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**Office of the Auditor General**

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February 28, 1983

Letter Report P-251

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
State Capitol, Room 3151  
Sacramento, California 95814

Dear Mr. Chairman and Members:

We have reviewed the Department of Housing and Community Development's (HCD) administration of the petition process authorized by Chapter 40, Statutes of 1982. This legislation allows owners of mobilehomes that have been transferred from the vehicle license fee system to local property taxation because of delinquent mobilehome registrations to petition the HCD to reinstate the mobilehome to the vehicle license fee system.

As of December 29, 1982, the HCD had processed 4,677 petitions for reinstatement to the vehicle license system. Of these 4,677, the HCD approved 713 (15 percent) and denied 3,964 (85 percent). However, the HCD has inconsistently applied its criteria for approving petitions. The inconsistency has almost always been in favor of the mobilehome owner. Thirty-one of 100 approved petitions that we reviewed did not meet the HCD's criteria for approval; only 1 of 100 denied petitions we reviewed was improperly denied. Further, the criteria developed by the HCD appear to be more restrictive than the Legislature intended. The HCD should reevaluate its criteria for approving petitions to ensure that they are consistent with legislative intent.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 2

## BACKGROUND

On July 1, 1981, the Department of Housing and Community Development assumed responsibility for the registration and titling of mobilehomes sold or used within the State.\* Previously, all mobilehomes had been licensed in California under the vehicle license fee law. However, in 1979, the Legislature declared that mobilehomes were to be treated the same as any other owner-occupied housing. Consequently, all new mobilehomes sold on or after July 1, 1980, are subject to local property taxation.

Consistent with the Legislature's intent to treat mobilehomes as structures rather than as vehicles, Chapter 1149, Statutes of 1980, transferred the responsibility for mobilehome registration and titling from the Department of Motor Vehicles (DMV) to the Department of Housing and Community Development. The HCD created a registration and titling section within its Division of Codes and Standards, and assumed registration and titling operations on July 1, 1981.

### Registration and Titling

Mobilehomes in California must be registered annually with the HCD unless the mobilehome is subject to local property taxation or is specifically exempted from annual registration. Those mobilehomes that are subject to local property taxation include new mobilehomes sold on or after July 1, 1980; mobilehomes installed on a permanent foundation; and mobilehomes for which the registration has been delinquent for 120 days or more. However, those mobilehomes subject to local property taxation and not installed on a permanent foundation must be registered with the HCD at the time of sale, resale, or transfer of title. Other exceptions to annual registration include mobilehomes owned by nonresidents and military personnel, provided that these mobilehomes are properly registered in other jurisdictions. The HCD estimates that there are about 500,000 registered mobilehomes in California.

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\* A mobilehome, as used here, is a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 3

The annual registration of mobilehomes includes payment of two types of fees: a registration fee and a license fee. The registration fee is established by law at \$11 per transportable section of the mobilehome.\* The license fee is equal to two percent of the market value of the mobilehome. The HCD determines market value based on the sales price of the mobilehome when it was first sold new and an 18-year depreciation schedule.

Annual registration and licensing fees are due to the HCD each year on or before the date the registration expires. To facilitate prompt annual renewal of mobilehome registration, the HCD sends registration renewal notices to each registered owner about 30 days before the expiration date. Renewal notices are automatically sent to the last mailing address reported by the mobilehome owner. The HCD is not required to send renewal notices, but does so as a matter of policy. According to an opinion from the Legislative Counsel, mobilehome owners are liable for prompt payment of registration fees even if they do not receive renewal notices. The HCD also mails a further warning notice to mobilehome owners who have allowed their registration to become delinquent 60 days.

#### Transfer to Local Property Taxation

In 1979 the Legislature specified that on or after July 1, 1980, any mobilehome for which licensing fees are delinquent 120 days or more becomes subject to local property taxation. However, when the legislation transferring delinquent mobilehomes to local property taxation became effective, many mobilehome owners claimed that they had been unfairly transferred. Some claimed that the delinquency had occurred through no fault of their own, others claimed that errors by the DMV or the HCD had caused or contributed to the delinquency, or had caused them to be reported delinquent when, in fact, they were not.

