

54:4C-1 and 54:4C-2

LEGISLATIVE HISTORY CHECKLIST

WJSA 54:4C-1 and 54:4C-2 (Mobile homes--taxation--Moratorium)

LAWS OF 1979 CHAPTER 366

Bill No. S3294

Sponsor(s) Hamilton and others

Date Introduced May 24, 1979

Committee: Assembly -----

Senate -----

Amended during passage Yes
according to Governor's recommendations

Amendments during passage denoted by asterisks. Substituted for A3417 (not enclosed since identical to S3294)

Date of Passage: Assembly July 16, 1979

Re-enacted 1/3/80

Senate June 18, 1979

Re-enacted 1/7/80

Date of approval Feb. 4, 1980

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>
Committee Statement: Assembly	Yes	<input type="checkbox"/>
Senate	Yes	<input type="checkbox"/>
Fiscal Note	Yes	<input type="checkbox"/>
Veto message	Yes	<input checked="" type="checkbox"/>
Message on signing	Yes	<input type="checkbox"/>

Following were printed:

Reports	Yes	<input checked="" type="checkbox"/>
Hearings	Yes	<input checked="" type="checkbox"/>

974.90 NJ. Legislature. Mobile Home Study Commission.
H842 Public hearing on taxation of mobile homes,
1978g held 11-21-78. Trenton, 1978.

974.90 NJ. Legislature. Mobile Home Study Commission.
H842 Public hearing on financing of mobile homes
1979 and mobile homes and mobile home land development,
held 1-24-79. Trenton.

2/1/73

(over)

[OFFICIAL COPY REPRINT]
SENATE, No. 3294

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1979

By Senators HAMILTON, DWYER, WEISS, J. RUSSO, PARKER,
BEDELL, GAGLIANO, KENNEDY and CAFIERO

(Without Reference)

AN ACT concerning the taxation of mobile homes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. ***[a.** Except as otherwise provided in subsections b. and c. of
2 this section, mobile homes located on leased land shall not be
3 assessed and taxed as real property until October 1, 1980, for the
4 tax year 1981.

5 b. Mobile homes located on leased lands and assessed as real
6 property prior to and on March 20, 1979 for which no appeal has
7 been taken on the imposition of a real property tax as of the
8 effective date of this act, and any mobile homes located on leased
9 land in any mobile home park wherein mobile homes were assessed
10 as real property prior to and on March 20, 1979, shall be assessed
11 and taxed as real property.]*

12 *a. *Any mobile home assessed and taxed as real property prior*
13 *to and on March 20, 1979 for which no appeal has been taken on the*
14 *imposition of a real property tax as of said date, shall be assessed*
15 *and taxed as real property. Any mobile home that was not assessed*
16 *and taxed as real property prior to and on March 20, 1979 shall not*
17 *be assessed and taxed as real property until October 1, 1980 for the*
18 *tax year 1981.*

19-20 b. *Any mobile home acquired after March 20, 1979 shall be as-*
21 *essed and taxed as real property; except that any mobile home*
22 *located after said date in any mobile home park in which mobile*
23 *homes were not assessed and taxed as real property prior to March*
24 *20, 1979 for which no appeal has been taken on the imposition of a*
25 *real property tax as of said date, shall not be assessed and taxed*
26 *as real property until October 1, 1980 for the tax year 1981.**

27 c. During the period of the moratorium ***[imposed under sub-**
28 **section a. of this section]***, and for the tax years 1978, 1979 and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

29 1980, no mobile home **subject to the moratorium** shall be assessed
30 as an added or omitted assessment and taxed as real property
31 **[unless such property is assessable and taxable as real property*
32 *under subsection b. of this section]**.

1 2. a. Except as otherwise provided in subsection b. of this sec-
2 tion, a sales tax pursuant to subsection (v) of section 2 of P. L.
3 1966, c. 30 (C. 54:32B-2 (v)) on any mobile home sale made on or
4 after March 20, 1979, shall remain in effect and be enforced as
5 heretofore until December 31, 1980.

6 b. Any sale of a mobile home assessed and taxable as real prop-
7 erty pursuant to **[subsection b. of]** section 1 of this act shall not
8 be subject to the sales tax, except in the case of the sale of a new or
9 previously unused mobile home which shall be subject to the sales
10 tax only to the extent of the taxation of the sale of tangible personal
11 property for building construction pursuant to subsection (e) (2)
12 (A) of section 2 of P. L. 1966, c. 30 (C. 54:32B-2 (e) (2) (A)).

1 3. This act shall take effect immediately.

SENATE, No. 3294

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1979

By Senators HAMILTON, DWYER, WEISS, J. RUSSO, PARKER, BEDELL, GAGLIANO, KENNEDY and CAFIERO

(Without Reference)

AN ACT concerning the taxation of mobile homes.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. a. Except as otherwise provided in subsections b. and c. of
2 this section, mobile homes located on leased land shall not be
3 assessed and taxed as real property until October 1, 1980, for the
4 tax year 1981.

