

SENATE BILL REPORT

SB 5225

As of February 9, 2021

Title: An act relating to direct appeals to the court of appeals of cases brought under the administrative procedure act and the land use petition act.

Brief Description: Concerning direct appeals to the court of appeals of cases brought under the administrative procedure act and the land use petition act.

Sponsors: Senators Hunt, Padden and Pedersen.

Brief History:

Committee Activity: Law & Justice: 2/09/21.

Brief Summary of Bill

- Creates a process for direct appeal to the court of appeals for cases brought under the Administrative Procedure Act or Land Use Petition Act.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Administrative Procedures Act. The Administrative Procedure Act (APA) sets the process state agencies must follow when an agency takes administrative action. Individuals appealing agency actions must exhaust their administrative remedies with the agency prior to judicial review. Agencies offer administrative hearings that are quasi-judicial to hear appeals of agency actions. Administrative hearings adjudicate appeals by interpreting agency policy and regulations. Adjudication resembles what a court does, but it is less formal. Adjudicative proceedings determine legal rights, duties, or privileges when a hearing is required by law or by the Constitution.

Direct Appeals to the Court of Appeals. Under the APA, the final decision of an

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administrative agency in an adjudicative proceeding may be directly reviewed by the court of appeals either:

- upon certification by the superior court; or
- if the final decision is from an environmental board, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within 30 days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

- fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;
- delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;
- an appeal to the court of appeals would be likely regardless of the determination in superior court; and
- the appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification are established by court rule.

For direct review of final decisions of environmental boards, a party may file an application with the superior court and serve the appropriate environmental board and all parties of record within 30 days after filing the petition for review with the superior court. The application shall request the environmental board to file a certificate of appealability. An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

- fundamental and urgent statewide or regional issues are raised; or
- the proceeding is likely to have significant precedential value.

Environmental boards include the Pollution Control Hearings Board, the Shorelines Hearings Board, and the Growth Management Hearings Board.

Land Use Petition Act. With limited exceptions, the Land Use Petition Act (LUPA) is the exclusive means of judicial review of land use decisions. The term "land use decision" is defined and means a final determination by a county, city, or incorporated town's body or officer with the highest level of authority, including those with authority to hear appeals, to make a determination on:

- applications for a project permit or other governmental approval;
- an interpretative or declaratory decision regarding the application to a specific property of zoning, ordinances, or rules; and
- the enforcement of ordinances regulating the improvement, development,

modification, maintenance, or use of real property.

A petition for review under the LUPA is commenced with the timely filing of a petition in superior court within 21 days of the date the land use decision is issued. Superior courts provide expedited review of land use decisions appealed under LUPA, and must set matters for hearing within sixty days of the deadline for a local jurisdiction's record submission. The superior court may affirm or reverse a land use decision, or remand it for modification or further proceedings by the local jurisdiction.

Appeal From a Superior Court Decision. The Washington State Supreme Court adopts rules of appellate procedure (RAPs), which establish judicial review processes for the Supreme Court and courts of appeals. RAPs establish several logistical deadlines for court proceedings, including:

- requiring notices of appeal to be filed 30 days after the entry of a trial court decision;
- timelines for the filing of briefs, reply briefs, and briefs of amicus curiae in both civil and criminal cases; and
- procedures for scheduling oral arguments.

RAP 2.3 grants that a party may seek discretionary review of any act of the superior court that may not be appealed as a matter of right.

Summary of Bill: Administrative Procedure Act. The final decision of an administrative agency in an adjudicative proceeding may be directly reviewed by the court of appeals upon certification by the superior court. Transfer of cases does not require the filing of a motion for discretionary review with the court of appeals. The superior court may certify cases for transfer to the court of appeals upon finding that:

- all parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record; or
- one or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:
 1. the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record; or
 2. the superior court has completed any necessary supplementation of the record, such that only issues of law remain for determination.

If the superior court certifies a final decision of an administrative agency in an adjudicative proceeding, the superior court shall transfer the matter to the court of appeals as a direct appeal. A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals.

Land Use Petition Act. The superior court may transfer the judicial review of a land use decision to the court of appeals upon finding that all parties have consented to the transfer to

the court of appeals and agreed that the judicial review can occur based upon an existing record. Transfer of cases does not require the filing of a motion for discretionary review with the court of appeals.

The provisions creating a direct appeal process expire on July 1, 2026.

Appropriation: None.

Fiscal Note: Requested on February 7, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: Thurston County gets the bulk of administrative agency appeals in Thurston County Superior Court. It helps parties that help courts quickly address their cases. There is a significant backlog of criminal cases. There are hundreds of administrative cases each year. They should be transferred directly to the court of appeals which has the capacity to take these cases. It frees up superior courts to work on the backlog of criminal cases. It simplifies the current convoluted process for direct appeals to the court of appeals. It has a five year sunset clause and an emergency clause to go into effect right away. The court of appeals and all of its three divisions has agreed to share this new workload.

Persons Testifying: PRO: Senator Sam Hunt, Prime Sponsor; Lisa Sutton, Court of Appeals; Chris Lanese, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: No one.