SUMMARY OF HB 3016A REGARDING MANUFACTURED HOME PARK TENANCIES: The Manufactured Housing Landlord/Tenant Coalition Bill

John VanLandingham, Lane County Legal Aid & Advocacy Center

May 7, 2015

Introduction: The Manufactured Housing Landlord/Tenant Coalition, which has had a negotiated compromise bill in every session since 1997, is the source of HB 3016A. The coalition consists of MH park residents, landlords, manufacturers, and other interested parties. It met 11 times between May 2014 and February 2015, for three hours each, to negotiate this bill. There are no known opponents of the bill. The bill was reviewed in the House Revenue Committee and the House Human Services and Housing Committee. It passed the full House on a unanimous vote.

The bill does a couple of big things and a couple of small things, and fixes some mistakes or oversights in the 2014 Opportunity to Purchase bill, HB 4038.

1. Preserve and increase the capacity of the Manufactured Communities Resource Center, a program of the Oregon Housing & Community Services Department. The MCRC provides education and counseling and mediation for both landlords and tenants of MH parks and enforces landlord compliance with the mandatory registration and education requirements. It is funded by a special assessment – essentially a self-imposed tax – on tenants who own and occupy MHs on rented land, both in and out of MH parks, and by a $25 annual registration fee imposed on park landlords. The special assessment is collected by counties when they bill MH owners for their personal property taxes each year. (MHs on rented land are typically treated as personal property, not real property.) It was first adopted by the legislature in 1989, at $3 per MH owner. ORS 446.525. That amount was increased to $6 in 1999 in a bill negotiated and sponsored by this coalition. The landlord registration fee was imposed in a 2009 coalition bill, with landlord support. MCRC receives no General Funds.

a. **Help counties with the collection of the MCRC assessment**.

i. Counties have become concerned about the cost to bill and collect the special assessment, especially in the four largest counties – Multnomah, Washington, Clackamas, and Lane – which are prohibited from billing MH owners for personal property taxes if the MH is worth less than $16,000 (indexed). ORS 308.250 (2) (b). In these four counties, for these low value MHs or "threshold accounts," the counties find themselves billing only for the $6 special assessment,

which is further reduced by the mandatory early payment 3 percent reduction. The cost to the counties to collect these accounts exceeds the amount collected. Section 1 of the bill will **amend ORS 308.250 to exempt the special assessment for these low value MHs**, helping the four large counties**.** We estimate that this will reduce the revenue for MCRC by about $150,000 a biennium.

ii. For all counties, to help compensate for the cost of billing and collecting the special assessment, section 2 (3) of the bill amends ORS 446.525 and **allocates $1.50 of the increase in the special assessment (discussed immediately below) to the county for each account it bills**.

b. **Increase MCRC's capacity by increasing its funding**. The bill accomplishes this (1) by **increasing the special assessment paid by tenants from $6 to $10 and dedicating $2.50 of the $4 increase in the special assessment to funding for MCRC** (estimated to be worth about $320,000 per biennium) (section 2 (1), amending ORS 446.525) and (2) by **increasing the current $25 annual registration fee for park landlords to $50 for parks with more than 20 spaces** (estimated to be worth about $37,000 per biennium) (section 3, amending ORS 90.732).

2. Address the issue of abandoned MHs on which are still owed unpaid (by the prior tenant/owner) back personal property taxes, an issue with which the coalition has struggled for years. Current law requires landlords to go through a complex abandonment process, including addressing any lienholders. At the end of that process, the landlord often ends up owning the MH – and the liability for any unpaid back taxes. The MH may be a worthy and affordable home for a new owner, but the unpaid back taxes may be more than the value of the home, causing the landlord to destroy it, since selling it would require the landlord to pay the back taxes. The result is a loss of an available and affordable home, no payment on the back property taxes, and no rent to the landlord for that space. Working closely with the tax collectors for Washington County (also the current president of the state tax collectors association) and Clackamas County and the Department of Revenue (for unpaid taxes resulting from the senior property tax deferral program), we have crafted a compromise which **allows landlords in these situations to get the back taxes cancelled**, if the landlord sells the home in an arms-length transaction to a buyer who will live in it, thereby **preserving a badly needed affordable housing unit**. The landlord may deduct from the sale proceeds the cost of acquiring the home plus the cost of any improvements made to the home (to

facilitate a sale) and any debts owed to the landlord for back rent; **any balance over those amounts goes to the taxing jurisdiction for the unpaid back taxes.** Any amount over that, if any, goes to the landlord as profit, thus giving the landlord an incentive to maximize the sale price. The primary benefit to the landlord is not the proceeds from the sale, but the future rent. Section 4, amending ORS 90.675.

3. Section 7 of the bill amends ORS 90.730, the **habitability requirement, to add to a landlord's obligation to maintain the space the tenant rents (a) natural gas or propane**, if that is the utility service provided in the park or marina; the landlord's duty, as with other utilities, is to provide and maintain the natural gas or propane connection to the space; and **(b) the surface or ground under and supporting a MH**; the landlord's duty to maintain the surface or ground arises when the landlord actually knows or should know of a condition regarding the surface or ground that makes the MH unsafe to occupy.