5 b. Mobile homes located on leased lands and assessed as real
6 property prior to and on March 20, 1979 for which no appeal has
7 been taken on the imposition of a real property tax as of the
8 effective date of this act, and any mobile homes located on leased
9 land in any mobile home park wherein mobile homes were assessed
10 as real property prior to and on March 20, 1979, shall be assessed
11 and taxed as real property.

12 c. During the period of the moratorium imposed under subsec-
13 tion a. of this section, and for the tax years 1978, 1979 and 1980, no
14 mobile home shall be assessed as an added or omitted assessment
15 and taxed as real property unless such property is assessable and
16 taxable as real property under subsection b. of this section.

1 2. a. Except as otherwise provided in subsection b. of this sec-
2 tion, a sales tax pursuant to subsection (v) of section 2 of P. L.
3 1966, c. 30 (C. 54:32B-2 (v)) on any mobile home sale made on or
4 after March 20, 1979, shall remain in effect and be enforced as
5 heretofore until December 31, 1980.

6 b. Any sale of a mobile home assessed and taxable as real prop-
7 erty pursuant to subsection b. of section 1 of this act shall not be
8 subject to the sales tax, except in the case of the sale of a new or
9 previously unused mobile home which shall be subject to the sales
10 tax only to the extent of the taxation of the sale of tangible personal
11 property for building construction pursuant to subsection (e) (2)
12 (A) of section 2 of P. L. 1966, c. 30 (C. 54:32B-2 (e) (2) (A)).

1 3. This act shall take effect immediately.

STATEMENT

This bill is introduced on behalf of the Mobile Home Study Commission, which has been created pursuant to Joint Resolution 3 of 1977. The commission is charged with studying and making recommendations on current systems of taxation and financing of, and land use regulations on mobile homes, with a view to increasing the availability and improving the affordability of mobile homes in New Jersey. The commission is directed to report its findings and recommendations to the Legislature and the Governor by October 19, 1979, or within 6 months of that date.

This bill is a response to *Koester v. Hunterdon County Board of Taxation*, 79 N. J. 381 (1979), in which the New Jersey Supreme Court recently held that mobile homes on leased lands are taxable as real property, if the mobile home serves as a permanent dwelling unit and receives or is entitled to the same municipal services as other such dwelling units. Prior to this decision, it was the view of the courts that mobile homes on leased lands in commercially operated parks, were not affixed to the land in a manner to qualify them as real property. The *Koester* decision strongly suggests that intent and use, rather than the manner in which a mobile home is affixed to the land, are to be the main determinants of whether or not mobile homes on leased lands are taxable as real property.

The net effect of the *Koester* decision is to provoke, if not require, an abrupt shift in the manner in which most mobile homes in commercially operated parks are taxed. Such homes have traditionally been considered as personal property and have been required to pay various municipal fees in-lieu-of taxes. The decision therefore raises not only considerable new problems of tax policy and administration, but, in many instances, will also result in substantial year-to-year increases in the "tax-obligations" of households residing in mobile homes affected by the *Koester* decision.

It is for these reasons, more fully elaborated on below, that the commission recommends, by means of this bill, a moratorium on any immediate implementation of *Koester*. The commission's and the bill's objective are, however, not to undo or eviscerate the court's decision. Indeed, the commission is openly on record in support of the essential tax principles enunciated in *Koester*. Instead, the commission is of the firm view that a moratorium will provide the necessary respite for an orderly transition to the real property tax and allow a better effectuation of the principle of tax equity central to *Koester*, without causing any of the unintended dislocations that may eventuate from immediate implementation of *Koester*.

The main provisions of the bill are as follows:

(1) Implementation of the *Koester* decision is to be postponed until tax year (fiscal year) 1981, but only with respect to mobile homes on leased lands that prior to and on the date of the *Koester* decision were not assessed as real property;

(2) Mobile homes assessed as real property prior to and on that date will during the period of the moratorium, continue to be assessed and taxed as real property, if no appeal has been taken on the manner of taxation (and not the assessment) as of the date of the bill's enactment;

(3) Mobile homes placed on leased lands in mobile homes parks wherein mobile homes located therein were assessed as real property prior to and on the date of the *Koester* decision, will be assessed and taxed as real property;

(4) A sales tax is to be levied and collected in full on all mobile homes sold during the moratorium that are not assessable as real property pursuant to the provisions of this bill, but mobile homes taxed as real property shall be subject to the sales tax only to the extent of other dwelling units.

