From:	Paul Conte
To:	Sen Fagan; Sen Heard; Sen Golden; Sen Knopp; Sen MonnesAnderson
Cc:	Exhibits SHOUS; Sen Courtney; Sen Prozanski; Sen Manning
Subject:	Testimony: SB 8 is unnecessary, unjust, and an egregious violation of Goal 1 - Citizen Involvement.
Date:	Friday, March 15, 2019 8:30:26 AM

March 15, 2019 -- For the record of SB 8 public hearing scheduled for April 1, 2019

Dear Senators,

Proposed Senate Bill 8 is unnecessary, unjust and an egregious violation of Goal 1 - Citizen Involvement.

According to the Legislature's website, eight parties have this far testified against this bill, including:

- League of Women Voters of Oregon
- American Planning Association, Oregon Chapter
- Oregon Progressive Party
- Oregon Land and Water Alliance
- Jefferson Westside Neighbors (Eugene)
- Central Oregon Landwatch
- Two residents, from Eugene and Portland, respectively

All of the opponents emphasized that SB 8 was an egregious attempt to block legitimate citizen participation in land use decisions.

The only organization that supported the bill was Oregon Smart Growth, a cynical trade group that represents rapacious development interests falsely wrapping themselves in the cloak of "affordable housing." One individual also supported the bill.

Notably, the testimony by both supporters misrepresented the effect of the bill as if it only discouraged "meritless" LUBA appeals. For example, from Edward Sullivan's testimony:

> *"[T]he possibility of awarding attorney fees will make those who would bring non-meritorious appeals think twice."*

If such representations were accurate, SB 8 would be entirely unnecessary because the statutes and OAR *already* award attorney fees for appeals that are not "well founded in fact or law." ORS 197.830(15)(b)

Anyone with substantial experience with LUBA appeals knows that an appeal can have merit -- even recognized as such in a the text of the final opinion by LUBA -- and still not result in a remand or reversal.

This bill is a shameless, anti-democratic attempt by development interests to have the Legislature put their thumb (or entire foot) on the scales of justice to serve developers' financial interests -- *not* the people of Oregon. Rather than making a citizen impacted by a land use decision "think twice," this bill will create a risk so unreasonable that citizens won't think at all about even the most worthy appeals.

Appropriately, the next hearing on this travesty is scheduled for April Fool's Day, because SB 8 is indeed a fool's errand.

This bill should be roundly rejected.

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On Fri, Feb 22, 2019 at 3:28 PM Paul Conte <paul.t.conte@gmail.com> wrote:

February 22, 2019

Dear Senators,

Proposed Senate Bill 8 is unnecessary, unjust and an egregious violation of Goal 1 - Citizen Involvement.

The new provision reads:

> (5) Notwithstanding ORS 197.830 (15), a person who petitions the Land Use Board of Appeals to challenge a local government's approval of development of affordable housing shall pay to a prevailing intervening applicant, as described in ORS 197.830 (7)(b)(A), the applicant's costs and attorney fees, including any costs and attorney fees on subsequent appeals from the board.

Oregon Administrative Rules and Oregon Revised Statutes already provide reasonable protect for applicants against abuse of the LUBA appeal procedure or errors by the local decision makers:

DIVISION 10 RULES OF PROCEDURE FOR APPEALS
OAR 661-010-0075 Miscellaneous Provisions
(1) Cost Bill and Attorney Fees:

> (a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.
> * * * *
> (e) Attorney Fees:
>
> > (A) Attorney fees shall be awarded by the Board to the prevailing party **as specified in ORS 197.830(15)(b)** [See below]; a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.
> > (B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).
> > (C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under 197.845(2).

ORS 197.830(15)(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-

founded in law or on factually supported information.

As is clear, ORS already provides an applicant protection against meritless appeals whose sole purpose is to delay a development project of any kind.

SB 8 adds no protection against *meritless* appeals. Instead SB 8 not only allows, but aids, suppressing *legitimate* appeals because of the unavoidable risk of an unfavorable decision by LUBA. In the past, wiser Oregon legislators understood the anti-democratic use of the threat of legal costs by powerful corporations against land use advocates -- the so-called "SLAPP" -- Strategic Lawsuit Against Public Participation. In response, and to protect the rights of citizens to have their day in court, Oregon was one of many states that adopted an "Anti-SLAPP" statute:

ORS 31.150(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

> (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;
> (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;
> (c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or
> (d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Yet now, an unholy alliance of developers and density fanatics proposes to essentially institute a built-in "SLAPP" provision in the quasi-judicial land use appeal proceedings. In practice, this will mean that no individual -- no matter how wronged or how legitimate his or her case -- will dare to file a LUBA appeal.

The shameless, unjust intent of this bill is glaringly apparent in that a petitioner challenging an approval is not awarded attorney fees if the petitioner prevails.

If Tom McCall were Governor today, he would fiercely condemn this proposal. It has no valid purpose beyond existing OAR and ORS provisions other than to shut down citizen involvement by means of intimidation.

Please withdraw the bill without further consideration.

Thank you,

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From:	Paul Conte
To:	Sen Fagan; Sen Heard; Sen Golden; Sen Knopp; Sen MonnesAnderson
Cc:	Exhibits SHOUS; Sen Courtney; Sen Prozanski; Sen Manning
Subject:	On this "Day of Fools" -- Get rid of the foolish Senate Bill 8
Date:	Monday, April 1, 2019 8:20:59 AM

April 1, 2019

Oregon Democrats should be ashamed that our State legislative leaders are stealthily pushing bills that would put a heavy hand on the scales of justice and eviscerate Statewide Planning Goal 1.

The Senate President is responsible for proposing Senate Bill 8, which would include the following provision"

> "Upon affirming a quasi-judicial land use decision approving an application to develop publicly supported housing, as defined in ORS 456.250, shall award reasonable attorney fees and expenses to a prevailing respondent that is the applicant or local government."

The thin and false justification for this provision is to discourage meritless or obstructionist LUBA appeals. However, the glaring lie in that cover story is that no equitable provision is made for awarding attorney fees and expenses to prevailing *appellants*, i.e., petitioners and intervenor-petitioners.

LUBA statutes already award attorney fees and expenses against a petitioner who brings a meritless appeal, and applicants are already awarded fees and expenses when LUBA reverses a government's denial of an application. There is no need for this additional statute; however, the true intent is obvious -- to make it prohibitively risky to appeal local approval of a development for any reason, no matter how legitimate.

It is appalling -- and won't soon be forgotten -- if elected *Democrats*, who control the State Legislature and Governor's Office, pass this *anti-democratic* bill.

I've been a Democrat for 53 years, since I first voted. But I may not be for long, if on this "Day of Fools," the Democrats on the committee don't oppose this foolish bill.

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