

2 **SB 5087 - H AMD 871 WITHDRAWN 4/14/95**
3 By Representatives Chandler and Mastin

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature recognizes that judicial
8 review of certain environmental and land use appeals can be expedited
9 to benefit the people of the state. Allowing direct appeals to
10 superior court or the court of appeals can reduce backlogs, conserve
11 resources, and provide quicker guidance to individuals and communities
12 concerning important matters impacting their area. The legislature
13 therefore finds that it is in the public interest to reduce delays in
14 obtaining a final resolution over certain environmental and land use
15 matters by streamlining the judicial appeals process.

16 **Sec. 2.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to read
17 as follows:

18 (1) Except as provided in subsections (2) and (3) of this section
19 (~~and RCW 36.70A.300(3)~~), proceedings for review under this chapter
20 shall be instituted by filing a petition in the superior court, at the
21 petitioner's option, for (a) Thurston county, (b) the county of the
22 petitioner's residence or principal place of business, or (c) in any
23 county where the property owned by the petitioner and affected by the
24 contested decision is located.

25 (2) For proceedings involving institutions of higher education, the
26 petition shall be filed either in the county in which the principal
27 office of the institution involved is located or in the county of a
28 branch campus if the action involves such branch.

29 (3) For proceedings involving water quantity decisions made by the
30 department of ecology, as defined in section 14 of this act, the
31 petition shall be filed in the superior court in the county that will
32 be directly and immediately affected by the decision.

33 **Sec. 3.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
34 read as follows:

1 (1) The pollution control hearings board shall only have
2 jurisdiction to hear and decide appeals from the following decisions of
3 the department, the director, the administrator of the office of marine
4 safety, and the air pollution control boards or authorities as
5 established pursuant to chapter 70.94 RCW, or local health departments:

6 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
7 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 90.56.330.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
11 (~~90.14.130~~) and 90.48.120.

12 (c) The issuance, modification, or termination of any permit,
13 certificate, or license by the department or any air authority in the
14 exercise of its jurisdiction, including the issuance or termination of
15 a waste disposal permit, the denial of an application for a waste
16 disposal permit, or the modification of the conditions or the terms of
17 a waste disposal permit.

18 (d) Decisions of local health departments regarding the grant or
19 denial of solid waste permits pursuant to chapter 70.95 RCW.

20 (e) Decisions of local health departments regarding the issuance
21 and enforcement of permits to use or dispose of biosolids under RCW
22 70.95J.080.

23 (f) Any other decision by the department, the administrator of the
24 office of marine safety, or an air authority which pursuant to law must
25 be decided as an adjudicative proceeding under chapter 34.05 RCW.

26 (2) The jurisdiction of the pollution control hearings board is
27 further limited as follows:

28 (a) The hearings board shall have no jurisdiction whatsoever to
29 review water quantity decisions of the department of ecology as defined
30 in section 14 of this act, which are appealed directly to a superior
31 court, to review orders pertaining to the relinquishment of a water
32 right under RCW 90.14.130, or to review proceedings regarding general
33 adjudications of water rights conducted pursuant to chapter 90.03 or
34 90.44 RCW.

35 (b) The following hearings shall not be conducted by the hearings
36 board:

37 (~~(a)~~) (i) Hearings required by law to be conducted by the
38 shorelines hearings board pursuant to chapter 90.58 RCW.

1 (~~(b)~~) (ii) Hearings conducted by the department pursuant to RCW
2 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
3 90.44.180.

4 (~~(c)~~ ~~Proceedings by the department relating to general~~
5 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.~~

6 (~~(d)~~) (iii) Hearings conducted by the department to adopt, modify,
7 or repeal rules.

8 (3) Review of rules and regulations adopted by the hearings board
9 shall be subject to review in accordance with the provisions of the
10 Administrative Procedure Act, chapter 34.05 RCW.

