Enrolled
Senate Bill 294

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CHAPTER .....

AN ACT

Relating to landlord-tenant law; creating new provisions; amending ORS 90.315, 90.510, 90.532, 90.536, 90.537, 90.730, 92.830, 92.840 and 446.062 and section 13, chapter 658, Oregon Laws 2003, section 3, chapter 619, Oregon Laws 2005, and section 1, chapter 479, Oregon Laws 2009; repealing section 26, chapter 619, Oregon Laws 2005; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 90.505 to 90.840.

SECTION 2. The Legislative Assembly finds and declares that:

(1) Water is an essential and scarce resource;

(2) Conservation of water is critical for the future of this state; and

(3) Billing for water according to usage encourages users to conserve water and allows users to exercise better control over their costs.

SECTION 3. Section 1, chapter 479, Oregon Laws 2009, is added to and made a part of ORS 90.505 to 90.840.

SECTION 4. Section 1, chapter 479, Oregon Laws 2009, is amended to read:

Sec. 1. [*(1) As used in this section, "landlord," "manufactured dwelling park" and "tenant" have the meanings given those terms in ORS 90.100.*]

(1) [*(2)*] **Except as provided in subsections (2) and (3) of this section,** a landlord that assesses the tenants of a manufactured dwelling park containing 200 or more spaces in the facility a utility or service charge for water by the **pro rata** billing method described in ORS 90.532 [*(1)(b)*] **(1)(b)(C)(ii)** shall convert the method of assessing the utility or service charge to a billing method described in ORS 90.532 (1)(a) or (1)(c). The landlord shall complete the conversion no later than December 31, 2012. A conversion under this section to a billing method described in ORS 90.532 (1)(c) is subject to ORS 90.537.

(2) A landlord that provides water to a manufactured dwelling park solely from a well or from a source other than those listed in ORS 90.532 (8) is not required to comply with subsection (1) of this section.

(3) A landlord that meets the following requirements designed to promote conservation is not required to comply with subsection (1) of this section:

(a) The landlord must:

(A) Bill for water provided to a space using the pro rata billing method described in ORS 90.532 (1)(b)(C)(ii) by apportioning the utility provider's charge to tenants on a pro rata basis, with only the following factors being considered in the apportionment, notwithstanding ORS 90.534 (2)(c):

(i) The number of tenants or occupants in the manufactured dwelling compared with the number of tenants or occupants in the manufactured dwelling park; and

(ii) The size of a tenant's space as a percentage of the total area of the manufactured dwelling park.

(B) Base two-thirds of the charge to the tenants on the factor described in subparagraph (A)(i) of this paragraph and one-third of the charge on the factor described in subparagraph (A)(ii) of this paragraph.

(C) Determine the number of tenants or occupants in each dwelling unit and in the manufactured dwelling park at least annually.

(b) The landlord must demonstrate significant other conservation measures, including:

(A) Testing for leaks in common areas of the manufactured dwelling park at least annually, repairing significant leaks within a reasonable time and making test results available to tenants;

(B) Testing each occupied manufactured dwelling and space for leaks without charge to a tenant occupying the dwelling at least annually and making test results available to the tenant;

(C) Posting annually in any manufactured dwelling park office and in any common area evidence demonstrating that per capita consumption of water in the manufactured dwelling park is below the area average for single-family dwellings, as shown by data from the local provider of water; and

(D) Taking one or more other reasonable measures to promote conservation of water and to control costs, including educating tenants about water conservation, prohibiting the washing of motor vehicles in the manufactured dwelling park and requiring drip irrigation systems or schedules for watering landscaping.

(c) The landlord must amend the rental agreement of each tenant to describe the provisions of this subsection and subsection (4) of this section and to describe the use of the pro rata billing method with additional conservation measures. The landlord may make the amendment to the rental agreement unilaterally and must provide written notice of the amendment to the tenant at least 60 days before the amendment is effective.

(4) If a landlord subject to this section adopts conservation measures described in subsection (3) of this section to avoid having to comply with subsection (1) of this section:

(a) Notwithstanding ORS 90.539 or 90.725 (1), a tenant must allow a landlord access to the tenant's space and to the tenant's manufactured dwelling so the landlord can test for water leaks as provided by subsection (3)(b)(B) of this section.

(b) The landlord must give notice consistent with ORS 90.725 (1)(e) before entering the tenant's space or dwelling to test for water leaks.

(c) A tenant may be required by the landlord to repair a significant leak in the dwelling found by the landlord's test. The tenant must make the necessary repairs within a reasonable time after written notice from the landlord regarding the leak, given the extent of repair needed and the season. The tenant's responsibility for repairs is limited to leaks within the tenant's dwelling and from the connection at the ground under the dwelling into the dwelling. If the tenant fails to make the repair as required, the landlord may terminate the tenancy pursuant to ORS 90.630.

