

---

SENATE BILL 5087

---

State of Washington                      54th Legislature                      1995 Regular Session

By Senator Fraser; by request of Environmental Hearings Office

Read first time 01/10/95. Referred to Committee on Ecology & Parks.

1            AN ACT Relating to appeals involving environmental and land use  
2 boards; amending RCW 43.21B.160, 43.21B.170, 43.21B.190, 90.58.180,  
3 34.05.518, 34.05.522, and 75.20.140; and repealing RCW 43.21B.140 and  
4 43.21B.150.

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

6            **Sec. 1.** RCW 43.21B.160 and 1990 c 65 s 5 are each amended to read  
7 as follows:

8            In all appeals (~~involving a formal hearing~~), the hearings board  
9 shall have all powers relating to administration of oaths, issuance of  
10 subpoenas, and taking of depositions as are granted to agencies in  
11 chapter 34.05 RCW, the Administrative Procedure Act. The hearings  
12 board, and each member thereof, shall be subject to all duties imposed  
13 upon, and shall have all powers granted to, an agency by those  
14 provisions of chapter 34.05 RCW relating to adjudicative proceedings.  
15 In the case of appeals within the jurisdiction of the hearings board,  
16 the hearings board, or any member thereof, may obtain such assistance,  
17 including the making of field investigations, from the staff of the  
18 director as the hearings board, or any member thereof, may deem  
19 necessary or appropriate. Any communication, oral or written, from the

1 staff of the director to the hearings board shall be presented only in  
2 an open hearing.

3 **Sec. 2.** RCW 43.21B.170 and 1970 ex.s. c 62 s 47 are each amended  
4 to read as follows:

5 All proceedings(~~(, including both formal and informal hearings,)~~)  
6 before the hearings board or any of its members shall be conducted in  
7 accordance with such rules of practice and procedure as the hearings  
8 board may prescribe. The hearings board shall publish such rules and  
9 arrange for the reasonable distribution thereof.

10 **Sec. 3.** RCW 43.21B.190 and 1994 c 253 s 7 are each amended to read  
11 as follows:

12 Within thirty days after the final decision and order of the  
13 hearings board upon such an appeal has been communicated to the  
14 interested parties, such interested party aggrieved by the decision and  
15 order of the hearings board may appeal to the superior court. ~~((In all  
16 appeals involving a decision or an order of the hearings board after an  
17 informal hearing, the petition shall be filed in the superior court for  
18 the county of the petitioner's residence or principal place of  
19 business, or in the absence of a residence or principal place of  
20 business, for Thurston county. Such appeal may be perfected by filing  
21 with the clerk of the superior court a notice of appeal, and by serving  
22 a copy thereof by mail, or personally on the director, the air  
23 pollution control boards or authorities, established pursuant to  
24 chapter 70.94 RCW or on the board as the case may be. The hearings  
25 board shall serve upon the appealing party, the director, the air  
26 pollution control board or authorities established pursuant to chapter  
27 70.94 RCW, or the board, as the case may be, and on any other party  
28 appearing at the hearings board's proceeding, and file with the clerk  
29 of the court before trial, a certified copy of the hearings board's  
30 decision and order. Appellate review of a decision of the superior  
31 court may be sought as in other civil cases. No bond shall be required  
32 on appeals to the superior court or on review by the supreme court  
33 unless specifically required by the judge of the superior court.))~~

34 **Sec. 4.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read  
35 as follows:

1 (1) Any person aggrieved by the granting, denying, or rescinding of  
2 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
3 review from the shorelines hearings board by filing a request for the  
4 same within thirty days of the date of filing as defined in RCW  
5 90.58.140(6).

6 ~~((Concurrently with))~~ Within seven days of the filing of any  
7 request for review with the board as provided in this section  
8 pertaining to a final order of a local government, the requestor shall  
9 ~~((file a copy))~~ serve copies of his or her request ~~((with))~~ on the  
10 department and the attorney general. ~~((If it appears to the department  
11 or the attorney general that the requestor has valid reasons to seek  
12 review, either the department or the attorney general may certify the  
13 request within thirty days after its receipt to the shorelines hearings  
14 board following which the board shall then, but not otherwise, review  
15 the matter covered by the requestor. The failure to obtain such  
16 certification shall not preclude the requestor from obtaining a review  
17 in the superior court under any right to review otherwise available to  
18 the requestor.))~~ The department and the attorney general may intervene  
19 to protect the public interest and insure that the provisions of this  
20 chapter are complied with at any time within fifteen days from the date  
21 of the receipt by the department or the attorney general of a copy of  
22 the request for review filed pursuant to this section. ~~((The  
23 shorelines hearings board shall initially schedule review proceedings  
24 on such requests for review without regard as to whether such requests  
25 have or have not been certified or as to whether the period for the  
26 department or the attorney general to intervene has or has not expired,  
27 unless such review is to begin within thirty days of such scheduling.  
28 If at the end of the thirty day period for certification neither the  
29 department nor the attorney general has certified a request for review,  
30 the hearings board shall remove the request from its review schedule.))~~