11 **Sec. 4.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read
12 as follows:

13 The administrative procedure act, chapter 34.05 RCW, shall apply to
14 the appeal of rules and regulations adopted by the board to the same
15 extent as it applied to the review of rules and regulations adopted by
16 the directors and/or boards or commissions of the various departments
17 whose powers, duties and functions were transferred by section 6,
18 chapter 62, Laws of 1970 ex. sess. to the department. Except with
19 regard to water quantity decisions by the department, as defined in
20 section 14 of this act, which are appealed directly to a superior court
21 and orders pertaining to the relinquishment of a water right under RCW
22 90.14.130, all other decisions and orders of the director and all
23 decisions of air pollution control boards or authorities established
24 pursuant to chapter 70.94 RCW shall be subject to review by the
25 hearings board as provided in this chapter.

26 **Sec. 5.** RCW 43.21B.140 and 1987 c 109 s 30 are each amended to
27 read as follows:

28 In all appeals over which the hearings board has jurisdiction, a
29 party taking an appeal may elect either a formal or an informal
30 hearing, such election to be made according to rules of practice and
31 procedure to be promulgated by the hearings board: PROVIDED, That
32 nothing herein shall be construed to modify the provisions of RCW
33 43.21B.190 (~~and 43.21B.200~~). In the event that appeals are taken
34 from the same decision, order, or determination, as the case may be, by
35 different parties and only one of such parties elects (~~a formal~~) an
36 informal hearing, (~~a formal~~) an informal hearing shall be granted.

1 **Sec. 6.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to
2 read as follows:

3 The department and air authorities shall not have authority to hold
4 adjudicative proceedings pursuant to the Administrative Procedure Act,
5 chapter 34.05 RCW. ~~((Such))~~ All other hearings, except for water
6 quantity decisions as defined in section 14 of this act, that are
7 appealed directly to a superior court, and appeals of orders pertaining
8 to the relinquishment of a water right under RCW 90.14.130, shall be
9 held by the pollution control hearings board.

10 **Sec. 7.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (2) of this section, any order
13 issued by the department, the administrator of the office of marine
14 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,
15 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision
16 enacted after July 26, 1987, or any permit, certificate, or license
17 issued by the department may be appealed to the pollution control
18 hearings board if the appeal is filed with the board and served on the
19 department or authority within thirty days after receipt of the order.
20 Except as provided under chapter 70.105D RCW, ~~((this is))~~ these are the
21 exclusive means of appeal of such an order.

22 ~~((+2))~~ (a) The department, the administrator, or the authority in
23 its discretion may stay the effectiveness of an order during the
24 pendency of such an appeal.

25 ~~((+3))~~ (b) At any time during the pendency of an appeal of such an
26 order to the board or to an administrative law judge acting pursuant to
27 RCW 34.05.425(3), the appellant may apply pursuant to RCW 43.21B.320 to
28 the hearings board or administrative law judge for a stay of the order
29 or for the removal thereof.

30 ~~((+4))~~ (c) Any appeal before the hearings board must contain the
31 following in accordance with the rules of the hearings board:

32 ~~((+a))~~ (i) The appellant's name and address;

33 ~~((+b))~~ (ii) The date and docket number of the order, permit, or
34 license appealed;

35 ~~((+c))~~ (iii) A description of the substance of the order, permit,
36 or license that is the subject of the appeal;

37 ~~((+d))~~ (iv) A clear, separate, and concise statement of every
38 error alleged to have been committed;

1 (~~(e)~~) (v) A clear and concise statement of facts upon which the
2 requester relies to sustain his or her statements of error; and

3 (~~(f)~~) (vi) A statement setting forth the relief sought.

4 (~~(5)~~) (d) Upon failure to comply with any final order of the
5 department or the administrator or the administrative law judge acting
6 pursuant to RCW 34.05.425(3), the attorney general, on request of the
7 department or the administrator, may bring an action in the superior
8 court of the county where the violation occurred or the potential
9 violation is about to occur to obtain such relief as necessary,
10 including injunctive relief, to insure compliance with the order. The
11 air authorities may bring similar actions to enforce their orders.

12 (~~(6)~~) (e) An appealable decision or order shall be identified as
13 such and shall contain a conspicuous notice to the recipient that it
14 may be appealed only by filing an appeal with the hearings board and
15 serving it on the department within thirty days of receipt.

