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## Environment Committee

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### HB 2728

**Brief Description:** Addressing the impartial participation of members of the growth management hearings board on matters before the board.

**Sponsors:** Representatives McDonald, Maycumber, Hargrove and Haler.

#### Brief Summary of Bill

- Requires a Growth Management Hearings Board (GMHB) member or hearing examiner to disclose whether the member or hearing examiner has ever been involved in specified types of relationships with any of the parties to a proceeding before the GMHB.
- Provides that a GMHB member or hearing examiner must grant a motion or request for disqualification if the GMHB member or hearing examiner has ever been involved in one of the specified types of relationships with the parties to a proceeding before the GMHB.
- Establishes a sanctions process for a GMHB member or hearing examiner who fails to disclose the existence of one of the specified types of relationships, including monetary penalties and removal.
- Authorizes a court reviewing a GMHB decision to take certain actions in the event that a GMHB member or hearing examiner fails to abide by the prescribed disclosure and disqualification requirements, including invalidation and remand of the GMHB decision under review.

**Hearing Date:** 1/30/18

**Staff:** Robert Hatfield (786-7117).

**Background:**

Growth Management Hearings Board.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Growth Management Hearings Board (GMHB) was created pursuant to the Growth Management Act (GMA) and has the authority to hear petitions alleging noncompliance with the requirements of the GMA. The GMHB consists of seven members qualified by experience or training in matters pertaining to land use law or land use planning and who have practical experience in those areas. All GMHB members are appointed by the Governor. Members are appointed for six-year terms. Decisions of the GMHB may be appealed to Superior Court.

#### Growth Management Hearings Board - Member Adjudication Tribunal.

Any GMHB member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the Governor. The Governor must transmit the charges to the GMHB member accused and to the Chief Justice of the Supreme Court. The Chief Justice must then designate a tribunal composed of three judges of the Superior Court to hear and adjudicate the charges. Removal of any GMHB member by the tribunal disqualifies that member for reappointment.

#### Disqualification of Judicial Officers.

A judicial officer is a person authorized to act as a judge in a court of justice. A person may not act as a judicial officer in a court of which he or she is a member in any of the following cases:

- in a proceeding to which he or she is a party or in which he or she is directly interested;
- when he or she was not present as a member of the court at the hearing of a matter submitted for its decision;
- when he or she is closely related to either party; or
- when he or she has been an attorney in the proceeding for either party.

The third and fourth cases for disqualification listed above may be waived by the parties.

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

A GMHB member or hearing examiner is subject to disqualification in instances in which a judge would be disqualified under the law governing disqualification of judicial officers. A GMHB member or hearing examiner is also subject to disqualification upon the motion of a party to a hearing before the GMHB if the member or hearing examiner has ever been employed by a party to the hearing, served as a volunteer for a party to the hearing, provided legal representation or counsel to a party to the hearing, or been a member of the board of directors of a party to the hearing.

The rules of practice of the GMHB must provide that a GMHB member or hearing examiner must timely disclose to all parties to a hearing if the GMHB member or hearing examiner has ever been employed by a party to the hearing, served as a volunteer for a party to the hearing, provided legal representation or counsel to a party to the hearing, or been a member of the board of directors of a party to the hearing.

Upon the disclosure or discovery of a relationship requiring disclosure as described above, a party to a hearing may move for or request the disqualification of the GMHB member or hearing examiner. Such a disclosure is sufficient grounds for disqualification, and the GMHB member or hearing examiner must grant a motion or request based on such a disclosure.

A GMHB member adjudication tribunal may remove a GMHB member or hearing examiner, or

may impose sanctions or a monetary penalty on a GMHB member or hearing examiner, for violating the requirement to disclose a relationship described above.

In the event that a GMHB member or hearing examiner fails to abide by the disclosure and disqualification requirements described above, a court reviewing a GMHB decision may take either, or both, of the following actions:

- invalidate and remand the decision by the GMHB; and
- impose sanctions or a monetary penalty on a GMHB member.

The court is especially encouraged to take the actions described above in circumstances where the court determines that the recusal failure of the GMHB member impaired the ability of a party to receive a fair and impartial decision.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2018.

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