit court~~
24 ~~mediators in that judicial circuit;--The court shall assess~~
25 ~~the parties equally to pay the compensation awarded to the~~
26 ~~arbitrators if neither party requests a trial de novo;--If a~~
27 ~~party has filed for a trial de novo; the party shall be~~
28 ~~assessed the arbitration costs; court costs; and other~~
29 ~~reasonable costs of the opposing party; including attorney's~~
30 ~~fees; investigation expenses; and expenses for expert or other~~
31 ~~testimony or evidence incurred after the arbitration hearing~~

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1 ~~if the judgment upon the trial de novo is not more favorable~~
2 ~~than the arbitration decision--if subsequent to arbitration a~~
3 ~~party files for a trial de novo, the arbitration decision may~~
4 ~~be made known to the judge only after he has entered his order~~
5 ~~on the merits:~~

6 Section 5. Section 723.063, Florida Statutes, is
7 amended to read:

8 723.063 Defenses to action for rent or possession;
9 procedure.--

10 (1) In any action based upon nonpayment of rent or
11 seeking to recover unpaid rent, or a portion thereof, or a
12 rent increase, the mobile home owner or mobile home owners'
13 association may defend upon the ground of a material
14 noncompliance with any portion of this chapter or may raise
15 any other defense, whether legal or equitable, which he may
16 have. The defense of material noncompliance may be raised by
17 the mobile home owner or mobile home owners' association only
18 if 7 days have elapsed after he has notified the park owner in
19 writing of his intention not to pay rent, or a portion
20 thereof, based upon the park owner's noncompliance with
21 portions of this chapter, specifying in reasonable detail the
22 provisions in default. A material noncompliance with this
23 chapter by the park owner is a complete defense to an action
24 for possession based upon nonpayment of rent, or a portion
25 thereof, and, upon hearing, the court or the jury, as the case
26 may be, shall determine the amount, if any, by which the rent
27 is to be reduced to reflect the diminution in value of the lot
28 during the period of noncompliance with any portion of this
29 chapter. After consideration of all other relevant issues,
30 the court shall enter appropriate judgment.

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1 (2) In any action by the park owner or a mobile home
2 owner or mobile home owners' association brought under
3 subsection (1), the mobile home owner or mobile home owners'
4 association shall pay into the registry of the court that
5 portion of the accrued rent, if any, relating to the claim of
6 material noncompliance as alleged in the complaint, or as
7 determined by the court. The court shall notify the mobile
8 home owner or mobile home owners' association of such
9 requirement. The failure of the mobile home owner or mobile
10 home owners' association to pay the rent, or portion thereof,
11 into the registry of the court as required herein constitutes
12 an absolute waiver of the mobile home owner's or mobile home
13 owners' association's defenses other than payment, and the
14 park owner is entitled to an immediate default.

15 (3) When the mobile home owner or mobile home owners'
16 association has deposited funds into the registry of the court
17 in accordance with the provisions of this section and the park
18 owner is in actual danger of loss of the premises or other
19 personal hardship resulting from the loss of rental income
20 from the premises, the park owner may apply to the court for
21 disbursement of all or part of the funds or for prompt final
22 hearing, whereupon the court shall advance the cause on the
23 calendar. The court, after preliminary hearing, may award all
24 or any portion of the funds on deposit to the park owner or
25 may proceed immediately to a final resolution of the cause.

26 Section 6 Section 723.071, Florida Statutes, is
27 amended to read:

28 723.071 Sale of mobile home parks --

29 (1)(a) If a mobile home park owner offers a mobile
30 home park for sale or receives a bona fide offer to purchase
31 the park that he or she intends to consider or make a counter

1 offer to, he shall notify the officers of the homeowners'
2 association created pursuant to ss. 723.075-723.079 of his
3 offer or the bona fide offer of purchase, stating the price
4 and the terms and conditions of sale.

5 (b) The mobile home owners, by and through the
6 association defined in s. 723.075, shall have the right to
7 purchase the park, provided the home owners meet the price and
8 terms and conditions of the bona fide offer of purchase or the
9 offer by the mobile home park owner by executing a contract
10 with the park owner within 45 days, unless agreed to
11 otherwise, from the date of mailing of the notice and provided
12 they have complied with ss. 723.075-723.079. If a contract
13 between the park owner and the association is not executed
14 within such 45-day period, then, unless the park owner
15 thereafter elects to offer the park at a price lower than the
16 price specified in his notice to the officers of the
17 homeowners' association, he has no further obligations under
18 this subsection, and his only obligation shall be as set forth
19 in subsection (2).

20 (c) If the bona fide offer of purchase includes other
21 property or more than one mobile home park, the mobile home
22 owners shall have the right to purchase the park in which they
23 reside for the price and terms and conditions as they relate
24 to said park separate and apart from the other properties. The
25 park owner shall notify the homeowners' association as
26 required in paragraph (a), and shall separately state the
27 price, terms, and conditions of each park which is a part of
28 an offer consisting of more than one park.

29 (2)(c) If the park owner thereafter elects to offer
30 the park at a price lower than the price specified in his
31 notice to the home owners, the home owners, by and through the

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1 association, will have an additional 10 days to meet the price
2 and terms and conditions of the park owner by executing a
3 contract.

4 ~~{2}--If-a-mobile-home-park-owner-receives-a-bona-fide~~
5 ~~offer-to-purchase-the-park-that-he-intends-to-consider-or-make~~
6 ~~a-counteroffer-to,-his-only-obligation-shall-be-to-notify-the~~
7 ~~officers-of-the-homeowners'-association-that-he-has-received~~
8 ~~an-offer-and-disclose-the-price-and-material-terms-and~~
9 ~~conditions-upon-which-he-would-consider-selling-the-park-and~~
10 ~~consider-any-offer-made-by-the-home-owners;-provided-the-home~~
11 ~~owners-have-complied-with-ss--723-075-723-079.-The-park-owner~~
12 ~~shall-be-under-no-obligation-to-sell-to-the-home-owners-or-to~~
13 ~~interrupt-or-delay-other-negotiations;-and-he-shall-be-free-at~~
14 ~~any-time-to-execute-a-contract-for-the-sale-of-the-park-to-a~~
15 ~~party-or-parties-other-than-the-home-owners-or-the~~
16 ~~association:~~

17 (3)(a) As used in subsections (1) and (2), the term
18 "notify" means the placing of a notice in the United States
19 mail addressed to the officers of the homeowners' association.
20 Each such notice shall be deemed to have been given upon the
21 deposit of the notice in the United States mail.

