

HOUSE BILL REPORT

SB 5087

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to appeals involving environmental and land use boards.

Brief Description: Revising appeals involving environmental and land use boards.

Sponsors: Senator Fraser; by request of Environmental Hearings Office.

Brief History:

Committee Activity:

Agriculture & Ecology: 3/16/95, 3/30/95 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives R. Fisher; Poulsen; Regala and Rust.

Staff: Bill Lynch (786-7092).

Background: The Environmental Hearings Office consists of the Pollution Control Hearings Board, the Forest Practices Appeals Board, the Shorelines Hearings Board, and the Hydraulic Appeals Board. Each of these boards has jurisdiction over certain types of environmental appeals arising from decisions by local governments and state agencies.

Final decisions of these boards may be appealed to superior court. A final decision may, however, be directly reviewed by the court of appeals if the superior court finds that certain conditions exist and certifies the case for direct review by the court of appeals. These conditions include findings that a delay in obtaining a final determination of the issue would be detrimental to any party or the public interest, and that an appeal to the court of appeals is likely regardless of the superior court's decision. The court of appeals may accept or refuse direct review of a case, and its decision is final.

Any person aggrieved by the grant, denial, or rescission of a shorelines permit may seek review from the Shoreline Hearings Board by filing a request for review with the board. A copy of the request for review must also be filed concurrently with the Department of Ecology and the Attorney General. The department or the Attorney General must determine if there are valid reasons to seek review before the board. If neither the department nor the Attorney General certifies the request for review within 30 days after its receipt, the Shoreline Hearings Board may not review the matter. A person who is unable to obtain certification for review may still appeal the matter to superior court.

The statutes pertaining to the Pollution Control Hearings Board and the Hydraulics Appeals Board contain references to informal hearings. If one of the parties requests a formal hearing, however, a formal hearing must be held. As a consequence, informal hearings are not conducted because at least one party elects a formal hearing.

The Office of Administrative Hearings (OAH) is responsible for conducting impartial adjudicative proceedings for most state agencies in accordance with the Administrative Procedure Act. A person who wishes to appeal the decision of a state agency that uses OAH to preside over appeals of its decisions is entitled to a hearing before an administrative law judge.

Summary of Amended Bill: Appeals of certain water-related agency actions by the Department of Ecology are appealable to superior court or to an administrative law judge assigned by the Office of Administrative Hearings instead of being appealed to the Pollution Control Hearings Board. Appeals to superior court are de novo and are filed in the superior court directly and are immediately affected by the decision. An appeal pertaining to the relinquishment of a water right must be made to superior court.

The Department of Ecology must commence an adjudicatory proceeding pursuant to the provisions of the Administrative Procedures Act within 30 days after receiving a request for an administrative hearing for a water-related agency action. The administrative law judge (ALJ) that conducts the hearing also makes the final decision. The decision of the ALJ is not appealable back to the Department of Ecology, but may be appealed by any of the parties to the superior court in the county that will be directly and immediately affected by the decision.

The Chief Administrative Law Judge of the Office of Administrative Hearings must develop procedural rules for conducting appeals of water-related agency actions. The procedures must ensure that the hearings will be conducted in the general area where the petitioner resides, or provide for the hearings to be conducted by telephone.

"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.

Amended Bill Compared to Original Bill: The original bill allowed certain final decisions of environmental boards to be directly reviewed by the court of appeals. The original bill also simplified certification of appeals of the Shoreline Management Act and deleted references to informal hearings by the Pollution Control Hearings Board and the Hydraulics Appeals Board.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original Bill) This will shorten the appeal time for environmental board decisions that address important statewide or regional issues. The Growth Management Act contemplated quick decisions. Informal hearings are not used because witnesses will have to be called twice and it is expensive.

Testimony Against: None.

Testified: Senator Fraser (prime sponsor); Bob Jensen, Environmental Hearings Office (pro); Bobbi Olson, Office of the Administrator for the Courts/Court of Appeals (pro); and Les Eldridge, Western Washington Growth Management Hearings Board (pro).