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HOUSE BILL 1251

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State of Washington

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By Representatives Backlund, L. Thomas, Lisk, Mastin, McMorris, Sheldon, Basich, Hatfield, Fuhrman, Chandler, Elliot, Johnson, Hargrove, Clements, Hickel, Huff, Beeksma, Schoesler, Hymes, Boldt, Sheahan, Sherstad and Morris

Read first time 01/18/95. Referred to Committee on Government Operations.

1 AN ACT Relating to standing to appeal actions taken under the state  
2 environmental policy act; amending RCW 43.21C.075; and creating a new  
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 reduce frivolous appeals to actions taken under the state environmental  
7 policy act by limiting standing to persons directly impacted by such  
8 actions.

9 **Sec. 2.** RCW 43.21C.075 and 1994 c 253 s 4 are each amended to read  
10 as follows:

11 (1) Because a major purpose of this chapter is to combine  
12 environmental considerations with public decisions, any appeal brought  
13 under this chapter shall be linked to a specific governmental action.  
14 The State Environmental Policy Act provides a basis for challenging  
15 whether governmental action is in compliance with the substantive and  
16 procedural provisions of this chapter. The State Environmental Policy  
17 Act is not intended to create a cause of action unrelated to a specific  
18 governmental action.

1       (2) Only a person directly impacted by a specific governmental  
2 action taken under this chapter may bring an appeal related to any  
3 governmental action taken under the authority of this chapter. For the  
4 purposes of this subsection, a "person directly impacted" is a person  
5 (a) whose interest is within the zone of interests to be protected or  
6 regulated by this chapter, and (b) who will suffer an injury in fact if  
7 the proposed action is taken.

8       (3) Unless otherwise provided by this section:

9       (a) Appeals under this chapter shall be of the governmental action  
10 together with its accompanying environmental determinations.

11       (b) Appeals of environmental determinations made (or lacking) under  
12 this chapter shall be commenced within the time required to appeal the  
13 governmental action which is subject to environmental review.

14       (~~(3)~~) (4) If an agency has a procedure for appeals of agency  
15 environmental determinations made under this chapter, such procedure:

16       (a) Shall not allow more than one agency appeal proceeding on a  
17 procedural determination (the adequacy of a determination of  
18 significance/nonsignificance or of a final environmental impact  
19 statement), consistent with any state statutory requirements for  
20 appeals to local legislative bodies. The appeal proceeding on a  
21 determination of significance/nonsignificance may occur before the  
22 agency's final decision on a proposed action. Such an appeal shall  
23 also be allowed for a determination of significance/nonsignificance  
24 which may be issued by the agency after supplemental review;

25       (b) Shall consolidate appeal of procedural issues and of  
26 substantive determinations made under this chapter (such as a decision  
27 to require particular mitigation measures or to deny a proposal) by  
28 providing for simultaneous appeal of an agency decision on a proposal  
29 and any environmental determinations made under this chapter, with the  
30 exception of the threshold determination appeal as provided in (a) of  
31 this subsection or an appeal to the local legislative authority under  
32 RCW 43.21C.060 or other applicable state statutes;

33       (c) Shall provide for the preparation of a record for use in any  
34 subsequent appeal proceedings, and shall provide for any subsequent  
35 appeal proceedings to be conducted on the record, consistent with other  
36 applicable law. An adequate record consists of findings and  
37 conclusions, testimony under oath, and taped or written transcript. An  
38 electronically recorded transcript will suffice for purposes of review  
39 under this subsection; and

1 (d) Shall provide that procedural determinations made by the  
2 responsible official shall be entitled to substantial weight.

3 (~~((4))~~) (5) If a person aggrieved by an agency action has the right  
4 to judicial appeal and if an agency has an appeal procedure, such  
5 person shall, prior to seeking any judicial review, use such procedure  
6 if any such procedure is available, unless expressly provided otherwise  
7 by state statute.

