



'Loser pays' litigation could help accelerate infrastructure projects, scholar says

Charmaine Little

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A new bill that would require losers in certain lawsuits to pay the other side's costs is worth Congress' attention, a noted legal scholar and senior fellow at the Cato Institute says.

U.S. Rep. Tom Rice, R-S.C., has introduced the controversial Discourage Frivolous Laws Act, which aims to dissuade special interest groups from taking legal action that could put a hold on construction projects. Rice's bill also states that if a group does sue and holds up an infrastructure project, the losing party would have to pay court costs. This is known as the "loser pays" bill.

Walter Olson, a senior fellow at Cato's Center for Constitutional Studies and the founder of the blog Overlawyered.com, says environmental groups sometimes use lawsuits as a way to pause or stop infrastructure projects instead of considering the "interests of justice."

"Loser-pays is the rule in most advanced democratic countries and any serious look at breaking up artificial barriers to infrastructure should include looking at loser-pays principles," he said.

Rice introduced the bill on Feb. 16. It has about 30 co-sponsors, and many groups oppose it, including an [environmental group in Rice's home state](#).

"Historically, loser pay rules have been one of the most important ways to discourage poorly grounded litigation," Olson said.

As for whether special interest organizations like environment groups have the means to pay the pricey legal costs, Olson added that they might be better funded than assumed.

"Some entities on both sides of environmental litigation are big, wealthy and have access to sophisticated lawyers, while some entities on both sides have none of these advantages," he said.

"Environmentalist causes, overall, raise large sums from national donors and are at least as well-placed to absorb fee shifts as are many small local governments, such as rural towns and counties.

"Under two-way fee shifting, the overall flow of funds in fee awards would continue to be toward environmental groups, not away, so long as they are overall selecting more meritorious cases than otherwise."