

HB 2777 - H AMD 1028

By Representatives Jenkins, Stokesbary

ADOPTED 02/13/2018

1 On page 8, after line 17, insert the following:

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3 **"Sec. 18.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

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

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

9 ~~((+3))~~ (4)(a) For the purposes of direct review of final
10 decisions of environmental boards, environmental boards include
11 those boards identified in RCW 43.21B.005 and the growth management
12 hearings board as identified in RCW 36.70A.250.

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

17 (i) Fundamental and urgent statewide or regional issues are
18 raised; or

19 (ii) The proceeding is likely to have significant precedential
20 value.

21 ~~((+4))~~ (5) The environmental board (~~(shall)~~) must state in the
22 certificate of appealability which criteria it applied, explain how
23 that criteria was met, and file with the certificate a copy of the
24 final decision.

25 ~~((+5))~~ (6) For purposes of direct review of final decisions of
26 the board of tax appeals, the board of tax appeals must issue a
27 certificate of appealability, unless it finds that:

28 (a) The proceeding is unlikely to have significant precedential
29 value; or

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

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

3 (8) For an appellate court to accept direct review of a final
4 decision of an environmental board, it (~~shall~~) must consider the
5 same criteria outlined in subsection (~~(3)~~) (4) of this section(~~(7~~
6 except as otherwise provided in chapter 43.21L RCW)).

7 (~~(6)~~) (9) For an appellate court to accept direct review of a
8 final decision of the board of tax appeals, it must consider the
9 same criteria outlined in subsection (6) of this section.

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

12 (a) Within thirty days after filing the petition for review with
13 the superior court, a party may file an application for direct
14 review with the superior court and serve the board of tax appeals or
15 the appropriate environmental board and all parties of record. The
16 application (~~shall~~) must request the board of tax appeals or the
17 environmental board to file a certificate of appealability.

18 (b) If an issue on review is the jurisdiction of the
19 environmental board or the board of tax appeals, the board with
20 jurisdiction may file an application for direct review on that
21 issue.

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

26 (d) If a certificate of appealability is issued, the parties
27 (~~shall~~) have fifteen days from the date of service to file a
28 notice of discretionary review in the superior court, and the notice
29 (~~shall~~) must include a copy of the certificate of appealability
30 and a copy of the final decision.

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

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

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

7 The court of appeals may refuse to accept direct review of a
8 case pursuant to RCW 34.05.518 if it finds that the case does not
9 meet the applicable standard in RCW 34.05.518 (2) (~~or (5)~~), (4),
10 or (6). Rules of Appellate Procedure 2.3 do not apply in this
11 instance. The refusal to accept such review is not subject to
12 further appellate review, notwithstanding anything in Rule 13.3 of
13 the Rules of Appellate Procedure to the contrary.

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16 NEW SECTION. **Sec. 20.** A new section is added to chapter 82.03
17 RCW to read as follows: (1) The board, by its order, may direct the
18 department of revenue to hold in abeyance the collection of tax from
19 any taxpayer or any group of taxpayers when a question bearing on
20 their liability for tax hereunder is pending before the board. The
21 board may impose such conditions as may be deemed just and equitable
22 and shall require the payment of interest at the rate of three-
23 quarters of one percent of the amount of the tax for each thirty
24 days or portion thereof from the date upon which such tax became due
25 until the date of payment.

26 (2) Interest imposed under this section shall be computed on a
27 daily basis at the rate as computed under RCW 82.32.050(2). The rate
28 so computed shall be adjusted on the first day of January of each
29 year.

30 (3) The department of revenue must not impose a late payment
31 penalty if the taxpayer pays the assessment within thirty days of:

32 (a) the denial of a stay of collections by the board; or

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1 (b) the expiration of an order staying the collection of such
2 assessment.

