

HOUSE BILL REPORT

ESHB 1774

As Passed House:

March 13, 1995

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: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Basich and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/15/95, 2/26/95, 3/1/95 [DPS];

Appropriations: 3/3/95 [DPS(AG)].

Floor Activity:

Passed House: 3/13/95, 70-27.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives R. Fisher; Poulsen; Regala and Rust.

Staff: Bill Lynch (786-7092).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Ecology be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Basich; Beeksma; Brumsickle; Carlson; Cooke; Crouse; Foreman; Grant; Jacobsen; Lambert; Lisk; McMorris; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 7 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; G. Fisher; Poulsen; Rust; Thibaudeau and Wolfe.

Staff: Nancy Stevenson (786-7137).

Background: The Office of Administrative Hearings (OAH) is responsible for conducting impartial adjudicative proceedings for most state agencies in accordance with the Administrative Procedure Act. A person who wishes to appeal the decision of a state agency that uses OAH to preside over appeals of its decisions is entitled to a hearing before an administrative law judge.

The decision of the administrative law judge (ALJ) must contain findings of facts and conclusions of law. In most instances, the decision by the ALJ is considered to be an initial decision. The agency or a party to the proceedings may request that the ALJ's decision be reviewed by the agency. The agency may adopt or reverse the decision of the ALJ in making its final decision. A party to the proceedings, not including the agency, may appeal the agency's final decision to superior court. An agency may, however, authorize OAH to make the final decision for the agency. The decision of the ALJ under these circumstances is directly appealable to superior court instead of being appealable back to the agency.

The Pollution Control Hearings Board (PCHB) presides over certain appeals of decisions made by the Department of Ecology, Office of Marine Safety, air pollution control boards or authorities, and local health departments. The PCHB consists of three members appointed by the Governor and confirmed by the Senate. These members must have experience or training in matters pertaining to the environment, and at least one member must be a lawyer admitted to practice law in this state.

Proceedings before the PCHB are conducted in accordance with procedures adopted by the PCHB. The PCHB must make findings of fact and conclusions of law in each of its decisions. Decisions of the PCHB may be appealed to superior court by any of the parties.

Certain water-related actions by the Department of Ecology are appealable to the PCHB instead of to OAH.

Summary of Bill: Appeals of certain water-related agency actions by the Department of Ecology are appealable to superior court or to an administrative law judge assigned by the Office of Administrative Hearings instead of being appealed to the Pollution Control Hearings Board. Appeals to superior court are de novo and are filed in the superior court directly and are immediately affected by the decision. An appeal pertaining to the relinquishment of a water right must be made to superior court.

The Department of Ecology must commence an adjudicatory proceeding pursuant to the provisions of the Administrative Procedures Act within 30 days after receiving a request for an administrative hearing for a water-related agency action. The administrative law judge who conducts the hearing also makes the final decision. The decision of the ALJ is not appealable back to the Department of Ecology, but may be appealed by any of the parties to the superior court in the county that will be directly and immediately affected by the decision.

The Chief Administrative Law Judge of the Office of Administrative Hearings must develop procedural rules for conducting appeals of water-related agency actions. The procedures must ensure that the hearings will be conducted in the general area where the petitioner resides, or provide for the hearings to be conducted by telephone.

"Water-related agency actions" by the Department of Ecology include: (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; and (3) Decisions to establish a minimum flow or level for water, or to reserve water for such a minimum flow or level.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Agriculture & Ecology) The current appeal process before the Pollution Control Hearings Board is time-consuming. Local courts will serve the citizens better on water issues. It is difficult to prove a decision of the board is arbitrary and capricious.

(Appropriations) This bill offers a better choice for appeals: an administrative law judge, or superior court. Cases can be expedited by allowing the use of more administrative law judges. Expertise can be transferred from the Pollution Control Hearings Board to administrative law judges.

Testimony Against: (Agriculture & Ecology) The current process is fair. The Pollution Control Hearings Board has expertise on these issues. Prehearing conferences are often used to settle disputes. The Legislature could always authorize a single member of the board to make decisions on water rights issues.

(Appropriations) This bill is not in the public interest. It will cost more to appeal cases to superior court. PCHB has the expertise to deal with these cases. The PCHB

provides an informal hearings process where many cases are settled without using attorneys. The backlog has been reduced from one year to six months.

Testified: (Agriculture & Ecology) Mary Pearson, Suquamish Tribe (con); Bob Jensen, Environmental Hearings Office (con); Dick Ducharme, Building Industry Association of Washington, and Mary Burke.

(Appropriations) Representative Gary Chandler, prime sponsor; Representative Dave Mastin, sponsor (pro); and Bob Jensen, Environmental Hearings Office (con).