

SENATE BILL REPORT

ESSB 6068

AS PASSED SENATE, FEBRUARY 11, 1994

**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)

**SENATE COMMITTEE ON ECOLOGY & PARKS**

**Majority Report:** That Substitute Senate Bill No. 6068 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chairman; Deccio, Moore, Sutherland and Talmadge.

**Minority Report:** Do not pass.

Signed by Senator Morton.

**Staff:** Gary Wilburn (786-7453)

**Hearing Dates:** January 21, 1994; January 26, 1994

**HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS**

**BACKGROUND:**

Pollution Control Hearings Board

The Pollution Control Hearings Board is a three-member board that determines appeals of permit decisions, civil penalties, and other decisions by the Department of Ecology, Office of Marine Safety, local air pollution authorities and local health departments. Board members are appointed by the Governor to six year terms; at least one must be admitted to practice law; and no more than two may be of the same political party. Board decisions must be signed by two or more members.

A person bringing an appeal may elect an informal hearing procedure to determine the appeal, unless the respondent agency may override this election by a notice to the board that the formal hearing process be used. When a board determination is made using the informal procedure, a subsequent appeal before superior court is determined "de novo," meaning a new record is developed in the case and the court makes its own findings as to the facts.

Shorelines Hearings Board

The Shorelines Hearings Board determines appeals under the Shorelines Management Act, relating to local government decisions on shorelines permits, Department of Ecology

shorelines rules, and Department of Ecology decisions to approve or deny local government shorelines programs. The board is comprised of six members: the three members of the Pollution Control Hearings Board, the Public Lands Commissioner, and a cities and a counties representative appointed by their respective associations. Shorelines Board decisions must be agreed to by at least four members. Judicial review of board decisions may be obtained in superior court under the state's Administrative Procedure Act.

#### Forest Practices Appeals Board

The Forest Practices Appeals Board is comprised of three members appointed by the Governor to six year terms. At least one must be admitted to practice law, and no more than two may be of the same political party. The board determines appeals of decisions by the Department of Natural Resources on forest practices applications. An informal hearing of an appeal may be conducted if both parties consent to such procedure.

#### Environment Hearings Office

The Environmental Hearing Office consists of the above-named boards and the Hydraulics Appeals Board. During the 1970's, the average number of appeals filed with the office annually was 222. It has averaged 379 in the 1990's, and the office expects a total over 500 for 1993. It is suggested that measures to expedite smaller and routine cases, and other efficiency measures, will reduce the current delays in decisions of cases.

### **SUMMARY:**

#### Shorelines Hearings Board

The Shorelines Board may decide the following types of appeals by a three-member panel of the board: single family residences and appurtenances, including docks or piers. At least one and not more than two members of the panel shall be members of the Pollution Control Hearings Board. Alternative processes to expedite appeals are to be developed by rule by the board, including mediation, submission of testimony by affidavit, and other forms.

Judicial review of board decisions shall be to the Court of Appeals, rather than superior court. The Shorelines Board shall have sole jurisdiction over an appeal under the State Environmental Policy Act relating to a matter that is also the subject of an appeal to the Shorelines Board. The two appeals shall be considered together. All appeals of shoreline board decisions shall be to the court of appeals, rather than superior court.

#### Pollution Control Hearings Board

One member of the Pollution Control Hearings Board may decide appeals involving penalties of \$5,000 or less. The board shall develop alternatives to expedite small appeals. The

authority to hear appeals through informal hearings is deleted.

Forest Practices Appeals Board

The authority of the Forest Practices Appeals Board to hear appeals through informal hearings is deleted.

The Regulatory Reform Task Force shall study the consolidation of environmental hearings boards into a single board with jurisdiction over environmental and land use decisions.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** available

**TESTIMONY FOR:**

Will expedite hearing and deciding appeals, and reduce the current case back log before these boards. Allows greater flexibility to use alternative dispute resolution methods for cases before the boards.

**TESTIMONY AGAINST:**

Parties should have role in determining which single board member may hear a case. Deleting informal hearings authority removes a useful alternative to formal hearings.

**TESTIFIED:** Bob Jensen, Environmental Hearings Office (pro); Kent Lebsack, WA Cattlemen's Assn. (con)

**HOUSE AMENDMENT(S):**

For all types of cases, upon consent of all parties, a single member of the Pollution Control Hearings Board may hear and decide the case. The provision in the engrossed Senate bill providing for direct review by the Court of Appeals of Shorelines Board decisions is deleted. The study by the Regulatory Reform Task Force is deleted and instead the Administrator for the Courts is directed to study expediting appeals from administrative hearings.