(d) Notwithstanding ORS 90.730 (3)(c), a landlord is responsible for maintaining the water lines within a tenant's space up to the connection with the dwelling, including repairing significant leaks found in a test.

(e) A landlord may use the pro rata billing method described in ORS 90.532 (1)(b)(C)(ii) with the allocation factors described in ORS 90.534 (2)(c) for common areas.

(f) Notwithstanding ORS 90.534 (4), a landlord may include in the utility or service charge the cost to read water meters and to bill tenants for water if those tasks are performed by a third party service and the landlord allows the tenants to inspect the third party's billing records as provided by ORS 90.538.

(5) A tenant may file an action for injunctive relief to compel compliance by a landlord with the requirements of subsections (1), (3) and (4) of this section and for actual damages plus at least two months' rent as a penalty for noncompliance by the landlord with subsections (1), (3) and (4) of this section. A landlord is not liable for damages for a failure to comply with the requirements of subsections (1), (3) and (4) of this section if the noncompliance is only a good faith mistake by the landlord in counting the number of tenants and occupants in each dwelling unit or the manufactured dwelling park pursuant to subsection (3)(a) of this section.

SECTION 5. ORS 90.510 is amended to read:

90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) The personal property, services and facilities that are provided by the landlord.

(e) The installation charges that are imposed by the landlord and the installation fees that are imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) The utilities and services that are available, the name of the person furnishing them and the name of the person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association. The tenants' association shall provide the summary to the landlord.

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy must be a copy of the agreement entered by the landlord and tenant.

(3) The landlord shall give:

(a) Prospective tenants a copy of the statement of policy before the prospective tenants sign rental agreements;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy a copy of the statement of policy upon the expiration of their rental agreements and before the tenants sign new agreements.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d). The agreement must be signed by the landlord and tenant and may not be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions taken pursuant to ORS 90.530, 90.533, 90.537 or 90.600 **or section 1 (3), chapter 479, Oregon Laws 2009**; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section must specify:

(a) The location and approximate size of the rented space;

(b) The federal fair-housing age classification;

(c) The rent per month;

(d) All personal property, services and facilities to be provided by the landlord;

(e) All security deposits, fees and installation charges imposed by the landlord;

(f) Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions must be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which the landlord or tenant shall give notices.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall do or may not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility must be based on reasonable factors and not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) Reasonable factors may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

(8) Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(9) A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

(10) A suit or action arising under subsection (8) of this section must be commenced within one year after the discovery or identification of the alleged violation.

(11) Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants' association. The tenants' association shall provide the summary to the landlord.

SECTION 6. ORS 90.532 is amended to read:

90.532. (1) Subject to the policies of the utility or service provider, a landlord may, except as provided in subsections (2) [*and (3)*] **to (4)** of this section, provide for utilities or services to tenants by one or more of the following billing methods:

(a) A relationship between the tenant and the utility or service provider in which:

(A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and

(B) The landlord does not act as a provider.

(b) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and

(C) The landlord:

(i) Includes the cost of the utility or service in the tenant's rent; or

(ii) Bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning on a pro rata basis the provider's charge to the landlord as measured by a master meter.

(c) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space; and

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

(2) A landlord may not use a separately charged pro rata apportionment **billing method** as described in subsection (1)(b)(C)(ii) of this section:

(a) For garbage collection and disposal, unless the pro rata apportionment is based upon the number and size of the garbage receptacles used by the tenant.

(b) For water service, if the rental agreement for the dwelling unit was entered into on or after January 1, 2010**, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010**.

(c) For sewer service, if sewer service is measured by consumption of water and the rental agreement for the dwelling unit was entered into on or after January 1, 2010**, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010**.

(3) **Except as allowed by subsection (2) of this section for rental agreements entered into on or after January 1, 2010,** a landlord and tenant may not amend a rental agreement to convert

water or sewer utility and service billing from a method described in subsection (1)(b)(C)(i) of this section to a method described in subsection (1)(b)(C)(ii) of this section.

(4)(a) A landlord of a manufactured dwelling park built after the effective date of this 2011 Act may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water.

(b) A landlord of a manufactured dwelling park that expands to add spaces after the effective date of this 2011 Act may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water to any spaces added in excess of 200.

[*(4)*] **(5)** To assess a tenant for a utility or service charge for any billing period **using the billing method described in subsection (1)(b)(C)(ii) or (c) of this section**, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that the tenant is to pay the landlord and the due date for making the payment. The due date may not be less than 14 days from the date of service of the notice. **The amount of the charge is determined as described in ORS 90.534 or 90.536. If the rental agreement allows delivery of notice of a utility or service charge by electronic means, for purposes of this subsection, "written notice" includes a communication that is transmitted in a manner that is electronic, as defined in ORS 84.004.**

[*(5)*] **(6)** A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.630.

[*(6)*] **(7)** The landlord is responsible for maintaining the utility or service system, including any submeter, consistent with ORS 90.730. After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.