22 (b) As used in subsections subsection (1) and (2), the
23 term "offer" means any solicitation by the park owner to the
24 general public.

25 (4) This section does not apply to:

26 (a) Any sale or transfer to a person who would be
27 included within the table of descent and distribution if the
28 park owner were to die intestate.

29 (b) Any transfer by gift, devise, or operation of law.

30 (c) Any transfer by a corporation to an affiliate. As
31 used herein, the term "affiliate" means any-shareholder-of-the

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1 ~~transferring corporation; any corporation or entity owned or~~
2 ~~controlled, directly or indirectly, by the transferring~~
3 ~~corporation; or any other corporation or entity owned or~~
4 ~~controlled; directly or indirectly; by any shareholder of the~~
5 ~~transferring corporation.~~

6 (d) Any transfer by a partnership to any of its
7 partners.

8 (e) Any conveyance of an interest in a mobile home
9 park incidental to the financing of such mobile home park.

10 (f) Any conveyance resulting from the foreclosure of a
11 mortgage, deed of trust, or other instrument encumbering a
12 mobile home park or any deed given in lieu of such
13 foreclosure

14 (g) Any sale or transfer between or among joint
15 tenants or tenants in common owning a mobile home park.

16 (h) Any exchange of a mobile home park for other real
17 property, whether or not such exchange also involves the
18 payment of cash or other boot.

19 (i) The purchase of a mobile home park by a
20 governmental entity under its powers of eminent domain.

21 Section 7. Section 723.083, Florida Statutes, is
22 amended to read:

23 723.083 Governmental action affecting removal of
24 mobile home owners.--No agency of municipal, local, county, or
25 state government shall approve any application for rezoning,
26 or take any other official action, which would result in the
27 removal or relocation of mobile home owners residing in a
28 mobile home park without first determining that adequate
29 mobile home parks or ~~ether~~ suitable facilities exist for the
30 relocation of the mobile home owners.
31

1 Section 8. Paragraph (b) of subsection (5) of section
2 723.031, Florida Statutes, is amended to read:

3 723.031 Mobile home lot rental agreements.--

4 (5) The rental agreement shall contain the lot rental
5 amount and services included. An increase in lot rental
6 amount upon expiration of the term of the lot rental agreement
7 shall be in accordance with ss. 723.033 and 723.037 or s.
8 723.059(4), whichever is applicable, provided that, pursuant
9 to s. 723.059(4), the amount of the lot rental increase is
10 disclosed and agreed to by the purchaser, in writing. An
11 increase in lot rental amount shall not be arbitrary or
12 discriminatory between similarly situated tenants in the park.
13 No lot rental amount may be increased during the term of the
14 lot rental agreement, except:

5 (b) For pass-through charges as defined in s.
16 723.003(11)(46).

17 Section 9. This act shall take effect October 1, 1997.

18 *****

19
20 HOUSE SUMMARY

21 Revises the provisions of the Florida Mobile Home Act to:

- 22 1. Define the term "pass-on charge."
- 23 2. Provide that no park rule or regulation shall
- 24 prohibit a previously owned mobile home from being
- 25 permanently located in a mobile home park, provided that
- 26 such home is of comparable age and condition to homes
- 27 already existing in the park.
- 28 3. Revise language with respect to lot rental
- 29 increases.
- 30 4. Authorize mobile home owners' associations to
- 31 defend actions for rent or possession under described
- circumstances.
- 5. Revise language with respect to the sale of
- mobile home parks.
- 6. Delete reference to arbitration.

See bill for details.

By Senators Latvala, Brown-Waite, Kurth, Dudley, Grant, Crist, Lee, Cowin, Sullivan, Dyer, McKay, Myers, Campbell, Dantzler and Burt

19-384-97

1 A bill to be entitled

2 An act relating to mobile homes; amending s.
3 723.003, F.S.; defining the term "pass-on
4 charge"; amending s. 723.035, F.S.; prohibiting
5 certain mobile home park rules and regulations;
6 amending s. 723.037, F.S.; requiring a mobile
7 home park owner to disclose material factors
8 that justify a change in rentals, services,
9 utilities, or rules; amending s. 723.0381,
10 F.S.; deleting court-ordered arbitration;
11 amending s. 723.063, F.S.; providing for the
12 participation of mobile home owners'
13 associations in certain legal actions; amending
14 s. 723.071, F.S.; providing conditions for the
15 sale of mobile home parks to mobile home
16 owners; revising the definition of the term
17 "affiliate"; amending s. 723.083, F.S.;
18 removing other suitable facilities from
19 governmental action affecting removal or
20 relocation of mobile home owners; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Present subsections (10), (11), (12), (13),
26 and (14) of section 723.003, Florida Statutes, are
27 redesignated as subsections (11), (12), (13), (14), and (15),
28 respectively, and a new subsection (10) is added to that
29 section to read:

1 723.003 Definitions.--As used in this chapter, the
2 following words and terms have the following meanings unless
3 clearly indicated otherwise:

4 (10) The term "pass-on charge" means a charge for ad
5 valorem property taxes and utility charges, or increases of
6 either, to be paid by a mobile home owner to the park owner in
7 reimbursement of the charges paid by the park owner, if the ad
8 valorem property taxes and the utility charges are not
9 otherwise being collected in the remainder of the lot rental
10 amount and the pass-on of the ad valorem taxes or utility
11 charges, or increases of either, was disclosed prior to
12 tenancy, was being passed on as a matter of custom between the
13 mobile home park owner and the mobile home owner, or the
14 pass-on was authorized by law.

15 Section 2. Section 723.035, Florida Statutes, is
16 amended to read:

17 723.035 Rules and regulations.--

18 (1) A copy of all rules and regulations shall be
19 posted in the recreation hall, if any, or in some other
20 conspicuous place in the park.

21 (2) A rule or regulation may not prohibit a previously
22 owned mobile home from being permanently located in a mobile
23 home park if the home is of comparable age and comparable
24 condition to homes already existing in the park.

25 ~~(3)~~ (2) A No rule or regulation may not shall provide
26 for payment of any fee, fine, assessment, or charge, except as
27 otherwise provided in the prospectus or offering circular
28 filed under s. 723.012, if one is required to be provided, and
29 until after the park owner has complied with the procedure set
30 forth in s. 723.037.

