

SUBSTITUTE SENATE BILL 6175

State of Washington

63rd Legislature

2014 Regular Session

By Senate Trade & Economic Development (originally sponsored by Senator Braun)

READ FIRST TIME 01/31/14.

1 AN ACT Relating to modifying the tax appeal process; amending RCW
2 82.03.020, 82.03.030, 82.03.050, 82.03.090, 84.08.130, 34.05.518, and
3 34.05.522; adding new sections to chapter 82.03 RCW; adding a new
4 section to chapter 82.32 RCW; creating new sections; and providing
5 effective dates.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature that
8 this act foster the settlement or other resolution of tax disputes to
9 the extent possible and, in cases in which litigation is necessary, to
10 provide the people of this state with a fair, independent, prepayment
11 procedure to determine a dispute with tax administration agencies.
12 This act must be interpreted and construed to further this intent.

MEMBERSHIP OF THE BOARD

14 **Sec. 2.** RCW 82.03.020 and 1967 ex.s. c 26 s 31 are each amended to
15 read as follows:

16 (1) The board of tax appeals, hereinafter in chapter 26, Laws of
17 1967 ex. sess. referred to as the board, (~~shall~~) must consist of

1 three members (~~(qualified by experience and training in the field of~~
2 ~~state and local taxation,~~) appointed by the governor with the advice
3 and consent of the senate(~~(, and no more than two of whom at the time~~
4 ~~of appointment or during their terms shall be members of the same~~
5 ~~political party))~~).

6 (2) No person may be appointed as a member of the board unless at
7 the time of appointment the individual has substantial knowledge of the
8 tax law and substantial experience making the record in a tax case
9 suitable for judicial review.

10 **Sec. 3.** RCW 82.03.030 and 1967 ex.s. c 26 s 32 are each amended to
11 read as follows:

12 (1) Members of the board ((shall)) must be appointed for a term of
13 six years and until their successors are appointed and have qualified.
14 In case of a vacancy, it ((shall)) must be filled by appointment by the
15 governor for the unexpired portion of the term in which said vacancy
16 occurs(~~(: PROVIDED, That the terms of the first three members of the~~
17 board shall be staggered so that one member shall be appointed to serve
18 until March 1, 1969, one member until March 1, 1971, and one member
19 until March 1, 1973))).

20 (2) Whenever a member of the board is absent, disqualified, or for
21 any other reason unable to perform his or her duties, and it appears to
22 the governor that it is advisable that the services of an additional
23 member be provided, the governor may appoint a member, pro tempore of
24 the board. Any person appointed member pro tempore of the board must
25 have the qualifications set forth in RCW 82.03.020(2) and may not serve
26 for a term longer than one year. This appointment may be renewed once.

27 **Sec. 4.** RCW 82.03.050 and 2013 c 23 s 311 are each amended to read
28 as follows:

29 The board (~~((shall))~~) must operate on (~~((either a part-time or))~~) a
30 full-time basis(~~(, as determined by the governor. If it is determined~~
31 ~~that the board shall operate on a full-time basis, each member of the~~
32 ~~board shall receive an annual salary to be determined by the governor.~~
33 ~~If it is determined that the board shall operate on a part-time basis,~~
34 ~~each member of the board shall receive compensation on the basis of~~
35 ~~seventy five dollars for each day spent in performance of his or her~~
36 ~~duties, but such compensation shall not exceed ten thousand dollars in~~

1 ~~a fiscal year~~)). Each member of the board must receive an annual
2 salary no less than that provided for superior court judges under RCW
3 2.08.092, which salary may not be diminished during the member's term
4 of appointment except to the extent such reduction applies to all
5 superior court judges. Each board member (~~shall~~) must receive
6 reimbursement for travel expenses incurred in the discharge of his or
7 her duties in accordance with RCW 43.03.050 and 43.03.060 as now
8 existing or hereafter amended.

9 **LOCATION OF THE BOARD**

10 **Sec. 5.** RCW 82.03.090 and 1967 ex.s. c 26 s 38 are each amended to
11 read as follows:

12 (1) The principal office of the board (~~shall~~) must be at the
13 state capital, but it may sit or hold hearings at any other place in
14 the state. The board must maintain at least one hearing office where
15 it regularly conducts hearings in both King and Spokane counties.

