I. INTRODUCTION AND OVERVIEW

In May, 1997, the Department of Business and Professional Regulation asked the Florida Conflict Resolution Consortium (CRC), based at Florida State University, to conduct a feasibility assessment for utilizing negotiated rulemaking as a means for rule development pursuant to the Florida Mobile Home Act (Chapter 723, F.S.). In particular, the Department asked the CRC to explore with affected interests the feasibility of a negotiated rulemaking to implement provisions in a 1997 amendment requiring rulemaking to define "minor violations" pursuant to §723.006 F.S. and to explore such other regulatory issues that stakeholders identify for rulemaking and/or a negotiated process. The CRC formed a team to conduct this independent feasibility assessment conducting interviews with various interest groups and reviewing relevant documentation for

---

1. Negotiated rulemaking is a new tool the legislature recently authorized for use in agency rulemaking (Ch.120.54(2)(d) F.S.). The Department is the first state agency to actively consider its use. This tool has been successfully used by other states and by federal agencies as a cost-effective approach to rule development which requires the voluntary participation of the affected interests. As defined in Chapter 120, "negotiated rulemaking is a process that uses a committee of designated representatives to draft a mutually acceptable proposed rule." (See appendices for the negotiated rulemaking statutory and rule language and for a description of the negotiated rulemaking process.

2. That language is as follows:723:006 Powers and Duties of division.--In performing its duties, the division has the following powers and duties:

(9) The division shall adopt rules establishing a category of minor violations of this chapter or rules promulgated pursuant hereto. 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. . . .

(11) Upon adoption of rules establishing minor violations and a determination by the division that the violation is a minor violation, the division may levy a civil penalty of up to $250 but shall not require a refund of rent increases, fees, charges or assessments, including pass-through and pass-ons collected from mobile home owners. Until rules have been adopted as provided in this section, the enforcement procedures of the division in existence on the effective date of this act shall be in effect.

Language of 1997 amendment.
consideration by the DBPR and its Division of Mobile Homes, which implements Chapter 723, F.S.

The Florida Mobile Home Act regulates the structure and relationship between park owners and that of homeowners who rent lot space within a park, typically on an annual basis consistent with the prospectus provides by the park owner. There are approximately 365,000 lots in about 2770 parks in Florida. The Florida Manufactured Housing Association (FMHA) represents the spectrum of park owner interests, including ranges of size, amenities, and ownership forms. The Federation of Mobile Home Owners of Florida (FMO) represents, respectively, the interests of homeowner interests affected by Chapter 723, F.S. and currently reports that it has 220,000 members.

This report is based on interviews with the affected interests and a review of documentation. We have concluded that the key interests affected by the new "minor violations" statutory language are willing to participate in a negotiation over rule language to implement the provisions. We believe that a negotiated rulemaking procedure focusing on the new 1997 provisions of Ch. 723.006 F.S. relating to "minor violations" is a viable option and path to seeking resolution of the issues and the promulgation of a rule.

II. THE FEASIBILITY ASSESSMENT PROCESS

The CRC team’s objective was to conduct a time and resource-effective feasibility assessment for utilizing negotiated rulemaking as set forth in Chapter 120.54(2)(d) Florida Statutes, for rules published by the Department pursuant to Chapter 723, Florida Statutes, needed in conjunction with the operation of the Bureau of Mobile Homes.

The CRC team met initially with DBPR administrators and legal counsel to discuss the process for moving forward with the feasibility assessment and to clarify the agency's interest and stake in the issues. It conducted interviews with both park owner and home owner interests and with agency representatives.

A. The Assessment Team

This assessment was conducted by the Florida Conflict Resolution Consortium a publicly supported center based at Florida State University. The Consortium's mission is to bring Floridians together to learn to transform unproductive conflict into cost-effective, sustainable solutions. The assessment team included Robert M. Jones, director of the Florida Conflict Resolution Consortium and Jonathan Davidson with the Tallahassee Mediation Center. Mr. Jones is an attorney and has served as mediator and facilitator of over 100 public policy disputes and problems in Florida and contributed to the Administrative Procedures Act reforms dealing with dispute resolution. Mr. Davidson is an attorney and mediator with the Tallahassee
Mediation Center based in Tallahassee Florida. His mediation practice has included over 650 cases throughout the state of Florida, including circuit court cases, land-use and environmental cases and Ch. 723 mobile home cases. He is certified and has served as a mediator with the Department of Insurance and the Bureau of Mobile Homes. (See Appendix #1 for more information on the team).

