

HOUSE BILL REPORT

HB 2799

As Reported by House Committee On:

Judiciary
Finance

Title: An act relating to the sale of manufactured/mobile home communities.

Brief Description: Concerning the sale of manufactured/mobile home communities.

Sponsors: Representatives McBride, Robinson, Zeiger, Ormsby, Gregerson, Orwall, Goodman, Tharinger, Tarleton and Appleton.

Brief History:

Committee Activity:

Judiciary: 2/3/16, 2/4/16 [DPS];

Finance: 2/8/16 [DP2S(w/o sub JUDI)].

Brief Summary of Second Substitute Bill

- Requires a landlord of a manufactured/mobile home community, within two days of receiving an offer to purchase the community, to provide written notice of opportunity to purchase to all eligible organizations.
- Prohibits a landlord from closing on the sale of a manufactured/mobile home community until 90 days after the date on which the notice of opportunity was delivered, except that during this period the landlord may sell to either a qualified tenant organization or an eligible organization.
- Provides that a landlord failing to provide requisite notice or selling within the 90-day period is liable to the state in the amount of \$5,000 or 5 percent of the total sales price, whichever is greater.
- Extends the exemption from the real estate excise tax for a qualified sale of a manufactured/mobile home community from December 31, 2018, to December 31, 2026.

HOUSE COMMITTEE ON JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Kuderer and Orwall.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Haler, Klippert and Stokesbary.

Minority Report: Without recommendation. Signed by 1 member: Representative Muri.

Staff: Cece Clynch (786-7195).

Background:

A landlord must provide a written notice of sale of a manufactured/mobile home community, by certified mail or personal delivery, to:

- each tenant in the community;
- the officers of any known "qualified tenant organization", defined as a formal organization of tenants within a manufactured/mobile home community, with the only requirement for membership consisting of being a tenant;
- the Office of Mobile/Manufactured Home Relocation Assistance, in the Department of Commerce (Department);
- the local government and the local housing authority within whose jurisdiction all or part of the community exists; and
- the Washington State Housing Finance Commission.

The notice of sale must be delivered within 14 days after the date on which any advertisement, multiple listing, or public notice advertises that a manufactured/mobile home community is for sale. The notice must include a statement that the landlord intends to sell the community and the contact information of the landlord or landlord's agent who is responsible for communicating with the qualified tenant organization or "eligible organization". "Eligible organization" includes local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state, and regional or statewide nonprofit housing assistance organizations.

A landlord intending to sell a manufactured/mobile home community is encouraged to negotiate in good faith with qualified tenant organizations and eligible organizations. A sale of a manufactured/mobile home community to a qualified tenant organization or an eligible organization is a qualified sale. A qualified sale that takes place between June 12, 2008, and December 31, 2018, is exempt from the state and local real estate excise tax (REET).

The above provisions were enacted into law in 2008. At the same time, the Legislature repealed provisions granting a right of first refusal to qualified tenant organizations that had been declared an unconstitutional taking of private property for private use by the Washington Supreme Court in 2000. Those provisions required a park owner in receipt of notice from a qualified tenant organization expressing interest in purchasing the park to: (1) notify the tenant organization of any agreement to sell the park to a third party; (2) disclose the agreement's terms; (3) allow the tenant organization 30 days in which to pay the owner

two percent of the third party's agreed purchase price and tender its own offer; and, (4) sell to the tenants as long as the tenants' offer was as financially favorable as the offer from the third party.

Summary of Substitute Bill:

An eligible organization may submit to the Department a written request to receive notices of opportunity to purchase manufactured/mobile home communities. The Department is required to furnish the list to any person upon request.

Within two days after receiving a purchase offer, a landlord must provide written notice of opportunity to purchase, by certified mail or personal delivery, to all eligible organizations on the list maintained by the Department. This notice must include:

- a statement that the landlord intends to sell;
- contact information for the landlord or the landlord's agent who is responsible for communications regarding the sale; and
- the terms of any offer or agreement for the sale, including the terms of any seller financing.

A landlord is generally prohibited from closing on the sale of a manufactured/mobile home community until 90 days after the date on which the notice of opportunity was delivered; however, during this period the landlord may sell to either a qualified tenant organization or an eligible organization.

A landlord who sells or transfers a manufactured/mobile home community and willfully fails to comply with either the requirement to provide notice of opportunity to purchase or the prohibition on sale for 90 days is liable to the state in the amount of \$5,000 or five percent of the total sales price, whichever is greater. This penalty is the exclusive remedy for a violation. The Attorney General may bring a civil action in the name of the state against the landlord for such violations.

The expiration date of December 31, 2018, is removed, making permanent the REET exemption for a qualified sale.