16 (2) A majority of the board (~~shall~~) constitutes a quorum for
17 making orders or decisions, promulgating rules and regulations
18 necessary for the conduct of its powers and duties, or transacting
19 other official business, and may act though one position on the board
20 be vacant. One or more members may hold hearings and take testimony to
21 be reported for action by the board when authorized by rule or order of
22 the board. The board (~~shall~~) must perform all the powers and duties
23 specified in this chapter or as otherwise provided by law.

24 **FILING FEES**

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.03 RCW
26 to read as follows:

27 (1) A party electing a formal hearing pursuant to RCW 82.03.140 or
28 82.03.190, must pay to the clerk of the board a fee in the amount of
29 two hundred fifty dollars within thirty days of filing a notice of
30 appeal or a notice of intent that the hearing be held pursuant to
31 chapter 34.05 RCW.

32 (2) A party electing an informal hearing pursuant to RCW 82.03.140
33 or 82.03.190, must pay to the clerk of the board a fee in the amount of
34 fifty dollars within thirty days of filing a notice of appeal.

1 (3) The board may waive the fees provided for in subsections (1)
2 and (2) of this section upon affidavit by a party that the party is
3 unable to pay the fee due to financial hardship.

4 (4) If a party does not pay the fees provided for in subsections
5 (1) and (2) of this section or file an affidavit of financial hardship
6 pursuant to subsection (3) of this section within forty-five days of
7 filing a notice of appeal, the board must dismiss the case.

8 (a) The board must notify the party at least ten days in advance of
9 the deadline that it will dismiss the case unless the party pays the
10 fee or files an affidavit of financial hardship.

11 (b) If the board fails to notify the party in writing at least ten
12 days in advance of the forty-fifth day, the party will have ten days
13 from the date on which the board notifies the party in writing to pay
14 the fee or file an affidavit of financial hardship.

15 (5) If a party does not pay the fee provided for in subsection (1)
16 of this section or file an affidavit of financial hardship pursuant to
17 subsection (3) of this section within forty-five days of filing a
18 notice of intent that the hearing be held pursuant to chapter 34.05
19 RCW, the notice must be considered untimely.

20 (a) The board must notify the party at least ten days in advance of
21 the deadline that it will not hear the case pursuant to chapter 34.05
22 RCW unless the party pays the fee or files an affidavit of financial
23 hardship.

24 (b) If the board fails to notify the party in writing at least ten
25 days in advance of the forty-fifth day, the party will have ten days
26 from the date on which the board notifies the party in writing to pay
27 the fee or file an affidavit of financial hardship.

28 (6) This section does not apply to notices of appeal, or notices of
29 intent that the hearing be held pursuant to chapter 34.05 RCW, filed
30 before July 1, 2014.

31 **Sec. 7.** RCW 84.08.130 and 1998 c 54 s 3 are each amended to read
32 as follows:

33 (1) Any taxpayer or taxing unit feeling aggrieved by the action of
34 any county board of equalization may appeal to the board of tax appeals
35 by filing with the board of tax appeals in accordance with RCW 1.12.070
36 a notice of appeal within thirty days after the mailing of the decision
37 of such board of equalization, which notice (~~shall~~) must specify the

1 actions complained of; and in like manner any county assessor may
2 appeal to the board of tax appeals from any action of any county board
3 of equalization. (~~There shall be no fee charged for the filing of an~~
4 ~~appeal.~~) The board (~~shall~~) must transmit a copy of the notice of
5 appeal to all named parties within thirty days of its receipt by the
6 board. Appeals (~~which~~) that are not filed as provided in this
7 section (~~shall~~) must be dismissed. The board of tax appeals
8 (~~shall~~) must require the board appealed from to file a true and
9 correct copy of its decision in such action and all evidence taken in
10 connection therewith, and may receive further evidence, and (~~shall~~)
11 must make such order as in its judgment is just and proper.

12 (2) The board of tax appeals may enter an order, pursuant to
13 subsection (1) of this section, that has effect up to the end of the
14 assessment cycle used by the assessor, if there has been no intervening
15 change in the value during that time.

