

EHB 2777 - S COMM AMD

By Committee on Law & Justice

ADOPTED AS AMENDED 03/02/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.03.020 and 1967 ex.s. c 26 s 31 are each amended
4 to read as follows:

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

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

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

23 **Sec. 2.** RCW 82.03.030 and 1967 ex.s. c 26 s 32 are each amended
24 to read as follows:

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

1 ~~appointed to serve until March 1, 1969, one member until March 1,~~
2 ~~1971, and one member until March 1, 1973)).~~

3 **Sec. 3.** RCW 82.03.040 and 1967 ex.s. c 26 s 33 are each amended
4 to read as follows:

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

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

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

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

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

1 **Sec. 5.** RCW 82.03.060 and 2013 c 23 s 312 are each amended to
2 read as follows:

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

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

13 **Sec. 6.** RCW 82.03.070 and 1988 c 222 s 2 are each amended to
14 read as follows:

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

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

24 **Sec. 7.** RCW 82.03.080 and 2013 c 23 s 313 are each amended to
25 read as follows:

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

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

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

35 (1) The principal office of the board ~~((shall))~~ must be at the
36 state capital, but it may sit or hold hearings at any other place in
37 the state. ~~((A majority of the board shall constitute a quorum for~~

1 making orders or decisions, promulgating rules and regulations
2 necessary for the conduct of its powers and duties, or transacting
3 other official business, and may act though one position on the board
4 ~~be vacant.~~) The board must provide for regular hearings in the most
5 populous county west of the crest of the Cascade mountains and east
6 of the crest of the Cascade mountains for the conduct of informal
7 proceedings.

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

12 NEW SECTION. **Sec. 9.** On or before November 1, 2018, and in
13 compliance with RCW 43.01.036, the board must provide the governor
14 and the appropriate committees of the legislature with a detailed
15 report on the following:

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

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

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

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

25 **Sec. 10.** RCW 82.03.100 and 1967 ex.s. c 26 s 39 are each amended
26 to read as follows:

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

33 **Sec. 11.** RCW 82.03.110 and 1967 ex.s. c 26 s 40 are each amended
34 to read as follows:

35 The board (~~shall either publish at its expense or make~~
36 ~~arrangements with a publishing firm for the publication of those of~~
37 ~~its findings and decisions which are of general public interest~~)

1 must publish those of its orders and decisions issued after the
2 effective date of this section which are of precedential value, in
3 such form as to assure ((reasonable distribution thereof)) such
4 decisions are available for online research, including through a
5 publicly available web site. The board may, in addition, identify,
6 publish, and make available online orders and decisions issued prior
7 to the effective date of this section that are of precedential value.

8 **Sec. 12.** RCW 82.03.120 and 1988 c 222 s 3 are each amended to
9 read as follows:

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

20 **Sec. 13.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to
21 read as follows:

22 ((In all appeals over which the board has jurisdiction under RCW
23 82.03.130, a party taking an appeal may elect either a formal or an
24 informal hearing, such election to be made according to rules of
25 practice and procedure to be promulgated by the board:)) (1) A party
26 filing an appeal with the board must elect either a formal or an
27 informal proceeding, according to rules of practice and procedure
28 adopted by the board. If no such election is made, the appeal must be
29 treated as an election for an informal proceeding: PROVIDED, That
30 nothing ((shall)) prevents the assessor or taxpayer, as a party to an
31 appeal pursuant to RCW 84.08.130, within twenty days from the date of
32 the receipt of the notice of appeal, from filing with the clerk of
33 the board notice of intention that the hearing be a formal one:
34 PROVIDED, HOWEVER, That nothing herein ((shall)) may be construed to
35 modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That
36 upon an appeal under RCW 82.03.130(1)(e), the director of revenue
37 may, within ten days from the date of its receipt of the notice of

1 appeal, file with the clerk of the board notice of its intention that
2 the hearing be held pursuant to chapter 34.05 RCW.