31

1 Section 3. Subsection (4) of section 723.037, Florida
2 Statutes, is amended to read:

3 723.037 Lot rental increases; reduction in services or
4 utilities; change in rules and regulations; mediation.--

5 (4)(a) A committee, not to exceed five in number,
6 designated by a majority of the affected mobile home owners or
7 by the board of directors of the homeowners' association, if
8 applicable, and the park owner shall meet, at a mutually
9 convenient time and place within 30 days after receipt by the
10 homeowners of the notice of change, to discuss the reasons for
11 the increase in lot rental amount, reduction in services or
12 utilities, or change in rules and regulations.

13 (b) At the meeting, the park owner shall in good faith
14 disclose and explain all material factors resulting in the
15 decision to increase the lot rental amount, reduce services or
16 utilities, or change rules and regulations, including how
17 those factors justify the specific change proposed. The park
18 owner may not limit the discussion of the reasons for the
19 change to generalities only, such as, but not limited to,
20 increases in operational costs, changes in economic
21 conditions, or rents charged by comparable mobile home parks.
22 A written summary of all material factors disclosed by the
23 park owner shall be delivered to the homeowners at the
24 meeting. Any reasons not disclosed at the meeting by the park
25 owner are not admissible into evidence in any subsequent
26 administrative procedure or civil action between the parties.

27 Section 4. Section 723.0381, Florida Statutes, is
28 amended to read:

29 723.0381 Civil actions;~~arbitration.~~--
30
31

1 (†) After mediation of a dispute pursuant to s.
2 723.038 has failed to provide a resolution of the dispute,
3 either party may file an action in the circuit court.

4 ~~(2) The court shall refer the action to a panel of
5 three arbitrators for court-annexed nonbinding arbitration
6 pursuant to s. 44.103 and the Florida Rules of Civil
7 Procedure, except that compensation for the arbitrators shall
8 be in accordance with the authorized rate for circuit court
9 mediators in that judicial circuit. The court shall assess
10 the parties equally to pay the compensation awarded to the
11 arbitrators if neither party requests a trial de novo. If a
12 party has filed for a trial de novo, the party shall be
13 assessed the arbitration costs, court costs, and other
14 reasonable costs of the opposing party, including attorney's
15 fees, investigation expenses, and expenses for expert or other
16 testimony or evidence incurred after the arbitration hearing
17 if the judgment upon the trial de novo is not more favorable
18 than the arbitration decision. If subsequent to arbitration a
19 party files for a trial de novo, the arbitration decision may
20 be made known to the judge only after he has entered his order
21 on the merits.~~

22 Section 5. Section 723.063, Florida Statutes, is
23 amended to read:

24 723.063 Defenses to action for rent or possession;
25 procedure.--

26 (1) In any action based upon nonpayment of rent or
27 seeking to recover unpaid rent, or a portion thereof, or a
28 rent increase, the mobile home owner or mobile home owners'
29 association may defend upon the ground of a material
30 noncompliance with any portion of this chapter or may raise
31 any other defense, whether legal or equitable, which is

1 available he may have. The defense of material noncompliance
2 may be raised by the mobile home owner or mobile home owners'
3 association only if 7 days have elapsed after ~~he has notified~~
4 the park owner has been notified in writing of the his
5 intention not to pay rent, or a portion thereof, based upon
6 the park owner's noncompliance with portions of this chapter,
7 specifying in reasonable detail the provisions in default. A
8 material noncompliance with this chapter by the park owner is
9 a complete defense to an action for possession based upon
10 nonpayment of rent, or a portion thereof, and, upon hearing,
11 the court or the jury, as the case may be, shall determine the
12 amount, if any, by which the rent is to be reduced to reflect
13 the diminution in value of the lot during the period of
14 noncompliance with any portion of this chapter. After
15 consideration of all other relevant issues, the court shall
16 enter appropriate judgment.

17 (2) In any action by the park owner or a mobile home
18 owner or mobile home owners' association brought under
19 subsection (1), the mobile home owner or mobile home owners'
20 association shall pay into the registry of the court that
21 portion of the accrued rent, if any, relating to the claim of
22 material noncompliance as alleged in the complaint, or as
23 determined by the court. The court shall notify the mobile
24 home owner or mobile home owners' association of such
25 requirement. The failure of the mobile home owner or mobile
26 home owners' association to pay the rent, or portion thereof,
27 into the registry of the court ~~as required herein~~ constitutes
28 an absolute waiver of the mobile home owner's or mobile home
29 owners' association's defenses other than payment, and the
30 park owner is entitled to an immediate default.

31

1 (3) When the mobile home owner or mobile home owners'
2 association has deposited funds into the registry of the court
3 in accordance with the provisions of this section and the park
4 owner is in actual danger of loss of the premises or other
5 personal hardship resulting from the loss of rental income
6 from the premises, the park owner may apply to the court for
7 disbursement of all or part of the funds or for prompt final
8 hearing, whereupon the court shall advance the cause on the
9 calendar. The court, after preliminary hearing, may award all
10 or any portion of the funds on deposit to the park owner or
11 may proceed immediately to a final resolution of the cause.

12 Section 6. Section 723.071, Florida Statutes, is
13 amended to read:

14 723.071 Sale of mobile home parks.--

15 (1)(a) If a mobile home park owner offers a mobile
16 home park for sale, or receives a bona fide offer to purchase
17 the park that the park owner intends to consider or make a
18 counteroffer to, the park owner he shall notify the officers
19 of the homeowners' association created pursuant to ss.
20 723.075-723.079 of the park owner's ~~his~~ offer or the bona fide
21 offer to purchase, stating the price and the terms and
22 conditions of sale.

23 (b) The mobile home owners, by and through the
24 association defined in s. 723.075, ~~shall~~ have the right to
25 purchase the park, if provided the home owners meet the price
26 and terms and conditions of the bona fide offer to purchase or
27 the offer by the mobile home park owner by executing a
28 contract with the park owner within 45 days, unless agreed to
29 otherwise, from the date of mailing of the notice and provided
30 they have complied with ss. 723.075-723.079. If a contract
31 between the park owner and the association is not executed

1 within such 45-day period, then, unless the park owner
2 thereafter elects to offer the park at a price lower than the
3 price specified in the his notice to the officers of the
4 homeowners' association, the park owner he has no further
5 obligations under this subsection ~~and his only obligation~~
6 ~~shall be as set forth in subsection (2).~~

7 (c) If the bona fide offer includes other property or
8 more than one mobile home park, the mobile home owners have
9 the right to purchase the park in which they reside for the
10 price and terms and conditions as they relate to the park
11 separate from the other properties. The park owner shall
12 notify the homeowners' association as required in paragraph
13 (1)(a), and shall separately state the price, terms, and
14 conditions of each park that is a part of an offer consisting
15 of more than one park.

