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 HOUSE BILL 2635
 

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Tharinger and Freeman

Read first time 01/23/14. Referred to Committee on Finance.

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, and 34.05.518;  
 3 adding new sections to chapter 82.03 RCW; and creating a new section.

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

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

11 **MEMBERSHIP OF THE BOARD**

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

14 (1) The board of tax appeals, hereinafter in chapter 26, Laws of  
 15 1967 ex. sess. referred to as the board, (~~shall~~) must consist of  
 16 three members (~~(qualified by experience and training in the field of~~  
 17 ~~state and local taxation,))~~) appointed by the governor with the advice

1 and consent of the senate(~~(, and no more than two of whom at the time~~  
2 ~~of appointment or during their terms shall be members of the same~~  
3 ~~political party))~~).

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

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

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

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

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

27 The board ((shall)) must operate on ((~~either a part-time or~~)) a  
28 full-time basis(~~(, as determined by the governor. If it is determined~~  
29 ~~that the board shall operate on a full-time basis, each member of the~~  
30 ~~board shall receive an annual salary to be determined by the governor.~~  
31 ~~If it is determined that the board shall operate on a part-time basis,~~  
32 ~~each member of the board shall receive compensation on the basis of~~  
33 ~~seventy-five dollars for each day spent in performance of his or her~~  
34 ~~duties, but such compensation shall not exceed ten thousand dollars in~~  
35 ~~a fiscal year))~~. Each member of the board must receive an annual  
36 salary no less than that provided for superior court judges under RCW

1 2.08.092, which salary may not be diminished during the member's term  
2 of appointment except to the extent such reduction applies to all  
3 superior court judges. Each board member (~~shall~~) must receive  
4 reimbursement for travel expenses incurred in the discharge of his or  
5 her duties in accordance with RCW 43.03.050 and 43.03.060 as now  
6 existing or hereafter amended.

7 **LOCATION OF THE BOARD**

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

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

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

22 **FILING FEES**

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

25 (1) A party electing a formal hearing pursuant to RCW 82.03.140 or  
26 82.03.190, must pay to the clerk of the board a fee in the amount of  
27 two hundred fifty dollars within thirty days of filing a notice of  
28 appeal or a notice of intent that the hearing be held pursuant to  
29 chapter 34.05 RCW.

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

33 (3) The board may waive the fees provided for in subsections (1)

1 and (2) of this section upon affidavit by a party that the party is  
2 unable to pay the fee due to financial hardship.

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

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

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

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

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

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

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

29 (1) Any taxpayer or taxing unit feeling aggrieved by the action of  
30 any county board of equalization may appeal to the board of tax appeals  
31 by filing with the board of tax appeals in accordance with RCW 1.12.070  
32 a notice of appeal within thirty days after the mailing of the decision  
33 of such board of equalization, which notice (~~shall~~) must specify the  
34 actions complained of; and in like manner any county assessor may  
35 appeal to the board of tax appeals from any action of any county board  
36 of equalization. (~~There shall be no fee charged for the filing of an~~  
37 ~~appeal.~~) The board (~~shall~~) must transmit a copy of the notice of

1 appeal to all named parties within thirty days of its receipt by the  
2 board. Appeals (~~(which)~~) that are not filed as provided in this  
3 section (~~(shall)~~) must be dismissed. The board of tax appeals  
4 (~~(shall)~~) must require the board appealed from to file a true and  
5 correct copy of its decision in such action and all evidence taken in  
6 connection therewith, and may receive further evidence, and (~~(shall)~~)  
7 must make such order as in its judgment is just and proper.

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

12 **STAY OF COLLECTION OF ASSESSMENTS**

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

15 (1) The board may stay collection of any assessment or additional  
16 assessment of the department, or any part thereof, on petition of the  
17 taxpayer.

18 (2) The board must establish rules governing the circumstances and  
19 conditions under which collection will be stayed. The board may impose  
20 interest on the amount of any assessment for which collection is  
21 stayed.

22 (3) Interest imposed under this section is in addition to the  
23 interest imposed under other provisions of law. The interest rate may  
24 be adjusted on the first day of January of each year.

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

27 **AWARD OF FEES AND COSTS**

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

30 (1) In a formal hearing, the board must award fees and other  
31 expenses to the prevailing party, including reasonable attorneys' fees,  
32 unless the board finds that (a) both parties prevailed on significant  
33 issues, or (b) the circumstances of the appeal make an award unjust.  
34 A party seeking review must be considered a prevailing party if the

1 party obtained relief on a significant issue that achieves some benefit  
2 that the party sought. A party opposing review must be considered the  
3 prevailing party if the board affirms the determination, order, or  
4 decision under review on a significant issue.

5 (2) The amount awarded to a prevailing party under subsection (1)  
6 of this section may not exceed fifty thousand dollars. If two or more  
7 prevailing parties join in an action, the award in total may not exceed  
8 fifty thousand dollars.

9 (3) The amount awarded to a prevailing party under subsection (1)  
10 of this section may not exceed five hundred dollars if:

11 (a) The opposing party is a qualified party under RCW 4.84.340(5);  
12 or

13 (b) The prevailing party elected to convert an informal hearing to  
14 a formal hearing pursuant to RCW 82.03.140 or 82.03.190.

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

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

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

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

35 **MEDIATION CONFERENCES**



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

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

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

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

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

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

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

21        ~~((+3))~~ (4)(a) For the purposes of direct review of final decisions  
22 of environmental boards, environmental boards include those boards  
23 identified in RCW 43.21B.005 and the growth management hearings board  
24 as identified in RCW 36.70A.250.

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

29        (i) Fundamental and urgent statewide or regional issues are raised;  
30 or

31        (ii) The proceeding is likely to have significant precedential  
32 value.

33        ~~((+4))~~ (5) The environmental board (~~(shall)~~) must state in the  
34 certificate of appealability which criteria it applied, explain how  
35 that criteria was met, and file with the certificate a copy of the  
36 final decision.

37        ~~((+5))~~ (6) For purposes of direct review of final decisions of the



1 board of tax appeals, the board of tax appeals must issue a certificate  
2 of appealability, unless it finds that:

3 (a) The proceeding is unlikely to have significant precedential  
4 value; or

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

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

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

15 (~~(6)~~) (9) For an appellate court to accept direct review of a  
16 final decision of the board of tax appeals, it must consider the same  
17 criteria outlined in subsection (5) of this section.

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

20 (a) Within thirty days after filing the petition for review with  
21 the superior court, a party may file an application for direct review  
22 with the superior court and serve the board of tax appeals or the  
23 appropriate environmental board and all parties of record. The  
24 application (~~shall~~) must request that the board of tax appeals or the  
25 environmental board (~~to~~) file a certificate of appealability.

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

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

33 (d) If a certificate of appealability is issued, the parties  
34 (~~shall~~) must have fifteen days from the date of service to file a  
35 notice of discretionary review in the superior court, and the notice  
36 (~~shall~~) must include a copy of the certificate of appealability and  
37 a copy of the final decision.

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

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

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