16 **STAY OF COLLECTION OF ASSESSMENTS**

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.03 RCW
18 to read as follows:

19 (1) The board must stay collection of any assessment or additional
20 assessment of the department, or any part thereof, on petition of the
21 taxpayer, unless it finds:

22 (a) There is inadequate assurance that the full amount of the
23 assessment will be collectable at the conclusion of the stay; or

24 (b) The taxpayer's appeal lacks merit and is brought for purposes
25 of delaying payment of the assessment.

26 (2) The board must establish rules governing the circumstances and
27 conditions under which collection will be stayed. The board may impose
28 interest on the amount of any assessment for which collection is
29 stayed.

30 (3) No stay of collection ordered by the board may stay collection
31 for more than sixty days past the date on which the board issues its
32 final decision or rules on a motion for reconsideration, whichever is
33 later.

34 (4) Interest imposed under this section is in addition to the
35 interest imposed under other provisions of law. The interest rate may
36 be adjusted on the first day of January of each year.

1 (5) The board must adopt the rules required by subsection (2) of
2 this section no later than December 1, 2014.

3 (6) The board may not stay collection in hearings where the notice
4 of appeal was filed before December 1, 2014.

5 **AWARD OF FEES AND COSTS**

6 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.03 RCW
7 to read as follows:

8 (1) In a formal hearing where the decision is made pursuant to RCW
9 82.03.130(1)(a), the board must award fees and other expenses to the
10 prevailing party, including reasonable attorneys' fees, unless (a) the
11 parties stipulate that fees and other expenses should not be awarded,
12 (b) the board finds that both parties prevailed on significant issues,
13 or (c) the department's action was substantially justified. A taxpayer
14 seeking review must be considered a prevailing party if the taxpayer
15 obtained relief on a significant issue that achieves some benefit that
16 the taxpayer sought. The department must be considered a prevailing
17 party if the board affirms the determination, order, or decision under
18 review on a significant issue.

19 (2) The amount awarded to a taxpayer under subsection (1) of this
20 section may not exceed fifty thousand dollars. If two or more
21 taxpayers join in an action, the award in total may not exceed fifty
22 thousand dollars.

23 (3) The amount awarded to the department under subsection (1) of
24 this section may not exceed two thousand five hundred dollars.
25 However, the amount awarded to the department under subsection (1) of
26 this section may not exceed five hundred dollars if:

27 (a) The taxpayer is a qualified party under RCW 4.84.340(5); or

28 (b) The department elected to convert an informal hearing to a
29 formal hearing pursuant to RCW 82.03.190.

30 (4) The board, in its discretion, may reduce the amount to be
31 awarded pursuant to subsection (1) of this section, or deny any award,
32 to the extent that a prevailing party during the course of the
33 proceedings engaged in conduct that unduly or unreasonably protracted
34 the final resolution of the matter in controversy.

35 (5) Fees and other expenses awarded to or against the department
36 must be deposited into or withdrawn from the general fund.

1 (6) For purposes of this section, "fees and other expenses"
2 includes the reasonable expenses of expert witnesses, the reasonable
3 cost of a study, analysis, appraisal report, test, or project that is
4 found by the board to be necessary for the preparation of the party's
5 case, and reasonable attorneys' fees. Reasonable attorneys' fees must
6 be based on the prevailing market rates for the kind and quality of
7 services furnished, except that:

8 (a) No expert witness may be compensated at a rate in excess of the
9 highest rates of compensation for expert witnesses paid by the state of
10 Washington; and

11 (b) Attorneys' fees may not be awarded in excess of two hundred
12 fifty dollars per hour unless the board determines that an increase in
13 the cost of living or a special factor, such as the limited
14 availability of qualified attorneys for the proceedings involved,
15 justifies a higher fee.

16 (7) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Reasonable attorneys' fees" includes fees paid to third-party
19 representatives authorized to represent parties in formal proceedings
20 before the board.

21 (b) "Substantially justified" has the same meaning as the term in
22 RCW 4.84.350(1).

23 (8) This section does not apply to hearings where the notice of
24 appeal is filed before July 1, 2014.

