CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2777**

Chapter 174, Laws of 2018

(partial veto)

65th Legislature

2018 Regular Session

BOARD OF TAX APPEALS

EFFECTIVE DATE: June 7, 2018

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| Passed by the House March 6, 2018  Yeas 98 Nays 0  FRANK CHOPP  **Speaker of the House of Representatives**  Passed by the Senate March 2, 2018  Yeas 48 Nays 0  CYRUS HABIB  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2777** as passed by House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved March 22, 2018 11:03 AM with the exception of sections 6, 8, 11, 17 and 18 which are vetoed. | March 26, 2018 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED HOUSE BILL 2777**

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AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

**State of Washington 65th Legislature 2018 Regular Session**

**By** Representative Jinkins

AN ACT Relating to improving and updating administrative provisions related to the board of tax appeals; amending RCW 82.03.020, 82.03.030, 82.03.040, 82.03.050, 82.03.060, 82.03.070, 82.03.080, 82.03.090, 82.03.100, 82.03.110, 82.03.120, 82.03.140, 82.03.150, 82.03.160, and 82.03.170; adding new sections to chapter 82.03 RCW; and creating a new section.

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

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

(1) The board of tax appeals, hereinafter ((~~in chapter 26, Laws of 1967 ex. sess.~~)) referred to as the board, ((~~shall~~)) must consist of three members qualified by experience and training in the field of state and local taxation, appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their terms ((~~shall~~)) may be members of the same political party.

(2) Beginning with appointments made after the effective date of this section, at least two members of the board must be attorneys licensed to practice law in the state of Washington with substantial knowledge of Washington tax law. At least one attorney member must have substantial experience in making a record suitable for judicial review. Any nonattorney member must have substantial experience in the fields of residential and commercial property appraisal.

(3) Each member of the board must attend at least twenty hours of judicial training deemed by the board to be appropriate for instructing members in Washington law, evidentiary procedures, and judicial practice and ethics.

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

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

**Sec.**  RCW 82.03.040 and 1967 ex.s. c 26 s 33 are each amended to read as follows:

Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who ((~~shall~~)) must transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice ((~~shall~~)) must thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal ((~~shall~~)) must fix the time of the hearing, which ((~~shall~~)) must be public, and the procedure for the hearing, and the decision of such tribunal ((~~shall be~~)) are final and not subject to review by the supreme court. Removal of any member of the board by the tribunal ((~~shall disqualify such~~)) disqualifies that member ((~~for~~)) from reappointment.

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

(1) The board ((~~shall~~)) must operate on ((~~either a part-time or~~)) a full-time basis((~~, as determined by the governor. If it is determined that the board shall operate on a full-time basis, each member of the board shall receive an annual salary to be determined by the governor. If it is determined that the board shall operate on a part-time basis, each member of the board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his or her duties, but such compensation shall not exceed ten thousand dollars in a fiscal year~~)). Each member of the board must devote his or her full time and efforts to the efficient discharge of the duties of the board.

(2) Board members must receive an annual salary in the same range as that established for equivalent members of class four boards under RCW 43.03.250.

(3) Each board member ((~~shall~~)) must receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

**Sec.**  RCW 82.03.060 and 2013 c 23 s 312 are each amended to read as follows:

((~~Each member of the board of tax appeals:~~

~~(1) Shall not~~)) (1) No member of the board may be a candidate for ((~~nor~~)) or hold any other public office or trust, and ((~~shall~~)) may not engage in any occupation or business interfering with or inconsistent with his or her duty as a member of the board, ((~~nor shall he or she~~)) or serve on or under any committee of any political party; and

(2) ((~~Shall not~~)) No member of the board may, for a period of one year after the termination of his or her membership on the board, act in a representative capacity before the board on any matter.

**Sec.**  RCW 82.03.070 and 1988 c 222 s 2 are each amended to read as follows:

(1) The board ((~~may~~)) must appoint, discharge and fix the compensation of an executive director, tax referees, and a clerk((~~, and~~)). The board may appoint such other clerical, professional and technical assistants as may be necessary. Tax referees ((~~shall~~)) are not ((~~be~~)) subject to chapter 41.06 RCW.

