
HOUSE BILL 2201

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Fitzgibbon, Springer, and Upthegrove

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1 AN ACT Relating to the use and governance of hearing examiners;
2 amending RCW 36.70B.060, 35.63.130, 35A.63.170, 36.70.970, and
3 58.17.330; adding a new section to chapter 36.70B RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that cities are
7 the engines of our state's economic growth and that the prospects for
8 the state's economic recovery will be enhanced by removing delay and
9 uncertainty in the development permit review process.

10 The legislature affirms the growth management act direction in RCW
11 36.70A.210(1) that cities are to be the primary providers of urban
12 governmental services within urban growth areas and that applications
13 for development permits in urban growth areas are to be processed in a
14 timely, fair, and predictable manner consistent with RCW 36.70A.020(7).

15 The legislature intends that certain cities in high growth counties
16 consider assigning certain quasi-judicial permit applications and
17 appeals of administrative decisions to professional hearing examiners.
18 The legislature finds that qualified and independent hearing examiners
19 provide for a more timely, fair, and predictable permit process and

1 finds that increased use of hearing examiners as quasi-judicial and
2 appellate decision makers will decrease a city's financial risk and
3 increase the ability of its council to keep local comprehensive plans
4 and development regulations up-to-date. The legislature also concludes
5 that the effectiveness of the hearing examiner system should be
6 strengthened by statutory amendments to enhance public faith in the
7 accessibility, transparency, objectivity, and professionalism of the
8 system.

9 **Sec. 2.** RCW 36.70B.060 and 1995 c 347 s 407 are each amended to
10 read as follows:

11 (1) Not later than March 31, 1996, each local government planning
12 under RCW 36.70A.040 shall establish by ordinance or resolution an
13 integrated and consolidated project permit process that may be included
14 in its development regulations. In addition to the elements required
15 by RCW 36.70B.050, the process shall include the following elements:

16 ~~((1))~~ (a) A determination of completeness to the applicant as
17 required by RCW 36.70B.070;

18 ~~((2))~~ (b) A notice of application to the public and agencies with
19 jurisdiction as required by RCW 36.70B.110;

20 ~~((3))~~ (c) Except as provided in RCW 36.70B.140, an optional
21 consolidated project permit review process as provided in RCW
22 36.70B.120. The review process shall provide for no more than one
23 consolidated open record hearing and one closed record appeal. If an
24 open record predecision hearing is provided prior to the decision on a
25 project permit, the process shall not allow a subsequent open record
26 appeal hearing;

27 ~~((4))~~ (d) Provision allowing for any public meeting or required
28 open record hearing to be combined with any public meeting or open
29 record hearing that may be held on the project by another local, state,
30 regional, federal, or other agency, in accordance with provisions of
31 RCW ~~((36.70B.090 and))~~ 36.70B.110;

32 ~~((5))~~ (e) A single report stating all the decisions made as of
33 the date of the report on all project permits included in the
34 consolidated permit process that do not require an open record
35 predecision hearing and any recommendations on project permits that do
36 not require an open record predecision hearing. The report shall state
37 any mitigation required or proposed under the development regulations

1 or the agency's authority under RCW 43.21C.060. The report may be the
2 local permit. If a threshold determination other than a determination
3 of significance has not been issued previously by the local government,
4 the report shall include or append this determination;

5 ~~((+6))~~ (f) Except for the appeal of a determination of
6 significance as provided in RCW 43.21C.075, if a local government
7 elects to provide an appeal of its threshold determinations or project
8 permit decisions, the local government shall provide for no more than
9 one consolidated open record hearing on such appeal. The local
10 government need not provide for any further appeal and may provide an
11 appeal for some but not all project permit decisions. If an appeal is
12 provided after the open record hearing, it shall be a closed record
13 appeal before a single decision-making body or officer;

14 ~~((+7))~~ (g) A notice of decision as required by RCW 36.70B.130 and
15 issued within the time period provided in RCW 36.70B.080 ~~((and~~
16 ~~36.70B.090))~~;

17 ~~((+8))~~ (h) Completion of project review by the local government,
18 including environmental review and public review and any appeals to the
19 local government, within any applicable time periods ~~((under—RCW~~
20 ~~36.70B.090))~~; and

21 ~~((+9))~~ (i) Any other provisions not inconsistent with the
22 requirements of this chapter or chapter 43.21C RCW.

