

**HOUSE COMMITTEE ON**  
**BUSINESS, LABOR AND CONSUMER AFFAIRS**

**February 07, 2005 Hearing Room HR B**

**8:30 AM Tapes 22 - 23**

**Corrected 09/27/05**

**MEMBERS PRESENT: Rep. Alan Brown, Chair**

**Rep. Sal Esquivel, Vice-Chair**

**Rep. Mike Schaufler, Vice-Chair**

**Rep. George Gilman**

**Rep. Paul Holvey**

**Rep. Chip Shields**

**MEMBER EXCUSED: Rep. Derrick Kitts**

**STAFF PRESENT: Janet Adkins, Committee Administrator**

**Annetta Mullins, Committee Assistant**

**MEASURES/ISSUES HEARD & WITNESSES:**

**HB 2216 – PUBLIC HEARING**

**Marilyn Odell, Attorney General's office**

**Don Miner, Oregon Mfg. Housing Association**

**John Brenneman, Mfg. Housing Communities of Or.**

**HB 2217 – PUBLIC HEARING**

**Marilyn Odell, Attorney General's office**

**Don Miner, Oregon Mfg. Housing Association**

**John Brenneman, Mfg. Housing Communities of Or.**

**HB 2219 – PUBLIC HEARING**

**Marilyn Odell, Attorney General's office**

**Don Miner, Oregon Mfg. Housing Association**

**John Brenneman, Mfg. Housing Communities of Or.**

**Introduction of Committee Bills – Work Session**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
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**TAPE 22, A**

003	Chair Brown	Calls meeting to order at 8:34 a.m. and opens joint public hearings on HB 2216, 2217 and 2219.
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**HB 2216, HB 2217, AND HB 2219 – PUBLIC HEARINGS**

011	Janet Adkins	Administrator. Explains the provisions of HB 2216. Advises members that the witnesses will distinguish between manufactured dwelling parks and manufactured dwelling subdivisions, and review the 2001 Attorney General's report on review of all the manufactured dwelling parks statutes; HB 2216, HB 2217 and HB 2219 are a cleanup of the statutes as a result of the review. Explains that the HB 2216-1 amendments ( <b>EXHIBIT A</b> ) proposed by Marilyn Odell, Attorney General's office, specify that the disclosure and contracting requirements apply to the manufactured dwelling subdivisions regardless of whether the lots are located in a facility, and restates the definition of manufactured dwelling park to include subdivisions ( <b>EXHIBIT A, page 9</b> ). The HB 2216-1 amendments replace all but the last two sections of HB 2216.
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031	Adkins	Explains that HB 2217 makes it clear that the manufactured dwelling dealers and owners are responsible for making sure the work is completed if they contract with a third party to make improvements.
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Explains that HB 2219 makes an unlawful trade practices by a manufactured dwelling dealer one that can be prosecuted by the Attorney General. The unlawful trade practices by a manufactured dwelling dealer are in ORS 646.648.

