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ENGROSSED SUBSTITUTE HOUSE BILL 2338

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State of Washington

61st Legislature

2009 Regular Session

By House Ways & Means (originally sponsored by Representative Hunt)

READ FIRST TIME 04/20/09.

1 AN ACT Relating to the administration and operations of growth  
2 management hearings boards; amending RCW 36.70A.260, 36.70A.270, and  
3 36.70A.290; adding new sections to chapter 36.70A RCW; creating a new  
4 section; providing an effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 36.70A.260 and 1994 c 249 s 30 are each amended to  
7 read as follows:

8 (1) Each growth management hearings board shall consist of three  
9 members qualified by experience or training in matters pertaining to  
10 land use planning and, except as provided in RCW 36.70A.270(4),  
11 residing within the jurisdictional boundaries of the applicable board.  
12 At least one member of each board must be admitted to practice law in  
13 this state and at least one member must have been a city or county  
14 elected official. Each board shall be appointed by the governor and  
15 not more than two members at the time of appointment or during their  
16 term shall be members of the same political party. No more than two  
17 members at the time of appointment or during their term shall reside in  
18 the same county.

1 (2) Each member of a board shall be appointed for a term of six  
2 years. A vacancy shall be filled by appointment by the governor for  
3 the unexpired portion of the term in which the vacancy occurs. (~~The~~  
4 ~~terms of the first three members of a board shall be staggered so that~~  
5 ~~one member is appointed to serve until July 1, 1994, one member until~~  
6 ~~July 1, 1996, and one member until July 1, 1998.~~)

7 **Sec. 2.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to  
8 read as follows:

9 Each growth management hearings board shall be governed by the  
10 following rules on conduct and procedure:

11 (1) Any board member may be removed for inefficiency, malfeasance,  
12 and misfeasance in office, under specific written charges filed by the  
13 governor. The governor shall transmit such written charges to the  
14 member accused and the chief justice of the supreme court. The chief  
15 justice shall thereupon designate a tribunal composed of three judges  
16 of the superior court to hear and adjudicate the charges. Removal of  
17 any member of a board by the tribunal shall disqualify such member for  
18 reappointment.

19 (2) Each board member shall receive reimbursement for travel  
20 expenses incurred in the discharge of his or her duties in accordance  
21 with RCW 43.03.050 and 43.03.060(~~(. If it is determined that the~~  
22 ~~review boards shall operate on a full-time basis, each member shall~~  
23 ~~receive an annual salary to be determined by the governor pursuant to~~  
24 ~~RCW 43.03.040. If it is determined that a review board shall operate~~  
25 ~~on a part-time basis, each member shall receive compensation pursuant~~  
26 ~~to RCW 43.03.250, provided such amount shall not exceed the amount that~~  
27 ~~would be set if they were a full-time board member. The principal~~  
28 ~~office of each board shall be located by the governor within the~~  
29 ~~jurisdictional boundaries of each board. The boards shall operate on~~  
30 ~~either a part-time or full-time basis, as determined by the governor)~~  
31 and each board member shall receive compensation in accordance with RCW  
32 43.03.040.

33 (3) Each board member shall not: (a) Be a candidate for or hold  
34 any other public office or trust; (b) engage in any occupation or  
35 business interfering with or inconsistent with his or her duty as a  
36 board member; and (c) for a period of one year after the termination of

1 his or her board membership, act in a representative capacity before  
2 the board on any matter.

3 (4) A majority of each board shall constitute a quorum for making  
4 orders or decisions, adopting rules necessary for the conduct of its  
5 powers and duties, or transacting other official business, and may act  
6 even though one position of the board is vacant. One or more members  
7 may hold hearings and take testimony to be reported for action by the  
8 board when authorized by rule or order of the board. If, due to  
9 vacancy, disqualification, illness, injury, workload imbalances, or  
10 budgetary constraints, only two members are available to render a  
11 decision on a case, the two remaining members may select a member from  
12 a different board to substitute for the unavailable member and render  
13 a decision on that case only. In selecting a substitute member, the  
14 selecting board must attempt to maintain the applicable compositional  
15 requirements of RCW 36.70A.260(1). The board shall perform all the  
16 powers and duties specified in this chapter or as otherwise provided by  
17 law.