23 (2)(a) Except as provided in (c) of this subsection, not later than
24 March 31, 2013, each city with ten thousand or more residents that is
25 located within a county subject to RCW 36.70A.215 shall adopt an
26 ordinance requiring all project permits, administrative appeals of
27 project permit decisions, and environmental appeals that require an
28 open record hearing to be decided by a hearing examiner authorized by
29 RCW 35.63.130, 35A.63.170, 36.70.970, or 58.17.330. The requirements
30 of this subsection (2)(a) do not apply to project permits excluded from
31 review under RCW 36.70B.140.

32 (b) A city that adopts the ordinance required by (a) of this
33 subsection:

34 (i) May require the applicant for a project permit, or the
35 appellant of a project permit decision who is not an applicant, to
36 reimburse the city for the costs of using the hearing examiner,
37 including hearing examiner time, associated administrative and staff
38 costs, and required notice costs. Except as provided otherwise by this

1 subsection (2)(b)(i), the fees, costs, or reimbursements required of
2 appellants who are not applicants may not exceed one thousand five
3 hundred dollars. Failure by an appellant to pay fees, costs, or
4 reimbursements authorized by this subsection must result in a default
5 judgment against the appeal. Beginning January 1, 2013, a city may
6 annually increase the fee, cost, or reimbursement limit authorized by
7 this subsection by an amount that may not exceed the implicit price
8 deflator for the state of Washington; and

9 (ii) May provide that an appeal of an administrative decision heard
10 and decided by a hearing examiner apply the clearly erroneous standard
11 of review.

12 (c) After March 31, 2013, a city otherwise subject to the
13 requirements of (a) of this subsection may choose to exempt itself from
14 those requirements through the adoption of an applicable motion,
15 resolution, or ordinance. A decision to exempt itself from the
16 requirements of (a) of this subsection may be taken at a city's sole
17 discretion and does not constitute a cause for action, appeal, or
18 petition for review.

19 NEW SECTION. Sec. 3. A new section is added to chapter 36.70B RCW
20 to read as follows:

21 (1) An ordinance establishing a hearing examiner system shall
22 specify the qualifications for hearing examiners and the terms and
23 conditions under which they shall serve. A hearing examiner must have
24 the necessary training and experience to qualify them to conduct
25 hearings and make decisions and recommendations for the matters
26 assigned to the hearing examiner.

27 (2) A hearing examiner must be impartial and independent from the
28 officials and departments who provide recommendations or whose
29 decisions may be appealed to the hearing examiner. If a hearing
30 examiner is a local government employee, he or she must be in a
31 different department from the officials and departments who provide
32 them with recommendations or from whom they hear appeals. If a hearing
33 examiner contracts with a local government, the contract must assure
34 independence and impartiality. A contract shall have a term of at
35 least two years and be subject to cancellation only for cause. The
36 hearing examiner shall be paid for sufficient time to make an informed,
37 accurate, and comprehensive decision.

1 (3) A hearing examiner shall avoid conflicts of interest and ex
2 parte communications, and shall adhere to the appearance of fairness
3 doctrine as provided by law and local ordinance.

4 (4) The ordinance establishing a hearing examiner system shall
5 authorize the hearing examiner to recuse himself or herself in any
6 matter and establish a process to appoint or assign another hearing
7 examiner to handle the matter.

8 (5) The ordinance establishing a hearing examiner system shall
9 establish rules of practice and procedure before the examiner and
10 require that the rules be posted on the city's official web site.

11 **Sec. 4.** RCW 35.63.130 and 1995 c 347 s 423 are each amended to
12 read as follows:

13 (1) As an alternative to those provisions of this chapter relating
14 to powers or duties of the planning commission to hear and report on
15 any proposal to amend a zoning ordinance, the legislative body of a
16 city or county may, in accordance with section 3 of this act, adopt a
17 hearing examiner system under which a hearing examiner or hearing
18 examiners may hear and decide applications for amending the zoning
19 ordinance when the amendment which is applied for is not of general
20 applicability. In addition, the legislative body may vest in a hearing
21 examiner the power to hear and decide those issues it believes should
22 be reviewed and decided by a hearing examiner, including but not
23 limited to:

24 (a) Applications for conditional uses, variances, subdivisions,
25 shoreline permits, or any other class of applications for or pertaining
26 to development of land or land use;

27 (b) Appeals of administrative decisions or determinations; and

28 (c) Appeals of administrative decisions or determinations pursuant
29 to chapter 43.21C RCW.

