History of SLAPP Legislation in Oregon

Oregon

CITIZEN INVOLVEMENT ADVISORY COMMITTEE (CIAC)

February 24, 1998

TO: **Land Conservation and Development Commission (LCDC)**

FROM: **Patricia Daniels, Communication Specialist**

SUBJECT: **AGENDA ITEM 5.0, LCDC Meeting of March 5-6, 1998**

Report from the Citizen Involvement Advisory Committee (CIAC)

The Citizen Involvement Advisory Committee (CIAC) met in Salem on Friday, February 20, 1998. The meeting was attended by Chair Robert Moldenhauer, Lawrence DeBates, Michael Guyer, Mary Palmer, and Barbara Wiggin. Patricia Combes and Elizabeth Turner were absent.

Agenda Item 1.0, Public Comment: Bill Hawkins of the Netarts Steering Committee in Tilllamook County presented a history of the committee's formation, work, and current legal status. Committee members have received written notice of a local builder's intent to file suit against them both individually and as a committee. Tillamook County Community Development Director Vic Affolter was also on hand to provide additional background and information. Both expressed a concern at the potential loss of citizen participation in county planning issues, and the possibility of increased future litigation (or threatened litigation) on more and broader issues. Sid Friedman of 1000 Friends of Oregon also testified regarding the problems posed to citizen participation by the threat of "SLAPP" (Strategic Litigation Against Public Participation) suits, and suggested that CIAC's action and advice on such suits be considered as an agenda item by the Land Conservation and Development Commission (LCDC).

Agenda Item 2.0, Briefing on legal history of SLAPP suits: Celeste Doyle and Charles Landman of the Oregon Attorney General's Office presented written and oral background on SLAPP suits, their prevalence, anti-SLAPP legislation in other states, precautions citizen groups can take to protect themselves from such suits, and other relevant information. Following extensive discussion, the committee recommended to staff that a packet of informational materials be assembled and distributed to planning departments statewide, for them to share with neighborhood and other citizen planning groups.

The committee then unanimously recommended that LCDC consider developing proposed anti-SLAPP legislation for consideration in the next legislative session. The purpose of the proposed legislation would be to protect the rights of citizens to participate freely in public processes and activities without fear of intimidation.

Agenda Item 3, Discussion of the right of citizens' groups to legal standing in land use appeals: Porter Lombard of the Jackson County Citizens' League spoke of his group's difficulty in obtaining timely information from county offices regarding pending land use actions, in attaining access to information, and in achieving county recognition to receive notices of upcoming land use decisions. The committee suggested that staff

John A. Kitzhaber
Governor

1175 Court Street NE
Salem, OR 97310-0590
(503) 373-0050
FAX (503) 362-6705

investigate reminding local jurisdictions of their public records access obligations.

Agenda Item 4, Report on the role of citizen involvement in the Josephine County Regional Problem Solving (RPS) pilot project: Mike Rupp, DLCD staff, gave a presentation on the overall RPS program and its key citizen involvement components. He then focused on the effort to reconnect citizens to government through the RPS pilot in Josephine County. The pilot has provided an opportunity for the city of Grants Pass and the county to overcome longstanding animosities and work together to solve problems affecting multiple jurisdictions.

Agenda Item 5, Demonstration of DLCD's computer web site as a tool for public information and involvement: Lloyd Chapman, DLCD's computer specialist, provided an audiovisual demonstration of the department's web site, the kinds of information it offers, how it is used by the public, how to search for any topic of a user's choosing, and potential future applications for the technology.

Agenda Item 6, Update on activities for the celebration of the 25th anniversary of Oregon's planning program: Trish Daniels, DLCD communications staff, discussed a probable high school convention tentatively scheduled for May 11, on the topic of "The Environment, Growth, and Land Use Planning." She was urged to contact former high school students who had participated in previous mock conventions, to encourage their participation.

Agenda Item 7, Other business: The committee voted to re-elect Robert Moldenhauer as chair.

Agenda Item 8, Adjournment: The meeting was adjourned at 2:58 p.m.