18 (5) The board may appoint one or more hearing examiners to assist  
19 the board in its hearing function, to make conclusions of law and  
20 findings of fact and, if requested by the board, to make  
21 recommendations to the board for decisions in cases before the board.  
22 Such hearing examiners must have demonstrated knowledge of land use  
23 planning and law. The boards shall specify in their joint rules of  
24 practice and procedure, as required by subsection (7) of this section,  
25 the procedure and criteria to be employed for designating hearing  
26 examiners as a presiding officer. Hearing examiners selected by a  
27 board shall meet the requirements of subsection (3) of this section.  
28 The findings and conclusions of the hearing examiner shall not become  
29 final until they have been formally approved by the board. This  
30 authorization to use hearing examiners does not waive the requirement  
31 of RCW 36.70A.300 that final orders be issued within one hundred eighty  
32 days of board receipt of a petition.

33 (6) Each board shall make findings of fact and prepare a written  
34 decision in each case decided by it, and such findings and decision  
35 shall be effective upon being signed by two or more board members who  
36 participated in deciding the matter of the board, and upon being filed  
37 at the board's principal office(~~(, and)~~) or, after June 30, 2009, at

1 the office of growth management hearings boards. Filed decisions shall  
2 be open for public inspection at all reasonable times.

3 (7) All proceedings before the board, any of its members, or a  
4 hearing examiner appointed by the board shall be conducted in  
5 accordance with such administrative rules of practice and procedure as  
6 the boards jointly prescribe. All three boards shall jointly meet to  
7 develop and adopt joint rules of practice and procedure, including  
8 rules regarding expeditious and summary disposition of appeals. The  
9 boards shall publish such rules and decisions they render and arrange  
10 for the reasonable distribution of the rules and decisions. Except as  
11 it conflicts with specific provisions of this chapter, the  
12 administrative procedure act, chapter 34.05 RCW, and specifically  
13 including the provisions of RCW 34.05.455 governing ex parte  
14 communications, shall govern the practice and procedure of the boards.

15 (8) A board member or hearing examiner is subject to  
16 disqualification under chapter 34.05 RCW. The joint rules of practice  
17 of the boards shall establish procedures by which a party to a hearing  
18 conducted before the board may file with the board a motion to  
19 disqualify, with supporting affidavit, against a board member or  
20 hearing examiner assigned to preside at the hearing.

21 (9) The members of the boards shall meet jointly on at least an  
22 annual basis with the objective of sharing information that promotes  
23 the goals and purposes of this chapter.

24 **Sec. 3.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to  
25 read as follows:

26 (1) All requests for review to a growth management hearings board  
27 shall be initiated by filing a petition to the office of growth  
28 management hearings boards that includes a detailed statement of issues  
29 presented for resolution by the applicable board. The board shall  
30 render written decisions articulating the basis for its holdings. The  
31 board shall not issue advisory opinions on issues not presented to the  
32 board in the statement of issues, as modified by any prehearing order.

33 (2) All petitions relating to whether or not an adopted  
34 comprehensive plan, development regulation, or permanent amendment  
35 thereto, is in compliance with the goals and requirements of this  
36 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days  
37 after publication by the legislative bodies of the county or city.

1 (a) Except as provided in (c) of this subsection, the date of  
2 publication for a city shall be the date the city publishes the  
3 ordinance, or summary of the ordinance, adopting the comprehensive plan  
4 or development regulations, or amendment thereto, as is required to be  
5 published.

6 (b) Promptly after adoption, a county shall publish a notice that  
7 it has adopted the comprehensive plan or development regulations, or  
8 amendment thereto.

9 Except as provided in (c) of this subsection, for purposes of this  
10 section the date of publication for a county shall be the date the  
11 county publishes the notice that it has adopted the comprehensive plan  
12 or development regulations, or amendment thereto.

13 (c) For local governments planning under RCW 36.70A.040, promptly  
14 after approval or disapproval of a local government's shoreline master  
15 program or amendment thereto by the department of ecology as provided  
16 in RCW 90.58.090, the local government shall publish a notice that the  
17 shoreline master program or amendment thereto has been approved or  
18 disapproved by the department of ecology. For purposes of this  
19 section, the date of publication for the adoption or amendment of a  
20 shoreline master program is the date the local government publishes  
21 notice that the shoreline master program or amendment thereto has been  
22 approved or disapproved by the department of ecology.

23 (3) Unless the board dismisses the petition as frivolous or finds  
24 that the person filing the petition lacks standing, or the parties have  
25 filed an agreement to have the case heard in superior court as provided  
26 in RCW 36.70A.295, the board shall, within ten days of receipt of the  
27 petition, set a time for hearing the matter.

