

# SENATE BILL REPORT

## HB 2740

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As Reported by Senate Committee On:  
Government Operations & Elections, February 25, 2010

**Title:** An act relating to the definition of land use decision in the land use petition act.

**Brief Description:** Regarding the definition of land use decision in the land use petition act.

**Sponsors:** Representatives Seaquist and Angel.

**Brief History:** Passed House: 1/28/10, 97-0.

**Committee Activity:** Government Operations & Elections: 2/25/10 [DP].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; McDermott, Pridemore and Swecker.

**Staff:** Karen Epps (786-7424)

**Background:** 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.

Land use decisions subject to judicial review under the LUPA are limited to:

- applications for project permits or approvals that are required before real property can be improved, developed, modified, sold, transferred, or used;
- interpretations regarding the application of specific requirements to specific property; and
- 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.

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*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.*

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.

Land use decision is defined to mean a final determination by a local jurisdiction's governing body or officer with the highest level of authority to make the decision, including those with the authority to hear appeals at the local, non-judicial level.

Recent court decisions are in conflict regarding when the time limit for the filing of judicial appeals begins to run in cases involving motions for the reconsideration of local administrative decisions.

In 2008 Division I of the Washington State Court of Appeals ruled that where the law allows a local, non-judicial motion for reconsideration of an administrative decision, the time limit for the filing of a judicial appeal runs from the date of the final order on the motion for reconsideration rather than from the date of the original administrative decision. *Skinner v. Civil Service Commission of the City of Medina*, 146 Wn. App. 171, 188 P 3d (2008). This ruling has been appealed to the Washington State Supreme Court, which has agreed to review the case.

In 2009 Division II of the Washington State Court of Appeals ruled that under LUPA the 21-day limit for filing a judicial appeal begins to run on the date the order is entered on the original, administrative land use decision, regardless of whether a party has filed a local, non-judicial motion for reconsideration. *Mellish v. Frog Mountain Pet Care, et al.* --- P.3d ----, 2010 WL 374507, Wash.App. Div. 2, February 03, 2010 (NO. 37583-4-II).

**Summary of Bill:** A land use decision occurs on the date a decision is entered on the motion for reconsideration and not the date of the original decision.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill came out as a result of a decision from the Court of Appeals that kind of upset the apple cart in terms of how land use attorneys had been doing business. This bill will fix the problem that the Court of Appeals saw when they made their decision. This bill has to do with access to justice. This bill will allow a local jurisdiction to correct an error before someone is forced to go to court. This is a good first step in addressing some of the issues the Court of Appeals and the Supreme Court have found with LUPA.

**Persons Testifying:** PRO: Jill Guernsey, David St. Pierre, Pierce County Prosecutor's Office; Arthur West, citizen.