
SENATE BILL 5323

State of Washington

61st Legislature

2009 Regular Session

By Senators Fairley, McDermott, and Haugen; by request of Growth Management Hearings Board

Read first time 01/20/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to substitution of growth management hearings board
2 members in the case of vacancy, disqualification, illness, or injury;
3 and amending RCW 36.70A.260 and 36.70A.270.

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

5 **Sec. 1.** RCW 36.70A.260 and 1994 c 249 s 30 are each amended to
6 read as follows:

7 (1) Each growth management hearings board shall consist of three
8 members qualified by experience or training in matters pertaining to
9 land use planning and, except as provided in RCW 36.70A.270(4),
10 residing within the jurisdictional boundaries of the applicable board.
11 At least one member of each board must be admitted to practice law in
12 this state and at least one member must have been a city or county
13 elected official. Each board shall be appointed by the governor and
14 not more than two members at the time of appointment or during their
15 term shall be members of the same political party. No more than two
16 members at the time of appointment or during their term shall reside in
17 the same county.

18 (2) Each member of a board shall be appointed for a term of six
19 years. A vacancy shall be filled by appointment by the governor for

1 the unexpired portion of the term in which the vacancy occurs. The
2 terms of the first three members of a board shall be staggered so that
3 one member is appointed to serve until July 1, 1994, one member until
4 July 1, 1996, and one member until July 1, 1998.

5 **Sec. 2.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to
6 read as follows:

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

9 (1) Any board member may be removed for inefficiency, malfeasance,
10 and misfeasance in office, under specific written charges filed by the
11 governor. The governor shall transmit such written charges to the
12 member accused and the chief justice of the supreme court. The chief
13 justice shall thereupon designate a tribunal composed of three judges
14 of the superior court to hear and adjudicate the charges. Removal of
15 any member of a board by the tribunal shall disqualify such member for
16 reappointment.

17 (2) Each board member shall receive reimbursement for travel
18 expenses incurred in the discharge of his or her duties in accordance
19 with RCW 43.03.050 and 43.03.060. If it is determined that the review
20 boards shall operate on a full-time basis, each member shall receive an
21 annual salary to be determined by the governor pursuant to RCW
22 43.03.040. If it is determined that a review board shall operate on a
23 part-time basis, each member shall receive compensation pursuant to RCW
24 43.03.250, provided such amount shall not exceed the amount that would
25 be set if they were a full-time board member. The principal office of
26 each board shall be located by the governor within the jurisdictional
27 boundaries of each board. The boards shall operate on either a part-
28 time or full-time basis, as determined by the governor.

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

35 (4) A majority of each board shall constitute a quorum for making
36 orders or decisions, adopting rules necessary for the conduct of its
37 powers and duties, or transacting other official business, and may act

1 even though one position of the board is vacant. One or more members
2 may hold hearings and take testimony to be reported for action by the
3 board when authorized by rule or order of the board. If a board is
4 missing one of its members to render a decision on a matter, due to
5 vacancy, disqualification, illness, or injury, the remaining two
6 members of that board may appoint a board member from one of the other
7 boards to substitute for the unavailable member and participate in
8 rendering the decision on that matter. The appointing board must
9 attempt to maintain the other compositional parameters of RCW
10 36.70A.260(1) in selecting the substitute board member. The board
11 shall perform all the powers and duties specified in this chapter or as
12 otherwise provided by law.

13 (5) The board may appoint one or more hearing examiners to assist
14 the board in its hearing function, to make conclusions of law and
15 findings of fact and, if requested by the board, to make
16 recommendations to the board for decisions in cases before the board.
17 Such hearing examiners must have demonstrated knowledge of land use
18 planning and law. The boards shall specify in their joint rules of
19 practice and procedure, as required by subsection (7) of this section,
20 the procedure and criteria to be employed for designating hearing
21 examiners as a presiding officer. Hearing examiners selected by a
22 board shall meet the requirements of subsection (3) of this section.
23 The findings and conclusions of the hearing examiner shall not become
24 final until they have been formally approved by the board. This
25 authorization to use hearing examiners does not waive the requirement
26 of RCW 36.70A.300 that final orders be issued within one hundred eighty
27 days of board receipt of a petition.

28 (6) Each board shall make findings of fact and prepare a written
29 decision in each case decided by it, and such findings and decision
30 shall be effective upon being signed by two or more board members who
31 participated in deciding the matter of the board and upon being filed
32 at the board's principal office, and shall be open for public
33 inspection at all reasonable times.

34 (7) All proceedings before the board, any of its members, or a
35 hearing examiner appointed by the board shall be conducted in
36 accordance with such administrative rules of practice and procedure as
37 the boards jointly prescribe. All three boards shall jointly meet to
38 develop and adopt joint rules of practice and procedure, including

1 rules regarding expeditious and summary disposition of appeals. The
2 boards shall publish such rules and decisions they render and arrange
3 for the reasonable distribution of the rules and decisions. Except as
4 it conflicts with specific provisions of this chapter, the
5 administrative procedure act, chapter 34.05 RCW, and specifically
6 including the provisions of RCW 34.05.455 governing ex parte
7 communications, shall govern the practice and procedure of the boards.

8 (8) A board member or hearing examiner is subject to
9 disqualification under chapter 34.05 RCW. The joint rules of practice
10 of the boards shall establish procedures by which a party to a hearing
11 conducted before the board may file with the board a motion to
12 disqualify, with supporting affidavit, against a board member or
13 hearing examiner assigned to preside at the hearing.

14 (9) The members of the boards shall meet jointly on at least an
15 annual basis with the objective of sharing information that promotes
16 the goals and purposes of this chapter.

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