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BILL ANALYSIS

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Senate Bill 869 (as passed by the Senate)  
Sponsor: Senator Doug Carl  
Committee: Local Government and Veterans

Date Completed: 8-3-90

**RATIONALE**

Although many concerns of mobile home owners were addressed by the enactment of the Mobile Home Commission Act and amendments to the Act, there are reports that problems remain. Apparently, mobile home owners in some parks are subject to quite severe restrictions--such as limitations on the number of children allowed, prohibitions against pets, and extra charges for more than two residents in a home--as well as lack of clarity in lease agreements and inadequate care of parks, roads, and wastewater. In order to give mobile home owners more direct control over these circumstances, it has been suggested that the law expressly authorize the homeowners to form a corporation for the purpose of purchasing their park or taking other actions.

to notify the homeowners' corporation if the owner offered the park for sale, except under specific circumstances.

Corporation

The mobile home owners in a mobile home park could form a homeowners' corporation to purchase the park if two-thirds of the homeowners' in the park consented in writing to become members of the corporation. The corporation would have to be incorporated under the Nonprofit Corporation Act or the Business Corporation Act. All consenting homeowners and their successors would be members of the corporation and would be bound by the articles of incorporation, the bylaws, and the regulations promulgated under the articles or bylaws.

Upon incorporation and service of the required notice to the park owner (described below), the corporation would be the representative of the mobile home owners in all matters relating to the bill.

Articles of Incorporation

At a minimum, the articles of incorporation would have to include all of the following provisions:

- Specify other actions a homeowners' corporation could take, such as maintaining park property, collecting assessments, and creating easements.
- Require a corporation's articles of incorporation and bylaws to contain certain provisions.
- Require a homeowners' corporation to give the park owner notice of the incorporation.
- Require a mobile home park owner

- A person who was not a bona fide owner of a mobile home located in the park could not be a member or shareholder of the homeowners' corporation.
- The corporation would be authorized to negotiate for, acquire, and operate the park on behalf of the homeowners.

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- If the park were acquired by the corporation, it could be converted to a condominium, cooperative, or other form of ownership, and the corporation would be the entity that created a condominium or offered condominium parcels for sale or lease in the ordinary course of business; or, if the homeowners chose a different form of ownership, the corporation would be the entity that owned the record interest in the property and was responsible for its operation.

#### Bylaws

The bylaws of a homeowners' corporation would have to include a statement of the share or percentage of expenses that each member would bear, and the method by which the corporation would collect each member's share. The bylaws also would have to include at least all of the following provisions:

- The board of directors would be composed of five members. Meetings of the board would have to be open to all members, and notice of meetings would have to be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of a meeting at which assessments against members were to be considered for any reason would specifically have to contain a statement that assessments would be considered and a description of their nature.
- The board would have to mail a meeting notice and copies of the proposed annual budget to the members at least 30 days before the meeting at which the budget would be considered.
- If the homeowners' corporation purchased the mobile home park, it would have to make assessments against members at least four times a year in at least the amount required to provide funds in advance for payments of all the anticipated current operating expenses and for all of the unpaid expenses previously incurred.
- An amendment to the bylaws that changed the proportion or percentage by which members shared in the expenses as initially established would have to be approved by all of the members affected

by the change.

The bylaws also would have to include certain provisions pertaining to minutes of meetings of members and the board of directors.

If the homeowners' corporation purchased the mobile home park, the bylaws also could provide the following:

- A method of adopting and amending rules and regulations consistent with the Act governing the details of the operation and use of the park property.
- Restrictions governing the use and maintenance of mobile homes in the park, and the use of the park property, consistent with the Act and rules promulgated under it.
- Other provisions consistent with the Act or other laws governing the park property or mobile homes in the park.

#### Corporation Responsibilities

Upon receiving its certificate of incorporation, a homeowners' corporation would be required to give the park owner written notification of the incorporation and advise the owner of the names and addresses of the corporate officers. The notice would have to be personally delivered or sent by certified mail, return receipt requested. The corporation also would be required to maintain accounting records in the county in which the park was located, according to accepted accounting practices.

