

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6574

Chapter 214, Laws of 2020

66th Legislature
2020 Regular Session

GROWTH MANAGEMENT HEARINGS BOARD/ENVIRONMENTAL LAND USE AND HEARINGS
OFFICE--VARIOUS PROVISIONS

EFFECTIVE DATE: June 11, 2020

Passed by the Senate March 10, 2020
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House March 6, 2020
Yeas 97 Nays 0

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved March 27, 2020 2:56 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6574** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 27, 2020

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6574

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By Senate Local Government (originally sponsored by Senators Takko and Short; by request of Office of the Governor)

READ FIRST TIME 02/05/20.

1 AN ACT Relating to clarifying the respective administrative
2 powers, duties, and responsibilities of the growth management
3 hearings board and the environmental land use and hearings office;
4 and amending RCW 36.70A.250, 36.70A.252, 36.70A.260, 36.70A.270, and
5 43.21B.005.

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

7 **Sec. 1.** RCW 36.70A.250 and 2010 c 211 s 4 are each amended to
8 read as follows:

9 (1) ((A)) (a) There is hereby created within the environmental
10 and land use hearings office established by RCW 43.21B.005 a growth
11 management hearings board for the state of Washington ((is created)).
12 The board shall consist of ((seven)) five members qualified by
13 experience or training in pertinent matters pertaining to land use
14 law or land use planning and who have experience in the practical
15 application of those matters. All ((seven)) five board members shall
16 be appointed by the governor((, ~~two each residing respectively in the~~
17 central Puget Sound, eastern Washington, and western Washington
18 regions, ~~plus one board member residing within the state of~~
19 Washington)). At least three members of the board shall be admitted
20 to practice law in this state, one each residing respectively in the
21 central Puget Sound, eastern Washington, and western Washington

1 regions. At least (~~three~~) two members of the board shall have been
2 a city or county elected official, one each residing respectively in
3 (~~the central Puget Sound,~~) eastern Washington(~~7~~) and western
4 Washington (~~regions~~). (~~After expiration of the terms of board~~
5 ~~members on the previously existing three growth management hearings~~
6 ~~boards,~~ ~~no~~) No more than (~~four~~) three members of the (~~seven-~~
7 ~~member~~) five-member board may be members of the same major political
8 party. No more than two members at the time of their appointment or
9 during their term may reside in the same county. Board members shall
10 operate on a full-time basis, shall receive an annual salary to be
11 determined by the governor pursuant to RCW 43.03.040, shall receive
12 reimbursement for travel expenses incurred in the discharge of their
13 duties in accordance with RCW 43.03.050 and 43.03.060, and shall be
14 considered employees of the state of Washington subject to chapter
15 42.52 RCW.

16 (2) Each member of the board shall be appointed for a term of six
17 years, and until their successors are appointed. A vacancy shall be
18 filled by appointment by the governor for the unexpired portion of
19 the term in which the vacancy occurs. (~~Members of the previously~~
20 ~~existing three growth management hearings boards appointed before~~
21 ~~July 1, 2010, shall complete their staggered, six-year terms as~~
22 ~~members of the growth management hearings board created under~~
23 ~~subsection (1) of this section. The reduction from nine board members~~
24 ~~on the previously existing three growth management hearings boards to~~
25 ~~seven total members on the growth management hearings board shall be~~
26 ~~made through attrition, voluntary resignation, or retirement.))~~

27 **Sec. 2.** RCW 36.70A.252 and 2010 c 210 s 15 are each amended to
28 read as follows:

29 (~~(1)~~) On July 1, 2011, the growth management hearings board is
30 administratively consolidated into the environmental and land use
31 hearings office created in RCW 43.21B.005. The chair of the growth
32 management hearings board shall continue to exercise duties and
33 responsibilities pursuant to RCW 36.70A.270(11). The environmental
34 and land use hearings office shall be responsible for all other
35 administrative functions pertaining to the growth management hearings
36 board.