MEMORANDUM

DATE: March 25, 1998

TO: Dick Benner, Mitch Rohse, Caren Ann Cianciabella, Jim Knight, Anna Russo, Eldon Hout

FROM: Trish Daniels

SUBJECT: Legislative Concept for "Anti-SLAPP" Legislation

DESCRIPTION: Proposed legislation to discourage use of frivolous lawsuits aimed at inhibiting public participation (SLAPP stands for Strategic Litigation Against Public Participation)

SOURCE: This proposal originated with the state Citizen Involvement Advisory Committee (CIAC). The committee has received both written and oral testimony at its last two meetings regarding actual or threatened lawsuits against Oregon citizens involved in community planning efforts or local land use cases. At the February CIAC meeting, Celeste Doyle and Charles Landman presented information on the background, extent, and nature of such activity; state legislation was among possible remedies listed in their presentation. Following considerable discussion, CIAC unanimously recommended to our commission that they (LCDC) consider initiating anti-SLAPP legislation at the next session of the Oregon Legislature. At its March meeting, our commission requested that staff look into the matter further.

BACKGROUND: A SLAPP suit is a legal action that moves a public policy dispute into court, where the parties speaking out on the issue must defend their actions. The point of a SLAPP suit is not necessarily to win; it is to intimidate potential critics or opponents from testifying at public meetings, writing letters to the local newspaper, speaking with supporters or neighbors, or otherwise exercising their first amendment rights. The fact that such suits are almost always dismissed or decided in favor of the defendants is, in a sense, irrelevant. They are still successful when they divert the energy of an individual or group from the controversy and force them to hire counsel, spend money, and defend their reputations.

While the majority of SLAPP suits arise out of local development proposals, they are not limited to development activity. Recent cases in other states have focused on custodial care providers, ballot measure advertising, and health dangers in home plumbing, to name a few. I have been unable to determine, however, whether there has been any SLAPP suit activity in Oregon other than that focused on land use. Current Oregon cases of which CIAC is aware involve land use issues in St. Paul, Netarts, and Scappoose.

Existing legal remedies provide inadequate protection for citizens wishing to participate in the public life of their communities. The right to sue is itself a constitutionally-protected right, regardless of how outrageous or ill-founded the charges may be. Furthermore, if a defendant

seeks prompt dismissal, the burden of proof is on the party seeking dismissal and the facts alleged in the complaint are assumed to be true. Finally, the current legal framework requires a lengthy period of time before SLAPP suits finally arrive at the point of dismissal. The amount of time itself becomes part of the defendant's ordeal. What is needed is a mechanism for **prompt** dismissal of unfounded lawsuits that infringe upon constitutionally-protected speech.

PURPOSE OF PROPOSAL: Proposed legislation would accomplish this protection primarily by setting out an effective early review for filed SLAPPS, and by shifting the burden of proof to the filer.

WHAT IS PROPOSED: A number of other states have passed anti-SLAPP legislation, some of which I have reviewed. Most are quite brief. A model anti-SLAPP statute also exists; it is also brief. I have attached copies of the model statute and the California and Georgia statutes. Some of the elements in the model statute may not be relevant to Oregon, which already contains some provisions (such as absolute immunity for statements made in the course of judicial proceedings and during certain types of quasi-judicial proceedings). Further work (though probably not a lot) would be needed to draft a specific proposal, should you decide to go forward with this.

April 29, 1998

TO: **Citizen Involvement Advisory Committee (CIAC)**
FROM: **Mitch Rohse, Policy Development Specialist**
SUBJECT: **LEGISLATIVE PROPOSAL ON SLAPP'S**

At your meeting of February 20, 1998, the Citizen Involvement Advisory Committee considered the issue of "SLAPP's" (Strategic Lawsuits Against Public Participation). After reviewing background material from the agency's legal counsel and hearing testimony about a recent SLAPP threat in Tillamook County, you recommended that the Land Conservation and Development Commission act to limit SLAPP suits in Oregon. The commission received your recommendation and directed the Department of Land Conservation and Development to investigate the issue and take appropriate action. The department did that and has developed a draft proposal for legislation in the 1999 legislative session.

The draft proposal is attached for your review and comment. It is based on a model anti-SLAPP bill from the University of Denver's SLAPP Resource Center. The model was attached to material submitted to you at your February 20 meeting. It has the words "Chapter 10, Anti-SLAPP Legislation" across its top. Apparently it was copied from the book *SLAPP's: Getting Sued for Speaking Out*, by University of Denver professors Penelope Canan and George Pring. The book was published by the Temple University Press, Philadelphia, in 1996.

