
SENATE BILL 5013

State of Washington

62nd Legislature

2011 Regular Session

By Senator White

Read first time 01/10/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to the use of hearing examiners or local planning
2 officials in a quasi-judicial land use permit process; amending RCW
3 36.70B.060, 35.63.130, 35A.63.170, 36.70.970, and 58.17.330; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature intends that the legislative
7 authority of each city and county planning under RCW 36.70A.040 adopt
8 a policy framework of comprehensive plan, capital budget, and
9 development regulations; however, the legislature does not intend that
10 a local legislative authority also administer or adjudicate permit
11 applications pursuant to that framework. The legislature finds that in
12 order to create a more timely, fair, and predictable permit process
13 pursuant to RCW 36.70A.020(7), local legislative bodies should divest
14 themselves of responsibility for administrative, quasi-judicial, and
15 appellate decision making, and assign those responsibilities to hearing
16 examiners or professional staff.

17 **Sec. 2.** RCW 36.70B.060 and 1995 c 347 s 407 are each amended to
18 read as follows:

1 (1) Not later than March 31, 1996, each local government planning
2 under RCW 36.70A.040 shall establish by ordinance or resolution an
3 integrated and consolidated project permit process that may be included
4 in its development regulations. In addition to the elements required
5 by RCW 36.70B.050, the process shall include the following elements:

6 ~~((+1))~~ (a) A determination of completeness to the applicant as
7 required by RCW 36.70B.070;

8 ~~((+2))~~ (b) A notice of application to the public and agencies with
9 jurisdiction as required by RCW 36.70B.110;

10 ~~((+3))~~ (c) Except as provided in RCW 36.70B.140, an optional
11 consolidated project permit review process as provided in RCW
12 36.70B.120. The review process shall provide for no more than one
13 consolidated open record hearing and one closed record appeal. If an
14 open record predecision hearing is provided prior to the decision on a
15 project permit, the process shall not allow a subsequent open record
16 appeal hearing;

17 ~~((+4))~~ (d) Provision allowing for any public meeting or required
18 open record hearing to be combined with any public meeting or open
19 record hearing that may be held on the project by another local, state,
20 regional, federal, or other agency, in accordance with provisions of
21 RCW ~~((36.70B.090 and))~~ 36.70B.110;

22 ~~((+5))~~ (e) A single report stating all the decisions made as of
23 the date of the report on all project permits included in the
24 consolidated permit process that do not require an open record
25 predecision hearing and any recommendations on project permits that do
26 not require an open record predecision hearing. The report shall state
27 any mitigation required or proposed under the development regulations
28 or the agency's authority under RCW 43.21C.060. The report may be the
29 local permit. If a threshold determination other than a determination
30 of significance has not been issued previously by the local government,
31 the report shall include or append this determination;

32 ~~((+6))~~ (f) Except for the appeal of a determination of
33 significance as provided in RCW 43.21C.075, if a local government
34 elects to provide an appeal of its threshold determinations or project
35 permit decisions, the local government shall provide for no more than
36 one consolidated open record hearing on such appeal. The local
37 government need not provide for any further appeal and may provide an

1 appeal for some but not all project permit decisions. If an appeal is
2 provided after the open record hearing, it shall be a closed record
3 appeal before a single decision-making body or officer;

4 ~~((+7))~~ (g) A notice of decision as required by RCW 36.70B.130 and
5 issued within the time period provided in RCW 36.70B.080 ~~((and~~
6 ~~36.70B.090))~~;

7 ~~((+8))~~ (h) Completion of project review by the local government,
8 including environmental review and public review and any appeals to the
9 local government, within any applicable time periods ~~((under—RCW~~
10 ~~36.70B.090))~~; and

11 ~~((+9))~~ (i) Any other provisions not inconsistent with the
12 requirements of this chapter or chapter 43.21C RCW.

13 (2)(a) Except as provided in (b) of this subsection, not later than
14 March 31, 2012, each local government that has a population of ten
15 thousand or greater and is planning under RCW 36.70A.040 shall adopt an
16 ordinance that requires all quasi-judicial permits be decided by either
17 the planning official or director at the local government or a hearing
18 examiner authorized by RCW 35.63.130, 35A.63.170, 36.70.970, or
19 58.17.330.

20 (b) A local government may adopt an ordinance opting out of the
21 requirements of (a) of this subsection no sooner than March 1, 2012, or
22 later than May 30, 2012.

