

MAINE STATE LEGISLATURE

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*STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION*

*Final Report
of the
MANUFACTURED HOUSING COMMISSION
December 1989*

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Members:
*Sen. John E. Baldacci
Sen. Stephen C. Estes
Sen. Robert R. Gould
Rep. Donnell P. Carroll
*Rep. Charles R. Priest
Rep. Carl F. Sheltra*

*Louise Dorais
Richard Hathaway
Robert Howe
William Livengood
Joseph Riley
Arthur Ritch
John Schiavi*

** Denotes Chair*

EXECUTIVE SUMMARY

The 113th Maine Legislature created the Manufactured Housing Commission during its Second Regular Session to examine a variety of issues relating to manufactured housing, mobile home parks and their owners and tenants, which merited more detailed consideration than was possible during the legislative session. See Private and Special Law 1987, c. 139. See Appendix A. P.L. 1989, c. 601, Pt. C, specified that the Commission would study the issue of mediation of mobile home park disputes and include pertinent recommendations in its final report. See id.

The law creating the Commission provided that the Commission would be composed of 6 legislators appointed to legislative committees with jurisdiction over matters related to manufactured housing and 7 persons representing persons or groups with interests in the residential use of mobile homes. The Commission's members are:

Sen. John E. Baldacci
Sen. Stephen C. Estes
Sen. Robert R. Gould
Rep. Donnell P. Carroll
Rep. Charles R. Priest, Chair
Rep. Carl F. Sheltra
Louise Dorais, manufactured housing owner
Richard Hathaway, manufactured housing owner
Robert Howe, Manufactured Housing Association of Maine
William Livengood, Maine Municipal Association
Joseph Riley, Maine Building Officials and Inspectors Association
Arthur Ritch, mobile home park owner
John Schiavi, mobile home park owner

The Legislature directed the Commission to make an interim report and recommendations by December 1, 1988, and a final report and recommendations by December 1, 1989. This final report is submitted in satisfaction of the latter statutory requirement.

The Commission submitted its interim report by December 1, 1988. The Interim Report of the Manufactured Housing Commission (December 1988) provides a detailed analysis of the Committee's 7 meetings held up to December 1, 1988, and contains the Commission's 6 unanimous recommendations in the form of legislation. See Section II, A, infra, for description of the Commission's interim recommendations and the Legislature's response to those recommendations.

The full Commission met 4 times between September and December 1989 to discuss mobile home park dispute mediation and sales warranties as well as unfinished business carried over from its first year. The Commission held one of these meetings in the Town of Saco in an effort to hear the concerns of owners of mobile homes or mobile home parks and similarly interested parties, who live in southern Maine where development pressures have been heaviest.



FINAL RECOMMENDATIONS

The Commission unanimously agreed on most of its recommendations. However, on two issues - mediation and eviction procedures - the Commission has a majority and minority report.

The Commission's final recommendations regarding the new mobile home warranty are these:

(1) New mobile home warranty's application to out-of-state dealers

Unanimous: Clarify that the new mobile home warranty applies to out-of-state dealers when it is foreseeable that the home will be installed in Maine and extend the warranty to cover carriers and installers who bring mobile homes into the state;

(2) Licensing out-of-state dealers

Unanimous: Require the Manufactured Housing Board to study the feasibility of licensing out-of-state manufactured housing dealers whose products are transported into and installed in Maine; and

(3) Disclosure of new mobile home warranty to consumers

Unanimous: Recommend that the Attorney General proceed with plans to research, draft and secure introduction of a bill to ensure that manufacturers disclose the terms of this State's new mobile home warranty to consumers.

The Commission's final recommendations regarding the mobile home park owner/tenant relationship are these:

(4) Retaliatory eviction

Unanimous: Prevent eviction of mobile home park tenants in retaliation for asserting their rights as tenants or for forming or participating in a tenants' association;

(5) Eviction due to park renovation or reconstruction

Unanimous: Grant mobile home park tenants the following rights in cases of eviction from parks due to reconstruction or renovation:

- (a) where eviction is permanent, the park owner or operator must give tenants one year's written notice;

(b) where eviction is temporary, the park owner or operator must:

(i) give tenants 30 days' notice, unless the eviction is due to an immediate threat to tenant's health and safety; and

(ii) pay the cost of relocation and removal unless there is a written agreement to the contrary;

(6) Tenants' rights when mobile home park is sold

Unanimous: Require a mobile home park owner either to give tenants 45 days' notice of an offer to purchase the mobile home park or to enter into an agreement with the purchaser, enforceable by the parks' tenants, not to change the use of park for 2 years after the purchase;

(7) Safety of pre-1976 homes

Unanimous: Allow mobile home park owners to require tenants who own mobile homes built before June 15, 1976, to provide (at the time of a change in ownership or principal occupancy of the home) evidence that the homes comply with the Manufactured Housing Board's Used Manufactured Home Standard regarding safety of heating and electrical systems and fire safety and require the Board to adopt rules setting forth the Standard;

(8) Notice in evictions for non-payment of rent

Unanimous: Require the notice of eviction served to a mobile home park tenant for non-payment of rent to say, as does the notice served to tenants in other residential properties, that the tenant may avoid eviction by paying the full rent owed before expiration of the notice;

(9) Drinking water quality

Unanimous: Require mobile home park owners who receive written notification that 25% or more of the park's tenants have found the water provided to the tenants objectionable due to contaminants, color, odor or taste to inform prospective tenants of the water quality problem and require the Department of Human Services to study the feasibility of developing secondary drinking water standards regarding color, odor and taste which will apply to all drinking water supplies;

(10) Municipal implementation of manufactured housing law

Unanimous: Require the Department of Economic and Community Development, Office of Comprehensive Planning, to study municipal implementation of the recently revised law governing development and expansion of mobile home parks, P.L. 1989 c. 506, and report its findings to the Joint Standing Committee on Legal Affairs by December 1, 1991.

(11) Defense of breach of warranty of habitability

(A) Majority: Allow mobile home park tenants to assert the breach of warranty of habitability as an affirmative defense to an eviction action only when the tenant gives the park owner or owner's agent actual notice of the breach before withholding rent; and

(B) Minority: Allow mobile home park tenants to assert the breach of warranty of habitability as an affirmative defense to an eviction action when the park owner or owner's agent has actual or constructive notice of the breach; and

(12) Mediation

(A) Majority: Encourage mobile home park owners and tenants to use the voluntary, non-binding, non-statutory dispute resolution program developed by representatives of mobile home park owners; and

(B) Minority: Establish a procedure whereby a majority of mobile home park tenants has a right to mediate changes in park rules and fees, rent increases, evictions or reductions in park services or utilities with the park owner.

The text of these recommendations is included as Appendix B.

Throughout its term, the Commission's work benefited greatly from the enthusiastic and informed participation of members of the public, representatives of industry and consumer organizations, State and non-profit agency personnel. The Commission and staff offer their thanks to all participants.

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I. BACKGROUND: MEDIATION AND SALES WARRANTIES

During its second year, the Commission focused on the relationship between mobile home park tenants and park operators, in particular mediation of disputes and sales warranties. The Commission sought to identify statutory changes which would help ensure that manufactured housing remains an affordable form of housing able to meet the needs of moderate to low income persons around the State. The Commission's final findings and conclusions are discussed in Section III, infra.

This section provides background information on the principal topics - sales warranties and mediation - addressed by the Commission during the second year of its term. The Commission considered several aspects of the mobile home park owner's legal relationship to park tenants under current law.

The Interim Report of the Manufactured Housing Commission (December 1988) contains detailed background information on the manufactured housing industry in Maine, the regulation of that industry and the concerns of mobile home owners and mobile home park tenants. The reader is referred to the Interim Report for that information as well as background regarding the Commission's interim recommendations.

A. The Landlord Tenant Relationship in Mobile Home Parks

The legal relationship between a mobile home park owner and a park dweller is that of a landlord and a tenant. The park dweller owns, or less often rents, the manufactured home. The park owner owns the land on which the home is installed and rents a lot to the park dweller.

The landlord tenant law generally applicable across the state, 14 MRSA chapter 709, does not apply to mobile home park rental agreements. The landlord tenant relationship in a mobile home park is governed by a statute geared to the unique features of mobile home park life. See 10 MRSA, c. 953.

The generally applicable landlord tenant law and the law applicable to mobile home parks are similar in most respects. There are, however, several notable differences. A mobile home park owner needs to show one of several statutorily prescribed causes for evicting a park tenant. 10 MRSA § 9097, sub-§1. The time periods regarding an eviction from a mobile home park are longer than those applicable to other forms of residential housing. 10 MRSA § 9097, sub-§2. The Commission feels that these differences are explained by the unique status of many mobile home park tenants who own their home but not the land on which it sits. This status makes them particularly vulnerable in the event of an eviction which threatens their entire investment in their home.

Two other differences in the mobile home park landlord tenant law also relate to tenants' rights in an eviction action. Unlike tenants in other residential housing, mobile home park tenants do not receive notification, when served with an eviction notice, that they may negate the effect of the notice by paying the rent arrearage in full. Also, a park tenant's right, under current law, to raise breach of the implied warranty of habitability as an affirmative defense in an eviction action is unclear. The right to raise this defense is granted tenants in other forms of residential housing in cases where the landlord had actual or constructive notice of the condition rendering the leased premises uninhabitable. See 14 MRSA §6002, sub-§3.

The uniqueness of the mobile home owner's rental situation and the demand for mobile home park lots are factors which have exacerbated the traditionally arms' length relationship between landlord and tenant. In many areas, especially the southern tier of the state, the demand for mobile home park lots appears to exceed the number available. See Section II, B, 2; Appendix C.

Thus, market conditions do not encourage park operators to accommodate the wishes of their tenants. A park operator may rely on a new tenant to replace a malcontented tenant who decides to leave the park. The same market conditions make leaving a park a difficult decision. A tenant simply cannot rely on finding another suitably located lot.

In addition, the difficulties and problems associated with moving a mobile home, such as expense and the need to tear down additions made to the home, are daunting. A tenant may reasonably conclude that putting up with park rules and conditions the tenant considers unreasonable is a financial necessity. With a considerable investment in a manufactured home, lacking title to the land on which that home is installed and subject to market conditions which favor the park operator, the tenant is in an inferior bargaining position when the time comes for negotiations regarding park rules and conditions which directly affect the quality of life in the park.

B. The Concept of Mediation

The purpose of mediation is to facilitate parties' resolution of their differences through the services of a neutral third party trained in the area of dispute resolution. The philosophy behind mediation states that the parties to a dispute are best acquainted with their needs and desires and in the best position to arrive at a resolution of their problem which meets those needs and desires. The mediator does not sit in judgment and decide whose cause is more just. The mediator helps parties arrive at a mutually acceptable solution to their problem.

Mediation is used in connection with other disputes as a means to maximizing parties' resolution of their differences and minimizing court imposed solutions. In a divorce action, for example, the court may order the parties to mediate in good faith on any issue on which they differ. 19 MRSA §636. Where the custody of children is at issue, the court must order mediation. 19 MRSA §752, sub-§4.

C. Sales Warranties Applicable to Mobile Homes

State and federal laws regulate the sale of manufactured housing and provide consumers with measures for seeking compensation if they purchase a defective home. Subsection 1 discusses the applicable federal regulations issued by the Department of Housing and Urban Development (the HUD Code). Subsections 2 and 3 discuss the two primary sources of state manufactured housing warranty law - 10 MRSA, c. 213, Mobile Home Warranties and Maine's Uniform Commercial Code, 11 MRSA §1-101 et. seq.

1. HUD Code

The Department of Housing and Urban Development (HUD) has issued construction standards regulating the construction of manufactured housing. These standards, the HUD Code (24 CFR §3280), became effective in June, 1976, and preempt state and local construction standards. All manufactured housing built after June 15, 1976, must be built to HUD Code standards and is inspected at the manufacturing site for compliance. Under contract with HUD, the Manufactured Housing Board is the agency which oversees compliance with the HUD Code in Maine.

Subpart I of the HUD Code, see 24 CFR §3282 401, et seq., concerns the handling of consumer complaints regarding Code violations. The complaint procedure, as implemented by the Manufactured Housing Board, works as follows. A consumer with a complaint regarding the construction aspects of a mobile home first notifies the Manufactured Housing Board. The board then forwards the complaint to the home's manufacturer, as well as the dealer who sold the home, and initiates an investigation. If the complaint involves an out-of-state dealer, the board notifies its counterpart in the state of manufacture and HUD. At this point, the manufacturer often takes corrective action and sends a letter, kept on file by the Manufactured Housing Board, which explains how the problem was remedied. If the manufacturer does not identify and correct the problem, the board may hire an engineer or determine for itself whether the defect complained of is a violation of the federal standards. A copy of the consumer complaint is forwarded at this point to the Attorney General.

If the board determines that the defect is a violation of the HUD Code, the board must forward the complaint to HUD for enforcement. HUD will only find a violation when "there exists or may exist an imminent safety hazard or serious defect". 24 CFR §3282 404. The board lacks authority to take action requiring correction of HUD Code violations.

2. New Mobile Home Warranty

Maine law contains an implied warranty covering sales of new mobile homes. See 10 MRSA c. 213. The warranty applies to manufacturers of mobile homes and mobile home dealers who sell to consumers. 10 MRSA §1403. The warranty requires dealers, who have co-signed a warranty provided by the manufacturer, to provide the consumer at the time of sale with a written warranty, the contents of which are specified by statute. 10 MRSA §1404. The law specifies that dealers and manufacturers are equally responsible for correction of state warranty violations. 10 MRSA §1404, sub-§5. A violation of the statutory warranty requirements is an unfair trade practice. 10 MRSA §1406.

The new mobile home warranty law is problematic in several respects. First, it is unclear whether the law applies to out-of-state dealers, to the limits of the state's jurisdiction. Second, there is a question whether federal law, see Federal Trade Commission Act, 15 USC §45 (a)(1) et. seq., preempts the state from requiring the manufacturer to provide a document describing Maine's warranty to the consumer who purchases the mobile home from a dealer. Third, the law is ambiguous as to whether the new mobile home warranty is an implied warranty. If the warranty is an implied warranty, the written warranty called for by 10 MRSA §1404 is in reality a description of the warranty which exists regardless of the delivery of the writing.

