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**HOUSE BILL 2802**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Fitzgibbon and Lekanoff; by request of Office of the Governor

AN ACT Relating to aligning the administration of the growth management hearings board with other boards within the environmental land use and hearings office by modifying requirements pertaining to growth management hearings board membership and the duties and responsibilities of members, streamlining procedures in cases before the growth management hearings board, and allowing the use of administrative appeals judges in growth management hearings board proceedings; and amending RCW 36.70A.250, 36.70A.252, 36.70A.260, 36.70A.270, and 43.21B.005.

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

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

(1) ((~~A~~)) (a) There is hereby created within the environmental and land use hearings office established by RCW 43.21B.005 a growth management hearings board for the state of Washington ((~~is created~~)). The board shall consist of ((~~seven~~)) five members qualified by experience or training in pertinent matters pertaining to land use law or land use planning and who have experience in the practical application of those matters. ((~~All seven~~))

(b) Three board members shall be appointed by the governor, ((~~two each~~)) one residing respectively in the central Puget Sound, eastern Washington, and western Washington regions((~~, plus one board member residing within the state of Washington. At least three members of the board~~)) at the time of their appointment. They shall be admitted to practice law in this state((~~, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions~~)). ((~~At least three members of the board~~)) Board members appointed under this subsection (1)(b) shall operate on a full-time basis, shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040, shall receive reimbursement for travel expenses incurred in the discharge of their duties in accordance with RCW 43.03.050 and 43.03.060, and shall be considered employees of the state of Washington subject to chapter 42.52 RCW. No more than two of the board members appointed under this subsection (1)(b) may be members of the same major political party.

(c) The remaining two board members shall have been ((~~a~~)) city or county elected ((~~official, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions. After expiration of the terms of board members on the previously existing three growth management hearings boards, no more than four members of the seven-member board may be members of the same major political party. No more than two members at the time of their appointment or during their term may reside in the same county~~)) officials qualified by experience or training in matters related to land use, land use planning, or the practical application of those matters.

(i) The environmental and land use hearings office shall maintain a list of qualified former elected officials provided by the statewide association representing cities and the statewide association representing counties from which representatives of the associations may be selected as needed to hear cases before the board. For each case before the board, the director of the environmental and land use hearings office shall select one member representing each association respectively to hear the case. When selecting representatives to hear cases, the director shall avoid actual or perceived conflicts of interest while endeavoring to maintain regional representation.

(ii) Board members appointed under this subsection (1)(c) shall operate on a part-time basis, receive compensation on the basis of one hundred fifty dollars for each day spent in performance of their duties but such compensation shall not exceed ten thousand dollars in a fiscal year, and receive reimbursement for travel and subsistence expenses incurred in the discharge of their duties as provided in RCW 43.03.050 and 43.03.060.

(d) In order to carry out the duties and responsibilities of the board, and within resources provided for those purposes, the environmental and land use hearings office may employ, and make available to the board, administrative appeals judges.

(2) ((~~Each~~)) By July 1, 2020, the governor shall exercise his or her appointment authority under subsection (1)(b) of this section. Initial appointments shall be staggered to expire on June 30, 2022, June 30, 2024, and June 30, 2026. Thereafter, each full-time member of the board shall be appointed for a term of six years, and until their successors are appointed. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. ((~~Members of the previously existing three growth management hearings boards appointed before July 1, 2010, shall complete their staggered, six-year terms as members of the growth management hearings board created under subsection (1) of this section. The reduction from nine board members on the previously existing three growth management hearings boards to seven total members on the growth management hearings board shall be made through attrition, voluntary resignation, or retirement.~~)) The terms of board members serving as of the effective date of this section shall conclude upon the governor's exercise of his or her appointment authority under subsection (1)(b) of this section and no later than June 30, 2020. However, board members serving as of the effective date of this section are not excluded from receiving a successive appointment under subsection (1)(b) of this section or from selection as a part-time board member.

(3) By July 1, 2020, the statewide association representing cities and the statewide association representing counties shall each submit to the environmental and land use hearings office an initial list of qualified former elected officials in order to carry out the purposes of subsection (1)(c) of this section. The associations and the environmental and land use hearings office shall coordinate as needed to keep the list updated.