As a state executive agency, the Department of Land Conservation and Development must submit all proposals for legislation to the state Department of Administrative Services (DAS). DAS reviews the proposals for budget impacts, legal issues, and conflicts or overlaps with other legislative proposals. The attached proposal was submitted to DAS in mid April. It is likely to be several weeks before we learn whether this legislative proposal will go forward to become a bill in the 1999 legislature.

I will attend your meeting on May 15 to discuss the attached draft with you. It would be helpful if you brought the background materials on SLAPP's that you received in February to our May 15 discussion. I look forward to hearing your comments and questions. ❑

Attachment

Section 1. Title
This Act may be cited as the "Citizen Participation in Government Act of 1999."

Section 2. Findings
The legislature finds and declares the following:
a. Citizen participation in government is an inalienable right essential to the survival of democracy. Such participation is protected through the right to petition the government for redress of grievances in the First Amendment to U.S. Constitution.
b. The communications, information, opinions, reports, testimony, claims, and arguments provided by citizens to their government are essential to the making of sound government decisions and policies regarding the public health, safety, and welfare.
c. Civil lawsuits and counterclaims, often seeking millions of dollars, have been and are being filed against citizens and organizations exercising their valid right to petition and to participate in the making of sound government decision and policies.
d. The great majority of such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPP's," are dismissed, but not before the defendant citizens or organizations have incurred great expense, stress, and interruption of their personal life.
e. SLAPP's are an abuse of the judicial process, in that they are groundless suits intended to intimidate or punish citizens and organizations for involving themselves in public affairs.
f. SLAPP's have compelled citizens and organizations in Oregon to withdraw from rightful participation in government decisions and processes.
g. Control of SLAPP's will bring a significant reduction in the amount of litigation in Oregon's courts and a consequent saving of public funds.
h. The threat of financial liability, litigation costs, loss of business, loss of one's home, and other personal losses from groundless lawsuits seriously affects state government by diminishing citizen participation in government, in public issues, and in voluntary service.
i. Although courts have recognized and discouraged SLAPP's, protection from SLAPP's has been neither uniform nor comprehensive.
j. Although some citizen communications to government inevitably will be incorrect, unsound, self-interested, or not in good faith, it is essential to democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly and comprehensively protected and encouraged.

Section 3. Purpose
This Act has five purposes:
a. To protect and to encourage citizen participation in government to the maximum extent permitted by law;
b. To create a more equitable balance between the rights of persons to file lawsuits and the rights of persons to petition, speak out, associate, and otherwise participate in

government;
c. To protect the public's health, safety, and welfare by protecting public participation in the government programs, decisions, and other actions that affect the public's health, safety, and welfare;
d. To establish a balanced, uniform, and comprehensive process for rapid, equitable, and cost-effective adjudication of SLAPP's; and
e. To provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

Section 4. Immunity
Acts involving a citizen's constitutional right to petition, influence, inform, communicate with, or otherwise participate in the processes of government shall be immune from civil liability, regardless of their intent or purpose, except when such acts are not intended to procure any governmental action, result, or outcome.

Section 5. Applicability
This act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act of the moving party in furtherance of the moving party's rights as described in Section 4.

Section 6. Required Practices
1. On the filing of any motion as described in Section 5, the following steps shall be taken:

a. The motion shall be treated as one for summary judgment.
b. The trial court shall set a schedule appropriate to preferred or expedited motions.
c. The moving party shall have a right of expedited appeal from a trial court order denying such a motion or from a trial court failure to rule on such a motion in an expedited fashion.
d. Discovery shall be suspended, pending decision on the motion and appeals.
e. The responding party shall have the burden of proof, of going forward with the evidence, and of persuasion on the motion.
f. The court shall make its determination based on the facts contained in the pleadings and affidavits filed.
g. The court shall grant the motion and dismiss the judicial claim, unless the responding party has produced substantial evidence that the acts of the moving party are not immune from liability as described in Section 4.
h. Any governmental body to which the moving party's acts were directed or the Attorney General may intervene to defend or otherwise support the moving party.

i. The court shall award to a moving party who is dismissed the following:
    i. Costs of litigation, including reasonable fees for attorneys and expert witnesses, incurred in conjunction with the motion; and
    ii. Such additional sanctions upon the responding party or its attorney or both as the court determines will be sufficient to deter repetition of such conduct and comparable conduct by others similarly situated.

