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**SENATE BILL 5225**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Hunt, Padden, and Pedersen

Read first time 01/14/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to direct appeals to the court of appeals of  
2 cases brought under the administrative procedure act and the land use  
3 petition act; amending RCW 34.05.518, 34.05.522, 36.18.018,  
4 34.05.518, and 34.05.522; adding a new section to chapter 36.70C RCW;  
5 providing an effective date; providing expiration dates; and  
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70C  
9 RCW to read as follows:

10 (1) The superior court may transfer the judicial review of a land  
11 use decision to the court of appeals upon finding that all parties  
12 have consented to the transfer to the court of appeals and agreed  
13 that the judicial review can occur based upon an existing record.  
14 Transfer of cases pursuant to this section does not require the  
15 filing of a motion for discretionary review with the court of  
16 appeals.

17 (2) Upon stipulation and consent to transfer, the parties waive  
18 the right to seek an award of attorneys' fees and costs under RCW  
19 4.84.370, except as may be awarded following an appeal to the supreme  
20 court.

1 (3) RCW 36.70C.090 does not apply to a matter transferred to the  
2 court of appeals pursuant to this section.

3 (4) This section expires June 30, 2026.

4 **Sec. 2.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to  
5 read as follows:

6 (1) The final decision of an administrative agency in an  
7 adjudicative proceeding under this chapter may(~~(, except as otherwise~~  
8 ~~provided in chapter 43.21L RCW,)~~) be directly reviewed by the court  
9 of appeals (~~(either (a))~~) upon certification by the superior court  
10 pursuant to this section (~~(or (b) if the final decision is from an~~  
11 ~~environmental board as defined in subsection (3) of this section,~~  
12 ~~upon acceptance by the court of appeals after a certificate of~~  
13 ~~appealability has been filed by the environmental board that rendered~~  
14 ~~the final decision))~~).

15 (~~(2) For direct review upon certification by the superior court,~~  
16 ~~an application for direct review must be filed with the superior~~  
17 ~~court within thirty days of the filing of the petition for review in~~  
18 ~~superior court. The superior court may certify a case for direct~~  
19 ~~review only if the judicial review is limited to the record of the~~  
20 ~~agency proceeding and the court finds that:~~

21 ~~(a) Fundamental and urgent issues affecting the future~~  
22 ~~administrative process or the public interest are involved which~~  
23 ~~require a prompt determination;~~

24 ~~(b) Delay in obtaining a final and prompt determination of such~~  
25 ~~issues would be detrimental to any party or the public interest;~~

26 ~~(c) An appeal to the court of appeals would be likely regardless~~  
27 ~~of the determination in superior court; and~~

28 ~~(d) The appellate court's determination in the proceeding would~~  
29 ~~have significant precedential value.~~

30 ~~Procedures for certification shall be established by court rule.~~

31 ~~(3) (a) For the purposes of direct review of final decisions of~~  
32 ~~environmental boards, environmental boards include those boards~~  
33 ~~identified in RCW 43.21B.005 and the growth management hearings board~~  
34 ~~as identified in RCW 36.70A.250.~~

35 ~~(b) An environmental board may issue a certificate of~~  
36 ~~appealability if it finds that delay in obtaining a final and prompt~~  
37 ~~determination of the issues would be detrimental to any party or the~~  
38 ~~public interest and either:~~

1       ~~(i) Fundamental and urgent statewide or regional issues are~~  
2 ~~raised; or~~

3       ~~(ii) The proceeding is likely to have significant precedential~~  
4 ~~value.~~

5       ~~(4) The environmental board shall state in the certificate of~~  
6 ~~appealability which criteria it applied, explain how that criteria~~  
7 ~~was met, and file with the certificate a copy of the final decision.~~

8       ~~(5) For an appellate court to accept direct review of a final~~  
9 ~~decision of an environmental board, it shall consider the same~~  
10 ~~criteria outlined in subsection (3) of this section, except as~~  
11 ~~otherwise provided in chapter 43.21L RCW.~~

12       ~~(6) The procedures for direct review of final decisions of~~  
13 ~~environmental boards include:~~

14       ~~(a) Within thirty days after filing the petition for review with~~  
15 ~~the superior court, a party may file an application for direct review~~  
16 ~~with the superior court and serve the appropriate environmental board~~  
17 ~~and all parties of record. The application shall request the~~  
18 ~~environmental board to file a certificate of appealability.~~