25 MEDIATION CONFERENCES

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.03 RCW
27 to read as follows:

28 (1) The board must establish practices and procedures for
29 conducting mediation conferences between parties. The board must adopt
30 rules establishing the practices and procedures for conducting
31 mediation conferences by December 1, 2014.

32 (2) A party may request a mediation conference at any time up to
33 thirty days before the hearing.

34 (3) The board may not make mediation conferences mandatory.

35 (4) The mediation conference must be conducted by a tax referee who
36 will not participate in the hearing.

1 (5) The board must establish a fee schedule for conducting
2 mediations under subsection (1) of this section by December 1, 2014.
3 The fee schedule must be updated at least every two years to recoup at
4 least sixty percent of the anticipated cost of conducting mediations
5 under subsection (1) of this section.

6 (6) No party may request a mediation conference under this section
7 until the board has adopted the rules required by subsection (1) of
8 this section.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.03 RCW
10 to read as follows:

11 Any taxpayer having filed a petition for correction of assessment
12 under RCW 82.32.160 or a refund petition under RCW 82.32.170, may
13 request a mediation conference to be held by a tax referee under
14 section 10 of this act.

15 **DETERMINATION DEADLINE**

16 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.32 RCW
17 to read as follows:

18 (1) The department must grant or deny a taxpayer's petition under
19 RCW 82.32.110, 82.32.160, 82.32.170, or 82.49.060 within one hundred
20 twenty days of the date of filing, unless the taxpayer agrees in
21 writing to an extension.

22 (2) If the department fails to issue a denial or determination
23 within one hundred twenty days, the petition may be deemed denied and
24 the taxpayer may file an appeal to the board of tax appeals pursuant to
25 RCW 82.03.190.

26 (a) Unless the taxpayer files an appeal with the board of tax
27 appeals, nothing in this section removes the department's obligation to
28 grant or deny the taxpayer's petition under RCW 82.32.110, 82.32.160,
29 82.32.170, or 82.49.060.

30 (b) Nothing in this section may prevent a taxpayer from filing an
31 appeal to the board of tax appeals under RCW 82.03.190 within thirty
32 days of the mailing of a denial or determination under RCW 82.32.110,
33 82.32.160, 82.32.170, or 82.49.060.

34 (3) This section does not apply to petitions filed before January
35 1, 2015.

DIRECT REVIEW BY COURT OF APPEALS

Sec. 13. RCW 34.05.518 and 2010 c 211 s 15 are each amended to read as follows:

(1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may(~~(, except as otherwise provided in chapter 43.21B RCW,)~~) be directly reviewed by the court of appeals (~~(either)~~):

(a) Upon certification by the superior court pursuant to this section (~~(or)~~);

(b) If the final decision is from an environmental board as defined in subsection ((+3)) (4) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision; or

(c) If the final decision is from the board of tax appeals, upon acceptance by the court of appeals after a certificate of appealability has been filed by the board of tax appeals.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

(3) Procedures for certification (~~(shall)~~) under this section must be established by court rule.

~~((+3))~~ (4)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 and the growth management hearings board as identified in RCW 36.70A.250.

1 (b) An environmental board may issue a certificate of appealability
2 if it finds that delay in obtaining a final and prompt determination of
3 the issues would be detrimental to any party or the public interest and
4 either:

5 (i) Fundamental and urgent statewide or regional issues are raised;
6 or

7 (ii) The proceeding is likely to have significant precedential
8 value.

9 ~~((+4))~~ (5) The environmental board ~~((shall))~~ must state in the
10 certificate of appealability which criteria it applied, explain how
11 that criteria was met, and file with the certificate a copy of the
12 final decision.

13 ~~((+5))~~ (6) For purposes of direct review of final decisions of the
14 board of tax appeals, the board of tax appeals must issue a certificate
15 of appealability, unless it finds that:

16 (a) The proceeding is unlikely to have significant precedential
17 value; or

18 (b) Direct review by the court of appeals would be detrimental to
19 any party or the public interest.

20 (7) If the board of tax appeals denies a request for a certificate
21 of appealability, it must state in its denial which criteria it applied
22 and explain how that criteria supported its decision to deny the
23 request.

