

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1140

INTRODUCER: Fiscal Policy Committee; Regulated Industries Committee and Senator Burton

SUBJECT: Mobile Homes

DATE: February 19, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1140 revises provisions in ch. 723, F.S., relating to mobile homes. The bill allows park owners and homeowners in a dispute related to lot rental increases to select a mediator and initiate mediation proceedings before submitting a petition for mediation with the Division of Condominiums, Timeshares, and Mobile Homes (division). The mediator selected by the parties must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium. It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

Under the bill, a civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5), F.S., which provides the process for mediating certain mobile home park disputes, including a dispute related to a rent increase. Current law permits a civil action after mediation of a dispute has failed to resolve a dispute, but does not explicitly bar the initiation of a civil action if the dispute is not submitted for mediation pursuant to s. 723.037(5), F.S. The bill allows homeowners, after the majority of the affected home owners have agreed in writing to file an action, to file an action in circuit court if the responding party park owner refuses or fails to participate in mediation. Current law provides that either party may file an action in circuit court if the mediation failed to provide a resolution to the dispute.

The bill provides that a mobile home owner's live-in health care aide or assistant be allowed to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must provide the information

required to have the background check and pay the cost of a background check for the live-in health care aide or assistant if one is necessary. The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant. The mobile home owner is also responsible for any removal of the live-in health care aide and any costs associated with the removal of a live-in health care aide or assistant, if necessary.

The bill requires the division to adopt rules to implement and administer the provisions of the bill.

The bill takes effect July 1, 2024.

II. Present Situation:

Chapter 723, F.S., the “Florida Mobile Home Act” (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.¹ The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.²

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home park” or “park” means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.³
- “Mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.⁴

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. The division may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant hereto.⁵ The division may also adopt rules for mediation procedures.⁶

A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns.⁷ If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed.

¹ Section 723.004, F.S.

² Section 723.002(1), F.S.

³ Section 723.003(12), F.S.

⁴ Section 723.003(11), F.S.

⁵ See ss. 723.006(7), (8), (9), and (10), F.S.

⁶ Section 723.038, F.S.

⁷ Section 723.007(1), F.S.

Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.⁸

Additionally, there is a \$1 surcharge on each annual fee. The collected surcharge must be deposited in the Florida Mobile Home Relocation Trust Fund by the division.⁹

Mobile Home Park Rent Increases

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller.¹⁰ The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.¹¹

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement “in an amount deemed appropriate by the mobile home park owner.”¹² The park owner must give affected mobile home owners and the board of directors of the homeowners’ association, if one has been formed, at least a 90-day notice of a lot rental increase.¹³

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.¹⁴ A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges¹⁵ may also be increased during the term of the rental agreement.¹⁶

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.¹⁷ However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.¹⁸

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were

⁸ *Id.*

⁹ Section 723.007(2), F.S.

¹⁰ Section 723.059(3), F.S.

¹¹ *Id.*

¹² Section 723.059(4), F.S.

¹³ Section 723.037(1), F.S.

¹⁴ Section 723.031(5), F.S.

¹⁵ Section 723.003(17), F.S., defines the term “pass-through charge” to mean “the mobile home owner’s proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.”

¹⁶ Section 723.031(5)(b), F.S.

¹⁷ Section 723.031(5), F.S.

¹⁸ Section 723.031(5)(c), F.S.

disclosed as a factor for increasing the lot rental amount in the prospectus¹⁹ or rental agreement.²⁰

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations.²¹ The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must make the names and addresses available upon request.²²

Dispute Resolution

A committee of homeowners and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase. The homeowners' committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners' association if formed as provided under s. 723.075, F.S.²³ At the meeting, the park owner or subdivision developer must 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, including how those factors justify the specific change proposed.²⁴

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation if a majority of the affected have designated, in writing, that:²⁵

- 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 corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition the division for mediation of the dispute.²⁶

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.²⁷ The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

¹⁹ Before the rental of a mobile home lot, s. 723.011, F.S., requires the park owner of a mobile home park containing 26 or more lots to file a prospectus with the division. The prospectus must include written disclosures to prospective renters, as specified in s. 723.012, F.S.

