

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:** SB 234 Amend ORS 197.850 to allow service of the appeal petition on LUBA and the other parties by first class mail.

**Submitted by:** Real Estate and Land Use Section

**Legislative Contact:** Susan Grabe  
**Phone :** (503) 431-6380  
**E-mail:** sgrabe@osbar.org

**1. Does this amend current law or program? Yes.**

Amends 197.850, the process for appealing LUBA decisions to Court of Appeals.

**2. PROBLEM PRESENTED (including level of severity):**

The process under ORS 197.850 for filing an appeal from LUBA to the Court of Appeals requires the appellant to serve all parties by registered or certified mail. The Supreme Court in Wal-Mart v. City of Central Point found this requirement to be jurisdictional and dismissed the appeal because Wal-Mart served the other parties by first-class mail. The Executive Committee believes the “registered or certified” requirement for serving other parties is unnecessary. It is also unlike appeals from other tribunals (e.g. tax court, circuit courts) which only require service by first class mail.

**3. SOLUTION:**

Amend ORS 197.850 to allow service of the appeal petition on LUBA and the other parties by first class mail. Filing of the appeal with the Court of Appeals would still require certified or registered mail.

**4. PUBLIC POLICY IMPLICATION of this proposed legislative change:**

Little or none.

**5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?**

No. As the Supreme Court concluded, the statute is clear on its face.

**6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?**

The concept would also be appropriate for the section on Civil Procedure, but it is even more relevant to the land use bar represented by RELU.

- 7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

This change will affect persons who practice before LUBA. The land use bar and pro se practitioners are likely to support it. We do not foresee any opposition.

- 8. Has this been introduced in a prior session?** No.