
Environment & Energy Committee

HB 2039

Brief Description: Modifying the appeals process for environmental and land use matters.

Sponsors: Representatives Fitzgibbon and Ramel.

Brief Summary of Bill

- Modifies the process, beginning July 1, 2026, for direct review by the Court of Appeals for decisions issued by the Pollution Control Hearings Board (PCHB), the Shoreline Hearings Board (SHB), and the Growth Management Hearings Board (GMHB).
- Modifies the process, beginning July 1, 2026, for direct review by the Court of Appeals for appeals arising under the Land Use Petition Act.
- Directs the presiding officer, in a proceeding before the PCHB, the SHB, or the GMHB, in which it appears that more than one appeal has arisen out of the same underlying project, to consolidate such appeals for hearing upon a determination that certain criteria have been met.
- Modifies the jurisdiction of the PCHB to hear appeals arising pursuant to specified additional environmental laws.

Hearing Date: 1/8/24

Staff: Robert Hatfield (786-7117).

Background:

Authority of the Department of Ecology.

The Department of Ecology (Ecology) is responsible for managing many of the state's

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environmental programs and policies. Ecology's authority derives from multiple statutes that direct it to manage the state's water resources, air quality, pollution, solid and hazardous wastes, toxic hazards, and the state shorelines. Some of the programs administered by Ecology include the authority to:

- adopt rules that establish statewide exemptions from local solid waste permitting requirements for certain solid wastes with beneficial uses;
- prepare and update a statewide master oil and hazardous substance spill prevention and contingency plan;
- administer and enforce the operations of stewardship organizations formed to collect and recycle mercury-containing lights;
- enforce the requirements of the Children's Safe Products Act, which establishes restrictions on the amount of certain chemicals in children's products and requires manufacturers to provide information to Ecology about their use of other chemicals of concern; and
- review and approve shoreline master programs submitted by local governments.

Aggrieved parties may appeal many types of Ecology administrative decisions, orders, and penalties to the Pollution Control Hearings Board.

Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an administrative body that hears and decides appeals from state and local governmental agencies on a wide variety of environmental permits, orders, and civil penalties, including orders and civil penalties related to water well construction, water rights, hazardous waste, noise control, and carryout bags.

Shoreline Hearings Board.

The Shoreline Hearings Board hears and decides appeals of shoreline building and construction permits or penalty orders issued by local or state government agencies under the Shoreline Management Act.

Growth Management Hearings Board.

The Growth Management Hearings Board (GMHB) hears petitions and resolves disputes concerning the Growth Management Act.

Environmental and Land Use Hearings Office.

The Environmental and Land Use Hearings Office (ELUHO) is the state agency that administers the PCHB, the SHB, and the GMHB. The ELUHO employs administrative law judges to facilitate a wide range of administrative processes. The director of the ELUHO may appoint administrative law judges to assist with cases that come before the PCHB, the SHB, and the GMHB.

Administrative Procedure Act.

The Administrative Procedure Act sets the process state agencies must follow when an agency takes administrative action. Individuals appealing agency actions must exhaust their administrative remedies with the agency prior to judicial review. Agencies offer quasi-judicial administrative hearings to hear appeals of agency actions. Administrative hearings adjudicate appeals by interpreting agency policy and regulations. Adjudication resembles what a court does, but is less formal. Adjudicative proceedings determine legal rights, duties, or privileges when a hearing is required by law or by the Constitution.

The Administrative Procedure Act—Direct Review by Court of Appeals.

As a result of legislation enacted in 2021 that is effective until July 1, 2026, the final decision of an administrative agency in an adjudicative proceeding, including decisions issued by the PCHB, the SHB, or the GMHB (collectively referred to as environmental boards), may be directly reviewed by the Court of Appeals upon certification by the superior court. Transfer of cases does not require the filing of a motion for discretionary review with the Court of Appeals. The superior court may certify cases for transfer to the Court of Appeals upon finding the following:

- all parties have consented to the transfer to the Court of Appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record; or
- one or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:
 1. the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record; or
 2. the superior court has completed any necessary supplementation of the record, such that only issues of law remain for determination.