23 (c) A local government may require a permit applicant or the
24 appellant to reimburse the local government for the costs of using a
25 hearing examiner, including all associated administrative and staff
26 costs, required notice costs, and environmental review costs. Issuance
27 of a hearing examiner decision may be delayed beyond the ten-day period
28 required by RCW 35.63.130, 35A.63.170, 36.70.970, or 58.17.330 until
29 the local government is reimbursed.

30 **Sec. 3.** RCW 35.63.130 and 1995 c 347 s 423 are each amended to
31 read as follows:

32 (1) As an alternative to those provisions of this chapter relating
33 to powers or duties of the planning commission to hear and report on
34 any proposal to amend a zoning ordinance, the legislative body of a
35 city or county may adopt a hearing examiner system under which a
36 hearing examiner or hearing examiners may hear and decide applications
37 for amending the zoning ordinance when the amendment which is applied

1 for is not of general applicability. In addition, the legislative body
2 may vest in a hearing examiner the power to hear and decide those
3 issues it believes should be reviewed and decided by a hearing
4 examiner, including but not limited to:

5 (a) Applications for conditional uses, variances, subdivisions,
6 shoreline permits, or any other class of applications for or pertaining
7 to development of land or land use;

8 (b) Appeals of administrative decisions or determinations; and

9 (c) Appeals of administrative decisions or determinations pursuant
10 to chapter 43.21C RCW.

11 The legislative body shall prescribe procedures to be followed by
12 the hearing examiner.

13 (2) Each city or county legislative body electing to use a hearing
14 examiner pursuant to this section shall by ordinance specify the legal
15 effect of the decisions made by the examiner. The legal effect of such
16 decisions may vary for the different classes of applications decided by
17 the examiner but shall include one of the following:

18 (a) The decision may be given the effect of a recommendation to the
19 legislative body;

20 (b) The decision may be given the effect of an administrative
21 decision appealable within a specified time limit to the legislative
22 body; or

23 (c) Except in the case of a rezone, the decision may be given the
24 effect of a final decision of the legislative body.

25 (3) Each final decision of a hearing examiner shall be in writing
26 and shall include findings and conclusions, based on the record, to
27 support the decision. Such findings and conclusions shall also set
28 forth the manner in which the decision would carry out and conform to
29 the city's or county's comprehensive plan and the city's or county's
30 development regulations. Each final decision of a hearing examiner,
31 unless a longer period is mutually agreed to in writing by the
32 applicant and the hearing examiner, shall be rendered within ten
33 working days following conclusion of all testimony and hearings.
34 Issuance of a hearing examiner decision may be delayed beyond the ten-
35 day period until a local government is reimbursed pursuant to RCW
36 36.70B.060.

1 **Sec. 4.** RCW 35A.63.170 and 1995 c 347 s 424 are each amended to
2 read as follows:

3 (1) As an alternative to those provisions of this chapter relating
4 to powers or duties of the planning commission to hear and report on
5 any proposal to amend a zoning ordinance, the legislative body of a
6 city may adopt a hearing examiner system under which a hearing examiner
7 or hearing examiners may hear and decide applications for amending the
8 zoning ordinance when the amendment which is applied for is not of
9 general applicability. In addition, the legislative body may vest in
10 a hearing examiner the power to hear and decide those issues it
11 believes should be reviewed and decided by a hearing examiner,
12 including but not limited to:

13 (a) Applications for conditional uses, variances, subdivisions,
14 shoreline permits, or any other class of applications for or pertaining
15 to development of land or land use;

16 (b) Appeals of administrative decisions or determinations; and

17 (c) Appeals of administrative decisions or determinations pursuant
18 to chapter 43.21C RCW.

19 The legislative body shall prescribe procedures to be followed by
20 a hearing examiner. If the legislative authority vests in a hearing
21 examiner the authority to hear and decide variances, then the
22 provisions of RCW 35A.63.110 shall not apply to the city.

23 (2) Each city legislative body electing to use a hearing examiner
24 pursuant to this section shall by ordinance specify the legal effect of
25 the decisions made by the examiner. The legal effect of such decisions
26 may vary for the different classes of applications decided by the
27 examiner but shall include one of the following:

28 (a) The decision may be given the effect of a recommendation to the
29 legislative body;

30 (b) The decision may be given the effect of an administrative
31 decision appealable within a specified time limit to the legislative
32 body; or

33 (c) Except in the case of a rezone, the decision may be given the
34 effect of a final decision of the legislative body.

