**TESTIMONY IN SUPPORT OF SB 586**

Senate Committee on Housing

March 4, 2019

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Chair Fagan, Vice-chair Heard, and members of the Senate Committee on Housing:

SB 586 was developed by the Manufactured Housing Landlord/Tenant Coalition in 19 meetings each of three hours between September 2017 and February 22, 2019, ten days ago, when final agreement was reached.

The coalition consists of manufactured housing landlords and tenants and tenant advocates, such as me. Manufactured housing tenants own their manufactured homes ("MHs") and rent the land under the home in MH parks, which are defined as having four or more spaces rented by a homeowner from the land owner (or landlord). There are about 1,000 MH parks in Oregon with about 60,000 homeowners/tenants. In some respects MH park tenants are treated like apartment tenants, in some respects not; for example, SB 608, which you recently considered, had one element – the rent cap – that applies to both kinds of tenancies, while that bill's second element – good-cause only evictions – does not, because park residents already have that protection.

The coalition has existed since 1997 and has produced a negotiated bill amending MH landlord/tenant law in every long session since. I have been the primary tenant advocate and drafter and facilitator on each of those bills. This time, the landlords appointed a co-facilitator, John DiLorenzo, to help lead the coalition.

There is one other change this time: The coalition included marina landlords and tenants and our bill makes some improvements to the laws that cover those tenancies. Floating home owners and their tenancies in marinas share many of the characteristics of MH tenants and parks.

Note that, collectively, MH parks and floating home marinas are called “facilities” in Oregon law.

We are requesting amendments to SB 586 which will entirely replace the bill as introduced. In other words, a gut and stuff. A summary of what will be included in the bill once it is amended follows my written testimony.

There are others here today from the Coalition to talk about the process and the issues and to demonstrate their support for the bill.

We hope you will support the bill. I am happy to try to answer any questions.

## SUMMARY OF SB 586 ONCE IT IS AMENDED

The bill will cover six areas:

1. Tax expenditures related to MH park closures or sales
2. Dispute resolution and enforcement of facility tenancy laws
3. Termination of tenancies; noncompliance fees
4. Submetering of water
5. Floating home tenancies in marinas
6. Maintenance of trees on MH park spaces

The bill's effective date will be January 1, 2020.

### 1. Tax expenditures

There are two current tax laws which benefit park tenants and which will sunset unless they are extended. The first is a capital gains exemption for park owners who choose to sell their parks to their residents, a nonprofit, or a housing authority. This exemption has been in statute since 2005, when there was a park closure "crisis," and it is a significant tool to help preserve MH parks. This sunset extension is also addressed in SB 192 and HB 2127 and 2664.

The second is a tax credit of $5,000 for MH park residents who are displaced by a park closure. This credit has also been in statute since 2005. This sunset extension is also addressed in SB 197 and HB 2136 and 2664.

Neither of these are available to marina residents. These may be deleted from the bill and addressed in the other bills.

2. Dispute resolution and enforcement

There are two parts to this issue. The first is dispute resolution, which the coalition has been working on for about four years. The theory here is that many facility disputes, between landlords and tenants but also between one tenant and another, could be resolved through communication, which might avoid evictions or noncompliance fees. The law already requires that facility rental agreements include the provision of informal dispute resolution, and this has produced some mediations (many of which successfully resolved disputes), but this was entirely voluntary. The bill will amend Oregon law to provide that either party may require the other party to participate in at least one mediation session – "mandatory mediation" – regarding a dispute involving landlord/tenant law or park issues, so long as the request for mediation is done in good faith and the session is held within 30 days. A timely request can delay most but not all terminations. Certain disputes are exempted, including nonpayment of rent, park closures or sales, rent increase amounts, terminations for outrageous conduct, or disputes involving domestic violence. Failure to participate makes that party subject to a penalty of one month's rent and is a defense to a claim by that party. Mediations will be performed by the existing network of Community Dispute Resolution Centers, funded by the existing annual assessment already paid by MH park residents ($10, collected with property tax assessments), or by a qualified mediator as chosen by the parties. This may be arranged through the Manufactured Communities Resource Center (MCRC, which is supported by that same tenant annual assessment). The current annual fee paid by park

landlords ($25 for parks of 20 spaces or fewer, $50 for larger parks) is doubled, to help pay for the increased use of mediators. No state tax dollars are involved. Landlords will be required to amend their rental agreements to add this new provision.