[*(7)*] **(8)** A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:

(a) Public utility as defined in ORS 757.005;

(b) Municipal utility operating under ORS chapter 225;

(c) People's utility district organized under ORS chapter 261;

(d) Cooperative organized under ORS chapter 62;

(e) Domestic water supply district organized under ORS chapter 264; or

(f) Water improvement district organized under ORS chapter 552.

[*(8)*] **(9)** A landlord that provides utilities or services only to tenants of the landlord in compliance with this section and ORS 90.534 and 90.536 is not a public utility for purposes of ORS chapter 757.

[*(9)*] **(10)** The authority granted in this section for a utility or service provider to apply policy regarding the billing methods described in subsection (1) of this section does not authorize the utility or service provider to dictate either the amount billed to tenants or the rate at which tenants are billed under ORS 90.534 or 90.536.

SECTION 6a. ORS 90.532, as amended by section 6a, chapter 816, Oregon Laws 2009, is amended to read:

90.532. (1) Subject to the policies of the utility or service provider, a landlord may, except as provided in subsections (2)[*, (3) and (4)*] **to (5)** of this section, provide for utilities or services to tenants by one or more of the following billing methods:

(a) A relationship between the tenant and the utility or service provider in which:

(A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and

(B) The landlord does not act as a provider.

(b) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and

(C) The landlord:

(i) Includes the cost of the utility or service in the tenant's rent; or

(ii) Bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning on a pro rata basis the provider's charge to the landlord as measured by a master meter.

(c) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space; and

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

(2) A landlord may not use a separately charged pro rata apportionment **billing method** as described in subsection (1)(b)(C)(ii) of this section:

(a) For garbage collection and disposal, unless the pro rata apportionment is based upon the number and size of the garbage receptacles used by the tenant.

(b) For water service, if the rental agreement for the dwelling unit was entered into on or after January 1, 2010**, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010**.

(c) For sewer service, if sewer service is measured by consumption of water and the rental agreement for the dwelling unit was entered into on or after January 1, 2010**, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010**.

(3) **Except as allowed by subsection (2) of this section for rental agreements entered into on or after January 1, 2010,** a landlord and tenant may not amend a rental agreement to convert water or sewer utility and service billing from a method described in subsection (1)(b)(C)(i) of this section to a method described in subsection (1)(b)(C)(ii) of this section.

(4) **Except as provided in section 1 (3), chapter 479, Oregon Laws 2009,** a landlord for a manufactured dwelling park containing 200 or more spaces in the facility may not assess a tenant a utility or service charge for water by using the billing method described in subsection [*(1)(b)*] **(1)(b)(C)(ii)** of this section.

(5)(a) A landlord of a manufactured dwelling park built after the effective date of this 2011 Act may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water.

(b) A landlord of a manufactured dwelling park that expands to add spaces after the effective date of this 2011 Act may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water to any spaces added in excess of 200.

[*(5)*] **(6)** To assess a tenant for a utility or service charge for any billing period **using the billing method described in subsection (1)(b)(C)(ii) or (c) of this section**, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that the tenant is to pay the landlord and the due date for making the payment. The due date may not be less than 14 days from the date of service of the notice. **The amount of the charge is determined as described in ORS 90.534 or 90.536. If the rental agreement allows delivery of notice of a utility or service charge by electronic means, for purposes of this subsection, "written notice" includes a communication that is transmitted in a manner that is electronic, as defined in ORS 84.004.**

[*(6)*] **(7)** A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.630.

[*(7)*] **(8)** The landlord is responsible for maintaining the utility or service system, including any submeter, consistent with ORS 90.730. After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.

[*(8)*] **(9)** A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:

(a) Public utility as defined in ORS 757.005;

(b) Municipal utility operating under ORS chapter 225;

(c) People's utility district organized under ORS chapter 261;

(d) Cooperative organized under ORS chapter 62;

(e) Domestic water supply district organized under ORS chapter 264; or

(f) Water improvement district organized under ORS chapter 552.

[*(9)*] **(10)** A landlord that provides utilities or services only to tenants of the landlord in compliance with this section and ORS 90.534 and 90.536 is not a public utility for purposes of ORS chapter 757.

[*(10)*] **(11)** The authority granted in this section for a utility or service provider to apply policy regarding the billing methods described in subsection (1) of this section does not authorize the utility or service provider to dictate either the amount billed to tenants or the rate at which tenants are billed under ORS 90.534 or 90.536.

SECTION 7. ORS 90.315 is amended to read:

90.315. (1) As used in this section[*,*]**:**

(a) "Sewer service" includes storm water service and wastewater service.

(b) "Utility or service" includes but is not limited to electricity, natural or liquid propane gas, oil, water, hot water, heat, air conditioning, cable television, direct satellite or other video subscription services, Internet access or usage, sewer service and garbage collection and disposal.

(2) The landlord shall disclose to the tenant in writing at or before the commencement of the tenancy any utility or service that the tenant pays directly to a utility or service provider that benefits, directly, the landlord or other tenants. A tenant's payment for a given utility or service benefits the landlord or other tenants if the utility or service is delivered to any area other than the tenant's dwelling unit.