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\* For calendar year 1983, the registration renewal fee was reduced to \$6 to compensate for an unintended fee increase in 1982.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 4

Two factors led to the mobilehome owners' concern. First, local property taxes are generally significantly higher than vehicle license and registration fees. For example, in the case of one mobilehome that was transferred to local property taxation because of delinquency, the property tax due for the mobilehome in 1982-83 was \$115. Had the owner kept the mobilehome registration current, the registration and license fees on the mobilehome for 1982-83 would have been \$66. The second factor contributing to the mobilehome owners' concern was that the transfer to local property taxation was permanent and there was no way to appeal.

The Legislature subsequently passed legislation that provided a right of appeal for those owners whose mobilehomes may have become subject to local property taxation through no fault of their own. Chapter 40, Statutes of 1982 (Assembly Bill 1400), allows owners of mobilehomes that were transferred to local property taxation because of delinquent registration to petition the HCD for reinstatement to the vehicle licensing fee system.

In addition to this petition process, further legislation allows certain owners of mobilehomes transferred to local property taxation another opportunity to be reinstated to the vehicle license system. Because mobilehome owners were not adequately notified of the change in delinquent penalties and because of confusion resulting from changes in the administration of the registration program, the Legislature enacted Chapter 1395, Statutes of 1982 (Senate Bill 1343). This legislation provided a one-time opportunity for owners whose mobilehome registrations became delinquent between July 1, 1980, and March 1, 1982, to gain reinstatement to the vehicle license fee system by applying to the HCD for a waiver and either paying the delinquent fees or providing proof that payment of property taxes is current. These requests for waivers can be filed with the HCD through June 30, 1983. Neither filing fees nor explanation of reasons for delinquency are required.

#### Program Costs and Staffing

The HCD's registration and titling function is supported by the Mobilehome Revolving Fund. For fiscal year 1982-83, the HCD estimates that registration and titling costs will be about \$7.5 million.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 5

As of December 31, 1982, the HCD had 132 full-time positions and 22 seasonal positions to administer its registration and titling program. These totals include 29 positions in the nine field offices.

#### SCOPE AND METHODOLOGY

To conduct this analysis, we observed the HCD's overall procedures for the registration and titling of mobilehomes. However, we focused our review on the HCD's procedures for transferring mobilehomes to local property taxation and its administration of the process that allows owners of mobilehomes transferred to local property taxation to petition to be reinstated to the vehicle license fee system. To assess the consistency of the HCD's approval and disapproval of petitions, we reviewed a random sample of 100 petitions that were approved and 100 petitions that were disapproved, and checked these against the criteria that the HCD has established for approval. Additionally, we reviewed the HCD's procedures for sending registration renewal notices to mobilehome owners.

#### AUDIT RESULTS

Chapter 40, Statutes of 1982 (Assembly Bill 1400), allows owners of mobilehomes that were transferred to local property taxation because of delinquent registration to petition the HCD for reinstatement to the vehicle license fee system. As of December 29, 1982, the HCD had processed 4,677 petitions; the HCD approved 15 percent, and denied 85 percent. However, the HCD has inconsistently applied the criteria it developed for approving petitions; most of the inconsistencies were in favor of the mobilehome owners. Additionally, the criteria developed by the HCD may be more restrictive than the Legislature intended.

#### Development of Criteria for Approving Petitions

The Legislature, through Assembly Bill 1400, provided that a mobilehome can be reinstated to the vehicle license fee system if the owner can demonstrate that the delinquency occurred through no fault of the owner. Specifically, the legislation states as follows:

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 6

If the director [of the HCD] determines that the failure to pay the license fee was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the director may grant the petition...

The Revenue and Tax Code also provided that petitions were to be approved when a mobilehome owner paid fees to a dealer or escrow agent who failed to transmit the fees to the Department of Motor Vehicles (DMV) or the HCD in time to avoid local property taxation.

The legislation provides no further criteria for approving petitions, but leaves that responsibility to the director of the HCD. The legislation does provide, however, that the director's decision, upon reviewing the petition, is final.

In establishing its criteria for approving petitions, the HCD determined that the following reasons would be acceptable grounds for reinstating a mobilehome to the vehicle license fee system:

1. The mobilehome owner paid license fees for one or more sections of a mobilehome while another section of the mobilehome became delinquent for 120 days or more, provided that department records indicate the sections of the mobilehome were registered separately.
2. The DMV or the HCD made errors of commission or omission that were a contributing factor in the registration's becoming delinquent.
3. The mobilehome was located on land purchased by the federal government after September 1939 and was erroneously given exempt status by the DMV. Private property located on certain federal lands acquired before September 1939 is not taxable.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 7

In addition to these categories, HCD officials told us that there were some unique cases that, when reviewed individually, seemed to fall within the category of "circumstances beyond the owner's control." Petitions in this category would also be approved.