(2) The board must maintain at least five tax referees, of which two must be active or judicial members of the Washington state bar association and three must be state-certified general real estate appraisers, as defined in RCW 18.140.010(22).

**Sec.**  RCW 82.03.080 and 2013 c 23 s 313 are each amended to read as follows:

((~~The board shall as soon as practicable after the initial appointment of the members thereof,~~)) (1) The board must meet and elect from among its members a chair((~~, and shall~~)) at least biennially ((~~thereafter meet and elect such a chair~~)).

(2) A majority of the board constitutes a quorum when transacting official business of the agency. The board may act when one board position is vacant.

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

(1) The principal office of the board ((~~shall~~)) must be at the state capital, but it may sit or hold hearings at any other place in the state. ((~~A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant.~~)) The board must provide for regular hearings in the most populous county west of the crest of the Cascade mountains and east of the crest of the Cascade mountains for the conduct of informal proceedings.

(2) One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. ((~~The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.~~))

NEW SECTION. **Sec.**  On or before November 1, 2018, and in compliance with RCW 43.01.036, the board must provide the governor and the appropriate committees of the legislature with a detailed report on the following:

(1) The current number of pending appeals, categorized by the year in which each such appeal was filed;

(2) The number of appeals closed, since the effective date of this section, categorized by the year in which each such appeal was filed;

(3) The number of appeals filed since the effective date of this section; and

(4) A detailed plan, to be executed by the board, to address pending appeals.

**Sec.**  RCW 82.03.100 and 1967 ex.s. c 26 s 39 are each amended to read as follows:

The board ((~~shall~~)) must make findings of fact and prepare a written decision in each case decided by it, and such findings and decision ((~~shall be~~)) are effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and ((~~shall be~~)) are open to public inspection at all reasonable times.

**Sec.**  RCW 82.03.110 and 1967 ex.s. c 26 s 40 are each amended to read as follows:

The board ((~~shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest~~)) must publish those of its orders and decisions issued after the effective date of this section which are of precedential value, in such form as to assure ((~~reasonable distribution thereof~~)) such decisions are available for online research, including through a publicly available web site. The board may, in addition, identify, publish, and make available online orders and decisions issued prior to the effective date of this section that are of precedential value.

**Sec.**  RCW 82.03.120 and 1988 c 222 s 3 are each amended to read as follows:

The board ((~~shall~~)) must maintain at its principal office a copy ((~~of its final findings and decisions. The findings and decisions shall be available for public inspection at the principal office of the board at all reasonable times~~)), electronic or otherwise, of all final orders and decisions until transferred to the state archives in accordance with state agency retention policies and chapter 40.14 RCW. The orders and decisions maintained at the principal office of the board must be available for public inspection at all reasonable times; however, this provision may be satisfied by making the orders and decisions available via a publicly available web site.

**Sec.**  RCW 82.03.140 and 2000 c 103 s 1 are each amended to read as follows:

((~~In all appeals over which the board has jurisdiction under RCW 82.03.130, a party taking an appeal may elect either a formal or an informal hearing, such election to be made according to rules of practice and procedure to be promulgated by the board:~~)) (1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing ((~~shall~~)) prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within twenty days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein ((~~shall~~)) may be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1)(e), the director of revenue may, within ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

(2) A responding party may file a cross appeal. In the event that appeals are taken ((~~from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted~~)) by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding.

**Sec.**  RCW 82.03.150 and 2000 c 103 s 2 are each amended to read as follows:

In all appeals involving an informal hearing before the board or any of its members or tax referees, the board ((~~or its~~)), any member of the board, and the board's tax referees ((~~shall~~)) have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. The board, ((~~or its~~)) any member of the board, and the board's tax referees((~~, shall~~)) also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b) the board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board or any member thereof may deem necessary or appropriate.

**Sec.**  RCW 82.03.160 and 2000 c 103 s 3 are each amended to read as follows:

In all appeals involving a formal hearing before the board or any of its members or tax referees, the board ((~~or its~~)), any member of the board, and the board's tax referees ((~~shall~~)) have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW; and the board, and each member thereof, or its tax referees, ((~~shall be~~)) are subject to all duties imposed upon, and ((~~shall~~)) have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. The board, ((~~or its~~)) any member of the board, and the board's tax referees((~~, shall~~)) also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees ((~~shall~~)) may be presented only in open hearing.