B. Interview Participants

In conducting the assessment, the team sought individual and group interviews with those representing park owner interests, home owner interests and with the agency’s interests. Below is a list of persons participating in the interview process and their affiliations.

1. Park Owner interests

- Steven P. Adler, Executive Vice President, Uniprop, Inc., Birmingham MI
- Richard Coates, Esquire, Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon, P.A. Tallahassee, CPA/Lobbyist for the firm. Former Assistant Director, Division of Florida Land Sales, Condominiums, and Mobile Homes. Firm also represents Ad Hoc Committee of Concerned Park Operators
- Bob Custer, Director of Community Operations, FMHA, Cap Coral, Served on FMHA’s Executive Committee and State Board of Directors
- Jim Dale, Owner/Operator, Paradise Village, Rancho Santa Fe, CA, current President of FMHA Filled Park Division and member of State Board of Directors and Executive Committee.
- David Eastman, Skelding, Labasky, Corry, Eastman, Hauser, Jolly & Metz, P.A. Tallahassee, Office of General Counsel to FMHA
- David Huey, Owner/Operator, A & H Ltd., Inc. St. Petersburg, Member, FMHA Filled Park Governing Council
- Thomas Keenan, Regional Vice President, Manufactured Home Communities, Inc., Clearwater, Vice President, FMHA Developer Division
- Larry Knight, Assistant to Regional Vice President, Manufactured Home Communities, Inc. Clearwater, Member, FMHA Filled Park Governing Council
- Dick Leiter Regional Vice President, Sun Communities, Ltd., Plant City, currently State President of FMHA, Vice President of FMHA Filled Park Division and member of State Board of Directors and Executive Committee.
- Carl Peterson, Esquire, Skelding, Labasky, Corry, Eastman, Hauser, Jolly & Metz, P.A. Tallahassee, Office of General Counsel to FMHA
- Frank Williams, Executive Director, FMHA, Tallahassee, formerly, Executive Director, Indiana Manufactured Housing Association
- Ronald T. York, Staff Assistant to Director of Community Operations, Altamonte Springs, Former Member, FMHA State Board of Directors
- Robert B. Young, President/CEO, The Blair Group, Lakeland, Former President, FMHA, Member, Executive Committee and State Board of Directors

2. Home Owner Interests

- Charity Cicardo, Executive Director, Federation of Mobile Home Owners of Florida (FMO), Largo
- Bob Cohen, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. Tallahassee
3. Agency Interests

- Jim Norred, Chief, Bureau of Mobile Homes, DBPR
- Robert Elzey, Director, Division of Florida Land Sales, Condominiums and Mobile Homes
- Lynda Goodgame, General Counsel, Department of Business and Professional Regulation
- Robin Suarez, Chief Asst. General Counsel, DBPR

C. Interview Questions

- What interest does you represent?
  - If you represent an association, how and to what degree does your association represent the interest (e.g. how does FMHA represent park owner interests? How does FMO represent homeowner interests?)

- What other interests may be affected by this rulemaking?

- What is the importance to you of the new minor violations statutory provisions and potential rule?

- What obstacles do you see to negotiating a minor violations rule?

- Is the interest you represent willing to participate and negotiate in good faith in a negotiated rulemaking on minor violations?

- What other related issues or rules are of concern to you?

- How will your interest be represented in the process?

III. Summary of Issues and Concerns Regarding "Minor Violations" (Ch. 723.006 (9) & (11) Under the Florida Mobile Home Act

A. Scope of Issues to Address.

1) The assessment team noted an overlap as well as variance of homeowner and park owner interests, in defining the scope of what incidents could be defined as minor violations.
2) Interested parties expressed concerns with agency enforcement of the minor violations provisions as an issue, though the concerns ranged from too little enforcement to unpredictable enforcement.

