

HOUSE BILL REPORT

HB 2152

As Reported By House Committee On:
Environmental Affairs

Title: An act relating to appeals involving boards within the environmental hearings office.

Brief Description: Revising procedures for appeals involving boards within the environmental hearings office.

Sponsors: Representatives Rust, Horn, Sommers, Karahalios, Linville, L. Johnson, J. Kohl and Patterson.

Brief History:

Reported by House Committee on:
Environmental Affairs, January 20, 1994, DPS.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Van Luven, Assistant Ranking Minority Member; Bray; Edmondson; Foreman; Holm; L. Johnson; J. Kohl; Linville; Roland, and Sheahan.

Minority Report: Do not pass. Signed by 1 member: Representative Hansen.

Staff: Harry Reinert (786-7110).

Background: The Pollution Control Hearings Board (PCHB) has three members of the public appointed by the governor. The PCHB considers appeals of Department of Ecology decisions to impose a fine or penalty and of department regulatory orders. The PCHB also reviews decisions of the air pollution control boards and of the Office of Marine Safety. Although the PCHB has authority to appoint a hearing examiner to conduct hearings, decisions of the PCHB must be agreed to by at least two members of the board.

The Shorelines Hearings Board (SHB) has six members. Three of the members are the three PCHB members. The other three members must include a representative of cities and a representative of counties. Under the Shoreline Management Act, each county and city is required to adopt a master program to regulate the shorelines within the government's

boundaries. A substantial development permit is required from the local government prior to construction within the shorelines, although there are a number of exemptions from the permit requirement. The SHB hears appeals from local government decisions relating to substantial development permits. The SHB also hears local government appeals of the Department of Ecology rules related to the Shorelines Management Act. Decisions of the SHB must be approved by at least four members of the board and are appealable to superior court. The SHB may also hear an appeal of a decision under the State Environmental Policy Act (SEPA) if the parties consent to transferring the case to the SHB. The decision of the SHB shall be certified by the superior court and may only be appealed to the court of appeals.

The Forest Practices Appeals Board has three public members appointed by the governor. The Forest Practices Appeals Board hears appeals of decisions by the Department of Natural Resources to approve or disapprove of a forest practice.

Both the PCHB and the Forest Practices Appeals Board statutes allow the person filing an appeal to request either an informal or a formal hearing. If an informal hearing is chosen, the other party may request a formal hearing. If there is an appeal of a decision issued after an informal hearing, the superior court hears the case anew. If there is an appeal of a decision issued after a formal hearing, superior court review is based on the record from the board.

Summary of Substitute Bill: A three member panel of the SHB may hear and decide cases involving substantial development permits for single family homes and related structures. In addition to the authority to hear an appeal granted to the SHB under SEPA, an appeal of a decision under SEPA shall be consolidated with the appeal of a decision under the Shoreline Management Act. An appeal of a SHB decision shall be heard by the division of the court of appeals with jurisdiction over the county in which the case arose. The SHB shall develop alternative dispute resolution procedures.

A single member of the PCHB may hear and decide cases involving a penalty of \$5,000 or less. The PCHB shall develop alternative dispute resolution procedures for small cases.

Statutory provisions establishing an informal hearing procedure before the PCHB and the Forest Practices Appeals board are deleted.

Substitute Bill Compared to Original Bill: The substitute bill makes a number of technical and grammatical changes to

the bill. It also clarifies that if a decision of the Shorelines Hearings Board is appealed to the court of appeals, the court shall use the standards for judicial review established in the Administrative Procedure Act.

Fiscal Note: Requested January 17, 1994.

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

Testimony For: The four boards within the Environmental Hearings Office have seen a gradual increase in their caseload. Some of the boards are starting to experience a backlog of cases. This bill will streamline the procedures of the boards, allow the PCHB to make better use of its hearing examiners, and allow the boards to more efficiently resolve smaller cases. The informal hearing procedure provided for in current law is so seldom used that it is unnecessary.

Testimony Against: None.

Witnesses: Bob Jensen, Chair, Environmental Hearings Office (pro).