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SENATE BILL 5953

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By Senators Sheldon, Loveland, A. Anderson, Hale, Winsley, Gaspard, Drew, Fraser, Haugen, Spanel, Snyder, Palmer, Rasmussen and Bauer

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1 AN ACT Relating to judicial review of land use decisions; amending  
2 RCW 7.16.360 and 58.17.180; adding a new section to chapter 4.84 RCW;  
3 and adding a new chapter to Title 36 RCW.

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

5 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
6 land use petition act. A petition brought under this chapter must be  
7 called a land use petition.

8 NEW SECTION. **Sec. 2.** The purpose of this chapter is to reform the  
9 process for judicial review of land use decisions made by local  
10 jurisdictions, by establishing uniform, expedited appeal procedures and  
11 uniform criteria for reviewing such decisions, in order to provide  
12 consistent, predictable, and timely judicial review.

13 NEW SECTION. **Sec. 3.** Unless the context clearly requires  
14 otherwise, the definitions in this section apply throughout this  
15 chapter.

16 (1) "Land use decision" means a final determination by a local  
17 jurisdiction's body or officer with the highest level of authority to

1 make the determination, including those with authority to hear appeals,  
2 on:

3 (a) An application for a development permit or other governmental  
4 approval required by law before real property may be improved,  
5 developed, modified, sold, transferred, or used, but excluding  
6 applications for permits or approvals to use streets, parks, and  
7 similar types of public property and excluding applications for  
8 legislative approvals such as area-wide rezones and annexations;

9 (b) An interpretative or declaratory decision regarding the  
10 application to a specific property of zoning or other ordinances or  
11 rules regulating the development, modification, maintenance, or use of  
12 real property; and

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

18 (2) "Local jurisdiction" means a county, city, or town, or special  
19 purpose district as defined in RCW 36.96.010.

20 (3) "Person" means an individual, partnership, corporation,  
21 association, public or private organization, or governmental agency.

22 NEW SECTION. **Sec. 4.** (1) This chapter replaces the writ of  
23 certiorari for judicial review of local jurisdictions' land use  
24 decisions.

25 (2) This chapter does not apply to judicial review procedures  
26 established by other laws, including, but not limited to judicial  
27 review of:

28 (a) Land use decisions made by bodies that are not part of a local  
29 jurisdiction;

30 (b) Land use decisions of a local jurisdiction that are subject to  
31 review by a quasi-judicial body created by state law, such as the  
32 shorelines hearings board or the growth management hearings board;

33 (c) Claims provided by any law for monetary damages or  
34 compensation; or

35 (d) Applications for a writ of certiorari or mandamus.

36 (3) If one or more claims for damages or compensation are set forth  
37 in the same complaint with a land use petition brought under this  
38 chapter, the procedures and standards, including deadlines, provided in

1 this chapter for review of the petition do not apply to the claims for  
2 damages or compensation. The judge who hears the land use petition  
3 may, if appropriate, preside at a trial for damages or compensation.

4 (4) The court rules govern procedural matters under this chapter to  
5 the extent that the rules are consistent with this chapter.

6 NEW SECTION. **Sec. 5.** (1) A party's agreement is a waiver of the  
7 right to petition under this chapter for judicial review of the matters  
8 agreed to, when:

9 (a) The agreement is made as provided in RCW 82.02.020; or

10 (b) For matters outside the scope of RCW 82.02.020, the agreement  
11 is made as part of a written contract with the local jurisdiction.

12 (2) In all other instances, waiver is determined in accordance with  
13 common law principles.

14 NEW SECTION. **Sec. 6.** (1) Proceedings for review under this  
15 chapter must be commenced by filing a land use petition in superior  
16 court.

17 (2) A land use petition is barred, and the court may not grant  
18 review, unless the petition is timely filed with the court and timely  
19 served on the following parties:

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

23 (b) Each of the following, if not the petitioner:

24 (i) Any person identified by name and address in the local  
25 jurisdiction's written decision as an applicant for the permit or  
26 approval at issue or as a property owner of the property at issue;

27 (ii) If no person is named in the decision as provided in (b)(i) of  
28 this subsection, any such person identified in the application for a  
29 permit or approval at issue; and

30 (iii) Any person who filed an appeal to a quasi-judicial decision  
31 maker regarding the land use decision at issue, unless the person has  
32 abandoned the appeal or the person's claims were dismissed before the  
33 quasi-judicial decision was rendered. Any person who later intervened  
34 or joined in the appeal is not required to be made a party under this  
35 subsection.

