

## Legislative Fiscal Office

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## Joint Committee on Ways and Means

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Representative Tawna Sanchez, House Co-Chair

Senator Fred Girod, Senate Co-Vice Chair  
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Tom MacDonald, Deputy Legislative Fiscal Officer (Budget)  
Paul Siebert, Deputy Legislative Fiscal Officer (Audit/IT)

**To:** Natural Resource Subcommittee

**From:** Doug Wilson, Legislative Fiscal Office

**Date:** April 24, 2023

**Subject:** HB 5028 – Land Use Board of Appeals  
Work Session Recommendations

### Land Use Board of Appeals – Agency Totals

	2019-21 Actual	2021-23 Legislatively Approved	2023-25 Current Service Level	2023-25 LFO Recommended
General Fund	2,095,169	2,686,644	2,706,702	2,772,715
Other Funds	35,842	36,486	38,019	38,019
<b>Total Funds</b>	<b>2,131,011</b>	<b>2,723,130</b>	<b>2,744,721</b>	<b>2,810,734</b>
Positions	6	7	7	7
FTE	6.00	7.00	7.00	7.00

In 1979, the Oregon Legislature created the Land Use Board of Appeals (LUBA) as an agency with exclusive jurisdiction to review appeals of land use decisions made by cities, counties, districts, and state agencies. Prior to LUBA's creation, appeals of land use decisions were heard in 36 different county circuit courts, and sometimes before the Land Conservation and Development Commission. In creating LUBA, the Legislature intended to provide a simpler and faster process for resolving land use disputes as well as to promote a consistent interpretation of state and local land use laws. LUBA's decisions are reviewable by appeal to the Court of Appeals.

The three-member Board, appointed by the Governor to serve four-year terms, must be attorneys who are members of the Oregon State Bar in good standing. Board members are salaried employees who resolve appeals, issue orders, prepare for and conduct oral arguments, provide peer review, and participate in continuing legal education and land use seminars. The Board is supported by two administrative support staff and two staff attorneys. Funding is primarily General Fund.

### Adjustments to Current Service Level

The current service level (CSL) for the Land Use Board of Appeals (LUBA) is \$2,706,702 General Fund and \$38,019 Other Funds with seven positions (7.00 FTE). The LFO recommendations includes two policy packages for funding the reclassification of two positions and correcting the funding of a Board member position.

See attached "Work Session Presentation Report."

Note: Statewide adjustments and six-year capital construction expenditures are not included in these recommendations. Any needed adjustments will be made in end of session bills.

**Accept** LFO Recommendation:

**MOTION: I move the LFO recommendation to HB 5028. (VOTE)**

**OR**

**Change** LFO Recommendation:

**MOTION: I move the LFO recommendation to HB 5028, with modifications. (VOTE)**

### Performance Measures

See attached "Legislatively Proposed 2023-25 Key Performance Measures."

**Accept** LFO Recommendation:

**MOTION: I move the LFO recommendation on Key Performance Measures. (VOTE)**

**OR**

**Change** LFO Recommendation:

**MOTION: I move the LFO recommendation on Key Performance Measures, with modifications. (VOTE)**

### Budget Notes

No Budget Notes Proposed

### Recommended Changes

LFO recommends a budget of \$2,772,715 General Fund, \$38,019 Other Funds, and 7 positions (7.00 FTE), which is reflected in the -1 amendment.

**MOTION: I move adoption of the – 1 amendment to HB 5028. (VOTE)**

**Final Subcommittee Action**

LFO recommends that HB 5028, as amended by the –1 amendment, be moved to the Ways and Means Full Committee.

