

# SENATE BILL REPORT

## SB 5027

---

As of January 14, 1997

**Title:** An act relating to the water-related actions of the department of ecology.

**Brief Description:** Altering appeal procedures for water-related actions of the department of ecology.

**Sponsors:** Senators Swecker and Winsley.

**Brief History:**

**Committee Activity:** Agriculture & Environment: 1/15/97.

---

### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Staff:** Richard Duggan (786-7414)

**Background:** The Pollution Control Hearings Board (PCHB) was established in 1970 to hear appeals of certain decisions of the Department of Ecology, air pollution control boards or authorities, and local health departments. The PCHB is composed of three members appointed by the Governor and confirmed by the Senate. They are required to have experience or training in matters pertaining to the environment, and at least one member must be an attorney admitted to practice law in this state.

Proceedings before the PCHB are conducted in accordance with rules of practice and procedure adopted by the PCHB. Decisions of the PCHB may be appealed to superior court, following the procedures of the Administrative Procedure Act.

**Summary of Bill:** Certain actions of the Department of Ecology are defined as water quantity decisions,— including: (1) decisions to grant or deny permits or certificates for a right to the beneficial use of water, or to amend, change, or transfer such a right; (2) decisions to enforce the conditions of a permit for, or right to, the beneficial use of water or to require any person to discontinue the use of water; (3) decisions to establish a minimum flow or level for water, or to reserve water for such a minimum flow or level; and (4) decisions to establish a water management plan.

Department of Ecology decisions relating to the relinquishment of a water right can only be appealed to superior court. All other water quantity decisions may be appealed to either the PCHB or to superior court. The county in which the appeal must be filed is specified: decisions relating to a water withdrawal in the county where the withdrawal takes place; decisions regarding an instream flow or a water management plan in the county with the greatest area governed by the flow or plan; decisions regarding water right relinquishment in the county where the land is located on which the water was used. Appeals to superior court are de novo.

The PCHB is required to ensure that a hearing on a water quantity decision is conducted in the general area of the petitioner's residence or provide for a hearing conducted by telephone. A single member of the PCHB may conduct such hearings.

A party electing to appeal a water quantity decision to the PCHB may choose either an informal or formal hearing. An informal hearing must be held if it is requested by any party. PCHB decisions made after an informal hearing may be appealed to superior court and reviewed in a de novo proceeding.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 1997.

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