3) Interested parties expressed concern that trying to put a number of the other issues that have been in contention among the interests in recent years (e.g. prospectus/tenancy issues; notice issues; pass-ons, in particular those related to utility hook ups) may not be productive for purposes of negotiating rule language at present. However there was recognition by all interests that in seeking agreement on minor violations rule language, some of these issues may need to be addressed.

B. Procedural Issues

1) All interests expressed similar concerns about getting all interests to the table interested in trying to negotiate solutions in good faith.

2) All interests pointed out that resident-owned communities (ROCs) present issues of representation for both park owner and home owner interests. They are represented to some degree by both major organizations (FMHA and FMO).

c) For park owners, the representation question had to do with covering the large, small and resident owned parks. For home owners, the question had to do with effectively representing individual home owners and the park owners. (e.g., representation of existing and other interests) that would be required for the negotiated rulemaking.

IV. Feasibility Assessment

The elements of a feasibility assessment for negotiated rulemaking are dependent on whether the issues are clearly identified and the interests are capable of being represented in a negotiation process. In this context, the assessment below addresses the guidelines and criteria for negotiated rulemaking established by 1996 amendments to the Florida Administrative Procedure Act, Chapter 120.54(2)(d), F.S. (FAPA), and the Uniform Rules, Section 28-103.04, adopted by the Florida Administration Commission that guide agency implementation of the Chapter 120 provisions. (See Appendix #3)

A. Complexity of Rules and Potential Opposition.

Within the range of defining the scope of what constitutes minor violations under the Mobile Home Act, the interviews revealed a wide range of potential and complex interrelated topics, ranging from notice and disclosure to enforcement issues and matters that may be characterized as health, safety, and welfare concerns.
Regarding the potential for opposition, the interviews revealed that matters of rule development under the Mobile Home Law have been frequent subjects for rule challenges and judicial appeals.

**It is our opinion that a negotiated rulemaking format to address minor violations is consistent with these FAPA considerations.**

**B. Can a balanced committee of interested persons who will negotiate in good faith be assembled?**

Based on information and analysis of the interviews conducted and documents reviewed, it is our opinion that a balanced committee representing homeowner, park owner and agency interests can be structured with reliance on the FMO and FMHA organizations. With respect to negotiated rulemaking for defining minor rule violations, we are satisfied that the FMO and FMHA can adequately represent the respective interests of homeowners and park owners, so long as there is recognition that more particularized interests may emerge during detailed discussion of subject matter and issues.

The Ch. 120 procedure also provides for an opportunity after the Agency notices its proposal for negotiated rulemaking to review requests of individuals and organizations who do not believe their interests are adequately represented on the proposed committee. Further the negotiated rulemaking process and sessions will be noticed and open to the public.

While we do not recommend a specific structure for representation in this report, we believe the agency ought to consider a team approach for each of the three interests that may be involved in this negotiated rulemaking. Observations by interviewees indicated that the concerns of resident-owned communities [ROCs] may overlap the associational interests of both FMO and FMHA. We recommend that the Agency consider ensuring representation of ROC interests within both FMO and FMHA teams as a way to deal with this issue.

Based on information and analysis for all interviews, we conclude that the interested parties and the agency are prepared to negotiate in good faith.

**C. Agency Support and Commitment to the Process**

The agency has indicated its willingness to provide technical support and assistance to a negotiated rulemaking process for implementation of the minor violations rule, and to use the committee consensus as the basis for its proposed rule.
The definition of "consensus" was a concern raised by all interests in the interview process. This will be an important organizational ground rule decision to be make at the outset of the process. In the over sixty examples of negotiated rulemaking by other states and at the Federal level, consensus is understood as the concurrence among the interests represented on a negotiated rulemaking committee. There has been some variation in terms of whether formal votes are taken or agreement is determined informally, whether committee members all sign an agreement to signify the end product of the negotiations and whether the committee is aiming for agreement on specific rule language or agreement on general principles.

