

HOUSE BILL REPORT

ESHB 1774

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to the water-related actions of the department of ecology.

Brief Description: Altering appeal procedures for water-related actions of the department of ecology.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Basich and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/09/96, 1/10/96, 1/11/96,1/24/96 [DP2S].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives Murray; Ogden; Regala and Rust.

Staff: Bill Lynch (786-7092).

Background: The Pollution Control Hearings Board (PCHB) presides over certain appeals of decisions made by the Department of Ecology, Office of Marine Safety, air pollution control boards or authorities, and local health departments. The PCHB consists of three members appointed by the Governor and confirmed by the Senate. These members must have experience or training in matters pertaining to the environment, and at least one member must be a lawyer admitted to practice law in this state.

Proceedings before the PCHB are conducted in accordance with procedures adopted by the PCHB. The PCHB must make findings of fact and conclusions of law in each of its decisions. Decisions of the PCHB may be appealed to Superior Court by any of

the parties. Certain water-related actions by the Department of Ecology are appealable to the PCHB.

Summary of Second Substitute Bill: Appeals of certain water-related agency actions by the Department of Ecology are appealable to Superior Court or to the Pollution Control Hearings Board. Appeals to superior court are de novo. An appeal of a decision related to a water withdrawal must be filed in the county where the withdrawal takes place. An appeal of a decision regarding an instream flow or a water management plan must be filed in the county with the greatest amount of territory governed by the flow or plan. An appeal pertaining to the relinquishment of a water right must be made to Superior Court in the county where the land is located where the water was used.

The PCHB is required to ensure that a hearing on a water quantity decision is conducted in the general area where the petitioner resides or provides for the hearing to be conducted by telephone. A single member of the PCHB may conduct the hearing.

A party electing to appeal a water quantity decision to the PCHB may elect either an informal or formal hearing. If one of the parties requests an informal hearing, then an informal hearing must be held.

"Water-related agency actions" by the Department of Ecology include (1) decisions to grant or deny permits or certificates for a right to the beneficial use of water, or to amend, change, or transfer such a right; (2) decisions to enforce the conditions of a permit for, or right to, the beneficial use of water or to require any person to discontinue the use of water; and (3) decisions to establish a minimum flow or level for water, or to reserve water for such a minimum flow or level.

Second Substitute Bill Compared to Engrossed Substitute Bill: The original bill removed the authority of the PCHB to hear appeals of water quantity decisions. Those decisions were appealable to an administrative law judge of the Office of Administrative Hearings.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Second Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: People have to feel that the appeal process is fair. People should have the option of choosing a Superior Court or the PCHB. The relinquishment proceedings need to be changed.

Testimony Against: The current process is fair. The Pollution Control Hearings Board has expertise on these issues. A two-track process would cause confusion. There shouldn't be 39 separate sets of opinions in this area.

Testified: Robert Jensen, PCHB; and Judy Turpin, Washington Environmental Council (opposed). Kathleen Collins, Water Alliance; Dick Ducharme, Yakima Growers and Shippers; and Mike Alberg (in favor).