1 (3) The petition is timely if it is filed and served on all parties  
2 listed in subsection (2) of this section within twenty-one days of the  
3 issuance of the land use decision.

4 (4) For the purposes of this section, a land use decision is issued  
5 on the date on which a written decision is mailed or if not mailed, the  
6 date on which the local jurisdiction provides notice that a written  
7 decision is publicly available. However, if written notification is  
8 not required to be provided, the decision is issued on the later of:

9 (a) The date that the decision is made at a public meeting; or

10 (b) The date that the decision is entered into the public record.

11 (5) Service on the local jurisdiction must be by delivery of a copy  
12 of the petition to the agent designated by the local jurisdiction  
13 pursuant to RCW 4.28.080 to receive service of process. Service on  
14 other parties must be in accordance with the civil rules or, for  
15 parties who provided an address to the local jurisdiction during a  
16 quasi-judicial proceeding regarding the land use decision at issue,  
17 service may be by deposit in the United States mail to the address.  
18 Service by mail is effective on the date of mailing. Proof of service  
19 must be evidence by affidavit.

20 NEW SECTION. **Sec. 7.** Standing to bring a land use petition under  
21 this chapter, and to intervene in a proceeding under this chapter, is  
22 limited to the following parties:

23 (1) The applicant and the owner of property to which the land use  
24 decision is directed;

25 (2) Another person aggrieved or adversely affected by the land use  
26 decision, or who would be aggrieved or adversely affected by a reversal  
27 or modification of the land use decision, and who will suffer direct  
28 and substantial impacts from the decision, reversal, or modification.

29 NEW SECTION. **Sec. 8.** (1) A petitioner shall set forth in a land  
30 use petition:

31 (a) The name and mailing address of the petitioner;

32 (b) The name and mailing address of the petitioner's attorney, if  
33 any;

34 (c) The name and mailing address of the local jurisdiction whose  
35 land use decision is at issue;

1 (d) Identification of the decision-making body or officer, together  
2 with a duplicate copy of the decision, or if not a written decision, a  
3 summary or brief description of it;

4 (e) Identification of persons who were named petitioners or  
5 appellants in any quasi-judicial proceedings regarding the land use  
6 decision at issue;

7 (f) Facts demonstrating that the petitioner is entitled to seek  
8 judicial review;

9 (g) A separate and concise statement of each error alleged to have  
10 been committed;

11 (h) A concise statement of facts upon which the petitioner relies  
12 to sustain the statement of error; and

13 (i) A request for relief, specifying the type and extent of relief  
14 requested.

15 (2) Along with the petition, the petitioner shall file and serve an  
16 order to show cause why the petition should not be granted. The order  
17 must set the date for hearing no sooner than ten days, and no later  
18 than twenty days, after filing and service of the petition on all  
19 parties is completed.

20 (3) At the hearing on the order to show cause, the court shall:

21 (a) Determine:

22 (i) Whether the petition was timely filed and served. If the court  
23 finds it was untimely, the court shall deny judicial review;

24 (ii) Whether there are reasons why review should not be granted,  
25 including, but not limited to: Improper service; lack of standing;  
26 failure to join an indispensable party; and failure of the petition to  
27 comply with subsection (1) of this section. However, the defenses of  
28 lack of standing and failure to join an indispensable party may be  
29 raised later, as provided by the court rules; and

30 (iii) The estimated cost of preparing the record;

31 (b) Enter an order:

32 (i) Setting the date by which the petitioner shall pay the  
33 estimated cost of preparing the record to the local jurisdiction;

34 (ii) Setting a later date by which the local jurisdiction's record,  
35 including the transcript, must be submitted;

36 (iii) Framing the factual and legal issues to be decided;

37 (iv) Setting the date for hearing the matter; and

38 (v) Resolving other issues that may be resolved at this stage of  
39 the proceeding in order to provide for expeditious and orderly review.

1 The parties may waive the hearing on the order to show cause by  
2 filing a stipulated order setting forth the matters listed in this  
3 subsection.

4 NEW SECTION. **Sec. 9.** The court shall provide expedited review of  
5 petitions filed under this chapter. If judicial review is granted, the  
6 matter must be set for hearing within sixty days of the date set for  
7 submitting the local jurisdiction's record, absent a showing of  
8 compelling reasons for a different date or a stipulation of the  
9 parties.