(3) If the landlord knowingly fails to disclose those matters required under subsection (2) of this section, the tenant may recover twice the actual damages sustained or one month's rent, whichever is greater.

(4)(a) Except for tenancies covered by ORS 90.505 to 90.840, if a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that shall be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. Unless the method of allocating the charges to the tenant is described in the tenant's written rental agreement, the tenant may require that the landlord give the tenant a copy of the provider's bill as a condition of paying the charges.

(b) Except as provided in this paragraph, a utility or service charge may only include the cost of the utility or service as billed to the landlord by the provider. A landlord may add an additional amount to a utility or service charge billed to the tenant if:

(A) The utility or service charge to which the additional amount is added is for cable television, direct satellite or other video subscription services or for Internet access or usage;

(B) The additional amount is not more than 10 percent of the utility or service charge billed to the tenant;

(C) The total of the utility or service charge and the additional amount is less than the typical periodic cost the tenant would incur if the tenant contracted directly with the provider for the cable television, direct satellite or other video subscription services or for Internet access or usage;

(D) The written rental agreement providing for the utility or service charge describes the additional amount separately and distinctly from the utility or service charge; and

(E) Any billing or notice from the landlord regarding the utility or service charge lists the additional amount separately and distinctly from the utility or service charge.

(c) A landlord may not require a tenant to agree to the amendment of an existing rental agreement, and may not terminate a tenant for refusing to agree to the amendment of a rental agreement, if the amendment would obligate the tenant to pay an additional amount for cable tele-

vision, direct satellite or other video subscription services or for Internet access or usage as provided under paragraph (b) of this subsection.

(d) A utility or service charge, including any additional amount added pursuant to paragraph (b) of this subsection, is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394 but is grounds for termination of a rental agreement for cause under ORS 90.392.

(e) If a landlord fails to comply with paragraph (a), (b) or (c) of this subsection, the tenant may recover from the landlord an amount equal to one month's periodic rent or twice the amount wrongfully charged to the tenant, whichever is greater.

(5)(a) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service prior to moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

(A) Pay the outstanding amount and deduct the amount from the rent;

(B) Enter into a mutual agreement with the landlord to resolve the lack of service; or

(C) Immediately terminate the rental agreement by giving the landlord actual notice and the reason for the termination.

(b) If the tenancy terminates, the landlord shall return all moneys paid by the tenant as deposits, rent or fees within four days after termination.

(6) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service after moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

(a) Pay the outstanding amount and deduct the amount from the rent; or

(b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy does not terminate if the landlord restores service or the availability of service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

(A) Within four days after termination, all rent and fees; and

(B) All of the security deposit owed to the tenant under ORS 90.300.

(7) If a landlord, under the rental agreement, is responsible for a utility or service and the utility or service is shut off due to a nonpayment of an outstanding amount, the tenant may either:

(a) Pay the outstanding balance and deduct the amount from the rent; or

(b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy does not terminate if the landlord restores service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

(A) Within four days after termination, all rent prepaid for the month in which the termination occurs prorated from the date of termination or the date the tenant vacates the premises, whichever is later, and any other prepaid rent; and

(B) All of the security deposit owed to the tenant under ORS 90.300.

(8) If a landlord fails to return to the tenant the moneys owed as provided in subsection (5), (6) or (7) of this section, the tenant shall be entitled to twice the amount wrongfully withheld.

(9) This section does not preclude the tenant from pursuing any other remedies under this chapter.

SECTION 8. ORS 90.536 is amended to read:

90.536. (1) If a written rental agreement so provides, a landlord using the **submeter** billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.

(2) A utility or service charge to be assessed to a tenant under this section may consist of:

(a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;

(b) The cost of any sewer service for [*stormwater or*] wastewater as a percentage of the tenant's water charge as measured by a submeter, if the utility or service provider charges the landlord for sewer service as a percentage of water provided; [*and*]

(c) A pro rata portion of the cost of sewer service for storm water and wastewater if the utility or service provider does not charge the landlord for sewer service as a percentage of water provided;

(d) A pro rata portion of costs to provide a utility or service to a common area;

[*(c)*] **(e)** A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider**; and**

(f) A pro rata portion of the cost to read water meters and to bill tenants for water if:

(A) A third party service reads the meters and bills tenants for the landlord; and

(B) The landlord allows the tenants to inspect the third party's billing records as provided by ORS 90.538.

(3) **Except as provided in subsection (2) of this section,** the landlord may not bill or collect more money from tenants for utilities or services than the utility or service provider charges the landlord. A utility or service charge to be assessed to a tenant under this section may not include[*:*]

[*(a)*] any additional charge, including any costs of the landlord, for the installation[*,*] **or** maintenance [*or operation*] of the utility or service system or any profit for the landlord[*; or*]

[*(b) Any costs to provide a utility or service to common areas of the facility*].