16 (2)(c) If the park owner thereafter elects to offer
17 the park at a price lower than the price specified in the his
18 notice to the home owners, the home owners, by and through the
19 association, will have an additional 10 days to meet the price
20 and terms and conditions of the park owner by executing a
21 contract.

22 ~~(2) If a mobile home park owner receives a bona fide~~
23 ~~offer to purchase the park that he intends to consider or make~~
24 ~~a counteroffer to, his only obligation shall be to notify the~~
25 ~~officers of the homeowners' association that he has received~~
26 ~~an offer and disclose the price and material terms and~~
27 ~~conditions upon which he would consider selling the park and~~
28 ~~consider any offer made by the home owners, provided the home~~
29 ~~owners have complied with ss. 723.075-723.079. The park owner~~
30 ~~shall be under no obligation to sell to the home owners or to~~
31 ~~interrupt or delay other negotiations, and he shall be free at~~

1 ~~any-time-to-execute-a-contract-for-the-sale-of-the-park-to-a~~
2 ~~party-or-parties-other-than-the-home-owners-or-the~~
3 ~~association.~~

4 (3)(a) As used in subsection ~~subsections~~ (1) ~~and~~ (2),
5 the term "notify" means the placing of a notice in the United
6 States mail addressed to the officers of the homeowners'
7 association. Each such notice shall be deemed to have been
8 given upon the deposit of the notice in the United States
9 mail.

0 (b) As used in subsection (1), the term "offer" means
11 any solicitation by the park owner to the general public.

12 (4) This section does not apply to:

13 (a) Any sale or transfer to a person who would be
14 included within the table of descent and distribution if the
15 park owner were to die intestate.

16 (b) Any transfer by gift, devise, or operation of law.

17 (c) Any transfer by a corporation to an affiliate. As
18 used in this paragraph herein, the term "affiliate" means any
19 ~~shareholder-of-the-transferring-corporation;~~ any corporation
20 or entity owned or controlled, directly or indirectly, by the
21 transferring corporation; ~~or-any-other-corporation-or-entity~~
22 ~~owned-or-controlled,-directly-or-indirectly,-by-any~~
23 ~~shareholder-of-the-transferring-corporation.~~

24 (d) Any transfer by a partnership to any of its
25 partners.

26 (e) Any conveyance of an interest in a mobile home
27 park incidental to the financing of such mobile home park.

28 (f) Any conveyance resulting from the foreclosure of a
29 mortgage, deed of trust, or other instrument encumbering a
30 mobile home park or any deed given in lieu of such
31 foreclosure.

1 (g) Any sale or transfer between or among joint
2 tenants or tenants in common owning a mobile home park.

3 (h) Any exchange of a mobile home park for other real
4 property, whether or not such exchange also involves the
5 payment of cash or other boot.

6 (i) The purchase of a mobile home park by a
7 governmental entity under its powers of eminent domain.

8 Section 7. Section 723.083, Florida Statutes, is
9 amended to read:

10 723.083 Governmental action affecting removal of
11 mobile home owners.--~~An~~ No agency of municipal, local, county,
12 or state government may not ~~shall~~ approve any application for
13 rezoning, or take any other official action, which would
14 result in the removal or relocation of mobile home owners
15 residing in a mobile home park without first determining that
16 adequate mobile home parks ~~or other suitable facilities~~ exist
17 for the relocation of the mobile home owners.

18 Section 8. This act shall take effect October 1, 1997.

19 *****

20 SENATE SUMMARY

21 Amends the "Florida Mobile Home Act" to: define the term
22 "pass-on charge"; prohibit certain rules; require
23 disclosure of material factors; delete court-ordered
24 arbitration; allow participation of mobile home owners'
25 associations in certain legal actions; revise conditions
26 for the sale of mobile home parks; and remove other
27 suitable facilities from governmental action affecting
28 removal or relocation of mobile home owners.
29
30
31

By the Committee on Community Affairs and Senators Latvala, Brown-Waite, Kurth, Dudley, Grant, Crist, Lee, Cowin, Sullivan, Dyer, McKay, Myers, Campbell, Dantzler and Burt

316-1784-97

1 A bill to be entitled

2 An act relating to mobile homes; amending s.

3 723.003, F.S.; defining the term "pass-on

4 charge"; amending s. 723.037, F.S.; requiring a

5 mobile home park owner to disclose material

6 factors that justify a change in rentals,

7 services, utilities, or rules; amending s.

8 723.0381, F.S.; deleting court-ordered

9 arbitration; amending s. 723.063, F.S;

10 providing for the participation of mobile home

11 owners' associations in certain legal actions;

12 amending s. 723.071, F.S.; providing conditions

13 for the sale of mobile home parks to mobile

14 home owners; revising the definition of the

15 term "affiliate"; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Present subsections (10), (11), (12), (13),
20 and (14) of section 723.003, Florida Statutes, are
21 redesignated as subsections (11), (12), (13), (14), and (15),
22 respectively, and a new subsection (10) is added to that
23 section to read:

24 723.003 Definitions.--As used in this chapter, the
25 following words and terms have the following meanings unless
26 clearly indicated otherwise:

27 (10) The term "pass-on charge" means a charge for ad
28 valorem property taxes and utility charges, or increases of
29 either, to be paid by a mobile home owner if the ad valorem
30 property taxes and the utility charges are not otherwise being
31 collected in the remainder of the lot rental amount and the

1 pass-on of the ad valorem taxes or utility charges, or
2 increases of either, was disclosed prior to tenancy, was being
3 passed on as a matter of custom between the mobile home park
4 owner and the mobile home owner, or the pass-on was authorized
5 by law.

6 Section 2. Subsection (4) of section 723.037, Florida
7 Statutes, is amended to read:

8 723.037 Lot rental increases; reduction in services or
9 utilities; change in rules and regulations; mediation.--

10 (4)(a) A committee, not to exceed five in number,
11 designated by a majority of the affected mobile home owners or
12 by the board of directors of the homeowners' association, if
13 applicable, and the park owner shall meet, at a mutually
14 convenient time and place within 30 days after receipt by the
15 homeowners of the notice of change, to discuss the reasons for
16 the increase in lot rental amount, reduction in services or
17 utilities, or change in rules and regulations.