As of December 29, 1982, the HCD had processed 4,677 petitions to reinstate mobilehomes to the vehicle license fee system. Of the 4,677 petitions processed, the HCD approved 15 percent (713) and denied 85 percent (3,964). With each petition, an applicant is required to submit an \$11 filing fee to cover processing costs. By December 29, 1982, the HCD had received \$51,477.00 in petition filing fees. These fees were deposited in the Mobilehome Revolving Fund, which supports the mobilehome registration and titling function. According to staff in the HCD Fiscal Services Office and Budget Office, it costs the HCD more than \$11 to process each petition, but the Mobilehome Revolving Fund is able to absorb the additional cost. The HCD has not determined the exact cost of processing petitions.

#### Inconsistency in Application of Criteria

We randomly selected for review 100 petitions that were approved and 100 that were denied.\* We found that the HCD has been inconsistent in applying criteria for approval, and that the inconsistency was most often in favor of the mobilehome owner. Of the 100 approved petitions we reviewed, 31 did not meet the HCD's standards for approval. Of the 100 denied petitions in our review, only one was improperly denied.

The following examples illustrate the HCD's inconsistent application of its criteria. These petitions cite nearly identical reasons for delinquent registration; however, the HCD approved some petitions but denied others.

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\* We selected our sample from approximately 2,000 petitions that were available for our review. The HCD had sent the remainder of the 4,677 petitions processed to its permanent file room prior to the start of our audit. We have no reason to believe that the petitions available for review were not representative of the total petitions processed.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 8

A number of petitions we reviewed stated that the mobilehome registration became delinquent because the owner could not afford to pay the registration fees. In some instances these petitions were approved; in other instances they were denied. One petition that was approved by the HCD cited illness and inability to afford the fees:

I have a bad back injury that has put me out of work for 8 months. My wife has been very ill to the point of not knowing if she was going to live and is also disabled and unable to work. Our money situation has been almost none.

However, another petition with a similar explanation was denied:

Since 1977 we have suffered two lay-offs and open-heart surgery. Being acutely short of cash, we put the coach up for sale last fall with [Name] expecting to pay the DMV licenses out of the sale proceeds. The sale fell thru unfortunately, and we are resigned to live here for a while. Last month I finally had saved enough to pay the licenses, but the DMV refused my payment, stating that we were now on the property tax rolls.... (If I had been aware of such a change, I would have borrowed the money to pay the licenses.)

Another frequent explanation provided on petitions was confusion resulting from the fact that in some instances a mobilehome composed of more than one section requires separate licenses for each section. Again the HCD was inconsistent in its decisions on these cases. For example, the HCD approved a petition pleading ignorance of the required licensing of each section:



Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 9

Notice was received for [license number for one half of mobilehome] wish [sic] I paid May 15th 1981, and thought it was the fee for the whole coach. Move [sic] here in Nov. 81 didn't know anything about mobilehomes, that I need two stamps....

But another petition that provided a similar explanation was denied:

We received a Registration Renewal Billing Notice for one half of the trailer but thought it was for the entire mobile....

Such inconsistency in applying criteria results in inequitable treatment of mobilehome owners. It also causes confusion among mobilehome owners, leading to increased administrative effort for the HCD because the HCD must respond to correspondence and the numerous telephone calls from mobilehome owners and concerned legislators.

HCD management offered several reasons for this inconsistent application of standards. First, the Legislature did not specify the criteria for approving petitions to reinstate mobilehomes to the vehicle license fee system. The HCD developed its guidelines for approval based on its interpretation of the legislation. However, according to HCD staff, there is still a degree of subjectivity in approving and denying petitions. Staff members told us that "reasonable cause" and "unique circumstances" cannot be precisely defined. Additionally, HCD supervisors responsible for petition processing said that errors and inconsistencies also occurred because of the initial rush of petitions and because staff members were new and had to be trained on the job.