2. A person damaged or injured by reason of a claim filed in violation of their rights under Section 4 of this act may seek relief from the person responsible in the form of a claim for actual or compensatory damages, as well as for punitive damages, attorney fees, and costs.

Section 7. Definitions

a. "***Government***" includes any branch, department, agency, instrumentality, official, employee, agent, or other person acting under the law of the United States, the State of Oregon, or any city or county within the State of Oregon,

b. "***Person***" includes any individual, corporation, association, organization, partnership, or other legal entity.

c. "***Judicial claim***" or "***claim***" includes any lawsuit, cause of motion, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

d. "***Motion***" includes any motion to dismiss, for summary judgement, for judgment on the pleadings, to strike, demurrer, or any other judicial pleading filed to dispose of a judicial claim.

e. "***Moving party***" means any person on whose behalf the motion described in Section 5 is filed seeking dismissal of the judicial claim.

f. "***Responding party***" means any person against whom the motion described in Section 5 is filed. ❑

Speaker's Notes -- Mitch Rohse -- CIAC, May 15, 1998 -- SLAPP's

What's the Problem?

Citizens who participate in local planning may be subject to unfair intimidation by SLAPP's -- "Strategic Lawsuits Against Public Participation." Such suits often are unfounded, but the mere threat of them may keep citizens from participating in planning. The current system unfairly places the burden of proof on the citizens being sued. And it takes an undue amount of time and money to settle even a groundless suit.

What's Being Proposed as a Solution?

No law can eliminate the use of lawsuits to intimidate others. And no law should restrict the rights of citizens to protect themselves against slander and libel. But the law could give better protection to citizens who express legitimate concerns in a civic forum such as a land-use planning hearing, and and it could make it more difficult to file groundless lawsuits. The draft proposal would do both of those things by:

a. Expanding the concept of "immunity" for citizens offering legitimate testimony on public issues in a governmental forum;
b. Putting the burden of proof on the person who files the SLAPP rather than on the citizen who is sued;
c. Having courts dispose of SLAPP's more rapidly, so a citizen faced with a SLAPP doesn't have to spend so much time and money to get the matter settled;
d. Enabling courts to impose penalties on those who file SLAPP's.

What's the Extent of the SLAPP Problem in Oregon?

We don't know. No statewide data on SLAPP's is available. It's sometimes difficult even to know whether a particular suit should be counted as a SLAPP. And the number of cases where the mere threat of a SLAPP has caused citizens to retreat from public participation can never be known. But we do know from testimony to CIAC and from media accounts that several citizens and citizen groups in Oregon have been threatened with SLAPP's in recent years and have withdrawn from public participation in planning as a result.

Is CIAC Going To Adopt This Proposal?

CIAC can't change state law. Only the Oregon legislature can do that. CIAC already expressed concern about SLAPP's to the Land Conservation and Development Commission (LCDC). LCDC directed its staff to look into the matter and take appropriate action. The staff did that and submitted a draft legislative proposal to the state's Department of Administrative Services. This may lead to a bill being introduced in the next legislative session (which will start in January 1999). So it's still early in the process: it would take about a year for legislation on this matter to be adopted.

(more . . . ☞)

How Would the Proposal Work?

Section 1 just provides a title for the bill (if indeed a bill gets passed).

Section 2 of the proposal lists some findings that the legislature might make if it decides to pass a bill against SLAPP's. Such findings are a statement of reasons why the legislature passes a law. Since the legislature hasn't even considered this proposal yet, we can't be sure what the legislature might find about SLAPP's.

Section 3 lists 5 things that the proposal is intended to do:

- Encourage citizen participation in government;
- Achieve a better balance between one's right to sue and one's right to speak out;
- Promote good government through active public involvement in government;
- Make the process of handling SLAPP's faster, cheaper, and more fair;
- Make the costs of SLAPP's be borne by those who initiate them.

Section 4 proposes a very broad standard for a citizen's immunity from SLAPP's: If the citizen is participating in a governmental process to shape some governmental action, the citizen is protected from civil liability.

Section 5 specifies that the proposal applies to a certain type of judicial proceeding -- namely a motion by a citizen ("the moving party") to dispose of the SLAPP. This section enables the citizen being sued to say to the court, "I move to throw this suit out because I was participating in a governmental process and therefore am immune under the terms of Section 4."