**MOTION: I move HB 5028, as amended, to the Full Committee with a do pass recommendation. (VOTE)**

**Carriers**

Full Committee: \_\_\_\_\_

House Floor: \_\_\_\_\_

Senate Floor: \_\_\_\_\_

	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	Total Funds	Positions	Full-Time Equivalent (FTE)
<b>2021-23 Agy. Leg. Adopted</b>	<b>2,590,340</b>	-	<b>36,486</b>	-	-	-	<b>2,626,826</b>	<b>7</b>	<b>7.00</b>
2021-23 Ebds, SS & Admin Act	96,304	-	-	-	-	-	96,304	-	-
Ways & Means Actions	-	-	-	-	-	-	-	-	-
<b>2021-23 Leg Approved Budget</b>	<b>2,686,644</b>	-	<b>36,486</b>	-	-	-	<b>2,723,130</b>	<b>7</b>	<b>7.00</b>
<b>2021-23 Leg Approved Budget (Base)</b>	<b>2,686,644</b>	-	<b>36,486</b>	-	-	-	<b>2,723,130</b>	<b>7</b>	<b>7.00</b>
Summary of Base Adjustments	58,011	-	-	-	-	-	58,011	-	-
<b>2023-25 Base Budget</b>	<b>2,744,655</b>	-	<b>36,486</b>	-	-	-	<b>2,781,141</b>	<b>7</b>	<b>7.00</b>
010: Non-PICS Pers Svc/Vacancy Factor	5,459	-	-	-	-	-	5,459	-	-
020: Phase In / Out Pgm & One-time Cost	(50,000)	-	-	-	-	-	(50,000)	-	-
030: Inflation & Price List Adjustments	6,588	-	1,533	-	-	-	8,121	-	-
<b>2023-25 Current Service Level</b>	<b>2,706,702</b>	-	<b>38,019</b>	-	-	-	<b>2,744,721</b>	<b>7</b>	<b>7.00</b>
<b>Adjusted 2023-25 Current Service Level</b>	<b>2,706,702</b>	-	<b>38,019</b>	-	-	-	<b>2,744,721</b>	<b>7</b>	<b>7.00</b>
<b>Total LFO Recommended Packages</b>	<b>66,013</b>	-	-	-	-	-	<b>66,013</b>	-	-
<b>2023-25 Legislative Actions</b>	<b>2,772,715</b>	-	<b>38,019</b>	-	-	-	<b>2,810,734</b>	<b>7</b>	<b>7.00</b>
Net change from 2021-23 Leg Approved Budget	86,071	-	1,533	-	-	-	87,604	-	-
Percent change from 2021-23 Leg Approved Budget	3.2%	0.0%	4.2%	0.0%	0.0%	0.0%	3.2%	0.0%	0.0%
Net change from 2023-25 Adj Current Service Level	66,013	-	-	-	-	-	66,013	-	-
Percent change from 2023-25 Adj Current Service Level	2.4%	0.0%	0.0%	0.0%	0.0%	0.0%	2.4%	0.0%	0.0%

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Ways & Means Actions	-	-	-	-	-	-	-	-	-
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Summary of Base Adjustments	58,011	-	-	-	-	-	58,011	-	-
<b>2023-25 Base Budget</b>	<b>2,744,655</b>	-	<b>36,486</b>	-	-	-	<b>2,781,141</b>	<b>7</b>	<b>7.00</b>
010: Non-PICS Pers Svc/Vacancy Factor	5,459	-	-	-	-	-	5,459	-	-
020: Phase In / Out Pgm & One-time Cost	(50,000)	-	-	-	-	-	(50,000)	-	-
030: Inflation & Price List Adjustments	6,588	-	1,533	-	-	-	8,121	-	-
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<b>Total LFO Recommended Packages</b>	<b>66,013</b>	-	-	-	-	-	<b>66,013</b>	-	-
<b>2023-25 Legislative Actions</b>	<b>2,772,715</b>	-	<b>38,019</b>	-	-	-	<b>2,810,734</b>	<b>7</b>	<b>7.00</b>
Net change from 2021-23 Leg Approved Budget	86,071	-	1,533	-	-	-	87,604	-	-
Percent change from 2021-23 Leg Approved Budget	3.2%	0.0%	4.2%	0.0%	0.0%	0.0%	3.2%	0.0%	0.0%
Net change from 2023-25 Adj Current Service Level	66,013	-	-	-	-	-	66,013	-	-
Percent change from 2023-25 Adj Current Service Level	2.4%	0.0%	0.0%	0.0%	0.0%	0.0%	2.4%	0.0%	0.0%