3. Maine's Uniform Commercial Code

Maine's Uniform Commercial Code contains implied warranties which protect the rights of consumers who purchase mobile homes. A consumer who buys consumer goods receives the benefit of a statutorily created, implied warranty, enforceable against the dealer who sold the goods and the manufacturer of the goods, that the goods are fit for the particular purpose for which they were purchased. See 11 MRSA §2-315. In addition, the law creates a warranty that the goods are "merchantable", as that term is defined by statute. See 11 MRSA §2-314.

11 MRSA §2-316, sub-§5, specifies that the implied warranty of merchantability and fitness for a particular purpose applicable to sales of goods transactions applies to sales of mobile homes used or bought primarily for personal, family or household purposes. This warranty also applies to installations of mobile homes since the warranty applies to consumer "services" as well. State law makes contract provisions which disclaim these warranties in a consumer transaction unenforceable. See id.

II. THE WORK OF THE COMMISSION

A. The Commission's Interim Recommendations and the Legislature's Response.

The Commission's unanimous interim recommendations were the following:

1. Adjust the composition of the Manufactured Housing Board to provide balanced representation of mobile home consumers and mobile home industry representatives;
2. Require the Manufactured Housing Board to provide booklets, which dealers will distribute, containing important information on choosing mobile homes, financing, mobile homes, warranties and other consumer rights;
3. Require the Manufactured Housing Board to develop and adopt an installation standard which is appropriate for Maine's physical and economic climate;
4. Require the Manufactured Housing Board to review compliance with the installation standard once adopted to determine if a mandatory inspection is necessary;
5. Help municipalities comply with the statutory requirements pertaining to accommodation of mobile home parks by:
 - A. Requiring the Office of Comprehensive Land Use Planning to develop a guide for municipalities; and
 - B. Amending the comprehensive land use planning law to include compliance with the mobile home park requirements as a part of municipal comprehensive plans and implementation strategies; and
6. Direct the Maine State Housing Authority to work with the Commission to develop programs to help mobile home owners who are forced out of mobile home parks because of renovation or change of use and have no place to go.

The Legislature's response to the Commission's unanimous interim recommendations was generally favorable. Of the 4 bills introduced to implement the interim recommendations, the 114th Legislature in the First Regular Session enacted 3, (LDs 59, 60, and 62), with minor changes. See Resolves 25 and 26 and P.L. 1989 ch. 271 (text attached at Appendix D). In addition, the Legislature enacted emergency legislation aimed

at preventing municipal discrimination against mobile home parks (a practice noted by the Commission) in order to allow expansion of this form of affordable housing in environmentally suitable locations across the state. See P.L. 1989, c. 506, Appendix D.

The Legislature also enacted legislation adding to the charge of the Commission. P.L. 1989, c. 601, Pt. C, requires the Commission on Manufactured Housing to study mediation of disputes between mobile home park operators and tenants and report its recommendations in its final report.

B. Work of the Commission During its Second Year

This section describes the issues considered and the information and testimony presented to the Commission during the 4 meetings it held during its second year.

1. Meeting of September 15, 1989

a. Mediation

The Commission devoted the first meeting of its second term to consideration of background information regarding mediation of mobile home park disputes and sales warranties. On the topic of warranties, the testimony presented at the meeting and the discussion focused on the regulatory and economic climate within which mobile home sellers and buyers are operating in Maine.

On the issue of mediation, the Commission heard testimony from William Tyler. Mr. Tyler is an attorney whose business, Alternative Dispute Resolution of Maine, Inc., located in Portland, Maine, represents a variety of clients in mediation and arbitration sessions. Mr. Tyler, as an attorney in private law practice for over 20 years and at present, has had substantial experience with mediation.

In his presentation, Mr. Tyler emphasized several points:

- (1) mediation should be carefully distinguished from arbitration which commonly involves fact finding and a binding decision by a third party;
- (2) mediation works best when it is non-binding and when parties are participating voluntarily, since under these circumstances they have a greater commitment to the process;
- (3) any legislation requiring mediation should spell out the circumstances under which mediation will be required;

(4) in addition, legislation regarding mediation should indicate the parties' options if mediation is not successful;

(5) in his experience, mediation has resulted in a high percentage of settlement, i.e. parties did not need to go to court to resolve their differences; and

(6) the cost of mediation is a factor to consider. Private mediators, though likely to have relevant experience and training, are not the only option - any neutral third party could act as a mediator.

In addition, Mr. Tyler suggested that it was in the best interest of the manufactured housing industry to seek an expeditious and relatively inexpensive means of dispute resolution. He pointed to the state's "lemon law", see 10 MRSA ch. 203-A, requiring mediation of disputes regarding an automobile purchase, as a possible model.

Finally, Mr. Tyler emphasized that certain topics, namely changes in park rules and services, involved in mobile home disputes appeared ideally suited to mediation. He questioned whether rent increases could profitably be submitted to mediation and cautioned that the practice could lead to a form of rent control.

Commissioners raised several issues of concern. Commission Chair Rep. Priest emphasized that some provision would need to be made for limiting the length of mandated mediation. If left open ended, the costs are not estimable and mediation could be used as a tool to avoid dispute resolution and run up an adversary's costs. Sen. Baldacci echoed Mr. Tyler's concerns that mediation was ill-suited to disputes regarding rent increases.

A number of Commissioners, including Rep. Priest, Robert Howe of the Manufactured Housing Association of Maine and Senator Baldacci, expressed concern that mediation would result in a small number of park residents reaching an agreement with the park owner or operator regarding, for example, a rule applicable to all park residents without the majority of park residents' knowledge or participation. The Commissioners expressed concern that mandating mediation of this type might pose constitutional issues. Commissioners agreed in principle that mediation, if required, must be requested by a majority of park residents or their representatives on matters affecting the park as a whole.

b. Sales warranties: business environment

The Commission next turned its attention to the topic of sales warranties. In an effort to understand the business environment within which new mobile home sales are made, the

Commission considered the testimony of Jack Hewett, President of Burlington Homes, Inc., a manufactured home manufacturer in Oxford, Maine.

Mr. Hewett informed the Commission that 1989 was the lowest production year for mobile homes since 1964. He stated that in 1989, 200,000 manufactured homes, not including modular homes, were produced nationwide as compared to 220,000 in 1988. He noted that single parents and elderly people provide the largest market. Mr. Hewett noted that there are currently 3 manufactured home builders in Maine and that the number of manufacturers across the nation is declining.

Mr. Hewett told the commission that in his opinion the down turn in sales was attributable to increased government regulation of the industry and municipalities' resistance to siting of manufactured housing and mobile home parks.

David Preble, Executive Director of the Manufactured Housing Board, noted that approximately 2500 manufactured homes were sold in Maine in 1989. Mr. Preble estimated that the board received 160 warranty-related complaints in 1988. For all of these complaints, the complainant completed a complaint form and the board processed the complaint in accordance with HUD procedures. Mr. Preble stressed that most warranty problems he has had experience with involve out-of-state manufacturers and dealers.

Mr. Preble pointed out that the board will likely license 10 new mobile home parks in 1989 and that there will be an additional 400 - 600 available sites. He noted that sales of high quality mobile homes have been declining. Consumers, faced with high land prices, are choosing less expensive mobile homes, many of which are built out-of-state. This situation increases the number of warranty problems while decreasing the state's ability to address them under current law.

c. Municipal implementation of manufactured housing laws

The Commission next turned its attention to the issue of municipal resistance to manufactured housing. Commissioner William Livengood of the Maine Municipal Association noted that the down turn in manufactured housing sales is reflective of the depressed market across the state for all forms of housing. He informed the Commission that towns' resistance to manufactured housing stems in part from dissatisfaction with a requirement to plan for location of manufactured housing before completion of the local comprehensive plan. See 30-A MRSA §4358, sub-§3, ¶M. He noted that the Department of Economic and Community Development is in the process of preparing a guidebook to assist towns attempting to comply with laws governing municipal regulation of manufactured housing.

Rep. Priest stressed that this exception to the comprehensive planning schedule was made in response to an immediate need to ensure the availability of the one type of affordable housing currently available, namely manufactured housing. He noted that, if necessary, towns could at a later date amend their mobile home ordinances for consistency with comprehensive plan provisions.

Commissioner Rep. Carl Sheltra added that the property tax crisis is at the heart of the problem: towns are concerned that mobile home parks mean more people requiring municipal services but contributing little to the tax base. In addition, he noted that the cost of land makes financing any home beyond the financial grasp of most Maine people.

The Commission concluded its discussions with an examination of changes to manufactured housing law enacted by the 1st Regular session of the 114th Legislature. See Appendix D.

2. Meeting of October 15, 1989

The Commission conducted the second meeting of its second term in Saco, Maine. The Commission hoped to open its deliberations to those in southern Maine, the part of the state where development pressures have been most intense and where the availability of mobile home sites has been most problematic.

The Commission focused on warranty issues and municipal compliance with state law regarding manufactured housing.

a. Maine's warranty laws applicable to mobile homes

James McKenna, an Assistant Attorney General assigned to that office's consumer protection division, explained to Commission members Maine's warranty laws applicable to mobile home sales. Those laws are 10 MRSA ch. 213 (new mobile home implied warranty) and 11 MRSA §§ 2-314, 2-315 and 2-316 (the Uniform Commercial Code).

Mr. McKenna acknowledged, in response to a point raised by Commissioner Robert Howe, that the decision on whether a particular flaw in a mobile home amounts to a warranty violation is a factual issue left for judicial resolution. He noted that the Attorney General under authority delegated by the State's Unfair Trade Practices Act, 5 MRSA ch. 10, could adopt rules defining warranty violations but cautioned against this approach.

In response to another issue raised by Commissioner Howe, Mr. McKenna noted that state warranties covering mobile homes are not preempted by federal law. He added that there is an argument that federal law preempts any state law which requires a manufacturer to disclose the existence of a state warranty and that the Attorney General's Office was discussing this issue with representatives of the manufactured housing industry.

Commissioner William Livengood asked about the Attorney General's method of handling mobile home complaints. McKenna explained that his office keeps track of complaints by computer. If a number of complaints are made about a manufacturer or dealer, an investigation is undertaken to determine the need to bring a legal action. He added that his office makes a concerted effort to resolve problems of this nature through negotiation and mediation rather than court action. He pointed out that a great many of the complaints his office receives involve improper siting and installation of mobile homes and the State's new mobile home warranty law does not cover problems which flow from improper siting of the home.

Commission Chair Rep. Priest observed that the time and expense of bringing law suit to enforce a consumer remedy under the warranty laws make these actions rare and the remedies they afford of questionable utility. He stressed that the Commission should consider a state administrative hearing process for handling these complaints.

Dave Preble of the Manufactured Housing Board explained to the Commission HUD's regulations regarding warranties and how the Board, as an agent for HUD, handles consumer complaints. See Section I, C, 1, supra. He noted that the price of housing and land in the State has caused less affluent consumers to purchase less expensive, and less well made, manufactured homes many of which are sold by out-of-state dealers not subject to enforcement efforts of Maine officials. Also, he pointed out that HUD has never, during his tenure as the Board's executive director, brought an enforcement action against a manufacturer or dealer.

Concerned at the lack of enforcement, Rep. Priest suggested that the Commission consider means for enjoining sales by or pulling licenses of out-of-state dealers (if these dealers can be made subject to Maine's regulatory authority) who have a history of selling defective homes. Christopher St. John of Pine Tree Legal Assistance, Inc., suggested that the Commission consider licensing of independent contractors and installers who operate in Maine under contract to out-of-state dealers.

b. Municipal implementation of manufactured housing laws

Sherry Hanson of the Department of Economic and Community Development's (DECD) Office of Comprehensive Planning, next addressed the Commission. Ms. Hanson explained the purposes and contents of a handbook¹ designed to assist towns in complying with manufactured housing laws. (The handbook, available from DECD, is an excellent resource which the Commission recommends to municipal officers and those researching manufactured housing law.) In addition, she made several points regarding municipal concerns with the revised manufactured housing laws. Her main points to the Commission were these:

- (1) towns are concerned that the law requiring them to permit location of mobile home park(s) does not tell them how many acres should be zoned for parks;
- (2) towns are concerned that the January 1, 1990, deadline for enactment of a mobile home park ordinance (after this time, all environmentally suitable locations are potentially available for parks) conflicts with comprehensive planning deadlines; and
- (3) towns are finding the language of 30-A MRSA §4358 regarding applicability of environmental standards in Title 38 ambiguous and confusing.

Commissioner Livengood, the head of the Maine Municipal Association's legal services division, noted that he was aware of similar municipal concerns regarding the relationship of the manufactured housing law to the comprehensive planning law.

Rep. Priest emphasized that the affordable housing crisis dictated that a law forbidding discrimination against mobile home parks be implemented on a priority basis. He stressed that manufactured housing, especially mobile homes, represents the only truly affordable housing available to many Maine people. He urged Commission members, and municipalities, to acknowledge the need to give priority to the pressing present need of moderate to low income Mainers for affordable housing.

¹ Maine's New Mobile Home Park Law: A Guidebook for Local Officials, Department of Economic and Community Development, Office of Comprehensive Planning (September, 1989).

c. Mobile home park survey

During its first term, the Commission directed staff to conduct a survey of the State's mobile home parks primarily to determine the number of mobile home park sites available around the State. The underlying question was how available is the only type of affordable housing available to many Mainers, namely mobile homes located in mobile home parks.

A staff presentation of preliminary results of the survey formed the next part of the meeting. See Appendix C for the survey's final conclusions and explanation of the methodology used and representativeness of the respondents. At the Commission's request, data regarding the parks was divided into 4 zones to provide an indication of how conditions differed around the State.

The major findings of the survey were these:

(1) Of the 7961 licensed mobile home lots represented by those who responded to the survey only 457 (5.7%) were completed, ready for occupancy, but unoccupied. Fifty-eight of these sites were in Zone 1 (Cumberland and York counties). In Zone 2 (Franklin and Oxford counties), there were 12 such sites. In Zone 3 (Androscoggin, Kennebec, Knox, Lincoln, Sagadahoc and Waldo counties) and Zone 4 (Washington, Aroostook, Hancock, Penobscot, Piscataquis and Somerset counties) there were 214 and 150 built but unoccupied sites, respectively;

(2) There were another 671 licensed but unbuilt sites (some of which may not yet have necessary municipal approval). These licensed but unbuilt sites were distributed as follows:

- (a) Zone 1 - 330
- (b) Zone 2 - 178
- (c) Zone 3 - 150
- (d) Zone 4 - 464; and

(3) 30.6% (2437) of the licensed lots covered by the responses house homes built before the effective date of the HUD construction standards.