- 058 Marilyn Odell Senior Assistant Attorney General, Department of Justice, Financial Fraud Section/Consumer Protection Section. States she works in the consumer protection section and will talk about HB 2216, HB 2217 and HB 2219. Explains the three bills relate to disclosures to purchasers of manufactured dwellings. Presents a prepared statement providing background on manufactured housing issues considered by the Attorney General's Manufactured Housing Task Force **(EXHIBIT B)**.
- 111 Odell Continues presentation explaining the recommendations of the Advisory Committee for drafting administrative rules to implement the measures passed in 2001 **(EXHIBIT B, pages 1 and 2)**. Explains that the three bills today are to fill the holes in the 2001 legislation.
- 131 Don Miner Oregon Manufactured Housing Association. Testifies in support of HB 2219. States he represents manufacturers, retailers, lenders who finance manufactured homes, suppliers who provide shingles, siding, etc., and land developers, but not parks owners generally. Comments on adverse effects caused by some who engaged in practices that resulted in defrauding retail consumers who walked away, which in turn affected the lending institutions, and resulted in layoffs in the manufacturing industry because there was no market demand for the homes. States the industry decided to clean its own house but needed government assistance. The industry was regulated by various agencies and none had the authority to take action when there was wrongdoing. .
- Their goal in supporting the 2001 legislation was to make sure the Department of Justice had the authority to act. Comments that the purpose of the 2001 legislation was to require that consumers be given disclosure. States he does not believe the proposed legislation is new; it may clarify what they intended to do in 2001. It was their intention to require that park owners and retailers disclose to consumers any improvements that the consumer would have to make if they move into a manufactured home park or mobile home park, such as decks, driveways etc. The consumer should know what the improvements would be and what they would cost. HB 2219 deals more with manufactured home retailers; it prohibits retailers from misrepresenting to a consumer that they must buy credit life to qualify for the loan. HB 2219 makes that an unlawful trade practice. In 2001, dealers were prohibited from making misrepresentations to banks that a consumer had made a cash down payment on a house when that was not true; that misrepresentation was also made an

unlawful trade practice. Explains that the Attorney General arrived at a conclusion that the consumer had a right of action against a retailer for making those representations, but the Department of Justice did not have a right to act.

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| 206 | Miner          | Explains that during last session, regulation of manufactured homes was by the Department of Motor Vehicles (DMV); it has been transferred to the Building Codes Division of the Department of Consumer and Business Services (DCBS). States that they will be bringing in HB 2375 and 2376 giving direction to DCBS.   |
| 209 | John Brenneman | <p>Manufactured Housing Communities of Oregon. Explains that his clients rent the spaces. Explains that the tenants have changed the name of their organization and that has caused confusion about who they are. Some in their coalition ask that these bills come up in a regular session so the issues can be worked on. Explains that they will be introducing a bill in the Senate and the issues will be pretty well worked out when it comes to the House. Explains the make up of the group and states the group meets for three hours once a week to continue their discussion.</p> <p>On page 3 of Odell's statement, they have concern about the statement that a landlord would not have to have a contractor's license under some conditions; "The dealer/landlord is not a "provider" if the dealer/landlord merely gives the tenant/buyer a list of required improvements or if the dealer/landlord merely suggests the name of a licensed contractor or if the landlord performs landscape or other maintenance within their parks." (<b>EXHIBIT B, page 3</b>). States that was a particular concern to at least one of his landlords. The landlord did not want to distribute a load of gravel or spread it out and then find he needed a contractor license. States they are comfortable with the bills with the amendments. The amendments were requested by their coalition and they accept them as ones to take care of their concerns.</p> |
| 287 | Chair Brown    | Notes the bulleted item on page 4 that says, "This bill would not require a dealer or landlord to be "licensed contractor" if they perform landscape or other maintenance.  |
|     | Odell          | Provides background information on HB 2216 ( <b>EXHIBIT B, page 2</b> ). It would change the definition of manufactured dwelling park to include not only lots that are within a traditional park as defined under Chapter 446 but would include lots in a subdivision—those created under Chapter 92. Notes there is a provision for conversion of a park to a subdivision, which would allow the individual sale of the lots while they are rented. Explains that the change is needed so there is full disclosure to the tenant of any improvements they need to make.   |

