

Requested by Representative FAHEY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2364**

1 On page 1 of the printed bill, after “90.844” delete the rest of the line and
2 delete line 3 and insert “and 90.846.”.

3 Delete lines 5 through 31 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 90.842 is amended to read:

5 “90.842. (1) An owner of a facility shall give written notice of the owner’s
6 interest in selling the facility before the owner markets the facility for sale
7 or when the owner receives an offer to purchase that the owner intends to
8 consider, whichever occurs first.

9 “(2) The owner shall give the notice required by subsection (1) of this
10 section to:

11 “(a) All tenants of the facility; or

12 “(b) A tenants committee, if there is an existing committee of tenants
13 formed for purposes including the purchase of the facility and with which
14 the owner has met in the 12-month period immediately before delivery of the
15 notice.

16 “(3) The owner shall also give the notice required by subsection (1) of this
17 section to the Housing and Community Services Department.

18 “(4) The notice must include the following:

19 “(a) The owner is considering selling the facility.

20 “(b) The tenants, through a tenants committee, have an opportunity to
21 compete to purchase the facility.

1 “(c) In order to compete to purchase the facility, within [10] **15** days after
2 delivery of the notice, the tenants must form or identify a single tenants
3 committee for the purpose of purchasing the facility and notify the owner in
4 writing of:

5 “(A) The tenants’ interest in competing to purchase the facility; and

6 “(B) The name and contact information of the representative of the ten-
7 ants committee with whom the owner may communicate about the purchase.

8 “(d) The representative of the tenants committee may request financial
9 information described in ORS 90.844 (2) from the owner within the [10-day]
10 **15-day** period.

11 “(e) Information about purchasing a facility is available from the Housing
12 and Community Services Department.

13 **“SECTION 2.** ORS 90.844 is amended to read:

14 “90.844. (1) Within [10] **15** days after delivery of the notice described in
15 ORS 90.842, if the tenants choose to compete to purchase the facility in
16 which the tenants reside, the tenants must notify the owner in writing of:

17 “(a) The tenants’ interest in competing to purchase the facility;

18 “(b) The formation or identification of a single tenants committee formed
19 for the purpose of purchasing the facility; and

20 “(c) The name and contact information of the representative of the ten-
21 ants committee with whom the owner may communicate about the purchase.

22 “(2) During the [10-day] **15-day** period, in order to perform a due diligence
23 evaluation of the opportunity to compete to purchase the facility, the repre-
24 sentative of the tenants committee may make a written request for the kind
25 of financial information that a seller of a facility would customarily provide
26 to a prospective purchaser.

27 “(3) Of the financial information described in subsection (2) of this sec-
28 tion, the owner shall provide the following information within seven days
29 after delivery of the request by the tenants committee for the information:

30 “(a) The asking price, if any, for the facility;

1 “(b) The total income collected from the facility and related profit cen-
2 ters, including storage and laundry, in the 12-month period immediately be-
3 fore delivery of the notice required by ORS 90.842;

4 “(c) The cost of all utilities for the facility that were paid by the owner
5 in the [*12-month period*] **previous calendar year** immediately before delivery
6 of the notice required by ORS 90.842;

7 “(d) The annual cost of all insurance policies for the facility that were
8 paid by the owner, as shown by the most recent premium;

9 “(e) The number of homes in the facility owned by the owner; and

10 “(f) The number of vacant spaces and homes in the facility.

11 “(4) The owner may:

12 “(a) Designate all or part of the financial information provided pursuant
13 to this section as confidential.

14 “(b) If the owner designates financial information as confidential, estab-
15 lish, in cooperation with the representative of the tenants committee, a list
16 of persons with whom the tenants may share the information, including any
17 of the following persons that are either seeking to purchase the facility on
18 behalf of the tenants committee or assisting the tenants committee in eval-
19 uating or purchasing the facility:

20 “(A) A nonprofit organization or a housing authority.

21 “(B) An attorney or other licensed professional or adviser.

22 “(C) A financial institution.

23 “(c) Require that persons authorized to receive the confidential informa-
24 tion:

25 “(A) Sign a confidentiality agreement before receiving the information;

26 “(B) Refrain from copying any of the information; and

27 “(C) Return the information to the owner when the negotiations to pur-
28 chase the facility are completed or terminated.