16 (2) Water quantity decisions of the department, as defined in
17 section 14 of this act may be appealed either to the pollution control
18 hearings board or directly to a superior court as provided in section
19 14 of this act. Appeals of orders pertaining to the relinquishment of
20 a water right shall be filed in superior court as provided by RCW
21 90.14.130.

22 **Sec. 8.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
23 read as follows:

24 Notwithstanding and in addition to any other powers granted to the
25 department of ecology, whenever it appears to the department that a
26 person is violating or is about to violate any of the provisions of the
27 following:

28 (1) Chapter 90.03 RCW; or

29 (2) Chapter 90.44 RCW; or

30 (3) Chapter 86.16 RCW; or

31 (4) Chapter 43.37 RCW; or

32 (5) Chapter 43.27A RCW; or

33 (6) Any other law relating to water resources administered by the
34 department; or

35 (7) A rule or regulation adopted, or a directive or order issued by
36 the department relating to subsections (1) through (6) of this section;
37 the department may cause a written regulatory order to be served upon
38 (~~(said)~~) the person either personally, or by registered or certified

1 mail delivered to addressee only with return receipt requested and
2 acknowledged by him or her. The order shall specify the provision of
3 the statute, rule, regulation, directive or order alleged to be or
4 about to be violated, and the facts upon which the conclusion of
5 violating or potential violation is based, and shall order the act
6 constituting the violation or the potential violation to cease and
7 desist or, in appropriate cases, shall order necessary corrective
8 action to be taken with regard to such acts within a specific and
9 reasonable time. The regulation of a headgate or controlling works as
10 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other
11 person so authorized by the department shall constitute a regulatory
12 order within the meaning of this section. A regulatory order issued
13 hereunder shall become effective immediately upon receipt by the person
14 to whom the order is directed, except for regulations under RCW
15 90.03.070 which shall become effective when a written notice is
16 attached as provided therein. Any person aggrieved by such order may
17 appeal the order pursuant to RCW 43.21B.310 unless the order is a water
18 quantity decision of the department, as defined in section 14 of this
19 act, in which case it may be appealed either to the pollution control
20 hearings board or directly to a superior court as provided in section
21 14 of this act.

22 **Sec. 9.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
23 as follows:

24 (1) The legislature recognizes the value of interties for improving
25 the reliability of public water systems, enhancing their management,
26 and more efficiently utilizing the increasingly limited resource.
27 Given the continued growth in the most populous areas of the state, the
28 increased complexity of public water supply management, and the trend
29 toward regional planning and regional solutions to resource issues,
30 interconnections of public water systems through interties provide a
31 valuable tool to ensure reliable public water supplies for the citizens
32 of the state. Public water systems have been encouraged in the past to
33 utilize interties to achieve public health and resource management
34 objectives. The legislature finds that it is in the public interest to
35 recognize interties existing and in use as of January 1, 1991, and to
36 have associated water rights modified by the department of ecology to
37 reflect current use of water through those interties, pursuant to
38 subsection (3) of this section. The legislature further finds it in

1 the public interest to develop a coordinated process to review
2 proposals for interties commencing use after January 1, 1991.

3 (2) For the purposes of this section, the following definitions
4 shall apply:

5 (a) "Interties" are interconnections between public water systems
6 permitting exchange or delivery of water between those systems for
7 other than emergency supply purposes, where such exchange or delivery
8 is within established instantaneous and annual withdrawal rates
9 specified in the systems' existing water right permits or certificates,
10 or contained in claims filed pursuant to chapter 90.14 RCW, and which
11 results in better management of public water supply consistent with
12 existing rights and obligations. Interties include interconnections
13 between public water systems permitting exchange or delivery of water
14 to serve as primary or secondary sources of supply, but do not include
15 development of new sources of supply to meet future demand.