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

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

(2) Not later than July 1, ((~~2012~~)) 2020, the growth management hearings board consists of ((~~seven~~)) five members qualified by experience or training in pertinent matters pertaining to land use law or land use planning((~~, except that the governor may reduce the board to six members if warranted by the board's caseload~~)). All board members must be appointed ((~~by the governor, two each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions~~)) as enumerated in RCW 36.70A.250 and shall continue to meet the qualifications set out in ((~~RCW 36.70A.260~~)) RCW 36.70A.250. ((~~The reduction from seven board members to six board members must be made through attrition, voluntary resignation, or retirement.~~))

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

(1) ((~~Each~~)) (a) Except in simplified or expedited proceedings as the board creates by rule pursuant to (b) of this subsection, or when an administrative appeals judge serves as presiding officer pursuant to RCW 36.70A.270, each petition for review that is filed with the growth management hearings board shall be ((~~heard and decided by a regional panel of growth management hearings board members~~)) presided over by a full-time attorney member of the board from the same region where the appeal originates. Regional ((~~panels~~)) representation shall be constituted as follows:

((~~(a)~~)) (i) Central Puget Sound region. A ((~~three-member~~)) central Puget Sound ((~~panel~~)) representative shall be selected to ((~~hear matters~~)) preside over appeals pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

((~~(b)~~)) (ii) Eastern Washington region. ((~~A three-member~~)) An eastern Washington ((~~panel~~)) representative shall be selected to ((~~hear matters~~)) preside over appeals pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

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

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

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

(b) The board may adopt rules in accordance with chapter 34.05 RCW to set forth alternative processes to simplify and expedite judicial procedures and proceedings.

(2) All cases before the board must be heard by three full-time board members and two part-time board members. A decision must be agreed to by at least three members of the board to be final.

(3) Cases before the board, on settlement extension, or on appeal as of July 1, 2020, will be heard according to subsection (2) of this section. The board chair may make emergency provision, or adopt any suitable process or mode of proceeding, for the timely conclusion of any case arising under this section, but in no event shall the case be decided by less than three members of the board.

**Sec.**  RCW 36.70A.270 and 2019 c 452 s 2 are each 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~~)) Thurston county, but it may hold hearings at any other place in the state.

(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~~)) administrative appeals judges 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~~)) administrative appeals judges 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~~)) administrative appeals judges as a presiding officer. ((~~Hearing examiners~~)) Administrative appeals judges 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~~)) three or more members of the ((~~regional panel deciding the particular case~~)) board 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~~)) an administrative appeals judge 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 it renders and arrange for the reasonable distribution of the rules. 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) The board must ensure all rulings, decisions, and orders are available to the public through the environmental and land use hearings office's web sites as described in RCW 43.21B.005. To ensure uniformity and usability of searchable databases and web sites, the board shall coordinate with the environmental and land use hearings office, the department of commerce, and other interested stakeholders to develop and maintain a rational system of categorizing its decisions and orders.

(9) A board member or ((~~hearing examiner~~)) administrative appeals judge is subject to disqualification under chapter 34.05 RCW. 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~~)) administrative appeals judge assigned to preside at the hearing.

(10) 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.

(11) The board shall ((~~annually~~)) biannually elect one of its full-time attorney members to be the board ((~~administrative officer~~)) chair. The duties and responsibilities of the ((~~administrative officer~~)) chair 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~~)) and procedures, and managing board meetings.

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

(1) There is created an environmental and land use hearings office of the state of Washington. The environmental and land use hearings office consists of the pollution control hearings board created in RCW 43.21B.010, the shorelines hearings board created in RCW 90.58.170, and the growth management hearings board created in RCW 36.70A.250. The governor shall ((~~designate one of the members of the pollution control hearings board or growth management hearings board to be the~~)) appoint a director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, the shorelines hearings board, and the growth management hearings board shall be as provided by law.

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

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

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

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

(6) The director of the environmental and land use hearings office must ensure that timely and accurate ((~~growth management hearings~~)) board rulings, decisions, and orders are made available to the public through searchable databases accessible through the environmental and land use hearings office web sites. To ensure uniformity and usability of searchable databases and web sites, the director must coordinate with the ((~~growth management hearings board~~)) relevant boards, the department of commerce, and other interested stakeholders to develop and maintain a rational system of categorizing ((~~growth management hearings~~)) board rulings, decisions, and orders. The environmental and land use hearings office web sites must allow a user to search growth management hearings board decisions and orders by topic, party, and geographic location or by natural language. All rulings, decisions, and orders issued before January 1, 2019, must be published by June 30, 2021.

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