**Sec.**  RCW 82.03.170 and 1988 c 222 s 7 are each amended to read as follows:

All proceedings, including both formal and informal hearings, before the board or any of its members or tax referees ((~~shall~~)) must be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board ((~~shall~~)) must publish such rules and arrange for ((~~the reasonable distribution thereof~~)) public access to the rules, including through a publicly available web site.

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

(1) The board may require parties to attend a mandatory settlement conference at any time before or after the appeal has been heard.

(2)(a) The board must provide an informal voluntary and confidential mediation process. The purpose of the mediation is to help the parties reach an agreement that settles the dispute. The board must adopt rules for the conduct of mediation, including appropriate fees, consistent with the purpose of the mediation.

(b) Any person appointed as a neutral mediator must have substantial experience in Washington tax law or in residential and commercial property appraisals. The mediator's role is to assist the parties to work together to reach a mutually agreeable dispute resolution. The mediator will not issue a decision in the matter. An agreement reached by the parties during the mediation must be memorialized in writing and signed by the parties before the board may enter an order closing the appeal.

(c) All mediation discussions, statements of parties, and materials provided as part of the mediation are confidential, must be destroyed or returned to the parties after mediation is complete, and may not be used for any other purpose or in any other proceeding.

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

(1)(a) Except as otherwise specifically provided by statute, the board:

(i) Must award a qualified party that prevails in a formal hearing from a department of revenue action fees and other expenses, including reasonable attorneys' fees, unless the board finds that the department of revenue's action was substantially justified or that circumstances make an award unjust;

(ii) May award a qualified party that prevails in a formal hearing from a board of equalization action fees and other expenses, including reasonable attorneys' fees, unless the board finds that the board of equalization's action was substantially justified or that circumstances make an award unjust.

(b) A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. The board, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

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

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

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

(b) "Qualified party" means (i) an individual whose net worth did not exceed one million dollars at the time the initial appeal petition was filed or (ii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed five million dollars at the time the initial appeal petition was filed, except that an organization described in section 501(c)(3) of the federal internal revenue code of 1954 as exempt from taxation under section 501(a) of the code and a cooperative association as defined in section 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party regardless of the net worth of such organization or cooperative association.

**--- END ---**

Passed by the House March 6, 2018.

Passed by the Senate March 2, 2018.

Approved by the Governor March 22, 2018, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2018.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 6, 8, 11, 17, and 18, Engrossed House Bill No. 2777 entitled:

"AN ACT Relating to improving and updating administrative provisions related to the board of tax appeals."

Section 6 mandates the number of tax referees the Board must maintain. I have concerns that mandating the Board to hire a specific number of staff could change the Board's ability to be flexible with future budgetary decisions needed to reduce the backlog.

Section 8 requires the Board to hold regular meetings on both sides of the Cascade. Although I agree with providing this access, we must continue to work towards using technology to find other ways of convening and providing access to all citizens.

Section 11 requires the Department of Revenue to adhere to precedential rulings by the Board of Tax Appeals, but does not differentiate between formal and informal proceedings. This leaves open the possibility for precedential rulings handed down by the Board of Tax Appeals that are exempt from appeals.

Section 17 mandates settlement conferences and providing a mediation process. I have concerns with the practical application of requiring attendance at a settlement conference. The Board of Tax Appeals is able to offer voluntary mediation services, per stakeholder demands, without requiring legislation.

Section 18 requires the Board to award attorney's fees and costs. Typically, the authority to grant attorney's fees and costs is limited to courts and not given to one executive agency with respect to another. There also appears to be an unintended drafting error that would require local boards of equalization to pay attorney's fees and expenses rather than the county assessor which is party to the action.

Finally, the Department of Revenue and Office of the Attorney General will have a fiscal impact of $1.2 million in fiscal year 2019 and $2.2 million in the 2019-21 biennium. Both agencies did not receive the funding needed to fulfill the duties of this bill in the 2018 Supplemental Budget.

For these reasons I have vetoed Sections 6, 8, 11, 17, and 18 of Engrossed House Bill No. 2777.

With the exception of Sections 6, 8, 11, 17, and 18, Engrossed House Bill No. 2777 is approved."