
Civil Rights & Judiciary Committee

SSB 6009

Brief Description: Concerning direct review of administrative decisions by the court of appeals.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Holy, Dhingra and Nobles).

Brief Summary of Substitute Bill

- Retains current provisions and repeals certain provisions that will take effect on July 1, 2026, in the Administrative Procedure Act and the Land Use Petition Act (LUPA) relating to direct review by the court of appeals of administrative decisions.
- Makes a party's withholding of consent to transfer for direct appeal of land use cases under the LUPA inadmissible in any proceeding.

Hearing Date: 2/20/26

Staff: Matt Sterling (786-7289).

Background:

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 quasijudicial 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Environmental Boards.

The Pollution Control Hearings Board, the Shorelines Hearings Board, and the Growth Management Hearings Board (collectively referred to as the environmental boards) review environmental and land use decisions from agencies and local governments, including the issuance of permits, orders, and civil penalties.

Direct Review by Court of Appeals Until July 1, 2026.

A final decision of an administrative agency in an adjudicative proceeding is subject to a petition for direct review by the court of appeals rather than the superior court subject to certain requirements. A final administrative agency decision may be directly reviewed by the court of appeals upon certification by the superior court if:

- all parties have consented to the transfer and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record; or
- without unanimous consent, the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, and that the judicial review can occur based upon the agency record developed before the administrative body.

For the appeal of a permit related to a clean energy project that is the subject of a final decision of the environmental boards, a petition must be certified by the superior court for transfer to the court of appeals upon a finding that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record or the superior court has completed any necessary supplementation of the record.

If the superior court certifies a final decision of an administrative agency in an adjudicative proceeding, the superior court must transfer the matter to the court of appeals as a direct appeal. A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to 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.

Direct Review by Court of Appeals After July 1, 2026.

After July 1, 2026, a final agency decision, other than any decision that has been issued by an environmental board, that has been appealed to the 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;
- a 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 the superior court; and

- the appellate court's determination in the proceeding would have significant precedential value.

For the appeal of a permit related to a clean energy project that is the subject of a final decision of the environmental boards, a petition must be certified by the superior court for transfer to the court of appeals upon a finding that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record or the superior court has completed any necessary supplementation of the record.

An agency decision that has been issued by an environmental board that is not related to a clean energy project may be directly reviewed upon certification by the superior court if:

- all parties have consented to the transfer 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, and that the judicial review can occur based upon the agency record developed before the administrative body.

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. A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to the superior court.

Clean Energy Projects.

Clean energy projects are defined as the following facilities, together with their associated facilities:

- clean energy product manufacturing facilities;
- electrical transmission facilities;
- facilities to produce nonemitting electric generation or electric generation from renewable resources, with certain exceptions;
- storage facilities;
- facilities or projects at any facilities that exclusively or primarily process biogenic feedstocks into biofuel;
- biomass energy facilities; or
- facilities or projects at any facilities that exclusively or primarily process alternative jet fuel.

Land Use Petition Act.

With limited exceptions, the Land Use Petition Act (LUPA) is the exclusive means of judicial review of land use decisions. The term land use decision is defined as 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:

- 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.

The Legislature made changes to the LUPA in 2021, which provide for the appellate review of a land use decision. 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 filing a motion for discretionary review with the court of appeals.

The changes to the LUPA in 2021 will expire June 30, 2026.

Summary of Bill:

Administrative Procedure Act.

A petition for direct review of a final agency decision by an environmental board that relates to a clean energy project must be certified by the superior court for transfer to the court of appeals upon a finding that the judicial review can occur based upon the agency record developed before the administrative body.

The provisions for direct review of a final agency decision that was not an environmental board that required the superior court to make certain findings for the decision to be eligible for direct review are repealed and the current provisions are retained that allow for direct review of an agency decision that does not relate to a clean energy project if the superior court finds:

- that transfer would serve the interest of justice;
- it would not cause substantial prejudice to any party; and
- that the judicial review can occur based upon the agency record developed before the administrative body.

Land Use Petition Act.

The provisions of the LUPA for transfer of judicial review of a land use decision to the court of appeals upon the superior court finding that all parties have consented to the transfer and agreed that the judicial review can occur based upon an existing record are retained and will not expire on July 1, 2026.

A party's withholding of consent to transfer for direct appeal is inadmissible as evidence at trial. The withholding of consent may not be used against the party in any proceeding.

Appropriation: None.

Fiscal Note: Available.

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