	Odell	Explains there is a time requirement in the statute for giving the estimate of cost; the time is stated as “prior to delivery of the home.” States that must happen much earlier in the process. The costs are rolled into the financing and the work has to be completed weeks before the home is delivered. This bill proposes to delete the time requirement.
329	Adkins	Comments that the time requirement is eliminated and is not replaced by a different time requirement, and asks if that is all right.
	Odell	Responds that they felt it was all right because the time that is needed depends on the work that needs to be done and whether the bid needs to be given in advance so the buyer can get the financing.
	Odell	States that HB 2216 requires that the provider, as it is defined in the statutes, comply with the requirements under Chapter 701, the statute that governs independent contractors. The bid would have to be given in compliance with Chapter 701. States that requirement becomes more important because HB 2217 expands the definition of provider.
346	Rep. Schaufler	States he supports these bills. Asks Odell to explain how the language is improved by using the words “mean” and “means” rather than “includes” and “include.”
	Odell	Responds that the word changes were made by Legislative Counsel because those are the words they prefer to use now. States that she had Legislative Counsel change the language in ORS 9.100 back from “means” to “includes.” States that uniformity is good but in some cases “means: does not work.
365	Rep. Esquivel	Reads requirements for providers ( <b>EXHIBIT B, page 2</b> ) and asks if the estimate must be a part of the loan before the home can be ordered, or whether the home is ordered and the package then shows up.
	Odell	Explains that typically the costs of the improvements (the park package) are included in the initial financing so the bid needs to be given early in the process before the home is actually purchased.
	Miner	Responds that not all manufactured homes are financed.
	Esquivel	Asks if the consumer has a chance to approve an increased estimate.

Miner Responds that as he reads the language, it would say the consumer is not bound unless he is given the information.

Rep. Esquivel Asks what is meant by “prior to.”

408 Odell States an amount would need to be determined for the buyer to be liable for the improvements and the improvements need to be completed prior to the manufactured dwelling being delivered; it needs to be included in a contract.

Rep. Esquivel Asks if a home could be coming and then have a change in cost of the improvements.

Odell Explains there would have to be a contract that was an agreement between the two parties to hold the buyer liable for the costs of the improvements.

#### **TAPE 23, A**

010 Rep. Esquivel States he would not want someone to have a manufactured home coming then find out there is more to the package than they anticipated. Asks if the witnesses are saying the costs must be cast in stone before the consumer purchases the manufactured home.

012 Miner Responds he does not think it would work to say the costs are cast in stone before the home is ordered. When someone buys a manufactured home, they acquire the home itself and there are site improvement costs. States that one would not want to say that an order for a home is valid until the costs are finalized because it is a work in progress and things change. “Before the home was delivered” was a point in time when the costs should be known. This language gives no point in time.

023 Rep. Schaufler Asks if a consumer could be charged more because they are getting gold instead of brass fixtures.

Odell States they are trying to address the site itself in this legislation, not the amenities in the home.

Rep. Schaufler Comments that the purchaser of the home is not covered by this legislation. Comments further on making sure the consumer is not changed more than expected when the home is delivered.

030	Odell	Respond that they are talking about a rental agreement that is contracted between the tenant (buyer) and the landlord. As part of that agreement, under the current law, the landlord needs to detail all the improvements that are required. The question is what is included in the disclosure of the price. If the buyer gets a contractor and has the work done, there is no issue because the buyer is directly paying the contractor for the work. The problem arises when either the dealer or landlord acts as the middleman in the transactions. They make arrangements for the work to be done and pay the contractor. In that case the buyer needs to know exactly what the amounts are. It is agreed to in a separate contract.
055	Chair Brown	Comments that Section 3 of HB 2216, in lines 22 through 24, just requires that a provider provide an estimate and does not give a timeframe. Adds that there is a remedy beginning in line 25 of Section 3.
	Odell	Responds that Chair Brown is correct; it only removes the specification when it has to happen but it still has to happen.
073	Rep. Holvey	Comments that the provider has to provide an estimate of costs, and in HB 2217 we define the landlord as not being a provider for other maintenance. Asks if the landlord also has to provide estimated costs to the buyer entering into the agreement. Comments there is no definition of what "other maintenance" is that allows the landlord to not be a provider.
091	Odell	Responds that "improvement" is defined in Chapter 446 to include things that are a part of the initial set up. Gives examples of the infrastructure such as driveways, gutters, down spouts, building a basement, building a garage, and hookup to utilities. It does not address any on-going maintenance that a landlord would perform routinely in their park. This merely address the pre-installation and those kinds of improvements that are done as a part of that home.
	Rep. Holvey	Asks if the maintenance would be covered in the agreement with the landlord.
	Odell	Responds that she would think if the landlord was charging for that kind of on-going maintenance, there would be some monthly charge or something else; it would be outside the scope of this bill.
116	Rep. Holvey	Asks if there is a definition of on-going maintenance that the landlord is not required to provide.