24 (8) For an appellate court to accept direct review of a final
25 decision of an environmental board, it ~~((shall))~~ must consider the same
26 criteria outlined in subsection ~~((+3))~~ (4) of this section~~((, except~~
27 ~~as otherwise provided in chapter 43.21L RCW))~~.

28 ~~((+6))~~ (9) For an appellate court to accept direct review of a
29 final decision of the board of tax appeals, it must consider the same
30 criteria outlined in subsection (5) of this section.

31 (10) The procedures for direct review of final decisions of
32 environmental boards or the board of tax appeals include:

33 (a) Within thirty days after filing the petition for review with
34 the superior court, a party may file an application for direct review
35 with the superior court and serve the board of tax appeals or the
36 appropriate environmental board and all parties of record. The
37 application ~~((shall))~~ must request that the board of tax appeals or
38 the environmental board ~~((to))~~ file a certificate of appealability.

1 (b) If an issue on review is the jurisdiction of the environmental
2 board or the board of tax appeals, the board with jurisdiction may file
3 an application for direct review on that issue.

4 (c) The environmental board (~~shall have~~) or the board of tax
5 appeals has thirty days to grant or deny the request for a certificate
6 of appealability and its decision (~~shall~~) must be filed with the
7 superior court and served on all parties of record.

8 (d) If a certificate of appealability is issued, the parties
9 (~~shall~~) must have fifteen days from the date of service to file a
10 notice of discretionary review in the superior court, and the notice
11 (~~shall~~) must include a copy of the certificate of appealability and
12 a copy of the final decision.

13 (e) If the appellate court accepts review, the certificate of
14 appealability (~~shall~~) must be transmitted to the court of appeals as
15 part of the certified record.

16 (f) If a certificate of appealability is denied, review (~~shall~~)
17 must be by the superior court. The superior court's decision may be
18 appealed to the court of appeals.

19 **Sec. 14.** RCW 34.05.522 and 1995 c 382 s 6 are each amended to read
20 as follows:

21 The court of appeals may refuse to accept direct review of a case
22 pursuant to RCW 34.05.518 if it finds that the case does not meet the
23 applicable standard in RCW 34.05.518 (2) (~~or (5)~~), (4), or (6).
24 Rules of Appellate Procedure 2.3 do not apply in this instance. The
25 refusal to accept such review is not subject to further appellate
26 review, notwithstanding anything in Rule 13.3 of the Rules of Appellate
27 Procedure to the contrary.

28 **Tax Appeals Reform Task Force**

29 NEW SECTION. **Sec. 15.** (1) A joint task force on the reform of the
30 tax appeals process is created.

31 (2) The membership of the joint task force consists of the
32 following five persons:

33 (a) The chairs and ranking members of the respective tax policy
34 committees within the senate and house of representatives;

35 (b) A representative of the governor's office.

1 (3) The joint task force must appoint an advisory committee
2 consisting of at least one representative from the following
3 organizations:

- 4 (a) The administrator for the courts;
- 5 (b) The board of tax appeals;
- 6 (c) The department of revenue;
- 7 (d) The office of the attorney general;
- 8 (e) The association of Washington counties;
- 9 (f) The Washington state bar association;
- 10 (g) The association of Washington business;
- 11 (h) The counsel on state taxation; and
- 12 (i) The University of Washington school of law.

13 (4) Staff support for the joint task force must be provided by the
14 senate committee services and the house of representatives office of
15 program research.

16 (5) The joint task force must make recommendations regarding
17 potential improvements to the tax appeal process in Washington. The
18 joint task force must evaluate the performance of the current tax
19 appeal process including access to a fair and impartial prepayment
20 hearing, the time and costs needed to resolve tax disputes, and the
21 precedential value of decisions rendered by taxing authorities and tax
22 tribunals. The joint task force must at a minimum evaluate the
23 feasibility of creating an independent tax court in the judicial
24 branch. The joint task force must make recommendations to the
25 appropriate committees of the legislature and the governor by December
26 1, 2014.

27 NEW SECTION. **Sec. 16.** (1) Except for section 4 of this act, this
28 act takes effect July 1, 2014.

29 (2) Section 4 of this act takes effect July 1, 2015.

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