16 (b) "Service area" is the area designated in a water system plan or
17 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
18 respectively. When a public water system does not have a designated
19 service area subject to the approval process of those chapters, the
20 service area shall be the designated place of use contained in the
21 water right permit or certificate, or contained in the claim filed
22 pursuant to chapter 90.14 RCW.

23 (3) Public water systems with interties existing and in use as of
24 January 1, 1991, or that have received written approval from the
25 department of health prior to that date, shall file written notice of
26 those interties with the department of health and the department of
27 ecology. The notice may be incorporated into the public water system's
28 five-year update of its water system plan, but shall be filed no later
29 than June 30, 1996. The notice shall identify the location of the
30 intertie; the dates of its first use; the purpose, capacity, and
31 current use; the intertie agreement of the parties and the service
32 areas assigned; and other information reasonably necessary to modify
33 the water right permit. Notwithstanding the provisions of RCW
34 90.03.380 and 90.44.100, for public water systems with interties
35 existing and in use as of January 1, 1991, the department of ecology,
36 upon receipt of notice meeting the requirements of this subsection,
37 shall, as soon as practicable, modify the place of use descriptions in
38 the water right permits, certificates, or claims to reflect the actual
39 use through such interties, provided that the place of use is within

1 service area designations established in a water system plan approved
2 pursuant to chapter 43.20 RCW, or a coordinated water system plan
3 approved pursuant to chapter 70.116 RCW, and further provided that the
4 water used is within the instantaneous and annual withdrawal rates
5 specified in the water right permit and that no outstanding complaints
6 of impairment to existing water rights have been filed with the
7 department of ecology prior to September 1, 1991. Where such
8 complaints of impairment have been received, the department of ecology
9 shall make all reasonable efforts to resolve them in a timely manner
10 through agreement of the parties or through available administrative
11 remedies.

12 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
13 exchange or delivery of water through interties commencing use after
14 January 1, 1991, shall be permitted when the intertie improves overall
15 system reliability, enhances the manageability of the systems, provides
16 opportunities for conjunctive use, or delays or avoids the need to
17 develop new water sources, and otherwise meets the requirements of this
18 section, provided that each public water system's water use shall not
19 exceed the instantaneous or annual withdrawal rate specified in its
20 water right authorization, shall not adversely affect existing water
21 rights, and shall not be inconsistent with state-approved plans such as
22 water system plans or other plans which include specific proposals for
23 construction of interties. Interties commencing use after January 1,
24 1991, shall not be inconsistent with regional water resource plans
25 developed pursuant to chapter 90.54 RCW.

26 (5) For public water systems subject to the approval process of
27 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
28 commencing use after January 1, 1991, shall be incorporated into water
29 system plans pursuant to chapter 43.20 RCW or coordinated water system
30 plans pursuant to chapter 70.116 RCW and submitted to the department of
31 health and the department of ecology for review and approval as
32 provided for in subsections (5) through (9) of this section. The plan
33 shall state how the proposed intertie will improve overall system
34 reliability, enhance the manageability of the systems, provide
35 opportunities for conjunctive use, or delay or avoid the need to
36 develop new water sources.

37 (6) The department of health shall be responsible for review and
38 approval of proposals for new interties. In its review the department
39 of health shall determine whether the intertie satisfies the criteria

1 of subsection (4) of this section, with the exception of water rights
2 considerations, which are the responsibility of the department of
3 ecology, and shall determine whether the intertie is necessary to
4 address emergent public health or safety concerns associated with
5 public water supply.

6 (7) If the intertie is determined by the department of health to be
7 necessary to address emergent public health or safety concerns
8 associated with public water supply, the public water system shall
9 amend its water system plan as required and shall file an application
10 with the department of ecology to change its existing water right to
11 reflect the proposed use of the water as described in the approved
12 water system plan. The department of ecology shall process the
13 application for change pursuant to RCW 90.03.380 or 90.44.100 as
14 appropriate, except that, notwithstanding the requirements of those
15 sections regarding notice and protest periods, applicants shall be
16 required to publish notice one time, and the comment period shall be
17 fifteen days from the date of publication of the notice. Within sixty
18 days of receiving the application, the department of ecology shall
19 issue findings and advise the department of health if existing water
20 rights are determined to be adversely affected. If no determination is
21 provided by the department of ecology within the sixty-day period, the
22 department of health shall proceed as if existing rights are not
23 adversely affected by the proposed intertie. The department of ecology
24 may obtain an extension of the sixty-day period by submitting written
25 notice to the department of health and to the applicant indicating a
26 definite date by which its determination will be made. No additional
27 extensions shall be granted, and in no event shall the total review
28 period for the department of ecology exceed one hundred eighty days.