	Odell	States it is not part of the language of the bill; they are only pulling in the statutory definition of improvements within the scope of this bill to make a record for other interested parties--they are not intending to pull in other maintenance in the park that would be done as general upkeep of the park.
122	Rep. Schaufler	Comments that if the owner makes a deal with the landlord saying the landlord will install the gutters, driveway, and landscaping, it doesn't mean they have to maintain it on a monthly basis. Asks if his statement is true.
	Odell	Responds that the maintenance would have nothing to do with this bill. The rental agreement may include the maintenance issues.
138	Odell	Explains the HB 2216-1 amendments <b>(EXHIBIT A)</b> . Explains amendments address landlord-tenant relationships. The first half of Chapter 90 addresses non-facility rentals. The second half of Chapter 90 addresses facility rentals. Because the definition of manufactured dwelling park for purposes of Chapter 90 includes both facilities and non-facilities, the coalition recommended that we add a cross reference in the non-facility section of ORS 90.120 to include the definition as well only for the purposes of these regulations. It is a technical cross-reference that does not have any substantive effect except to make it clear that it applies to both kinds of rentals because both types are included in the expanded definition of manufactured dwelling park in HB 2216.
161	Rep. Schaufler	Comments that the language in the HB 2216-1 amendments <b>(EXHIBIT A)</b> on page 9, lines 11-16 says, "if the subdivision was approved by the local government..." Asks when a subdivision would not be approved by the local government
	Odell	States the language just cross references that it was a duly authorized subdivision created by law versus informal, unauthorized divisions of land.
	Rep. Schaufler	Comments he wants to make sure we are not allowing anyone to put up a subdivision without it being approved by local government.
175	Odell	States it would not allow a subdivision without approval by the local government.
183	Odell	



Explains that the balance of the HB 2216-1 amendments (**EXHIBIT A**) are to correct the revision back to original statutory language using “includes” as opposed to “means.”

- 189            Odell            Provides background on HB 2217 (**EXHIBIT B, page 3**). It is a companion bill to HB 2216. It only expands the definition of “provider” for purposes of the disclosures that are necessary regarding improvements. Comments on contracts to get the improvements done; it is important for the tenant to have recourse against the landlord or the dealer who is actually the contracting party who can go after the bond if the contractor fails to perform as required. HB 2217 adds landlords and dealers to “providers” if they are the one contracting to make the improvements. It does not require the dealer/landlord to become a licensed contractor if they are acting as the middleman in the transaction. HB 2216 does require that they comply with the bid requirements under the construction contractor laws.
- 237            Adkins            Comments that the language in lines 11 and 12 of HB 2217 on first reading sounded like the buyer was the one making the improvements, not a third party, but it is the third parties, not the buyer of the home.
- 241            Rep. Holvey            Asks for clarification of when a contractor license is needed by the dealer and landlord—if a manufactured dwelling dealer or landlord contracts with the buyer to make improvements and subcontracts it out to a licensed contractor, would the dealer or landlord, who is not the provider, need a contractor license.
- Odell            Responds that her understanding is the same as Rep. Holvey’s statement. States that Don Miner will probably disagree about whether the dealer/landlord would need to have a contractor license. States it has been their agency’s view that if they are acting as the middleman in the transaction, they would not be required to be a contractor, but they would be required to comply with the bid requirements for contractors.
- 264            Miner            Disagrees with Odell. States he believes a person who serves as the middle man is required to be a construction contractor because that person is the one who is in "privity" with the buyer. The park owner who arranges for decks to be built and has an agreement with the consumer, must be licensed as a construction contractor just as the dealer who on behalf of the consumer arranges for a person to install the home. The dealer is required to be a construction contractor. Otherwise the consumer would have no recourse because the

consumer would not have a contract with the subcontractor and there would be no mechanism to go after the park owner.