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5 NEW SECTION. Sec. 21. A new section is added to chapter 82.03
6 RCW to read as follows: (1) When any assessment or additional
7 assessment has been made, the taxpayer may obtain a stay of
8 collection, under such circumstances and for such periods as the
9 board may by general regulation provide, of the whole or any part
10 thereof, by filing with the board a bond in an amount, not exceeding
11 twice the amount on which stay is desired, and with sureties as the
12 department deems necessary, conditioned for the payment of the
13 amount of the assessments, collection of which is stayed by the
14 bond, together with the interest thereon at the rate of one percent
15 of the amount of such assessment for each thirty days or portion
16 thereof from the date the bond is filed until the date of payment.

17 (2) Interest imposed under this section shall be computed on a
18 daily basis on the amount of tax at the rate as computed under RCW
19 82.32.050(2). The rate so computed shall be adjusted on the first
20 day of January of each year.

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22 NEW SECTION. Sec. 22. A new section is added to chapter 82.03 RCW
23 to read as follows:

24 (1) Except as otherwise specifically provided by statute, the
25 board must award a qualified party that prevails in a formal hearing
26 fees and other expenses, including reasonable attorneys' fees,
27 unless the court finds that the department of revenue's or the board
28 of equalization's action was substantially justified or that
29 circumstances make an award unjust. A qualified party shall be
30 considered to have prevailed if the qualified party obtained relief
31 on a significant issue that achieves some benefit that the qualified
32 party sought.

33 (2) The amount awarded a qualified party under subsection (1) of
34 this section shall not exceed twenty-five thousand dollars. The

1 board, in its discretion, may reduce the amount to be awarded
2 pursuant to subsection (1) of this section, or deny any award, to
3 the extent that a qualified party during the course of the
4 proceedings engaged in conduct that unduly or unreasonably
5 protracted the final resolution of the matter in controversy.

6 (3) Fees and other expenses awarded under this section must be
7 paid by the board over which the party prevails from operating funds
8 appropriated to the agency within sixty days. The board shall report
9 all payments to the office of financial management within five days
10 of paying the fees and other expenses. Fees and other expenses
11 awarded by the board shall be subject to the provisions of chapter
12 39.76 RCW and shall be deemed payable on the date the board
13 announces the award.

14 (4) The following definitions apply to this section unless the
15 context clearly indicates otherwise.

16 (a) "Fees and other expenses" includes the reasonable expenses of
17 expert witnesses, the reasonable cost of a study, analysis,
18 engineering report, test, or project that is found by the court to
19 be necessary for the preparation of the party's case, and reasonable
20 attorneys' fees. Reasonable attorneys' fees shall be based on the
21 prevailing market rates for the kind and quality of services
22 furnished, except that (a) no expert witness shall be compensated at
23 a rate in excess of the highest rates of compensation for expert
24 witnesses paid by the state of Washington, and (b) attorneys' fees
25 shall not be awarded in excess of one hundred fifty dollars per hour
26 unless the court determines that an increase in the cost of living
27 or a special factor, such as the limited availability of qualified
28 attorneys for the proceedings involved, justifies a higher fee.

29 (b) "Qualified party" means (a) an individual whose net worth
30 did not exceed one million dollars at the time the initial appeal
31 petition was filed or (b) a sole owner of an unincorporated
32 business, or a partnership, corporation, association, or
33 organization whose net worth did not exceed five million dollars at
34 the time the initial appeal petition was filed, except that an

1 organization described in section 501(c)(3) of the federal internal
2 revenue code of 1954 as exempt from taxation under section 501(a) of
3 the code and a cooperative association as defined in section 15(a)
4 of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a
5 party regardless of the net worth of such organization or
6 cooperative association."

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8 Correct any internal references accordingly.

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10 Correct the title.

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EFFECT: (1) Authorizes the Board of Tax Appeals (BTA) to grant
a stay of collections pending an appeal. (2) Authorizes a direct
appeal from the BTA to the Court of Appeals in certain
circumstances. (3) Authorizes the BTA to grant attorneys fees to a
prevailing party in an appeal against the Department of Revenue or
the Board of Equalization during a formal hearing under certain
circumstances.

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