18 (b) At the meeting, the park owner shall in good faith
19 disclose and explain all material factors resulting in the
20 decision to increase the lot rental amount, reduce services or
21 utilities, or change rules and regulations, including how
22 those factors justify the specific change proposed. The park
23 owner may not limit the discussion of the reasons for the
24 change to generalities only, such as, but not limited to,
25 increases in operational costs, changes in economic
26 conditions, or rents charged by comparable mobile home parks.
27 A written summary of all material factors disclosed by the
28 park owner shall be delivered to the homeowners at the
29 meeting. Any reasons not disclosed at the meeting by the park
30 owner are not admissible into evidence in any subsequent
31 administrative procedure or civil action between the parties.

1 Section 3. Section 723.0381, Florida Statutes, is
2 amended to read:

3 723.0381 Civil actions, ~~arbitration.~~--

4 ~~(1)~~ After mediation of a dispute pursuant to s.
5 723.038 has failed to provide a resolution of the dispute,
6 either party may file an action in the circuit court.

7 ~~(2)~~ ~~The court shall refer the action to a panel of~~
8 ~~three arbitrators for court-annexed nonbinding arbitration~~
9 ~~pursuant to s. 44.103 and the Florida Rules of Civil~~
10 ~~Procedure, except that compensation for the arbitrators shall~~
11 ~~be in accordance with the authorized rate for circuit court~~
12 ~~mediators in that judicial circuit. The court shall assess~~
13 ~~the parties equally to pay the compensation awarded to the~~
14 ~~arbitrators if neither party requests a trial de novo. If a~~
15 ~~party has filed for a trial de novo, the party shall be~~
16 ~~assessed the arbitration costs, court costs, and other~~
17 ~~reasonable costs of the opposing party, including attorney's~~
18 ~~fees, investigation expenses, and expenses for expert or other~~
19 ~~testimony or evidence incurred after the arbitration hearing~~
20 ~~if the judgment upon the trial de novo is not more favorable~~
21 ~~than the arbitration decision. If subsequent to arbitration a~~
22 ~~party files for a trial de novo, the arbitration decision may~~
23 ~~be made known to the judge only after he has entered his order~~
24 ~~on the merits.~~

25 Section 4. Section 723.063, Florida Statutes, is
26 amended to read:

27 723.063 Defenses to action for rent or possession;
28 procedure.--

29 (1) In any action based upon nonpayment of rent or
30 seeking to recover unpaid rent, or a portion thereof, or a
31 rent increase, the mobile home owner or mobile home owners'

1 association may defend upon the ground of a material
2 noncompliance with any portion of this chapter or may raise
3 any other defense, whether legal or equitable, which is
4 available ~~he-may-have~~. The defense of material noncompliance
5 may be raised by the mobile home owner or mobile home owners'
6 association only if 7 days have elapsed after ~~he-has-notified~~
7 the park owner has been notified in writing of the his
8 intention not to pay rent, or a portion thereof, based upon
9 the park owner's noncompliance with portions of this chapter,
10 specifying in reasonable detail the provisions in default. A
11 material noncompliance with this chapter by the park owner is
12 a complete defense to an action for possession based upon
13 nonpayment of rent, or a portion thereof, and, upon hearing,
14 the court or the jury, as the case may be, shall determine the
15 amount, if any, by which the rent is to be reduced to reflect
16 the diminution in value of the lot during the period of
17 noncompliance with any portion of this chapter. After
18 consideration of all other relevant issues, the court shall
19 enter appropriate judgment.

20 (2) In any action by the park owner or a mobile home
21 owner or mobile home owners' association brought under
22 subsection (1), the mobile home owner or mobile home owners'
23 association shall pay into the registry of the court that
24 portion of the accrued rent, if any, relating to the claim of
25 material noncompliance as alleged in the complaint, or as
26 determined by the court. The court shall notify the mobile
27 home owner or mobile home owners' association of such
28 requirement. The failure of the mobile home owner or mobile
29 home owners' association to pay the rent, or portion thereof,
30 into the registry of the court ~~as-required-herein~~ constitutes
31 an absolute waiver of the mobile home owner's or mobile home

1 owners' association's defenses other than payment, and the
2 park owner is entitled to an immediate default.

3 (3) When the mobile home owner or mobile home owners'
4 association has deposited funds into the registry of the court
5 in accordance with the provisions of this section and the park
6 owner is in actual danger of loss of the premises or other
7 personal hardship resulting from the loss of rental income
8 from the premises, the park owner may apply to the court for
9 disbursement of all or part of the funds or for prompt final
10 hearing, whereupon the court shall advance the cause on the
11 calendar. The court, after preliminary hearing, may award all
12 or any portion of the funds on deposit to the park owner or
13 may proceed immediately to a final resolution of the cause.

14 Section 5. Section 723.071, Florida Statutes, is
15 amended to read:

16 723.071 Sale of mobile home parks.--

17 (1)(a) If a mobile home park owner offers a mobile
18 home park for sale, or receives a bona fide offer to purchase
19 the park that the park owner intends to consider or make a
20 counteroffer to, the park owner he shall notify the officers
21 of the homeowners' association created pursuant to ss.
22 723.075-723.079 of the park owner's his offer or the bona fide
23 offer to purchase, stating the price and the terms and
24 conditions of sale.

25 (b) The mobile home owners, by and through the
26 association defined in s. 723.075, ~~shall~~ have the right to
27 purchase the park, if provided the home owners meet the price
28 and terms and conditions of the bona fide offer to purchase or
29 the offer by the mobile home park owner by executing a
30 contract with the park owner within 45 days, unless agreed to
31 otherwise, from the date of mailing of the notice and provided

1 they have complied with ss. 723.075-723.079. If a contract
2 between the park owner and the association is not executed
3 within such 45-day period, then, unless the park owner
4 thereafter elects to offer the park at a price lower than the
5 price specified in the his notice to the officers of the
6 homeowners' association, the park owner he has no further
7 obligations under this subsection, ~~and his only obligation~~
8 ~~shall be as set forth in subsection (2).~~

9 (c) If the bona fide offer includes other property or
10 more than one mobile home park, the mobile home owners have
11 the right to purchase the park in which they reside for the
12 price and terms and conditions as they relate to the park
13 separate from the other properties. The park owner shall
14 notify the homeowners' association as required in paragraph
15 (1)(a), and shall separately state the price, terms, and
16 conditions of each park that is a part of an offer consisting
17 of more than one park.

18 (2)(e) If the park owner thereafter elects to offer
19 the park at a price lower than the price specified in the his
20 notice to the home owners, the home owners, by and through the
21 association, will have an additional 10 days to meet the price
22 and terms and conditions of the park owner by executing a
23 contract.