The reason for the moratorium is that the *Koester* decision has, as the court well recognized, raised more issues than it resolved. The moratorium will give the commission and the Legislature the opportunity to address, in a more deliberative and comprehensive fashion, some of the following issues or problems:

(1) Should a sales tax continue to be levied on the sales price of dwelling units? Should or will mobile homes assessed and taxed as real property be subject to the realty transfer tax. If so, should or will this exempt such homes from the sales tax, and under what circumstances? Should or will mobile homes taxed as real property be eligible for sales tax refunds?

(2) Will a municipality have the authority to continue to levy license and pad fees on commercially operated parks, notwithstanding that such mobile homes are taxed as real property?

(3) How are mobile homes to be valued and assessed? Are "blue book" values to be used or should assessors employ traditional assessing methods?

(4) In lease situations involving two separate property interests:

Will the tax be levied on the land or the unit or who will have the responsibility for payment of the tax? Who may file a tax appeal? Who is responsible in the case of a tax delinquency, or in the case where the mobile home is moved before the quarterly installment

is due and payable? How are tax liens to be recorded? In the case of a tax sale, must a park owner continue to provide a location for the unit until the time of the sale? Would the rights of redemption and foreclosure be governed by real property or personality law?

(5) How do we deal with the host of other definitional, administrative (including rather rigid assessment schedules) and enforcement problems posed by the subjection of relatively mobile properties to a tax regime devised for structures more permanently affixed to the land?

(6) If a park owner is made responsible for collection (payment) of the property tax, must he pay the tax out-of-pocket if the local rent control ordinance does not permit an immediate pass through of such expenses?

(7) Can an assessor pick up a mobile home as an omitted assessment during the current year and then carry back the assessment, and taxes due thereon, to the immediately preceding year?

(8) How will the classification of mobile homes as real property affect the provisions of the motor vehicle law relating to (a) vehicle registration and (b) titling?

(9) Will mobile home dealers have to qualify for a realtor's licensing laws or will they continue to be subject to the motor vehicles law?

(10) Is mobile home financing henceforth to be subject to the usury and other financing laws of the State relating to real property, or does it again depend on circumstances? If so, what circumstances?

(11) What effects will the immediate implementation of *Koester* have on municipal revenues and the "caps law?" On intergovernmental fiscal transfers?

As partial fulfillment of its legislative mandate, the commission intends to submit to the Legislature a package of bills dealing with some or all of the above, and possibly other relevant issues. The legislative package will also include a proposal for a constitutional amendment that will qualify eligible mobile homeowners for senior citizen deductions, as well as such other measures as may be necessary to accord eligible mobile homeowners the same tax benefits as are currently available to other similarly situated homeowners.

The commission is of the firm belief that a period of transition is essential in order to ease the inevitable dislocations on mobile homeowners, mobile home dealers and mobile home parks operators, and to clarify their respective rights and responsibilities, as well as,

for that matter, the responsibilities of public agencies and officials, in the wake of the rather abrupt change in tax policy wrought by the *Koester* decision. The transitional period will also afford the Legislature an opportunity to address the many ancillary issues raised by that decision on the basis of the respective merits of each issue, and to do so in a comprehensive manner.

The commission does not of course contend that many of the foregoing issues or problems are not manageable under existing law. What the commission does question is the suitability of some of the existing laws governing real property in regulating property of a hybrid character. The commission is further of the view that resolution of the many issues raised by *Koester* ought not to be left to the discretion of 567 municipalities or 21 county boards of taxation, or the courts. A somewhat similar conclusion was reached in *Switz v. Middletown Twp.*, 23 N. J. 580 (1957) wherein the New Jersey Supreme Court afforded the State Legislature a 2 year grace period in order to adopt appropriate administrative procedures for realizing the constitutional requirement that all property shall be assessed "under general laws and by uniform rules . . . according to the same standard of value." The commission is of the belief that we should do no less in this instance.

SENATE AMENDMENTS TO
SENATE, No. 3294

STATE OF NEW JERSEY

ADOPTED DECEMBER 17, 1979

Amend page 1, section 1, lines 1-11, delete the text in its entirety and insert:

“a. Any mobile home assessed and taxed as real property prior to and on March 20, 1979 for which no appeal has been taken on the imposition of a real property tax as of said date, shall be assessed and taxed as real property. Any mobile home that was not assessed and taxed as real property prior to and on March 20, 1979 shall not be assessed and taxed as real property until October 1, 1980 for the tax year 1981.

b. Any mobile home acquired after March 20, 1979 shall be assessed and taxed as real property; except that any mobile home located after said date in any mobile home park in which mobile homes were not assessed and taxed as real property prior to March 20, 1979 for which no appeal has been taken on the imposition of a real property tax as of said date, shall not be assessed and taxed as real property until October 1, 1980 for the tax year 1981.”

Amend page 1, section 1, lines 12-13, delete “imposed under subsection a. of this section”.

Amend page 1, section 1, line 14, after “mobile home”, insert “subject to the moratorium”.

