

SENATE BILL REPORT

SB 5126

As of January 27, 2003

Title: An act relating to environmental appeals.

Brief Description: Allowing de novo review of environmental hearings board decisions.

Sponsors: Senators Benton and Morton.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/29/03.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Staff: Genevieve Pisarski (786-7488)

Background: When a hearing is required by law or by constitutional right on an action by an administrative agency, Chapter 34.05 RCW, the state Administrative Procedure Act (APA), establishes the basic requirements for conducting the hearing and any subsequent judicial review, consistent with other states, the federal government, and court decisions. The particular laws that govern individual agencies often also provide requirements, such as designating what body will conduct the hearing, and may incorporate the requirements of the APA by reference or may modify or add to them.

APA requirements are based on the assumption that expertise in the governing law and the subject matter resides with the administrative agency and administrative hearings board, and that the scope of judicial review is limited to the validity, rather than the substance, of agency action, with the burden for demonstrating invalidity placed on the party asserting it. Under the APA, the standards that a reviewing court may use to determine validity of agency action include whether the agency action is constitutional, is within the agency's authority, was arrived at in a lawful manner, correctly applies the law, is supported by substantial evidence, resolves all necessary issues, or is arbitrary or capricious. The particular laws that govern individual agencies may, however, specify a de novo standard for judicial review, meaning that the court will substitute its own judgement for that of the agency. Under this standard, the court must agree with the agency action in order to uphold it and must conclude that the weight of the evidence supports the agency. Depending on the nature of the issue and the evidence and record developed in the administrative proceeding, the court may require the equivalent of a new trial.

Summary of Bill: Judicial review of the decisions of the growth management hearings boards is de novo.

Judicial review of the decisions of the Pollution Control Hearings Board, the Shoreline Hearings Board, the Hydraulic Appeals Board, and the Forest Practices Appeals Board is de novo, with the burden of proof on the department. As applicable, department may mean the

Department of Ecology, the Department of Fish and Wildlife, the Department of Natural Resources, the Office of Community Development, and the Department of Agriculture.

The rules for proceedings conducted by the Pollution Control Hearings Board must adopt the following requirements for the Department of Ecology: (1) The department must furnish the board and the appealing party a copy of all evidence relied upon in the department's decision. (2) The department must submit only evidence that supports the findings in the decision under appeal. (3) The department must identify and make available for examination and cross-examination any individuals whose observations it relied upon for its decision. (4) The department has the burden of proof, including the burden of moving forward with the evidence.

Appropriation: None.

Fiscal Note: Available.

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