

SENATE BILL REPORT

SB 5087

As Passed Senate, January 30, 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: Ecology & Parks: 1/11/95, 1/19/95 [DP].
Passed Senate, 1/30/95, 48-0.

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass.

Signed by Senators Fraser, Chair; C. Anderson, Vice Chair; McAuliffe, McDonald, Spanel and Swecker.

Staff: David Danner (786-7784)

Background: The Environmental Hearings Office (EHO) consists of four quasi-judicial hearing boards: the Pollution Control Hearings Board (PCHB), the Forest Practices Hearings Board, the Shorelines Hearings Board (SHB), and the Hydraulics Appeals Board. Each board has jurisdiction as set forth in statute to hear appeals in certain environmental cases arising in local governments or state agencies.

A person aggrieved by an action of the Department of Ecology or a local government under the Shorelines Management Act may obtain SHB review only if he or she submits a request for review with the department and the Attorney General, and if the request is certified by either office. If neither certify the request, the aggrieved party must seek any further review in superior court.

Under the state Administrative Procedure Act, appeals of EHO board decisions are heard in superior court. However, the superior court may certify a case directly to the Court of Appeals under certain conditions. The Court of Appeals may accept or reject a certified case for direct review.

Although the EHO and SHB enabling statutes no longer distinguish between formal and informal hearings, a few references to them still appear in the statutory code.

Summary of Bill: The provisions of the Shoreline Management Act that require the Department of Ecology or the Attorney General to certify shoreline appeals to the SHB are deleted.

The Administrative Procedure Act is amended to authorize the EHO boards and the Growth Management Hearings Boards (GMHB) to certify a case directly to the Court of Appeals when an appeal to the superior court would result in undue delay, and: (1) the case involves fundamental and urgent matters of statewide or regional concern, or (2) the case is likely to establish a significant precedent. If the Court of Appeals declines to accept a case, the aggrieved party may appeal the case to superior court.

All remaining references to informal and formal hearings in the EHO enabling statutes and Shoreline Management Act are deleted.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: These measures would allow the EHO to streamline its proceedings, conserve resources, and reduce backlog.

Testimony Against: None.

Testified: Robert Jensen, EHO (pro).

House Amendment(s): Appellants of "water quantity decisions" (decisions involving beneficial use and minimum flow levels) or the Department of Ecology shall have the choice of appealing to the PCHB or to the superior court in the county directly and immediately affected by the decision.

The distinction between formal and informal hearings in cases in which the PCHB has jurisdiction is reinstated. If more than one party appeals a decision, and if any one of them selects an informal hearing, then an informal hearing shall be granted.

Superior court review of water quantity decisions is de novo.

Water appeals heard by the PCHB must be conducted in the general area where the petitioner resides, or by telephone. A single member of the PCHB may conduct an appeal of a water quantity decision.

GMHB jurisdiction is limited to cases where the Governor finds (1) that a state agency has substantially participated in the local process and has consistently raised issues in the petition for review, or (2) where review by the GMHB is the best means to accomplish state goals.

Growth management decisions of local legislative bodies are presumed to be valid. The burden shall be upon the petition for review to prove that the local government has not complied with the Growth Management Act.

The Attorney General is directed to defend or provide legal assistance to local governments in growth management hearings, if the local government requests such defense or legal assistance.

Growth Management Hearings Boards are deemed to be quasi-judicial bodies.