After July 1, 2026, an agency decision, other than a decision that has been issued by an environmental board, that has been appealed to superior court may be directly reviewed by the Court of Appeals if the judicial review is limited to the record of the agency proceeding and the superior court finds that:

- fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;
- delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;
- an appeal to the Court of Appeals would be likely regardless of the determination in superior court; and
- the appellate court's determination in the proceeding would have significant precedential value.

After July 1, 2026, a final decision issued by an environmental board may be directly reviewed

by the Court of Appeals upon acceptance by the Court of Appeals after a certificate of appealability has been filed by the environmental board that issued the final decision.

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

- fundamental and urgent statewide or regional issues are raised; or
- the proceeding is likely to have significant precedential value.

The Court of Appeals may accept direct review of a decision from an environmental board based on a consideration of the same criteria used by the environmental board to issue the certificate of appealability.

Land Use Petition Act.

With limited exceptions, the Land Use Petition Act is the exclusive means of judicial review of land use decisions. The term "land use decision" is defined and means a final determination by a county, city, or incorporated town's body or officer with the highest level of authority, including those with authority to hear appeals, to make a determination on the following:

- applications for a project permit or other governmental approval;
- an interpretative or declaratory decision regarding the application to a specific property of zoning, ordinances, or rules; and
- the enforcement of ordinances regulating the improvement, development, modification, maintenance, or use of real property.

Land Use Petition Act—Direct Review by Court of Appeals.

As a result of legislation enacted in 2021 that is effective until July 1, 2026, the superior court may transfer the judicial review of a land use decision to the Court of Appeals upon finding that all parties have consented to the transfer to the Court of Appeals and agreed that the judicial review can occur based upon an existing record. Transfer of cases does not require the filing of a motion for discretionary review with the Court of Appeals.

Summary of Bill:

Direct Review by Court of Appeals of Decisions Issued by the Pollution Control Hearings Board, the Shoreline Hearings Board, and the Growth Management Hearings Board.

Beginning July 1, 2026, the final decision of the Pollution Control Hearings Board (PCHB), the Shoreline Hearings Board (SHB), and the Growth Management Hearings Board (SHB) may be directly reviewed by the Court of Appeals upon certification by the superior court. Transfer of cases for direct review by the Court of Appeals does not require the filing of a motion for discretionary review with the Court of Appeals.

The superior court may certify cases for transfer to the Court of Appeals upon finding that

transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:

- the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or
- the superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562, such that only issues of law remain for determination.

If the superior court certifies a final decision of an administrative agency in an adjudicative proceeding, the superior court shall transfer the matter to the Court of Appeals as a direct appeal.

Direct Review by Court of Appeals of Land Use Decisions Pursuant to the Land Use Petition Act

The superior court may transfer the judicial review of a land use decision to the Court of Appeals upon finding that:

- transfer would serve the interest of justice;
- transfer would not cause substantial prejudice to any party, including any unrepresented party; and
- the judicial review can occur based upon the existing record.

Consolidation of Appeals Before the Pollution Control Hearings Board, the Shoreline Hearings Board, and the Growth Management Hearings Board.

In a proceeding before the PCHB, the SHB, or the GMHB, where it appears that more than one appeal has arisen out of the same underlying project, the presiding officer shall consolidate such appeals for hearing upon making a determination that the following three criteria have been met:

- consolidation will expedite disposition of the appeals;
- consolidation will avoid duplication of testimony; and
- consolidation will not prejudice the rights of the parties.

Appeal of Orders and Civil Penalties Issued Pursuant to Specified Environmental Laws.

The jurisdiction of the PCHB to hear appeals arising from the issuance of civil penalties, orders, and decisions under various environmental laws is amended to include appeals arising pursuant to specified additional environmental laws, including, among others:

- the Children's Safe Products Act;
- hazardous waste management;
- water well construction;
- floodplain management; and
- electronic product recycling.

Appropriation: None.

Fiscal Note: Requested on January 2, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.