

SENATE BILL REPORT

EHB 2777

As of February 21, 2018

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 Jenkins.

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

Committee Activity: Law & Justice: 2/20/18.

Brief Summary of Bill

- Requires qualifications, training, and duties for members of the Board of Tax Appeals and tax referees.
- Requires publication of orders and decision with precedential value on a public website.
- Provides an informal and voluntary mediation with confidentiality.
- Requires reporting on number of appeals, and the development of a plan for pending appeals.
- Permits a stay of collections pending appeal, an award of attorney fees for qualified prevailing parties, and direct review by the Court of Appeals.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Board of Tax Appeals. Washington established its state Board of Tax Appeals (Board) in 1967 as an independent agency to hear property and excise tax appeals. The Governor appoints the Board members. Board members qualify for appointment 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

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.

Board hears appeals from County Boards of Equalization and from the state Department of Revenue (DOR).

Washington's Tax Appeal Process. A taxpayer challenges a tax assessment by filing an appeal to the taxing authority. For excise tax appeals, a taxpayer files a petition with DOR. If the taxpayer does not agree with DOR's final decision, the taxpayer may file an appeal with the Board or file an appeal directly in Thurston County Superior Court. For a property tax appeal, a taxpayer may file a petition with the County Board of Equalization challenging the property's valuation. County Boards of Equalization are independent bodies formed to hear property tax cases between the taxpayer and county assessor. If a taxpayer does not agree with a decision from a County Board of Equalization, they may file a petition with the Board.

Appeals to Superior Court. Taxpayers who disagree with a decision from either DOR or the Board may file an appeal in the superior court. Property tax cases may be filed in the superior court for the county where the property is located. Excise tax cases may only be filed in Thurston County Superior Court. A taxpayer must pay all taxes, penalties, and interest in full before going to court, unless DOR agrees to suspend collection until the court reaches its decision. Superior court decisions may be appealed to the Court of Appeals.

Summary of Bill: Board Member Qualifications. For appointments made after the effective date of the act:

- two Board members must be attorneys licensed in the state with substantial knowledge of Washington tax law;
- one attorney member must have substantial experience making a record suitable for judicial review; and
- the non-attorney member must have substantial experience in the fields of residential and commercial property appraisal.

Members must attend 20 hours of judicial training including Washington law, evidence, and judicial practice and ethics.

Board Operations. The Board must operate on a full time basis. Board members must devote their full time to the efficient discharge of Board duties. Board members receive a salary pursuant to class 4 groups. Class 4 groups means a part time board or commission where the member may receive compensation in an amount not to exceed \$100 for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. The Board may delegate administrative powers to the executive director as appropriate. A tax referee must be competent to perform their duties and have substantial experience relevant to the responsibilities of a tax referee. For informal proceedings the Board must provide regular hearings in the most populous county east and west of the Cascade Mountains. According to OFM, the most populous counties east and west of the Cascades are King and Spokane.

Reporting Requirements. On or before November 1, 2018, the Board must report to the Governor and appropriate legislative committees:

- the number of pending appeals categorized by the year in which the appeal was filed;

- the number of appeals closed since the effective date of the act, categorized by the year in which the appeal was filed;
- the number of appeals filed since the effective date of the act; and
- a detailed plan to address pending appeals.

Decisions of Precedential Value. A requirement to publish findings and decisions of general public interest is removed. After the effective date of the act, the Board must publish orders and decisions of precedential value and make them available on a public website. The Board may publish orders and decisions of precedential value issued prior to the effective date of the act, to be made available online.

Appeals Before the Board. If an appealing party does not elect either a formal or informal proceeding, the appeal is deemed an informal proceeding. The Board's rules of practice and procedure must be publicly available on a website. The Board may require parties to attend a mandatory settlement conference at any time. The Board must provide an informal voluntary mediation process. The Board must adopt rules for mediation, including appropriate fees. An appointed mediator must have substantial experience in Washington tax law or property appraisals. All mediation discussions, statements, and materials are confidential and must be destroyed or returned to the parties after mediation is complete, and may not be used for any other purpose.

Stay of Collections Pending Appeal Before the Board. The Board may order DOR to not collect the tax assessment from any party during that party's appeal. The Board may impose just and equitable conditions in such an order. The Board must still require payment of interest on the tax assessment from the date the tax became due until the date of payment. DOR may not impose a late payment penalty if the assessment is paid within 30 days of (1) a denial of a request for stay of collections, or (2) the expiration of an order staying collections. A party appealing an assessment may obtain a stay of collection of all or any part of the tax assessment by filing with the Board a bond for certain circumstances and periods that the Board may by regulation provide.

Award of Attorney Fees and Expenses. In a formal hearing, the Board must award attorney's fees and expenses to a qualified prevailing party unless the court finds:

- the action by DOR or Board of Equalization was substantially justified; or
- the circumstances make an award unjust.

The award may not exceed \$25,000. The Board may reduce or deny the amount of award where the Board finds that the party engaged in conduct to unreasonably protract a final resolution. 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. A qualified party prevails where it obtains relief on a significant issue that achieves some benefit sought by the party.

Direct Reviews to the Court of Appeals. The Board may permit an appeal of any final decision directly to the Court of Appeals only after a certificate permitting that appeal has been issued by the Board. The Board must issue a certificate unless it meets the following criteria:

- the proceeding is unlikely to have a significant precedential value; or

- direct review by the Court of Appeals would be detrimental to any party or the public interest.

Where the Board denies a request to issue a certificate, the Board must state the criteria applied and how the criteria supports the denial. For the Court of Appeals to accept review it must consider the same criteria, and may refuse a request for direct review that does not meet the criteria.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The last couple years there has been a bill that created a whole new tax court of appeals. This bill is an attempt to reform the existing Board of Tax Appeals and to bring down the backlog of cases before we create a new tax court. It increases the qualifications of Board members. The executive branch should speak with one voice on precedential value of administrative decisions. The bill has a provision for a voluntary confidential mediation process that could lead to settlement agreements and reduce the backlog. The Department of Revenue exclusive authority to grant stays of collection of tax assessments pending an appeal to the Board. The Board is a neutral body and it makes sense that the Board should have the same authority to stay collections.

The business community did not get all the reforms it wanted. Even with the stay of collections, we feel it should be an automatic stay any time there is a timely appeal filed with the Board. The bill does not provide an automatic stay, but requires a showing before a stay may be granted. The same is true with the provision allowing attorney fees. Any time you are a prevailing party you should obtain attorney fees, but instead the bill requires you to be a qualified party. The board is a great forum for resolving tax disputes but there are a number of issues that hold it back. It needs to be fairer for small businesses. Under the current system, taxpayers don't have to pay their taxes to the Board of Tax Appeals, and large taxpayers can post a bond to stay collections. This bill is getting at small businesses that do not have access to bonds or sureties. The direct appeal provision is in state law for other entities like the environmental hearing board decision. The administration of our revenue system is broken. There needs to be independent review. Increasing the funding for the Board is the most important reform to reduce the backlog of appeals. There is a three year backlog for appeals. Hiring more tax referees and increasing the qualification is also critical to reduce the backlog.

Persons Testifying: PRO: Representative Laurie Jenkins, Prime Sponsor; Clay Hill, AWB; Brett Durbin; Mike Bernard, KOM Consulting.

Persons Signed In To Testify But Not Testifying: No one.