

HOUSE BILL REPORT

EHB 2777

As Amended by the Senate

Title: An act relating to improving and updating administrative provisions related to the board of tax appeals.

Brief Description: Improving and updating administrative provisions related to the board of tax appeals.

Sponsors: Representative Jinkins.

Brief History:

Committee Activity:

Finance: 1/30/18, 2/2/18 [DP];

Appropriations: 2/5/18, 2/6/18 [DP].

Floor Activity:

Passed House: 2/13/18, 98-0.

Senate Amended.

Passed Senate: 3/2/18, 48-0.

Brief Summary of Engrossed Bill

- Makes changes to the required qualifications, training, and duties of members of the Board of Tax Appeals (BTA).
- Provides for the BTA to identify and publish decisions and orders of precedential value.
- Authorizes the BTA to provide an informal voluntary and confidential mediation process.
- Requires the BTA to report on the handling and disposition of its appeal docket.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Dolan, Pollet, Springer, Stokesbary, Wilcox and Wylie.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 1 member: Representative Condotta.

Minority Report: Without recommendation. Signed by 1 member: Representative Orcutt, Assistant Ranking Minority Member.

Staff: Tracey O'Brien (786-7152).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Stokesbary, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 10 members: Representatives Chandler, Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative MacEwen, Assistant Ranking Minority Member.

Staff: Meghan Morris (786-7119).

Background:

The Board of Tax Appeals (BTA) was created in 1967 as an independent state agency. It is a full-time administrative tax court that adjudicates tax-related appeals. The BTA is made up of three board members who are appointed by the Governor, with the consent of the Senate. Each board member serves a six-year term. Board members qualify based on their training and experience in state and local tax matters. At the time of appointment, no more than two of the three board members may be members of the same political party. The BTA also includes three tax referees who hear and decide tax matters, and five supporting staff, including an executive director.

The BTA hears tax appeals from decisions of the County Board of Equalization and the Department of Revenue. The BTA processes 2,500 to 3,000 appeals annually. The most common types of appeals are property tax valuations, property tax exemptions, assessed value direct appeals, and excise tax appeals. Most appeals must be filed within 30 days of the mailing date of the decision or determination being appealed. The BTA has no authority to accept an appeal filed after the deadline.

An appeal can be informal or formal. A decision on an informal appeal cannot be appealed to superior court, but a party may challenge the BTA on its initial decision or may ask the BTA to reconsider a ruling. A final decision on a formal appeal may be appealed to superior court.

Summary of Engrossed Bill:

Future appointments of BTA board members must ensure that at least two of the BTA members are attorneys licensed to practice law in Washington and possess substantial

knowledge of Washington tax laws. In addition, one attorney board member must have substantial experience in developing a record suitable for judicial review. Any nonattorney board member must have substantial experience in residential and commercial appraisals.

A tax referee must be competent to fulfill the duties of office and have substantial relevant experience.

Each BTA board member must attend at least 20 hours of judicial training, including Washington law, evidentiary procedures, and judicial practice and ethics. Board members will receive an annual salary equal to members of class four boards.

The BTA must operate on a full-time basis, and each board member must devote his or her full time and efforts in the discharge of their duties. The board members may delegate administrative powers to the executive director. Regular hearings must occur in King County and in Spokane County.

The BTA must publish all orders and decisions of precedential value made after the effective date of the act. The BTA may identify and publish orders and decisions of precedential value decided prior to the act. The decisions and orders shall be available for online research. All final orders and decisions will be maintained at BTA's principal office until transferred to the state archives.

If a party fails to elect either a formal or informal proceeding when filing an appeal with the BTA, the appeal will be treated as an election for an informal proceeding. A final decision by the BTA may be directly appealed to the Court of Appeals.

The BTA may require parties to attend a mandatory settlement conference. The BTA must also provide an informal voluntary and confidential mediation process. Any person appointed as a mediator must have substantial experience in Washington tax law or in residential and commercial appraisals.

The BTA may direct the Department of Revenue to stay collections pending an appeal.

Attorney's fees may be awarded, by the BTA to a qualified prevailing party. A "qualified party" is an individual whose net worth did not exceed \$1 million or a business with a net worth that did not exceed \$5 million at the time of the initial appeal.

The BTA must deliver a report to the Governor and appropriate legislative committees by November 1, 2018, that includes: the current number of pending appeals, the number of appeals closed since the effective date of the act, the number of appeals filed since the effective date of the act, and a detailed plan outlining how the BTA will address pending appeals.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment requires the BTA to have at least five tax referees, two of which must be members of the Washington State Bar Association and three must be state-certified real estate appraisers. In addition, the amendment removes the authority of the BTA to direct the

Department of Revenue to stay collections pending appeal. The Senate amendment also clarifies that the BTA may issue findings related to the awarding of attorneys' fees and costs. Finally, the Senate amendment removes the ability to directly appeal a BTA decision to the Court of Appeals.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Finance):

(In support) This bill is important for the administration of taxes in this state. Taxpayers need a reasonable process to resolve disputes. The BTA has the potential to be an effective forum; however, it is currently facing some staffing and procedural challenges. The BTA has a backlog of appeal cases of two to three years as the result of inefficiencies in the review process and the underfunding of the agency. This bill will go a long way towards increasing certainty for businesses and other taxpayers. The qualification requirements and mandated training, along with the creation of a body of precedential decisions, will improve the BTA. However, this legislation could go further by allowing direct appeals to the BTA, allowing the direct review by the Court of Appeals, having an office close to where most of the practitioners are located, creating a selection committee for new board members, and allowing the staying of collections pending an appeal.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This important legislation will increase the efficiency of the Board of Tax Appeals (BTA). The BTA has a strong backlog of up to 2,500 cases. Taxpayers who appeal their case to the BTA may wait two to three years before receiving a final decision. During that time taxpayers are left with uncertainty and frustration. This legislation provides the BTA with improved staffing, additional training, and qualification guidelines for personnel, which will lead to real improvements for taxpayers. Many of the provisions, such as providing a process for voluntary mediation and providing in-person hearings in locations other than Olympia, are favorable to taxpayers and should improve tax fairness and efficiency.

(Opposed) None.

Persons Testifying (Finance): Representative Jinkins, prime sponsor; Clay Hill, Association of Washington Business; and Brett Durbin.

Persons Testifying (Appropriations): Representative Jinkins, prime sponsor; and Clay Hill, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Finance): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.