10 NEW SECTION. **Sec. 10.** (1) A petitioner for judicial review of a  
11 land use decision may request the court to stay or suspend an action by  
12 the local jurisdiction or another party to implement the decision under  
13 review, by including the request in the petition. The request must set  
14 forth a statement of grounds for the stay and the factual basis for the  
15 request. The court shall rule on the request at the hearing on the  
16 order to show cause.

17 (2) Another party to the judicial review proceedings may request a  
18 stay by making a motion in accordance with the court rules. The motion  
19 must be filed with the party's first pleading in the matter.

20 (3) The court shall deny a request for a stay that is made after  
21 the times required by subsections (1) and (2) of this section unless  
22 the party requesting the stay establishes that the reasons justifying  
23 the stay did not exist, or could not have been discovered, at the times  
24 set forth in subsections (1) and (2) of this section.

25 (4) A court may grant a stay only if the court finds that:

26 (a) The party requesting the stay is likely to prevail on the  
27 merits;

28 (b) Without the stay the party requesting it will suffer  
29 irreparable harm; and

30 (c) The grant of a stay will not substantially harm other parties  
31 to the proceedings or the public.

32 (5) The court may grant the request for a stay upon such terms and  
33 conditions, such as the filing of security, as are necessary to prevent  
34 harm to other parties from the stay.

35 NEW SECTION. **Sec. 11.** (1) Within forty-five days after entry of  
36 an order to submit the record, or within such a further time as the

1 court allows or as the parties agree, the local jurisdiction shall  
2 submit to the court a certified copy of the record for judicial review  
3 of the land use decision, except that the petitioner shall prepare and  
4 submit a verbatim transcript of any hearings held on the matter.

5 (2) The petitioner shall pay the local jurisdiction the estimated  
6 costs of preparing the record as determined by the court at the show  
7 cause hearing. A failure by the petitioner to timely pay the local  
8 jurisdiction as ordered relieves the local jurisdiction of the  
9 responsibility to prepare and submit the record and is grounds for  
10 dismissal of the petition.

11 (3) The court in its final judgment may assess the actual costs of  
12 preparing the record against the petitioner if the relief sought by the  
13 petitioner is substantially denied, and may assess the costs against  
14 and among the local jurisdiction and other parties of record if the  
15 relief sought by the petitioner is substantially granted.

16 (4) The court may require or permit corrections of errors or  
17 omissions in the record.

18 NEW SECTION. Sec. 12. (1) If the land use decision being reviewed  
19 was made by a quasi-judicial body or officer who was making factual  
20 determinations and the parties had the opportunity to make a record on  
21 the factual issues, judicial review of factual issues, and the  
22 conclusions drawn from the factual issues, must be confined to the  
23 record created by the quasi-judicial body or officer, except as  
24 provided in this section.

25 (2) For decisions described in subsection (1) of this section, the  
26 record may be supplemented by additional evidence only if the  
27 additional evidence relates to:

28 (a) Disputed factual issues regarding the authority or jurisdiction  
29 of the body or officer that made the land use decision;

30 (b) Grounds for disqualification of a member of the body or of the  
31 officer that made the land use decision;

32 (c) Unlawfulness of the procedure used to make the decision;

33 (d) Matters that were improperly excluded from the record after  
34 being offered by a party to the quasi-judicial proceeding; or

35 (e) Matters that were outside the jurisdiction of the body or  
36 officer that made the land use decision.

37 (3) For land use decisions other than those described in subsection  
38 (1) of this section, the record for judicial review may be supplemented

1 by evidence of material facts that were not required to be made part of  
2 the local jurisdiction's record.

3 (4) The parties may not conduct civil discovery except with the  
4 prior permission of the court. The court may not grant permission  
5 unless the party requesting it makes a prima facie showing of need.  
6 The court shall strictly limit discovery to what is necessary for  
7 equitable and timely review under this chapter. Requests made under  
8 chapter 42.17 RCW for records relating to the matters at issue must be  
9 treated as requests for civil discovery and must meet the requirements  
10 of this section and the court rules.

