
HOUSE BILL 1781

State of Washington

66th Legislature

2019 Regular Session

By Representatives Pollet, Fitzgibbon, Hansen, Doglio, Dolan, and Riccelli

Read first time 01/30/19. Referred to Committee on Local Government.

1 AN ACT Relating to amending the land use petition act; amending
2 RCW 36.70C.010, 36.70C.020, and 36.70C.040; and adding a new section
3 to chapter 36.70C RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 36.70C.010 and 1995 c 347 s 702 are each amended to
6 read as follows:

7 The purpose of this chapter is to reform the process for judicial
8 review of land use decisions made by local jurisdictions, by
9 establishing uniform, expedited appeal procedures and uniform
10 criteria for reviewing such decisions, in order to provide
11 consistent, predictable, and timely judicial review. Recognizing that
12 appeals of land use decisions may be highly technical, involve
13 parties that may have little or no experience in land use appeals,
14 and occur on short timelines, the requirements of this chapter will
15 be liberally interpreted to promote justice and facilitate the
16 decisions of cases on the merits. Cases and issues will not be
17 determined on the basis of compliance or noncompliance with this
18 chapter.

19 **Sec. 2.** RCW 36.70C.020 and 2010 c 59 s 1 are each amended to
20 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Energy overlay zone" means a formal plan enacted by the
4 county legislative authority that establishes suitable areas for
5 siting renewable resource projects based on currently available
6 resources and existing infrastructure with sensitivity to adverse
7 environmental impact.

8 (2) "Land use decision" means a final determination by a local
9 jurisdiction's body or officer with the highest level of authority to
10 make the determination, including those with authority to hear
11 appeals, on:

12 (a) An application for a project permit or other governmental
13 approval required by law before real property may be improved,
14 developed, modified, sold, transferred, or used, but excluding
15 applications for permits or approvals to use, vacate, or transfer
16 streets, parks, and similar types of public property; excluding
17 applications for legislative approvals such as area-wide rezones and
18 annexations; and excluding applications for business licenses;

19 (b) An interpretative or declaratory decision regarding the
20 application to a specific property of zoning or other ordinances or
21 rules regulating the improvement, development, modification,
22 maintenance, or use of real property if such decision is in writing
23 and states that it is a final decision appealable under this chapter;
24 and

25 (c) The enforcement by a local jurisdiction of ordinances
26 regulating the improvement, development, modification, maintenance,
27 or use of real property. However, when a local jurisdiction is
28 required by law to enforce the ordinances in a court of limited
29 jurisdiction, a petition may not be brought under this chapter.

30 Where a local jurisdiction allows or requires a motion for
31 reconsideration to the highest level of authority making the
32 determination, and a timely motion for reconsideration has been
33 filed, the land use decision occurs on the date a decision is entered
34 on the motion for reconsideration, and not the date of the original
35 decision for which the motion for reconsideration was filed.

36 A failure by the petitioner to exhaust an administrative appeal
37 remedy does not preclude judicial review of the decision, if the
38 petitioner establishes that good cause existed for not exhausting the
39 administrative appeal remedy, including lack of notice or inadequate
40 notice.

1 (3) "Local jurisdiction" means a county, city, or incorporated
2 town.

3 (4) "Person" means an individual, partnership, corporation,
4 association, public or private organization, or governmental entity
5 or agency.

6 (5) "Renewable resources" has the same meaning provided in RCW
7 19.280.020.

8 **Sec. 3.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to
9 read as follows:

10 (1) Proceedings for review under this chapter shall be commenced
11 by filing a land use petition in superior court.