²⁰ *Id.*

²¹ Section 723.037(1), F.S.

²² *Id.*

²³ Section 723.037(4)(a), F.S.

²⁴ Section 723.037(4)(b), F.S.

²⁵ Section 723.037(5)(a), F.S.

²⁶ Section 723.037(5)(b), F.S.

²⁷ Sections 723.038 and 723.0381, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, the division must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify the division in writing that they have selected a mediator. The person appointed by the division to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.²⁸ The division must promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court.²⁹ The division must also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.³⁰

The division has adopted by rule separate petitions for mediation for filing by the homeowners and the park owner.³¹

Within 20 days of receiving a petition to mediate a dispute, the division must notify the parties that a mediator has been appointed by the division. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute.³² Each party to the mediation must pay a \$250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The \$250 filing fee must be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used must be refunded to the parties.³³

The parties may agree to select their own mediator to be governed by the rules of procedure established by the division. The parties may agree to waive mediation, or the petitioning party may withdraw the petition prior to mediation.³⁴

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.³⁵

²⁸ Section 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University “to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building.” See Florida Conflict Resolution Consortium at <https://consensus.fsu.edu/index.html> (last visited Jan. 23, 2024).

²⁹ See Fla. Admin. Code Ch. 61B-32, relating to mobile home mediation rules; and Fla. R. Civ. P. 1.720, providing for mediation procedures.

³⁰ See Fla. Admin. Code R. 61B-32.0056, relating to the fees for mediators and mediation. The fee amount is based on the county or judicial circuit in which the mobile home park is located and ranges from \$175 for up to two hours of mediation to \$125 per prorated hour.

³¹ See DBPR, Mobile Homes – Forms and Publications, available at: <http://www.myfloridalicense.com/DBPR/mobile-homes/forms-and-publications/> (last visited Jan. 24, 2024).

³² Section 723.038(4), F.S.

³³ *Id.*

³⁴ Section 723.038(5), F.S.

³⁵ Section 723.038(6), F.S.

If mediation does not resolve the dispute, either party may file an action in the circuit court.³⁶

Invitees – Rights and Obligations

An invitee³⁷ of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.³⁸

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an “invitee” is:

a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

III. Effect of Proposed Changes:

Dispute Resolution

The bill amends s. 723.037(5)(b), F.S., to require the mobile homeowner’s petition for mediation must be filed with the division for a determination of adequacy and conformance with the types of disputes that are subject to mediation in s. 723.037(5)(a), F.S. The homeowners must provide the following information and documentation to the park owners by certified mail, return receipt requested:

- The homeowner petition for mediation on the form adopted by rule of the Division of Condominiums, Timeshares, and Mobile Homes (division);
- The written required designation, which must include lot identification for each signature;
- The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
- The records that verify the selection of the required homeowners’ committee.

The bill also:

- Allows the park owner and the mobile home owners to select a mediator as an alternative to the appointment of a mediator by the division.
- Requires the division to dismiss a petition for mediation that is not timely filed, fails to comply with the petition requirements, or is otherwise found deficient by the division.

³⁶ Section 723.0381(1), F.S.

³⁷ Black's Law Dictionary (11th ed. 2019) defines the term “invitee” to mean “someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions.”

³⁸ Section 723.051(1), F.S.

- Requires the division to assign a mediator with 10 days of after receipt of a petition if the parties have not selected a mediator.

The bill amends ss. 723.038(1) and (4), F.S., to provide that the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in ss. 723.038(2) and (4), F.S., relating to qualifications for mediators and their fees, respectively. It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

If the parties have not selected a mediator, the division must appoint a mediator upon receipt of the petition for mediation and notify the parties within 20 days after such selection. The bill does not define how immediate the division's selection of a mediator must be. Under current law, the must notify the parties that a mediator has been appointed by the division within 20 days of its receipt of the petition for mediation.³⁹

The bill also amends s. 723.038(9), F.S., to provide that the mediator selected by the parties has the same judicial immunity in the same manner and extent as a judge. Under current law the mediator appointed by the division has the same judicial immunity in the same manner and extent as a judge.