The remainder of the survey results concern the landlord/tenant relationship in mobile home parks. The survey findings were that:

(1) 131 of the 167 mobile home parks responding to the survey charge tenants an entry fee ranging from \$50 to \$2000, with the majority charging \$500 to \$600;

(2) Reported rents range from \$50 to \$400 per month; Eighteen park operators who responded indicated they had raised the rent in each of the last 5 years; 56 said they had raised the rent at least once in that period;

(3) 58 parks reported a total of 87 successful evictions in the last 2 years;

(4) 39 parks which responded said sales of mobile homes were used to fund park operating costs and 40 respondents said entry into the park was limited to homes purchased from seller affiliated with the park; and

(5) 53 respondents indicated the use of a written lease.

Staff cautioned the Commission to take care in drawing generalized conclusions from the survey results, since: (a) the respondents represented only 41.5% of the total number of mobile home parks around the State (219 of 528 licensed parks) and (b) the response rate was greater for some areas than others.

d. Mediation

Assistant Attorney General James McKenna explained his office's interest in a statutorily established process for mediation of mobile home park disputes and the proposal put before the Commission. He stated that his office receives numerous calls from park tenants anxious about their lack of influence regarding how the park is run and the financial and emotional insecurity that results. He explained that recourse to mediation when park rules, fees or services are changed or an eviction initiated will help alleviate this anxiety as well as produce practical benefits enhancing a cooperative spirit and sense of community in the park. He explained the salient features of the mediation system proposed. Those features are:

(1) Mediation will result in non-binding, good faith resolutions to problems, when parties agree to be bound;

(2) Mediation mandated by statute will not exceed 3 hours in length;

(3) Parties to the mediation will share the costs equally, provided the Manufactured Housing Board may pay indigents' share;

(4) A park owner is not required to participate in mediation unless a request is made by a majority of the park's tenants;

(5) Mediation may be requested only regarding lot rental increases, reduction in services or utilities, changes in park rules or fees and evictions; and

(6) A request for mediation will stay court action until mediation is completed; however, mediation will not delay eviction proceedings.

Commissioner Howe stated that the Manufactured Housing Association of Maine (MHA) is not opposed to mediation per se, but objects to state mandated mediation. He suggested that the Commission consider the following recommendation, the product of discussions with the Mobile Homeowners' Association of Maine, Inc., in lieu of state mandated mediation.

This proposal works as follows. The MHA will install a "800" phone line which tenants may call with complaints. Representatives of park owners and tenants will screen the calls. Complaints regarding changes in park rules, reduction in services, changes in park conditions, and evictions other than those for non-payment of rent, will result in a request to the park operator to meet with affected tenants. Tenants will document complaints by submitting a simple one-page form sent subsequent to their call. Park and tenant representatives will review the forms and determine how best to seek resolution of the problem. Complaints involving threats to health and safety will be referred to appropriate government officials. Mediation will be requested if an initial meeting between tenants and the park operator fails to resolve the problem. In cases other than evictions, mediation will be suggested only if the complaint is shared by a number of tenants. Each month the MHA will send a complaint status report to the Manufactured Housing Board.

Informed of these proposals, the Commission agreed to discuss the issue of mediation at its next meeting.

3. Meeting of November 9, 1989

The Commission devoted this meeting to discussion of legislation under consideration for inclusion among its final recommendations.

a. Synopsis of proposed final recommendations

The Commission considered 10 pieces of legislation. At the suggestion of Commissioner John Schiavi, the Commission agreed not to vote on these proposals at this meeting, since they were seeing the language of a number of the proposals for the first time. The Commission agreed to hold a meeting on November 16, 1989, at which time a final discussion and vote would be had. Five of the bills were developed but tabled during the Commission's term. Those bills involved the following proposals:

- (1) Establishment of statutorily mandated mediation of specified disputes between mobile home park owners and tenants and statutorily prescribed requirements for formation and membership in a tenants' association;
- (2) Allowing a mobile home park owner to require removal of a mobile home not built to HUD standards unless the homeowner/tenant demonstrates that the home meets used mobile homes standards adopted by the Manufactured Housing Board;
- (3) Prevention of eviction of mobile home park tenants who show that the eviction action was brought in retaliation for participation or formation of a tenants' association or assertion of tenants' rights;
- (4) Requiring a mobile home park owner who has received an offer to purchase the mobile home park to give tenants 45 days' notice prior to executing a contract to sell the park or exacting a commitment from the purchaser to refrain from changing the use of the park for 5 years; and
- (5) Allowing mobile home park owners to evict tenants when a park is renovated or reconstructed only if-
 - (a) the renovation or reconstruction is necessary to protect tenants' health and safety; and
 - (b) 60 days' notice is given to tenants in cases of temporary evictions and one year's notice is given in cases where the renovation or reconstruction changes the number of homes which can be located in the park or which will result in removal of a home currently located in the park;

The Commission also considered the 2 proposals offered by Assistant Attorney General James McKenna who had amended the proposals in response to points raised by the Commissioners at the October 13 meeting. Those proposals called for:

- (1) a non-binding mediation system for use in mediating disputes between mobile home park owners and tenants regarding park rules, rent increases, changes in services and other matters; and
- (2) changes to the State's new mobile home warranty law to ensure that purchasers are made aware of the terms of the warranty.

The Commission also considered 2 bills prepared for Commission chair Rep. Priest by Christopher St. John of Pine Tree Legal Services. Those proposals sought to:

(1) Clarify that the notice of eviction for non-payment of rent served on mobile home park tenants, like that served on tenants in other forms of rental housing, must specify that a tenant may negate the effect of the notice by paying the rent arrearage in full prior to the expiration of the notice. In addition, the proposed bill allowed mobile home park tenants to raise the breach of the warranty of habitability as a defense to an eviction action. This right, too, is afforded tenants in other forms of rental housing; and

(2) Expand the State's new mobile home warranty to cover out-of-state mobile home dealers and those who transport into this State or install a mobile home sold by an out-of-state dealer.

Finally, the Commission considered a proposal offered by Rep. Priest which allowed mobile home park tenants to petition the Manufactured Housing Board to find that water furnished to the tenants by the park owner contained secondary pollutants, such as hydrogen sulfide, which rendered the water undrinkable though in compliance with health-based drinking water standards. The Board, if it made this finding, could order the park owner to correct the problem or provide an alternative supply of drinking water.

b. New mobile home warranty proposals

i. Notice to consumers

Assistant Attorney General James McKenna explained that the proposal dealing with disclosure of the State's new mobile home warranty was needed since some mobile home purchasers were not being made aware of the warranty by manufacturers or dealers. He informed the Commission that manufacturers' legal counsel have taken the position that federal trade practices law preempts state law requiring a manufacturer to disclose the terms of a state created warranty. He noted that manufacturers do not dispute that the State may create a warranty by which manufacturers are bound. He explained that in order to meet the concern of manufacturers, the proposal requires the Attorney General to develop a written description of the State warranty which the Manufactured Housing Board will distribute to dealers who will in turn distribute the warranty to purchasers. Under present law, the manufacturer is responsible for producing a warranty, which is countersigned by the dealer. He noted that the proposal meets an additional concern of manufacturers who argued that they did business in numerous states and maintaining warranties true to varying state laws and ensuring that the appropriate warranty was included with each home created an undue burden.

Commissioners had several concerns with this proposal. First, Commissioner Howe noted that he understood the manufacturers' argument to be that for Maine's warranty to be enforceable it must be approved by the Federal Trade Commission and there is no indication that that approval has been or will be sought.

Commissioner Livengood stressed two points. First, as drafted, the bill is unclear as to whether the warranty is an implied warranty or a warranty which requires action by the manufacturer or dealer. Second, he suggested that the terms of the warranty and the fact it is an implied warranty should be spelled out in statute.

Sen. Baldacci suggested that, if evidence suggests that consumers are experiencing difficulties in holding manufacturers to warranty obligations, the Commission consider adoption of an arbitration procedure similar to Maine recently enacted automobile "lemon law". He questioned the wisdom of holding dealers fully liable for manufacturing defects. Rep. Priest agreed that the "lemon law" concept was worth considering.

ii. Expansion of the scope of the warranty

Christopher St. John of Pine Tree Legal Assistance, Inc., explained the proposal for expansion of the scope of the new mobile home warranty. The proposal was developed in response to the information presented by the Manufactured Housing Board's Dave Preble who indicated that the board has become aware of a number of warranty problems involving less expensive mobile homes sold by out-of-state dealers over whom the State's authority is unclear. This proposal provides that the new mobile home warranty applies to out-of-state dealers and those who transport into and install in Maine homes sold by an out-of-state dealer. The last two parties are included under the warranty since some out-of-state dealers have sought to avoid being subject to the Maine warranty's provisions by hiring an independent contractor to handle transportation and installation of the home. Mr. St. John explained that there is some question as to whether the State may assert jurisdiction over out-of-state dealers who have avoided contact with the State in the course of the transaction. However, he added that this extension of state regulatory authority conforms to case law regarding the scope of state judicial authority.

The Commission agreed that out-of-state dealers' compliance with Maine's warranty is important to ensuring fair treatment of purchasers in the state. There was also agreement that the Manufactured Housing Board should explore the possibility of licensing out-of-state dealers.

c. Mediation proposals

Assistant Attorney General McKenna explained that the purpose of the mediation proposal is to create a situation in which park owners and tenants can work out their differences and avoid the expense and divisiveness of a court action. The opportunity for mediation can help relieve some of tenants' anxiety that they will be unfairly evicted from a park and lose their investment in their home. He added that the burden on owners is slight. Under the proposal, they are obligated to divulge no information nor even speak at a mediation session limited to 3 hours.

Commissioners expressed a variety of concerns regarding the mediation proposal yet agreed to discuss the issue of mediation in the context of this proposal rather than the mediation proposal tabled after the Commission's first term. Rep. Priest suggested that the bill include a requirement that parties participate in good faith lest the mediation become a meaningless hurdle on the way to court. Commissioner Livengood noted that the addition of a good faith requirement would introduce another issue of fact into a mobile home park dispute and thus make the parties' conduct at the mediation a threshold issue to be litigated.

Commissioner Robert Howe emphasized that while the Manufactured Housing Association is not opposed to mediation in principle the Association is concerned about placing a mediation requirement in statute. The Association views mandatory mediation of the limited nature set forth by this proposal as the thin edge of the wedge and is wary of subsequent efforts which will inevitably be made to expand the scope of the mediation requirement. He concluded his remarks on this topic by stating that the Association is committed to trying to work with the voluntary mediation plan he explained to Commissioners at the October meeting and feels that voluntary mediation should be given a chance prior to enactment of a law mandating mediation.

Commissioners Schiavi and Ritch shared Howe's point of view and noted that many park owners were willing to meet with tenants without a statutory obligation and a law requiring mediation would do nothing to change the predisposition of those who were not so inclined. Sen. Baldacci also shared this perspective and noted that none of his constituents has requested that he support mediation nor has he heard complaints indicating that the mediation proposal is necessary.

Commissioners Riley, Dorais and Priest spoke in support of mediation. Rep. Priest noted that the greater intensity of the affordable housing problem in southern Maine vests mobile home park disputes with more significant consequences for tenants. Under these circumstances, he stressed, an alternative dispute resolution tool which tenants acting as a concerned majority

may employ in disputes directly related to quality of life in the park is essential. Commissioner Dorais added that mediation at a minimum should be mandated in cases where changes are made in a park after a change in ownership and that mediation may be necessary to assuring communication in large mobile home parks.

d. Drinking water

Rep. Priest explained to the Commission that the purpose of this proposal is to ensure that mobile home park tenants receive water which not only complies with primary, health-based water quality standards but is in fact drinkable. He pointed to a situation in the Brunswick area where many park tenants have discontinued use of the park's water due to its offensive odor and taste stemming from a high sulfur content.

Commissioner Schiavi suggested that any requirement regarding drinking water quality be applicable statewide and not just in mobile home parks. He suggested that park owners be required to give notice to prospective tenants if there were complaints regarding the quality of park drinking water. He noted in addition that the federal government is in the process of considering secondary drinking water standards regarding color, odor and taste and the State should be aware of any federal proposals and their effect on state law prior to acting in this area. The Commissioners agreed in principle that drinking water standards should be uniform statewide unless unique hydrological circumstances dictate otherwise.

e. Mobile home park tenants' rights

The bulk of the proposals considered by the Commission involved the rights of tenants in mobile home parks. Two of these proposals involving mediation were discussed above. All but one of these proposals were considered and tabled by the commission during its first term.

i. Tenants' rights on eviction for non-payment or rent

This "new" proposal prepared for Rep. Priest by Christopher St. John granted tenants two rights available to those living in other types of rental housing.

First, the proposal required that the notice of eviction for non-payment of rent served to mobile home park tenants inform the recipient that payment of the amount of rent in arrears before expiration of the notice would negate the effect of the notice. Commission members agreed that this change, taken from 14 MRSA §6002, sub-§2, was fair and expressed unified approval.

The second part of the proposal proved more problematic. This provision clarified that a mobile home park tenant, like a tenant in another type of rental housing, could raise breach of the warranty of habitability as a defense to an eviction for non-payment of rent provided that the tenant could show that the park owner had actual or constructive notice of the uninhabitable condition which was not caused by the tenant and, had failed to take reasonably prompt steps to correct the problem. The proposal simply incorporated the language of 14 MRSA §6002, sub-§3, into the mobile home park landlord/tenant law.

Commissioner Robert Howe cautioned that other differences in the landlord/tenant law applicable to mobile home parks make seemingly minor changes in the balance of rights between park owners and tenants more significant. He stressed that the law should allow tenants to raise this defense only if the tenant actually notified the park owner of the uninhabitable condition prior to withholding rent.