19       ~~(b) If an issue on review is the jurisdiction of the~~  
20 ~~environmental board, the board may file an application for direct~~  
21 ~~review on that issue.~~

22       ~~(c) The environmental board shall have thirty days to grant or~~  
23 ~~deny the request for a certificate of appealability and its decision~~  
24 ~~shall be filed with the superior court and served on all parties of~~  
25 ~~record.~~

26       ~~(d) If a certificate of appealability is issued, the parties~~  
27 ~~shall have fifteen days from the date of service to file a notice of~~  
28 ~~discretionary review in the superior court, and the notice shall~~  
29 ~~include a copy of the certificate of appealability and a copy of the~~  
30 ~~final decision.~~

31       ~~(e) If the appellate court accepts review, the certificate of~~  
32 ~~appealability shall be transmitted to the court of appeals as part of~~  
33 ~~the certified record.~~

34       ~~(f) If a certificate of appealability is denied, review shall be~~  
35 ~~by the superior court. The superior court's decision may be appealed~~  
36 ~~to the court of appeals.)) Transfer of cases pursuant to this section~~  
37 ~~does not require the filing of a motion for discretionary review with~~  
38 ~~the court of appeals. The superior court may certify cases for~~  
39 ~~transfer to the court of appeals upon finding that:~~

1 (a) All parties have consented to the transfer to the court of  
2 appeals and agreed that the judicial review can occur based upon the  
3 agency record developed before the administrative body without  
4 supplementing the record pursuant to RCW 34.05.562; or

5 (b) One or more of the parties have not consented to the  
6 transfer, but the superior court finds that transfer would serve the  
7 interest of justice, would not cause substantial prejudice to any  
8 party, including any unrepresented party, and further finds that:

9 (i) The judicial review can occur based upon the agency record  
10 developed before the administrative body without supplementing the  
11 record pursuant to RCW 34.05.562; or

12 (ii) The superior court has completed any necessary  
13 supplementation of the record pursuant to RCW 34.05.562, such that  
14 only issues of law remain for determination.

15 (2) If the superior court certifies a final decision of an  
16 administrative agency in an adjudicative proceeding, the superior  
17 court shall transfer the matter to the court of appeals as a direct  
18 appeal.

19 (3) A party contesting a superior court decision granting or  
20 denying certification for direct review may file a motion for  
21 discretionary review with the court of appeals.

22 **Sec. 3.** RCW 34.05.522 and 1995 c 382 s 6 are each amended to  
23 read as follows:

24 The court of appeals may refuse to accept direct review of a case  
25 pursuant to RCW 34.05.518 if it finds that the case does not meet the  
26 applicable standard in RCW 34.05.518 (~~((2) or (5))~~). (~~(Rules of~~  
27 ~~Appellate Procedure 2.3 do not apply in this instance.)~~) The refusal  
28 to accept such review is not subject to further appellate review,  
29 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
30 Procedure to the contrary.

31 **Sec. 4.** RCW 36.18.018 and 2017 3rd sp.s. c 2 s 2 are each  
32 amended to read as follows:

33 (1) State revenue collected by county clerks under subsection (2)  
34 of this section must be transmitted to the appropriate state court.  
35 The administrative office of the courts shall retain fees collected  
36 under subsection (3) of this section.

37 (2) For appellate review under RAP 5.1(b), two hundred fifty  
38 dollars must be charged, except that no fee may be charged under this

1 section for a case transferred from the superior court to the court  
2 of appeals pursuant to RCW 34.05.518 or section 1 of this act.

3 (3) For all copies and reports produced by the administrative  
4 office of the courts as permitted under RCW 2.68.020 and supreme  
5 court policy, a variable fee must be charged.

6 (4) Until July 1, 2021, in addition to the fee established under  
7 subsection (2) of this section, a surcharge of forty dollars is  
8 established for appellate review. The county clerk shall transmit  
9 seventy-five percent of this surcharge to the state treasurer for  
10 deposit in the judicial stabilization trust account and twenty-five  
11 percent must be retained by the county.