29 “(5) Within [*15*] **60** days after delivery of the financial information de-
30 scribed in subsection (3) of this section, or within [*15*] **60** days after the end

1 of the [*10-day*] **15-day** period described in subsection (1) of this section when
2 the representative of the tenants committee does not request financial in-
3 formation under subsection (2) of this section, if the tenants choose to con-
4 tinue competing to purchase the facility, the tenants committee must:

5 “(a) Form a corporate entity under ORS chapter 60, 62 or 65 that is le-
6 gally capable of purchasing real property or associate with a nonprofit cor-
7 poration or housing authority that is legally capable of purchasing real
8 property or that is advising the tenants about purchasing the facility in
9 which the tenants reside.

10 “(b) Submit to the owner a written offer to purchase the facility, in the
11 form of a proposed purchase and sale agreement, and either a copy of the
12 articles of incorporation of the corporate entity or other evidence of the le-
13 gal capacity of the formed or associated corporate entity to purchase real
14 property.

15 “(6)(a) The owner may accept the offer to purchase in the tenants
16 committee’s purchase and sale agreement, reject the offer or submit a
17 counteroffer.

18 “(b) If the parties reach agreement on the purchase, the purchase and sale
19 agreement must specify the price, due diligence duties, schedules, timelines,
20 conditions and any extensions.

21 “(c) If the tenants do not act as required within the time periods described
22 in this section and ORS 90.842, if the tenants violate the confidentiality
23 agreement described in this section or if the parties do not reach agreement
24 on a purchase, the owner is not obligated to take additional action under
25 ORS 90.842 to 90.850.

26 “**SECTION 3.** ORS 90.846 is amended to read:

27 “90.846. (1) During the process described in ORS 90.842 to 90.850, the
28 parties shall act in a commercially reasonable manner, **which includes a**
29 **duty of the owner of the facility to consider in good faith any offer**
30 **from the tenants or an entity formed by or associated with the tenants**

1 **to negotiate in good faith.**

2 “(2) Except as provided in ORS 90.848, before selling a facility to an en-
3 tity that is not formed by or associated with the tenants, the owner of the
4 facility must give the notice required by ORS 90.842 and comply with the
5 requirements of ORS 90.844.

6 “(3) A minor error in providing the notice required by ORS 90.842 or in
7 providing the financial information required by ORS 90.844 does not prevent
8 the owner from selling the facility to an entity that is not formed by or as-
9 sociated with the tenants and does not cause the owner to be liable to the
10 tenants for damages or a penalty.

11 “(4) During the process described in ORS 90.842 to 90.850, the owner may
12 seek, or negotiate with, potential purchasers other than the tenants or an
13 entity formed by or associated with the tenants.

14 “(5) If the owner does not comply with requirements of this section and
15 ORS 90.842 and 90.844, in a substantial way that prevents the tenants from
16 competing to purchase the facility, the tenants may:

17 “(a) Obtain injunctive relief to prevent a sale or transfer to an entity that
18 is not formed by or associated with the tenants when the owner has not
19 caused an affidavit to be recorded before the sale or transfer pursuant to
20 ORS 90.850[.]; **or**

21 “(b) Recover [*actual damages or twice the rent from the owner for each*
22 *tenant, whichever is greater*] **10 percent of the sale price of the facility.**

23 “(6) **Upon an award of damages under subsection (5)(b) of this sec-**
24 **tion, the Department of Justice becomes a judgment creditor and the**
25 **award shall be divided with:**

26 “(a) **Fifty percent of the award going to the Attorney General for**
27 **deposit into the Manufactured Home Preservation Fund created under**
28 **ORS 458.366; and**

29 “(b) **Fifty percent of the award being payable to the prevailing**
30 **party.**

1 “[6] (7) If a tenant misuses or discloses, in a substantial way, confiden-
2 tial information in violation of a confidentiality agreement described in ORS
3 90.844, the owner may recover actual damages from the tenant.

4 “[7] (8) The Housing and Community Services Department shall prepare
5 and make available information for tenants about purchasing a facility.”.

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