Agency representatives also indicated that selection of a negotiated rulemaking process for the minor violations rule would not unreasonably delay implementing legislation, consistent with provisions of the Uniform Rule.

D. Willingness to Participate.

All interests interviewed expressed a positive degree of willingness to participate in negotiated rulemaking for the “minor violations” rule and would consider forming an appropriate negotiation team to effectively participate.

V. Suggested Structure for Negotiation

Identification of the interests to be represented on a negotiated rulemaking committee will be a key first step by the Agency in preparing its notice of proposed rulemaking. As the FMO and FMHA are broad membership organizations, each is aware of representation concerns among potential subgroups within each interest. Our recommendation is that the agency consider appointing teams for each of the three interests (park owners, home owners and agency) and work with the interests to identify those individuals who could serve on each team to be best represent the broader interest.

Following the notice of proposed negotiated rulemaking, we would recommend convening an organizational and orientation session to launch the negotiated rulemaking process that might include some orientation on interests-based negotiation and on rulemaking negotiations and should include objectives to agreeing on protocols and groundrules, on the scope of negotiation and the proposed schedule. The negotiation sessions should be designed to develop draft rule language within a reasonable amount of time. The interests are well briefed on relevant issues and this may enhance the ability to make progress and effectively use the time to craft creative solutions to different priorities and differences among the interests. The facilitator(s) should assist by drafting agendas, keeping meeting summaries, helping to develop text for negotiation and effectively moderating each of the negotiation sessions.
VI. Conclusion

We have concluded that the key interests affected by the new "minor violations" statutory language are willing to participate in good faith in a negotiation over rule language to implement the provisions. We believe that a negotiated rulemaking procedure focusing on the new 1997 provisions of Ch. 723.006 F.S. relating to "minor violations" is a viable option and path to seeking resolution of the issues and the promulgation of a rule.
Appendix #1  Feasibility Assessment Team

WHAT IS THE CONSORTIUM?

"The purpose of the Consortium is to serve as a neutral resource to assist citizens and public and private interests in Florida to seek cost-effective solutions to public disputes and problems through the use of alternative dispute resolution and consensus building."

--F.S. 240.702

Our mission is to bring Floridians together to learn to transform unproductive conflict into cost-effective, sustainable solutions. The Consortium serves as a catalyst to create supportive policies and to help educate statewide on the appropriate use of mediation, facilitation and other collaborative problem-solving approaches to resolve a wide range of public policy issues.

With the support of Florida State University and the Florida Legislature, the Consortium provides dispute resolution service, education, training and research to build a broader understanding of the value of collaborative approaches and create a cadre of citizens, leaders, professionals and students skilled in using collaborative consensus building and conflict resolution processes.

The Consortium offers neutral technical assistance to a wide range of professionals, agency staff and private citizens and organizations engaged in public problems throughout Florida. We help to design and implement efforts for intergovernmental collaboration, community and public problem-solving, and land-use and environmental dispute resolution. We also provide referral services connecting stakeholders and potential users with trained dispute resolution professionals.

THE CONFLICT ASSESSMENT TEAM

Robert M. Jones, director of the Florida Conflict Resolution Consortium, is an attorney and has served as mediator and facilitator of over 100 public policy disputes. He served for eight years as a senior program officer at the National Institute for Dispute Resolution and as chair of the Society for Professionals in Dispute Resolution's Mediator Qualifications Commission.
**Jonathan M. Davidson**, is an attorney and mediator with the Tallahassee Mediation Center based in Tallahassee Florida. His mediation practice has included over 650 cases throughout the state of Florida, including circuit court cases, land-use and environmental cases. He is certified and has served as a mediator with the Department of Insurance and the Bureau of Mobile Homes. He has served as counsel for the Governor's Office of Planning and Budgeting, the Florida Administration Commission and special counsel to the City of Jacksonville, as well as other government and private clients.
2. Interview request letters
3. 120 negotiated rulemaking language and process chart

Chapter 120.54 (2)(d) F.S.