Rep. Priest noted that proof of actual notice can be difficult and requiring written notice places a heavy burden on illiterate or functionally illiterate persons. He added that this issue had been fully discussed before the Legislature's Legal Affairs Committee when it recommended that the bill enacted and codified as 14 MRSA §6002, sub-§3 ought to pass and that the hearing and work sessions held on that bill had convinced him, and other committee members, that this proposal was workable and equitable for both landlords and tenants.

ii. Previously tabled proposals regarding tenants' rights

Commission staff outlined the provisions of the 5 proposals carried over from the Commission's first term. See p. 16, supra. The Commission agreed to set aside one of these, the first term mediation proposal, and use the bill developed by the Attorney General's Office for discussion of the issue.

A. Protection from retaliatory eviction

The proposal that the law be amended to prevent eviction of mobile home park tenants in retaliation for formation or participation in a tenants' association provoked little discussion among Commission members who were united in support of the proposal. Members also agreed that, on the suggestion of Christopher St. John of Pine Tree Legal Assistance, Inc., tenants should be required to show that the eviction was "primarily" not "solely" in retaliation. This change comports with similar language in the Maine Human Rights Act.

B. Tenants' rights in evictions due to park reconstruction or renovation

Commission members agreed that tenants should be given one year's notice in writing when renovation or reconstruction necessitates permanent eviction of one or more homes from a mobile home park. Commission members also agreed that cases of "temporary" eviction, removal of one or more homes for the time necessary to renovate or reconstruct a park, should be handled differently. Commissioner Robert Howe objected to a provision in the proposal limiting the right to evict tenants for reconstruction or renovation to instances where the work was necessary to improve the health and safety of park tenants. Commissioners agreed to vote on a redrafted version of this proposal at its next meeting.

C. Tenants' rights when mobile home park is sold

The proposal under consideration required a park owner to give tenants 45 days' notice of an offer to purchase the park which the owner intends to accept prior to execution of a contract to sell the park. Alternatively, the park owner could exact an agreement from the purchaser not to change the use of the park for 5 years.

Commissioner Schiavi expressed concern that the requirement intruded into a confidential business relationship which could not only jeopardize the deal but cause unnecessary turmoil in a mobile home park. Commissioner Dorais recounted personal experiences which showed how disruptive a mobile home park sale can be and urged creation of an opportunity for park tenants to make a counter-offer or contingency plans to protect their investment.

D. Park operators' rights regarding safety of pre-1976 mobile homes

Commission members agreed that park owners should be entitled to require tenants to show that a pre-1976 home meets objective safety standards or remove that home from the park. However, Commission members questioned the workability of the proposal before them. The two major issues discussed regarding the proposal were: (a) by what standards will the homes' safety be measured; and (b) who will be required to see that the standards are met.

On the first issue, Commission members agreed that the Manufactured Housing Board should adopt rules enacting applicable standards. The Board's Dave Preble presented Commissioners with a draft Used Manufactured Home Standard which outlines a variety of standards including those for fire safety, electrical and heating systems. Commissioners agreed

that park owners should be able to require removal of homes only for non-compliance with standards that relate to safety, especially fire safety. Thus, they agreed that a park owner could condition a tenant's right to keep a pre-1976 home in a park on demonstration that the home meets fire safety, electrical and heating system standards. Commissioner Livengood pointed out that the standard, prior to adoption as a rule, would have to be amended for consistency with the proposed provisions regarding who would inspect and certify that a home met the relevant portions of the standard.

On the second issue, Commissioners noted that due to concerns about liability it may be difficult for a tenant to find persons willing to certify that a home meets the standards. Commissioner Livengood noted that town officials would likely object to a requirement that a local fire official inspect the homes for fire safety due to concerns about liability and insurance costs. He suggested that the Commission's recommendation clarify that licensed tradepersons conduct the inspections and that those inspectors will certify the home's compliance only to those aspects of the standard regarding which they inspected.

4. Meeting of November 16, 1989

The Commission devoted its final meeting to voting on final findings and recommendations. Those findings and recommendations are detailed in the following section.

In addition, the Commission addressed the issue of municipal implementation of the laws governing municipal regulation of mobile home parks. Commissioner Howe noted that P.L. 1989 c. 506 (Appendix D), enacted during the First Regular Session of the 114th Legislature, may prompt a number of towns to enact zoning and other land use standards which affect mobile home park development and which could run counter to the Legislature's aims in enacting the law. (At its October meeting, see Section II, B, 2, the Commission considered testimony indicating municipalites may have difficulty or reluctance to enact regulations accommodating development of mobile home parks.) The Commission decided that legislative oversight of municipal implementation of P.L. 1989, c. 506 would be a useful tool in determining whether the law is achieving its objective of providing affordable housing by allowing development of mobile home parks in environmentally suitable locations. See Recommendation 10, *infra*.

III. FINAL FINDINGS AND RECOMMENDATIONS

This section contains the Commission's final findings and recommendations. Having thoroughly discussed and considered the information presented to it, the Commission achieved unanimity on all but two issues. The issues on which Commission members' recommendations differ involve mediation of mobile home park disputes and tenants' ability to raise the breach of the warranty of habitability as a defense to an eviction action for non-payment of rent. On these two issues there are majority and minority findings and recommendations.

The commissioners who voted in the majority on the two split votes are:

Sen. Baldacci
Sen. Gould
Rep. Sheltra
Robert Howe
William Livengood
Arthur Ritch
John Schiavi

The commissioners who voted in the minority on these two proposals are:

Rep. Priest
Louise Dorais

The Commission's final findings and recommendations are divided into 2 subject areas, mobile home park owner and tenant relationship and the state new mobile home warranty.

The text of the Commission's recommendations is found at Appendix B.

A. New Mobile Home Warranty

The Commission identified several problems regarding application of the State's new mobile home warranty to sales by out-of-state dealers to Maine consumers.

Recommendations 1 and 2 are designed to correct two of these problems. The Commission believes that additional legal research is necessary to devise an apt solution to the third problem identified - disclosure of the warranty to consumers. Recommendation 3 deals with that issue.

The Commission's goal is to ensure that consumers in the affordable housing market are able to bargain with the purveyors of manufactured housing, the one form affordable housing currently available, on fair and equitable terms.

Recommendation 1: Warranty's application to out-of-state dealers

The Commission unanimously finds that manufactured housing purchased by Maine people is produced and sold by companies within and without the state. The Commission learned that purchasers of mobile homes have experienced difficulties in getting defects in the home covered by the state's new mobile home warranty corrected by out-of-state dealers and manufacturers. In addition, the Commission has determined that HUD regulations fail to provide Maine consumers with an adequate means of addressing problems with homes manufactured out-of-state. Moreover, the Commission finds that out-of-state dealers often contract with carriers and installers who bring the home into and install the home in this State in an effort to avoid the duty to comply with Maine's regulations and new mobile home warranty.

The Commission unanimously recommends that the new mobile home warranty apply to out-of-state dealers when it is foreseeable that the homes they sell will be installed in Maine and that the warranty cover in addition carriers and installers who bring mobile homes into the state. See Appendix B, Recommendation 1.

Recommendation 2: Licensing of out-of-state dealers

The Commission's unanimous findings regarding consumers' difficulties with out-of-state mobile home dealers prompt a second recommendation designed to give the State an administrative means to ensure that these dealers treat consumers fairly and honor state warranty obligations. As in the case of its previous recommendation, the Commission recognizes that constitutional limits on this State's jurisdiction present obstacles to ensuring out-of-state dealer's compliance with Maine law. Thus the Commission unanimously recommends that the Manufactured Housing Board study the legal and practical feasibility of licensing out-of-state manufactured housing dealers whose products are transported into and installed in Maine. See Appendix B, Recommendation 2.

Recommendation 3: Disclosure of warranty to consumers

Despite law to the contrary, the Commission unanimously finds that consumers who purchase new mobile homes are sometimes not made aware of the terms and their rights under the new mobile home warranty at or prior to the time of sale. The Commission further finds that the manufactured housing industry has taken the position that federal law preempts any state law requirement that manufacturers disclose a state created warranty to consumers and that further research on

pertinent legal issues is necessary before a viable disclosure statute could be recommended.

Thus, the Commission unanimously recommends that the Attorney General proceed with plans to research, draft and secure introduction of a bill to address the disclosure problem identified by the Commission.

A. Mobile home park owner and tenant relationship

The Commission finds that the unique rental status of the mobile home park tenant and the market conditions within which a park tenant must enter into a rental agreement with a park owner necessitate amendment to the laws governing the landlord tenant relationship in a mobile home park. In general, those amendments, see Recommendations 4, 5, 6, 8, 11 and 12, are designed to give mobile home park tenants rights, some of which are accorded tenants in other forms of rental housing under current law, in order to allow tenants to bargain with park owners or more equitable terms and thereby ensure that manufactured housing, the only type of truly affordable housing on the market, remains a viable option. Recommendations 7 and 9 relate more to quality of life within the mobile home park whereas Recommendation 10 concerns municipal implementation of the law governing municipal regulation of mobile home park development.

Commission members, however, differ regarding use of breach of the warranty of habitability as a defense to an eviction action, see Recommendations 11(A) and (B), and mediation of mobile home park disputes, see Recommendations 12(A) and (B).

Recommendation 4: Retaliatory eviction

The Commission unanimously finds that mobile home park associations fulfill valuable function in assisting park tenants to become aware of their rights and responsibilities and thereby improve the quality of life in mobile home parks.

Thus, the Commission unanimously recommends that the law prevent eviction of mobile home park tenants in retaliation for asserting their rights as tenants or for forming or participating in tenants' associations. A similar right is accorded tenants in other forms of rental housing. 14 MRSA §6001, sub-§3. See Appendix B, Recommendation 4.

Recommendation 5: Eviction due to park reconstruction or renovation

The Commission unanimously finds that eviction from a mobile home park can result in serious financial hardship to a mobile home park tenant and that the lack of alternative sites to locate a displaced mobile home, especially in southern Maine, exacerbates an already dire situation. In turn, the Commission finds that eviction is necessary at times to undertake reconstruction or repairs necessary to maintain or improve the quality of life in the park.

Thus, the Commission unanimously recommends that mobile home park tenants be given one year's notice in cases of park reconstruction or renovation which will result in permanent removal of a mobile home from a mobile home park. In addition, the Commission unanimously recommends that in cases of temporary eviction due to reconstruction or renovation park operators or owners give tenants 30 days' notice in writing unless the eviction was necessary to correct an immediate threat to tenants health and safety. In addition, the Commission unanimously recommends that park owners and operators bear the costs of removal and relocation associated with these temporary evictions unless the tenant has agreed otherwise in a writing separate from the lease. See Appendix B, Recommendation 5.

Recommendation 6: Tenants' rights when a mobile home park is sold

The Commission unanimously finds that change in ownership can cause a host of problems for park tenants which directly affect enjoyment of life in the park or constitute a threat to the tenants' investment in their mobile homes. The new owner may decide to increase rents, change park rules or services or discontinue use of the land as a mobile home park. These changes may force tenants into a marketplace where mobile home sites in the community are scarce and other forms of affordable housing non-existent. Thus, the Commission has concluded that tenants should be given a chance to take action to preserve their interest and investment in the park and some degree of protection against changes in use of the park and how the park is run.

Thus, the Commission unanimously recommends that a mobile home park owner be required to give tenants 45 days' notice of an offer to purchase the mobile home park or enter into an agreement with the purchaser, enforceable by the parks' tenants, not to change the use of park for 2 years. See Appendix B, Recommendation 6.

Recommendation 7: Safety of pre-1976 homes

Based on the survey conducted of the State's mobile home parks, see Appendix C, the Commission unanimously finds that a substantial number of mobile homes in use around the State were built before the effective date of the HUD standards. The Commission finds that a number of these older, pre-HUD homes are in need of renovation and repair to make them safe for habitation. The Commission also finds that the Manufactured Housing Board is in the process of developing rules designed to ensure the safety of these homes and recognizes that park owners have a legitimate interest in determining that homes located in their mobile home park are reasonably safe. In addition, the Commission finds that these pre-HUD homes are the only form of housing affordable to a significant number of mobile home park residents, who, if required to remove the home from the park would be unable to find a suitable alternative site and unable to afford another type of home.

Thus, the Commission unanimously recommends that mobile home park owners be allowed to require tenants who own a mobile home built before June 15, 1976, to provide at the time of mobile home is sold or its principal occupant changed evidence that the home complies with the Manufactured Housing Board's Used Manufactured Home Standard regarding safety of heating and electrical systems and fire safety. See Appendix B, Recommendation 7.

Recommendation 8: Notice in evictions for non-payment of rent

As noted above, the Commission unanimously finds that evictions can have dire financial consequences for mobile home park tenants. In addition, the Commission unanimously finds that mobile home park tenants should receive the same type of eviction notice as tenants in other forms of rental housing.

Thus, the Commission unanimously recommends that the notice of eviction served to a mobile home park tenant for non-payment of rent to indicate, as does the notice served to tenants in other residential properties, that the tenant may negate the effect of the notice by paying the rent arrearage in full prior to the expiration of the notice. This provision is substantively identical to 14 MRSA §6002, sub-§2. See Appendix B, Recommendation 8.

Recommendation 9: Drinking water quality.

The Commission unanimously finds that some mobile home park tenants as well as some tenants in other forms of rental housing around the state, are being furnished drinking water which, although in compliance with the health-based drinking

water standards, is not drinkable due to foul odor and taste. The Commission believes that a problem of this nature directly diminishes quality of life in a mobile home park and in the interest of fairness prospective tenants should be made aware of the problem. The Commission also finds that the field of drinking water quality regulation is complex, involving federal and state regulatory schemes, and beyond the Commission's area of expertise. The Commission also finds that development of secondary drinking water standards, those applicable to water's color, odor and taste, may be especially difficult.

Thus, the Commission unanimously recommends that mobile home park owners who receive written notification that 25% or more of the park's tenants found the water provided to the tenants objectionable due to contamination, odor, color or taste be required to inform prospective tenants of the water quality problem and that the Department of Human Services be required to study the feasibility of developing secondary drinking water standards regarding color, odor and taste applicable to all drinking water supplies. See Appendix B, Recommendation 9.