#### Petition Approval Criteria May Be Overly Restrictive

In addition to the inconsistency in approving petitions, we found that the criteria for approval developed by the HCD may be more restrictive than the Legislature intended. To provide the HCD flexibility in approving petitions, the legislation that established the petition process did not specify the criteria for approval. As discussed in the preceding section,

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 10

however, the HCD has denied 85 percent of the petitions it has reviewed. Consequently, there have been complaints that the HCD's criteria are not consistent with legislative intent.

According to the HCD management, the HCD believed that the intent of Assembly Bill 1400 was to provide a remedy for those owners whose mobilehomes had been transferred to local property taxation through no fault of their own; the intent was not to allow mobilehome owners who had willfully failed to pay registration fees to be reinstated to the vehicle license fee system. The HCD developed its criteria based on this understanding of legislative intent. Because the HCD anticipated that most petitions would cite errors caused by the HCD or the DMV, or errors caused by confusion in the transferring of responsibility to the HCD, the HCD advised the Legislature that most petitions would likely be approved.

However, when the HCD began to review the petitions, it found that the reasons cited for delinquency were not those expected. Consequently, 85 percent of the petitions were denied. In our sample of petitions that were denied, we found that the following were the most common explanations given by mobilehome owners for not renewing their registration on time: "Did not receive renewal notice" (32 percent)\*; "Not the registered owner at time of license expiration" (15 percent)\*\*; "Forgot"

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\* There are two reasons why many people may not have received renewal notices. First, the renewal notice may have been undeliverable. For example, the HCD mails approximately 30,000 notices each month. In December 1982, the U.S. Postal Service returned 448 (1.5 percent) as "undeliverable." This is not solely the HCD's responsibility since mobilehome owners are responsible for notifying the HCD within 10 days of moving the mobilehome. Second, the HCD's policy is to not send renewal notices when mobilehomes are already on the property tax system. In our sample of denied petitions, 64 percent of the applicants who stated they did not receive a renewal notice had been delinquent for more than one year, and therefore were already on the property tax system and would not have been sent an HCD renewal notice.

\*\* Although we chose a random sample, the manner in which the HCD files its petitions makes it likely that this category is overrepresented in our sample.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 11

(11 percent); "Could not afford to pay fees" (7 percent); and, "Illness" (5 percent). According to an opinion of the Legislative Counsel, the HCD is within its authority in denying petitions based on the reasons presented above. However, in reviewing individual cases, we found that the criteria developed by the HCD may be more restrictive than the Legislature had intended.

For example, almost 10 percent of the 200 petitions we reviewed cited serious illness of the petitioner or petitioner's spouse as the primary cause of the delinquency. According to the HCD, these petitions are to be denied unless they involve unique circumstances, such as cases when sole registered owners are hospitalized and there is no one to oversee their business affairs. The following are two examples of cases involving illness that the HCD denied because the cases did not meet its criteria for approval.

Case 1: Since we purchased the Mobile Home in 1969, my husband normally handled most of the business matters including renewal of licenses. He passed away in March 1980. In November of 1981 I had a heart attack while I was in Salem, Oregon, and was recuperating in Salem in April of 1982 when the present license expired.

Apparently as a result of a mix up in forwarding of mail and the handling of business matters by my children and relatives for me, I failed to renew license when it became due. When I returned to the coach in Hemet, Calif. in September 1982, I became aware of the expired license.

I am almost 77 years old (March 2, 1983) and hereby petition to have my Mobile Coach reinstated to the Annual Renewal System....

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 12

Case 2: Have had operation on kidney and on parathyroid plus tumor, almost fatal [original illegible] with electrolyte imbalance, also heart attack. Not been myself for long time. Had over 1,000 dollars stolen while ill. Much better now, trying to get affairs in order.

Another frequent reason for delinquency cited in the denied petitions we reviewed was financial hardship or inability to pay the registration fees. Again, these reasons were not within the criteria for approval established by the HCD. Below are examples of denied petitions that cited financial hardship as the cause of delinquency.

Case 3: [Name] is unable to work and our only income is his social security. At age 69 he had a physical and mental breakdown and lost his job and was hospitalized for three months. [Name's] social security check is \$415.00 per month and I was unable to buy the tags for the mobilehome.