SECTION 9. ORS 90.537 is amended to read:

90.537. (1) A landlord may unilaterally amend a rental agreement to convert a tenant's existing utility or service billing method from a method described in ORS 90.532 (1)(b) to a submeter billing method described in ORS 90.532 (1)(c). The landlord must give the tenant not less than 180 days' written notice before converting to a submeter billing method.

(2) A landlord must give notice as provided in ORS 90.725 before entering a tenant's space to install or maintain a utility or service line or a submeter that measures the amount of a provided utility or service.

(3) If the cost of the tenant's utility or service was included in the rent before the conversion to submeters, the landlord shall reduce the tenant's rent **on a pro rata basis** upon the landlord's first billing of the tenant using the submeter method. The rent reduction may not be less than an amount reasonably comparable to the amount of the rent previously allocated to the utility or service cost averaged over at least the preceding [*six months*] **one year**. A landlord may not convert billing to a submeter method less than one year after giving notice of a rent increase, unless the rent increase is an automatic increase provided for in a fixed term rental agreement entered into one year or more before the conversion. Before the landlord first bills the tenant using the submeter method, the landlord shall provide the tenant with written documentation from the utility or service provider showing the landlord's cost for the utility or service provided to the facility during at least the [*six*] preceding [*months*] **year**.

[*(4) During the six months following a conversion to submeters, the landlord may not raise the rent to recover the costs of installing, maintaining or operating the utility or service system or of new lines or submeters. Except as part of the rent, a landlord may not charge the tenant for the cost of installation or for any capital expenses related to the conversion to submeters or for the cost of maintenance or operation of the utility or service system. As used in this subsection, "operation" includes, but is not limited to, reading the submeter.*]

(4) A landlord that installs submeters pursuant to this section may recover from a tenant the cost of installing the submeters, including costs to improve or repair existing utility or service system infrastructure necessitated by the installation of the submeters, only as follows:

(a) By raising the rent, as with any capital expense in the facility, except that the landlord may not raise the rent for this purpose within the first six months after installation of the submeters; or

(b) In a manufactured dwelling park, by imposing a special assessment pursuant to a written special assessment plan adopted unilaterally by the landlord. The plan may include only the landlord's actual costs to be recovered on a pro rata basis from each tenant with payments due no more frequently than monthly over a period of at least 60 months. Payments must be assessed as part of the utility or service charge. The landlord must give each tenant a copy of the plan at least 90 days before the first payment is due. Payments may not be due before the completion of the installation, but must begin within six months after completion. A new tenant of a space subject to the plan may be required to make payments under the plan. Payments must end when the plan ends. The landlord is not required to provide an accounting of plan payments made during or after the end of the plan.

(5) A landlord that converts to a submeter billing method under this section from the rent billing method described in ORS 90.532 (1)(b)(C)(i) may unilaterally, and at the same time as the conversion to submeters, convert the billing for common areas to the pro rata billing method described in ORS 90.532 (1)(b)(C)(ii) by including the change in the notice required by subsection (1) of this section. If the landlord continues to use the rent billing method for common areas, the landlord may offset against the rent reduction required by subsection (3) of this section an amount that reflects the cost of serving the common areas. If the utility or service provider cannot provide an accurate cost for the service to the common areas, the landlord shall assume the cost of serving the common areas to be 20 percent of the total cost billed. This offset is not available if the landlord chooses to bill for the common areas using the pro rata method.

(6) If storm water service and wastewater service are not measured by the submeter, a landlord that installs submeters to measure water consumption under this section and converts to a submeter billing method from the rent billing method described in ORS 90.532 (1)(b)(C)(i) may continue to recover the cost of the storm water service or wastewater service in the rent or may unilaterally, and at the same time as the conversion to submeters, convert the billing for the storm water service or wastewater service to the pro rata billing method described in ORS 90.532 (1)(b)(C)(ii) by including the change in the notice required by subsection (1) of this section. If the landlord converts the billing for the storm water service or wastewater service to the pro rata billing method, the landlord must reduce the rent to reflect that charge, as required by subsection (3) of this section.

[*(5)*] **(7)** A rental agreement amended under this section shall include language that fairly describes the provisions of this section.

[*(6)*] **(8)** If a landlord installs a submeter on an existing utility or service line to a space or common area that is already served by that line, unless the installation causes a system upgrade, a local government may not assess a system development charge as defined in ORS 223.299 as a result of the installation.

SECTION 10. ORS 90.730 is amended to read:

90.730. (1) As used in this section, "facility common areas" means all areas under control of the landlord and held out for the general use of tenants.

(2) A landlord who rents a space for a manufactured dwelling or floating home shall at all times during the tenancy maintain the rented space, vacant spaces in the facility and the facility common areas in a habitable condition. The landlord does not have a duty to maintain a dwelling or home. A landlord's habitability duty under this section includes only the matters described in subsections (3) to (5) of this section.