Recommendation 10: Municipal implementation of manufactured housing law

The Commission unanimously finds that in response to recent changes to the law governing local regulation of manufactured housing, see Appendix D, P.L. 1989 c. 506, a number of municipalities will enact zoning and other land use regulations designed to ensure that mobile home parks may be located in environmentally suitable locations. The Commission finds that these local rules may have a substantial impact on the ability of mobile home parks to develop and expand and thus may influence whether manufactured housing remains affordable housing. In short, the Commission finds that municipal implementation is the key to achieving the goals of P.L. 1989 c. 506, namely municipal evaluation of applications to build or expand mobile home parks which is equivalent to that given other housing development proposals in order to ensure the growth of the affordable housing segment of the housing market.

The Commission unanimously recommends that the Department of Economic and Community Development, Office of Comprehensive Planning, study municipal implementation of P.L. 1989 c. 506 and report its findings to the Joint Standing Committee on Legal Affairs by December 1, 1991. See Appendix B, Recommendation 10.

Recommendation 11: Defense of breach of warranty of habitability

a. Majority findings and recommendation.

A majority of the Commission finds that mobile home park tenants should be able to raise breach of the warranty and covenant of habitability as a defense to an eviction action for non-payment of rent. However, the majority finds that use of this defense should be limited to instances where the tenant failed to pay rent as a consequence of the uninhabitable conditions. The majority finds that if the condition of the leased premises is the reason rent is withheld, it is fair and reasonable to require the tenant to give actual notice of the problem, in writing or verbally, to the park owner or operator. The majority finds that notice to the owner or operator is an indication that the defense is being used in good faith and not as an after-the-fact pretext to avoid or delay eviction.

Thus, the majority recommends that a mobile home park tenant should be allowed to use the breach of habitability defense to an eviction action for non-payment of rent only if:

- (a) the tenant gave the park operator or owner actual notice of the uninhabitable condition while the tenant was current in rental payments;
- (b) The owner or operator failed to take reasonable prompt steps to correct the condition; and
- (c) the condition was not caused by the tenant or one under the tenant's control.

See Appendix B, Recommendation 11(A).

b. Minority findings and recommendation

A minority of the Commission finds that there is no justification for giving mobile home park tenants an inferior right to use the breach of warranty of habitability defense than that given tenants in other forms of rental housing. Minority finds that mobile home park tenants, like other tenants, see 14 MRSA §6002, sub-§3, should be able to use the defense where the park owner or operator had actual or constructive notice of a violative condition, not caused by the tenant or one under the tenants control, which the owner or operator failed to take reasonably prompt steps to correct. The minority finds that the actual notice requirement the majority proposes unfairly presumes tenants will be aware of steps they must take to protect their rights, unfairly discriminates against illiterate or semi-literate tenants, and leaves tenants more vulnerable to extra-legal eviction practices, such as discontinuance of electrical or water services.

Thus, the minority recommends that mobile home parks be granted the same right to use the defense of breach of warranty of habitability as is granted to all tenants in other forms of rental housing under 14 MRSA §6002, sub-§3. See Appendix B, Recommendation 11(B).

Recommendation 12: Mediation

The Commission unanimously finds that the time and expense associated with court actions necessitate that mobile home park tenants and owners should have access to some mechanism other than a lawsuit to resolve disputes as to park rules, rent increases and changes in services provided to tenants by the park. However, there is disagreement over what form that alternative dispute resolution should take.

a. Majority findings and recommendation

A majority of the Commission finds that mediation and other forms of alternative dispute resolution work best when the decision to mediate is made voluntarily. In these instances, the parties have a genuine interest in resolving their differences through good faith discussion. The majority finds that mandating mediation of mobile home park disputes is both unnecessary and counterproductive since the law cannot change the attitude of those few park operators unwilling to discuss problems openly with their tenants. As a result mediation will become simply a hurdle, and an expense, on the way to court. The majority finds that park owners and tenants should be given an opportunity to resolve their difficulties in a mutually agreed upon manner prior to being subjected to state mandated mediation.

Thus, a majority of the Commission recommends that the mobile home park industry and tenants avail themselves of the voluntary mediation program devised by the Manufactured Housing Association of Maine. See Appendix B, Recommendation 12(A). That program, already in operation, calls for establishment of an "800" phone line tenants may call with grievances and requests for mediation. Calls will be screened by representatives of mobile home park owners and tenants. Grievances regarding changes in park rules, reduction in park services, conditions in the park and evictions, except for evictions for non-payment of rent, will result in a request made by the Manufactured Housing Association of Maine to the park operator to meet with the tenant(s) affected by the change.

b. Minority findings and recommendation

A minority of the Commission finds that mediation is vital to discussion and mutual understanding of the differing perspectives in a mobile home park dispute. The minority finds that mediation will help mobile home park owners and tenants arrive at a mutually satisfactory resolution of their dispute which is less costly and less time consuming than a court action. The minority further finds that current law lacks an alternative to court action for resolving a dispute over the reasonableness of a park rule, conditions within a park, changes in park services, fees or rents, and evictions. This lack of an alternative, coupled with market conditions favoring park operators and the lack of affordable housing options, places tenants at a distinct disadvantage when they attempt to bargain with park owners regarding any matter affecting life in the park. The minority finds that provision for mediation in statute is essential to ensuring that mediation will in fact occur.

Based on these findings a minority of the Commission recommends establishment of a procedure whereby a majority of mobile home park tenants have a right to discuss changes in park rules and fees, rent increases, evictions and reduction in park services or utilities with the park owner in a non-binding, 3-hour mediation session prior to implementation of the change proposed by the park owner. See Appendix B, Recommendation 12(B).

#405LHS

APPENDIX A

APPROVED

CHAPTER

MAY 2 '88

139

BY GOVERNOR

P & S LAW

STATE OF MAINE

—

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

—

H.P. 1510 - L.D. 2060

AN ACT to Create a Commission to Examine
Rent Increases and Other Issues Concerning
Mobile Homes.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a rapid increase in land and housing costs have made mobile home parks an important housing option for many Maine citizens; and

Whereas, the shortage of mobile home park spaces has led to several recent increases in rent; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Commission created; duties. There is established the Commission on Manufactured Housing to examine issues affecting manufactured housing, including mobile home parks and mobile home owners. Among the issues to be examined are: Unreasonable rent increases; the eviction process for removing tenants of mobile home parks; unreasonable rules;

unreasonable fees or charges; conduct of real estate agents in the sale of mobile homes; tenants' rights of first refusal when the park is for sale; protection of tenants' organizations; prohibiting the importation of pre-1976 mobile homes into the State or municipalities; the safety of mobile homes; the role manufactured housing plays in providing affordable housing; zoning for mobile homes and mobile home parks, especially as it relates to older mobile homes; municipal regulation of mobile home parks; and any other issues which affect the health, safety and continued viability of mobile home owners, mobile home parks and manufactured housing in general. The commission shall consult with the Maine State Housing Authority and the Manufactured Housing Board which shall provide information and assistance.

Sec. 2. Commission membership. The commission shall consist of 13 members to be appointed as follows: Two members of the Joint Standing Committee on Legal Affairs, one to be appointed by the Speaker of the House and one to be appointed by the President of the Senate; 2 members of the Joint Standing Committee on Business Legislation, one to be appointed by the Speaker of the House and one to be appointed by the President of the Senate; 2 members of the Joint Standing Committee on State and Local Government, one to be appointed by the Speaker of the House and one to be appointed by the President of the Senate; 2 representatives of mobile home park owners and operators, one to be appointed by the Speaker of the House and one to be appointed by the President of the Senate; 2 representatives of mobile home owners, one to be appointed by the Speaker of the House and one to be appointed by the President of the Senate; one representative of manufacturers and retail dealers from the Manufactured Housing Association of Maine, to be appointed by that organization; one representative of the Maine Building Officials and Inspectors Association to be appointed by that organization; and one representative of the Maine Municipal Association to be appointed by that organization. The appointing authorities shall make the required appointments by September 1, 1988 and shall notify the Executive Director of the Legislative Council when the appointments have been made.

APPENDIX A

Sec. 3. Commission compensation. The commission members shall be compensated for expenses only.

Sec. 4. Commission schedule; meetings; staff. The Executive Director of the Legislative Council shall convene the first meeting of the commission within 30 days of the effective date. The commission shall elect a chairman from the membership at the first meeting. The commission shall hold up to 10 meetings as necessary to carry out its responsibilities. The Legislative Council and the Department of the Attorney General shall provide staff and assistance to the commission.

Sec. 5. Report; reporting date. The commission shall submit an interim report summarizing its findings and recommendations, including any suggested legislation to the 113th Legislature by December 1, 1988, and a final report to the Second Regular Session of the 114th Legislature in a written report submitted by December 1, 1989.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

LEGISLATURE

Commission on Manufactured Housing

All Other \$8,800

Provides funds for the travel and related expenses of the Commission on Manufactured Housing.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

3-1410

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

S.P. 688 - L.D. 1809

An Act Relating to Various
Commissions, Task Forces and Committees

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, several bills establishing and affecting study commissions, task forces and committees were enacted in the last legislative session; and

Whereas, unless these bills are effectuated immediately, the duties imposed on the study commissions, task forces and committees will not be completed before their reporting dates; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

* * * * *

PART C

Sec. 1. Examination of mediation of disputes between mobile home park operators and tenants. The Commission on Manufactured Housing, created by Private and Special Law 1987, chapter 139, shall, in addition to the duties of the commission prescribed by prior law, specifically examine issues regarding mediation of

APPENDIX A

disputes between mobile home park operators and tenants. Among the issues the commission shall examine are: the types of disputes for which mediation should be required; the types of disputes for which mediation should be optional; who should provide mediation services; the relationship of mediation to the parties' abilities to seek judicial remedies; the implementation of disputed changes in the agreement between a park operator and tenants pending completion of mandatory mediation; and any other issues regarding the desirability, feasibility and efficacy of requiring mediation of some or all of the disputes between mobile home park operators and tenants. The commission may consult with the Court Mediation Service and the Manufactured Housing Board.

Sec. 2. Reporting date. The commission shall include in its final, written report to the Second Regular Session of the 114th Legislature its findings and recommendations regarding mediation of disputes between mobile home park operators and tenants.

Sec. 3. P&SL 1989, c. 40 is repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except that Part B, section 4, the Maine Revised Statutes, Title 30-A, chapter 202, subchapters I to IV and subchapter VI shall take effect September 30, 1989.

APPENDIX B

Note: Recommendations 3 and 12(A) do not propose legislation. A description of Recommendation 12(A)'s non-legislative proposal is included in this Appendix. A similar description of Recommendation 3 is not appropriate.

RECOMMENDATIONS 1 AND 2

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Provide Warranties for Manufactured
Housing Purchased from Out-of-State Dealers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §1403 is repealed and the following enacted in its place:

§1403. Application.

The warranty provided for by this chapter applies to:

- 1. Manufacturer. A manufacturer of mobile homes;
- 2. Dealer. A mobile home dealer, including an out-of-state dealer, who sells a mobile home to a buyer located in this state provided that it was reasonably foreseeable that the mobile home would be transported to and installed in this state; and
- 3. Carrier; Installer. A person who in the ordinary course of business either transports a mobile home from out-of-state into this state or installs a mobile home transported into this state or both.

Sec. 2. Licensing out-of-state dealers. The Manufactured Housing Board shall study the feasibility of requiring out-of-state dealers to obtain a license issued by the board prior to selling a mobile home to be transported into and installed in this state and of imposing sanctions on those who sell a mobile home without a license or who fail to comply with

the warranty provisions of Maine Revised Statutes, Title 10, chapter 213. The board shall report its findings to the joint standing committee of the Legislature with jurisdiction over Legal Affairs no later than January 1, 1991.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

The purpose of this bill is to expand the class of persons subject to the mobile home warranty provisions of Title 10, §1403. The bill provides that out-of-state dealers who sell mobile homes foreseeably bound for installation at a site in Maine, as well as those who transport or install such a home, are subject to the warranty provisions. Currently, the warranty applies to the mobile home manufacturer and is ambiguous as to whether or not it includes out-of-state as well as in-state dealers. This expansion of the warranty law's application is meant to be consistent with relevant federal and state court decisions defining the limits of state jurisdiction.

The bill also requires the Manufactured Housing Board to study the possibility of licensing out-of-state mobile home dealers and to report its findings and recommendations to the Legal Affairs Committee no later than January 1, 1991.

RECOMMENDATION 4

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Prevent Retaliatory
Evictions of Mobile Park Tenants

Be it enacted by the People of the State of Maine as follows:

10 MRSA §9097, sub-§1-A, is enacted to read:

1-A. Retaliation. The court shall not order the termination of any tenancy if the tenant proves that the eviction action is primarily in retaliation for:

A. The tenant's participation in establishing, or membership in, an organization concerned with landlord-tenant relationships; or

B. The tenant's assertion of any right under this chapter.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

The bill clarifies that mobile home park tenants are protected from evictions based on retaliation for organizing or belonging to a tenants' organization, or asserting any right provided by laws governing mobile home parks, such as the warranty of habitability. A similar protection is provided tenants in other forms of rental housing. See 14 MRSA §6001, sub-§3. Unlike the Title 14 provision, this bill would require a tenant to show that the eviction was retaliatory in nature. There is no presumption of retaliation.

RECOMMENDATION 5

SECOND REGULAR SESSION
-----ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.
-----STATE OF MAINE
-----IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY
-----AN ACT to Clarify Mobile Home Tenants' Rights

Be it enacted by the People of the State of Maine as follows:

10 MRSA §9097, sub-§1, ¶G is repealed and the following enacted in its place:

G. Renovation or reconstruction of any portions of the park, provided that:

(1) in the case of a temporary eviction, the park owner or operator;

(a) gives affected tenants 30 days' notice in writing, unless the temporary eviction is necessary to correct conditions posing an immediate threat to one or more tenants' health or safety; and

(b) pays tenants' removal and relocation costs, unless the tenant agrees otherwise in a signed writing separate from the lease;

(2) in the case of a permanent eviction, other than an eviction due to reconstruction or renovation required by a state or local governmental body, of one or more mobile homes currently located in the park, the park owner or operator gives tenants one year's notice in writing.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

The bill involves mobile home park tenants' right to notice when reconstruction or renovation of the park requires permanent or temporary relocation of one or more homes in the park. This bill clarifies that mobile home park tenants are entitled to one year's notice in the case of a reconstruction or renovation of the park which will result in the permanent eviction of any mobile home located in the park. Park owners or operators must give affected tenants 30 days' written notice of temporary evictions, except those necessary to remedy health or safety threatening conditions, and bear the cost of removal and relocation of affected tenants' homes, unless a tenant has agreed in a signed writing separate from the lease to bear these costs.