The second part of this issue is enforcement: A portion of the reserve from the resident special assessment payments will be granted through Oregon Housing and Community Services to the Oregon Law Center to employ one attorney to provide direct legal services – advice, negotiation, litigation – to park residents on matters arising under Oregon residential landlord/tenant law. The amount is $100,000 annually for a period of four years.

Both of these elements have a four-year sunset. There is created an advisory committee, working with OHCS to monitor both elements, consisting of equal numbers of landlord and tenant representatives and a representative of the Community Dispute Resolution Centers. The committee shall present a report on the status of both elements to the 2021 and 2023 legislatures.

## 3. Termination of tenancies; noncompliance fees

Termination of tenancies in MH parks or floating home marinas are regulated by several statutes, including those that apply to apartment tenancies, such as for nonpayment of rent. But as noted in the introduction, park or marina tenants can only be evicted for cause. That primarily occurs under ORS 90.630 for noncompliance with laws or facility rules related to the tenant's conduct. That law requires a 30-day notice describing the cause, and gives the tenant the full thirty days to cure the noncompliance. If the tenant cures, the tenancy does not terminate. Landlords and neighboring tenants have long struggled with

the rare event in which a noncomplying tenant continues the noncompliance until the 30th day and stops only then, thereby curing and avoiding termination. The bill will allow landlords to require cure within three days, instead of the full thirty, for separate and distinct violations; this provision has been in apartment landlord/tenant law since 2005.

In addition, the bill will make a change to allow landlords to better utililize an existing statute regarding noncompliance fees. The theory behind noncompliance fees, which are authorized and limited by ORS 90.302 (3), is that the fee will discourage rule violations and thereby avoid terminations. ORS 90.302 (3) already applies to facility tenancies, but the right to assess these fees must be included in a written rental agreement. Many facility rental agreements do not currently include these noncompliance fees, in part because this provision was only recently adopted, and facility landlords may not unilaterally amend their rental agreements to add these fees; see ORS 90.510 (4). The bill will authorize facility landlords to add noncompliance fees to their rental agreements, unilaterally.

ORS 90.302 (3) regulates noncompliance fees as follows: The fees are limited to certain matters, such as late payment of a utility charge, failure to pick up pet waste from common areas, and speeding. The landlord must give a warning notice on a first violation. A second violation within 12 months allows a $50 fee. The bill will make one change from the current list of noncompliances supporting a fee: A marina landlord will not be allowed to charge a fee for a parking violation, because many marinas have limited parking.

4. Submetering of water

Background: Most MH parks and FH marinas were developed many years ago, when water and sewer/wastewater were cheap. Landlords then included the cost of water/wastewater (provided to common areas and to the tenants) in the rent, as an operating expense. Local water utilities provided water to the facility and billed the landlord; the landlord is responsible for extending the water lines to each tenant's space. Water and wastewater are no longer cheap, and many are concerned about conserving water; recovering the cost of water in the rent sends no price signal to residents/consumers, so there is no incentive to conserve, and is unfair to those who use less and who are careful to avoid wasteful leaks. As a result, in the 2005 legislative session, under the leadership of then-State Senator Suzanne Bonamici, the coalition negotiated several new laws intended to encourage landlords to install submeters measuring the water consumed by individual tenants. Those laws are at ORS 90.531 to 90.543. The coalition has revised those laws in several subsequent sessions, including under the leadership of Rep. Nancy Nathanson.

This bill represents another effort to simplify the submetering process and thereby encourage more landlords to undertake it. For tenants, removing the cost of water/wastewater from the rent is a good thing, because they have more control over their costs and because otherwise landlords can raise their rents to cover the increasing cost of water and rents never go down; paying for water as part of the rent is not good for tenants.

