

# SENATE BILL REPORT

## SB 6534

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As Reported by Senate Committee On:  
Law & Justice, February 6, 2014

**Title:** An act relating to prevailing party fees and costs for appeals of land use decisions.

**Brief Description:** Removing certain conditions for awarding prevailing party fees and costs for appeals of land use decisions.

**Sponsors:** Senators Pedersen, Roach and Kline.

**Brief History:**

**Committee Activity:** Law & Justice: 2/06/14 [DPS, w/oRec].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6534 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Vice Chair; Kline, Ranking Member; Darneille, Pedersen and Roach.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Chair; Pearson.

**Staff:** Aldo Melchiori (786-7439)

**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 the following:

- 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

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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.

The LUPA does not contain any requirement that persons aggrieved or adversely affected by a land use decision, other than permit applicants or owners of the property at issue, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision, receive notice that such a decision is pending or has been issued.

A petition for review under the LUPA is commenced with the timely filing of a petition in superior court. A petition is timely filed only if it is filed and served on specified parties within 21 days of the date on which a land use decision is issued.

The Court of Appeals or Supreme Court may award attorneys' fees to a substantially prevailing party if the party substantially prevailed in all prior judicial proceedings and before the local government. A county or city is considered the prevailing party if its decision is upheld at superior court and on appeal.

**Summary of Bill (Recommended Substitute):** The statute specifically providing that the Court of Appeals or Supreme Court may award attorneys' fees to a substantially prevailing party only if the party substantially prevailed in all prior judicial proceedings and before the local government, and that a county or city is considered the prevailing party if its decision is upheld at superior court and on appeal is repealed. The repeal applies retroactively to any litigation that is pending as of the effective date.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute):** The statute is repealed instead of amended. The repeal applies retroactively to any litigation that is pending as of the effective date.

**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 on Original Bill:** PRO: The general rule is that parties pay their own attorney fees. This law is inequitable. It stacks the deck against landowners who cannot afford to take the risk of incurring additional attorneys' fees if they do not prevail. The risk is one-sided. It has a chilling effect on the ability of people to exercise their rights. Landowners never win in the earlier stages, so they are never able to recover attorneys' fees.

**Persons Testifying:** PRO: Senator Pedersen, prime sponsor; Gerald Steel, Protect the Peninsula's Future; Sue Danver, citizen.