
SENATE BILL 5107

State of Washington

61st Legislature

2009 Regular Session

By Senator Honeyford

Read first time 01/14/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to energy overlay zones; and amending RCW
2 36.70C.020 and 36.70C.130.

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

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

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

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

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

17 (a) An application for a project permit or other governmental
18 approval required by law before real property may be improved,
19 developed, modified, sold, transferred, or used, but excluding

1 applications for permits or approvals to use, vacate, or transfer
2 streets, parks, and similar types of public property; excluding
3 applications for legislative approvals such as area-wide rezones and
4 annexations; and excluding applications for business licenses;

5 (b) An interpretative or declaratory decision regarding the
6 application to a specific property of zoning or other ordinances or
7 rules regulating the improvement, development, modification,
8 maintenance, or use of real property; and

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

14 ((+2)) (3) "Local jurisdiction" means a county, city, or
15 incorporated town.

16 ((+3)) (4) "Person" means an individual, partnership, corporation,
17 association, public or private organization, or governmental entity or
18 agency.

19 (5) "Renewable resources" has the same meaning provided in RCW
20 19.280.020.

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

23 (1) The superior court, acting without a jury, shall review the
24 record and such supplemental evidence as is permitted under RCW
25 36.70C.120. The court may grant relief only if the party seeking
26 relief has carried the burden of establishing that one of the standards
27 set forth in (a) through (f) of this subsection has been met. The
28 standards are:

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

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

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

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

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

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

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

11 (3) Land use decisions establishing renewable resource projects
12 within a county energy overlay zone are presumed to be reasonable to
13 the extent that they are in compliance with the requirements and
14 standards established by ordinance for that zone.

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