

ESSB 6574 - H COMM AMD

By Committee on Environment & Energy

ADOPTED 03/06/2020

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) ((A)) (a) There is hereby created within the environmental
6 and land use hearings office established by RCW 43.21B.005 a growth
7 management hearings board for the state of Washington ((is created)).
8 The board shall consist of ((seven)) five members qualified by
9 experience or training in pertinent matters pertaining to land use
10 law or land use planning and who have experience in the practical
11 application of those matters. All ((seven)) five board members shall
12 be appointed by the governor((, two each residing respectively in the
13 central Puget Sound, eastern Washington, and western Washington
14 regions, plus one board member residing within the state of
15 Washington)). At least three members of the board shall be admitted
16 to practice law in this state, one each residing respectively in the
17 central Puget Sound, eastern Washington, and western Washington
18 regions. At least ((three)) two members of the board shall have been
19 a city or county elected official, one each residing respectively in
20 ((the central Puget Sound,)) eastern Washington((,)) and western
21 Washington ((regions)). ((After expiration of the terms of board
22 members on the previously existing three growth management hearings
23 boards, no)) No more than ((four)) three members of the ((seven-
24 member)) five-member board may be members of the same major political
25 party. No more than two members at the time of their appointment or
26 during their term may reside in the same county. Board members shall
27 operate on a full-time basis, shall receive an annual salary to be
28 determined by the governor pursuant to RCW 43.03.040, shall receive
29 reimbursement for travel expenses incurred in the discharge of their
30 duties in accordance with RCW 43.03.050 and 43.03.060, and shall be
31 considered employees of the state of Washington subject to chapter
32 42.52 RCW.

1 (2) Each member of the board shall be appointed for a term of six
2 years, and until their successors are appointed. A vacancy shall be
3 filled by appointment by the governor for the unexpired portion of
4 the term in which the vacancy occurs. ~~((Members of the previously
5 existing three growth management hearings boards appointed before
6 July 1, 2010, shall complete their staggered, six-year terms as
7 members of the growth management hearings board created under
8 subsection (1) of this section. The reduction from nine board members
9 on the previously existing three growth management hearings boards to
10 seven total members on the growth management hearings board shall be
11 made through attrition, voluntary resignation, or retirement.))~~

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

14 ~~((1))~~ On July 1, 2011, the growth management hearings board is
15 administratively consolidated into the environmental and land use
16 hearings office created in RCW 43.21B.005. The chair of the growth
17 management hearings board shall continue to exercise duties and
18 responsibilities pursuant to RCW 36.70A.270(11). The environmental
19 and land use hearings office shall be responsible for all other
20 administrative functions pertaining to the growth management hearings
21 board.

22 ~~((2) Not later than July 1, 2012, the growth management hearings
23 board consists of seven members qualified by experience or training
24 in matters pertaining to land use law or land use planning, except
25 that the governor may reduce the board to six members if warranted by
26 the board's caseload. All board members must be appointed by the
27 governor, two each residing respectively in the central Puget Sound,
28 eastern Washington, and western Washington regions and shall continue
29 to meet the qualifications set out in RCW 36.70A.260. The reduction
30 from seven board members to six board members must be made through
31 attrition, voluntary resignation, or retirement.))~~

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

34 (1) Each petition for review that is filed with the growth
35 management hearings board shall be heard and decided by a regional
36 panel of growth management hearings board members. Regional panels
37 shall be constituted as follows:

1 (a) Central Puget Sound region. A three-member central Puget
2 Sound panel shall be selected to hear matters pertaining to cities
3 and counties located within the region comprised of King, Pierce,
4 Snohomish, and Kitsap counties.

5 (b) Eastern Washington region. A three-member eastern Washington
6 panel shall be selected to hear matters pertaining to cities and
7 counties that are required or choose to plan under RCW 36.70A.040 and
8 are located east of the crest of the Cascade mountains.