12 (2) A land use petition is barred, and the court may not grant
13 review, unless the petition is timely filed with the court and timely
14 served on the following persons who shall be parties to the review of
15 the land use petition:

16 (a) The local jurisdiction, which for purposes of the petition
17 shall be the jurisdiction's corporate entity and not an individual
18 decision maker or department;

19 (b) Each of the following persons if the person is not the
20 petitioner:

21 (i) Each person identified by name and address in the local
22 jurisdiction's written decision as an applicant for the permit or
23 approval at issue; and

24 (ii) Each person identified by name and address in the local
25 jurisdiction's written decision as an owner of the property at issue;
26 and

27 ~~(c) ((If no person is identified in a written decision as
28 provided in (b) of this subsection, each person identified by name
29 and address as a taxpayer for the property at issue in the records of
30 the county assessor, based upon the description of the property in
31 the application; and~~

32 ~~(d))~~ Each person named in the written decision who filed an
33 appeal to a local jurisdiction quasi-judicial decision maker
34 regarding the land use decision at issue, unless the person has
35 abandoned the appeal or the person's claims were dismissed before the
36 quasi-judicial decision was rendered. Persons who later intervened or
37 joined in the appeal are not required to be made parties under this
38 subsection.

1 (3) Subject to RCW 36.70C.010, the petition is timely if it is
2 filed and served on all parties listed in subsection (2) of this
3 section within (~~twenty-one~~) thirty days of the issuance of the land
4 use decision: PROVIDED, That this thirty-day limitation period will
5 not begin unless the decision is in writing and includes the name and
6 address of the applicant, the owner of the property at issue, each
7 party of record, and any persons who filed a quasi-judicial appeal
8 and did not abandon that quasi-judicial appeal. If the decision is
9 not in writing or fails to include that information, timeliness of
10 the petition shall be determined by use of the judicial laches
11 doctrine.

12 (4) (a) For the purposes of this section, the date on which a land
13 use decision is issued is:

14 (~~(a)~~) (i) Three days after a written decision is mailed by the
15 local jurisdiction to the applicant and all parties of record or, if
16 not mailed, the date on which the local jurisdiction provides notice
17 to the applicant and all parties of record of the substance of the
18 decision and that (~~a~~) the full written decision is publicly
19 available. A "party of record" includes anyone who submitted written
20 comments with their name and address before the decision was final,
21 provided oral comments at a hearing and specified their name and
22 address, or anyone who requested to be a party of record before the
23 decision was final;

24 (~~(b) If the land use decision is made by ordinance or resolution~~
25 ~~by a legislative body sitting in a quasi-judicial capacity, the date~~
26 ~~the body passes the ordinance or resolution; or~~

27 ~~(c) If neither (a) nor (b) of this subsection applies, the date~~
28 ~~the decision is entered into the public record))~~ (ii) If there are no
29 parties of record, three days after the latter of the date the
30 decision is mailed by the local jurisdiction, posted in a conspicuous
31 manner on the jurisdiction's web site, and mailed to all property
32 owners within urban growth areas five hundred feet of the subject
33 property and to all property owners outside of urban growth areas
34 within one-fourth mile of the subject property;

35 (b) The local jurisdiction shall promptly provide the notice
36 specified in this section upon finalization of the land use decision
37 and shall also provide notice concurrently to any neighborhood
38 organization formally recognized by the local jurisdiction and any
39 community council organized pursuant to chapter 35.14 RCW, whose
40 territory includes the property at issue.

1 (5) Service on the local jurisdiction must be by delivery of a
2 copy of the petition to the persons identified by or pursuant to RCW
3 4.28.080 to receive service of process. Service on other parties must
4 be in accordance with the superior court civil rules or by first-
5 class mail to:

6 (a) The address stated in the written decision of the local
7 jurisdiction for each person made a party under subsection (2)(b) of
8 this section; and

9 ~~(b) ((The address stated in the records of the county assessor
10 for each person made a party under subsection (2)(c) of this section;
11 and~~

12 ~~(e))~~) The address stated in the appeal to the quasi-judicial
13 decision maker for each person made a party under subsection (2)
14 ~~((d))~~) (c) of this section.

15 (6) Service by mail is effective on the date of mailing and proof
16 of service shall be by affidavit or declaration under penalty of
17 perjury.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70C
19 RCW to read as follows:

20 A local government may modify, suspend, cancel, or revoke a land
21 use decision without first appealing that decision administratively
22 or pursuant to this chapter, regardless of whether the limitation
23 period for any appeal has expired. This section neither confers
24 authority to modify, suspend, cancel, or revoke a land use decision,
25 nor waives procedural requirements for doing so.

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