

Testimony Before the House Committee on Business and Labor
SB 580
On behalf of the Oregon State Bar Administrative Law Section
May 22, 2015

Chair Holvey, members of the committee:

Thank you for allowing the Administrative Law Section of the Oregon State Bar to share their concerns with SB 580, as drafted. The Administrative Law Section's membership includes attorneys who represent private citizens and public agencies, as well as administrative law judges. The section works to ensure the public's access to administrative justice and reflects a cross-section of administrative law practitioners.

The Administrative Law Section is only concerned with the provisions in this bill that impose costs by the Landscape Contractors Board against a party for requesting a contested case hearing, rather than agreeing to binding arbitration for which the agency does not impose costs. Costs are defined as including the Landscape Contractors Board's "investigation costs, attorney fees, discovery costs and administrative law judge costs."

Access to a contested case hearing is an important due process right that is the backbone of administrative justice in Oregon. Section 2 of this bill can have the effect of robbing aggrieved persons of their ability to request contested case hearings because of the financial barriers it creates. These kinds of assessments have a disparate negative economic impact, being particularly hard on individuals who do not have access to substantial financial resources, such as older Oregonians with fixed incomes or small businesses.

Although both proceedings use an administrative law judge from the Office of Administrative Hearings, binding arbitration is not the equivalent of the due process provided by a contested case hearing and judicial review under the Administrative Procedures Act. Imposing costs, as this bill does, creates a profound deterrent to exercising the right to request a contested case hearing under the Administrative Procedures Act.

The threat of these assessments is a very powerful deterrent to the exercise of the right to request a hearing.

Respectfully submitted,

Janice Krem, Chair, and Judith Parker, 2016 Chair-Elect
On behalf of the Administrative Law Section of the Oregon State Bar