A homeowners' corporation that purchased the mobile home park could do the following:

- Maintain, manage, and operate the park property, and enter into any contracts ancillary to the exercise of these powers.
- Make and collect assessments and lease, maintain, repair, and replace the common areas.
- Modify, move, or create an easement for ingress or egress or for the purpose of utilities if the easement constituted part of or crossed the park property. This provision would not authorize action with respect to an easement created for the use or benefit of anyone other than the members, or crossing the property of anyone other than the members, without



that person's consent or approval as required by law. This provision also would not affect the rights of ingress or egress of a member of the corporation.

- Obtain and maintain adequate insurance to protect the corporation and the park property upon purchase of the park. A copy of each policy in effect would have to be made available for inspection by corporation members at reasonable times.

A homeowners' corporation also could institute, maintain, settle, or appeal actions or hearings in its name on behalf of all homeowners concerning matters of common interest. This provision would not limit the statutory or common-law right of an individual homeowner or class of homeowners to bring an action that was otherwise available. In addition, a homeowners' corporation could acquire, hold, lease, mortgage, and convey lots in the park.

#### Notice of Sale

If a mobile home park owner offered a park for sale, he or she would have to notify the officers of the homeowners' corporation of the offer, stating the price, terms, and conditions of sale. This requirement would not apply to the following:

- A sale or transfer to a person who would qualify as an heir under the Revised Probate Code if the park owner were to die intestate (without a will).
- A transfer by gift, devise, or operation of law.
- A transfer by a corporation to an "affiliate" (a shareholder of the transferring corporation, a corporation or entity owned or controlled directly or indirectly by the transferring corporation, or another corporation or entity owned or controlled directly or indirectly by a shareholder of the transferring corporation).
- A transfer by a partnership to one or more of its partners.
- A conveyance of an interest in a mobile home park incidental to the financing of the park.
- A conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a

mobile home park or a deed given in lieu of such foreclosure.

- A sale or transfer between or among joint tenants or tenants in common owning a mobile home park.
- An exchange of a mobile home park for other real property, whether or not the exchange also involved the payment of cash or other property.
- The condemnation and purchase of a mobile home park by a governmental entity under its powers of eminent domain.

MCL 125.2302 et al.

#### FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

#### ARGUMENTS

##### Supporting Argument

The bill would take a free market approach to solving mobile home owners' problems by giving these individuals express statutory authorization to form a nonprofit corporation or a business corporation. Upon incorporating, the homeowners could buy their park, convert it to a condominium or cooperative, maintain and operate the park property, collect assessments, create easements, and take other actions to govern the park. In addition, if mobile home owners did form a corporation and the park owner offered the park for sale, he or she would have to notify the corporate officers of the sale. These provisions would encourage park ownership by the homeowners, which would give them greater control over their own circumstances. Because there is a shortage of mobile home parks in some areas, and because it can be difficult and costly to move out of a park, homeowners should be able to exert as much influence over their living conditions as they need and desire. Although 1988 amendments to the Mobile Home Commission Act gave mobile home owners new protections concerning park rules that govern the physical conditions and aesthetics of mobile homes in a park, as well as the sale of homes and just cause terminations, the bill would give homeowners in a park the opportunity to set their own rules and write their own bylaws if they incorporated and bought the park.



### Opposing Argument

The bill not only is unnecessary, it actually could be detrimental to mobile home owners. Under existing law, any group of two or more people can form a corporate entity and buy a mobile home park, and many mobile home owners already do so. The bill, however, would require that two-thirds of the homeowners in a park consent to join the corporation. Further, by attempting to regulate the structure and activities of a mobile home owners' corporation, the bill would in fact give homeowners less flexibility than they enjoy under current law. The only additional benefit to homeowners under the bill is the requirement that a park owner give incorporated homeowners notice if the owner offered a park for sale. The bill would not, however, give the homeowners a first right of refusal, nor would it require notice to the homeowners if a potential buyer approached the park owner.

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