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HOUSE BILL 2810

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State of Washington

57th Legislature

2002 Regular Session

By Representative Dunshee

Read first time 01/29/2002. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to the authority of land use hearing examiners;  
2 amending RCW 36.70A.270; adding a new section to chapter 35.21 RCW;  
3 adding a new section to chapter 35.63 RCW; adding a new section to  
4 chapter 35A.63 RCW; adding a new section to chapter 36.70 RCW; adding  
5 a new section to chapter 36.70A RCW; adding a new section to chapter  
6 36.70B RCW; adding a new section to chapter 36.70C RCW; adding a new  
7 chapter to Title 35 RCW; and repealing RCW 35.63.130, 35A.63.170,  
8 36.70.970, and 58.17.330.

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

10 NEW SECTION. **Sec. 1.** There are presently several sections in the  
11 Revised Code of Washington with references to a hearing examiner. This  
12 leads to confusion over the role of the hearing examiner and the  
13 procedures that should be followed. Changes and additions to  
14 previously established land use law, either through statutory  
15 enactment, reform, or judicial decisions has created a growing and  
16 complex system that is difficult for many to navigate. Consolidating  
17 these sections into a single set of procedures, which would apply to  
18 all jurisdictions that adopt the system, would provide greater clarity  
19 and uniformity for the land use review process.

1        NEW SECTION.    **Sec. 2.**    (1) Each local government may adopt a  
2 hearing examiner system to hear and decide land use applications and  
3 appeals.

4        (2) To ensure procedural due process, each local government, upon  
5 adoption of a hearing examiner system, must adopt rules to govern the  
6 process for review of the land use permits and related appeal of  
7 administrative decisions.

8        (3) A hearing examiner must have a demonstrated knowledge of land  
9 use law, planning, and administrative procedure law, and have graduated  
10 from a law school accredited by the American bar association.

11       NEW SECTION.    **Sec. 3.**    A hearing examiner must have a reasonable  
12 period to produce a decision. For an original application for land use  
13 permits, thirty days constitutes a reasonable period. For appeals,  
14 sixty days constitutes a reasonable period. This reasonable period may  
15 be shortened upon motions of the party, which are supported by  
16 compelling evidence.

17       NEW SECTION.    **Sec. 4.**    A hearing examiner's decision has the legal  
18 effect of a final decision of a legislative body. This decision may be  
19 appealable under chapter 36.70C RCW.

20       NEW SECTION.    **Sec. 5.**    A hearing examiner has quasi-judicial  
21 immunity.

22       NEW SECTION.    **Sec. 6.**    A new section is added to chapter 35.21 RCW  
23 to read as follows:

24        The use of a hearing examiner system to settle land use issues must  
25 comply with the provisions of chapter 35.-- RCW (sections 1 through 5  
26 of this act).

27       NEW SECTION.    **Sec. 7.**    A new section is added to chapter 35.63 RCW  
28 to read as follows:

29        The use of a hearing examiner system to settle land use issues  
30 under this chapter must comply with the provisions of chapter 35.-- RCW  
31 (sections 1 through 5 of this act).

32       NEW SECTION.    **Sec. 8.**    A new section is added to chapter 35A.63 RCW  
33 to read as follows:

1 The use of a hearing examiner system to settle land use issues  
2 under this chapter must comply with the provisions of chapter 35.-- RCW  
3 (sections 1 through 5 of this act).

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.70 RCW  
5 to read as follows:

6 The use of a hearing examiner system to settle land use issues  
7 under this chapter must comply with the provisions of chapter 35.-- RCW  
8 (sections 1 through 5 of this act).

9 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.70A  
10 RCW to read as follows:

11 The use of a hearing examiner system to settle land use issues  
12 under this chapter must comply with the provisions of chapter 35.-- RCW  
13 (sections 1 through 5 of this act).

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70B  
15 RCW to read as follows:

16 The use of a hearing examiner system to settle land use issues  
17 under this chapter must comply with the provisions of chapter 35.-- RCW  
18 (sections 1 through 5 of this act).

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 36.70C  
20 RCW to read as follows:

21 The use of a hearing examiner system to settle land use issues  
22 under this chapter must comply with the provisions of chapter 35.-- RCW  
23 (sections 1 through 5 of this act).