29 (8) If the department of health determines the proposed intertie
30 appears to meet the requirements of subsection (4) of this section but
31 is not necessary to address emergent public health or safety concerns
32 associated with public water supply, the department of health shall
33 instruct the applicant to submit to the department of ecology an
34 application for change to the underlying water right or claim as
35 necessary to reflect the new place of use. The department of ecology
36 shall consider the applications pursuant to the provisions of RCW
37 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
38 interties and associated water rights the department of ecology
39 determines that additional information is required to act on the

1 application, the department may request applicants to provide
2 information necessary for its decision, consistent with agency rules
3 and written guidelines. Parties disagreeing with the decision of the
4 department of ecology ((~~en~~)) to approve or deny the application for
5 change in place of use may appeal the decision to the pollution control
6 hearings board or directly to a superior court as provided in section
7 14 of this act.

8 (9) The department of health may approve plans containing intertie
9 proposals prior to the department of ecology's decision on the water
10 right application for change in place of use. However, notwithstanding
11 such approval, construction work on the intertie shall not begin until
12 the department of ecology issues the appropriate water right document
13 to the applicant consistent with the approved plan.

14 **Sec. 10.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
15 read as follows:

16 When it appears to the department of ecology that a person entitled
17 to the use of water has not beneficially used his or her water right or
18 some portion thereof, and it appears that ((~~said~~)) the right has or may
19 have reverted to the state because of such nonuse, as provided by RCW
20 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall
21 notify such person by order: PROVIDED, That where a company,
22 association, district, or the United States has filed a blanket claim
23 under the provisions of RCW 90.14.060 for the total benefits of those
24 served by it, the notice shall be served on such company, association,
25 district or the United States and not upon any of its individual water
26 users who may not have used the water or some portion thereof which
27 they were entitled to use. The order shall contain: (1) A description
28 of the water right, including the approximate location of the point of
29 diversion, the general description of the lands or places where such
30 waters were used, the water source, the amount involved, the purpose of
31 use, and the apparent authority upon which the right is based; (2) a
32 statement that unless sufficient cause be shown on appeal the water
33 right will be declared relinquished; and (3) a statement that such
34 order may be appealed to ((~~the pollution control hearings board~~))
35 superior court. Any person aggrieved by such an order may appeal it to
36 ((~~the pollution control hearings board pursuant to RCW 43.21B.310~~)) the
37 superior court in the county where the land is located upon which the
38 water was used. Any such appeal to superior court shall be de novo.

1 The order shall be served by registered or certified mail to the last
2 known address of the person and be posted at the point of division or
3 withdrawal. The order by itself shall not alter the recipient's right
4 to use water, if any.

5 **Sec. 11.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
6 read as follows:

7 Any person feeling aggrieved by any decision of the department of
8 ecology may have the same reviewed by the pollution control hearings
9 board or directly to a superior court pursuant to ((RCW 43.21B.310))
10 section 22 of this act. In any such review, the findings of fact as
11 set forth in the report of the department of ecology shall be prima
12 facie evidence of the fact of any waiver or relinquishment of a water
13 right or portion thereof. If the hearings board affirms the decision
14 of the department, a party seeks review in superior court of that
15 hearings board decision pursuant to chapter 34.05 RCW, and the court
16 determines that the party was injured by an arbitrary, capricious, or
17 erroneous order of the department, the court may award reasonable
18 attorneys' fees. Any order regarding the relinquishment of a water
19 right shall be appealed pursuant to RCW 90.14.130.

