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## Civil Rights & Judiciary Committee

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### SB 5225

**Brief Description:** Concerning direct appeals to the court of appeals of cases brought under the administrative procedure act and the land use petition act.

**Sponsors:** Senators Hunt, Padden and Pedersen.

**Brief Summary of Bill**

- Authorizes superior courts to transfer appeals of land use and administrative agency decisions to the court of appeals.

**Hearing Date:** 3/10/21

**Staff:** John Burzynski (786-7133).

**Background:**

Judicial Review of Land Use Decisions.

A "land use decision" is a final determination by a county, city, or incorporated town's highest authority regarding: (1) an application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used; (2) an interpretative or declaratory decision regarding the application to a specific property of zoning, ordinances, or rules regulating the improvement, development, modification, maintenance, or use of real property; or (3) the enforcement of ordinances regulating the improvement, development, modification, maintenance, or use of real property.

With limited exceptions, the Land Use Petition Act (LUPA) is the exclusive means of judicial review of land use decisions. A petition for review under the LUPA is commenced with the timely filing of a petition in superior court within 21 days of the date the land use decision is

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issued. Superior courts must provide expedited review of land use decisions appealed under the LUPA and set matters for hearing within 60 days of the deadline for a local jurisdiction's record submission, absent a showing of good cause for setting a later date or stipulation of the parties. The superior court may affirm or reverse a land use decision or remand it for modification or further proceedings. The superior court's decision is then subject to appeal to the Washington Court of Appeals and Supreme Court.

#### Judicial Review of Administrative Agency Decisions.

The Administrative Procedure Act (APA) governs agency administrative actions and the process for affected individuals to challenge such actions. Agencies may provide quasi-judicial adjudicatory proceedings to consider appeals of administrative actions. Subject to limited exceptions, individuals appealing agency actions must exhaust their administrative remedies within the agency prior to seeking judicial review.

The final decision of an administrative agency in an adjudicative proceeding may be directly reviewed by the court of appeals either upon certification by the superior court; or — if the final decision is from an environmental board — upon certification by the environmental board and the court of appeal's acceptance of the same. Environmental boards include the Pollution Control Hearings Board, the Shorelines Hearings Board, and the Growth Management Hearings Board.

To obtain certification from the superior court for a direct appeal, an application must be timely filed within 30 days of the filing of the petition for review in the superior court. The superior court may certify a case for direct appeal if the judicial review is limited to the record of the agency proceeding and the court finds that:

- fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;
- delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;
- an appeal to the court of appeals would be likely regardless of the determination in superior court; and
- the appellate court's determination in the proceeding would have significant precedential value.

To obtain a certification from an environmental board, an application must be timely filed and served on the board and all parties. The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

- fundamental and urgent statewide or regional issues are raised; or
- the proceeding is likely to have significant precedential value.

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

#### Judicial Review of Land Use Decisions.

The superior court may transfer judicial review of a land use decision to the court of appeals if all parties consent to the transfer and agree judicial review can occur based upon an existing record.

Transfer of cases does not require the filing of a motion for discretionary review with the court of appeals. By consenting to transfer the case, the parties waive the right to seek attorney's fees and costs pursuant to RCW 4.84.370, except as may be awarded following an appeal to the supreme court.

Judicial Review of Administrative Agency Decisions.

The final decision of an administrative agency in an adjudicative proceeding may be directly reviewed by the court of appeals upon certification by the superior court that: (a) all parties consent to transfer to the court of appeals and agree judicial review can occur based on the agency record without supplementing the record; or (b) some parties do not consent to transfer, but transfer would serve the interest of justice, would not cause substantial prejudice to any party, and either (i) judicial review can occur based on the agency record without supplementing the record, or (ii) the superior court has completed any necessary supplementation of the record and only issues of law remain for determination.

Transfer of cases does not require the filing of a motion for discretionary review with the court of appeals. However, a party may contest a superior court decision to grant or deny certification for direct review by filing a motion for discretionary review with the court of appeals.

Expiration.

The provisions authorizing direct appeals for land use and administrative agency decisions expire on July 1, 2026.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains multiple effective dates.