Case 4: The reason these fees were not paid was due to financial hardship. At that time my sole income came from my job as a Real Estate Agent. I am enclosing a list of all the commisson checks I received in 1981. During that period (see list) my total income from 6-30-81 thru 10-31-81 was \$1,455.12. This was my gross income before taxes. With a wife and two childern [sic] the normal expenses (Utilities, Food, Cloths, [sic] House Payments) for the necessities of life made money extremely tight. Added too [sic] those costs were medical expenses (see attached sheets) and the costs of school supplies and cloths [sic] for my 4th grade son. I was aware of the license fee and the 20% penalty (see enclosure) which I had planned to pay as soon as I possibly could.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 13

Furthermore, the HCD also automatically denied petitions if they were not properly completed and signed. In our sample we found two examples of petitions that met the criteria for approval but that were denied because they were not signed, even though in one instance the mobilehome owner had hand-printed his name in the space above the signature line.

Although the criteria established by the HCD are within the HCD's legal authority, the criteria may be more restrictive than the Legislature intended. As we noted earlier, Assembly Bill 1400 provides that a mobilehome can be reinstated to the vehicle license fee system if the owner can demonstrate that the delinquency occurred due to reasonable cause and circumstances beyond the owner's control. According to legislative staff we interviewed, the legislation that provides the petition process was intentionally not more specific than this in order to allow the HCD the administrative discretion necessary to judge each petition on the basis of the applicant's particular circumstances, thereby enabling the HCD to grant most petitions routinely. Another indication that the Legislature did not intend for the HCD to be so restrictive is seen in the subsequent legislation that provides a further remedy for certain owners of mobilehomes transferred to property taxation. Chapter 1395, Statutes of 1982 (Senate Bill 1343), allows a one-time opportunity for owners whose mobilehomes became delinquent between July 1, 1980, and March 1, 1982 to gain reinstatement to the vehicle license fee system by applying to the HCD and either paying the delinquent fees or providing proof that payment of property taxes is current. No explanation of cause of delinquency is required.

Although Senate Bill 1343 provides a remedy for some mobilehome owners, it does not address the questions concerning the HCD's criteria for approving petitions. This legislation provides a one-time opportunity for reinstatement to the vehicle license fee system only for those owners whose delinquent registration occurred during an established time period. In contrast, the petition process established by Assembly Bill 1400 is a continuous activity. The HCD's decision on each petition is final, and HCD management officials have stated that they intend to continue using existing criteria for approving petitions.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 14

### CONCLUSION

California mobilehome owners whose mobilehomes had been transferred to the property tax system submitted 4,677 petitions to the Department of Housing and Community Development requesting reinstatement to the vehicle license fee system. Of the 4,677 petitions processed, the HCD approved 15 percent and denied 85 percent. However, in processing the petitions, the HCD inconsistently applied its criteria for approval. In almost every instance, the inconsistency with the criteria was in favor of the mobilehome owner.

Additionally, although the criteria for approving petitions established by the HCD are within its legal authority, the criteria may be more restrictive than the Legislature intended. Moreover, the HCD's decision is final.

### RECOMMENDATION

The Department of Housing and Community Development should clarify its petition approval criteria to reduce the degree of subjective judgment involved in evaluating petitions. Criteria for cases involving inability to pay fees, or "unique circumstances," should be more precise. The HCD should also ensure that staff reviewing petitions fully understand the limits of acceptable criteria and that such criteria are applied consistently.

Also, the HCD should reevaluate its petition approval criteria to ensure that these criteria are consistent with legislative intent. In particular, the HCD should reconsider its criteria for cases involving reasons such as serious illness and financial hardship.

Honorable Art Agnos  
Chairman, and Members of the  
Joint Legislative Audit Committee  
February 28, 1983  
Page 15

We conducted our review under the authority vested in the Auditor General by Section 10500 et seq. of the Government Code. Further, we conducted our review in accordance with generally accepted governmental auditing standards necessary to accomplish the work requested by the Legislature.