(3) For purposes of this section, a rented space is considered unhabitable if it substantially lacks:

(a) A sewage disposal system and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the sewage disposal system can be controlled by the landlord;

(b) If required by applicable law, a drainage system reasonably capable of disposing of storm water, ground water and subsurface water, approved under applicable law at the time of installation and maintained in good working order;

(c) A water supply and a connection to the space approved under applicable law at the time of installation and maintained so as to provide safe drinking water and to be in good working order to the extent that the water supply system can be controlled by the landlord;

(d) An electrical supply and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the electrical supply system can be controlled by the landlord;

(e) At the time of commencement of the rental agreement, buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(f) Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of commencement of the rental agreement, and for which the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal; and

(g) Completion of any landlord-provided space improvements, including but not limited to installation of carports, garages, driveways and sidewalks, approved under applicable law at the time of installation.

(4) A vacant space in a facility is considered unhabitable if the space substantially lacks safety from the hazards of fire or injury.

(5) A facility common area is considered unhabitable if it substantially lacks:

(a) Buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(b) Safety from the hazards of fire; [*and*]

(c) Trees, shrubbery and grass maintained in a safe manner**; and**

(d) If supplied or required to be supplied by the landlord to a common area, a water supply system, sewage disposal system or system for disposing of storm water, ground water and subsurface water approved under applicable law at the time of installation and maintained in good working order to the extent that the system can be controlled by the landlord.

(6) The landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(b) The agreement does not diminish the obligations of the landlord to other tenants on the premises; and

(c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated.

SECTION 11. ORS 446.062 is amended to read:

446.062. (1)(a) The Director of the Department of Consumer and Business Services shall issue rules under ORS chapter 183 to regulate mobile home or manufactured dwelling parks. These rules shall conform to ORS 446.090 to 446.140.

(b) Any water system serving a mobile home or manufactured dwelling park is subject to ORS 448.115 to 448.285 and the rules adopted pursuant thereto.

(2) Mobile home or manufactured dwelling parks are subject to ORS 446.003, 446.055, 446.072 to 446.100, 446.140 and 446.271 and the state building code, as defined in ORS 455.010, and the rules adopted thereunder by the director under ORS chapter 183.

(3) The Department of Consumer and Business Services shall review plans and inspect construction of mobile home or manufactured dwelling parks to [*insure*] **ensure** compliance with subsection (2) of this section. The director shall adopt rules under ORS chapter 183 to provide a schedule for plan review fees and construction inspection fees.

(4) A person shall not construct a new mobile home or manufactured dwelling park or add lots to an existing mobile home or manufactured dwelling park without approval by the department.

(5) Installation of a submeter as provided in ORS 90.537 to measure water consumption at a space in an existing manufactured dwelling park is a minor plumbing installation under ORS 447.076 and may be performed under a statewide permit and inspection system for minor construction work established under ORS 455.155.

SECTION 12. ORS 92.830 is amended to read:

92.830. As used in ORS 92.830 to 92.845, unless the context requires otherwise:

(1) "Declarant" means a person who makes a declaration pursuant to ORS 92.845.

(2) "Lot" has the meaning given that term in ORS 92.010.

(3) "Manufactured dwelling" has the meaning given that term in ORS 90.100.

(4) "Manufactured dwelling park" and "mobile home park" have the meanings given those terms in ORS 446.003.

(5) "Person" has the meaning given that term in ORS 92.305.

(6) "Tenant" means a person who owns and occupies as a residence a manufactured dwelling or mobile home on a rented space in a manufactured dwelling park or mobile home park.

SECTION 13. ORS 92.840 is amended to read:

92.840. (1) Notwithstanding the provisions of ORS 92.016 (1), prior to the approval of a tentative plan, the declarant may negotiate to sell a lot [*in a manufactured dwelling park or a mobile home park*] for which approval is required under ORS 92.830 to 92.845.

(2) Prior to the sale of a lot [*in a park*], the declarant shall offer to sell the lot to the tenant who occupies the lot. The offer required under this subsection:

(a) Terminates 60 days after receipt of the offer by the tenant or upon written rejection of the offer, whichever occurs first; and

(b) Does not constitute a notice of termination of the tenancy.

(3) **For 60 days after termination of the offer required under subsection (2) of this section,** the declarant may not sell the lot to a person other than the tenant [*for 60 days after termination of the offer required under subsection (2) of this section*] at a price or on terms that are more favorable to the purchaser than the price or terms that were offered to the tenant.

(4) After the **manufactured dwelling park or mobile home** park has been submitted for subdivision under ORS 92.830 to 92.845 and until a lot is offered for sale in accordance with subsection (2) of this section, the declarant shall notify a prospective tenant, in writing, prior to the commencement of the tenancy, that the park has been submitted for subdivision and that the tenant is entitled to receive an offer to purchase the lot under subsection (2) of this section.

