

HOUSE BILL REPORT

HB 1781

As Reported by House Committee On: Local Government

Title: An act relating to amending the land use petition act.

Brief Description: Amending the land use petition act.

Sponsors: Representatives Pollet, Fitzgibbon, Hansen, Doglio, Dolan and Riccelli.

Brief History:

Committee Activity:

Local Government: 2/15/19, 2/20/19 [DPS].

Brief Summary of Substitute Bill

- Amends provisions of the Land Use Petition Act including the purpose statement, timelines for filing a petition, consideration of when an appealable decision has been issued, and notice requirements for issued decisions.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Peterson, Vice Chair; Appleton and Senn.

Minority Report: Do not pass. Signed by 2 members: Representatives Kraft, Ranking Minority Member; Goehner.

Staff: Robbi Kesler (786-7153).

Background:

A number of state laws permit or require counties and cities to establish land use regulations or control land use activities. In 1995 the Land Use Petition Act (LUPA) was established to create a standardized process for direct judicial review of land use decisions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A land use decision as defined as a final determination, by the local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

- 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, 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 business licenses;
- an interpretive 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; and
- the enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property, excluding instances where a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction.

A land use decision is issued:

- three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date when the local jurisdiction provides notice that the decision is publicly available;
- 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
- the date the decision is entered into the public record.

A LUPA petition must be filed in superior court within 21 days of the issuance of a land use decision; if jurisdictions allow or require a motion for reconsideration and a timely motion for reconsideration has been filed, the land use decision occurs on the date it is entered on the decision.

The petition must be served on:

- the local jurisdiction;
- each person identified by name and address in the land use decision;
- each person identified by name and address as an owner of the property at issue;
- each person identified by name and address as a taxpayer for the property at issue, if no person is identified in the written decision; and
- each person named in the written decision who filed an appeal to the local jurisdiction quasi-judicial decision maker, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered.

The LUPA requires an initial hearing on jurisdiction and preliminary matters to be held no sooner than 35 days and later than 50 days after the petition has been served on the parties. Provisions are made for a stay of the decision, for paying costs of preparing the record, and for supplementing the record in exceptional circumstances.

Summary of Substitute Bill:

The LUPA purpose statement is amended to include a declaration 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.

If the petitioner establishes that good cause exists for not exhausting the administrative appeal remedy, including lack of notice or inadequate notice, the petitioner is not precluded from seeking judicial review of the decision.

A person identified by name and address as a taxpayer for the property at issue, if no person is identified in the written decision, is no longer required to be served a petition.

The timeline to file a petition is extended to 30 days, from 21 days, from the issuance of the land use decision. The 30-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 person who filed a quasi-judicial appeal and did not abandon that appeal.

A land use decision is considered issued:

- three days after the decision is mailed to the applicant and all parties of record, or four days if the three days includes a holiday in which mail is not delivered; or
- if there are no parties of record, then the decision is considered issued three days after the latter of the date it was mailed, posted in a conspicuous place online, or posted on or near the property.

Substitute Bill Compared to Original Bill:

The substitute bill adds reference to local rules and ordinances that may be adopted by local jurisdictions related to issuance of a land use decision. The requirement to mail the land use decision when there are no parties of record to certain neighbors and neighborhood associations is removed. The reference to the judicial laches doctrine is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is an important bill related to fundamental fairness for property owners. The current 21-day timeline is difficult to meet, particularly when a city does not provide timely notice. Also, under current law, an issuing jurisdiction cannot revise its decision; instead it must file an appeal which is a waste of judicial resources. There needs to

be a change made to allow a jurisdiction to amend a decision they realize is flawed in a way that does not require it to file an appeal of its own decision. A 30-day period for filing a petition and actual notice will allow neighborhood groups more time to be made aware of the opinion, get organized, and appeal. There needs to be clarity regarding what a final opinion is under this act.

(Opposed) The Land Use Petition Act (LUPA) was adopted in order to replace a writ system and also prevents parties from delaying land use decisions. This bill undermines the certainty and predictability of LUPA and adds complex new notice practices which would be burdensome and costly for local governments and citizens. There are public policy concerns, because the uncertainty and delay will undermine reforms related to affordable housing. This bill upends a pretty strict construction of the LUPA and adds a case-by-case basis model that will not result in more clarity. This may substantially increase costs of development due to extending timelines. The portion of this bill that requires large scale mailings when no one requests to be a party of record is an unfunded mandate.

Persons Testifying: (In support) Representative Pollet, prime sponsor; and Bryce Yadon, Futurewise.

(Opposed) Mike Ennis and Heather Burgess, Association of Washington Business; Jan Himebaugh, Building Industry Association of Washington; Carl Schroeder, Association of Washington Cities; and Paul Jewell, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.