

HOUSE BILL REPORT

ESSB 6068

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: Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Deccio, Spanel and Oke).

Brief History:

Reported by House Committee on:
Environmental Affairs, February 24, 1994, DPA.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: Do pass as amended. Signed by 14 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Van Luven, Assistant Ranking Minority Member; Bray; Edmondson; Foreman; Hansen; Holm; L. Johnson; J. Kohl; Linville; Roland and Sheahan.

Staff: Rick Anderson (786-7114).

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 Amended Bill: A three member panel of the SHB may hear and decide cases involving substantial development permits for single family homes and related structures. The SHB is given jurisdiction to hear cases that involve a decision that is contested under both the Shorelines Management Act and the State Environmental Policy Act. The SHB must develop alternative dispute resolution procedures.

If all parties agree, a single member of the PCHB may hear and decide cases involving a penalty of \$5,000 or less. The PCHB is directed to develop alternative dispute resolution procedures.

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

Amended Bill Compared to Engrossed Substitute Bill: The amended bill deletes the provision that required contested decisions from the SHB to be referred directly to the Court of Appeals. The amended bill deletes a study on consolidation of the Environmental Hearings Office and adds a study requiring the Administrator for the Courts to recommend ways to expedite appeals from administrative hearings. The amended bill requires the consent of all parties before the PCHB can use a single member to hear a

case. The amended bill also requires the PCHB to develop alternative dispute resolution procedures for all cases, not just cases involving a penalty less than \$5,000 as provided in ESSB 6068.

Fiscal Note: Available on original bill.

Effective Date of Amended 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: The provision requiring SHB decisions to be appealed directly to the Court of Appeals should be deleted. The Court of Appeals has a serious backlog of its own. More study is needed to determine how to expedite appeals. Cases involving penalties less than \$5,000 should not be treated differently from other cases.

Witnesses: Senator Karen Fraser, prime sponsor; Gerry Alexander, Judge, Court of Appeals Division (con); and Kent Lebsack, Washington Cattlemen's Association (con).