37 (~~(2)~~ Not later than July 1, 2012, the growth management hearings
38 board consists of seven members qualified by experience or training
39 in matters pertaining to land use law or land use planning, except

1 ~~that the governor may reduce the board to six members if warranted by~~
2 ~~the board's caseload. All board members must be appointed by the~~
3 ~~governor, two each residing respectively in the central Puget Sound,~~
4 ~~eastern Washington, and western Washington regions and shall continue~~
5 ~~to meet the qualifications set out in RCW 36.70A.260. The reduction~~
6 ~~from seven board members to six board members must be made through~~
7 ~~attrition, voluntary resignation, or retirement.)~~)

8 **Sec. 3.** RCW 36.70A.260 and 2010 c 211 s 5 are each amended to
9 read as follows:

10 (1) Each petition for review that is filed with the growth
11 management hearings board shall be heard and decided by a regional
12 panel of growth management hearings board members. Regional panels
13 shall be constituted as follows:

14 (a) Central Puget Sound region. A three-member central Puget
15 Sound panel shall be selected to hear matters pertaining to cities
16 and counties located within the region comprised of King, Pierce,
17 Snohomish, and Kitsap counties.

18 (b) Eastern Washington region. A three-member eastern Washington
19 panel shall be selected to hear matters pertaining to cities and
20 counties that are required or choose to plan under RCW 36.70A.040 and
21 are located east of the crest of the Cascade mountains.

22 (c) Western Washington region. A three-member western Washington
23 panel shall be selected to hear matters pertaining to cities and
24 counties that are required or choose to plan under RCW 36.70A.040,
25 are located west of the crest of the Cascade mountains, and are not
26 included in the central Puget Sound region. Skamania county, if it is
27 required or chooses to plan under RCW 36.70A.040, may elect to be
28 included within either the western Washington region or the eastern
29 Washington region.

30 (2)(a) Each regional panel selected to hear and decide cases
31 shall consist of three board members, at least a majority of whom
32 shall reside within the region in which the case arose, unless such
33 members cannot sit on a particular case because of recusal or
34 disqualification, or unless the board ((~~administrative officer~~))
35 chair determines ((~~that there is an emergency including, but not~~
36 ~~limited to,~~)) otherwise due to caseload management determinations or
37 the unavailability of a board member due to illness, absence, or
38 vacancy((~~, or significant workload imbalance~~)). The presiding officer
39 of each case shall reside within the region in which the case arose,

1 unless the board (~~(administrative officer)~~) chair determines that
2 there is an emergency.

3 (b) Except as provided otherwise in this subsection (2)(b), each
4 regional panel must: (i) Include one member admitted to practice law
5 in this state; (ii) include one member who has been a city or county
6 elected official; and (iii) reflect the political composition of the
7 board. The requirements of this subsection (2)(b) may be waived by
8 the board (~~(administrative officer)~~) chair due to member
9 unavailability, significant workload imbalances, or other reasons.

10 **Sec. 4.** RCW 36.70A.270 and 2019 c 452 s 2 are each amended to
11 read as follows:

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

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

22 (2) (~~Each board member shall receive reimbursement for travel~~
23 ~~expenses incurred in the discharge of his or her duties in accordance~~
24 ~~with RCW 43.03.050 and 43.03.060. Each member shall receive an annual~~
25 ~~salary to be determined by the governor pursuant to RCW 43.03.040.))
26 The principal office of the board shall be located in (~~Olympia~~)
27 Thurston county, but it may hold hearings at any other place in the
28 state.~~

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

35 (4) A majority of the board shall constitute a quorum for
36 adopting rules necessary for the conduct of its powers and duties or
37 transacting other official business, and may act even though one
38 position of the board is vacant. One or more members may hold
39 hearings and take testimony to be reported for action by the board

1 when authorized by rule or order of the board. The board shall
2 perform all the powers and duties specified in this chapter or as
3 otherwise provided by law.

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

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

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

37 (8) The board must ensure all rulings, decisions, and orders are
38 available to the public through the environmental and land use
39 hearings office's web sites as described in RCW 43.21B.005. To ensure
40 uniformity and usability of searchable databases and web sites, the

1 board shall coordinate with the environmental and land use hearings
2 office, the department of commerce, and other interested stakeholders
3 to develop and maintain a rational system of categorizing its
4 decisions and orders.