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

10 **Sec. 14.** RCW 82.03.150 and 2000 c 103 s 2 are each amended to
11 read as follows:

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

24 **Sec. 15.** RCW 82.03.160 and 2000 c 103 s 3 are each amended to
25 read as follows:

26 In all appeals involving a formal hearing before the board or any
27 of its members or tax referees, the board (~~((or its))~~), any member of
28 the board, and the board's tax referees (~~((shall))~~) have all powers
29 relating to administration of oaths, issuance of subpoenas, and
30 taking of depositions as are granted to agencies in chapter 34.05
31 RCW; and the board, and each member thereof, or its tax referees,
32 (~~((shall be))~~) are subject to all duties imposed upon, and (~~((shall))~~)
33 have all powers granted to, an agency by those provisions of chapter
34 34.05 RCW relating to adjudicative proceedings. The board, (~~((or its))~~)
35 any member of the board, and the board's tax referees(~~((, shall))~~) also
36 have all powers granted the department of revenue pursuant to RCW
37 82.32.110. In the case of appeals within the scope of RCW
38 82.03.130(1)(b), the board, or any member thereof, may obtain such

1 assistance, including the making of field investigations, from the
2 staff of the director of revenue as the board, or any member thereof,
3 may deem necessary or appropriate: PROVIDED, HOWEVER, That any
4 communication, oral or written, from the staff of the director to the
5 board or its tax referees (~~shall~~) may be presented only in open
6 hearing.

7 **Sec. 16.** RCW 82.03.170 and 1988 c 222 s 7 are each amended to
8 read as follows:

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

15 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.03
16 RCW to read as follows:

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

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

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

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

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 82.03
2 RCW to read as follows:

3 (1) Except as otherwise specifically provided by statute, the
4 board must award a qualified party that prevails in a formal hearing
5 fees and other expenses, including reasonable attorneys' fees, unless
6 the board finds that the department of revenue's or the board of
7 equalization's action was substantially justified or that
8 circumstances make an award unjust. A qualified party shall be
9 considered to have prevailed if the qualified party obtained relief
10 on a significant issue that achieves some benefit that the qualified
11 party sought.

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

19 (3) Fees and other expenses awarded under this section must be
20 paid by the board over which the party prevails from operating funds
21 appropriated to the agency within sixty days. The board shall report
22 all payments to the office of financial management within five days
23 of paying the fees and other expenses. Fees and other expenses
24 awarded by the board shall be subject to the provisions of chapter
25 39.76 RCW and shall be deemed payable on the date the board announces
26 the award.

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

29 (a) "Fees and other expenses" includes the reasonable expenses of
30 expert witnesses, the reasonable cost of a study, analysis,
31 engineering report, test, or project that is found by the court to be
32 necessary for the preparation of the party's case, and reasonable
33 attorneys' fees. Reasonable attorneys' fees shall be based on the
34 prevailing market rates for the kind and quality of services
35 furnished, except that (i) no expert witness shall be compensated at
36 a rate in excess of the highest rates of compensation for expert
37 witnesses paid by the state of Washington, and (ii) attorneys' fees
38 shall not be awarded in excess of one hundred fifty dollars per hour
39 unless the court determines that an increase in the cost of living or

1 a special factor, such as the limited availability of qualified
2 attorneys for the proceedings involved, justifies a higher fee.

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

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15 On page 1, line 2 of the title, after "appeals;" strike the
16 remainder of the title and insert "amending RCW 82.03.020, 82.03.030,
17 82.03.040, 82.03.050, 82.03.060, 82.03.070, 82.03.080, 82.03.090,
18 82.03.100, 82.03.110, 82.03.120, 82.03.140, 82.03.150, 82.03.160, and
19 82.03.170; adding new sections to chapter 82.03 RCW; and creating a
20 new section."

EFFECT: (1) The Board must maintain at least five tax referees,
two must be licensed members of the state bar, and three must be
state-certified real estate appraisers.

(2) Removes the authority of the Board to stay collections of tax
assessments pending an appeal before the Board. Clarifies that the
Board may issue findings related to an award of attorneys' fees and
costs. Removes provisions authorizing a direct appeal from the Board
to the Court of Appeals.

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