

SENATE BILL REPORT

2SHB 1774

As of February 15, 1996

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: Ecology & Parks: 2/20/96.

SENATE COMMITTEE ON ECOLOGY & PARKS

Staff: Gary Wilburn (786-7453)

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 the state Administrative Procedure Act and for the 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. The appeal may be taken in Thurston County Superior Court or the superior court of the county in which the petitioner resides or has property affected by the decision. Certain water-related actions by the Department of Ecology are appealable to the PCHB.

Summary of 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 upon which 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. PCHB decisions made after an informal hearing are reviewed de novo in the superior court.

"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.

Appropriation: None.

Fiscal Note: Requested on February 12, 1996.

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