Section 6 specifies what the court should do when the citizen makes such a motion. This section requires the court to accelerate disposition of the case. It shifts the burden of proof onto the person who filed the SLAPP (the "responding party"). It requires the court to dismiss the case unless there is "substantial evidence" that the citizen is not immune from the SLAPP. It enables a governmental body to intervene on behalf of the citizen in the case. It requires the court to make the filer of the SLAPP pay for court costs and attorney fees. It also allows the court to assess penalties on the filer of the SLAPP if the court wants to "deter repetition of such conduct." Finally, it allows the citizen who was SLAPP'ed to file a counter claim and seek punitive damages. ❑

DRAFT

Section 1. Title
This Act may be cited as the "Citizen Participation in Government Act of 1999."

Section 2. Findings
The legislature finds and declares the following:
a. Citizen participation in government is an inalienable right essential to the survival of democracy. Such participation is protected through the right to petition the government for redress of grievances in the First Amendment to U.S. Constitution.
b. The communications, information, opinions, reports, testimony, claims, and arguments provided by citizens to their government are essential to the making of sound government decisions and policies regarding the public health, safety, and welfare.
c. Civil lawsuits and counterclaims, often seeking millions of dollars, have been and are being filed against citizens and organizations exercising their valid right to petition and to participate in the making of sound government decision and policies.
d. The great majority of such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPP's," are dismissed, but not before the defendant citizens or organizations have incurred great expense, stress, and interruption of their personal life.
e. SLAPP's are an abuse of the judicial process, in that they are groundless suits intended to intimidate or punish citizens and organizations for involving themselves in public affairs.
f. SLAPP's have compelled citizens and organizations in Oregon to withdraw from rightful participation in government decisions and processes.
g. Control of SLAPP's will bring a significant reduction in the amount of litigation in Oregon's courts and a consequent saving of public funds.
h. The threat of financial liability, litigation costs, loss of business, loss of one's home, and other personal losses from groundless lawsuits seriously affects state government by diminishing citizen participation in government, in public issues, and in voluntary service.
i. Although courts have recognized and discouraged SLAPP's, protection from SLAPP's has been neither uniform nor comprehensive.
j. Although some citizen communications to government inevitably will be incorrect, unsound, self-interested, or not in good faith, it is essential to democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly and comprehensively protected and encouraged.

Section 3. Purpose
This Act has five purposes:
a. To protect and to encourage citizen participation in government to the maximum extent permitted by law;
b. To create a more equitable balance between the rights of persons to file lawsuits and

DRAFT

DRAFT

the rights of persons to petition, speak out, associate, and otherwise participate in government;

c. To protect the public's health, safety, and welfare by protecting public participation in the government programs, decisions, and other actions that affect the public's health, safety, and welfare;

d. To establish a balanced, uniform, and comprehensive process for rapid, equitable, and cost-effective adjudication of SLAPP's; and

e. To provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

Section 4. Immunity

Acts involving a citizen's constitutional right to petition, influence, inform, communicate with, or otherwise participate in the processes of government shall be immune from civil liability, regardless of their intent or purpose, except when such acts are not intended to procure any governmental action, result, or outcome.

Section 5. Applicability

This act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act of the moving party in furtherance of the moving party's rights as described in Section 4.

Section 6. Required Practices

1. On the filing of any motion as described in Section 5, the following steps shall be taken:

a. The motion shall be treated as one for summary judgment.

b. The trial court shall set a schedule appropriate to preferred or expedited motions.

c. The moving party shall have a right of expedited appeal from a trial court order denying such a motion or from a trial court failure to rule on such a motion in an expedited fashion.

d. Discovery shall be suspended, pending decision on the motion and appeals.

e. The responding party shall have the burden of proof, of going forward with the evidence, and of persuasion on the motion.

f. The court shall make its determination based on the facts contained in the pleadings and affidavits filed.

g. The court shall grant the motion and dismiss the judicial claim, unless the responding party has produced substantial evidence that the acts of the moving party are not immune from liability as described in Section 4.

h. Any governmental body to which the moving party's acts were directed or the

DRAFT

Attorney General may intervene to defend or otherwise support the moving party.

i. The court shall award to a moving party who is dismissed the following:
   i. Costs of litigation, including reasonable fees for attorneys and expert witnesses, incurred in conjunction with the motion; and
   ii. Such additional sanctions upon the responding party or its attorney or both as the court determines will be sufficient to deter repetition of such conduct and comparable conduct by others similarly situated.