(5) Prior to [*any*] **the** sale of a lot in a subdivision created [*in*] **by conversion of** the park, the declarant must provide the tenant or other potential purchaser of the lot with information about the homeowners association formed by the declarant as required by ORS 94.625. The information must, at a minimum, include the association name and type and any rights set forth in the declaration required by ORS 94.580.

(6) The declarant may not begin improvements or rehabilitation to the lot during the period described in the landlord's notice of termination under ORS 90.645 without the permission of the tenant.

(7) The declarant may begin improvements or rehabilitation to the common property as defined in the declaration during the period described in the landlord's notice of termination under ORS 90.645.

(8) If the tenant does not buy the lot occupied by the tenant's manufactured dwelling or mobile home, the declarant and the tenant may continue the tenancy on the lot after approval of the tentative plan. The rights and responsibilities of tenants who continue their tenancy on the lot in the planned community subdivision of manufactured dwellings are set out in section 17 of this 2011 Act.

(9) After approval of the tentative plan and the period provided by subsection (2)(a) of this section, the declarant shall promptly:

(a) Notify the Office of Manufactured Dwelling Park Community Relations of the Housing and Community Services Department of the approval.

(b) Provide the office with a street address for each lot in the planned community subdivision of manufactured dwellings that remains available for rental use.

[*(8)*] **(10)** Nothing in this section prevents the declarant from terminating a tenancy in the park in compliance with ORS 90.630, 90.632 and 90.645. However, the declarant shall make the offer required under subsection (2) of this section to a tenant whose tenancy is terminated after approval of the tentative plan unless the termination is for cause under ORS 90.392, 90.394, 90.396, 90.630 (1) or (8) or 90.632.

SECTION 14. Section 15 of this 2011 Act is added to and made a part of ORS 92.830 to 92.845.

SECTION 15. (1) When a declarant submits an application for approval of the conversion of a manufactured dwelling park or mobile home park to a planned community subdivision of manufactured dwellings pursuant to ORS 92.830 to 92.845, the declarant shall give each tenant:

(a) A copy of any notice given by the local government to neighboring property owners regarding the application.

(b) A written statement generally explaining the subdivision conversion and describing any public process or hearings to be conducted concerning the application.

(c) A general explanation of the tenant's rights during the conversion, including the right under ORS 92.840 to purchase the lot created during the conversion of the park to a planned community subdivision of manufactured dwellings.

(2) The declarant shall give the items described in subsection (1) of this section to the tenant in the manner provided in ORS 90.155 within five days after the local government gives its notice to the neighbors or, if the local government does not give a notice, within 10 days after the declarant submits the application.

(3) A declarant is liable to an affected tenant for failure to give the items described in subsection (1) of this section in the amount of $200 or actual damages, whichever is more. However, failure to give the items described in subsection (1) of this section to a tenant does not affect the validity of the conversion.

SECTION 16. Section 17 of this 2011 Act is added to and made a part of ORS 90.505 to 90.840.

SECTION 17. (1) A manufactured dwelling park may be converted to a planned community subdivision of manufactured dwellings pursuant to ORS 92.830 to 92.845. When a manufactured dwelling park is converted pursuant to ORS 92.830 to 92.845:

(a) Conversion does not require closure of the park pursuant to ORS 90.645 or termination of any tenancy on any space in the park or any lot in the planned community subdivision of manufactured dwellings.

(b) After approval of the tentative plan under ORS 92.830 to 92.845, the manufactured dwelling park ceases to exist, notwithstanding the possibility that four or more lots in the planned community subdivision may be available for rent.

(2) If a park is converted to a subdivision under ORS 92.830 to 92.845, and the landlord closes the park as a result of the conversion, ORS 90.645 applies to the closure.

(3) If a park is converted to a subdivision under ORS 92.830 to 92.845, but the landlord does not close the park as a result of the conversion:

(a) A tenant who does not buy the space occupied by the tenant's manufactured dwelling may terminate the tenancy and move. If the tenant terminates the tenancy after receiving the notice required by section 15 of this 2011 Act and before the expiration of the 60-day period described in ORS 92.840 (2), the landlord shall pay the tenant as provided in ORS 90.645 (1)(b).

(b) If the landlord and the tenant continue the tenancy on the lot created in the planned community subdivision, the tenancy is governed by ORS 90.100 to 90.465, except that the following provisions apply and, in the case of a conflict, control:

(A) ORS 90.510 (4) to (7) applies to a rental agreement and rules and regulations concerning the use and occupancy of the subdivision lot until the declarant turns over administrative control of the planned community subdivision of manufactured dwellings to a homeowners association pursuant to ORS 94.600 and 94.604 to 94.621. The landlord shall provide each tenant with a copy of the bylaws, rules and regulations of the homeowners association at least 60 days before the turnover meeting described in ORS 94.609.

(B) ORS 90.530 applies regarding pets.

(C) ORS 90.545 applies regarding the extension of a fixed term tenancy.