RECOMMENDATION 6

SECOND REGULAR SESSION
-----ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.
-----STATE OF MAINE
-----IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY
-----AN ACT Regarding Homeowners' Rights
when Mobile Home Parks are Sold

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9094-A is enacted to read:**§9094-A. Restrictions on sale of a mobile home park.**

1. Notice of offer or no change of use. If a mobile home park owner receives an offer to purchase the mobile home park and if the park owner intends to accept that offer, the park owner shall give 45 days' notice to the tenants of the park that the park owner has received an offer to purchase the park which he or she intends to accept. During the 45-day period, the park owner shall not execute a contract for the purchase and sale of the park. Notice shall include a separate notice mailed to each park tenant by regular mail.

2. Exception; agreement to maintain use. Notwithstanding subsection 1, a mobile home park owner may sell the mobile home park without notifying the tenants, if the purchase and sale agreement provides for a deed containing a covenant forbidding the purchaser from changing the use of the park for 2 years after the transfer and which allows tenants of the mobile home park to enforce that covenant.

3. Enforcement. Any mobile home owner, group of mobile home owners or homeowners' association aggrieved by a mobile home park owner's violation of this section may bring an action for injunctive relief and damages and attorneys fees against the violator in Superior Court.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

Many times when parks are sold the new owner changes the use of the park and there is a loss of mobile home lots. The purpose of this bill is to give mobile home park tenants notice of, and thus opportunity to respond to, offers to buy the park.

If a park owner receives an offer to purchase the park and the park owner anticipates acceptance of that offer, the owner can follow one of two courses. First, the owner can notify all the tenants that an offer has been received. Notice by regular mail, as opposed to certified mail, is sufficient. The tenants then have 45 days to try to negotiate with the owner to sell or lease the park to them or perhaps find a buyer who will not change the use of the park. The park owner cannot complete the sale until those 45 days have passed. This does not create a right of first refusal for the tenants, and the park owner is under no obligation to accept any alternative advanced by the tenants. This is intended to ensure that the park owner will receive bona fide offers, and that the negotiations between a willing buyer and seller will not be burdened by a possible outstanding right of the tenants to require the park owner to accept a matching offer.

Second, the park owner may elect to sell the park without providing notice to tenants, if the contract for sale provides for covenants in the deed forbidding the purchaser from changing the use of the park for 2 years and allowing tenants to enforce that covenant.

RECOMMENDATION 7

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT Regarding Mobile Home Safety Standards

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9094, sub-§2, ¶B is amended to read:

2. **Rules.** No mobile home park owner or operator may require a mobile home to be removed from the park except pursuant to a rule contained in the written copy of park rules given to the tenant under section 9097, subsection 4. The rules shall clearly describe the standards under which the park owner or operator may require a tenant to remove a mobile home from the park.

A. These standards shall specify, but not be limited to, fair and reasonable rules governing the conditions of:

- (1) Protective exterior coating or siding;
- (2) Roof;
- (3) Windows and doors;
- (4) Plumbing, heating and electrical systems;
- (5) Anchoring system;
- (6) Skirting around the base;
- (7) Steps and handrails;

- (8) Porches, decks or other additions to the home and the exterior structure;
- (9) Width of home, if less than 11 feet, 6 inches;
- (10) Aesthetic appearance;
- (11) Smoke detectors wired into the electrical system; and
- (12) Other aspects of the structural safety or soundness of the home.

B. The park owner or operator shall have the burden of proving that the mobile home does not meet the standards of the rules adopted under this subsection.

B-1. At the time of sale or change in the principal occupant of a mobile home, the park owner or operator may require the owner of the home, if built before June 15, 1976, to provide evidence that the home meets the Manufactured Housing Board's Used Manufactured Home Standard regarding heating and electrical systems and fire safety. The mobile home owner may demonstrate compliance with the Standard by providing the park owner with a report signed by the following persons and indicating that the home complies with the Standard's specifications regarding those aspects of the home inspected:

1. a licensed electrician who inspected the home's electrical system;
2. a licensed oil burner repairer who inspected the home's heating system; and
3. a licensed engineer who inspected the home for fire safety.

Signature of the report may not be construed for any purpose as an endorsement that the home meets provisions of the Standard other than those for which the inspection was conducted. A park owner who receives a signed report may not require removal of a home under this section on the basis of fire safety or the safety of the home's heating and electrical systems.

C. No aesthetic standards may be applied against the mobile home if the standard relates to physical characteristics such as size, except as provided in paragraph A, subparagraph (9), original construction materials or color which cannot be changed without undue financial hardship to the mobile home owner.

Sec. 2. 10 MRSA §9094, sub-§2, ¶G, is repealed.

Sec. 3. 10 MRSA §9094, sub-§2, ¶F-1 and ¶F-2, are enacted to read:

F-1. The Manufactured Housing Board shall adopt rules under Title 5, chapter 375, establishing a Used Manufactured Home Standard no later than December 1, 1990. The Standard shall cover all equipment and installations in the construction, fire safety and plumbing, heat producing and electrical systems of used manufactured homes which are designed to be used as a dwelling. The Standard shall seek to ensure that used manufactured homes do not present an imminent and unreasonable risk of death or serious personal injury.

F-2. The Manufactured Housing Board shall report to the joint standing committee of the Legislature with jurisdiction over legal affairs on the implementation of paragraph B-1 and any changes to the Used Manufactured Home Standard no later than January 1, 1992.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

Park operators may no longer require the removal of mobile homes from parks solely because of their construction date or the fact that they were not built to the federal construction code adopted by the Department of Housing and Urban Development in 1976. This bill enables park owners and operators to require that mobile homes not built to the federal construction code be inspected to determine fire safety and the safety of heating and electrical systems by appropriate licensed tradepersons in order to determine that the home is safe enough to remain in the park. The park owner or operator may require the home owner to provide the report only at the time the home is sold or when there is a change in the primary resident of the home.

Under the bill, the mobile home owner bears the costs of the necessary inspection, but a written report signed by the inspectors would be sufficient to allow the home to remain in the park if the report indicates that the applicable safety standards, the Manufactured Housing Board's Used Manufactured Home Standard, are met.

RECOMMENDATION 8

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT Regarding Evictions from Mobile Home Parks

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9097, sub-§2, ¶B, sub-¶1, is amended to read:

2. **Notice.** A tenancy in a mobile home park may be terminated only by:

A. The tenant giving at least 45 days' notice of termination to the park owner; or

B. The park owner entitled under subsection 1 to the mobile home space giving at least 45 days' notice of termination in writing to the tenant. If the landlord or the landlord's agent has made at least 3 witnessed good faith efforts made on 3 separate days to serve the tenant, service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's space in the park.

(1) In cases where the reason for eviction is nonpayment of rent, the tenancy may be terminated by 30 days' notice given in the same manner provided that the notice for eviction shall contain notice of the amount owing and a statement indicating that the

tenant can negate the effect of the notice of termination as it applies to rent arrearage if the tenant pays the full amount of rent due before the expiration of the notice.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

The bill is meant to grant mobile home park tenants a right granted to all other tenants in residential housing under current law.

The bill provides that a notice of eviction for nonpayment of rent sent to a mobile home park tenant must include a statement informing the tenant that payment in full of the rent arrearage will negate the effect of the notice. This provision is substantially identical to a requirement of 14 MRSA §6002, sub-§2.

RECOMMENDATION 9

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Improve Drinking Water
Quality in Mobile Home Parks

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9095-A is enacted to read:

§9095-A. Notice of drinking water quality complaints.

If the owner of a mobile home park has received written notice that 25% or more of the park's tenants have found the drinking water furnished to the park's tenants objectionable due to contaminants, color, odor or taste the owner shall provide written notification of the drinking water quality complaints to each prospective tenant prior to the beginning of the tenancy.

Sec. 2. 22 MRSA §2611, sub-§2-A is enacted to read:

2-A. Study of secondary standards. The Department of Human Services, Bureau of Health, shall study the costs and technical feasibility of developing secondary drinking water standards for color, odor and taste. The Department shall report its findings, together with recommendations for legislation, to the joint standing committees of the Legislature with jurisdiction over human resources and legal affairs no later than January 1, 1991.

STATEMENT OF FACT

This bill is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988, chapter 139.

The bill, in response to concerns expressed by mobile home park tenants, takes two steps to ensure that water furnished those tenants is not only free from health threatening contaminants but also free of contaminants which render the water offensive and unpalatable.

First, the bill requires a mobile home park owner, who receives written notification that 25% or more of the park's tenants have found the park-provided drinking water objectionable due to contaminants, odor, color, or taste, to notify prospective tenants of the drinking water complaints before the beginning of the tenancy.

Second, the bill requires the Department of Human Services, Bureau of Health, to study the cost and technical feasibility of enacting state secondary drinking water standards regarding color, odor and taste applicable to all public drinking water sources.

RECOMMENDATION 10

SECOND REGULAR SESSION
-----ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.
-----STATE OF MAINE
-----IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY
-----Resolve, to Require the Office of Comprehensive Planning
to Study Municipal Implementation of Manufactured
Housing Law
-----**Municipal implementation of manufactured housing law.****Resolved:** That the Department of Economic and Community Development, Office of Comprehensive Planning, shall study municipal implementation of Maine Revised Statutes, Title 30-A, section 4358, subsection 3, paragraph M, and report its findings to the joint standing committee of the Legislature having jurisdiction over legal affairs by December 1, 1991.

STATEMENT OF FACT

This resolve is a unanimous final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988 chapter 139.

This resolve requires the Department of Economic and Community Development to study municipal implementation of Maine Revised Statutes, Title 30-A, section 4358, subsection 3, paragraph M, which requires municipalities to permit mobile home parks to expand and be developed in a number of environmentally suitable locations in the municipality and to report its findings to the Joint Standing Committee on Legal Affairs by December 1, 1991.

RECOMMENDATION 11(A)- MAJORITY

SECOND REGULAR SESSION
-----ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.
-----STATE OF MAINE
-----IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY
-----AN ACT to Ensure that Mobile Home Park Operators are Informed
of Habitability Problems

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9097, sub-§10 is enacted to read:

10. Breach of warranty of habitability as an affirmative defense. In an action brought by a mobile home park owner to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that:

(A) the tenant gave the mobile home park owner or owner's agent actual notice of the alleged violation while the tenant was current in rental payments;

(B) the park owner or operator unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and

(C) the condition was not caused by the tenant or another person acting under the tenant's control.

Upon finding that the leased premises is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed shall be paid on a pro rata basis,

unless the parties agree otherwise, and payments shall become due at the same intervals as rent for the current rental period. The mobile home park owner may not charge the tenant for the full rental value of the property until such time as the property is fit for human habitation.

STATEMENT OF FACT

This bill is a final recommendation of a majority of the Manufactured Housing Commission, established by Private and Special law 1988, chapter 139.

The bill allows mobile home park tenants to raise the breach of warranty of habitability as an affirmative defense in an eviction action for nonpayment of rent provided that the tenant gave the park owner or owner's agent actual notice of the conditions rendering the leased premises uninhabitable while the tenant was current in rental payments, the owner or operator failed to take reasonably prompt steps to correct the condition not caused by the tenant or one under the tenant's control.

RECOMMENDATION 11(B) - MINORITY

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT Regarding Mobile Home Park Tenants'
Use of the Defense of Breach
of the Warranty of Habitability

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9097, sub-§10 is enacted to read:

10. Breach of warranty of habitability as an affirmative defense. In an action brought by a mobile home park owner to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the mobile home park owner or owner's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the leased premises is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed shall be paid on a pro rata basis, unless the parties agree otherwise, and payments shall become due at the same intervals as rent for the current rental

period. The mobile home park owner may not charge the tenant for the full rental value of the property until such time as the property is fit for human habitation.

STATEMENT OF FACT

This bill is a minority final recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988, chapter 139.

The bill grants mobile home park tenants a right granted to all other tenants in residential housing under current law.

The bill allows mobile home park tenants to raise the breach of warranty of habitability as an affirmative defense in an eviction action for nonpayment of rent provided that park owner or owner's agent had actual or constructive notice of the conditions rendering the leased premises uninhabitable and failed to take reasonably prompt steps to correct the condition not caused by the tenant or one under the tenant's control. This provision is substantively identical to 14 MRSA §6002, sub-§3 which grants this right to tenants who live in other types of rental housing.



MANUFACTURED HOUSING ASSOCIATION of MAINE

Two Central Plaza, Augusta, Maine 04330 (207) 623-2204

Robert S. Howe
Executive Director

November 6, 1989

MOBILE HOME PARK LANDLORD-TENANT HOTLINE

A statewide, toll-free "800" line will be installed in Augusta for the purpose of receiving complaints and tenant requests for mediation of certain grievances with mobile home park operators. Calls to the "800" will be screened by representatives of park operators and park residents for the purpose of encouraging residents and park operators to meet to discuss grievances.

The following kinds of grievances will result in a request to the park operator to meet with the tenant(s):

- changes in park rules;
- reduction in services provided by park operators;
- existing conditions in parks, and
- evictions, except for evictions for non-payment of rent, with the intent that discussion or mediation not delay the eviction process.

Steps involved in filing and handling complaints would be as follows:

1. One or more tenants must call the toll-free "800" number and indicate the general nature of their grievance.
2. The call will be answered either "live" or with an answering machine.
3. The caller will be sent a simple, one-page complaint form with a return envelope.
4. Complaint forms will be reviewed jointly by a representative of park operators and a representative of park residents.
5. The representatives will jointly decide how best to proceed in acting on the complaint. In most cases,

14123.B01

it is anticipated they will request the park operator to meet with the resident(s). In cases where there is a clear threat to the health and safety of park residents, the matter will be brought to the attention of an appropriate public official. In all cases, park operators will be called.

