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## Local Government Committee

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### HB 2201

**Brief Description:** Addressing the use and governance of hearing examiners.

**Sponsors:** Representatives Fitzgibbon and Springer.

#### Brief Summary of Bill

- Requires cities with 10,000 or more residents in certain western Washington counties to adopt a hearing examiner system for land-use permits, related appeals, and selected environmental appeals.
- Authorizes these same cities to collect reimbursements for hearing examiner costs from permit applicants or appellants, and to exempt themselves from hearing examiner system requirements.
- Establishes criteria for hearing examiner conduct and systems.
- Authorizes hearing examiners to delay the issuance of final decisions beyond a required ten-day period if specified requirements are met.

**Hearing Date:** 1/10/12

**Staff:** Ethan Moreno (786-7386).

#### **Background:**

##### Hearing Examiners.

Cities and counties may adopt a hearing examiner system under which a hired or contracted hearing examiner hears and determines land use project applications, including applications pertaining to zoning ordinances and plat approvals, and appeals of administrative decisions. Minimum qualifications for hearing examiners are not established in statute.

Hearing examiners conduct quasi-judicial hearings in place of a planning commission or other decision-making body and must follow prescribed procedures of the applicable county or city. A

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hearing examiner's decision, as determined by the county or city adopting the hearing examiner system, can have the legal effect of being:

- a recommendation to city or county legislative body;
- an administrative decision that is appealable to the legislative body; or
- a final decision of the legislative body.

With limited exceptions, the final decision of a hearing examiner must be rendered within 10 working days following the conclusion of all testimony and hearings.

#### *Buildable Lands Program.*

The Growth Management Act (GMA), Washington's comprehensive land use and planning framework for counties and cities, requires six western Washington counties (*i.e.*, Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties) and the cities within those counties to establish a review and evaluation 'buildable lands' program. The purpose of the program is to determine whether a county and its cities are achieving urban densities and to identify reasonable measures, subject to statutory provisions, that will be taken to comply with GMA requirements.

#### **Summary of Bill:**

#### *Mandatory Hearing Examiner Systems - Selected Cities.*

Cities with 10,000 or more residents that are located within counties subject to the 'buildable lands' requirements of the GMA must adopt an ordinance requiring hearing examiners to hear and decide specific land use permits and appeals. The hearing examiner ordinance, which must be adopted by March 31, 2013, must generally require that all project permits, administrative appeals of project permit decisions, and environmental appeals that require an open record hearing, be decided by a hearing examiner. After March 31, 2013, cities subject to the hearing examiner ordinance requirement may elect to exempt itself from the ordinance-related requirements.

The required hearing examiner ordinance may also permit subject cities to apply the clearly erroneous standard of review in appeals of administrative decisions that are heard and decided by hearing examiners.

Cities subject to the hearing examiner ordinance requirement may also require a project permit applicant, or the appellant of a project permit decision who is not an applicant, to reimburse the city for the cost of using the hearing examiner, including hearing examiner time and associated administrative staff and notice costs. The fees, costs, or reimbursements required of appellants who are not project permit applicants may not exceed \$1,500. Subject to specified provisions, fees, costs, and reimbursement charges may be annually increased, beginning January 1, 2013. Failure by an appellant to pay the required fees, costs, and reimbursements must result in a default judgment against the appeal.

#### *Hearing Examiners - Qualifications and Systems.*

General hearing examiner qualifications and system requirements are established. For example:

- hearing examiners must be impartial and independent from the officials and departments who provide recommendations or whose decisions may be appealed to the hearing examiner;
- hearing examiner contracts must have a term of at least two years and may be subject to cancellation only for cause; and
- hearing examiners must avoid conflicts of interest and ex parte communications, and must adhere to the appearance of fairness doctrine.

Additionally, ordinances establishing hearing examiners or hearing examiner systems must:

- specify the qualifications for hiring and the terms and conditions under which the hearing examiner will serve;
- authorize the hearing examiner to recuse himself or herself and include a process for assigning a different person to the matter; and
- establish rules of practice and procedure, rules that must be posted on the city's official website.

*Delayed Issuance of Decisions.*

A hearing examiner may delay the issuance of a decision beyond the generally required 10-working day period if the hearing examiner has certified his or her costs to the applicable city or county, and if the city or county has, within the same 10-day period, billed the applicant or appellant for those costs.

**Appropriation:** None.

**Fiscal Note:** Requested on January 5, 2012.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.