11 NEW SECTION. **Sec. 13.** (1) The superior court, acting without a  
12 jury, shall review the record and such supplemental evidence as is  
13 permitted under RCW 36.70B.100. The court may grant relief only if the  
14 party seeking relief has carried the burden of establishing that one of  
15 the standards set forth in (a), (b), and (c) of this subsection have  
16 been met. The standards are:

17 (a) The party seeking relief has been substantially prejudiced as  
18 a result of the claimed error or errors, and:

19 (i) The body or officer that made the land use decision engaged in  
20 unlawful procedure or failed to follow a prescribed process;

21 (ii) The land use decision under review is a clearly erroneous  
22 interpretation or application of the law, in light of the law's  
23 purpose; or

24 (iii) The land use decision under review is not supported by  
25 substantial evidence;

26 (b) The land use decision under review was outside the authority or  
27 jurisdiction of the body or officer making the decision; and

28 (c) The land use decision violates the constitutional rights of the  
29 party seeking relief.

30 (2) In order to grant relief under this chapter, it is not  
31 necessary for the court to find that the local jurisdiction engaged in  
32 arbitrary and capricious conduct. A grant of relief is not equivalent  
33 to a finding of liability for monetary damages or compensation.

34 NEW SECTION. **Sec. 14.** The court may affirm or reverse the land  
35 use decision under review, modify it, or remand it for modification or  
36 further proceedings. If the decision is remanded for modification or  
37 further proceedings, the court may make the order as it finds necessary



1 to preserve the interests of the parties and the public, pending  
2 further proceedings or action by the local jurisdiction.

3 **Sec. 15.** RCW 7.16.360 and 1989 c 175 s 38 are each amended to read  
4 as follows:

5 This chapter does not apply to state agency action reviewable under  
6 chapter 34.05 RCW or the land use decisions of local jurisdictions  
7 reviewable under chapter 36.-- RCW (sections 1 through 14 of this act).

8 **Sec. 16.** RCW 58.17.180 and 1983 c 121 s 5 are each amended to read  
9 as follows:

10 Any decision approving or disapproving any plat shall be reviewable  
11 for (~~unlawful, arbitrary, capricious or corrupt action or nonaction by~~  
12 ~~writ of review before~~)) under chapter 36.-- RCW (sections 1 through 14  
13 of this act) by the superior court of the county in which such matter  
14 is pending. ((Standing to bring the action is limited to the following  
15 parties:

16 (1) ~~The applicant or owner of the property on which the subdivision~~  
17 ~~is proposed;~~

18 (2) ~~Any property owner entitled to special notice under RCW~~  
19 ~~58.17.090;~~

20 (3) ~~Any property owner who deems himself aggrieved thereby and who~~  
21 ~~will suffer direct and substantial impacts from the proposed~~  
22 ~~subdivision.~~

23 ~~Application for a writ of review shall be made to the court within~~  
24 ~~thirty days from any decision so to be reviewed. The cost of~~  
25 ~~transcription of all records ordered certified by the court for such~~  
26 ~~review shall be borne by the appellant.))~~

27 NEW SECTION. **Sec. 17.** A new section is added to chapter 4.84 RCW  
28 to read as follows:

29 (1) Notwithstanding any other provisions of this chapter,  
30 reasonable attorneys fees and costs shall be awarded to the prevailing  
31 party or substantially prevailing party on appeal before the court of  
32 appeals or the supreme court of a decision by a county, city, or town  
33 to issue, condition, or deny a development permit involving a site-  
34 specific rezone, zoning, plat, conditional use, variance, shoreline  
35 permit, building permit, site plan, or similar land use approval or

1 decision. The court shall award and determine the amount of reasonable  
2 attorneys fees and costs under this section if:

3 (a) The prevailing party on appeal was the prevailing or  
4 substantially prevailing party before the local government, or in a  
5 decision involving a substantial development permit under chapter 90.58  
6 RCW, the prevailing party on appeal was the prevailing party or the  
7 substantially prevailing party before the shoreline hearings board; and

8 (b) The prevailing party on appeal was the prevailing party or  
9 substantially prevailing party in all prior judicial proceedings.

10 (2) In addition to the prevailing party under subsection (1) of  
11 this section, the county, city, or town whose decision is on appeal is  
12 considered a prevailing party if its decision is upheld at superior  
13 court and on appeal.

14 NEW SECTION. **Sec. 18.** Sections 1 through 14 of this act  
15 constitute a new chapter in Title 36 RCW.

16 NEW SECTION. **Sec. 19.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

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