The landlord's duty to maintain the surface or ground does not include the landlord having to move the manufactured home off of the space to test the surface or ground where the home sits; the maintenance obligation is triggered only when the landlord knows or should know of a condition which actually makes the dwelling unit unsafe for occupancy. 'Normal settling' includes settling which may result from or following an earthquake. That is, any settling attributable to an earthquake shall be considered 'normal.' This provision does not apply to floating home tenancies in marinas.

4. Address another set of related issues with which the coalition has struggled for years, all in ORS 90.680, **regarding "in-place" sales of MHs and floating homes**, where the homes are intended to remain in the park or marina (homes sold in-place are worth much more than those that must be removed) and be occupied by the buyer, who becomes a tenant – specifically, concerns by tenants who are selling their own homes sometimes in competition with a landlord who is also selling a landlord-owned home in the park or marina, concerns that some landlords who sell homes on behalf of a tenant act unfairly to the tenant whose home the landlord is selling, and concerns that some landlords impose unfair requirements on a selling tenant, which may result in the selling tenant losing a buyer and eventually abandoning the home or selling it for a song to the landlord, losing much of the tenant's equity in the home. The bill makes several changes to try to address these issues:

a. **Regulate consignment sales**: Prohibit a landlord from requiring a tenant to allow the landlord to sell the tenant's home. If the tenant chooses to have the landlord sell the tenant's home, require that the landlord (i) have a license from DCBS as a dealer or limited dealer (for MHs only) and (ii) enter a written consignment agreement with the tenant who owns the home, addressing the length of the agreement, the price of the home, the compensation for the landlord, intended marketing, how the sale proceeds will be applied, and who applies to DCBS for title. In addition, the landlord has a 10 day period within which to account for and pay the tenant the proceeds from the sale. Without such a consignment agreement, the landlord cannot charge a fee for selling the home.

b. With regard to **concerns about fairness in competing sales by both a landlord and a tenant**, require the landlord to allow a tenant to advertise a tenant's home for sale in a similar manner and place as the landlord. In addition, a landlord is prohibited from making knowingly false statements about the tenant's home to a prospective purchaser. And, significantly, a landlord cannot apply stricter credit or conduct screening criteria to a purchaser from a tenant than the landlord applies to purchasers from the landlord, when the purchaser seeks to become a tenant. Finally, requires a landlord to give a prospective purchaser a copy of the required occupancy application with any related documents, such as the rental agreement and any rules, upon request.

c. Require a selling landlord or tenant to **provide title to the home to the purchaser within 25 days of completion of the sale**.

All of the above are in Section 5 of the bill, amending ORS 90.680.

d. **Increase the penalty for landlord violations** of the above from the minimum $200 to $500 (or actual damages, whichever is greater) if there have been three violations within a 24 month period. Section 6, amending ORS 90.710.

5. Similar to #4-b above, where subleasing is allowed, **prohibit a landlord from applying stricter credit or conduct-screening criteria to a subtenant** from a tenant than the landlord applies to subtenants from the landlord. Section 8, amending ORS 90.555.

Sections 9 through 15 of the bill (described in #6 through #9 below) "fix" oversights or mistakes made in chapter 89, Oregon Laws 2014, the Opportunity to Purchase bill, HB 4038.

6. **Restore the capital gains income tax exemption for landlords who sell their MH parks to their residents or to a nonprofit.** This exemption was unintentionally made inoperative in 2014 in the Opportunity to Purchase bill, when a cross-reference was not corrected. This bill makes no substantive changes to the exemption itself, which has been in place since 2005 and has had sunset extensions in 2007 and 2013; the 2013 legislation extended the sunset to 2020. Sections 9 and 10, amending chapter 89, Oregon Laws 2014.

7. **Close a loophole in the process created in the Opportunity to Purchase bill for MH park residents to compete to purchase their park**, when a landlord chooses to sell. Closing the loophole benefits landlords by removing the risk for an open-ended extension of the time allotted to tenants to compete; the parties to the bill intended this period to be short. Section 11, amending chapter 89, Oregon Laws 2014.

8. **Make existing language internally consistent regarding transfers or sales of parks which are exempt** from the Opportunity to Purchase provisions. Section 12, amending chapter 89, Oregon Laws 2014.

9. Sections 13, 14, and 15 of the bill make the capital gains exemption provisions in sections 9 and 10 of the bill apply to tax years beginning on or after January 1, 2015.

10. Sections 16, 17, and 18 correct cross-references in ORS 90.300, 90.545, and 90.632, respectively.

11. Sections 19 and 20 set the effective dates for the provisions in the bill. All but the Opportunity to Purchase fixes, sections 9 through 15 of the bill, are operative on January 1, 2016. The Opportunity to Purchase fixes are in effect on the 91st day after sine die, so that the fixes can apply sooner.

John VanLandingham
Attorney at Law
Lane County Legal Aid & Advocacy Center
376 East 11th Avenue, Eugene, OR 97401
(w) 541-485-1017 x138, (c) 541-285-8445
johnvl@lclac.org

f/John/2015 MH LT.HB 3016 summary.050615.docx