

OREGON STATE BAR
Legislative Proposal

RE: LC 450-1 -- Costs and fees in agency proceedings

FROM: OSB Administrative Law Section

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1. PROBLEM PRESENTED

Some agencies are allowed by statute to impose the costs for its investigation and hearing on the party, in addition to civil penalties after a contested case hearing at which the agency prevails. These fees and costs can and often do exceed the limitations on civil penalties that the agency may impose by statute. Allowing agencies to impose investigation and hearing costs discourages licensees from exercising their right to request a contested case hearing. Currently, investigation and hearing costs are only available to the agency and not to the licensee who prevails in the contested case hearing.

2. SOLUTION

Amend the statutes governing particular agencies to delete the provisions that currently allow those agencies to impose investigation and hearing costs on the party.

3. PUBLIC POLICY IMPLICATION

The recovery of investigation and hearing costs by agencies has a chilling effect on the public's right to seek redress in a contested case hearing. These costs are in addition to the civil penalties that an agency can impose. Historically, these fees and costs are an inherent part of a regulatory agency's activities. Consequently they are spread among the members of the regulated industry and then are reflected in the agency's budget.