

TESTIMONY IN SUPPORT OF HB 2130A

April 28, 2015

Chair Barnhart and Members of the House Revenue Committee:

I write in support of HB 2130A, which you will hear on April 29, 2015.

I have worked as a legal services attorney for more than 37 years, representing low income residents of Lane County. My areas of interest and expertise are residential landlord/tenant law and affordable housing. I have advocated in the legislature on these issues for more than 20 years. A particular area of interest for me is that of property tax exemptions for affordable housing developments. Property tax exemptions are an important tool in reducing operating expenses and making affordable housing projects viable – in other words, the project can be built – and allowing lower rents. My own city, Eugene, has used these extensively and effectively for almost 30 years, with the support of the school district.

Oregon has several state statutes which authorize property tax exemptions for affordable housing. The primary ones, such as the two proposed to be amended by HB 2130A, are local option – meaning that they are only available for affordable housing developments if local governments adopt them. Local governments are not required to use these tools.

What HB 2130A will do is to allow – not require – those local governments who choose to support affordable housing developments with property tax exemptions, to add additional criteria or provisions.

I have long advocated for local governments to adopt additional criteria or provisions, if they felt these added criteria were necessary to become comfortable with the exemption. In my experience some local governments respond that the law doesn't clearly allow that, and they and their attorneys tend to be cautious about things which are uncertain. And as a result those local governments did not adopt the exemption and affordable housing developments in that city had to charge higher rents or build fewer units, or not get built at all. This bill will resolve that question and, I hope, encourage more cities to adopt these affordable housing property tax exemptions.

And that can only be a good thing in helping us address the great need for more affordable housing in Oregon.

Let me comment briefly on what exactly is contemplated by these changes. I have worked closely with the representative of the City of Beaverton, the proponent of the bill.

- The current exemption statutes addressed in this bill include several already-in-existence eligibility criteria: that the occupants of the housing be low income, defined as at or below 60 percent of the area median income; that vacant land is being held for development as low income housing; that the housing be rental housing; that the developer be a nonprofit or tax-exempt entity or, if not, that the benefit of the property tax savings be reflected in lower rent.
- The bill will allow the implementing local government to adopt additional criteria, so long as those criteria are not in conflict with the basic existing criteria. Examples include:
 - That an applicant meet local affordable housing priorities, such as are typically set out in the HUD-required (for local governments receiving federal HOME or CDBG funds) Consolidated Plan, such as that a project be near social services or public transportation.
 - That an applicant not be debarred by the federal government or have been convicted of a crime related to housing development or use of federal subsidy programs.
 - That an applicant submitting as a nonprofit or as a tax-exempt charity demonstrate its track record or commitment to affordable housing.
- The bill will also allow the implementing local government to adopt “provisions” that are meant to be limitations other than program eligibility criteria. Examples include:
 - A maximum or cap on the amount of property tax revenue to be foregone or on the number of projects to be approved.
 - Project by project approval.
 - Limiting how long vacant land can be held for development while retaining the exemption from property taxes. Affordable housing development frequently takes three to five years, to get the necessary permits and assemble the many required sources of funding. Such a limitation must be “reasonable.” The implementing local government might require in its adopting ordinance that a developer who takes longer than five years must show evidence of reasonable progress or efforts to develop the affordable housing project.
- An implementing local government must apply additional criteria or provisions equally and fairly to all. And any additional criteria or provisions

must be clearly described, so that applicants and their lenders may understand them.

- It is my experience, and thus my assumption, that implementing local governments will adopt one of these exemption programs because that local government supports the development of affordable housing. If it didn't support the development of affordable housing, it wouldn't adopt the program. I believe that these local governments will operate in good faith.
- It is also my assumption that a local government which adopts one of these exemption programs will continue to allow the exemption as long as the project meets the criteria. If a city adopts a cap on foregone revenue, and it reaches or exceeds that cap, it may choose not to approve any future exemption applications, but it will not revoke an existing approved exemption.

Let me also note a few basic aspects to these property tax exemptions, which HB 2130A does not propose to change:

- These exemptions have been a part of Oregon law for a long time: ORS 307.517 et seq. since 1989; ORS 307.540 since 1985.
- The exemption applies to all taxing districts in which the property is located, if the program is approved by taxing districts whose tax rates equal 51 percent or more of the total combined rate of taxation. This typically means the city and the school district. If less than 51 percent approve, then the exemption only applies to those taxing districts which do approve.
- The adopting governing body monitors compliance, through annual applications or other mechanisms.
- If a governing body determines that a property no longer complies with the exemption criteria, it is required to terminate the exemption, after notice and hearing. The property owner is required to pay back the exempted taxes, for the period of noncompliance, up to 10 years.
- Both of these exemptions have been recently reviewed by this committee and had their sunsets extended: ORS 307.517 was reviewed in 2010 and had its sunset extended to 2020; ORS 307.540 was reviewed in 2011 and now has a sunset of 2027.

I would welcome questions.

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