31 (2) The department or the attorney general may obtain review of any  
32 final order granting a permit, or granting or denying an application  
33 for a permit issued by a local government by filing a written request  
34 with the shorelines hearings board and the appropriate local government  
35 within thirty days from the date the final order was filed as provided  
36 in RCW 90.58.140(6).

37 (3) The review proceedings authorized in subsections (1) and (2) of  
38 this section are subject to the provisions of chapter 34.05 RCW  
39 pertaining to procedures in adjudicative proceedings. Judicial review

1 of such proceedings of the shorelines hearings board is governed by  
2 chapter 34.05 RCW.

3 (4) A local government may appeal to the shorelines hearings board  
4 any rules, regulations, or guidelines adopted or approved by the  
5 department within thirty days of the date of the adoption or approval.  
6 The board shall make a final decision within sixty days following the  
7 hearing held thereon.

8 If the board determines that the rule, regulation, or guideline:

9 (a) Is clearly erroneous in light of the policy of this chapter; or

10 (b) Constitutes an implementation of this chapter in violation of  
11 constitutional or statutory provisions; or

12 (c) Is arbitrary and capricious; or

13 (d) Was developed without fully considering and evaluating all  
14 material submitted to the department by the local government; or

15 (e) Was not adopted in accordance with required procedures;

16 the board shall enter a final decision declaring the rule, regulation,  
17 or guideline invalid, remanding the rule, regulation, or guideline to  
18 the department with a statement of the reasons in support of the  
19 determination, and directing the department to adopt, after a thorough  
20 consultation with the affected local government, a new rule,  
21 regulation, or guideline. Unless the board makes one or more of the  
22 determinations as hereinbefore provided, the board shall find the rule,  
23 regulation, or guideline to be valid and enter a final decision to that  
24 effect.

25 (5) Rules, regulations, and guidelines shall be subject to review  
26 in superior court, if authorized pursuant to RCW 34.05.570(2). No  
27 review shall be granted by a superior court on petition from a local  
28 government unless the local government shall first have obtained review  
29 under subsection (4) of this section and the petition for court review  
30 is filed within three months after the date of final decision by the  
31 shorelines hearings board.

32 **Sec. 5.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to  
33 read as follows:

34 (1) The final decision of an administrative agency in an  
35 adjudicative proceeding under this chapter may be directly reviewed by  
36 the court of appeals either (a) upon certification by the superior  
37 court pursuant to this section or (b) if the final decision is from an  
38 environmental board as defined in subsection (3) of this section, upon

1 acceptance by the court of appeals after a certificate of appealability  
2 has been filed by the environmental board that rendered the final  
3 decision.

4 (2) For direct review upon certification by the superior court, an  
5 application for direct review must be filed with the superior court  
6 within thirty days of the filing of the petition for review in superior  
7 court. The superior court may certify a case for direct review only if  
8 the judicial review is limited to the record of the agency proceeding  
9 and the court finds that:

10 ((+1)) (a) Fundamental and urgent issues affecting the future  
11 administrative process or the public interest are involved which  
12 require a prompt determination;

13 ((+2)) (b) Delay in obtaining a final and prompt determination of  
14 such issues would be detrimental to any party or the public interest;

15 ((+3)) (c) An appeal to the court of appeals would be likely  
16 regardless of the determination in superior court; and

17 ((+4)) (d) The appellate court's determination in the proceeding  
18 would have significant precedential value.

19 Procedures for certification shall be established by court rule.

20 (3)(a) For the purposes of direct review of final decisions of  
21 environmental boards, environmental boards include those boards  
22 identified in RCW 43.21B.005 and growth management hearings boards as  
23 identified in RCW 36.70A.250.

