

SB 5107 - H COMM AMD

By Committee on Technology, Energy & Communications

NOT ADOPTED 04/07/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 36.70C.020 and 1995 c 347 s 703 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

23 (b) An interpretative or declaratory decision regarding the
24 application to a specific property of zoning or other ordinances or
25 rules regulating the improvement, development, modification,
26 maintenance, or use of real property; and

27 (c) The enforcement by a local jurisdiction of ordinances
28 regulating the improvement, development, modification, maintenance, or
29 use of real property. However, when a local jurisdiction is required

1 by law to enforce the ordinances in a court of limited jurisdiction, a
2 petition may not be brought under this chapter.

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

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

8 (5) "Renewable resources" has the same meaning provided in RCW
9 19.280.020.

10 **Sec. 2.** RCW 36.70C.130 and 1995 c 347 s 714 are each amended to
11 read as follows:

12 (1) The superior court, acting without a jury, shall review the
13 record and such supplemental evidence as is permitted under RCW
14 36.70C.120. The court may grant relief only if the party seeking
15 relief has carried the burden of establishing that one of the standards
16 set forth in (a) through (f) of this subsection has been met. The
17 standards are:

18 (a) The body or officer that made the land use decision engaged in
19 unlawful procedure or failed to follow a prescribed process, unless the
20 error was harmless;

21 (b) The land use decision is an erroneous interpretation of the
22 law, after allowing for such deference as is due the construction of a
23 law by a local jurisdiction with expertise;

24 (c) The land use decision is not supported by evidence that is
25 substantial when viewed in light of the whole record before the court;

26 (d) The land use decision is a clearly erroneous application of the
27 law to the facts;

28 (e) The land use decision is outside the authority or jurisdiction
29 of the body or officer making the decision; or

30 (f) The land use decision violates the constitutional rights of the
31 party seeking relief.

32 (2) In order to grant relief under this chapter, it is not
33 necessary for the court to find that the local jurisdiction engaged in
34 arbitrary and capricious conduct. A grant of relief by itself may not
35 be deemed to establish liability for monetary damages or compensation.

36 (3) Land use decisions establishing renewable resource projects
37 within a county energy overlay zone are presumed to be reasonable to

1 the extent that they are in compliance with the requirements and
2 standards established by ordinance for that zone provided that the
3 ordinance for wind power generation projects is consistent with the
4 department of fish and wildlife's wind power guidelines."

5 Correct the title.

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