

Talking Points for Senator Ann Cummings  
H.123 – Mobile Home Park Bill  
(Prepared by DHCD – March 31, 2015)

**Overview**

The bill enhances the mechanisms for enforcing the mobile home park statute, Title 10, Chapter 153, and makes clear that a park owner's failure to maintain the roads inside a park in a condition that reasonably ensures access by emergency vehicles is a violation of the warranty of habitability.

Warranty of Habitability provisions in Chapter 153 are similar those for rental properties or apartments. Mobile home owners in parks rent the lots and, like apartment renters, they rely on the owners for adequate electrical service, potable water, sewage disposal and the safe maintenance of common areas. In parks, this includes roads which are private and are owned and maintained by the park owners.

In some parks, the roads are so poorly maintained that residents have difficulty getting in and out. In the worst cases, emergency vehicle access is not assured. Residents have little recourse. While an ongoing issue, concerns were heightened after Tropical Storm Irene flooded or destroyed sixteen parks and many residents were evacuated.

In 2012, the Legislature directed the Department of Housing and Community Development to study this issue and "propose effective mechanisms for adequate maintenance a safety of park roads and public spaces." It did so and included habitability recommendations in its 2013 *Report on the Viability and Disaster Resilience of Mobile Homeownership and Parks*.

The bill's sponsor based H.123 on those recommendations.

Passed the House by a vote of 117 to 24.

Senate Economic Development, Housing and General Affairs Committee agreed with House passed version of H.123 and amended the bill to add sections clarifying the process for removing abandoned homes following an eviction.

Committee heard testimony that abandoned mobile homes can be a serious problem for both the owner of a mobile home park, who is denied rental income from the lot, as well as residents of the park who must tolerate an eyesore and, as the home deteriorates, a potentially hazardous structure. The park owners say it is not uncommon for a mobile home owner that has been legally evicted from the park and been absent for many months to attend the abandonment proceeding in court and block a park owner from having the home, often in poor disrepair and arguably not habitable, be declared abandoned.

The Department of Housing and Community Development worked with the interested parties and language to address this situation was developed and has been agreed to by private and nonprofit park owners, Vermont Legal Aid, Vermont Tenants, Inc., the Attorney General's office, the Department and the Vermont Affordable Housing Coalition.

The bill eliminates criminal penalties and creates more practical enforcement tools for ensuring emergency vehicles can get in and out of parks and abandoned homes can be dealt with fairly and expeditiously. H.123 appropriately balances the interests of park owners and residents. It has the support of all interested parties.

### **Section by Section**

H.123 moderates and enhances enforcement mechanisms for ensuring adequate and safe road maintenance. It also clarifies the process by which owners can removed abandoned homes following an eviction.

#### **Section 1**

Makes a violation of the Mobile Home Park statute an unfair and deceptive act in commerce, to which the consumer protection act applies. Enforcement of this provision would fall to the AG's office. (Note: Case law provides that the Consumer Protection Act (9VSA § 2453) applies to residential leases, which would include mobile home park leases. H.123 gives the AG statutory authority to pursue a consumer protection claim.)

Eliminates the Department of Housing and Community Development's authority to ask the AG to pursue criminal penalties or imprisonment of park owners.

Gives the Department the authority to impose administrative penalties of up to \$5,000 for violations of the statute or pursue injunctive relief and penalties thru Superior Court. And can refer to AG's office.

Extends the Department's enforcement authority to the full Chapter, including the warranty of habitability.

#### **Section 2**

Establishes that a park owner's failure to maintain the roads inside a park in a condition that reasonably ensures ingress and egress by emergency vehicles is a violation of the warranty of habitability, which means that park residents are permitted to withhold rent during the period of noncompliance pursuant to 10 VSA sec. 6263(a).

Makes clear that this section relates to the maintenance of roads and does not require park owners to create new or modify existing roads.

#### **Sections 3 and 4**

Provides that eviction orders must notify mobile home lot leaseholders that they need to sell or remove their homes within three months of when the order is served or it will be considered abandoned and the park owner can remove or sell it.

#### **Section 5**

Effective Date July 1, 2015.

## **Background**

In most instances, the Department is able to and prefers to work informally with a park owner to address violations of the Chapter 153 and its housing division rules.

Testimony pointed out that when the state sets codes or establishes rules, it must have the ability to enforce. Under existing law the Department's enforcement authority is limited to certain sections of the Mobile Home Park statute, which do not include the warranty of habitability. As a member of the House noted, the Department "has been an umpire without a whistle."

The bill addresses an enforcement gap by including specific language on the private roads in parks because they are not otherwise regulated the way electrical service, water and sewage disposal are through permitting and enforcement thru ANR and the Division of Fire Safety.

Bill also better enables DHCD to address issues related to unfair or illegal lease provisions by changing our enforcement authority from criminal to administrative. Example of park owner who is insisting on a lease with discriminatory provisions. Residents have refused to sign. Department has notified owner that lease violates our rules. Owner ignored. DHCD does not have the resources nor would it be practicable to pursue a criminal conviction of the owners. Park remains in limbo and owner plans to use same lease terms in other parks.

Bill does not change process or terms under which park residents can withhold rent. Existing law says only after:

1. The park owner has been notified of the problem,
2. Has had a reasonable time to remedy it; AND
3. The condition materially affects health and safety

H.123 clarifies for owners and residents what this means for roads, i.e., whether an emergency vehicle can get in or out.) This is not about potholes or plowing after a storm. It is when a road is so poorly maintained, an emergency vehicle could not get into a park.