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**HOUSE BILL 1781**

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**State of Washington 66th Legislature 2019 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**