30 The legislative body shall prescribe procedures to be followed by
31 the hearing examiner.

32 (2) Each city or county legislative body electing to use a hearing
33 examiner pursuant to this section shall by ordinance specify the legal
34 effect of the decisions made by the examiner. The legal effect of such
35 decisions may vary for the different classes of applications decided by
36 the examiner but shall include one of the following:

1 (a) The decision may be given the effect of a recommendation to the
2 legislative body;

3 (b) The decision may be given the effect of an administrative
4 decision appealable within a specified time limit to the legislative
5 body; or

6 (c) Except in the case of a rezone, the decision may be given the
7 effect of a final decision of the legislative body.

8 (3)(a) Each final decision of a hearing examiner shall be in
9 writing and shall include findings and conclusions, based on the
10 record, to support the decision. Such findings and conclusions shall
11 also set forth the manner in which the decision would carry out and
12 conform to the city's or county's comprehensive plan and the city's or
13 county's development regulations. Each final decision of a hearing
14 examiner, unless a longer period is mutually agreed to in writing by
15 the applicant and the hearing examiner, shall be rendered within ten
16 working days following conclusion of all testimony and hearings.

17 (b) The hearing examiner may delay issuance of a decision beyond
18 the ten-day period required by this section until the city or county
19 has been reimbursed. The delay authorized by this subsection (3) may
20 only occur if the hearing examiner has certified the examiner's costs
21 to the city or county and the city or county has, within the ten-day
22 period, billed the applicant or appellant for those costs.

23 **Sec. 5.** RCW 35A.63.170 and 1995 c 347 s 424 are each amended to
24 read as follows:

25 (1) As an alternative to those provisions of this chapter relating
26 to powers or duties of the planning commission to hear and report on
27 any proposal to amend a zoning ordinance, the legislative body of a
28 city may, in accordance with section 3 of this act, adopt a hearing
29 examiner system under which a hearing examiner or hearing examiners may
30 hear and decide applications for amending the zoning ordinance when the
31 amendment which is applied for is not of general applicability. In
32 addition, the legislative body may vest in a hearing examiner the power
33 to hear and decide those issues it believes should be reviewed and
34 decided by a hearing examiner, including but not limited to:

35 (a) Applications for conditional uses, variances, subdivisions,
36 shoreline permits, or any other class of applications for or pertaining
37 to development of land or land use;

- 1 (b) Appeals of administrative decisions or determinations; and
2 (c) Appeals of administrative decisions or determinations pursuant
3 to chapter 43.21C RCW.

4 The legislative body shall prescribe procedures to be followed by
5 a hearing examiner. If the legislative authority vests in a hearing
6 examiner the authority to hear and decide variances, then the
7 provisions of RCW 35A.63.110 shall not apply to the city.

8 (2) Each city legislative body electing to use a hearing examiner
9 pursuant to this section shall by ordinance specify the legal effect of
10 the decisions made by the examiner. The legal effect of such decisions
11 may vary for the different classes of applications decided by the
12 examiner but shall include one of the following:

13 (a) The decision may be given the effect of a recommendation to the
14 legislative body;

15 (b) The decision may be given the effect of an administrative
16 decision appealable within a specified time limit to the legislative
17 body; or

18 (c) Except in the case of a rezone, the decision may be given the
19 effect of a final decision of the legislative body.

20 (3)(a) Each final decision of a hearing examiner shall be in
21 writing and shall include findings and conclusions, based on the
22 record, to support the decision. Such findings and conclusions shall
23 also set forth the manner in which the decision would carry out and
24 conform to the city's comprehensive plan and the city's development
25 regulations. Each final decision of a hearing examiner, unless a
26 longer period is mutually agreed to in writing by the applicant and the
27 hearing examiner, shall be rendered within ten working days following
28 conclusion of all testimony and hearings.

29 (b) The hearing examiner may delay issuance of a decision beyond
30 the ten-day period required by this subsection (3) until the city has
31 been reimbursed. The delay authorized by this subsection may only
32 occur if the hearing examiner has certified the examiner's costs to the
33 city and the city has, within the ten-day period, billed the applicant
34 or appellant for those costs.

