
SUBSTITUTE HOUSE BILL 2201

State of Washington

62nd Legislature

2012 Regular Session

By House Local Government (originally sponsored by Representatives Fitzgibbon, Springer, and Upthegrove)

READ FIRST TIME 01/27/12.

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 April 30, 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

1 costs, and required notice costs. Failure by an appellant to pay fees,
2 costs, or reimbursements authorized by this subsection must result in
3 a default judgment against the appeal; and

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

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

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

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

22 (2) A hearing examiner must be impartial and independent from the
23 officials and departments who provide recommendations or whose
24 decisions may be appealed to the hearing examiner. If a hearing
25 examiner is a local government employee, he or she must be in a
26 different department from the officials and departments who provide
27 them with recommendations or from whom they hear appeals. If a hearing
28 examiner contracts with a local government, the contract must assure
29 independence and impartiality. The hearing examiner shall be paid for
30 sufficient time to make an informed, accurate, and comprehensive
31 decision.

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

35 (4) The ordinance establishing a hearing examiner system shall
36 authorize the hearing examiner to recuse himself or herself in any

1 matter and establish a process to appoint or assign another hearing
2 examiner to handle the matter.

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

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

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

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

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

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

25 The legislative body shall prescribe procedures to be followed by
26 the hearing examiner.

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

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

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

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

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

12 (b) The hearing examiner of a city subject to RCW 36.70B.060(2) may
13 delay issuance of a decision beyond the ten-day period required by this
14 subsection (3) until the city or county has been reimbursed. The delay
15 authorized by this subsection may only occur if the hearing examiner
16 has certified the examiner's costs to the city or county and the city
17 or county has, within the ten-day period, billed the applicant or
18 appellant for those costs. Failure by an appellant to pay fees, costs,
19 or reimbursements authorized by RCW 36.70B.060(2)(b) must result in a
20 default judgment against the appeal.

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

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

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

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

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

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

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

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

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

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

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

28 (b) The hearing examiner of a city subject to RCW 36.70B.060(2) may
29 delay issuance of a decision beyond the ten-day period required by this
30 subsection (3) until the city has been reimbursed. The delay
31 authorized by this subsection may only occur if the hearing examiner
32 has certified the examiner's costs to the city and the city has, within
33 the ten-day period, billed the applicant or appellant for those costs.
34 Failure by an appellant to pay fees, costs, or reimbursements
35 authorized by RCW 36.70B.060(2)(b) must result in a default judgment
36 against the appeal.

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

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

15 (a) Applications for conditional uses, variances, shoreline
16 permits, or any other class of applications for or pertaining to
17 development of land or land use;

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

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

21 The legislative authority shall prescribe procedures to be followed
22 by a hearing examiner.

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

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

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

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

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

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

10 (b) The hearing examiner of a city subject to RCW 36.70B.060(2) may
11 delay issuance of a decision beyond the ten-day period required by this
12 subsection (3) until the county has been reimbursed. The delay
13 authorized by this subsection may only occur if the hearing examiner
14 has certified the examiner's costs to the county and the county has,
15 within the ten-day period, billed the applicant or appellant for those
16 costs. Failure by an appellant to pay fees, costs, or reimbursements
17 authorized by RCW 36.70B.060(2)(b) must result in a default judgment
18 against the appeal.

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

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

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

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

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

35 The legislative authority shall prescribe procedures to be followed
36 by a hearing examiner.

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

7 (b) The hearing examiner of a city subject to RCW 36.70B.060(2) may
8 delay issuance of a decision beyond the ten-day period required by this
9 subsection (2) until the city or county has been reimbursed. The delay
10 authorized by this subsection may only occur if the hearing examiner
11 has certified the examiner's costs to the city or county and the city
12 or county has, within the ten-day period, billed the applicant or
13 appellant for those costs. Failure by an appellant to pay fees, costs,
14 or reimbursements authorized by RCW 36.70B.060(2)(b) must result in a
15 default judgment against the appeal.

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