



Oregon

Tina Kotek, Governor

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TO: Senate Committee on Natural Resources and Wildfire
FROM: Alyx Peterson, Staff Attorney, Land Use Board of Appeals (LUBA)
DATE: February 20, 2025
RE: SB 817 and ORS 197.830(9) – response to committee question

ORS 197.830(9) currently requires LUBA to award the filing fee to a local government when a petitioner fails to file a petition for review. In practice, a local government files a motion asking LUBA to award it the filing fee. The award is from General Fund monies and LUBA personnel process the payment with assistance from DAS Shared Financial Services. Very few local governments request an award of a filing fee under ORS 197.830(9). SB 817 removes the requirement that LUBA award the filing fee.

During the public hearing on SB 817, on February 18, 2025, Senator Prozanski asked LUBA to explain the legislative intent for the filing fee award in ORS 197.830(9) and why that money is paid from the General Fund to local governments. We have reviewed the statutory history to try to determine the legislative intent for the fee award in ORS 197.830(9).

Prior to 2021, LUBA was required by statute to collect a deposit for costs, in addition to the filing fee. If a petitioner failed to file a petition for review, then LUBA was required to award the filing fee and deposit of costs to the local government. Between 1979 and 2021, LUBA's fee provision statutes stated that the award was for the "cost of preparation of the record." Or Laws 1979, ch 772, § 4(4); ORS 197.830(7) (1983); ORS 197.830(9) (2019).

In 2021, LUBA proposed HB 2110 to raise the appeal filing fee and remove the requirement to collect a deposit for costs. Instead, the local government would be able to receive the filing fee in the event a petition was not filed. The language regarding the cost of preparing the record was removed as part of this amendment, but the testimony at the time demonstrates that the legislative intent of keeping an award of the filing fee was for the same purpose.

In the intervening four years, LUBA has determined that the administrative effort to award the filing fee is like that of awarding the deposit for costs, in that the state resources required to process the award payment from the General Fund are disproportionate to the benefit to the local government.

We hope that this explanation answers the committee questions. Please contact us with any questions or concerns.

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