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**HOUSE BILL 2728**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives McDonald, Maycumber, Hargrove, and Haler

AN ACT Relating to the impartial participation of members of the growth management hearings board on matters before the board; reenacting and amending RCW 36.70A.270; and adding a new section to chapter 36.70A RCW.

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

**Sec.**  RCW 36.70A.270 and 2010 c 211 s 6 and 2010 c 210 s 16 are each reenacted and amended to read as follows:

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

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

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. Each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. The principal office of the board shall be located in Olympia.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of the board shall constitute a quorum for adopting rules necessary for the conduct of its powers and duties or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

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

(6) The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the regional panel deciding the particular case and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the board prescribes. The board shall develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals and the assignment of cases to regional panels. The board shall publish such rules and decisions it renders and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the board.

(8)(a) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW, including but not limited to instances in which a judge would be disqualified under RCW 2.28.030, and under (b) of this subsection (8). The rules of practice of the board shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(b)(i) The rules of practice of the board shall provide that a growth management hearings board member or hearing examiner must, in a timely manner, disclose to all parties to a hearing if the board member or hearing examiner has ever:

(A) Been employed by a party to the hearing;

(B) Served as a volunteer for a party to the hearing;

(C) Provided legal representation or counsel to a party to the hearing; or

(D) Been a member of the board of directors of a party to the hearing.

(ii) Upon a disclosure under (b)(i) of this subsection or upon a party uncovering information of a relationship requiring disclosure under (b)(i) of this subsection, a party to the hearing may make a verbal motion or file a written request for disqualification of a board member or hearing examiner. A disclosure under (b)(i) of this subsection is sufficient grounds for disqualification, and the board member or hearing examiner must grant a motion or request for disqualification based on such disclosure.

(iii) A tribunal convened under subsection (1) of this section may remove a board member or hearing examiner or impose sanctions or a monetary penalty on a board member or hearing examiner for violations of the disclosure requirements of (b)(i) of this subsection.

(9) All members of the board shall meet on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

(10) The board shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions.

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

(1) In the event that a growth management hearings board member fails to abide by the disclosure and disqualification requirements in RCW 36.70A.270, a court reviewing a growth management hearings board decision may do either or both of the following:

(a) Invalidate and remand the decision by the board; and

(b) Impose sanctions or a monetary penalty on a member of the board.

(2) The court is especially encouraged to take the actions described in subsection (1) of this section in circumstances where the court determines that the recusal failure of the board member impaired the ability of a party to receive a fair and impartial decision.

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