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**Package 101 Legal Staff Reclass**

Package Description Package 101 adds \$47,191 General Fund for the costs of the reclassification of the two existing staff attorney positions. These positions are reclassified from Compliance Specialists 3 to Legal Staff to better reflect position requirements and responsibilities. They are also more in line with other staff attorney positions in other agencies. The current employees are working out-of-class as this reclassification has been approved by the Department of Administration (DAS). Given the size of this agency, it would be very difficult to internally finance these two positions.

LFO Recommendation Approve the package.

LFO Recommended	47,191	-	-	-	-	-	47,191	-	-
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**Package 801 LFO Analyst Adjustments**

Package Description Package 801 provides \$18,822 General Fund to fully fund one of the three Board member positions. During the budget process, the funding level for this position was inadvertently calculated at one salary range step lower that it should. This package corrects this oversight and fully funds the position.

LFO Recommendation Approve the package.

LFO Recommended	18,822	-	-	-	-	-	18,822	-	-
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# Legislatively Proposed 2023 - 2025 Key Performance Measures

Published: 3/27/2023 2:52:10 PM

Agency: Land Use Board of Appeals

**Mission Statement:**

To provide an accessible forum for resolving land use disputes quickly and efficiently and make LUBA decisions available as a decision making resource to state and local legislators, land use decision makers, property owners, and residents of Oregon.

Legislatively Proposed KPMs	Metrics	Agency Request	Last Reported Result	Target 2024	Target 2025
1. TIMELY RESOLVE APPEALS - Percentage of appeals of land use decisions that are resolved within statutory deadlines or, if all parties agree, with no more than a 7 day extension of the statutory deadline.		Approved	53%	90%	90%
2. TIMELY SETTLE RECORD - Percentage of record objections that are resolved within 60 days after the record objection is received by LUBA.		Approved	94%	95%	95%
3. RESOLVE ALL ISSUES - Percentage of decisions where all issues are resolved when reversing or remanding a land use decision.		Approved	100%	100%	100%
4. SUSTAINED ON APPEAL - Percentage of final opinions that are sustained on appeal.		Approved	80%	90%	90%
5. CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall, timeliness, accuracy, helpfulness, expertise, availability of information.	1) Overall	Approved	57%	95%	95%
	2) Accuracy		77%	95%	95%
	3) Availability of Information		53%	95%	95%
	4) Expertise		49%	95%	95%
	5) Helpfulness		57%	95%	95%
	6) Timeliness		60%	95%	95%

**LFO Recommendation:**

LFO recommends the following for the Land Use Board of Appeals' KPMs.

- KPM #1 -- Maintain the 90% target even though the agency has been unable to performance near the target for at least three years. Factors such as Board member turnover since 2018, staff turnover, and growing complexity of the cases have all contributed to the agency's performance. In 2018, the performance was 89% for this KPM.
- KPM #2 --Maintain the 95% target. Performance for the most recent reported year was 94%. For 2020 and 2021, performance had fallen, but in the last six months of 2020 resolved 100% of record objections.
- KPM #3 -- Maintain the 100% target which the agency has met every year since 2003.
- KPM #4 -- Maintain 90% target. Performance on this KPM varies from one year to the next likely based on the individual cases. Since 2003, the agency has had only one year where the percentage of final opinions that have been sustained on appeal fell under 80%.
- KPM #5 -- Maintain the current 95% target on all six categories. The agency generally performed well in all categories until the pandemic and staffing turnover in recent years. The agency changed how data was collected for this KPM in 2021 so no data is available for that year. Performance was significantly down for all categories in 2022.

**SubCommittee Action:**