

# HOUSE BILL REPORT

## SSB 5115

---

---

**As Reported By House Committee On:**  
Commerce & Labor

**Title:** An act relating to judicial review of public employment relations commission proceedings.

**Brief Description:** Changing judicial review of public employment relations commission proceedings.

**Sponsors:** Senate Committee on Labor & Workforce Development (originally sponsored by Senators Heavey, Prentice, Kline and Fairley).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/25/99, 4/2/99 [DPA].

**Brief Summary of Substitute Bill**  
**(As Amended by House Committee)**

- Subject to the consent of the court of appeals, appealable decisions by the Public Employees Relations Commission (PERC) may be appealed directly to the court of appeals, rather than to superior court.

---

### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hurst and McIntire.

**Minority Report:** Do not pass. Signed by 3 members: Representatives B. Chandler, Republican Vice Chair; Lisk and McMorris.

**Staff:** Douglas Ruth (786-7134).

**Background:**

PERC provides services to resolve labor-management disputes involving public employees covered by collective bargaining laws. One means of resolution PERC uses to resolve disputes is adjudication.

Normally, the adjudication process begins when a party files a petition with PERC. Depending on the type of case, the executive director or another officer reviews the petition and makes a preliminary determination. If a hearing is still necessary, a hearing officer or examiner is assigned. The parties may present evidence and arguments at the hearing. The parties may be represented by attorneys and may file briefs. Hearings are recorded by a court reporter.

Parties may have a right to appeal a decision of a hearing officer or examiner. The four types of cases that are appealable are those involving unfair labor practices, determinations of the appropriate groupings of employees, modifications to existing bargaining units, and the right to pay a charity in lieu of paying union dues. The appeals are made first to the commission.

Appeals of the commission are made to superior court and then to the court of appeals. Of the cases filed with PERC in 1996, eight were appealed to superior court. Of all PERC cases appealed since 1976, 53 percent of the cases that went to superior court were appealed to the court of appeals. Superior court decisions were affirmed in 61 percent of these cases. On average, superior court takes 12 months to decide a PERC case. The court of appeals takes an average of 16 months to issue a decision.

A superior court may decide to have any adjudicative decision by a state agency reviewed directly by the court of appeals if the court determines that: (1) The case involves fundamental and urgent issues; (2) delay in resolving the case would be detrimental to any party or the public; (3) an appeal to the court of appeals would be likely; and (4) resolution of the case would have precedential value. Superior courts have "bumped" six PERC cases (7.3 percent) since 1976.

Decisions of environmental boards and growth management hearing boards that meet similar criteria are directly reviewed by the court of appeals.

---

### **Summary of Amended Bill:**

Subject to the consent of the court of appeals, appealable decisions by PERC may be appealed directly to the court of appeals, rather than to superior court.

The person filing the appeal has three options for which court of appeals division hears a case. The person may choose the court of appeals for the division containing

Thurston County, the county of the public employer, or the county where the person resides or has his/her business.

**Amended Bill Compared to Substitute Bill:** Under the original bill, the court of appeals did not have any discretion over whether a bill was directly reviewed to the court.

---

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Public employers use the appellate process to draw out cases and delay final resolution. This increases the cost to employees and employee representatives to conduct litigation. Appeals to superior court take an average of 12 months. Because superior courts affirm PERC decisions in 84 percent of appealed cases, employers have little incentive not to appeal an unfavorable PERC decision to the superior court. Justice delayed is justice denied. Similarly, expensive justice is justice denied. PERC decisions are rarely appealed, but when they are it is often as a litigation or settlement strategy. This bill would allow timely resolution of cases and would lead to better decisions, since few superior court judges are familiar with labor law. Court of appeals judges make better decisions because they have more time and staff. The bill would not increase the caseload of the court of appeals since only about four PERC decisions a year are appealed. There is precedent for appealing administrative rulings by a labor commission directly to a higher court. The decisions of the National Labor Relations Board are appealed directly to a federal circuit court. By having direct appeals of PERC decisions, all parties would save money. As for creating a factual record, a sufficient record is created by PERC. The Administrative Procedure Act requires superior courts to use this record, so nothing is lost by direct appeal to the court of appeals.

**Testimony Against:** This is bad policy. PERC cases involve complex issues and this area of law is huge. For this reason, the two court review structure is needed and beneficial. At the superior court level, cases are refined, parties have an opportunity to find common ground, and the record is developed. That is why court of appeals' decisions are better reasoned. The court of appeals' judges have the insight and product of superior court to consider in making their decisions. The infrastructure of superior courts permit fact finding, while the court of appeals has no way of resolving factual disputes. In addition, there is already a current process for allowing direct review. Superior courts can certify cases for direct review. Other agencies, and other areas of law also produce a tremendous amount of litigation that take a long time to resolve. Collective bargaining cases are not unique in this way. There is no

reason for treating collective bargaining cases differently from other areas of law. There are legitimate reasons for every administrative case to have a speedier review. Each class of plaintiff, if asked, would say that cases take too long and that superior court judges don't understand their area of law. Why are PERC plaintiffs' rights more important? An expedited process was created for environmental cases because delay in these cases was delaying economic development. That is a policy reason for treating those cases differently. No similar policy reason is being given for PERC cases other than reasons that apply to all administrative decisions. Sixty-one percent of superior court decisions are affirmed by the court of appeals.

**Testified:** (In favor) David Westberg, Stationary Engineers; and Sam Kinville.

(Neutral) Marvin Schurke, Public Employment Relations Commission.

(Against) Chuck Foster, Board for Judicial Administration; and Frank Kurtz, court of appeals.