24 ~~(2) If a mobile home park owner receives a bona fide~~
25 ~~offer to purchase the park that he intends to consider or make~~
26 ~~a counteroffer to, his only obligation shall be to notify the~~
27 ~~officers of the homeowners' association that he has received~~
28 ~~an offer and disclose the price and material terms and~~
29 ~~conditions upon which he would consider selling the park and~~
30 ~~consider any offer made by the home owners, provided the home~~
31 ~~owners have complied with ss. 723.075-723.079. The park owner~~

1 ~~shall be under no obligation to sell to the home owners or to~~
2 ~~interrupt or delay other negotiations, and he shall be free at~~
3 ~~any time to execute a contract for the sale of the park to a~~
4 ~~party or parties other than the home owners or the~~
5 ~~association.~~

6 (3)(a) As used in subsection subsections (1) and ~~(2)~~,
7 the term "notify" means the placing of a notice in the United
8 States mail addressed to the officers of the homeowners'
9 association. Each such notice shall be deemed to have been
10 given upon the deposit of the notice in the United States
11 mail.

12 (b) As used in subsection (1), the term "offer" means
13 any solicitation by the park owner to the general public.

14 (4) This section does not apply to:

15 (a) Any sale or transfer to a person who would be
16 included within the table of descent and distribution if the
17 park owner were to die intestate.

18 (b) Any transfer by gift, devise, or operation of law.

19 (c) Any transfer by a corporation to an affiliate. As
20 used in this paragraph herein, the term "affiliate" means any
21 ~~shareholder of the transferring corporation;~~ any corporation
22 or entity owned or controlled, directly or indirectly, by the
23 transferring corporation; ~~or any other corporation or entity~~
24 ~~owned or controlled, directly or indirectly, by any~~
25 ~~shareholder of the transferring corporation.~~

26 (d) Any transfer by a partnership to any of its
27 partners.

28 (e) Any conveyance of an interest in a mobile home
29 park incidental to the financing of such mobile home park.

30 (f) Any conveyance resulting from the foreclosure of a
31 mortgage, deed of trust, or other instrument encumbering a

1 mobile home park or any deed given in lieu of such
2 foreclosure.

3 (g) Any sale or transfer between or among joint
4 tenants or tenants in common owning a mobile home park.

5 (h) Any exchange of a mobile home park for other real
6 property, whether or not such exchange also involves the
7 payment of cash or other boot.

8 (i) The purchase of a mobile home park by a
9 governmental entity under its powers of eminent domain.

10 Section 6. This act shall take effect October 1, 1997.

11

12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 750

14

15 Deletes a requirement that pass-on charges be in reimbursement
16 to the park owner.

17 Deletes a provision which would prevent park owners from
18 adopting rules or regulations to prohibit the location of
previously-owned mobile homes within the park.

19 Deletes a provision which would have relieved local
20 governments of the responsibility to consider "other suitable
21 facilities," in addition to mobile home parks, before rezoning
22 property or taking other action which would remove or relocate
23 mobile home owners.

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STORAGE NAME: h1299.rpp
DATE: March 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #. HB 1299

RELATING TO: Florida Mobile Home Act

SPONSOR(S): Representative Crow & others

STATUTE(S) AFFECTED: Amending sections 723.003, 723.035, 723.037, 723.0381, 723.063, 723.071, 723.083, and 723.031, Florida Statutes

COMPANION BILL(S): SB 750

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
- (2) COMMUNITY AFFAIRS
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1299 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill

--defines the term "pass-on charge";

--prohibits a mobile home park from excluding previously-owned homes which meet certain criteria,

--provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations;

--deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners;

--extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association;

--deletes exemptions to the home owners' right of first refusal;

--extends the first right of refusal to apply to bona fide offers to purchase the park, and

--deletes the requirement that a governmental agency consider "other suitable facilities" for relocating mobile home owners prior to taking an action resulting in the relocation or removal of those owners.

The bill will take effect October 1, 1997.

This bill may have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 723, Florida Statutes, is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR).

Section 723 003, Florida Statutes, provides definitions of terms used in this chapter

Section 723 031(5)(c), Florida Statutes, (1996 Supp.), permits a park owner to pass on to home owners ad valorem property taxes and utility charges, and increases therein, if there has been prior disclosure of the pass-on, the charges have been passed on as a matter of custom, or if the pass-on was specifically authorized by law. The pass-ons shall be a part of the lot rental amount. The mobile home park owner must pass on such charges within one year of payment of those charges, and is prohibited from passing on any fine, interest, fee or increase in a charge resulting from late payment by the park owner.

Section 723.035, Florida Statutes, governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from imposing a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to section 723 012, Florida Statutes, if required, and until the park owner has complied with the notice requirements of section 723.037, Florida Statutes.

Further, the Division has adopted Rule 61B-32 004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases.

Section 723.037, Florida Statutes, governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable; the rental increase has made the lot rental amount unreasonable, the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.0381, Florida Statutes, addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement,

the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, Florida Statutes, authorizes the home owners and the park owner to initiate mediation by a request to the Division.

Section 723.063, Florida Statutes, authorizes home owners to raise the defense of material noncompliance with Chapter 723, Florida Statutes, in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with Chapter 723, Florida Statutes. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, Florida Statutes, governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to section 723.075, Florida Statutes, through section 723.079, Florida Statutes. Paragraph (b) gives the association the right of first refusal on the park, the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association, however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate,
- (b) Any transfer by gift, devise or operation of law,
- (c) Any transfer by a corporation to an affiliate; "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation,
- (d) Any transfer by a partnership to one of its partners;
- (e) Any conveyance of interest in the park incidental to the financing of the park,

(f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;

(g) Any sale or transfer between or among joint tenants or tenants in common owning the park; and

(l) Any purchase of the park by a government entity exercising its eminent domain powers.

Finally, section 723.083, Florida Statutes, prohibits any municipal, local, county, or state government agency from taking rezoning or other action which would result in the removal or relocation of mobile home owners residing in mobile home parks, unless it first determines that there are adequate mobile home parks or other suitable facilities in existence for relocating the mobile home owners. In an informal opinion issued to Pinellas County, the Attorney General advised that the phrase "adequate mobile home parks or other suitable facilities" means the local government must consider all facilities suitable for the relocation of the mobile home owners, not their mobile homes. See Informal Opinion of Atty Gen. Jim Smith (January 3, 1986). The opinion includes apartments, trailer parks, and boarding houses as examples of "other suitable facilities" which a government may consider for the relocation of owners.