A severability clause is included, providing that if any provisions of the act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Substitute Bill Compared to Original Bill:

The substitute reduces the period of time within which the landlord is generally prohibited from closing the sale from 120 days to 90 days.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Recently, in one city in Washington, the only mobile home community in the city was sold to a buyer from Texas. It was sold without any notice to the state or the city. Now, a whole neighborhood is disappearing, and in its place, a few large houses will be built. Once the city found out about the sale, it tried to buy the community but its efforts were to no avail. Mobile homes are like cars. As they age, some cannot be moved. Some still have money owed on them. The main thrust of the bill is so that the state will have notice of a pending sale. It does include penalty provisions, as well as a 120-day waiting period, and both of these elements still need some work. An owner can still sell to anyone. If a sale is made to someone other than a qualified tenant organization or an eligible organization, then there will be no real estate excise tax exemption. Everyone wants to preserve affordable housing. There is an affordable housing crisis in this state. There has been a 19 percent increase in homelessness in the last year. The Superintendent of Public Instruction reports over 35,000 homeless children in schools. This bill allows the owner to be part of the solution to the crisis. It is a voluntary bill, and uses the word "may" not "must". The 120-day waiting period was chosen because it was thought that landlords would not want it to be any longer. The impacts of the housing crisis are seen in the legal clinic. This bill presents a rare opportunity to preserve affordable housing without impact to the state budget. Other jurisdictions have stronger, mandatory language. This just provides an opportunity to preserve. While there are relocation funds available for people when their mobile home community closes, there is nowhere to move. This bill is needed now. In one 250-home community, 28 percent of the were built between 1967 and 1976. These cannot be moved anywhere. There are only 300 senior low-income apartments in Pierce County, and there is a one to three year waiting list to get one. This bill came about after talks with the community owners went nowhere last year. This bill is really aimed at helping eligible organizations have an opportunity to purchase, and for those the 120-day timeframe is enough.

(Opposed) There are several problems with this bill. First, it will do damage to 1031 exchanges, which is the main way that real estate transfers are made. Second, there are constitutional questions about the 120-day period. Third, the penalties are unreasonable. Mobile home communities provide affordable housing for the working class and middle class. This isn't a homelessness issue. This bill is not needed. There are already laws in place, including laws regarding notice, and the Department has recently issued an updated, multi-page set of guidelines. The 120-day time frame causes problems, and is unconstitutional. Lock in loans have timelines. When the right of first refusal legislation was passed, owners saw original purchase deals go away while tenants tried to come up with the money. The industry has sponsored many bills in the past to be allowed to build in the urban growth areas. This been portrayed as a voluntary program, but there are a lot of "musts" and "shalls" in the bill. This bill will give special privileges to tenants and is unconstitutional on that basis. The bill is wide open. It seems that receipt of a piece of mail

saying "I want to buy" may trigger the duty to notify within two days. There is no need for this bill. It is too burdensome.

(Other) The Housing Finance Commission has, in the past, helped four communities of tenants form cooperatives, obtain financing, and buy the land. This work takes a lot of time, about 9 to 12 months, and in light of that experience it seems that the 120-day timeframe in this bill is simply too short of time to organize, arrange financing, and everything else that would need to be done.

Persons Testifying: (In support) Representative McBride, prime sponsor; Ishbel Dickens, Associated Manufactured Homeowners Organization; Rory O'Sullivan, Housing Justice Project; Janice Sylvester, Manufactured Home Owners of America; and Judith White, Mobile Home Owners Association of Washington.

(Opposed) Chester Baldwin, Craig Hillis, and Rick Jiles, Manufactured Housing Communities of Washington; and Robert Cochran, Contempo Mobile Home Park.

(Other) Kim Herman, Washington State Housing Finance Commission.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 8 members: Representatives Lytton, Chair; Robinson, Vice Chair; Frame, Pollet, Reykdal, Ryu, Springer and Wylie.

Minority Report: Without recommendation. Signed by 4 members: Representatives Nealey, Ranking Minority Member; Condotta, Manweller and Wilcox.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Assistant Ranking Minority Member; Stokesbary and Vick.

Staff: Dominique Meyers (786-7150).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Judiciary:

The substitute bill extends the current expiration date for the real estate excise tax exemption to December 31, 2026, versus making the exemption permanent. In addition, it adds a tax preference performance statement for the real estate excise tax exemption.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 9, 2016.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In one city in Washington, the only mobile home community in the city was sold to a buyer from Texas, without any notice to the state or the city. The new buyer plans to convert the community to a neighborhood that will have about six large houses in it. As many mobile homes age, they cannot be moved. An owner can still sell to anyone but will be required to provide notice of the intent to sell and information about the purchaser. It is important to provide nonprofit organizations the opportunity to buy these parks for the sake of the residents of the parks. It is entirely voluntary to sell to an eligible organization; however, the exemption is provided as an incentive to do so. Everyone wants to preserve affordable housing. It is a voluntary bill, and uses the word "may" not "must." The bill has very little impact to state revenues, but the exemption is worth the impact to provide sellers the opportunity to save money by selling to an eligible organization. This bill is really aimed at helping eligible organizations have an opportunity to purchase while providing an incentive to owners to sell to these organizations. The bill is good public policy with the goal of keeping mobile home communities in the state, as a last best place for seniors to continue to own their home.

(Opposed) There are several problems with this bill. There are constitutional questions about the 120-day period. The penalty in the bill is unreasonable. The bill will create concern for tenants when they receive notice when there is not an actual sale taking place. There are already laws in place, including laws regarding notice of sale. The 90-day period causes problems, and is unconstitutional. The requirement to wait 90 days is not reasonable for the industry and owners who want to sell. The bill is not voluntary as some stated, it requires notice be given even if there is no intention to sell. If the owner of a park receives an unsolicited offer, they are still required to send in the notice to sell.

Persons Testifying: (In Support) Don Carlson and Ishbel Dickens, Association of Manufactured Home Owners; and Judith White, Manufactured Home Owners of America.

(Opposed) Todd Fisher and Craig Hillis, Manufactured Home Owners of America; Nick Federici, Washington Low Income Housing Alliance; and Chester Baldwin, Manufactured Housing Communities of Washington.

Persons Signed In To Testify But Not Testifying: None.