24 **Sec. 13.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to  
25 read as follows:

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

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

1 any member of a board by the tribunal shall disqualify such member for  
2 reappointment.

3 (2) Each board member shall receive reimbursement for travel  
4 expenses incurred in the discharge of his or her duties in accordance  
5 with RCW 43.03.050 and 43.03.060. If it is determined that the review  
6 boards shall operate on a full-time basis, each member shall receive an  
7 annual salary to be determined by the governor pursuant to RCW  
8 43.03.040. If it is determined that a review board shall operate on a  
9 part-time basis, each member shall receive compensation pursuant to RCW  
10 43.03.250, provided such amount shall not exceed the amount that would  
11 be set if they were a full-time board member. The principal office of  
12 each board shall be located by the governor within the jurisdictional  
13 boundaries of each board. The boards shall operate on either a part-  
14 time or full-time basis, as determined by the governor.

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

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

29 ~~(5) ((The board may appoint one or more hearing examiners to assist  
30 the board in its hearing function, to make conclusions of law and  
31 findings of fact and, if requested by the board, to make  
32 recommendations to the board for decisions in cases before the board.  
33 Such hearing examiners must have demonstrated knowledge of land use  
34 planning and law. The boards shall specify in their joint rules of  
35 practice and procedure, as required by subsection (7) of this section,  
36 the procedure and criteria to be employed for designating hearing  
37 examiners as a presiding officer. Hearing examiners selected by a  
38 board shall meet the requirements of subsection (3) of this section.  
39 The findings and conclusions of the hearing examiner shall not become~~

1 final until they have been formally approved by the board. This  
2 authorization to use hearing examiners does not waive the requirement  
3 of RCW 36.70A.300 that final orders be issued within one hundred eighty  
4 days of board receipt of a petition.

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

10 ~~((7))~~ (6) All proceedings before the board~~((7))~~ or any of its  
11 members~~((7 or a hearing examiner appointed by the board))~~ shall be  
12 conducted in accordance with such administrative rules of practice and  
13 procedure as the boards jointly prescribe. All three boards shall  
14 jointly meet to develop and adopt joint rules of practice and  
15 procedure, including rules regarding expeditious and summary  
16 disposition of appeals. The boards shall publish such rules and  
17 decisions they render and arrange for the reasonable distribution of  
18 the rules and decisions. Except as it conflicts with specific  
19 provisions of this chapter, the administrative procedure act, chapter  
20 34.05 RCW, and specifically including the provisions of RCW 34.05.455  
21 governing ex parte communications, shall govern the practice and  
22 procedure of the boards.

23 ~~((8))~~ (7) A board member ~~((or hearing examiner))~~ is subject to  
24 disqualification under chapter 34.05 RCW. The joint rules of practice  
25 of the boards shall establish procedures by which a party to a hearing  
26 conducted before the board may file with the board a motion to  
27 disqualify, with supporting affidavit, against a board member ~~((or  
28 hearing examiner))~~ assigned to preside at the hearing.

29 ~~((9))~~ (8) The members of the boards shall meet jointly on at  
30 least an annual basis with the objective of sharing information that  
31 promotes the goals and purposes of this chapter.

32 NEW SECTION. Sec. 14. Sections 1 through 5 of this act constitute  
33 a new chapter in Title 35 RCW.

34 NEW SECTION. Sec. 15. The following acts or parts of acts are  
35 each repealed:

1 (1) RCW 35.63.130 (Hearing examiner system--Adoption authorized--  
2 Alternative--Functions--Procedures) and 1995 c 347 s 423, 1994 c 257 s  
3 8, & 1977 ex.s. c 213 s 1;

4 (2) RCW 35A.63.170 (Hearing examiner system--Adoption authorized--  
5 Alternative--Functions--Procedures) and 1995 c 347 s 424, 1994 c 257 s  
6 7, & 1977 ex.s. c 213 s 2;

7 (3) RCW 36.70.970 (Hearing examiner system--Adoption authorized--  
8 Alternative--Functions--Procedures) and 1995 c 347 s 425, 1994 c 257 s  
9 9, & 1977 ex.s. c 213 s 3; and

10 (4) RCW 58.17.330 (Hearing examiner system--Adoption authorized--  
11 Procedures--Decisions) and 1995 c 347 s 429, 1994 c 257 s 6, & 1977  
12 ex.s. c 213 s 4.

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