

SB 5107 - H AMD 487

By Representative Morris

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 that 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 made by a local jurisdiction concerning
37 renewable resource projects within a county energy overlay zone are

1 presumed to be reasonable if they are in compliance with the
2 requirements and standards established by local ordinance for that
3 zone. However, for land use decisions concerning wind power generation
4 projects, either:

5 (a) The local ordinance for that zone is consistent with the
6 department of fish and wildlife's wind power guidelines; or

7 (b) The local jurisdiction prepared an environmental impact
8 statement under chapter 43.21C RCW on the energy overlay zone; and

9 (i) The local ordinance for that zone requires project mitigation,
10 as addressed in the environmental impact statement and consistent with
11 local, state, and federal law;

12 (ii) The local ordinance for that zone requires site specific fish
13 and wildlife and cultural resources analysis; and

14 (iii) The local jurisdiction has adopted an ordinance that
15 addresses critical areas under chapter 36.70A RCW.

16 (4) If a local jurisdiction has taken action and adopted local
17 ordinances consistent with subsection (3)(b) of this section, then wind
18 power generation projects permitted consistently with the energy
19 overlay zone are deemed to have adequately addressed their
20 environmental impacts as required under chapter 43.21C RCW."

21 Correct the title.

EFFECT: Provides an additional process for land use decisions made by a local jurisdiction concerning wind energy power generation projects within a county energy overlay zone to be presumed reasonable under the land use petition act. Specifies that a wind power generation project is considered reasonable if a local jurisdiction prepares an environmental impact statement on the energy overlay zone and certain local ordinances have been adopted that mitigate environmental impacts, to analyze site specific fish and wildlife and cultural issues, and address critical areas as required by the growth management act.

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