9 (c) Western Washington region. A three-member western Washington
10 panel shall be selected to hear matters pertaining to cities and
11 counties that are required or choose to plan under RCW 36.70A.040,
12 are located west of the crest of the Cascade mountains, and are not
13 included in the central Puget Sound region. Skamania county, if it is
14 required or chooses to plan under RCW 36.70A.040, may elect to be
15 included within either the western Washington region or the eastern
16 Washington region.

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

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

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

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

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

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

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

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

30 (5) The board may use one or more hearing examiners to assist the
31 board in its hearing function, to make conclusions of law and
32 findings of fact and, if requested by the board, to make
33 recommendations to the board for decisions in cases before the board.
34 Such hearing examiners must have demonstrated knowledge of land use
35 planning and law. The board shall specify in its rules of practice
36 and procedure, as required by subsection (7) of this section, the
37 procedure and criteria to be employed for designating hearing
38 examiners as a presiding officer. Hearing examiners used by the board
39 shall meet the requirements of subsection (3) of this section. The
40 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
4 eighty days of board receipt of a petition.

5 (6) The 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 regional panel deciding the particular case and upon being filed at
9 the board's principal office, and shall be open for public inspection
10 at all reasonable times.

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

23 (8) The board must ensure all rulings, decisions, and orders are
24 available to the public through the environmental and land use
25 hearings office's web sites as described in RCW 43.21B.005. To ensure
26 uniformity and usability of searchable databases and web sites, the
27 board shall coordinate with the environmental and land use hearings
28 office, the department of commerce, and other interested stakeholders
29 to develop and maintain a rational system of categorizing its
30 decisions and orders.

31 (9) A board member or hearing examiner is subject to
32 disqualification under chapter 34.05 RCW. The rules of practice of
33 the board shall establish procedures by which a party to a hearing
34 conducted before the board may file with the board a motion to
35 disqualify, with supporting affidavit, against a board member or
36 hearing examiner assigned to preside at the hearing.

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

1 (11) The board shall annually elect one of its attorney members
2 to be the board (~~((administrative officer))~~) chair. The duties and
3 responsibilities of the (~~((administrative officer))~~) chair include
4 (~~((handling day-to-day administrative, budget, and personnel matters~~
5 ~~on behalf of the board, together with making case assignments to~~
6 ~~board members in accordance with the board's rules of procedure in~~
7 ~~order to achieve a fair and balanced workload among all board~~
8 ~~members. The administrative officer of the board may carry a reduced~~
9 ~~easeload to allow time for performing the administrative work~~
10 ~~functions))~~) developing board procedures, making case assignments to
11 board members in accordance with the board's rules of procedure in
12 order to achieve a fair and balanced workload among all board
13 members, and managing board meetings.

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

16 (1) There is created an environmental and land use hearings
17 office of the state of Washington. The environmental and land use
18 hearings office consists of the pollution control hearings board
19 created in RCW 43.21B.010, the shorelines hearings board created in
20 RCW 90.58.170, and the growth management hearings board created in
21 RCW 36.70A.250. The governor shall (~~((designate one of the members of~~
22 ~~the pollution control hearings board or growth management hearings~~
23 ~~board to be the))~~) appoint a director of the environmental and land
24 use hearings office during the term of the governor. Membership,
25 powers, functions, and duties of the pollution control hearings
26 board, the shorelines hearings board, and the growth management
27 hearings board shall be as provided by law.

28 (2) The director of the environmental and land use hearings
29 office may appoint one or more administrative appeals judges in cases
30 before the environmental boards and, (~~((with the consent of the chair~~
31 ~~of the growth management hearings board,))~~) one or more hearing
32 examiners in cases before the land use board comprising the office.
33 The administrative appeals judges shall possess the powers and duties
34 conferred by the administrative procedure act, chapter 34.05 RCW,
35 have a demonstrated knowledge of environmental law, and shall be
36 admitted to the practice of law in the state of Washington. The
37 hearing examiners possess the powers and duties provided for in RCW
38 36.70A.270.

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

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

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

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

31 Correct the title.

EFFECT: Provides that the chair of the Growth Management Hearings Board (Board), rather than the director of the Environmental and Land Use Hearings Office, is responsible for making case assignments to Board members. Provides that the chair of the Board must be an attorney.

--- END ---