

CERTIFICATION OF ENROLLMENT

SENATE BILL 5107

61st Legislature
2009 Regular Session

Passed by the Senate April 22, 2009
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 7, 2009
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5107** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5107

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

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 that 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 made by a local jurisdiction concerning
12 renewable resource projects within a county energy overlay zone are
13 presumed to be reasonable if they are in compliance with the
14 requirements and standards established by local ordinance for that
15 zone. However, for land use decisions concerning wind power generation
16 projects, either:

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

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

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

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

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

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

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