35 **Sec. 6.** RCW 36.70.970 and 1995 c 347 s 425 are each amended to
36 read as follows:

37 (1) As an alternative to those provisions of this chapter relating

1 to powers or duties of the planning commission to hear and issue
2 recommendations on applications for plat approval and applications for
3 amendments to the zoning ordinance, the county legislative authority
4 may, in accordance with section 3 of this act, adopt a hearing examiner
5 system under which a hearing examiner or hearing examiners may hear and
6 issue decisions on proposals for plat approval and for amendments to
7 the zoning ordinance when the amendment which is applied for is not of
8 general applicability. In addition, the legislative authority may vest
9 in a hearing examiner the power to hear and decide those issues it
10 believes should be reviewed and decided by a hearing examiner,
11 including but not limited to:

12 (a) Applications for conditional uses, variances, shoreline
13 permits, or any other class of applications for or pertaining to
14 development of land or land use;

15 (b) Appeals of administrative decisions or determinations; and

16 (c) Appeals of administrative decisions or determinations pursuant
17 to chapter 43.21C RCW.

18 The legislative authority shall prescribe procedures to be followed
19 by a hearing examiner.

20 Any county which vests in a hearing examiner the authority to hear
21 and decide conditional uses and variances shall not be required to have
22 a zoning adjuster or board of adjustment.

23 (2) Each county legislative authority electing to use a hearing
24 examiner pursuant to this section shall by ordinance specify the legal
25 effect of the decisions made by the examiner. Such legal effect may
26 vary for the different classes of applications decided by the examiner
27 but shall include one of the following:

28 (a) The decision may be given the effect of a recommendation to the
29 legislative authority;

30 (b) The decision may be given the effect of an administrative
31 decision appealable within a specified time limit to the legislative
32 authority; or

33 (c) Except in the case of a rezone, the decision may be given the
34 effect of a final decision of the legislative authority.

35 (3)(a) Each final decision of a hearing examiner shall be in
36 writing and shall include findings and conclusions, based on the
37 record, to support the decision. Such findings and conclusions shall
38 also set forth the manner in which the decision would carry out and

1 conform to the county's comprehensive plan and the county's development
2 regulations. Each final decision of a hearing examiner, unless a
3 longer period is mutually agreed to in writing by the applicant and the
4 hearing examiner, shall be rendered within ten working days following
5 conclusion of all testimony and hearings.

6 (b) The hearing examiner may delay issuance of a decision beyond
7 the ten-day period required by this subsection (3) until the county has
8 been reimbursed. The delay authorized by this subsection may only
9 occur if the hearing examiner has certified the examiner's costs to the
10 county and the county has, within the ten-day period, billed the
11 applicant or appellant for those costs.

12 **Sec. 7.** RCW 58.17.330 and 1995 c 347 s 429 are each amended to
13 read as follows:

14 (1) As an alternative to those provisions of this chapter requiring
15 a planning commission to hear and issue recommendations for plat
16 approval, the county or city legislative body may, in accordance with
17 section 3 of this act, adopt a hearing examiner system and shall
18 specify by ordinance the legal effect of the decisions made by the
19 examiner. The legal effect of such decisions shall include one of the
20 following:

21 (a) The decision may be given the effect of a recommendation to the
22 legislative body;

23 (b) The decision may be given the effect of an administrative
24 decision appealable within a specified time limit to the legislative
25 body; or

26 (c) The decision may be given the effect of a final decision of the
27 legislative body.

28 The legislative authority shall prescribe procedures to be followed
29 by a hearing examiner.

30 (2)(a) Each final decision of a hearing examiner shall be in
31 writing and shall include findings and conclusions, based on the
32 record, to support the decision. Each final decision of a hearing
33 examiner, unless a longer period is mutually agreed to by the applicant
34 and the hearing examiner, shall be rendered within ten working days
35 following conclusion of all testimony and hearings.

36 (b) The hearing examiner may delay issuance of a decision beyond
37 the ten-day period required by this subsection (2) until the city or

1 county has been reimbursed. The delay authorized by this subsection
2 may only occur if the hearing examiner has certified the examiner's
3 costs to the city or county and the city or county has, within the ten-
4 day period, billed the applicant or appellant for those costs.

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