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HOUSE BILL 1781

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State of Washington

66th Legislature

2019 Regular Session

By Representative Pollet

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. Cases and issues will not be  
17 determined on the basis of compliance or noncompliance with this  
18 chapter.

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

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

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

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

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

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

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

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

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

1 (3) "Local jurisdiction" means a county, city, or incorporated  
2 town.

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

6 (5) "Renewable resources" has the same meaning provided in RCW  
7 19.280.020.

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

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

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

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

19 (b) Each of the following persons if the person is not the  
20 petitioner:

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

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

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

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

1       (3) Subject to RCW 36.70C.010, the petition is timely if it is  
2 filed and served on all parties listed in subsection (2) of this  
3 section within (~~twenty-one~~) thirty days of the issuance of the land  
4 use decision: PROVIDED, That this thirty-day limitation period will  
5 not begin unless the decision is in writing and includes the name and  
6 address of the applicant, the owner of the property at issue, each  
7 party of record, and any persons who filed a quasi-judicial appeal  
8 and did not abandon that quasi-judicial appeal. If the decision is  
9 not in writing or fails to include that information, timeliness of  
10 the petition shall be determined by use of the judicial laches  
11 doctrine.

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

14       (~~(a)~~) (i) Three days after a written decision is mailed by the  
15 local jurisdiction to the applicant and all parties of record or, if  
16 not mailed, the date on which the local jurisdiction provides notice  
17 to the applicant and all parties of record of the substance of the  
18 decision and that (~~a~~) the full written decision is publicly  
19 available. A "party of record" includes anyone who submitted written  
20 comments with their name and address before the decision was final,  
21 provided oral comments at a hearing and specified their name and  
22 address, or anyone who requested to be a party of record before the  
23 decision was final;

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

27       ~~(c) If neither (a) nor (b) of this subsection applies, the date~~  
28 ~~the decision is entered into the public record))~~ (ii) If there are no  
29 parties of record, three days after the latter of the date the  
30 decision is mailed by the local jurisdiction, posted in a conspicuous  
31 manner on the jurisdiction's web site, and mailed to all property  
32 owners within urban growth areas five hundred feet of the subject  
33 property and to all property owners outside of urban growth areas  
34 within one-fourth mile of the subject property;

35       (b) The local jurisdiction shall promptly provide the notice  
36 specified in this section upon finalization of the land use decision  
37 and shall also provide notice concurrently to any neighborhood  
38 organization formally recognized by the local jurisdiction and any  
39 community council organized pursuant to chapter 35.14 RCW, whose  
40 territory includes the property at issue.

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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