Respectfully submitted,



THOMAS W. HAYES  
Auditor General

Staff: Richard C. Tracy, Audit Manager  
Melanie M. Kee  
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Attachment: Response to the Auditor General's Report

Department of Housing and Community Development

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
921 Tenth Street  
Sacramento, CA 95814-2774  
(916) 445-4775



February 24, 1983

Mr. Thomas W. Hayes  
Auditor General  
660 "J" Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Hayes:

Thank you for providing the Department of Housing and Community Development (HCD) with the opportunity to respond to your draft report The Department of Housing and Community Development's Administration of the Mobilehome Program, February 1983 (Letter Report 251). As you indicate in your legislative transmittal, the report deals with one part of the Mobilehome Program--the petition process authorized by Chapter 40, Statutes of 1982, which allows owners of mobilehomes that have been transferred from the vehicle license fee system to local property taxation because of delinquent mobilehome registrations to petition the HCD to reinstate the mobilehome to the State's registration renewal system. You recommend that HCD clarify petition approval criteria to reduce the degree of subjective judgment involved in evaluating petitions, and to ensure they are consistent with legislative intent. This recommendation stems from your conclusions that inconsistencies were found in HCD's petition action decisions, and that HCD's approval criteria may be more restrictive than the Legislature intended.

#### Auditor General Recommendation

In response to the report's recommendation, HCD will be pleased to review the petition approval criteria. However, we believe it important to note that HCD did establish very specific criteria and sought to apply them consistently across similar types of petitions, to assure equitable treatment of all petitioners in the face of very general statutory direction (see Attachment 1). Further, this Department's representatives participated actively with the key legislators and staff who dealt with mobilehome registration and titling legislative proposals, most notably Chapter 40/1982 (AB 1400) and its cleanup, Chapter 1465/1982 (AB 3382). That involvement (see Attachment 2) led to HCD's formulation and confirmation of the specific administrative



Mr. Thomas W. Hayes  
Page Two  
February 24, 1983

criteria utilized in the petition review process.

#### Inconsistent Decisions

While we believe our review criteria reinforced the objectivity of the petition approval process, our staff has concurred with your conclusions about those instances in which our determinations were inconsistent. The first year of implementation of the Mobilehome Registration and Titling Program (beginning July 1, 1981) was a very difficult one for this Department and for the Department of Motor Vehicles (DMV), whose staff provided data processing programming and computer operations support. Many new procedures were required, hiring and training proceeded slowly, and there was much public confusion about the transfer of responsibilities from DMV to HCD. Large processing backlogs resulted which required the commitment of a major extra staff effort from both departments beginning in the Spring and continuing into Summer, 1982.

In addition, the Legislature enacted Chapter 40/1982 as an urgency measure on February 17, 1982. According to one provision of that legislation, owners of any mobilehomes placed on local property tax rolls because they were delinquent for 120 days or more were given a fixed 60-day period from the effective date of the act (March 1, 1982) to file a petition for reinstatement. HCD in turn was provided 90 days from date of filing to act on the petition. As a result, a great number of the petitions received by HCD were submitted during that first 60-day period--March and April, 1982.

Sufficient staff resources to deal with the AB 1400 process were sought by HCD in early March. Legislative approval through the Section 28 process occurred June 9, 1982; however, the State's hiring freeze in effect at that time prevented HCD from gaining final authorization to fill approved positions until July 1982. During the period from March through June 1982, while existing staff were seeking to deal with the Registration and Titling backlog, they also sought to implement the AB 1400 responsibilities. Under these circumstances, strain was evident and you have identified inconsistent actions which resulted. As indicated in your report, management decisions which were affected by subjective influences, even in the face of specific criteria, sought to support the mobilehome owners' rationale.

#### Restrictive Criteria

You have also indicated that HCD's criteria for approving petitions may be more restrictive than the Legislature intended. We will certainly reexamine our criteria, particularly in those instances involving serious illness, financial hardship, and unsigned petitions. However, as we suggested earlier in this response, we believe HCD representatives had a clear notion of the Legislature's intent regarding approval criteria. We will now use your report, and our established

Mr. Thomas W. Hayes  
Page Three  
February 24, 1983

criteria (see Attachment 3) as the bases for a rediscussion with the authors of enacted measures influencing this process.

Thank you for providing this opportunity to respond to the report and for the consistent objectivity of your staff during their many hours involved in auditing our activities and preparing the report.

Sincerely,



Robert L. LaLiberte'  
Interim Director

Attachments

STATUTORY DIRECTION RE: AB 1400 (CHAPTER 40/1982)  
PETITION APPROVAL CRITERIA

While HCD recognized the potential subjectivity of its petition review process, it was difficult devising an approach to deal accurately and specifically with the statutory responsibility of determining:

- (a) What is, or is not, a "reasonable cause" for delinquency?
- (b) What is, or is not, a "reasonable circumstance" for delinquency?
- (c) What is, or is not, a "circumstance beyond a person's control"?
- (d) What is, or is not, a circumstance which "occurred notwithstanding the exercise of ordinary care"?
- (e) What does, or does not, represent "the absence of willful neglect"?

