

**From:** [Paul Conte](#)  
**To:** [Rep Clem](#); [Rep McLain](#); [Rep Post](#); [Rep BoshartDavis](#); [Rep Helm](#); [Rep Smith D](#); [Rep Williams](#)  
**Cc:** [Raszka Shelley](#); [Exhibits HAGLU](#); [Rep Kotek](#); [Rep Holvey](#); [Rep Nathanson](#)  
**Subject:** HB 2003 Testimony for April 2, 2019 public hearing  
**Date:** Tuesday, April 2, 2019 11:30:53 AM

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April 2, 2019

Dear Chair Clem and Committee Members,

Please accept this testimony stating *qualified* opposition to the amended version of HB 2003. First I address the bill's "poison pill"; but please read on because otherwise I believe HB 2003 could do a lot of good.

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This bill should not be passed UNLESS the following provision, or any similar amended version, is NOT contained in the bill

"(15)(c)The board shall award attorney fees to an applicant under subsection (7)(b)(A) of this section who is a prevailing party against a petitioner who appeals a local government's land use decision or limited land use decision that grants the applicant a permit to partition, subdivide or construct publicly supported housing, as defined in ORS 456.250."

This one-sided, anti-democratic provision is unnecessary, inequitable and serves only developers' interests.

The true measure of this provision is glaringly evident in that it allows only an *applicant* to recover attorney fees, but does nothing to provide comparable restitution to a *petitioner* who prevails. Even though it would still be unwise, the only just version of such a provision would apply *equally to all parties*.

As documented in previous testimony, LUBA regulations already provide for awarding attorney fees in the case of a meritless appeal. The effect of this bill would be to completely shut down the practical opportunity for any ordinary Oregon citizen to appeal any land division, regardless of the merits.

Even the language of this provision appears to be incompetently written. It's ambiguous whether the scope is *all* partition and subdivision permit applications, or *only* such permit applications that are specifically intended for, and limited to, entirely "publicly supported housing."

At the very least, if the committee does not reject this provision in HB 2003, the committee should at least transfer it to be melded with SB 8, which is a similarly bad bill, but which already deals with appeals of publicly supported housing. In that manner, HB 2003 would not unnecessarily contain a "poison pill" that could lead to defeat.

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The main substance of the bill has merit, which is why I strongly advise its proponents to remove the "attorney fees" provision.

Unlike HB 2001 and SB 8, which fly in the face of evidence and sound planning practice, HB 2003 has a focus that is generally in the right direction. HB 2003, in fact, seems well-intentioned and a reasonable start to using "carrot-and-stick" to get local jurisdictions to develop honest and pragmatic plans to address at least the most critical unmet housing needs.

However, the bill seems to "lock in" a widely-used approach to household "housing burden," i.e., relying on household income as the measure of a household's capacity to cover housing costs. This method then uses a percentage of that income as the reference point for what housing is "affordable." As explained in a Harvard research report that I provided previously, this approach doesn't actually give the best "actionable" analysis needed to do effective planning (as required by HB 2003).

I recently discovered that the **ECONorthwest** consultants confirmed this critical deficiency in their recent "Housing Needs Analysis" for the City of Eugene (pages 78-79):

"While cost burden is a common measure of housing affordability, it does have some limitations. Two important limitations are:

- A household is defined as cost burdened if the housing costs exceed 30% of their income, regardless of actual income. The remaining 70% of income is expected to be spent on nondiscretionary expenses, such as food or medical care, and on discretionary expenses. Households with higher income may be able to pay more than 30% of their income on housing without impacting the household's ability to pay for necessary nondiscretionary expenses.
- Cost burden compares income to housing costs and does not account for accumulated wealth. As a result, the estimate of how much a household can afford to pay for housing does not include the impact of accumulated wealth on a household's ability to pay for housing. For example, a household with retired people may have relatively low income but may have accumulated assets (such as profits from selling another house) that allow them to purchase a house that would be considered unaffordable to them based on the cost burden indicator.

The far better "actionable" measure is "Residual Household Income" (after housing costs) measured against non-housing expenses for basic needs. The concept is simple: If a household doesn't have adequate resources left over after housing costs to pay for other basic needs, then the household is "housing cost burdened." The larger the shortfall, the more severe the burden.

This would have one immediate and obvious benefit in that using this measure would lead to the common-sense conclusion that wealthy households are never "housing cost burdened" even when they choose to spend more than 30% of their household income. It would also better identify very low income households that are truly (as most are) "cost burdened."

This is not some esoteric point that the committee should treat with "Oh sure, that might be nice. But we've got a crisis and the old way will be good enough, and we don't have time to look into this." ***This is a critical piece to get right before spending a lot of money and "hammering" cities to do meaningful analysis and planning.***

The immediate "fix" to HB 2003 that the committee should take is to amend the sections that

establish *only* the less valid approach to have some general language like "or such alternative means of assessing the extent and degree of households that are "housing cost burdened." For example, in (3)(b) under (amended) SECTION 1.

I would also suggest similar, general language directing DLCD establish appropriate measures to identify "housing cost burdened" and "severely housing cost burdened." There is a reference to "rent burdened" in the (amended) bill, and it's true that most "burdened" households are going to be renters. But the analysis would be better if the concept were generalized because you would then be able to fit the analysis across all residual income levels and include home owners.

In sum, please put your best efforts into a "clean" and "our best work" version of HB 2003 bill and don't expend your time and staff's time and squander huge amounts of political capital and public trust on HB 2001, SB 10 and other misdirected, one-size fits all, micro-management. Improve HB 2003 as the statewide strategy if you care more about helping people than scoring political points with the YIMBYs.

Thank you for your consideration.

Respectfully,

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