SENATE BILL REPORT
SB 5107

As Amended by House, April 7, 2009

Title: An act relating to energy overlay zones.

Brief Description: Addressing renewable resource projects within energy overlay zones.

Sponsors: Senator Honeyford.

Brief History:
 Committee Activity: Environment, Water & Energy: 1/27/09 [DP].
 Passed Senate: 1/30/09, 46-0.
 Passed House: 4/07/09, 98-0.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: Do pass.
 Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Hatfield, Holmquist, Marr, Morton and Sheldon.

Staff: Sam Thompson (786-7413)

Background: The Land Use Petition Act (LUPA) was enacted to provide uniform, expedited judicial review of certain land use decisions made by counties, cities, and unincorporated towns. Decisions subject to judicial review under LUPA are limited to applications for permits or approvals required before property can be improved, developed, modified, sold, transferred, or used; interpretations regarding application of zoning or other land use regulations to specific property; and enforcement of ordinances regulating use of property.

Decisions that do not fall under LUPA include 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, LUPA does not apply to land use decisions 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.

Under LUPA, a person seeking review of a decision must file a petition in Superior Court within 21 days of the issuance of the decision. The parties must follow certain procedures

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within specified time frames meant to expedite the judicial process. Generally, the court sets a hearing within a few months of the filing of the petition, and may affirm or reverse the decision or remand it for modification or further proceedings.

The court may grant relief if the body or officer that made the decision followed an unlawful procedure or failed to follow a required procedure; the decision is an erroneous interpretation of the law; the decision is not supported by substantial evidence; the decision is a clearly erroneous application of the law to the facts; the decision is outside the authority or jurisdiction of the body or officer making the decision; or the decision violates the petitioner's constitutional rights.

Summary of Bill: Judicial standards for granting relief under LUPA are revised to provide that land use decisions establishing renewable resource projects within a county energy overlay zone are presumed to be reasonable to the extent that they are in compliance with requirements and standards established by ordinance for that zone.

"Energy overlay zone" is defined to mean a formal plan enacted by the county legislative authority which establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact. "Renewable resources" means electricity generation facilities fueled by water; wind; solar energy; geothermal energy; landfill gas; biomass energy using animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces treated with chemical preservatives; byproducts of pulping or wood manufacturing processes, including bark, wood chips, sawdust, and lignin; ocean thermal, wave, or tidal power; or gas from sewage treatment facilities.

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 will provide greater certainty regarding the review standard in appeals of certain decisions regarding permitting of renewable energy projects. Uncertainty regarding review standards and time consumed in appeals discouraged some proponents of wind energy projects in Klickitat County. Proposals must still address environmental concerns.

Persons Testifying: PRO: David McClure, Klickitat County Natural Resources Department; Dan Wood, Washington Farm Bureau.

House Amendment(s): The amendment clarifies Senate language and specifies additional requirements for land use decisions concerning wind power projects to qualify for a presumption of reasonableness.

Land use decisions made by a county, city, or town concerning renewable resource projects within a county energy overlay zone (zone) are presumed to be reasonable if they comply with requirements established by county, city, or town ordinance concerning the zone.

However, for county, city, or town land use decisions concerning wind power projects, either (1) the county, city, or town ordinance concerning the zone must be consistent with Department of Fish and Wildlife wind power guidelines; or (2) the county, city, or town must have prepared an environmental impact statement (EIS) under the State Environmental Policy Act (SEPA) concerning the zone.

In the latter case, the following requirements must also be satisfied:
- The county, city, or town ordinance concerning the zone must require (1) project mitigation, addressed in the EIS and consistent with applicable law; and (2) site specific fish and wildlife and cultural resources analysis; and
- The county, city, or town must have adopted an ordinance addressing critical areas under the state Growth Management Act.

If a county, city, or town has complied with these requirements, wind power projects permitted consistently with the zone are deemed to have adequately addressed environmental impacts under SEPA.