

SENATE BILL REPORT

E2SSB 5198

As Passed Senate, March 3, 2023

Title: An act relating to the sale or lease of manufactured/mobile home communities and the property on which they sit.

Brief Description: Concerning the sale or lease of manufactured/mobile home communities and the property on which they sit.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Frame, Kuderer, Hasegawa, Hunt, Keiser, Lovelett, Nobles, Valdez and Wilson, C.).

Brief History:

Committee Activity: Housing: 1/18/23, 2/15/23 [DPS-WM, DNP].

Ways & Means: 2/22/23, 2/24/23 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 3/3/23, 31-17.

Brief Summary of Engrossed Second Substitute Bill

- Requires landlords to provide two years notice for closure or conversion of a manufactured/mobile home community (MHC), with limited exceptions.
- Requires landlords to provide a written notice of opportunity to compete to purchase when selling or leasing an MHC.
- Establishes requirements and procedures that landlords and qualified tenant organizations or eligible organizations must follow when engaging with one another in the purchase and sale of an MHC.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5198 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Cleveland, Saldaña,

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

Shewmake and Trudeau.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Braun, Gildon, Rivers and Wilson, J..

Staff: Riley Benge (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5198 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Rivers, Assistant Ranking Member, Capital; Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Muzzall and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun and Torres.

Staff: Trevor Press (786-7446)

Background: Manufactured/Mobile Home Landlord-Tenant Act. The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a lot within a manufactured/mobile home community (MHC) where the tenant has no ownership interest in the property.

Notice of Closure. Under the MHLTA, any rental agreement must include either a covenant by the landlord that the MHC will not be converted or sold for three years or a statement that the MHC may be sold, transferred, or closed at any time after the required closure notice is provided to the tenants.

A landlord may not terminate or fail to renew a tenancy except if they change the land use of the MHC including, but not limited to, closure of the MHC or conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the MHC to a mobile home park cooperative or mobile home park subdivision. In these cases, a landlord must provide each affected tenant with 12 months notice in advance of such change. This 12 month notice requirement does not apply if the:

- mobile home park or manufactured housing community has been acquired for or is under imminent threat of condemnation;

- mobile home park or manufactured housing community is sold to an organization comprised of park or community tenants, to a nonprofit organization, to a local government, or to a housing authority for the purpose of preserving the park or community; or
- landlord compensates the tenants for the loss of their homes at their assessed value, as determined by the county assessor as of the date the closure notice is issued, at any point during the closure notice period and prior to a change of use or sale of the property.

If compensation is paid, the landlord must provide written notice of at least 90 days in which the tenant must vacate.

Notice of Sale. Under the MHLTA, a landlord must provide written notice of sale by certified mail or personal delivery to each tenant of the MHC, the officers of any known qualified tenant organization, the office of mobile/manufactured home relocation assistance, the local government and housing authority within whose jurisdiction all or part of the MHC exists, and the Washington State Housing Finance Commission.

Each notice of sale must include a statement that the landlord intends to sell the MHC and the contact information of the landlord or landlord's agent who is responsible for communicating with the qualified organization or eligible organizations with regard to the sale of the property.

A landlord intending to sell a MHC is encouraged to negotiate in good faith with qualified tenant organizations and eligible organizations.

A qualified tenant organization is a formal organization of tenants within an MHC, wherein the only requirement for membership is being a tenant. An eligible organization includes local governments local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations.

Summary of Engrossed Second Substitute Bill: Notice of Closure. The required closure notice before closure or conversion of the MHC is modified from three to two years. The option for landlords to include a covenant not to convert land use of the MHC for a three year period in the initial lease with the tenant is eliminated. Any tenant who sells their home within an MHC must provide the buyer with a copy of any closure notice in effect at least 15 days before the intended sale.

The two-year closure notice requirement does not apply if: the MHC has been acquired for or is under imminent threat of condemnation; the MHC is sold or transferred to a county in order to reduce conflicting residential uses near a military installation; or the MHC is sold to an eligible organization.