- 280 Rep. Holvey States he agrees with Miner. Agrees that the dealer/landlord who is not providing improvements, but merely providing other maintenance, is not a contractor, but we need to make sure when the dealer/landlord contracts with the buyer to do improvements, whether he is the middleman or not, he has the contract with the buyer and if he wants to subcontract it out to a subcontractor, that does not relieve the legal connection between the landlord who is contracting for the improvements and the buyer. It seems they would have to be a contractor licensed to do that.
- Miner Comments that if the park owner does nothing more than say to the buyer/perspective tenant that they must have a deck that is ten by ten and made of cedar, it does not make the park owner a contractor. It is when the park owner takes the next step and arranges for the work to be done and the consumer becomes obliged to pay the park owner for the work, the park owner is a contractor.
- 317 Brenneman Agrees with Miner and Rep. Holvey. Comments that his owners understand they need a contractor license.
- Rep. Holvey Comments that he wants to make it clear when a contractor license is required. Does not want the bill to allow them to not have the contractor's license.
- 341 Brenneman States he does not believe the bill requires a contractor license when it is not needed. They want to make it perfectly clear that their members do not have to have a contractor license to do the basics.
- Rep. Esquivel Comments that we have a law that requires if someone starts doing contractor businesses, they are liable under another law; it has nothing to do with this law. Believes there are laws that specifically apply to an individual who does not possess a contractor license but actually does contractor works. Asks if he is correct.
- Chair Brown Acknowledges the affirmative nod of Odell, Brenneman and Miner.
- 380 Rep. Schaufler Comments that Section 1(1)(a) of HB 2217 means a licensed contractor. States he believes the language is opening the door. States he reads it to say the dealer or landlord does not need a contractor license to contract with the homebuyer to do a lot of work.

Miner Comments he has wondered why this bill is needed, but the Department of Justice does believe it is needed. States he always thought (a) means that a dealer or park owner or the teacher at his elementary school, or any person who acts as a contractor, is a provider. States that the definition of a contractor in Chapter 701 is extensive and he does not believe there is any intention in (b) to allow them to carve out an exception—that one could be a provider without being a contractor. States that on one side he believes the bill may not be necessary, but on the other he believes that by including the dealer and landlord, it serves notice. In that sense, the bill serves its purpose.

433 Odell States there was no intention to carve out. The bill came out of their advisory committee in the rule making process. There was an issue of making more specific requirements that addressed the dealers and landlords. There was an inquiry to Legislative Counsel about including the language in the rules and whether it was within their rule-making authority. They were told by Legislative Counsel that it was not in the scope of the law and they needed to amend the law to include landlords and dealers within the scope of this requirement.

#### **TAPE 22, B**

026 Rep. Esquivel Comments on the various kinds of contracts that would be covered: a lender; a manufacture home dealer; a rental agreement; and a construction contractual agreement. It could be a rental contract, a purchasing contract, or a sales agreement, or it could be a contractual agreement to put the infrastructure in.

Odell Responds she thinks there are those four kinds of contracts, but this contract under this regulation really addresses the agreement to perform the construction work.

043 Rep. Schaufler Asks if the dealer or landlord that is contracting with the buyer for a profit is a contractor without a license, and whether HB 2217 would allow that.

Odell Comments that Rep. Schaufler may be correct and believes that was one of the reasons the disclosure statements came up. The dealer or landlord who was making the arrangements was taking a cut, adding some amount to that and the tenant/buyer did not know the costs were added. This requires a full disclosure of what the costs are so the buyer can make an informed decision.