2. A person damaged or injured by reason of a claim filed in violation of their rights under Section 4 of this act may seek relief from the person responsible in the form of a claim for actual or compensatory damages, as well as for punitive damages, attorney fees, and costs.

Section 7. Definitions

a. "***Government***" includes any branch, department, agency, instrumentality, official, employee, agent, or other person acting under the law of the United States, the State of Oregon, or any city or county within the State of Oregon,

b. "***Person***" includes any individual, corporation, association, organization, partnership, or other legal entity.

c. "***Judicial claim***" or "***claim***" includes any lawsuit, cause of motion, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

d. "***Motion***" includes any motion to dismiss, for summary judgement, for judgment on the pleadings, to strike, demurrer, or any other judicial pleading filed to dispose of a judicial claim.

e. "***Moving party***" means any person on whose behalf the motion described in Section 5 is filed seeking dismissal of the judicial claim.

f. "***Responding party***" means any person against whom the motion described in Section 5 is filed. ❑

DRAFT

Summary of Testimony Before the State Citizen Involvement Advisory Committee (CIAC) on the Subject of Proposed Legislation to Limit "Strategic Lawsuits Against Public Participation" (SLAPP's) May 15, 1998

Six people testified before CIAC. The notes below summarize their comments. CIAC also received some written testimony on the topic of SLAPP's. That testimony is attached. All of the oral and written testimony expressed concern about SLAPP's in Oregon; all encouraged the CIAC and the Department of Land Conservation and Development to pursue legislation to restrict SLAPP's.

1. Jim Ludwick, President, Friends of Yamhill County -- He fully supports the proposal. He believes that it would further citizen involvement by helping citizens feel as if they have a right to be heard. He has not personally been subject to a SLAPP but knows of one person who has been sued. Mr. Ludwick notes that the proposal would benefit developers as well as citizen activists by protecting the rights of all to express their opinion for or against a development proposal. He urges passage of the proposal because it would open the process to more effective citizen involvement.

2. Jeffrey Lamb, Chairman, Oregon Communities for a Voice in Annexations -- The OCVA supports the proposal. Mr. Lamb notes the irony of celebrating 25 years of strong statewide planning at the very time when many citizens feel threatened about participating in the planning process. He says that several OCVA members have been threatened with SLAPP's or actually sued. He notes that SLAPP's are insidious because they cannot be tracked, and because a few SLAPP's can intimidate a large number of people. He will provide CIAC with information about specific incidents and details about SLAPP's in Oregon. He suggests that we borrow from other states that have dealt with the SLAPP problem. He says that OCVA believes that SLAPP's are being used more and more to silence public participation in land use proceedings.

3. Richard Reid, President of Salem City Watch -- He reports that a member of City Watch was sued during a recent local election, and it was quite intimidating to that member. He says that at least one attorney in Salem will testify that SLAPP's are a problem. He says that the problem with SLAPP's is that they pit the scant resources of the individual against the deep pockets of corporations. Mr. Reid noted that Section 4 of the proposal is ambiguous: some of the words are subject to different interpretations.

More . . . ☞

4. Jerry Scott -- Mr. Scott reported that he had been involved in a SLAPP: he was threatened with a suit to withdraw his statement from a voters pamphlet. He contacted an attorney and decided to go forward with the statement. He commended the committee for developing the proposal.

5. Jake Stockfleth, Chair of the Marion County Planning Commission -- He says that his planning commission members all were threatened with lawsuits regarding a proposed subdivision. He's mainly concerned about lay persons who serve on planning commissions being vulnerable to legal and financial risks. He says that fear of being sued may well be a force that's keeping some people from participating in land use matters.

6. Bob Kiselosky, Yachats -- Mr. Kiselosky read his testimony into the record. He supports the proposal. His written testimony is attached.

Debby A. Todd and D. Ronald Gerber submitted written testimony. Both support the proposal. Their letters are attached.

