H-1247.1

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**HOUSE BILL 1830**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Stokesbary, Jinkins, and Frame

AN ACT Relating to improving and updating administrative provisions related to the board of tax appeals; amending RCW 82.03.070, 82.03.090, and 82.03.110; and adding new sections to chapter 82.03 RCW.

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

**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 82.03.090 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.~~))

**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.

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.

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