FORMULATION AND ENACTMENT  
OF LEGISLATION AFFECTING AB 1400 PETITION PROCESS

HCD was involved with AB 1400 from the point of its introduction in 1981, prior to HCD's assumption of responsibility for registration and titling of mobilehomes from DMV.

HCD implemented AB 1400 on March 1, 1982 as urgency legislation.

Assemblyman Cortese, author of AB 1400, introduced 1982 cleanup legislation of AB 1400 which became AB 3382 (Chapter 1465 of the 1982 Statutes).

AB 3382 provided only the following additional indication of legislative intent in Revenue and Taxation Code Section 10911 relating to reasonable cause for approval of petitions:

"...including but not limited to, the administrative or clerical errors of the department..."

HCD had previously adopted similar language in its emergency regulations implementing AB 1400, California Administrative Code, Title 25, Chapter 5, Section 5506(b)(3), which reads:

"Any documented error by either the department or the Department of Motor Vehicles resulting in the manufactured or mobilehome becoming delinquent for 120 days or more."

Notwithstanding the conclusions drawn in the Auditor General's Report, HCD believes that the Department correctly interpreted the legislative intent of AB 1400.

HCD CRITERIA: BASES FOR REJECTIONS OF AB 1400 PETITIONS

Following is an identification of the specific bases employed for each of the most common categories of petitions denied (see page 10 of Auditor General Report):

(a) "Did not receive renewal notice" (32 percent).

The report appears to support HCD's criteria for denial of petitions in this category. The report cites a Legislative Counsel's opinion on page 3 of the report as follows:

"According to an opinion of the Legislative Counsel, mobilehome owners are liable for prompt payment of registration fees even if they do not receive a renewal notice."

(b) "Not the registered owner at a time of license expiration" (15 percent).

It is HCD's position that AB 1400 extended the right of petition only to assessees, registered owners, and legal owners of mobilehomes at the time of the delinquency causing the mobilehome to become subject to Local Property Taxation.

Subsequent assessees, registered owners, and legal owners acquired their interest in the mobilehome with knowledge that the home was subject to Local Property Taxation. Additionally, after the fact assessees, registered owners, and legal owners could not accurately attest to the "reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect," resulting in the failure to pay the license fees at the time of original delinquency.

(c) "Forgot" (11 percent).

The report reflects the intent of the Legislature to treat mobilehomes as structures rather than vehicles on page 2 of the report, and the legislative specification that mobilehomes 120 days or more delinquent in license fees shall become subject to Local Property Taxation on page 3 of the report.

Prior legislation and legislative direction were drawn from AB 887 (Ch. 1160 of the 1979 Statutes), SB 1004 (Ch. 1180 of the 1979 Statutes), SB 1422 (Ch. 285 of the 1970 Statutes), and SB 1960 (Ch. 1142 of the 1981 Statutes) indicating the legislative intention to treat mobilehomes substantially similar to conventional structures.

As with the taxation of conventional structures, there is no forgiveness of delinquency or the resulting circumstances for an assessee who forgot to pay their taxes. This position appears to be supported by the

Legislative Counsel's Opinion previously cited on page 3 of the report.

(d) "Could not afford to pay fees" (7 percent).

Same as above for "Forgot."

(e) Illness (5 percent).

The HCD established criteria on this reason for denial is substantially similar to that for "Forgot," above. However, HCD did interpret the legislative intent of "reasonable cause and circumstances beyond the person's control" etc. to require HCD to closely examine issues related to illness causing the failure to pay license fees.

HCD used the following criteria, referenced on page 9 of the report as "unique circumstances" to evaluate, and grant where possible, petitions representing illness:

- (1) Was the illness of an incapacitating nature, specifically mentally incapacitating?
- (2) Was the time of the stated illness concurrent with the time of delinquency and the 120 days after such delinquency resulting in the home becoming subject to Local Property Taxation?
- (3) Was the person or persons indicated to have been ill sole owner or owners of the home without indication of other responsible persons in charge of their affairs?

HCD granted petitions where incapacitating illnesses of unsupported or unrepresented petitioners were determined.

(f) Unidentified (30 percent).