(D) ORS 90.600 (1) to (4) applies to an increase in rent.

(E) ORS 90.620 applies to a termination by a tenant.

(F) ORS 90.630 applies to a termination by a landlord for cause. However, the sale of a lot in the planned community subdivision occupied by a tenant to someone other than the tenant is a good cause for termination under ORS 90.630 that the tenant cannot cure or correct and for which the landlord must give written notice of termination that states the cause of termination at least 180 days before termination.

(G) ORS 90.632 applies to a termination of tenancy by a landlord due to the physical condition of the manufactured dwelling.

(H) ORS 90.634 applies to a lien for manufactured dwelling unit rent.

(I) ORS 90.680 applies to the sale of a manufactured dwelling occupying a lot in the planned community subdivision. If the intention of the buyer of the manufactured dwelling is to leave the dwelling on the lot, the landlord may reject the buyer as a tenant if the buyer does not buy the lot also.

(J) ORS 90.710 applies to a cause of action for a violation of ORS 90.510 (4) to (7), 90.630, 90.680 or 90.765.

(K) ORS 90.725 applies to landlord access to a rented lot in a planned community subdivision.

(L) ORS 90.730 (2), (3) and (6) apply to the duty of a landlord to maintain a rented lot in a habitable condition.

(M) ORS 90.750 applies to the right of a tenant to assemble or canvass.

(N) ORS 90.755 applies to the right of a tenant to speak on political issues and to post political signs.

(O) ORS 90.765 applies to retaliatory conduct by a landlord.

(P) ORS 90.771 applies to the confidentiality of information provided to the Office of Manufactured Dwelling Park Community Relations of the Housing and Community Services Department about disputes.

SECTION 18. Sections 14 to 17 of this 2011 Act and the amendments to ORS 92.830 and 92.840 by sections 12 and 13 of this 2011 Act become operative January 1, 2012.

SECTION 19. Section 3, chapter 619, Oregon Laws 2005, as amended by section 39, chapter 906, Oregon Laws 2007, and section 11, chapter 816, Oregon Laws 2009, is amended to read:

Sec. 3. (1) At least one person for each manufactured dwelling park who has authority to manage the premises of the park shall, every two years, complete [*six*] **four** hours of continuing education relating to the management of manufactured dwelling parks. The following apply for a person whose continuing education is required:

(a) If there is any manager or owner who lives in the park, the person completing the continuing education must be a manager or owner who lives in the park.

(b) If no manager or owner lives in the park, the person completing the continuing education must be a manager who lives outside the park or, if there is no manager, an owner of the park.

(c) A manager or owner may satisfy the continuing education requirement for more than one park that does not have a manager or owner who lives in the park.

(2) If a person becomes the manufactured dwelling park manager or owner who is responsible for completing continuing education, and the person does not have a current certificate of completion issued under subsection (3) of this section, the person shall complete the continuing education requirement by taking the next regularly scheduled continuing education class or by taking a continuing education class held within 75 days.

(3) The Housing and Community Services Department shall ensure that continuing education classes:

(a) Are offered at least once every six months;

(b) Are offered by a statewide nonprofit trade association in Oregon representing manufactured housing interests and approved by the department;

(c) Have at least one-half of the class instruction on one or more provisions of ORS chapter 90, ORS 105.105 to 105.168, fair housing law or other law relating to landlords and tenants;

(d) Provide a certificate of completion to all attendees; and

(e) Provide the department with the following information:

(A) The name of each person who attends a class;

(B) The name of the attendee's manufactured dwelling park;

(C) The city or county in which the attendee's park is located;

(D) The date of the class; and

(E) The names of the persons who taught the class.

(4) The department, a trade association or instructor is not responsible for the conduct of a landlord, manager, owner or other person attending a continuing education class under this section. This section does not create a cause of action against the department, a trade association or instructor related to the continuing education class.

(5) The owner of a manufactured dwelling park is responsible for ensuring compliance with the continuing education requirements in this section.

(6) The department shall annually send a written reminder notice regarding continuing education requirements under this section to each manufactured dwelling park at the address shown in the park registration filed under section 2, chapter 619, Oregon Laws 2005.

SECTION 20. The amendments to section 3, chapter 619, Oregon Laws 2005, by section 19 of this 2011 Act apply to two-year periods described in section 3 (1), chapter 619, Oregon Laws 2005, that begin on or after January 1, 2012.

SECTION 21. Section 26, chapter 619, Oregon Laws 2005, as amended by section 13, chapter 816, Oregon Laws 2009, is repealed January 1, 2012.

SECTION 22. Section 13, chapter 658, Oregon Laws 2003, as amended by section 41, chapter 906, Oregon Laws 2007, is amended to read:

Sec. 13. The amendments to ORS 646.605 by section 12, chapter 658, Oregon Laws 2003, become operative on January 2, [*2012*] **2018**.

SECTION 23. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 19, 2011

Repassed by Senate June 10, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2011

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Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State