Attachments

S:\INFOMATN\CIAC\SLAP515.WPD

Oregon
John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development
635 Capitol St. NE, Suite 200
Salem, Oregon 97301-2540
Phone (503) 373-0050
Director's Fax (503) 378-5518
Main Fax (503) 378-6033
Rural/Coastal Fax (503) 378-5518
TGM/Urban Fax (503) 378-2687
Web Address: http://www.lcd.state.or.us

May 18, 1999

TO: Interested Persons

FROM: Mitch Rohse, Policy Development Specialist

SUBJECT: Progress Toward Anti-SLAPP Legislation

The Department of Land Conservation and Development (DLCD) asked the 1999 Oregon Legislature to adopt legislation to limit SLAPP's ("Strategic Lawsuits Against Public Participation"). DLCD's bill, Senate Bill 330, was submitted to the legislature in January. Later, Representative Kurt Schrader introduced a stronger anti-SLAPP bill: House Bill 2805. His bill was identical to DLCD's except that it contained provisions for punitive damages to be awarded to SLAPP victims. DLCD agreed that such a provision helped the bill. The department therefore supported House Bill 2805 and testified strongly in favor of the bill during its public hearing before the House Judiciary Committee on Civil Law, on March 24, 1999.

At the hearing, eighteen people testified in favor of the bill. Several others submitted written testimony favoring it. No one testified against it, although one witness expressed concern that the bill was too broad.

In discussion after the hearing, several committee members felt the bill needed modification, mainly to limit its immunity provisions so they would not cover false testimony. Representative Schrader drafted several revisions to the bill to deal with such concerns. The House Judiciary Committee considered those revisions in a work session on April 28, 1999. The committee approved two sets of amendments (the "dash-3" and "dash-5" amendments). One requires expedited decisions by judges considering summary judgments against SLAPP's. The other exempts statements that are "knowingly false and immaterial" from the immunity provided by the bill. The committee then sent the revised bill to the House with a "Do Pass" recommendation. The committee's vote in that action was 8 to 1.

On May 12, 1999, the House considered the revised bill (HB 2805, A-Engrossed), and passed it with a strong 49 to 9 vote. The House's action sent the bill to the Senate, where the bill will be taken up in the Senate Judiciary Committee. That committee has seven members: Neil Bryant, Chair; Peter Courtney, Vice Chair; Ginny Burdick; Kate Brown; David Nelson; Eileen Qutub; and Veral Tarno.

There are now three main possibilities. The Senate Judiciary Committee could pass the

more on next page . . . ☞

bill to the Senate with a recommendation to pass HB 2805. The committee could choose not to act on it, in which case the bill would not get to the Senate for a vote. Or the committee could recommend changes to the bill, in which case both the House and Senate would have to agree to the changes. If the Senate and House both pass an anti-SLAPP bill, Governor Kitzhaber is likely to sign it. He already has expressed his support for anti-SLAPP legislation.

The Senate Judiciary Committee has scheduled a public hearing and work session on House Bill 2805, for Tuesday, May 25, 1999, at 3:00 p.m., in Room 343 of the Capitol, in Salem. For further information on the committee's schedule and activities, contact the committee's staff at 503 986-1750.

A copy of House Bill 2805, A-Engrossed, is enclosed. Also with this memo, you will find a variety of material related to the bill and the topic of SLAPP's. DLCD mailed some material to interested persons in February. This packet contains memos, news clippings, testimony, and other documents that have become available since that last mailing.

I am DLCD's lead staff person on the anti-SLAPP legislation. My telephone is 503 373-0050, Extension 226. My e-mail address is mitch.rohse@state.or.us. If you have questions or comments about the topic of SLAPP's, please contact me.

For the most up-to-date information on HB 2805 and other bills, use the legislature's "gopher" on the web. Its address ("URL") is ***gopher://gopher.leg.state.or.us***.

Attachments

P:\SLAPPS\0514MEMO.WPD

Oregon
John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development
635 Capitol St. NE, Suite 200
Salem, Oregon 97301-2540
Phone (503) 373-0050
Director's Fax (503) 378-5518
Main Fax (503) 378-6033
Rural/Coastal Fax (503) 378-5518
TGM/Urban Fax (503) 378-2687
Web Address: http://www.lcd.state.or.us

May 21, 1999

The Honorable Neil Bryant, Chair
Senate Judiciary Committee
Room 354, State Capitol
Salem, Oregon 97310

State Citizen Involvement Advisory Committee

Dear Chair Bryant and Members of the Committee:

The state's Citizen Involvement Advisory Committee (CIAC) strongly supports the passage of **House Bill 2805** (A-Engrossed) to limit SLAPP's (Strategic Lawsuits Against Public Participation).

