



April 29, 2019

## Oregon Progressive Party Position on Bill at 2019 Session of Oregon Legislature:

### SB 8: Oppose, again

Dear Committee:

The Oregon Progressive Party opposes this bill, which would require petitioners to pay costs and attorney fees, including on appeal, to prevailing intervening developers of affordable developments that were approved by local government, whether or not the petitioners present positions that are well-founded in law or on factually supported information.

This opposition is joined by the Independent Party of Oregon.

We testified against this bill on February 25, 2019, along with the League of Women Voters and many others and again on April 8.

This would effectively shield such developments from legal challenge by public interest advocates. The legal bills of the developers would likely be inflated into the hundreds of thousands of dollars. The prospect of such liability will immunize the developments, whether or not there are valid legal reasons for opposition.

**This is in many ways a pro-SLAPP bill.** SLAPP means "strategic litigation against public participation." The Oregon Legislature enacted ORS 31.150 et seq. to protect public participation in government proceedings. This would accomplish the opposite.

Note that ORS 197.830(15)(b) already enables LUBA to award reasonable attorney fees against a "party who[m] the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information." **So SB 8 would destroy only the opportunity to present well-founded opposition.**

It also would quash the opportunity for appealing decisions of LUBA to the Court of Appeals, because it would require an intervenor to "file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if" attorney fees have

been assessed against the intervenor in the LUBA process. It will be difficult or impossible to find an insurer that would issue such a surety, and that will preclude appeals that have merit.

Note that this bill does not require developers to pay the legal bills of public interest advocates who prevail against them before administrative agencies or in court.

The -1 and -2 amendments are no better than the original bill.

## **Oregon Progressive Party**

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