8 (~~((5))~~) (6) RCW 43.21C.080 establishes an optional "notice of  
9 action" procedure which, if used, imposes a time period for appealing  
10 decisions under this chapter. Some statutes and ordinances contain  
11 time periods for challenging governmental actions which are subject to  
12 review under this chapter, such as various local land use approvals  
13 (the "underlying governmental action"). This section does not modify  
14 any such time periods. This section governs when a judicial appeal  
15 must be brought under this chapter where a "notice of action" is used,  
16 and/or where there is another time period which is required by statute  
17 or ordinance for challenging the underlying governmental action. In  
18 this subsection, the term "appeal" refers to a judicial appeal only.

19 (a) If there is a time period for appealing the underlying  
20 governmental action, appeals under this chapter shall be commenced  
21 within thirty days. The agency shall give official notice stating the  
22 date and place for commencing an appeal. If there is an agency  
23 proceeding under subsection (~~((3))~~) (4) of this section, the appellant  
24 shall, prior to commencing a judicial appeal, submit to the responsible  
25 official a notice of intent to commence a judicial appeal. This notice  
26 of intent shall be given within the time period for commencing a  
27 judicial appeal on the underlying governmental action.

28 (b) A notice of action under RCW 43.21C.080 may be used. If a  
29 notice of action is used, judicial appeals shall be commenced within  
30 the time period specified by RCW 43.21C.080, unless there is a time  
31 period for appealing the underlying governmental action in which case  
32 (a) of this subsection shall apply.

33 (c) Notwithstanding RCW 43.21C.080(1), if there is a time period  
34 for appealing the underlying governmental action, a notice of action  
35 may be published within such time period.

36 (~~((6))~~) (7)(a) Judicial review of an appeal decision made by an  
37 agency under RCW 43.21C.075(5) shall be on the record, consistent with  
38 other applicable law.

1 (b) A taped or written transcript may be used. If a taped  
2 transcript is to be reviewed, a record shall identify the location on  
3 the taped transcript of testimony and evidence to be reviewed. Parties  
4 are encouraged to designate only those portions of the testimony  
5 necessary to present the issues raised on review, but if a party  
6 alleges that a finding of fact is not supported by evidence, the party  
7 should include in the record all evidence relevant to the disputed  
8 finding. Any other party may designate additional portions of the  
9 taped transcript relating to issues raised on review. A party may  
10 provide a written transcript of portions of the testimony at the  
11 party's own expense or apply to that court for an order requiring the  
12 party seeking review to pay for additional portions of the written  
13 transcript.

14 (c) Judicial review under this chapter shall without exception be  
15 of the governmental action together with its accompanying environmental  
16 determinations.

17 (~~(7)~~) (8) Jurisdiction over the review of determinations under  
18 this chapter in an appeal before an agency or superior court shall upon  
19 consent of the parties be transferred in whole or part to the  
20 shorelines hearings board. The shorelines hearings board shall hear  
21 the matter and sign the final order expeditiously. The superior court  
22 shall certify the final order of the shorelines hearings board and said  
23 certified final order may only be appealed to an appellate court. In  
24 the case of an appeal under this chapter regarding a project or other  
25 matter that is also the subject of an appeal to the shorelines hearings  
26 board under chapter 90.58 RCW, the shorelines hearings board shall have  
27 sole jurisdiction over both the appeal under this section and the  
28 appeal under chapter 90.58 RCW, shall consider them together, and shall  
29 issue a final order.

30 (~~(8)~~) (9) For purposes of this section and RCW 43.21C.080, the  
31 words "action", "decision", and "determination" mean substantive agency  
32 action including any accompanying procedural determinations under this  
33 chapter (except where the word "action" means "appeal" in RCW  
34 43.21C.080(2) and (3)). The word "action" in this section and RCW  
35 43.21C.080 does not mean a procedural determination by itself made  
36 under this chapter. The word "determination" includes any  
37 environmental document required by this chapter and state or local  
38 implementing rules. The word "agency" refers to any state or local

1 unit of government. The word "appeal" refers to administrative,  
2 legislative, or judicial appeals.

3 ~~((9))~~ (10) The court in its discretion may award reasonable  
4 attorney's fees of up to one thousand dollars in the aggregate to the  
5 prevailing party, including a governmental agency, on issues arising  
6 out of this chapter if the court makes specific findings that the legal  
7 position of a party is frivolous and without reasonable basis.

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