

# HOUSE BILL REPORT

## SB 5087

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### As Passed House - Amended:

April 14, 1995

**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].

#### Floor Activity:

Amended.

Passed House: 4/14/95, 71-20.

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## 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 Shorelines 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.

### **Summary of Bill:**

#### **Direct Review by Court of Appeals**

Final decisions of the Pollution Control Hearings Board, Forest Practices Appeals Board, Shoreline Hearings Board, Hydraulics Appeals Board, and the Growth Management Hearings Boards (environmental boards) may be directly reviewed by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

An environmental board may issue a certificate of appealability if it finds that an appeal to superior court would be detrimental to one of the parties or the public interest because of the delay in obtaining a final determination, and either (1) fundamental and urgent state-wide or regional issues are raised; or (2) the proceeding is likely to have significant precedential value.

The certificate of appealability must state the criteria that the board applied and explain how the criteria was met. The board must file a copy of the final decision with the certificate. In determining whether to accept direct review, the court of appeals must consider the same criteria used by the environmental board in preparing the certificate of appealability.

Within thirty days of filing a petition for review in the superior court, a person may file an application in superior court for direct review by the court of appeals and apply to the environmental board to issue a certificate of appealability. The

environmental board has thirty days to grant or deny the request for the certificate of appealability. The board may file an application for direct review if an issue on review is the jurisdiction of the board.

If a certificate of appealability is issued, the parties have fifteen days from the date of service to file a notice of discretionary review in superior court. The certificate becomes part of the certified record that is transmitted to the court of appeals.

### **Certification of Shoreline Appeals**

Provisions in the Shoreline Management Act that require the Department of Ecology or the Attorney General to certify an appeal to the Shorelines Hearing Board before a matter may be reviewed are repealed. A person who requests review before the Shorelines Hearings Board must serve copies of the request on the Department and the Attorney General within seven days of filing the request with the Board.

### **Informal Hearings**

If one party to an appeal before the Pollution Control Hearings Board requests an informal hearing, then that request must be granted.

### **Appeals of Water Quantity Decisions**

Appeals of certain water quantity decisions by the Department of Ecology are appealable to superior court or 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 Pollution Control Hearings Board must ensure that hearings pertaining to water quantity decisions of the Department of Ecology will be conducted in the general area where the petitioner resides, or provide for the hearings to be conducted by telephone. A single member of the board may conduct these hearings.

"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.

### **Growth Management Appeals**

The presumption of validity of local comprehensive plans is strengthened. The burden is upon the person challenging the local government to demonstrate noncompliance.

The failure of a city or county to fail to develop a record that supports their action is not by itself enough to show noncompliance. The board must take into account the size and capabilities of a city or county when determining noncompliance.

The Attorney General must provide assistance to a county or city whose plan has been found in compliance by the board, but is being challenged in superior court.

A state agency may not seek review by a board unless the Governor finds that the agency has consistently raised the issues in petition or review by a board is the best means to accomplish state goals.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of 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).