12 **Sec. 5.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to  
13 read as follows:

14 (1) The final decision of an administrative agency in an  
15 adjudicative proceeding under this chapter may(~~(, except as otherwise~~  
16 ~~provided in chapter 43.21L RCW,)~~) be directly reviewed by the court  
17 of appeals either (a) upon certification by the superior court  
18 pursuant to this section or (b) if the final decision is from an  
19 environmental board as defined in subsection (3) of this section,  
20 upon acceptance by the court of appeals after a certificate of  
21 appealability has been filed by the environmental board that rendered  
22 the final decision.

23 (2) For direct review upon certification by the superior court,  
24 an application for direct review must be filed with the superior  
25 court within thirty days of the filing of the petition for review in  
26 superior court. The superior court may certify a case for direct  
27 review only if the judicial review is limited to the record of the  
28 agency proceeding and the court finds that:

29 (a) Fundamental and urgent issues affecting the future  
30 administrative process or the public interest are involved which  
31 require a prompt determination;

32 (b) Delay in obtaining a final and prompt determination of such  
33 issues would be detrimental to any party or the public interest;

34 (c) An appeal to the court of appeals would be likely regardless  
35 of the determination in superior court; and

36 (d) The appellate court's determination in the proceeding would  
37 have significant precedential value.

38 Procedures for certification shall be established by court rule.

1 (3) (a) For the purposes of direct review of final decisions of  
2 environmental boards, environmental boards include those boards  
3 identified in RCW 43.21B.005 and the growth management hearings board  
4 as identified in RCW 36.70A.250.

5 (b) An environmental board may issue a certificate of  
6 appealability if it finds that delay in obtaining a final and prompt  
7 determination of the issues would be detrimental to any party or the  
8 public interest and either:

9 (i) Fundamental and urgent statewide or regional issues are  
10 raised; or

11 (ii) The proceeding is likely to have significant precedential  
12 value.

13 (4) The environmental board shall state in the certificate of  
14 appealability which criteria it applied, explain how that criteria  
15 was met, and file with the certificate a copy of the final decision.

16 (5) For an appellate court to accept direct review of a final  
17 decision of an environmental board, it shall consider the same  
18 criteria outlined in subsection (3) of this section (~~(, except as~~  
19 ~~otherwise provided in chapter 43.21L RCW)~~).

20 (6) The procedures for direct review of final decisions of  
21 environmental boards include:

22 (a) Within thirty days after filing the petition for review with  
23 the superior court, a party may file an application for direct review  
24 with the superior court and serve the appropriate environmental board  
25 and all parties of record. The application shall request the  
26 environmental board to file a certificate of appealability.

27 (b) If an issue on review is the jurisdiction of the  
28 environmental board, the board may file an application for direct  
29 review on that issue.

30 (c) The environmental board shall have thirty days to grant or  
31 deny the request for a certificate of appealability and its decision  
32 shall be filed with the superior court and served on all parties of  
33 record.

34 (d) If a certificate of appealability is issued, the parties  
35 shall have fifteen days from the date of service to file a notice of  
36 discretionary review in the superior court, and the notice shall  
37 include a copy of the certificate of appealability and a copy of the  
38 final decision.

1 (e) If the appellate court accepts review, the certificate of  
2 appealability shall be transmitted to the court of appeals as part of  
3 the certified record.

4 (f) If a certificate of appealability is denied, review shall be  
5 by the superior court. The superior court's decision may be appealed  
6 to the court of appeals.

7 **Sec. 6.** RCW 34.05.522 and 1995 c 382 s 6 are each amended to  
8 read as follows:

9 The court of appeals may refuse to accept direct review of a case  
10 pursuant to RCW 34.05.518 if it finds that the case does not meet the  
11 applicable standard in RCW 34.05.518 (2) or (5). (~~Rules of Appellate  
12 Procedure 2.3 do not apply in this instance.~~) The refusal to accept  
13 such review is not subject to further appellate review,  
14 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
15 Procedure to the contrary.

16 NEW SECTION. **Sec. 7.** Except for sections 5 and 6 of this act,  
17 this act is necessary for the immediate preservation of the public  
18 peace, health, or safety, or support of the state government and its  
19 existing public institutions, and takes effect 30 days after signed  
20 into law.

21 NEW SECTION. **Sec. 8.** Sections 2 and 3 of this act expire July  
22 1, 2026.

23 NEW SECTION. **Sec. 9.** Sections 5 and 6 of this act take effect  
24 July 1, 2026.

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