24 (b) An environmental board may issue a certificate of appealability  
25 if it finds that delay in obtaining a final and prompt determination of  
26 the issues would be detrimental to any party or the public interest and  
27 either:

28 (i) Fundamental and urgent state-wide or regional issues are  
29 raised; or

30 (ii) The proceeding is likely to have significant precedential  
31 value.

32 (4) The environmental board shall state in the certificate of  
33 appealability which criteria it applied, explain how that criteria was  
34 met, and file with the certificate a copy of the final decision.

35 (5) For an appellate court to accept direct review of a final  
36 decision of an environmental board, it shall consider the same criteria  
37 outlined in subsection (3) of this section.

38 (6) The procedures for direct review of final decisions of  
39 environmental boards include:

1 (a) Within thirty days after filing the petition for review with  
2 the superior court, a party may file an application for direct review  
3 with the superior court and serve the appropriate environmental board  
4 and all parties of record. The application shall request the  
5 environmental board to file a certificate of appealability.

6 (b) If an issue on review is the jurisdiction of the environmental  
7 board, the board may file an application for direct review on that  
8 issue.

9 (c) The environmental board shall have thirty days to grant or deny  
10 the request for a certificate of appealability and its decision shall  
11 be filed with the superior court and served on all parties of record.

12 (d) If a certificate of appealability is issued, the parties shall  
13 have fifteen days from the date of service to file a notice of  
14 discretionary review in the superior court, and the notice shall  
15 include a copy of the certificate of appealability and a copy of the  
16 final decision.

17 (e) If the appellate court accepts review, the certificate of  
18 appealability shall be transmitted to the court of appeals as part of  
19 the certified record.

20 (f) If a certificate of appealability is denied, review shall be by  
21 the superior court. The superior court's decision may be appealed to  
22 the court of appeals.

23 **Sec. 6.** RCW 34.05.522 and 1988 c 288 s 504 are each amended to  
24 read as follows:

25 The court of appeals may refuse to accept direct review of a case  
26 ((certified)) pursuant to RCW 34.05.518 if it finds that the case does  
27 not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of  
28 Appellate Procedure 2.3 do not apply in this instance. The refusal to  
29 accept such review is not subject to further appellate review,  
30 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
31 Procedure to the contrary.

32 **Sec. 7.** RCW 75.20.140 and 1989 c 175 s 161 are each amended to  
33 read as follows:

34 ~~(1) ((In all appeals over which the hydraulic appeals board has~~  
35 ~~jurisdiction, a party taking an appeal may elect either a formal or~~  
36 ~~informal hearing. Such election shall be made according to the rules~~  
37 ~~of practice and procedure to be adopted by the hydraulic appeals board.~~

1 ~~In the event that appeals are taken from the same decision, order, or~~  
2 ~~determination, by different parties and only one of such parties elects~~  
3 ~~a formal hearing, a formal hearing shall be granted.~~

4 ~~(2))~~ In all appeals, the hydraulic appeals board shall have all  
5 powers relating to administration of oaths, issuance of subpoenas, and  
6 taking of depositions, but such powers shall be exercised in conformity  
7 with chapter 34.05 RCW.

8 ~~((3))~~ (2) In all appeals ~~((involving a formal hearing))~~, the  
9 hydraulic appeals board, and each member thereof, shall be subject to  
10 all duties imposed upon and shall have all powers granted to, an agency  
11 by those provisions of chapter 34.05 RCW relating to adjudicative  
12 proceedings.

13 ~~((4))~~ (3) All proceedings~~(, including both formal and informal~~  
14 ~~hearings,)~~ before the hydraulic appeals board or any of its members  
15 shall be conducted in accordance with such rules of practice and  
16 procedure as the board may prescribe. Such rules shall be published  
17 and distributed.

18 ~~((5))~~ (4) Judicial review of a decision of the hydraulic appeals  
19 board ~~((shall be de novo except when the decision has been rendered~~  
20 ~~pursuant to the formal hearing, in which event judicial review))~~ may be  
21 obtained only pursuant to RCW 34.05.510 through 34.05.598.

22 NEW SECTION. Sec. 8. The following acts or parts of acts are each  
23 repealed:

24 (1) RCW 43.21B.140 and 1987 c 109 s 30 & 1970 ex.s. c 62 s 44; and

25 (2) RCW 43.21B.150 and 1990 c 65 s 4, 1974 ex.s. c 69 s 2, & 1970  
26 ex.s. c 62 s 45.

--- END ---