

HOUSE BILL REPORT

SB 5107

As Passed House - Amended:

April 7, 2009

Title: An act relating to energy overlay zones.

Brief Description: Addressing renewable resource projects within energy overlay zones.

Sponsors: Senator Honeyford.

Brief History:

Committee Activity:

Technology, Energy & Communications: 3/4/09, 3/23/09 [DPA].

Floor Activity

Passed House - Amended: 4/7/09, 98-0.

Brief Summary of Bill (As Amended by House)

- Provides that land use decisions establishing renewable resource projects within a county energy overlay zone are presumed to be reasonable to the extent that they are in compliance with requirements and standards established by ordinance for that zone.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: Do pass as amended. Signed by 15 members: Representatives McCoy, Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Eddy, Finn, Hasegawa, Herrera, Hudgins, Jacks, McCune, Morris, Takko and Van De Wege.

Staff: Scott Richards (786-7156)

Background:

The Land Use Petition Act.

The Land Use Petition Act (LUPA) was enacted in 1995 to provide uniform, expedited judicial review of land use decisions made by counties, cities, and unincorporated towns.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Land use decisions subject to judicial review under the LUPA are limited to: (1) applications for project permits or approvals that are required before real property can be improved, developed, modified, sold, transferred, or used; (2) interpretations regarding the application of specific requirements to specific property; and (3) enforcement by local jurisdictions of ordinances relating to particular real property.

Land use decisions that do not fall under the LUPA are approvals to use, vacate, or transfer streets, parks and other similar types of public property, approvals for area-wide rezones and annexations, and applications for business licenses. In addition, the LUPA does not apply to land use decisions that are subject to review by legislatively-created quasi-judicial bodies, such as the Shorelines Hearings Board, the Environmental and Land Use Hearings Board, and the Growth Management Hearings Board.

A person seeking review of a land use decision must file a petition in superior court and serve all parties within 21 days of the issuance of the land use decision. The parties must follow certain procedures within specified timeframes that are meant to expedite the judicial process.

Generally, the court sets a hearing within a few months of the filing of the petition. The court may affirm or reverse the land use decision or remand it for modification or further proceedings.

Relief may be granted based on the following grounds: (1) the decision maker followed an unlawful procedure or failed to follow a required procedure; (2) the land use decision is erroneous in its interpretation or application of the law; (3) the land use decision is not supported by evidence; (4) the land use decision is outside the authority or jurisdiction of the decision maker; or (5) the land use decision violates the petitioner's constitutional rights.

Summary of Amended Bill:

Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone.

Land use decisions relating to wind power generation projects decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable for wind power generation projects if either: (1) the local ordinance for that zone is consistent with the Department of Fish and Wildlife's wind power guidelines; or (2) the local jurisdiction prepared an environmental impact statement under the State Environmental Policy Act on the energy overlay zone and adopted certain local ordinances. These ordinances must mitigate environmental impacts, analyze site specific fish, wildlife and cultural issues, and address critical areas as required under the Growth Management Act. If local jurisdictions that have taken actions and adopted ordinances consistent with these requirements, then wind energy generation projects permitted consistently with the energy overlay zone are deemed to have adequately addressed their environmental impacts under the State Energy Policy Act.

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

"Renewable resources" means electricity generation facilities fueled by: (1) water; (2) wind; (3) solar energy; (4) geothermal energy; (5) landfill gas; (6) biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (7) byproducts of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (8) ocean thermal, wave, or tidal power; or (9) gas from sewage treatment facilities.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Klickitat County has developed an energy overlay zone that was controversial when it was first introduced, but the county commissioners worked to get almost unanimous support. Energy overlay zones help to provide an expedited process to get final approval on the development of wind energy projects. The energy overlay zone process offers a number of environmental protections and gives certainty to the wind energy development process.

(Opposed) None.

Persons Testifying: Senator Honeyford, prime sponsor; Dan Wood, Washington Farm Bureau; and David McClure, Klickitat County.

Persons Signed In To Testify But Not Testifying: None.