5 (9) A board member or hearing examiner is subject to
6 disqualification under chapter 34.05 RCW. The rules of practice of
7 the board shall establish procedures by which a party to a hearing
8 conducted before the board may file with the board a motion to
9 disqualify, with supporting affidavit, against a board member or
10 hearing examiner assigned to preside at the hearing.

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

14 (11) The board shall annually elect one of its attorney members
15 to be the board (~~administrative officer~~) chair. The duties and
16 responsibilities of the (~~administrative officer~~) chair include
17 (~~handling day-to-day administrative, budget, and personnel matters~~
18 ~~on behalf of the board, together with making case assignments to~~
19 ~~board members in accordance with the board's rules of procedure in~~
20 ~~order to achieve a fair and balanced workload among all board~~
21 ~~members. The administrative officer of the board may carry a reduced~~
22 ~~easeload to allow time for performing the administrative work~~
23 ~~functions)) developing board procedures, making case assignments to
24 board members in accordance with the board's rules of procedure in
25 order to achieve a fair and balanced workload among all board
26 members, and managing board meetings.~~

27 **Sec. 5.** RCW 43.21B.005 and 2019 c 452 s 1 are each amended to
28 read as follows:

29 (1) There is created an environmental and land use hearings
30 office of the state of Washington. The environmental and land use
31 hearings office consists of the pollution control hearings board
32 created in RCW 43.21B.010, the shorelines hearings board created in
33 RCW 90.58.170, and the growth management hearings board created in
34 RCW 36.70A.250. The governor shall (~~designate one of the members of~~
35 ~~the pollution control hearings board or growth management hearings~~
36 ~~board to be the~~) appoint a director of the environmental and land
37 use hearings office during the term of the governor. Membership,
38 powers, functions, and duties of the pollution control hearings

1 board, the shorelines hearings board, and the growth management
2 hearings board shall be as provided by law.

3 (2) The director of the environmental and land use hearings
4 office may appoint one or more administrative appeals judges in cases
5 before the environmental boards and, ~~((with the consent of the chair
6 of the growth management hearings board,))~~ one or more hearing
7 examiners in cases before the land use board comprising the office.
8 The administrative appeals judges shall possess the powers and duties
9 conferred by the administrative procedure act, chapter 34.05 RCW,
10 have a demonstrated knowledge of environmental law, and shall be
11 admitted to the practice of law in the state of Washington. The
12 hearing examiners possess the powers and duties provided for in RCW
13 36.70A.270.

14 (3) Administrative appeals judges are not subject to chapter
15 41.06 RCW. The administrative appeals judges appointed under
16 subsection (2) of this section are subject to discipline and
17 termination, for cause, by the director of the environmental and land
18 use hearings office. Upon written request by the person so
19 disciplined or terminated, the director of the environmental and land
20 use hearings office shall state the reasons for such action in
21 writing. The person affected has a right of review by the superior
22 court of Thurston county on petition for reinstatement or other
23 remedy filed within thirty days of receipt of such written reasons.

24 (4) The director of the environmental and land use hearings
25 office may appoint, discharge, and fix the compensation of such
26 administrative or clerical staff as may be necessary.

27 (5) The director of the environmental and land use hearings
28 office may also contract for required services.

29 (6) The director of the environmental and land use hearings
30 office must ensure that timely and accurate ~~((growth management
31 hearings))~~ board rulings, decisions, and orders are made available to
32 the public through searchable databases accessible through the
33 environmental and land use hearings office web sites. To ensure
34 uniformity and usability of searchable databases and web sites, the
35 director must coordinate with the ~~((growth management hearings
36 board))~~ relevant boards, the department of commerce, and other
37 interested stakeholders to develop and maintain a rational system of
38 categorizing ~~((growth management hearings))~~ board rulings, decisions,
39 and orders. The environmental and land use hearings office web sites
40 must allow a user to search growth management hearings board

1 decisions and orders by topic, party, and geographic location or by
2 natural language. All rulings, decisions, and orders issued before
3 January 1, 2019, must be published by June 30, 2021.

Passed by the Senate March 10, 2020.

Passed by the House March 6, 2020.

Approved by the Governor March 27, 2020.

Filed in Office of Secretary of State March 27, 2020.

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