6. If the decision is to request the park operator to meet with residents, an initial meeting without a third-party mediator will be suggested.
7. When such an initial meeting fails to result in agreement between the parties, the parties will be asked to meet with an independent mediator, both parties equally sharing expenses.
8. With the exception of evictions, there must be an indication that the grievance is shared by a substantial number of residents.
9. Complaint forms will be kept on file, and a monthly status report of each complaint will be provided to the Manufactured Housing Board.

RECOMMENDATION 12(B)- MINORITY

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Establish Mediation for
Mobile Home Park Operators and Tenants

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §§9097-A and 9097-B are enacted to read:

§9097-A. Dispute settlement.

1. Board duties. The Manufactured Housing Board shall provide mediators and arbitrators to conduct mediation or arbitration in accordance with this section and section 9097-B. The Board may satisfy this duty by compiling a list of available mediators and arbitrators from which the parties can select a mutually acceptable mediator or arbitrator. If the parties cannot agree, the Manufactured Housing Board shall make the selection.

2. Mediation or arbitration not binding; disclosure of financial records. Any mediation or arbitration is not binding unless the parties agree otherwise in writing. Unless the parties mutually agree otherwise, mediation required under §9097-B shall not exceed three hours. Nothing in this section or section 9097-B shall be construed to require a mobile home park owner to disclose financial records of the mobile home park to mobile home park tenants.

3. Not final agency action. No resolution arising from mediation or arbitration as provided in this section may be deemed final agency action.

4. Cost paid by parties. The cost of mediation or arbitration shall be paid equally by the parties, except, upon proof by a party of its inability to pay, the Manufactured Housing Board may waive the cost of mediation or arbitration for that party and shall itself pay that party's share.

5. Sunset. This section is repealed on January 1, 1992.

§9097-B. Lot rental increases; reduction in services or utilities; change in rules; evictions; mediation or arbitration

1. Notice of changes. A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days prior to any change in lot rental amount or reduction in services or utilities provided by the park owner or change in park rules, including fees, assessments and charges.

A. The notice must identify all affected mobile home owners, which may be by lot number, name, group or phase. If the affected mobile home owners are not identified by name, the park owner shall make the names and addresses available to any mobile home owner or homeowners' association upon request.

B. Content of notice. The notice required by this section shall include the change in lot rental amount, services or utilities provided by the park owner, or park rules, including changes in amounts of fees, assessments and charges, and the effective date of the change.

C. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety and welfare may be enforced before the expiration of the 90-day period but are not otherwise exempt from the requirements of this subchapter.

2. Meeting with mobile home owners and park owner upon request. A committee, not to exceed 5 in number, designated by a majority of the affected mobile home owners or the board of directors of the homeowners' association, if applicable, may request a meeting with the park owner or the park owner's representative to discuss reasons for the change. The park owner or the park owner's representative shall meet to discuss the change upon request.

3. Request for mediation of change Within 15 days after the date of the meeting requested under subsection 2, the committee representing the mobile home owners or the board of directors of the homeowners' association may designate in writing to the park owner that the change is unreasonable and request that the dispute be submitted to mediation under section 9097-A.

4. Arbitration upon agreement by parties. If, before, during or after mediation, both parties agree in writing, they may submit the dispute to arbitration.

5. Relation to court action. Except for an action to evict a tenant, no action relating to a dispute described in this section may be filed in any court until mediation or arbitration requested under this section has been held.

6. Failure to participate; change suspended. If a park owner fails to participate in a meeting requested under subsection 3 or in mediation requested under subsection 4, the park owner shall not implement the change proposed in the notice of change.

7. Evictions. Any tenant who receives a notice of eviction under section 9097, subsection 1, may request an individual meeting with the park owner pursuant to the procedures of subsection 3 and mediation pursuant to the procedures of subsection 4. The park owner shall participate in the meeting or mediation if requested. If the parties agree, they may submit the dispute to arbitration. If a number of tenants are being evicted due to renovations or reconstruction of the park, the meeting with the park owner and subsequent mediation authorized by this section may be satisfied by the park owner meeting with the affected tenants or their representatives in a group meeting or mediation. The mediation guaranteed by this subsection shall not stay the tenant's eviction date.

8. Sunset. This section is and section 9097-A are repealed on January 1, 1992.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1989-90</u>	<u>1990-91</u>
...(dept)		
...(sub-unit)		
total		

STATEMENT OF FACT

This bill is a minority recommendation of the Manufactured Housing Commission, established by Private and Special Law 1988, chapter 139.

The bill establishes a non-binding mediation system for mediation and arbitration of serious disputes between mobile home park owners and tenants. Currently, a lawsuit in Superior Court provides the only mechanism available to tenants to resolve disputes concerning rent increases, park rules, evictions and other management procedures which seem unreasonable or unlawful. Mediation provides a less expensive, less time consuming option. In addition, mediation may provide results more responsive to the needs of tenants and the owner of a particular park.

Mobile home park tenants often live in great anxiety that their landlord, the park owner, could unfairly evict them or subject them to too burdensome rules. Often such fears can quickly be relieved by the park owner and tenants simply discussing their disputes. The mediation program instituted by this bill would be non-binding and the only obligations on the part of the park owner would be to attend a duly requested meeting and a mediation session. If the park owner concludes that the tenants' complaints are without merit, mediation would be completed and the park owner's decision would stand. Mediations could not last longer than three hours, unless all parties agree and the park owner is under no obligation to disclose financial records of the mobile home park to park tenants.

The provisions of this section are repealed on January 1, 1992, to allow the Legislature to assess the effectiveness of and need for the bill's mediation provisions.

APPENDIX C

MARTHA E. FREEMAN, DIRECTOR
 WILLIAM T. GLIDDEN, PRINCIPAL ANALYST
 JULIE S. JONES, PRINCIPAL ANALYST
 DAVID C. ELLIOTT, PRINCIPAL ANALYST
 GILBERT W. BREWER
 TODD R. BURROWES
 GRO FLATEBO
 DEBORAH C. FRIEDMAN
 JOHN B. KNOX



STATE OF MAINE
 OFFICE OF POLICY AND LEGAL ANALYSIS
 ROOM 101/107/135
 STATE HOUSE STATION 13
 AUGUSTA, MAINE 04333

PATRICK NORTON
 HARTLEY PALLESCHI
 MARGARET J. REINSCH
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 JOHN R. SELSER
 HAVEN WHITESIDE
 JILL IPPOLITI, RES. ASST.
 BARBARA A. MCGINN, RES. ASST.
 BRET A. PRESTON, RES. ASST.

October 27, 1989

TO: Manufactured Housing Commission
 FROM: Margaret J. Reinsch, Legislative Analyst
 SUBJ: Final results of Mobile Home Park Survey

This memo summarizes the results of the mobile home park survey conducted by the Manufactured Housing Commission from January to September, 1989. A questionnaire was mailed to each of the 528 licensed mobile home parks in January, 1989. A follow-up mailing, to those who did not respond, was conducted in August, 1989. The results summarized here are based on questionnaires returned as of September 30, 1989.

OVERALL RESPONSE RATE: A total of 222 questionnaires were returned by September 30th, although 5 parks sent in duplicate questionnaires. The return rate is, therefore, approximately 41.5% (219 out of 528). (There are a total of 219 responding parks because 2 of the 217 responses each covered the 2 parks owned/operated by the owner/operator completing the survey.)

REPRESENTATION - SIZE: Are the responses representative of the total mobile home park population? To determine if the responding parks represent the total population, all the parks were grouped by size based on the licensing information of the Manufactured Housing Board. These groups were structured to contain, where possible, roughly equal numbers of parks. The

number of parks in each group which responded was compared to the total number of parks in each group.

<u>Size (lots)</u>	<u>Total #</u>	<u>Responding</u>	<u>Return rate</u>	<u>% points Difference from Overall Response Rate</u>
3-9	144	44	30.6%	- 10.9%
10-14	87}	37}	{ 42.5%	{ + 1.0%
15-19	44} 131	19} 56	42.7% { 43.2%	+0.1% { + 2.7%
20-39	138	65	47.1%	+ 5.6%
40-90	85}	41}	{ 48.2%	{ + 6.7%
91-199	16} 114	5} 54	47.4% { 31.2%	+5.9% { -10.3%
200-377	<u>13}</u>	<u>8}</u>	{ 61.5%	{ +20.0%
	527	219		

If the return rate for each grouping is compared with the total return rate, it can be determined whether that group is underrepresented or overrepresented in the responses. The smallest parks (3-9 lots) are comparatively poorly represented in the responses (30.6%). Parks of 10-19 lots are slightly overrepresented (42.5%). Although combining all the parks of 40 or more lots (114) produces a combined response rate of 47.4%, breaking this group into natural subgroups (drawing the lines between the 3 main clusters of parks) shows what a disparate group this is. The group of parks with 40 to 90 lots is comparatively overrepresented (85 parks, 41 responses; 48.2%), and the largest parks (200 or more lots) are very much overrepresented (61.5%). In comparison, the parks with 91 to 199 lots (16 parks) are underrepresented (31.2%). (One park, which did not respond, has no size listed; therefore the total number of parks in column 2 is only 527.)

In short, although each grouping by size has a response rate of over 30%, the response rates vary sufficiently to make it difficult to draw the conclusion that the responses are truly representative of the whole population of 528 mobile home parks. However, although the responses cannot be considered truly representative of all the parks based on park size, there are sufficient responses to be fairly confident that the information gives a general picture of parks across all ranges of park sizes.

REPRESENTATION - GEOGRAPHIC: All the mobile home parks were separated into 4 separate geographic zones based on the zip codes contained in the Manufactured Housing Board's licensing information. The zones were determined solely by county lines, and do not represent any other demographic significance.

Zone 1 consists of York and Cumberland Counties, and includes 94 mobile home parks (17.8% of the total of 528 parks)*.

Oxford and Franklin Counties make up Zone 2, which contains 43 mobile home parks (8.1%).

Zone 3 includes Androscoggin, Kennebec, Knox, Lincoln, Sagadahoc and Waldo Counties. A total of 169 mobile home parks (32.0%) are located in Zone 3.

Zone 4 consists of Aroostook, Hancock, Penobscot Piscataquis, Somerset and Washington Counties. The 6 counties contain 221 mobile home parks (41.9%).

Response rates for the zones are as follows:

Zone 1	51 parks responding	54.3% response rate;
Zone 2	19 parks responding	44.2% response rate;
Zone 3	63 parks responding	37.3% response rate;
Zone 4	79 parks responding	35.7% response rate.

REPRESENTATION - # OF LOTS: The Manufactured Housing Board licenses mobile home parks which consist of 3 or more mobile home sites. Each license specifies the number of lots which that park may contain. The number of licensed lots does not necessarily indicate the number of sites which are or could be occupied because not all park developers construct the full number of lots for which they have been licensed. Also, municipal approval may not have been given for all lots licensed by the Board. The total number of licensed lots is 17,111. The total number of licensed lots represented by the responses is 7,961, or 46.5%.

PARK CAPACITY AND LOT AVAILABILITY: The questionnaire asked park owners/operators to list the number of mobile home lots approved in their licenses, the number of lots developed (capable of accommodating a mobile home as is) and the number of sites developed and occupied. The responding parks indicated that at least 1,128 of the total number of licensed lots have not been developed. The information also indicates that of those 7,961 licensed sites covered in the responding parks, only 457 were, at the time the questionnaires were completed, constructed and not occupied, i.e. available for a mobile home to be installed. This number is 5.7% of the lots

* Percentages do not equal 100% due to rounding. Also, one park has an out-of-state business address zip code and no in-state park zip code; the totals for the zones add up to 527 because of this.

covered by the responses; it is unclear whether the same 5.7% vacancy rate can be applied to the total number of mobile home parks.

Park capacity and lot availability can also be broken down along the zone lines described above. Zone 1 (Cumberland and York Counties) respondents listed 330 Board-approved but unbuilt sites and 58 available sites. Responding parks in Zone 2 (Franklin and Oxford Counties) listed 178 unbuilt licensed sites, and 12 available sites. Zone 3 (Androscoggin, Kennebec, Knox, Lincoln, Sagadahoc and Waldo Counties) respondents reported a total of 150 licensed but unbuilt sites, and 214 available sites. Zone 4 (Aroostook, Hancock, Penobscot, Piscataquis, Somerset and Washington Counties) responding parks listed 464 sites which are Board-approved but not built and 150 available sites. The sites not accounted for in this breakdown are attributable to anonymous responses.

The 15 park owners/operators who responded anonymously cover 6 licensed but unbuilt sites, and 23 available sites. Because these responses are anonymous, it is unknown where the numbers fit geographically. Note that this is the only part of the analysis which suffers due to the anonymity (and, thus, no information about location) of the responses.

Of the total number of available sites reported by the responding parks, 12.7% are in Zone 1; 2.6% are in Zone 2; 46.8% are in Zone 3; 32.8% are in Zone 4; and 5.0% are covered by the anonymous respondents. Similarly, the Board-approved, unbuilt sites (1,128 total) are distributed as follows: Zone 1 - 29.3%; Zone 2 - 15.8%; Zone 3 - 13.3%; Zone 4 - 41.1%; anonymous - 0.5%.

PRE-HUD HOMES: The questionnaire asked park owners/operators to state the number of mobile homes within the park that were built before June, 1976; i.e., before the mandatory HUD standards. This was actually a fairly difficult question for some parks to answer, because many owners/operators never kept track of this attribute, so they either had to count the pre-HUD homes or make an estimate. Several left the answer blank. Of those that did respond, 167 parks reported that they had at least one pre-HUD home, for a total of 2,437 pre-HUD mobile homes. Therefore, at least 30.6% of the licensed lots covered by the responses contain pre-HUD mobile homes; at the very least, 14.2% of the total number of licensed mobile home park sites contain pre-HUD homes (this is the minimum percentage, and is accurate only if all the other parks contain absolutely no pre-HUD homes).

LOT SIZES: The parks owners/operators were asked to give the lot size or range of lot sizes within their mobile home parks. Of the responding parks, 53 have at least one lot smaller than 5,000 square feet; 59 parks have at least one lot which is at least 5,000 square feet but less than 6,500 square feet; 69 parks have at least one lot which is at least 6,500 square feet but less than 20,000 square feet; and 35 parks have at least one lot which is at least 20,000 square feet. Because so many parks contain a range of lot sizes, it is impossible from the information collected to determine the number of lots which fall into each category and the average lot size.