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. See section 2, Chapter 96-394, Laws of Florida. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the department. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the Act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants. The report reveals that during consideration by the members of the circumstances under which a prospectus should be amended, they discussed amendments to allow used mobile homes in a park, as long as they are no older than the average age of other mobile homes in the park. See Final Report of the Mobile Home Study Commission, Report B, page 15; and Appendix C, Minutes of the October 31, 1996 meeting.

B. EFFECT OF PROPOSED CHANGES

HB 1299 revises the Florida Mobile Home Act, Chapter 723, Florida Statutes. The bill defines the term "pass-on charge" to mean a charge for ad valorem property taxes and utility charges, or increases of either, to be paid by a mobile home owner to the park owner in reimbursement of the charges paid by the park owner. Provided, however, that the ad valorem property taxes and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided that the pass on of the ad valorem taxes or utility charges, or increases of either, was

disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or was authorized by law.

The bill prohibits a mobile home park from excluding previously-owned homes which meet certain criteria. The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. This is substantially similar to an existing agency rule, however, the bill further provides that any reasons not disclosed at the meeting by the park owner are not admissible into evidence in any subsequent administrative procedure or civil action between the parties.

HB 1299 deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners, and extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

The bill deletes exemptions to the home owners' right of first refusal, and extends the first right of refusal to apply to bona fide offers to purchase the park.

Finally, the bill deletes the requirement that a governmental agency consider "other suitable facilities" for relocating mobile home owners prior to taking an action resulting in the relocation or removal of those owners.

The bill will take effect October 1, 1997.

C APPLICATION OF PRINCIPLES

1 Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

The bill removes an existing arbitration requirement, thereby removing one of the prerequisites to a trial de novo. In addition, this bill will allow a homeowner's association to litigate and have the same defenses as an individual homeowner in an action for rent or possession of a mobile home lot.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

According to the DBPR, there is a question of retroactivity regarding the new provision which would not permit a rule or regulation prohibiting previously owned mobile home from being permanently located in a mobile home park. This may create some regulatory problems and resulting litigation for the department.

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes:

a Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No.

3 Personal Responsibility

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill makes changes in the Mobile Home Act. Arguably, the provision precluding a rule or regulation that prohibits a previously owned mobile home from being permanently located in a mobile home park may provide additional options to home owners. In addition, the inclusion of mobile home owners' associations as parties who may defend upon the ground of a material noncompliance with the provisions of Chapter 723, may provide home owners some assistance in seeking redress.

- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes The bill would preclude a rule or regulation that prohibits a previously owned mobile home from being permanently located in a mobile home park

5. Family Empowerment

- a. If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D SECTION-BY-SECTION ANALYSIS

Section 1 amends section 723 003, Florida Statutes, by adding a definition of the term "pass-on charge" and tracts the language in section 723.031(5)(c), Florida Statutes, regarding charges for ad valorem taxes and utility charges. However, this definition differs in that it specifies the add-on charge be a reimbursement to the park owner for payments made by him or her.

Section 2 amends section 723 035, Florida Statutes, by creating a new subsection (2) to prevent park rules or regulations from prohibiting the placement of previously owned mobile homes in the park if the age and condition of the mobile home is comparable to those already in the existing park. This section renumbers the subsequent subsection as (3) and makes a technical change therein.

Section 3 amends section 723.037, Florida Statutes, by creating a new paragraph (b) regarding the disclosures required to be made by a park owner to the home owners to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division's

administrative rule, Rule 61B-32.004(1), F.A.C , with the exception of the last sentence. The new language prohibits the admission of evidence, in any subsequent administrative or civil action between the parties, relating to reasons not disclosed to the home owners at the requested meeting.

Section 4 amends section 723.0381, Florida Statutes, by deleting all provisions relating to nonbinding arbitration of rental increase disputes between park owners and home owners. This amendment removes one of the prerequisites to filing an action in circuit court. The parties may still seek mediation of the dispute, pursuant to section 723.038, Florida Statutes

Section 5 amends section s. 723.063, Florida Statutes, to extend to a home owners' association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The bill also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase

Section 6 amends section 723.071, Florida Statutes, by removing the exemption from the right of first refusal granted to a home owners' association when the park owner receives a bona fide offer to purchase the park. The bill also amends this section to require the park owner to segregate the individual park from any bona fide offer to purchase the park along with other properties for purposes of notifying the association of the price, terms and conditions on which the park owner will consider selling the park. The bill deletes another exemption to the first right of refusal by amending the definition of the term "affiliate" used in subsection (4). Shareholders of the transferring corporation and any entity controlled directly or indirectly by a shareholder of the transferring corporation, are deleted from that definition.

Section 7 amends section 723.083, Florida Statutes, by deleting the requirement that the governmental unit consider "other suitable facilities" for the relocation of mobile home owners. This change limits the facilities which can be considered by a governmental unit for relocation of mobile home owners to other mobile home parks

Section 8 provides an effective date of October 1, 1997

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects:

See Recurring Effects below.

2. Recurring Effects.

The Department of Business and Professional Regulation, Division of Land Sales, Condominiums, and Mobile Homes, reports that Section 2 may impact the department due to increased litigation and possible rulemaking. That section of the bill prevents a park from prohibiting previously-owned mobile homes which are of "comparable age and condition" to the homes already located in the park. The Division expects this provision to generate litigation, especially concerning the subjective determination of "comparable age and condition" of a mobile home. The Division also indicates this provision may require rulemaking in order to implement those exceptions

3 Long Run Effects Other Than Normal Growth:

Unknown

4. Total Revenues and Expenditures.

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1 Non-recurring Effects:

See Recurring Effects below.

2. Recurring Effects:

This bill may have a negative fiscal impact on local governments relating to their inability, pursuant to the bill, to determine that "other suitable facilities" exist for mobile home owners when taking action affecting removal of mobile home owners.

3 Long Run Effects Other Than Normal Growth

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs.

Mobile home park owners could be negatively impacted by the following provisions

Section 1, which defines pass-on charge as a reimbursement, could require additional up-front expenses by park owners

Section 2, which prevents a park owner from refusing to accept previously-owned homes of "comparable age and condition," will likely subject park owners to lawsuits by home owners who are denied entry into the park,

as well as by existing residents who challenge the location of previously-owned homes within the park.