The two-year closure notice requirement is reduced:

- to 18 months if the landlord provides relocation assistance of at least \$15,000 for a multi-section home or of at least \$10,000 for a single section home at any point during the closure notice period and prior to a change of use or sale of the property; or
- to 12 months if the landlord provides relocation assistance of at least \$15,000 for a multi-section home and \$10,000 for a single section home and actually compensates the tenants for the loss of their homes at 50 percent of the assessed value in the tax year prior to the notice of closure being issued, or \$5,000, whichever is greater.

In both cases, if a home remains in the MHC after the tenant vacates, the landlord is responsible for its demolition or disposal.

Tenants receiving this type of relocation assistance from landlords are still eligible to receive the maximum amount of assistance available to them through the Mobile Home Relocation Assistance Program.

Notice of Sale. The required notice of sale is modified to include intent to sell or lease the MHC or the property on which it sits (underlying property). The definition of "notice of sale" is also modified to include both public and private notice that an MHC or the underlying property is for sale or lease.

Notice of Opportunity to Compete to Purchase. A landlord must provide a written notice of opportunity to compete to purchase indicating the owner's interest in selling the MHC before the owner markets the MHC for sale or includes the sale of the MHC in a multiple listing and when the owner receives an offer to purchase that the owner intends to consider. A notice of opportunity to compete to purchase must be provided to each tenant, a qualified tenant organization if in existence within the MHC, the Department of Commerce (Commerce), and the Housing Finance Commission within 14 days after the date on which any advertisement, listing, or public notice is first made that the MHC or the underlying property is for sale or lease.

A notice of opportunity to purchase compete to purchase must include:

- a statement that the landlord intends to sell or lease the MHC or the underlying property;
- a statement that tenants, through a qualified tenant organization or an eligible organization have an opportunity to compete to purchase the MHC;
a statement that in order to compete to purchase the MHC, within 70 days after delivery of the notice of the owner's interest in selling the MHC, the tenants must form or identify a single qualified tenant organization for the purpose of purchasing the MHC and notify the owner in writing of: (1) the tenant's interest in competing to purchase the MHC; and (2) the name and contact information of the representative of the qualified tenant organization with whom the owner may communicate about the purchase; and

- a statement that information about purchasing a MHC is available from Commerce.

Commerce is required to maintain a registry of all eligible organizations that submit written requests to receive notices of opportunity to purchase or lease an MHC. Commerce must provide registered eligible organizations with notices of opportunity to purchase once it receives such notice.

Competing to Purchase. If the tenants choose to compete to purchase the MHC in which they reside, within 70 days after delivery of the notice of the opportunity to compete to purchase, they must notify the owner of: the tenant's interest in competing to purchase the MHC; their formation or identification of a single qualified tenant organization; and the name and contact information of the representative or representatives of the qualified tenant organization with whom the owner may communicate about the purchase.

Within 15 days from the delivery of notice that the tenants will compete to purchase, the designated representative of the qualified tenant organization may make a written request to the owner for: (1) the asking price for the MHC; and (2) financial information relating to the operating expenses of the MHC in order to assist them in making an offer to purchase the MHC. In response, the owner may make a written request to the designated representative or representatives of the qualified tenant organization for proof of intent to fund a sale.

Within 21 days after delivery of information relating to the asking price and financial information relating to the operating expenses of the MHC, if the tenants choose to continue competing to purchase, the tenants must:

- form a resident nonprofit cooperative that is legally capable of purchasing real property or associate with a nonprofit corporation or housing authority that is legally capable of purchasing the manufactured/mobile home community in which the tenants reside; and
- submit to the owner a written offer to purchase the manufactured/mobile home community, in the form of a proposed purchase and sale agreement, and either a copy of the articles of incorporation of the corporate entity or other evidence of the legal capacity of the formed or associated corporate entity, nonprofit corporation, or housing authority to purchase real property and the manufactured/mobile home community.