ENTRY FEES: Of the park owners/operators responding, 131 reported that they charge an entry fee in at least some circumstances. The entry fees charged range from \$50 to \$2,000, with the majority between \$200 and \$600.

RENT; RENT INCREASES: The questionnaire asked park owners/operators to list the rent or range of rent charged, as well as the number of times they increased the rent within the past 5 years. The reported rents range from \$50 per month to \$400 per month. The frequency of rent increases was reported as follows:

<u>rent increases in past 5 years</u>	<u># of parks</u>
1	56
2	48
3	46
4	10
5	18
6 or more	1

The remaining parks either listed zero or did not respond.

EVICTIONS: Of the responding parks, 58 parks reported a total of 87 evictions successfully pursued in the last 2 years. Three of the parks indicated that a total of 5 of those evictions were due to park renovations.

MOBILE HOME SALES: The questionnaire asked the park owners/operators whether any of the proceeds from the sale of new mobile homes help fund any of the development or operating costs of the park. Thirty-nine parks answered affirmatively, and 40 parks said that entry of new mobile homes into the park was restricted to those homes purchased from an affiliated seller. In looking more closely at these numbers, 13 of the parks which restrict entry answered that they do not subsidize the park through sales. This leaves 12 parks that depend on

some sales profits to help the park, but which do not restrict entry to new mobile homes purchased from that seller.

The questionnaire also asked about the resale of mobile homes in the parks by the mobile home owner/tenant. One hundred and sixty-nine park owners/operators permit the sale of mobile homes already in their parks to new tenants. Thirteen parks prohibit such sales. Three parks replied that they permit and prohibit sales to new tenants. (This was asked as 2 separate questions. The conflicting results suggest that the question was not fully understood.)

LEASES: The questionnaire asked if the parks used leases, and, is so, is there an average length of time that the leases are effective. Of the responding parks, 53 said they do use leases. Forty-three parks reported an average term of the lease.

<u>average term</u>	<u># of parks</u>
1 month	12
6 months	2
12 months	27
Other	2

(Fifteen of those 53 did not list an average length for the lease; 5 who did not say they use leases listed a term.)

#172LHS

APPENDIX D

JUN 12 '89

25

BY GOVERNOR

RESOLVES

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE
—

S.P. 70 - L.D. 59

**Resolve, to Direct the Manufactured Housing Board to Provide
Information to Purchasers of Manufactured Housing**

Production of information. Resolved: That the Manufactured Housing Board shall provide information for purchasers of manufactured housing concerning choosing and purchasing manufactured housing, financing manufactured housing, the installation of manufactured housing and consumers' rights concerning the purchase, financing, installation and ownership of manufactured housing. To fulfill this responsibility, the board may reproduce an existing publication which provides the required information; and be it further

Distribution. Resolved: That the board shall provide copies of the information to all manufactured housing dealers licensed in this State. Each dealer shall prominently display a sign which states that the information is available and the dealer will supply a copy to anyone who is interested in purchasing manufactured housing; and be it further

Dealers to produce and distribute. Resolved: That after all copies of the information funded by this resolve are distributed, manufactured housing dealers shall continue to print the information and distribute it to anyone who is interested in purchasing manufactured housing. Dealers may charge a fee for copies of the information up to the cost of production; and be it further

Allocation. Resolved: That the following funds are allocated from Other Special Revenue to carry out the purposes of this resolve.

APPENDIX D

	1989-90	1990-91
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Manufactured Housing Board		
All Other	\$5,000	\$5,000

JUN 12 '89

BY GOVERNOR

26

RESOLVES

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 NINETEEN HUNDRED AND EIGHTY-NINE

—
 H.P. 48 - L.D. 62

**Resolve, to Require the Manufactured Housing Board to
 Develop a Manufactured Housing Installation Standard**

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Manufactured Housing Board has not adopted a standard for the installation of mobile homes on lots; and

Whereas, some mobile homes have been damaged by improper installation, although there is no information about how many mobile homes have been improperly installed; and

Whereas, the Manufactured Housing Board does not have sufficient information to implement a statewide standard at this time; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Standard appropriate for Maine. Resolved: That the Manufactured Housing Board shall contract with a professional engineer to develop an installation standard for mobile homes that is appropriate for the physical conditions present in Maine. The standard may be an adaptation of existing or proposed national standards. The standard must be specific enough to eliminate ambiguity in what is required, yet flexible enough to cover varying site requirements and to help keep manufactured housing an affordable housing option in Maine. The board shall also consider the need to be able to move a mobile home from one site to another, the issue of exempting current installations

from the application of the standard and the interaction of the standard with other state requirements. For the purposes of this resolve, "installation" has the same meaning as provided in the Maine Revised Statutes, Title 10, section 9002, subsection 6, which is the process of affixing or assembling or setting up manufactured housing on foundations or supports at a building site and includes the connection to existing electrical, oil burner, gas, water, sewage and similar systems which are necessary for the use of the house for dwelling or commercial purposes; and be it further

Preemption. Resolved: That the Manufactured Housing Board shall review the issue of state preemption as it relates to a state installation standard, specifically examining the desirability and feasibility of a state installation standard that preempts municipal standards either in all cases or only when the municipal standard is less strict or creates a conflict; and be it further

Report; recommended legislation. Resolved: That the Manufactured Housing Board shall report to the joint standing committee of the Legislature having jurisdiction over legal affairs by March 1, 1990, concerning the installation standard proposed by the board, the board's recommendation regarding the issue of preemption and any other recommended legislation the board determines necessary; and be it further

Allocation. Resolved: That the following funds shall be allocated from Other Special Revenue to carry out the purposes of this resolve.

1988-89

**PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF**

Manufactured Housing Board

All Other	\$20,000
-----------	----------

Provides funds for consulting fees and other related costs to develop an installation standard.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

JUN 12 '89

271

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE
—

S.P. 71 - L.D. 60

An Act to Implement the Interim Recommendations of
the Manufactured Housing Commission

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §9003, sub-§1, as amended by PL 1987, c. 395, Pt. A, §35, is further amended to read:

1. Established. The Manufactured Housing Board, established by Title 5, section ~~12004~~ 12004-A, subsection ~~1~~ 22 and located in the Department of Professional and Financial Regulation shall have the responsibility of administering and enforcing this chapter. The board shall consist of ~~7~~ 9 members appointed by the Governor.

Sec. 2. 10 MRSA §9003, sub-§2, as amended by PL 1987, c. 395, Pt. A, §36, is repealed and the following enacted in its place:

2. Composition and terms of members. The members of the board shall include:

A. A representative who is a manufactured housing owner, and whose home is not located in a mobile home park or similar rental community;

B. Two representatives who are manufactured housing owners, and the manufactured housing units in which the owners live are located on lots within mobile home parks or similar rental communities which the manufactured housing owners do not own;

C. A representative who is a professional engineer with demonstrated experience in construction and building technology;

APPENDIX D

D. A representative who is a dealer;

E. A representative who is an owner or operator of a mobile home park with 15 or fewer lots;

F. A representative who is an owner or operator of a mobile home park with more than 15 lots;

G. A representative who is a builder of manufactured housing; and

H. A representative with a minimum of 2 years of practical experience in building code administration and enforcement and is currently employed as a code enforcement officer.

The term of office of the members is 4 years. Members may be appointed to successive terms. Members shall serve for their appointed terms and until their successors are appointed and duly qualified, except that any member of the board may be removed for cause by the Governor. No board member may serve more than 2 consecutive terms.

Sec. 3. 10 MRSA §9006-A is enacted to read:

§9006-A. Notice of installation

1. Notice of installation. All dealers and mechanics shall notify the Manufactured Housing Board every month of the installations completed by that dealer or mechanic that month. The notice must include the location of each unit of manufactured housing, the owner of each unit at the time of installation and the name and address of the dealer or mechanic who installed the unit. The information must be submitted within 10 days after the end of each month in the form and manner prescribed by the board by rule.

2. Fee. At the same time the notice of installation is given, the dealer or mechanic shall pay a fee of up to \$5 to the board for each unit installed.

3. Failure to file. The board may require any dealer or mechanic who fails to comply with this section to pay a fine of not less than \$5 and not more than \$100 for each day the notice is late.

Sec. 4. 30-A MRSA §4326, sub-§3, ¶G, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

G. Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of

APPENDIX D

section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes and increasing densities;

Sec. 5. Transition. Members of the Manufactured Housing Board serving on the effective date of this Act shall continue to serve as members until the terms for which they were appointed expire.

Sec. 6. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1989-90	1990-91
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Manufactured Housing Board		
Positions	(1.5)	(1.5)
Personal Services	\$26,836	\$37,969
All Other	5,250	7,000
Capital Expenditures	9,000	
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION		
TOTAL	<u>\$41,086</u>	<u>\$44,969</u>

JUN 30 '89

506

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE
—

H.P. 866 - L.D. 1205

**An Act Regarding Minimum Lot Sizes and Other
Municipal Regulations Concerning Mobile Home Parks**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, mobile home parks provide one of the few truly affordable housing options for many Maine residents; and

Whereas, many municipalities are concerned that they will be unable to comply with current law regarding minimum lot sizes; and

Whereas, the bill gives municipalities a reasonable degree of control of mobile home park developments, while assuring that development of this affordable housing option remains economically feasible; and

Whereas, receipt of the benefits afforded municipalities and mobile home park developers alike is vital to facilitating growth of this affordable housing option; and

Whereas, it is necessary to clarify the relationship between municipal authority to regulate mobile home parks and state land use and environmental laws codified in the Maine Revised Statutes, Title 38; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4358, sub-§1, ¶B, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §§8 and 10, is amended to read:

B. "Mobile home park" means a parcel of land under unified ownership approved by the municipality for the placement of 3 or more manufactured housing homes.

Sec. 2. 30-A MRSA §4358, sub-§1, ¶B-1 is enacted to read:

B-1. "Mobile home park lot" means the area of land on which an individual home is situated within a mobile home park and which is reserved for use by the occupants of that home. A municipality may require a lot to be designated on a mobile home park plan.

Sec. 3. 30-A MRSA §4358, sub-§3, as enacted by PL 1989, c. 104, Pt. A, §45, and Pt. C, §§8 and 10, is repealed and the following is enacted in its place:

3. Regulation of mobile home parks. This subsection governs a municipality's regulation of mobile home parks.

A. Except as required under Title 38, or an ordinance adopted pursuant to Title 30, a municipality shall require:

(1) The size of any mobile home park lot served by a public sewer system to be larger than the smaller of:

(a) Six thousand five hundred square feet; or

(b) The area of the smallest residential lot permitted in the municipality;

(2) The size of any mobile home park lot with on-site subsurface waste water disposal to be larger than 20,000 square feet; or

(3) The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Human Services to be larger than 12,000 square feet, provided that a municipality may require that the overall density of the mobile home park be no more than one home for every 20,000 square feet.

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B. A municipality shall not require the overall area of a mobile home park to be greater than the combined area of its mobile home park lots plus:

(1) The area required for road rights-of-way;

(2) The area required for buffer strips, if any; and

(3) For mobile home parks served by a public sewer, an additional area for open space, storage or recreation, as those terms are defined by local ordinances applicable to all residential developments. A municipality shall not require this additional area to be greater than 10% of the combined area of the individual lots within a mobile home park; and

(4) The area of any setbacks required under Title 38 or an ordinance adopted pursuant to Title 38.

C. Except as required under Title 38 or an ordinance adopted pursuant to Title 38, a municipality shall not require setbacks that have the effect of requiring lots larger than those permitted under paragraph A.

D. Notwithstanding paragraph C, a municipality may require that mobile homes on lots adjacent to a public road be set back from the public road according to requirements applicable to other residential developments.

E. A municipality shall not require road frontage on individual lots within a mobile home park that has the effect of requiring a manufactured home on the lot to be placed parallel to an adjacent private or public roadway.

F. Except as provided by paragraph G, municipal road standards shall not apply to private roads within a mobile home park unless the developer intends to offer the roads to the municipality for acceptance as town ways.

G. A municipality may require by ordinance or rule that privately owned roads within a mobile home park:

(1) Be built according to acceptable engineering standards and with a professional engineer's seal as required by the Manufactured Housing Board;

(2) Have a right-of-way up to 23 feet in width, 20 feet of which the municipality may require to be paved; and

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(3) Conform to reasonable safety standards applicable to intersections with public ways adjacent to the mobile home park.

H. The Manufactured Housing Board shall develop standards for construction of roads within a mobile home park no later than January 1, 1990. The board shall submit these standards to the joint standing committee of the Legislature having jurisdiction over legal affairs matters for that committee's review.

I. A municipality may require buffer strips, not to exceed 50 feet, including individual lot setbacks, along any mobile home park boundary which abuts land used for residential use if the per-acre density of homes within the mobile home park is at least 2 times greater than:

(1) The density of residential development on immediately adjacent parcels of land; or

(2) If the immediately adjacent parcels of land are undeveloped, the maximum net residential density permitted by applicable municipal ordinances or state law.

No structures, streets or utilities may be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to a mobile home park. Municipalities may impose reasonable natural screening requirements within the first 25 feet of the buffer strip as measured from the exterior boundaries of the mobile home park if the requirements are no greater than those for other residential developments.

J. A municipality shall not require electrical utilities and telephone lines to be located underground within a mobile home park. A municipality shall allow a developer to install utilities anywhere within the mobile home park.

K. Except as required under Title 38, or an ordinance adopted pursuant to Title 38, a municipality may not enact or enforce land use regulations or ordinances, including, but not limited to, subdivision regulations or ordinances, which limit the number of lots in a mobile home park, which circumvent the intent of this section or which conflict with the provisions of this section.

L. Notwithstanding any provision in this subsection, a person developing or expanding a mobile home park has the burden of proving that development will not pollute a public water supply or aquifer or violate any state law relating to land development, subdivision or use.

M. A municipality shall permit mobile home parks to expand and to be developed in a number of environmentally suitable locations in the municipality with reasonable consideration being given to permit existing mobile home parks to expand in their existing locations. A municipality may not select a location for a mobile home park development which is not reasonably suitable because of:

- (1) Prior lot division;
- (2) Locational setting within the municipality;
- (3) Natural features; or
- (4) Other similar factors.

This paragraph is effective January 1, 1990.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.