

1 6094 AMS MCCA S2993.2

2 **SB 6094** - S AMD - 448  
3 By Senators McCaslin and Haugen

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5 On page 21, beginning on line 24, after "decision" strike all  
6 material through "board" on line 25, and insert "~~((to superior court as  
7 provided in RCW 34.05.514 or 36.01.050 within thirty days of the final  
8 order of the board))~~ directly to the court of appeals for assignment by  
9 the chief presiding judge"

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13 On page 39, after line 39, insert the following:

14 **"Sec. 32.** RCW 34.05.518 and 1995 c 382 s 5 are each amended to  
15 read as follows:

16 (1) The final decision of an administrative agency in an  
17 adjudicative proceeding under this chapter may be directly reviewed by  
18 the court of appeals either (a) upon certification by the superior  
19 court pursuant to this section or (b) if the final decision is from an  
20 environmental board as defined in subsection (3) of this section, upon  
21 acceptance by the court of appeals after a certificate of appealability  
22 has been filed by the environmental board that rendered the final  
23 decision.

24 (2) For direct review upon certification by the superior court, an  
25 application for direct review must be filed with the superior court  
26 within thirty days of the filing of the petition for review in superior  
27 court. The superior court may certify a case for direct review only if  
28 the judicial review is limited to the record of the agency proceeding  
29 and the court finds that:

30 (a) Fundamental and urgent issues affecting the future  
31 administrative process or the public interest are involved which  
32 require a prompt determination;

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

1 (c) An appeal to the court of appeals would be likely regardless of  
2 the determination in superior court; and

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

5 Procedures for certification shall be established by court rule.

6 (3)(a) For the purposes of direct review of final decisions of  
7 environmental boards, environmental boards include those boards  
8 identified in RCW 43.21B.005 (~~and growth management hearings boards as~~  
9 ~~identified in RCW 36.70A.250~~)).

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

14 (i) Fundamental and urgent state-wide or regional issues are  
15 raised; or

16 (ii) The proceeding is likely to have significant precedential  
17 value.

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

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

24 (6) The procedures for direct review of final decisions of  
25 environmental boards include:

26 (a) Within thirty days after filing the petition for review with  
27 the superior court, a party may file an application for direct review  
28 with the superior court and serve the appropriate environmental board  
29 and all parties of record. The application shall request the  
30 environmental board to file a certificate of appealability.

31 (b) If an issue on review is the jurisdiction of the environmental  
32 board, the board may file an application for direct review on that  
33 issue.

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

37 (d) If a certificate of appealability is issued, the parties shall  
38 have fifteen days from the date of service to file a notice of  
39 discretionary review in the superior court, and the notice shall

1 include a copy of the certificate of appealability and a copy of the  
2 final decision.

3 (e) If the appellate court accepts review, the certificate of  
4 appealability shall be transmitted to the court of appeals as part of  
5 the certified record.

6 (f) If a certificate of appealability is denied, review shall be by  
7 the superior court. The superior court's decision may be appealed to  
8 the court of appeals."

9 Renumber the remaining sections consecutively.

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13 On page 1, beginning on line 4 of the title, after "36.93.170,"  
14 strike "and 84.14.010" and insert "84.14.010, and 34.05.518"

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