Amend page 1, section 1, lines 15-16, delete “unless such property is assessable and taxable as real property under subsection b. of this section”.

Amend page 1, section 2, line 7, delete “subsection b. of”.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 17, 1979

SENATE BILL NO. 3294

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 3294, with my objections, for reconsideration.

S-3294 would establish a moratorium on the assessment and taxation as real property of certain mobile homes on leased land until October 1, 1980 for the tax year 1981. The stated purpose of the bill is to permit local governments to adjust to the changes in taxation principles brought about by the N.J. Supreme Court decision in Koester v. Hunterdon County Board of Taxation, 79 N.J. 381 (1979). This decision states that a mobile home on leased land is taxable as real property if it serves as a permanent dwelling and receives or is entitled to the same municipal services as other dwellings. Prior to this decision it was the prevailing view that mobile homes on leased property in commercial mobile home parks were not so affixed to the land as to qualify them as real property. Koester suggests that intent and use rather than manner of affixation should determine whether mobile home qualifies as real property.

While I concur with the concept of allowing municipalities the opportunity to adjust to this significant change in prevailing tax assessment practices, I am concerned about the focus of the bill on mobile homes on leased land. In my judgment, greater equity would be done by providing for all mobile homes, whether on leased or owned land.

Under my recommendation mobile homes taxed as real property on or before March 20, 1979, the date of Koester, would continue to be so taxed. Mobile homes not taxed as real property prior to that date could not be so taxed until October 1, 1980 for the tax year 1981. Mobile homes acquired after March 20, 1979 would be taxed as real property except that mobile homes located after that date in a mobile home park in which the mobile homes were not taxed as real property prior to that date would not be taxed as real property until October 1, 1980 for the tax year 1981.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-2-

Accordingly, I herewith return Senate Bill No. 3294 for re-consideration and recommend that it be amended as follows:

Page 1, Section 1, Lines 1-11: Delete the text in its entirety and insert:

"a. Any mobile home assessed and taxed as real property prior to and on March 20, 1979 for which no appeal has been taken on the imposition of a real property tax as of said date, shall be assessed and taxed as real property. Any mobile home that was not assessed and taxed as real property prior to and on March 20, 1979 shall not be assessed and taxed as real property until October 1, 1980 for the tax year 1981.

"b. Any mobile home acquired after March 20, 1979 shall be assessed and taxed as real property; except that any mobile home located after said date in any mobile home park in which mobile homes were not assessed and taxed as real property prior to March 20, 1979 for which no appeal has been taken on the imposition of a real property tax as of said date, shall not be assessed and taxed as real property until October 1, 1980 for the tax year 1981."

Page 1, Section 1, Lines 12-13: Delete "imposed under subsection a. of this section"

Page 1, Section 1, Line 14: After "mobile homes" insert "subject to the moratorium"

Page 1, Section 1, Lines 15-16: Delete "unless such property is assessable and taxable as real property under subsection b. of this section"

Page 1, Section 2, Line 7: Delete "subsection b. of"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 4, 1980

PAT SWEENEY

Governor Brendan Byrne today at noon signed two bills in a public ceremony in his office. S-1419, sponsored by Senator William J. Hamilton, Jr. (D-Middlesex), is known as the Medicaid Fraud and Abuse bill. The bill makes the following changes in the Medicaid Statute:

- Clarification that Medicaid dollars be the last dollar coverage;
- Updating the eligibility sections to reflect current federal law and state practice;
- Expanding the Commissioner of Human Services' authority to recover funds from recipients, their estates, third parties, and others;
- Broadening and clarifying the prohibition against willfully and fraudulently obtaining benefits or payments, adding a prohibition against misappropriation and against kickbacks, rebates or bribes;
- Expanding the procedures available to aid the department in its recovery and enforcement actions.

S-3294, also sponsored by Senator Hamilton, concerns the assessment and taxation of mobile homes. The legislation provides that unless a mobile home located on leased land was assessed and taxed as real property prior to March 20, 1979, then the mobile home shall not be so assessed and taxed until October 1, 1980, for the tax year 1981.

The bill is a response to "Koester v. Hunterdon County Board of Taxation," in which the New Jersey Supreme Court recently held that mobile homes on leased lands are taxable as real property if the mobile home serves as a permanent dwelling unit and receives, or is entitled to, the same municipal services as other dwelling units.

Prior to this decision it was the view of the courts that mobile homes on leased lands in commercially operated parks were not affixed to the land in a manner to qualify them as real property. The effect of the "Koester" decision is to require an abrupt shift in the manner in which most mobile homes in commercially operated parks are taxed.

The bill provides a moratorium to provide for an orderly transition to the real property tax. Implementation of the "Koester" decision is postponed until tax year (fiscal year) 1981, for most mobile homes.