
HOUSE BILL 2802

State of Washington

66th Legislature

2020 Regular Session

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

Read first time 01/22/20. Referred to Committee on Environment & Energy.

1 AN ACT Relating to aligning the administration of the growth
2 management hearings board with other boards within the environmental
3 land use and hearings office by modifying requirements pertaining to
4 growth management hearings board membership and the duties and
5 responsibilities of members, streamlining procedures in cases before
6 the growth management hearings board, and allowing the use of
7 administrative appeals judges in growth management hearings board
8 proceedings; and amending RCW 36.70A.250, 36.70A.252, 36.70A.260,
9 36.70A.270, and 43.21B.005.

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

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

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

20 (b) Three board members shall be appointed by the governor, ((two
21 each)) one residing respectively in the central Puget Sound, eastern

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

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

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

37 (ii) Board members appointed under this subsection (1)(c) shall
38 operate on a part-time basis, receive compensation on the basis of
39 one hundred fifty dollars for each day spent in performance of their
40 duties but such compensation shall not exceed ten thousand dollars in

1 a fiscal year, and receive reimbursement for travel and subsistence
2 expenses incurred in the discharge of their duties as provided in RCW
3 43.03.050 and 43.03.060.

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

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

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

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

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

9 (2) Not later than July 1, ~~((2012))~~ 2020, the growth management
10 hearings board consists of ~~((seven))~~ five members qualified by
11 experience or training in pertinent matters pertaining to land use
12 law or land use planning(~~((, except that the governor may reduce the~~
13 ~~board to six members if warranted by the board's caseload))~~). All
14 board members must be appointed ~~((by the governor, two each residing~~
15 ~~respectively in the central Puget Sound, eastern Washington, and~~
16 ~~western Washington regions))~~ as enumerated in RCW 36.70A.250 and
17 shall continue to meet the qualifications set out in ~~((RCW~~
18 ~~36.70A.260))~~ RCW 36.70A.250. ~~((The reduction from seven board members~~
19 ~~to six board members must be made through attrition, voluntary~~
20 ~~resignation, or retirement.))~~

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

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

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

37 ~~((b))~~ (ii) Eastern Washington region. ~~((A three-member))~~ An
38 eastern Washington ~~((panel))~~ representative shall be selected to
39 ~~((hear matters))~~ preside over appeals pertaining to cities and

1 counties that are required or choose to plan under RCW 36.70A.040 and
2 are located east of the crest of the Cascade mountains.

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

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

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

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

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

36 (3) Cases before the board, on settlement extension, or on appeal
37 as of July 1, 2020, will be heard according to subsection (2) of this
38 section. The board chair may make emergency provision, or adopt any
39 suitable process or mode of proceeding, for the timely conclusion of

1 any case arising under this section, but in no event shall the case
2 be decided by less than three members of the board.

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

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

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

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

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

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

36 (5) The board may use one or more ~~((hearing examiners))~~
37 administrative appeals judges to assist the board in its hearing
38 function~~((, to make conclusions of law and findings of fact))~~ and, if
39 requested by the board, to make recommendations to the board for

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

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

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

33 (8) The board must ensure all rulings, decisions, and orders are
34 available to the public through the environmental and land use
35 hearings office's web sites as described in RCW 43.21B.005. To ensure
36 uniformity and usability of searchable databases and web sites, the
37 board shall coordinate with the environmental and land use hearings
38 office, the department of commerce, and other interested stakeholders
39 to develop and maintain a rational system of categorizing its
40 decisions and orders.

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

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

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

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

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

36 (2) The director of the environmental and land use hearings
37 office may appoint one or more administrative appeals judges in cases
38 before the environmental and growth management boards (~~and, with the~~
39 ~~consent of the chair of the growth management hearings board, one or~~

1 ~~more hearing examiners in cases before the land use board comprising~~
2 ~~the office)).~~ The administrative appeals judges shall possess the
3 powers and duties conferred by the administrative procedure act,
4 chapter 34.05 RCW, have a demonstrated knowledge of environmental or
5 land use law, and shall be admitted to the practice of law in the
6 state of Washington. (~~The hearing examiners possess the powers and~~
7 ~~duties provided for in RCW 36.70A.270.)~~)

8 (3) Administrative appeals judges are not subject to chapter
9 41.06 RCW. The administrative appeals judges appointed under
10 subsection (2) of this section are subject to discipline and
11 termination, for cause, by the director of the environmental and land
12 use hearings office. Upon written request by the person so
13 disciplined or terminated, the director of the environmental and land
14 use hearings office shall state the reasons for such action in
15 writing. The person affected has a right of review by the superior
16 court of Thurston county on petition for reinstatement or other
17 remedy filed within thirty days of receipt of such written reasons.

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

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

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

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