060 Rep. Holvey Comments he is having problems with (b) in HB 2217. Suggests changing the language to say “(b) A manufactured dwelling dealer or

landlord, in compliance with ORS Chapter 701, contracts with the buyer to make improvements...”. That would put the dwelling dealer and the landlord on notice that they need to be in compliance with the construction contractor laws when they contract to do improvements. Otherwise it seems vague and opens the door for interpretation on whether the dwelling dealer or landlord needs to be in compliance with ORS Chapter 701.

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|     | Miner       | Suggest an alternative way to accomplish it would be to add the wording in lines 11 and 12 after the “or” in line 10.  |
| 111 | Odell       | Comments she believes the committee has made valid points and that they should review the language to make it clearer so long as everyone agrees that the dealer and the landlord needs to be a contractor. States they would not want to take them outside the requirements.  |
|     | Chair Brown | Advises that the committee will ask that amendments be drafted by Legislative Counsel.   |
| 121 | Odell       | Provides background on HB 2219 ( <b>EXHIBIT B, page 4</b> ). This regards the unlawful trade practices when a manufactured dwelling dealer makes certain representation relating to financing. There is a laundry list of violations that are actionable in ORS 646.608. Every violation, except this one, is in that list. ORS 646.638 defines how parties have a right of action in .608 and in .648, the manufactured housing violation section. They are suggesting that it be removed from .638 and that it be added to .608. Action by the attorney general or district attorney is important because the cost to a private party is great, and it allows claims to be addressed in a consolidated manner. |
|     | Adkins      | Notes that the amendment in Section 3 of HB 2219 is on page 6 in line 9; “or 646.648” is deleted.  |
| 162 | Rep. Holvey | Notes that the change on page 6 takes out .648 and leaves in .608. Asks if .608 covers .648.   |
|     | Odell       | Explains they have added .648 to .608, which is the laundry list of violations.  |
| 173 | Chair Brown | Announces that staff will request amendments to HB 2217 and will reschedule all the bills for a work session when the amendments are received.   |

Chair Brown Closes the public hearings on HB 2216, HB 2217, and HB 2219, and opens a work session for the purpose of introduction of committee bills.

### **INTRODUCTION OF COMMITTEE BILLS – WORK SESSION**

191 Janet Adkins Administrator. Advises members that LC 1357 was not routed to the members' offices because of the number of pages **(EXHIBIT C)**. Explains that LC1357 is from the Oregon Manufactured Housing Association and would convert the Manufactured Structures and Parks Advisory Board to a separate agency.

206 Chair Brown Comments that the Legislative Counsel drafts relate to a variety of subjects. States that introduction of the bills does not indicate support for them.

229 Rep. Schaufler **MOTION: Moves LC's: 1357 (EXHIBIT C), 1067 (EXHIBIT D), 251 (EXHIBIT E), AND 1539 (EXHIBIT F) BE INTRODUCED as committee bills.**

231 **VOTE: 6-0-1**  
**EXCUSED: 1 - Rep. Kitts**

Chair Brown **Hearing no objection, declares the motion CARRIED.**

**NOTE: LC 1357 introduced as HB 2527; LC 1067 introduced as HB 2090; LC 251 introduced as HB 2525; and LC 1539 introduced as HB 2526.**

Chair Brown Closes the work session on introduction of committee bills.

Adkins Reviews agenda for the meeting on Wednesday.

239 Chair Brown Comments on field trip to Portland to view programs. Advises members they will be excused if they choose not to attend. Adjourns meeting at 9:47 a.m.

## **EXHIBIT SUMMARY**

- A. HB 2216, -1 amendments, staff, 9 pp
- B. HB 2216, HB 2217, HB 2219, prepared statement, Marilyn Odell, 4 pp
- C. Introductions, LC 1357, staff, 166 pp
- D. Introductions, LC 1067, staff, 6 pp
- E. Introductions, LC 251, staff 4 pp
- F. Introductions, LC 1539, staff, 13