20 **Sec. 12.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
21 read as follows:

22 (1) All matters relating to the implementation and enforcement of
23 this chapter by the department of ecology shall be carried out in
24 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
25 except where the provisions of this chapter expressly conflict with
26 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
27 ((~~adjudicative proceedings within the meaning of chapter 34.05 RCW.~~
28 ~~Final decisions of the department of ecology in these proceedings~~))
29 appealable to superior court as provided in that section. Other final
30 decisions of the department of ecology under this chapter are subject
31 to review by the pollution control hearings board or a superior court
32 in accordance with ((~~chapter 43.21B RCW~~)) section 14 of this act.

33 (2) RCW 90.14.130 provides nonexclusive procedures for determining
34 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
35 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
36 among other proceedings, general adjudication proceedings initiated
37 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall

1 apply to litigation involving determinations of the department of
2 ecology under RCW 90.03.290 relating to the impairment of existing
3 rights.

4 **Sec. 13.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read
5 as follows:

6 The department is hereby empowered to promulgate such rules as may
7 be necessary to carry out the provisions of this chapter. Decisions of
8 the department, other than rule making, shall be subject to review by
9 the pollution control hearings board or a superior court in accordance
10 with (~~chapter 43.21B RCW~~) section 14 of this act.

11 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.21B
12 RCW to read as follows:

13 (1) A person who is aggrieved or adversely affected by a water
14 quantity decision may appeal the decision either to the pollution
15 control hearings board pursuant to RCW 43.21B.310 or directly to a
16 superior court. Any direct appeal to a superior court as authorized by
17 this section shall be de novo and must be filed in the superior court
18 in the county that will be directly and immediately affected by the
19 decision.

20 (2) For purposes of this section, a "water-related agency action"
21 includes the following:

22 (a) A decision to grant or deny a permit or certificate for a right
23 to the beneficial use of water or to amend, change, or transfer such a
24 right;

25 (b) A decision to enforce the conditions of a permit for, or right
26 to, the beneficial use of water or to require any person to discontinue
27 the use of water; and

28 (c) A decision to establish a minimum flow or level for water under
29 chapter 90.03, 90.22, or 90.54 RCW, or to reserve water for such a
30 minimum flow or level

31 **Sec. 15.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read
32 as follows:

33 (1) Any person aggrieved by the granting, denying, or rescinding of
34 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
35 review from the shorelines hearings board by filing a request for the

1 same within thirty days of the date of filing as defined in RCW
2 90.58.140(6).

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

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

34 (3) The review proceedings authorized in subsections (1) and (2) of
35 this section are subject to the provisions of chapter 34.05 RCW
36 pertaining to procedures in adjudicative proceedings. Judicial review
37 of such proceedings of the shorelines hearings board is governed by
38 chapter 34.05 RCW.

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

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

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

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

10 (c) Is arbitrary and capricious; or

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

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

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

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

30 **Sec. 16.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to
31 read as follows:

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

1 has been filed by the environmental board that rendered the final
2 decision.

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

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

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

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

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

18 Procedures for certification shall be established by court rule.

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

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

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

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

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

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

37 (6) The procedures for direct review of final decisions of
38 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. 17.** 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. 18.** RCW 34.05.542 and 1988 c 288 s 509 are each amended to
33 read as follows:

34 Subject to other requirements of this chapter or of another
35 statute:

36 (1) A petition for judicial review of a rule may be filed at any
37 time, except as limited by RCW 34.05.375.

1 (2) A petition for judicial review of an order shall be filed with
2 the court and served on the agency, the hearings board if one is
3 involved, the office of the attorney general, and all parties of record
4 within thirty days after service of the final order.

5 (3) A petition for judicial review of agency action other than the
6 adoption of a rule or the entry of an order is not timely unless filed
7 with the court and served on the agency, the office of the attorney
8 general, and all other parties of record within thirty days after the
9 agency action, but the time is extended during any period that the
10 petitioner did not know and was under no duty to discover or could not
11 reasonably have discovered that the agency had taken the action or that
12 the agency action had a sufficient effect to confer standing upon the
13 petitioner to obtain judicial review under this chapter.