The bill will make the following changes:

a. Allow landlords to initiate the switch to submeter billing with a tenant meeting about one month prior to installation of the submeters

and three months in advance of the initial billing using the submeters, rather than a written notice 180 days in advance.

b. Require the landlord to distribute written materials regarding how it works.

c. Require landlords to do three months of trial billings before "going live," to check the system.

d. Remove the prohibition on landlords increasing the rent for the year prior to submeter billing; too complicated, plus SB 608 limits rent increases anyway.

e. Continue to require that landlords "back out" the cost of water and reduce the rent after the switch. This rent reduction can include foregoing a scheduled annual rent increase.

f. Provide greater clarity regarding the period used to determine the rent reduction, the location of the submeters, the landlord's duty to restore the home after any submeter installation, and the third party meter-reading pass-through charge.

g. Allow landlords to also switch from recovering the cost of water in the rent to recovering the cost through pro rata billing (e.g., per space or number of occupants; see ORS 90.534) by complying with similar procedures as for switching to submeter billing (the meeting, information, backing the cost out of the rent). To encourage conservation, a landlord who switches to pro rata billing must test the water lines within the facility, including those within the tenant's space, for leaks every three years.

h. Allow landlords to offer tenants a choice between these two changes (submeter or pro rata billing) at the required meeting. Include in that choice a third alternative, called the Park Specific Billing Plan, so long as that plan allocates costs fairly and the tenants do not pay more

cumulatively than the water utility bills the landlord, and the landlord pays for all costs to the system.

i. Allow landlords who get their water from wells to submeter. Current law does not allow this, because we mistakenly feared that landlords with well water could set their own price for the water. Actually such landlords can't charge for the water, under other laws, but they can charge for wastewater, which can only be measured by water consumption (water in, wastewater out). Parks with wells may need submeters to encourage conservation, thereby reducing output into their septic systems.

j. Allow landlords to pass through local government "public safety charges," as apartment landlords are already allowed to do. ORS 90.315.

5. Floating home tenancies in marinas

As noted earlier, floating home tenancies in marinas are generally treated the same as MH tenancies in parks, although there are some differences. Several of those differences are addressed in this bill.

The bill will require marina tenants to pay the same $10 annual special assessment that MH park tenants have long paid, to support MCRC (and the new expanded mandatory mediation program and enforcement); see ORS 446.525. This will allow marina tenants to access MCRC's programs. And marina landlords will be required, as park landlords are now required, to register with MCRC and pay an annual registration fee to cover the costs, and they will be required to obtain and document four hours of continuing education every two years on marina management issues and on landlord/tenant and fair housing laws. See ORS 90.732, 90.734.

Another change is to make the existing Opportunity to Purchase statutes – which require park landlords to notify park tenants when the landlord is considering selling the park, to provide due diligence financial information to the tenants if requested, and to allow a short period for the tenants to compete to buy the park – apply to marinas. See ORS 90.842 to 90.850.

Also amend ORS 90.632, regarding required repairs of a home, to give a longer repair period for floating homes with needed repairs to the floats, because this repair is complicated, repair times are limited in times of low water, and repair people are few.

Also amend the existing statute regarding abandoned homes to allow a marina tenant to require a longer storage period.

Finally add a new provision allowing marina landlords to require a marina tenant to move her floating home within the marina in certain circumstances (such as when needed to move another home or to dredge) for short periods, at the landlord's expense.

## 6. Maintenance of trees on MH park spaces

ORS 90.727 allows a tenant to make a landlord maintain certain large trees considered to be hazardous by an arborist (see the definition of "hazard tree" in ORS 90.100 (20)); it also allows a landlord to act to prevent a tree from becoming a hazard. "Maintaining" a tree includes removal – aka cutting it down. The statute currently requires the landlord who proposes to take this preventive action to give the tenant reasonable notice in advance. In a recent incident, the landlord gave that notice, but there were two trees on the space and the landlord mistakenly cut down the wrong (healthy) tree. This bill will amend this

statute to require the landlord to specify which tree is proposed to be removed.

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