2. Direct Private Sector Benefits:

Mobile home owners within parks could benefit from the changes in Section 3, which foster better communication between the park owner and home owners prior to initiating an action based on rental increases, reduction of services or a change in the rules or regulations. Increased communication regarding these issues may reduce litigation, which would financially benefit both park owners and home owners.

3. Effects on Competition, Private Enterprise and Employment Market

See 1 and 2. above.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Both the United States and the State Constitutions prohibit the Legislature from passing any law impairing the obligations of contracts. U.S. Const art. I, s. 10, Fla Const art I, s 10 Section 2 of the bill, which prevents a park owner from adopting rules or regulations prohibiting the placement of used mobile homes in the park if they meet certain criteria, may be subject to constitutional challenge if it is applied so as to impair an obligation of the contract between park owner and home owners. Section 723 012(11), Florida Statutes, requires that park rules and regulations be

included in the prospectus which is provided to prospective purchasers of lots in the park. The prospectus has been defined as "the disclosure document provided to tenants," *Herrick v Florida Dept. of Business Regulation*, 595 So 2d 148 (Fla 1st DCA 1992), the purpose of which is "to disclose to prospective lessees certain information regarding the future operation of the mobile home park" *Village Park Mobile Home Assoc'n v. State, Dept. of Business*, 506 So 2d 426, 428 (Fla 1st DCA 1987). This construction has now been codified by the Legislature at section 723.011(3), Florida Statutes. According to the Division, many, if not most, mobile home parks already have rules restricting the location of used mobile homes within the park. Therefore, the bill may be construed to interfere with an obligation of the parties to a contract, i e , restructure the obligations set forth in the prospectus given by park owner to mobile home owner.

There is 1 technical problem with the bill Page 7, line 17 makes reference to subsection (2) under the current law. This section is being stricken in the bill Since the new subsection (2) does not contain the term "notify", the reference should be removed.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by.

Legislative Research Director

P K. Jameson

P K Jameson

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.)

Date: April 1, 1997 Revised: _____

Subject: Mobile Homes

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____

I. Summary:

The Committee Substitute (CS) makes numerous changes to the Florida Mobile Home Act, chapter 723, F S. The CS defines the term "pass-on charge," provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations, deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners; extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association, deletes exemptions to the home owners' first right of refusal, and extends the right of first refusal to apply to bona fide offers to purchase the park.

This CS amends the following sections of the Florida Statutes. 723 003, 723 037, 723 0381, 723 063, and 723 071

II. Present Situation:

Chapter 723 is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (division) of the Department of Professional Regulation (department). The following sections are pertinent to the CS

Section 723 003, F S , provides definitions of terms used in this chapter

Section 723 031(5)(c), F S , 1996 Supplement, permits a park owner to pass on to home owners ad valorem property taxes and utility charges, and increases therein, if there has been prior disclosure of the pass-on, the charges have been passed on as a matter of custom, or if the pass-on was specifically authorized by law. The pass-ons shall be a part of the lot rental amount. The

mobile home park owner must pass on such charges within one year of payment of those charges, and is prohibited from passing on any fine, interest, fee or increase in a charge resulting from late payment by the park owner

Section 723.035, F.S., governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from instating a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to s. 723.012, if required, and until the park owner has complied with the notice requirements of s. 723.037, F.S.

Further, the division has adopted Rule 61B-32.004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases.

Section 723.037, F.S., governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable, the rental increase has made the lot rental amount unreasonable, the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable, or the change in the rules or regulations is unreasonable.

Section 723.0381, F.S., addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement, the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, F.S., authorizes the home owners and the park owner to initiate mediation by a request to the division.

Section 723.063, F.S., authorizes home owners to raise the defense of material noncompliance with chapter 723 in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after seven days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with chapter 723. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Failure to pay the

rent into the court's registry constitutes an absolute waiver of the home owner's defenses, other than payment, and the park owner is entitled to immediate default. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, F.S., governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to s. 723.075 through 723.079, F.S. Paragraph (b) gives the association the right of first refusal on the park; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association, however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- ▶ Sale or transfer to a descendant as if the park owner had died intestate,
- ▶ Any transfer by gift, devise or operation of law,
- ▶ Any transfer by a corporation to an affiliate; "affiliate" means any shareholder of the transferring corporation, any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation, or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation,
- ▶ Any transfer by a partner to one of its partners,
- ▶ Any conveyance of interest in the park incidental to financing the park,
- ▶ Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property,
- ▶ Any sale or transfer between or among joint tenants or tenants in common owning the park, and
- ▶ Any purchase of the park by a government entity exercising its eminent domain powers

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. *See* s. 2, ch. 96-394, *Laws of Florida*. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the department. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants.

III. Effect of Proposed Changes:

Section 1 amends s. 723.003, F.S., by adding a definition of the term “pass-on charge” and tracks the language in s. 723.031(5)(c) regarding charges for ad valorem taxes and utility charges.

Section 2 amends s. 723.037, F.S., by creating a new paragraph (b) regarding the disclosures required to be made by a park owner to the home owners to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division’s administrative rule, Rule 61B-32.004(1), F.A.C., with the exception of the last sentence. The new language prohibits the admission of evidence, in any subsequent administrative or civil action between the parties, relating to reasons not disclosed to the home owners at the requested meeting.

Section 3 amends s. 723.0381, F.S., by deleting all provisions relating to nonbinding arbitration of rental increase disputes between park owners and home owners. This amendment removes one of the prerequisites to filing an action in circuit court. The parties may still seek mediation of the dispute, pursuant to s. 723.038, F.S.

Section 4 amends s. 723.063, F.S., to extend to a home owners’ association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The CS also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase. Subsection (2) is also amended to require that the home owner’s association, like the individual home owner, pay into the court’s registry the amount of rent relating to the claim of material noncompliance.

Section 5 amends s. 723.071, F.S., by removing the exemption from the right of first refusal granted to a home owners’ association when the park owner receives a bona fide offer to purchase the park. The CS also amends this section to require the park owner to segregate the individual park from any bona fide offer to purchase the park along with other properties for

purposes of notifying the association of the price, terms and conditions on which the park owner will consider selling the park. The CS deletes another exemption to the first right of refusal by amending the definition of the term "affiliate" used in subsection (4). Shareholders of the transferring corporation and any entity controlled directly or indirectly by a shareholder of the transferring corporation, are deleted from that definition.

Section 6 provides an effective date of October 1, 1997.

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:

Indeterminate

C. Government Sector Impact:

The Department of Business and Professional Regulation, Division of Land Sales, Condominiums, and Mobile Homes, reports that the CS will not impact the resources of the department.

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