The bill amends s. 723.0381(1), F.S., to provide that a civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5), F.S., which provides the process for mediating certain mobile home park disputes, including a dispute related to a rent increase. Current law permits a civil action after mediation of a dispute has failed to resolve a dispute, but does not explicitly bar the initiation of a civil action if the dispute is not submitted for mediation pursuant to s. 723.037(5), F.S.

Invitees – Rights and Obligations

The bill amends s. 723.051(1), F.S., to require that park owners allow a live-in health care aide or assistant as provided under the Fair Housing Act,⁴⁰ to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must provide the information required to have a background check and pay the cost of a background check for the live-in health care aide or assistant if one is necessary.

The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant. The mobile home owner cover is also responsible for any removal of the live-in health care aide and any costs associated with the removal of a live-in health care aide or assistant, if necessary.

³⁹ Section 723.038(4), F.S.

⁴⁰ Part II of ch. 760, F.S., the Fair Housing Act, prohibits certain types of discriminatory housing practices, including in the sale and rental of housing.

Rulemaking

The bill creates an unnumbered section of Florida law to require the division to adopt rules to implement and administer the provision of the bill.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 723.037, 723.038, and 723.0381.

This bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Fiscal Policy on February 15, 2024:**

The committee substitute removes from the bill the provision providing that the purpose of the Florida Mobile home Relocation Corporation (corporation) is to address the voluntary closure of a mobile home park due to a change in the use of land.

The committee substitute also removes from the bill the provisions increasing the payment amounts from the corporation to mobile homeowners for the expense of moving the mobile home to a new location within a 50-mile radius and for abandonment of the mobile home in lieu of its relocation.

CS by Regulated Industries on January 29, 2024:

The committee substitute makes the following substantive revisions to the bill:

- Revises the requirements for the mobile home owner’s petition for mediation to require that the petition conform to the types of disputes that are subject to mediation in s. 723.037(5)(a), F.S., and that the homeowners provide the following information and documentation to the park owners by certified mail, return receipt requested:
 - The homeowner petition for mediation on the form adopted by rule of the Division of Condominiums, Timeshares, and Mobile Homes (division);
 - The written required designation, which must include lot identification for each signature;
 - The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
 - Records that verify the selection of the required homeowners’ committee.
- Provides that the park owner and the mobile home owners may select a mediator as an alternative to the appointment of a mediator by the division.
- Requires the division to dismiss a petition for mediation if the park owner and mobile home owners fail to comply with the petition requirements.
- Requires the division to assign a mediator with 10 days of after receipt of a petition if the parties have not selected a mediator.
- If the parties have not selected a mediator, requires the division to appoint a mediator upon receipt of the petition for mediation and notify the parties within 20 days after such selection.

- Provides that the mediator selected by the parties has the same judicial immunity in the same manner and extent as a judge;
- Removes the provision allowing the aggrieved party to initiate a civil action if responding party park owner refuses or fails to participate in mediation, and replaces it with a requirement that a civil action in circuit court may not be initiated unless the dispute has been submitted to mediation pursuant to the mediation petition requirements.
- Decreases the maximum payment amount the Florida Mobile Home Relocation Corporation must pay under the bill if a homeowner chooses to abandon a mobile home from \$5,000 to \$3,000 for a single section mobile home and from \$7,000 to \$5,000 for a multi-section mobile home.
- Requires the mobile homeowner to provide the information required to have a background check for the line-in health care aide if one is necessary, and is responsible for any removal of the live-in health care aide if necessary;
- Deletes the requirement that a majority of the affected home owners have to agree in writing to file an action before a civil action in circuit court may be initiated;
- Deletes the provision requiring the Division of Law Revision to replace the phrase “this act” where it may occur in s. 723.006(16), F.S.
- Creates an unnumbered section in the bill to require the division to adopt rules to implement and administer the provision in the bill, and deletes the revision to s. 723.006(16), F.S., requiring the division to adopt such rules.
- Removes the republication of the following provisions that are included in the bill for the purpose of incorporating the revisions in the bill: ss. 723.002, 723.004, 723.006, 723.031, 723.033, 723.035, 723.051, 723.068, and 723.078.

B. Amendments:

None.