Within ten days of receiving the tenants' purchase and sale agreement, the owner may accept, reject, or counteroffer. If the parties reach agreement on the purchase, the purchase and sale agreement must specify the price, due diligence duties, schedules, timelines, conditions, and any extensions. If the offer is rejected, then the owner must provide a written explanation of why the offer is being rejected and, if any, what terms and conditions might be included in a subsequent offer for the landlord to potentially accept it. The price, terms, and conditions of an acceptable offer stated in the response must be universal and applicable to all potential buyers and must not be specific to and prohibitive of a qualified tenant organization or eligible organization making a successful offer to purchase the park.

Good Faith Requirement. The parties have an overall duty to act in good faith. With respect to negotiation, this overall duty of good faith requirement means that the owner must allow the tenants to develop an offer, give their offer reasonable consideration, and inform the tenants if a higher offer is submitted. The owner may not deny residents the same access to the community and to information that the landowner would give to a commercial buyer.

Exclusivity. During the negotiation process, the owner may seek, negotiate with, or enter into a contract subject to the rights of the tenants in this act with potential purchasers other than the tenants or an entity formed by or associated with the tenants or another eligible organization.

Substantial Compliance. If the owner does not comply with the requirements of this act in a substantial way that prevents the tenants or an eligible organization from competing to purchase the manufactured/mobile home community, the tenants or eligible organization may: obtain injunctive relief to prevent a sale or transfer to an entity that is not formed by or associated with the tenants; and recover actual damages not to exceed twice the monthly rent from the owner for each tenant.

Certification of Compliance. An owner may record an affidavit in the county in which the manufactured/mobile home community is located which certifies that the owner has: complied with the requirements relating to an offer received by the owner for the purchase or transfer of the MHC or to a counter-offer the owner has made or intends to make; and not entered into a contract for the sale or transfer of the MHC to an entity formed by or associated with the tenants.

Exemptions from Notice Requirement. A notice of opportunity to compete to purchase is not required for any:

- sale or transfer to an individual identified in RCW 11.04.015 if the owner of the manufactured/mobile home community dies intestate;
- transfer by gift, devise, or operation of law;
- transfer by a corporation to an affiliate;
- transfer by a partnership to any of its partners;
- transfer among the shareholders who own a manufactured/mobile home community;
- transfer to a member of the owner's family or to a trust for the sole benefit of members of the owner's family;
- sale or transfer of less than a controlling interest in the legal entity that owns the manufactured/mobile home community;
- conveyance of an interest in a manufactured/mobile home community incidental to the financing of the mobile home park;
- sale or transfer between or among joint tenants or tenants in common owning a manufactured/mobile home community;

- bona fide exchange of a manufactured/mobile home community for other real property under section 1031 of the internal revenue code, as long as, at the time the manufactured/mobile home community owner lists the property or receives an offer for the manufactured/mobile home community, the owner has already commenced the exchange by the purchase of a property through a qualified exchange agent. In that circumstance, the owner has a deadline for selling the 18 manufactured/mobile home community in order to gain the 1031 tax benefits; and
- purchase of a manufactured/mobile home community by a governmental entity under the entity's powers of eminent domain.

The notice of opportunity to compete to purchase requirements and penalties do not apply to any sale or transfer of a manufactured/mobile home community to a county in order to reduce conflicting residential uses near military installations.

Penalties. A landlord who sells or leases an MHC and willfully fails to comply with the notice of opportunity to purchase, or the notice of intent to consider purchasing or leasing offer or acceptance waiting period is liable to the state for a civil penalty of \$10,000. The attorney general may bring a civil action in the name of the state against a landlord.

Preemption. No county, city, town, or municipality may enact, maintain, or enforce ordinances or other provisions that regulate the same matters as sections 8 through 12 of the bill after May 1, 2023.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: Manufactured housing is accessible, affordable housing and it is important to preserve this type of affordable housing. Manufactured housing is the most accessible path to homeownership for low income households. Rent increases are destabilizing homeowners and causing displacement in addition to park closures. This bill incentivizes and provides meaningful opportunity for permanent preservation by nonprofits who would keep rent within reach of homeowners. It is in the interest of the states for nonprofits to purchase MHCs.

