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SUBSTITUTE HOUSE BILL 1781

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State of Washington

66th Legislature

2019 Regular Session

**By** House Local Government (originally sponsored by Representatives Pollet, Fitzgibbon, Hansen, Doglio, Dolan, and Riccelli)

1       AN ACT Relating to amending the land use petition act; amending  
2       RCW 36.70C.010, 36.70C.020, and 36.70C.040; and adding a new section  
3       to chapter 36.70C RCW.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 36.70C.010 and 1995 c 347 s 702 are each amended to  
6       read as follows:

7       The purpose of this chapter is to reform the process for judicial  
8       review of land use decisions made by local jurisdictions, by  
9       establishing uniform, expedited appeal procedures and uniform  
10      criteria for reviewing such decisions, in order to provide  
11      consistent, predictable, and timely judicial review. Recognizing that  
12      appeals of land use decisions may be highly technical, involve  
13      parties that may have little or no experience in land use appeals,  
14      and occur on short timelines, the requirements of this chapter will  
15      be liberally interpreted to promote justice and facilitate the  
16      decisions of cases on the merits.

17      **Sec. 2.** RCW 36.70C.020 and 2010 c 59 s 1 are each amended to  
18      read as follows:

19      Unless the context clearly requires otherwise, the definitions in  
20      this section apply throughout this chapter.

1 (1) "Energy overlay zone" means a formal plan enacted by the  
2 county legislative authority that establishes suitable areas for  
3 siting renewable resource projects based on currently available  
4 resources and existing infrastructure with sensitivity to adverse  
5 environmental impact.

6 (2) "Land use decision" means a final determination by a local  
7 jurisdiction's body or officer with the highest level of authority to  
8 make the determination, including those with authority to hear  
9 appeals, on:

10 (a) An application for a project permit or other governmental  
11 approval required by law before real property may be improved,  
12 developed, modified, sold, transferred, or used, but excluding  
13 applications for permits or approvals to use, vacate, or transfer  
14 streets, parks, and similar types of public property; excluding  
15 applications for legislative approvals such as area-wide rezones and  
16 annexations; and excluding applications for business licenses;

17 (b) An interpretative or declaratory decision regarding the  
18 application to a specific property of zoning or other ordinances or  
19 rules regulating the improvement, development, modification,  
20 maintenance, or use of real property if such decision is in writing  
21 and states that it is a final decision appealable under this chapter;  
22 and

23 (c) The enforcement by a local jurisdiction of ordinances  
24 regulating the improvement, development, modification, maintenance,  
25 or use of real property. However, when a local jurisdiction is  
26 required by law to enforce the ordinances in a court of limited  
27 jurisdiction, a petition may not be brought under this chapter.

28 Where a local jurisdiction allows or requires a motion for  
29 reconsideration to the highest level of authority making the  
30 determination, and a timely motion for reconsideration has been  
31 filed, the land use decision occurs on the date a decision is entered  
32 on the motion for reconsideration, and not the date of the original  
33 decision for which the motion for reconsideration was filed.

34 A failure by the petitioner to exhaust an administrative appeal  
35 remedy does not preclude judicial review of the decision, if the  
36 petitioner establishes that good cause existed for not exhausting the  
37 administrative appeal remedy, including lack of notice or inadequate  
38 notice.

39 (3) "Local jurisdiction" means a county, city, or incorporated  
40 town.

1 (4) "Person" means an individual, partnership, corporation,  
2 association, public or private organization, or governmental entity  
3 or agency.

4 (5) "Renewable resources" has the same meaning provided in RCW  
5 19.280.020.

6 **Sec. 3.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to  
7 read as follows:

8 (1) Proceedings for review under this chapter shall be commenced  
9 by filing a land use petition in superior court.