28 (4) The board shall base its decision on the record developed by  
29 the city, county, or the state and supplemented with additional  
30 evidence if the board determines that such additional evidence would be  
31 necessary or of substantial assistance to the board in reaching its  
32 decision.

33 (5) The board, shall consolidate, when appropriate, all petitions  
34 involving the review of the same comprehensive plan or the same  
35 development regulation or regulations.

36 NEW SECTION. **Sec. 4.** (1) The office of growth management hearings

1 boards is created. The office of growth management hearings boards  
2 consists of the three growth management hearings boards established in  
3 RCW 36.70A.250.

4 (2) The administrative offices of each board shall only be located  
5 in the office of growth management hearings boards. The office of the  
6 western Washington growth management hearings board shall serve as the  
7 initial location of the office of growth management hearings boards.

8 NEW SECTION. **Sec. 5.** In accordance with section 4 of this act,  
9 the following shall govern the creation of the office of growth  
10 management hearings boards, an office that is an administrative  
11 consolidation of the growth management hearings boards established in  
12 RCW 36.70A.250:

13 (1) All reports, documents, surveys, books, records, files, papers,  
14 or written material in the possession of the growth management hearings  
15 boards shall be delivered to the custody of the office of growth  
16 management hearings boards. All office furnishings, office equipment,  
17 motor vehicles, and other tangible property in the possession of the  
18 growth management hearings boards shall be made available to the office  
19 of growth management hearings boards;

20 (2) All funds, credits, or other assets held by the growth  
21 management hearings boards shall, on the effective date of this  
22 section, be transferred to the office of growth management hearings  
23 boards. Any appropriations made to the growth management hearings  
24 boards shall, on the effective date of this section, be transferred and  
25 credited to the office of growth management hearings boards;

26 (3) All employees of the growth management hearings boards are  
27 transferred to the office of growth management hearings boards. All  
28 employees classified under chapter 41.06 RCW, the state civil service  
29 law, are assigned to the office of growth management hearings boards to  
30 perform their usual duties upon the same terms as formerly, without any  
31 loss of rights, subject to any action that may be appropriate  
32 thereafter in accordance with the laws and rules governing state civil  
33 service;

34 (4) This section may not be construed to alter any existing  
35 collective bargaining unit or the provisions of any existing collective  
36 bargaining agreement until the agreement has expired or until the

1 bargaining unit has been modified by action of the public employment  
2 relations commission as provided by law;

3 (5) All rules and pending business before the growth management  
4 hearings boards shall be continued and acted upon by the appropriate  
5 growth management hearings board of the office of growth management  
6 hearings boards. All existing contracts and obligations remain in full  
7 force and shall be performed by the office of growth management  
8 hearings boards; and

9 (6) The transfer of the powers, duties, functions, and personnel of  
10 the growth management hearings boards to the office of growth  
11 management hearings boards does not affect the validity of any act  
12 performed before the effective date of this section.

13 NEW SECTION. **Sec. 6.** Subject to the availability of amounts  
14 appropriated for this specific purpose, the joint legislative audit and  
15 review committee shall examine the administration and operations of the  
16 growth management hearings boards or any successor agency. The  
17 examination shall include an evaluation of: (1) How to improve the  
18 effectiveness of the growth management act dispute resolution system;  
19 (2) the boards' organizational structure, workload, and work processes;  
20 (3) potential benefits associated with establishing three member  
21 regional panels; (4) potential opportunities to colocate or become part  
22 of the environmental hearings office; (5) technological opportunities  
23 to improve efficiency and decrease travel expenses; and (6) additional  
24 methods of improving compliance with the growth management act that may  
25 reduce costs to all parties. The committee shall report its findings  
26 and recommendations to the governor and the appropriate committees of  
27 the house of representatives and the senate by December 1, 2009.

28 NEW SECTION. **Sec. 7.** Sections 4 and 5 of this act are each added  
29 to chapter 36.70A RCW.

30 NEW SECTION. **Sec. 8.** Sections 1 and 2 of this act are necessary  
31 for the immediate preservation of the public peace, health, or safety,  
32 or support of the state government and its existing public  
33 institutions, and takes effect immediately.

1        NEW\_SECTION.   **Sec. 9.**   Sections 3 through 5 of this act are  
2 necessary for the immediate preservation of the public peace, health,  
3 or safety, or support of the state government and its existing public  
4 institutions, and take effect July 1, 2009.

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