MHCs are a valuable but dwindling resource for affordable housing. Many MHC residents are older adults, aging in place, or on fixed incomes. Not owning the land underneath the property creates insecurity by not knowing if rents will be raised. The biggest challenge to

living in an MHC is the reality of the stress if served a notice 12-month notice that they need to move. Most tenants are elderly or fixed-income. MHCs are almost completely full, if a park were to close there would be nowhere to go for most residents.

The Legislature needs to support the communities. Incentivizing eligible organizations and nonprofits to purchase an MHC is positive for tenants. Policies should allow nonprofit housing authorities to purchase and preserve communities. This bill creates a real opportunity to purchase for eligible organizations to step in, negotiate, and potentially purchase the park. Resident own purchase is useful and has been successful.

CON: The bill interferes with legal procedures around real estate transactions and it confuses selling a park with closing the park. A community sale isn't always a closure. The prolonged closure period is challenging and the 24 month or 12 month options are too costly. Sale of the land after closure would not offset rental assistance/compensation costs. The bill will cause more instability in MHCs that protections. The bill could cause many parks to go for sale or close down and could keep people from building more MHCs.

This bill is a disproportionate burden on one type of property and will discourage and disincentivize investment in more MHCs. The additional timeline restrictions will increase price of transactions because it would negate the ability for other bidders to use a 1031 exchange. Obligation of a qualified tenant organization does not exist. Sale of mobile home park should not differ from another type of real estate sale.

There are not enough housing units available in Washington. MHC owners are housing providers. Instead of creating more housing, this bill punishes existing owners. There is not an epidemic of parks closing. In 2022, only 129 sites out of 72,000 were taken down. A big issue with restricting the closure of MHCs is safety. The bill doesn't bring new inventory to the market. The Oregon bill is useful with regard to opportunity to purchase.

OTHER: The bill penalizes MHC owners rather than incentivizing the creation of more MHCs.

Persons Testifying (Housing): PRO: Senator Noel Frame, Prime Sponsor; Stacey Valenzuela; Ishbel Dickens, Assoc of Manufactured Home Owners; Rachel Elfenbein, Community Council; Anne Sadler, Association of Manufactured Home Owners - AMHO; JOANNA GRIST, AARP; Andrew Calkins, King County Housing Authority & Association of Washington Housing Authorities; Victoria OBanion; Jan Leonard.

CON: Brad Tower, Commonwealth Real Estate Services; Ryan Erickson, Commonwealth Real Estate Services; RUSS MILLARD; Robert Cochran, Contempo Mobile Home Park; Christa Connolly, West Prairie Village MHP; Christina Mays, Detente Management, Inc.; Mike Simonitch; Patricia Hoendermis, Yakima Valley Landlords Association.

OTHER: Arthur West.

Persons Signed In To Testify But Not Testifying (Housing): No one.

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means):

The committee recommended a different version of the bill than what was heard. PRO: This is a good compromise. There are a couple of errors that can easily be corrected from the floor.

CON: This bill violates the state constitutional rights. This well-meaning bill is a lawsuit waiting to happen. The Legislature should choose a path of incentives for landlords instead of what the current bill is.

OTHER: We are in strong support of a compromise. This is a very hard worked bill including with members of the house. We still need to fix this bill going forward but the proposed substitute is a good step going forward. We think that the second substitute represents a fair balance between the owners and the tenants for getting notification who may have disruption in their lives.

Persons Testifying (Ways & Means): PRO: Ishbel Dickens, Assoc of Manufactured Home Owners.

CON: Robert Cochran, Contempo Mobile Home Park.

OTHER: Mike Hoover, Detente Management; Brad Tower, Commonwealth Real Estate Services.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.