Negotiated Rulemaking

1. An agency may use negotiated Rulemaking in developing and adopting rules. The agency should consider the use of negotiated Rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of a negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated Rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated Rulemaking process described in this paragraph shall publish in the Florida Administrative Weekly a notice of negotiated Rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

Uniform Rule 28-103.04 Negotiated Rulemaking

(1) The agency may develop rules through negotiated rulemaking. Negotiated rulemaking is a process that uses a committee of designated representatives to draft a mutually acceptable proposed rule. The agency should consider the following factors in determining whether to use negotiated rulemaking:

(a) Whether there is a need for a rule;
(b) Whether there are identifiable multiple interests that will be affected by the rule;
(c) Whether a balanced committee of interested persons who are willing to negotiate in good faith and who can represent identified interests can be assembled;
(d) Whether there is a reasonable likelihood that a committee can reach a consensus within a fixed period of time;
(e) Whether negotiated rulemaking processes will unreasonably delay implementing legislation;
(f) Whether the agency has resources, including technical assistance, to commit to support negotiated rulemaking;
(g) Whether the agency will use the consensus of the committee as the basis for proposing a rule, consistent with its statutory responsibilities.

(2) When the agency chooses to use negotiated rulemaking, it shall publish a notice in the Florida Administrative Weekly. The notice shall include:

(a) An announcement that the agency intends to convene a negotiated rulemaking proceeding;
(b) A description of the subject and scope of the rule to be developed;
(c) A list of the rulemaking committee members, including their addresses and telephone numbers;
(d) A proposed schedule for completing the work of the committee;
(e) A statement of how persons who believe that their interests are not adequately represented may apply to participate on the committee.

(3) The agency shall respond in writing to requests for membership setting forth reasons for granting or denying the requests.
(4) The negotiating committee shall be chaired by a neutral facilitator or mediator. The facilitator/mediator shall serve subject to the approval of the committee.

(5) The negotiating committee may by consensus expand its membership.

(6) The negotiating committee shall report the results of its deliberations to the agency within the time frame specified in the notice of negotiated rulemaking.

Specific Authority: 120.54(5)(49), F.S. Law Implemented 120.54(2)(d), F.S. History-New
4. DBPR feasibility assessment agreement with CRC

AGREEMENT WITH FLORIDA STATE UNIVERSITY/
FLORIDA CONFLICT RESOLUTION CONSORTIUM

PRELIMINARY STATEMENT:

This agreement is being sought for the Bureau of Mobile Homes due to a recent legislative mandated to adopt rules to list minor violations of Chapter 723, Florida Statutes. In addition, the mobile home park industry has petitioned the agency to adopt rules dealing with service of notices on a mobile home park tenant association. This area of law has historically been very contentious and fraught with litigation. It is the agency’s desire to afford every opportunity available to resolve the issues prior to publishing new rules. To that end, the agency would like to enter into an agreement with Florida State University—Florida Conflict Resolution Consortium to assist in a feasibility review to determine if negotiated rulemaking is a viable option and path that should be used to seek resolution of the issues. The negotiated rulemaking process is a new concept in the administrative procedures. It is anticipated that this will be the first governmental effort in negotiated rulemaking and professional assistance would seem advisable.

TERMS OF AGREEMENT:

The Florida Conflict Resolution Consortium (FCRC) will conduct an assessment of the potential effectiveness of negotiated rulemaking for rules published pursuant to Chapter 723, Florida Statutes. The assessment will consist of the following:

a. Interviews will be conducted of the interest groups identified by the Department of Business and Professional Regulation (department). The FCRC will seek to identify any support or opposition to the negotiated rulemaking process.

b. In addition, the interviewed parties will be polled to attempt to determine issues in addition to statutorily mandated rules that have potential for resolution by negotiation.

c. The FCRC will conclude the assessment and report to the department no later than June 30, 1997. The report shall contain information regarding the parties interviewed and the information learned in the interviews. The report shall also make a professional assessment of the likelihood of the success of negotiated rulemaking for the Bureau of Mobile Homes.