35 (3) Each final decision of a hearing examiner shall be in writing
36 and shall include findings and conclusions, based on the record, to
37 support the decision. Such findings and conclusions shall also set
38 forth the manner in which the decision would carry out and conform to

1 the city's comprehensive plan and the city's development regulations.
2 Each final decision of a hearing examiner, unless a longer period is
3 mutually agreed to in writing by the applicant and the hearing
4 examiner, shall be rendered within ten working days following
5 conclusion of all testimony and hearings. Issuance of a hearing
6 examiner decision may be delayed beyond the ten-day period until a
7 local government is reimbursed pursuant to RCW 36.70B.060.

8 **Sec. 5.** RCW 36.70.970 and 1995 c 347 s 425 are each amended to
9 read as follows:

10 (1) As an alternative to those provisions of this chapter relating
11 to powers or duties of the planning commission to hear and issue
12 recommendations on applications for plat approval and applications for
13 amendments to the zoning ordinance, the county legislative authority
14 may adopt a hearing examiner system under which a hearing examiner or
15 hearing examiners may hear and issue decisions on proposals for plat
16 approval and for amendments to the zoning ordinance when the amendment
17 which is applied for is not of general applicability. In addition, the
18 legislative authority may vest in a hearing examiner the power to hear
19 and decide those issues it believes should be reviewed and decided by
20 a hearing examiner, including but not limited to:

21 (a) Applications for conditional uses, variances, shoreline
22 permits, or any other class of applications for or pertaining to
23 development of land or land use;

24 (b) Appeals of administrative decisions or determinations; and

25 (c) Appeals of administrative decisions or determinations pursuant
26 to chapter 43.21C RCW.

27 The legislative authority shall prescribe procedures to be followed
28 by a hearing examiner.

29 Any county which vests in a hearing examiner the authority to hear
30 and decide conditional uses and variances shall not be required to have
31 a zoning adjuster or board of adjustment.

32 (2) Each county legislative authority electing to use a hearing
33 examiner pursuant to this section shall by ordinance specify the legal
34 effect of the decisions made by the examiner. Such legal effect may
35 vary for the different classes of applications decided by the examiner
36 but shall include one of the following:

1 (a) The decision may be given the effect of a recommendation to the
2 legislative authority;

3 (b) The decision may be given the effect of an administrative
4 decision appealable within a specified time limit to the legislative
5 authority; or

6 (c) Except in the case of a rezone, the decision may be given the
7 effect of a final decision of the legislative authority.

8 (3) Each final decision of a hearing examiner shall be in writing
9 and shall include findings and conclusions, based on the record, to
10 support the decision. Such findings and conclusions shall also set
11 forth the manner in which the decision would carry out and conform to
12 the county's comprehensive plan and the county's development
13 regulations. Each final decision of a hearing examiner, unless a
14 longer period is mutually agreed to in writing by the applicant and the
15 hearing examiner, shall be rendered within ten working days following
16 conclusion of all testimony and hearings. Issuance of a hearing
17 examiner decision may be delayed beyond the ten-day period until a
18 local government is reimbursed pursuant to RCW 36.70B.060.

19 **Sec. 6.** RCW 58.17.330 and 1995 c 347 s 429 are each amended to
20 read as follows:

21 (1) As an alternative to those provisions of this chapter requiring
22 a planning commission to hear and issue recommendations for plat
23 approval, the county or city legislative body may adopt a hearing
24 examiner system and shall specify by ordinance the legal effect of the
25 decisions made by the examiner. The legal effect of such decisions
26 shall include one of the following:

27 (a) The decision may be given the effect of a recommendation to the
28 legislative body;

29 (b) The decision may be given the effect of an administrative
30 decision appealable within a specified time limit to the legislative
31 body; or

32 (c) The decision may be given the effect of a final decision of the
33 legislative body.

34 The legislative authority shall prescribe procedures to be followed
35 by a hearing examiner.

36 (2) Each final decision of a hearing examiner shall be in writing
37 and shall include findings and conclusions, based on the record, to

1 support the decision. Each final decision of a hearing examiner,
2 unless a longer period is mutually agreed to by the applicant and the
3 hearing examiner, shall be rendered within ten working days following
4 conclusion of all testimony and hearings. Issuance of a hearing
5 examiner decision may be delayed beyond the ten-day period until a
6 local government is reimbursed pursuant to RCW 36.70B.060.

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