The move to develop legislation to control SLAPP's originated in our committee, about a year ago. We heard testimony from several citizens that SLAPP's (or the threat of such litigation) had been used to intimidate people who spoke in public forums against certain land use proposals. These citizens asked us to investigate the matter and consider seeking legislation. We did investigate and concluded that legislation was indeed needed. Over the course of several months, we received extensive written and oral testimony that convinced us that SLAPP's have become a significant and growing problem in Oregon.

We asked the Department of Land Conservation and Development (DLCD) to draft a proposal for anti-SLAPP legislation, and DLCD did. The resulting bill, Senate Bill 330, was assigned to your committee early in the legislative session. Later, Representative Kurt Schrader introduced similar legislation in the House. His bill, House Bill 2805, was identical to SB 330, except for the addition of a provision for the awarding of punitive damages to SLAPP victims.

CIAC gave its support to HB 2805, as did DLCD. When concerns that the bill was too broad arose in the House Judiciary Committee on Civil Law, Representative Schrader proposed amendments. Those amendments were agreed to by the committee, which sent the bill to the House floor with a "Do-Pass" recommendation (on an 8-1 vote). The House subsequently passed HB 2805 (A-Engrossed) with a very strong vote of 49-9.

More on next page . . . . ☞

The history of this bill demonstrates four points that we believe should be of vital interest to your committee:

- There is very strong and widespread support for legislation to control SLAPP's.
- Throughout extensive public hearing and review over the course of several months, not one citizen or organization has testified in opposition to HB 2805.
- Many of the state's newspapers have written editorials in support of the bill. We know of none that have written in opposition to it.
- The bill has been amended to address early concerns that it was too broad.

But we have learned that new concerns may be raised at this late stage of the bill's review. You may hear proposals to amend the bill, especially to expand the exceptions to the immunity described in Section 1(1). Doing so would greatly weaken the bill and thus leave Oregon's citizens just as vulnerable to SLAPP's as they are now. **We therefore urge you not to make changes to the bill and to send House Bill 2805 (A-Engrossed) to the Senate with a strong recommendation of "Do Pass."**

Sincerely,

Robert Moldenhauer

Robert Moldenhauer,
Chair

cc: Representative Kurt Schrader
Richard P. Benner, Director of DLCD
Robin McArthur-Phillips, Governor's Land Use and Transportation Advisor
William Blosser, Chair, Land Conservation and Development Commission

May 28, 1998

TO: **Interested Persons**

FROM: **Mitch Rohse, Policy Development Specialist**

SUBJECT: **Attached Material on SLAPP's**

From recent testimony to the state Citizen Involvement Advisory Committee (CIAC), correspondence, or conversation, I have learned that you may be interested in the topic of SLAPP's: "Strategic Lawsuits Against Public Participation." I therefore am sending you the enclosed material about that topic. I hope you'll find it to be informative.

At the urging of CIAC, the Department of Land Conservation and Development (DLCD) has drafted a proposal for legislation to limit SLAPP's. Such proposals from state agencies must be approved by Governor Kitzhaber's legal and fiscal staff before they can be introduced as bills. If this particular proposal is approved, it may be introduced as a bill when Oregon's legislature convenes in January 1999. It will be several months before we know whether this proposal will become a bill.

The main question about SLAPP's seems to be this: ***"What is the nature and extent of the SLAPP problem (if any) in Oregon?"*** Right now, DLCD lacks the information necessary to answer that question. Evidence of what appear to be several SLAPP's in Oregon in the recent past has been presented to DLCD. But more and better information will be needed to establish whether legislation is appropriate and what form it should take.

During the next few months, if you are able to provide any information about the extent of SLAPP's in Oregon, we at DLCD would like to see it. I am the main staff person working on this matter, so please direct such information to me at the above address, call me at 503 373-0064, or send an e-mail message to *mitch.rohse@state.or.us*. If you have already presented testimony or written material to CIAC or me, there's no need to send that again: we have read it, we will keep it in our records, and we will make it available to legislators and other interested parties if legislation on SLAPP's is introduced.

I will keep your name on file for the next few months and may send other material to you. If you would prefer to be removed from this temporary SLAPP mailing list or if you need to correct some information about your name and address, let me know. Thank you.

Attachments