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HOUSE BILL 2728

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State of Washington

65th Legislature

2018 Regular Session

By Representatives McDonald and Maycumber

1 AN ACT Relating to the impartial participation of members of the  
2 growth management hearings board on matters before the board;  
3 reenacting and amending RCW 36.70A.270; and adding a new section to  
4 chapter 36.70A RCW.

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

6 **Sec. 1.** RCW 36.70A.270 and 2010 c 211 s 6 and 2010 c 210 s 16  
7 are each reenacted and amended to read as follows:

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

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

18 (2) Each board member shall receive reimbursement for travel  
19 expenses incurred in the discharge of his or her duties in accordance  
20 with RCW 43.03.050 and 43.03.060. Each member shall receive an annual

1 salary to be determined by the governor pursuant to RCW 43.03.040.  
2 The principal office of the board shall be located in Olympia.

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

9 (4) A majority of the board shall constitute a quorum for  
10 adopting rules necessary for the conduct of its powers and duties or  
11 transacting other official business, and may act even though one  
12 position of the board is vacant. One or more members may hold  
13 hearings and take testimony to be reported for action by the board  
14 when authorized by rule or order of the board. The board shall  
15 perform all the powers and duties specified in this chapter or as  
16 otherwise provided by law.

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

32 (6) The board shall make findings of fact and prepare a written  
33 decision in each case decided by it, and such findings and decision  
34 shall be effective upon being signed by two or more members of the  
35 regional panel deciding the particular case and upon being filed at  
36 the board's principal office, and shall be open for public inspection  
37 at all reasonable times.

38 (7) All proceedings before the board, any of its members, or a  
39 hearing examiner appointed by the board shall be conducted in  
40 accordance with such administrative rules of practice and procedure

1 as the board prescribes. The board shall develop and adopt rules of  
2 practice and procedure, including rules regarding expeditious and  
3 summary disposition of appeals and the assignment of cases to  
4 regional panels. The board shall publish such rules and decisions it  
5 renders and arrange for the reasonable distribution of the rules and  
6 decisions. Except as it conflicts with specific provisions of this  
7 chapter, the administrative procedure act, chapter 34.05 RCW, and  
8 specifically including the provisions of RCW 34.05.455 governing ex  
9 parte communications, shall govern the practice and procedure of the  
10 board.

11 (8)(a) A board member or hearing examiner is subject to  
12 disqualification under chapter 34.05 RCW, including but not limited  
13 to instances in which a judge would be disqualified under RCW  
14 2.28.030, and under (b) of this subsection (8). The rules of practice  
15 of the board shall establish procedures by which a party to a hearing  
16 conducted before the board may file with the board a motion to  
17 disqualify, with supporting affidavit, against a board member or  
18 hearing examiner assigned to preside at the hearing.

19 (b)(i) The rules of practice of the board shall provide that a  
20 growth management hearings board member or hearing examiner must, in  
21 a timely manner, disclose to all parties to a hearing if the board  
22 member or hearing examiner has ever:

23 (A) Been employed by a party to the hearing;

24 (B) Served as a volunteer for a party to the hearing;

25 (C) Provided legal representation or counsel to a party to the  
26 hearing; or

27 (D) Been a member of the board of directors of a party to the  
28 hearing.

29 (ii) Upon a disclosure under (b)(i) of this subsection or upon a  
30 party uncovering information of a relationship requiring disclosure  
31 under (b)(i) of this subsection, a party to the hearing may make a  
32 verbal motion or file a written request for disqualification of a  
33 board member or hearing examiner. A disclosure under (b)(i) of this  
34 subsection is sufficient grounds for disqualification, and the board  
35 member or hearing examiner must grant a motion or request for  
36 disqualification based on such disclosure.

37 (iii) A tribunal convened under subsection (1) of this section  
38 may remove a board member or hearing examiner or impose sanctions or  
39 a monetary penalty on a board member or hearing examiner for

1 violations of the disclosure requirements of (b)(i) of this  
2 subsection.

3 (9) All members of the board shall meet on at least an annual  
4 basis with the objective of sharing information that promotes the  
5 goals and purposes of this chapter.

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

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A  
16 RCW to read as follows:

17 (1) In the event that a growth management hearings board member  
18 fails to abide by the disclosure and disqualification requirements in  
19 RCW 36.70A.270, a court reviewing a growth management hearings board  
20 decision may do either or both of the following:

21 (a) Invalidate and remand the decision by the board; and  
22 (b) Impose sanctions or a monetary penalty on a member of the  
23 board.

24 (2) The court is especially encouraged to take the actions  
25 described in subsection (1) of this section in circumstances where  
26 the court determines that the recusal failure of the board member  
27 impaired the ability of a party to receive a fair and impartial  
28 decision.

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