14 (4) Service of the petition on the agency shall be by delivery of
15 a copy of the petition to the office of the director, or other chief
16 administrative officer or chairperson of the agency, at the principal
17 office of the agency. Service of a copy by mail upon the other parties
18 of record, the hearings board if one is involved, and the office of the
19 attorney general shall be deemed complete upon deposit in the United
20 States mail, as evidenced by the postmark.

21 (5) Failure to timely serve a petition on the office of the
22 attorney general or the hearings board if one is involved, is not
23 grounds for dismissal of the petition unless the service that is
24 provided impairs the orderly conduct of judicial process. The service
25 so provided as to the hearings board only applies to judicial
26 proceedings pending on the effective date of this act.

27 (6) For the purposes of this section, "hearings board" means and
28 independent, quasi-judicial, multiperson entity whose sole
29 responsibility is to determine on review in a contested matter the
30 validity or invalidity of an order issued by another governmental
31 entity.

32 **Sec. 19.** RCW 34.05.566 and 1989 c 175 s 26 are each amended to
33 read as follows:

34 (1) Within thirty days after service of the petition for judicial
35 review, or within further time allowed by the court or by other
36 provision of law, the agency shall transmit to the court the original
37 or a certified copy of the agency record for judicial review of the
38 agency action. The record shall consist of any agency documents

1 expressing the agency action, other documents identified by the agency
2 as having been considered by it before its action and used as a basis
3 for its action, and any other material described in this chapter as the
4 agency record for the type of agency action at issue, subject to the
5 provisions of this section.

6 (2) If part of the record has been preserved without a transcript,
7 the agency shall prepare a transcript for inclusion in the record
8 transmitted to the court, except for portions that the parties
9 stipulate to omit in accordance with subsection (4) of this section.

10 (3) The agency may charge a nonindigent petitioner with the
11 reasonable costs of preparing any necessary copies and transcripts for
12 transmittal to the court. A failure by the petitioner to pay any of
13 this cost to the agency relieves the agency from the responsibility for
14 preparation of the record and transmittal to the court.

15 (4) The record may be shortened, summarized, or organized
16 temporarily or, by stipulation of all parties, permanently.

17 (5) The court may tax the cost of preparing transcripts and copies
18 of the record:

19 (a) Against a party who unreasonably refuses to stipulate to
20 shorten, summarize, or organize the record; or

21 (b) In accordance with any provision of law.

22 (6) Additions to the record pursuant to RCW 34.05.562 must be made
23 as ordered by the court.

24 (7) The court may require or permit subsequent corrections or
25 additions to the record.

26 (8) For the purposes of this section, agency includes hearing board
27 as defined in RCW 34.05.542(6).

28 NEW SECTION. Sec. 20. It is the intent of the legislature through
29 the enactment of section 18 of this act to clarify the filing
30 procedures in RCW 34.05.542. Section 18 of this act is remedial in
31 nature and applies to all judicial proceedings pending on the effective
32 date of this act.

33 NEW SECTION. Sec. 21. A new section is added to chapter 43.21B
34 RCW to read as follows:

35 The hearings board shall ensure that a hearing pertaining to a
36 water quantity decision, as defined in section 14 of this act, shall be
37 conducted in the general area where the petitioner resides, or provide

1 for the hearing to be conducted by telephone. A single member of the
2 board may conduct such hearings.

3 NEW SECTION. **Sec. 22.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect immediately."

11 **SB 5087** - H AMD
12 By Representative Chandler

13

14 On page 1, line 2 of the title, after "boards;" strike the
15 remainder of the title and insert "amending RCW 34.05.514, 43.21B.110,
16 43.21B.130, 43.21B.240, 43.21B.310, 43.27A.190, 90.03.383, 90.14.130,
17 90.14.190, 90.14.200, 90.66.080, 90.58.180, 34.05.542, 34.05.518,
18 34.05.522, 34.05.542, and 34.05.566; adding new sections to chapter
19 43.21B RCW; creating new sections; and declaring an emergency."

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