10 (2) A land use petition is barred, and the court may not grant  
11 review, unless the petition is timely filed with the court and timely  
12 served on the following persons who shall be parties to the review of  
13 the land use petition:

14 (a) The local jurisdiction, which for purposes of the petition  
15 shall be the jurisdiction's corporate entity and not an individual  
16 decision maker or department;

17 (b) Each of the following persons if the person is not the  
18 petitioner:

19 (i) Each person identified by name and address in the local  
20 jurisdiction's written decision as an applicant for the permit or  
21 approval at issue; and

22 (ii) Each person identified by name and address in the local  
23 jurisdiction's written decision as an owner of the property at issue;  
24 and

25 ~~(c) ((If no person is identified in a written decision as~~  
26 ~~provided in (b) of this subsection, each person identified by name~~  
27 ~~and address as a taxpayer for the property at issue in the records of~~  
28 ~~the county assessor, based upon the description of the property in~~  
29 ~~the application; and~~

30 ~~(d))~~ Each person named in the written decision who filed an  
31 appeal to a local jurisdiction quasi-judicial decision maker  
32 regarding the land use decision at issue, unless the person has  
33 abandoned the appeal or the person's claims were dismissed before the  
34 quasi-judicial decision was rendered. Persons who later intervened or  
35 joined in the appeal are not required to be made parties under this  
36 subsection.

37 (3) The petition is timely if it is filed and served on all  
38 parties listed in subsection (2) of this section within ~~((twenty-~~  
39 ~~one))~~ thirty days of the issuance of the land use decision.

1       (a) The thirty-day limitation period will not begin unless the  
2 decision is in writing; notice has been provided pursuant to  
3 subsection (4) of this section; and includes the name and address of  
4 the applicant, the owner of the property at issue, each party of  
5 record, and any persons who filed a quasi-judicial appeal and did not  
6 abandon that quasi-judicial appeal. If the decision is not in writing  
7 or fails to include that information, the decision may be reissued in  
8 writing with the required information and notice to commence the  
9 limitation period. If an agency has adopted rules or an ordinance  
10 governing notice to neighboring property owners, nearby residents, or  
11 the public, including by posting of signs or mailing of notices, the  
12 limitations period does not begin until such notice of the decision  
13 has been posted or does not begin until such notice of the decision  
14 has been posted or otherwise made available for purposes of  
15 establishing the limitations period for persons who did not receive  
16 such notice of the final decision as a party of record.

17       (4) For the purposes of this section, the date on which a land  
18 use decision is issued is:

19       (a) Three days after a written decision is mailed by the local  
20 jurisdiction ~~((or, if not mailed, the date on which the local~~  
21 ~~jurisdiction provides notice that a written decision is publicly~~  
22 ~~available))~~ to the applicant and all parties of record, or four days  
23 if the three days includes a holiday during which mail is not  
24 delivered. A "party of record" includes anyone who submitted written  
25 comments with their name and address before the decision was final,  
26 provided oral comments at a hearing and specified their name and  
27 address, or anyone who requested to be a party of record before the  
28 decision was final;

29       (b) ~~((If the land use decision is made by ordinance or resolution~~  
30 ~~by a legislative body sitting in a quasi-judicial capacity, the date~~  
31 ~~the body passes the ordinance or resolution; or~~

32       ~~(c) If neither (a) nor (b) of this subsection applies, the date~~  
33 ~~the decision is entered into the public record))~~ If there are no  
34 parties of record, then three days after the latter of the date the  
35 decision is mailed by the local jurisdiction, posted in a conspicuous  
36 manner on the jurisdiction's web site, or the decision and its  
37 availability on the jurisdiction's web site is posted on or near the  
38 property in conformance with the jurisdiction's relevant rules and  
39 ordinances.

1 (5) Service on the local jurisdiction must be by delivery of a  
2 copy of the petition to the persons identified by or pursuant to RCW  
3 4.28.080 to receive service of process. Service on other parties must  
4 be in accordance with the superior court civil rules or by first-  
5 class mail to:

6 (a) The address stated in the written decision of the local  
7 jurisdiction for each person made a party under subsection (2)(b) of  
8 this section; and

9 (b) ~~((The address stated in the records of the county assessor~~  
10 ~~for each person made a party under subsection (2)(c) of this section;~~  
11 ~~and~~

12 ~~(e))~~ The address stated in the appeal to the quasi-judicial  
13 decision maker for each person made a party under subsection (2)  
14 ~~((d))~~ (c) of this section.

15 (6) Service by mail is effective on the date of mailing and proof  
16 of service shall be by affidavit or declaration under penalty of  
17 perjury.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70C  
19 RCW to read as follows:

20 A local government may modify, suspend, cancel, or revoke a land  
21 use decision without first appealing that decision administratively  
22 or pursuant to this chapter, regardless of whether the limitation  
23 period for any appeal has expired. This section neither confers  
24 authority to modify, suspend, cancel, or revoke a land use decision,  
25 nor waives procedural requirements for doing so.

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