

**Oregon State Bar Real Estate and Land Use Section**  
**Comments on proposed amendments to SB 77**  
House Land Use Committee  
May 23, 2013

On behalf of the Real Estate and Land Use Section of the Oregon State Bar, we offer the following comments about the proposed –A7 amendments to SB 77.

The amendments purport to allow LUBA to rule a land use decision to be both valid and invalid at the same time, rather than for that decision to be clearly affirmed, reversed or remanded. Under this proposal, a quasi-judicial zone change decision can be valid for some purposes and, at the same time, invalid for others (for example if there is no evidence on traffic or a finding is inadequate). Under current law, that decision would be remanded and the local government must correct it, if it decides to do so. However, correcting the bases on which that decision was remanded could involve other evidence or findings that could affect those portions of the decision that were not the basis for the remand.

Similarly, one provision of a legislative decision could be remanded, while other provisions are affirmed. Unless the remanded provisions are completely severable from the remainder of the decision, the local government could find itself in the position of not being able to correct the remanded provisions of the decision because it cannot reopen consideration of the portions of the decision that were affirmed. A local government might be asked to make further land use decisions based on the affirmed portions of the legislative decision, before it knows how such further decisions might be affected by corrections to the remanded portions of the legislative decision.

The proposed amendment raises significant and complicated legal issues and we respectfully request the Committee not adopt the amendment without more time to study these issues and refine the language as necessary.

**Oregon State Bar Real Estate and Land Use Section  
Comments on SB 77  
Before the House Land Use Committee  
May 9, 2013**

The Oregon State Bar Real Estate and Land Use Section respectfully suggests that the following comments be addressed in further amendments to Senate Bill 77:

- Under the A-Engrossed bill, all the basic information needed to generate the analyses and statistics required by Sec. 1(19) is already available on the LUBA website. This bill does not contain any authorization of funds to address the significant costs associated with the compilation of the materials requested or potential time that LUBA staff, including the board members, would have to expend to provide this information.
- Section 3 of the bill requires consolidation of all decisions relating to the subject property and tolling of LUBA's review. As such, the bill may have the unintended consequence of causing significant delay of appeals. For example, it may take months (if not longer) to zone property after the adoption of a comprehensive plan amendment or to achieve design review approval months after a conditional use permit is issued. A developer would face the possibility that the first decision requires additional findings and all decisions predicated on that first decision would be required either to be remanded or to start over again. Moreover, there may be situations in which a landowner obtains approval for a rezoning, but has not decided what ultimate use is to be made of the property. Should the land use decision be in limbo until the landowner decides?
- Having the bill go into effect on passage, as opposed to having a set effective date, may create havoc with appeals filed just before or after that date. There is no justification for an emergency clause here.

Thank you for your consideration of this testimony.