FINAL BILL REPORT
SB 5107

C 419 L 09
Synopsis as Enacted

Brief Description: Concerning energy overlay zones.

Sponsors: Senator Honeyford.

Senate Committee on Environment, Water & Energy
House Committee on Technology, Energy & Communications

Background: <u>Land Use Petition Act.</u> The Land Use Petition Act (LUPA) provides for expedited judicial review of certain local government land use decisions. Decisions reviewable under LUPA include applications for permits required before property can be developed, sold, or used, interpretations regarding application of land use regulations to specific property, and enforcement of land use ordinances.

Under LUPA, a court may grant relief if the decision maker followed an unlawful procedure or failed to follow a required procedure. In addition, a court may grant relief if a decision erroneously interpreted the law, is not supported by substantial evidence, clearly erred in applying the law to the facts, was outside the decision maker's authority, or violated the petitioner's constitutional rights.

<u>State Environmental Policy Act.</u> The State Environmental Policy Act (SEPA) specifies a process to identify environmental impacts that may result from governmental decisions, including local government land use decisions. If a proposal is likely to have a significant adverse environmental impact, a local government may require an environmental impact statement (EIS) evaluating alternatives and measures to eliminate or reduce environmental impacts.

<u>Growth Management Act.</u> The Growth Management Act (GMA) specifies a land use planning framework for local governments. Under the GMA, counties and cities must designate and protect "critical areas," including fish and wildlife habitat conservation areas.

<u>Energy Project Siting.</u> Some local governments have adopted zoning regulations concerning siting of energy generating projects. Klickitat County has adopted energy overlay zone regulations that provide for siting of wind and solar energy projects based on availability of energy resources, existing infrastructure, and locations where projects can be sensitively sited and mitigated.

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.

It is suggested that uncertainty regarding LUPA judicial review standards has unduly delayed resolution of appeals of Klickitat County land use decisions authorizing siting of wind energy projects.

Summary: Judicial standards for granting relief under LUPA are revised to provide that county land use decisions concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they comply with requirements established by county ordinance concerning the zone. "Energy overlay zone" (zone) is defined as a plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on available resources and existing infrastructure with sensitivity to adverse environmental impact. "Renewable resources" means electricity generating facilities fueled by a variety of renewable energy sources.

However, for county land use decisions concerning wind power projects, either the county zone ordinance must be consistent with Department of Fish & Wildlife wind power guidelines, or the county must have prepared an EIS concerning the zone. In the latter case, (1) the county zone ordinance must require project mitigation, addressed in the EIS and consistent with applicable law, and site specific fish and wildlife and cultural resources analysis, and (2) the county must have adopted an ordinance addressing critical areas under GMA. If a county has complied with these requirements, wind power projects permitted consistently with the zone are deemed to have adequately addressed environmental impacts under SEPA.

Votes on Final Passage:

Senate	46	0	
House	98	0	(House amended)
Senate	48	0	(Senate concurred)

Effective: July 26, 2009