

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

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

Approved March 22, 2018 11:03 AM with
the exception of sections 6, 8, 11, 17
and 18 which are vetoed.

JAY INSLEE

Governor of the State of Washington

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

FILED

March 26, 2018

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2777

AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Representative Jenkins

Read first time 01/16/18. Referred to Committee on Finance.

1 AN ACT Relating to improving and updating administrative
2 provisions related to the board of tax appeals; amending RCW
3 82.03.020, 82.03.030, 82.03.040, 82.03.050, 82.03.060, 82.03.070,
4 82.03.080, 82.03.090, 82.03.100, 82.03.110, 82.03.120, 82.03.140,
5 82.03.150, 82.03.160, and 82.03.170; adding new sections to chapter
6 82.03 RCW; and creating a new section.

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

8 **Sec. 1.** RCW 82.03.020 and 1967 ex.s. c 26 s 31 are each amended
9 to read as follows:

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

17 (2) Beginning with appointments made after the effective date of
18 this section, at least two members of the board must be attorneys
19 licensed to practice law in the state of Washington with substantial
20 knowledge of Washington tax law. At least one attorney member must
21 have substantial experience in making a record suitable for judicial

1 review. Any nonattorney member must have substantial experience in
2 the fields of residential and commercial property appraisal.

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

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

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

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

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

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

34 (1) The board (~~(shall)~~) must operate on (~~(either a part-time or)~~)
35 a full-time basis(~~(, as determined by the governor. If it is~~
36 ~~determined that the board shall operate on a full-time basis, each~~
37 ~~member of the board shall receive an annual salary to be determined~~

1 by the governor. If it is determined that the board shall operate on
2 a part-time basis, each member of the board shall receive
3 compensation on the basis of seventy-five dollars for each day spent
4 in performance of his or her duties, but such compensation shall not
5 exceed ten thousand dollars in a fiscal year)). Each member of the
6 board must devote his or her full time and efforts to the efficient
7 discharge of the duties of the board.

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

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

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

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

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

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

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

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

*Sec. 6 was vetoed. See message at end of chapter.

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

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

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

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

12 (1) The principal office of the board ((shall)) must be at the
13 state capital, but it may sit or hold hearings at any other place in
14 the state. ((A majority of the board shall constitute 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.)) The board must provide for regular hearings in the most
19 populous county west of the crest of the Cascade mountains and east
20 of the crest of the Cascade mountains for the conduct of informal
21 proceedings.

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

**Sec. 8 was vetoed. See message at end of chapter.*

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

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

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

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

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

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

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

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

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

**Sec. 11 was vetoed. See message at end of chapter.*

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

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

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

3 (~~In all appeals over which the board has jurisdiction under RCW~~
4 ~~82.03.130, a party taking an appeal may elect either a formal or an~~
5 ~~informal hearing, such election to be made according to rules of~~
6 ~~practice and procedure to be promulgated by the board:~~) (1) A party
7 filing an appeal with the board must elect either a formal or an
8 informal proceeding, according to rules of practice and procedure
9 adopted by the board. If no such election is made, the appeal must be
10 treated as an election for an informal proceeding: PROVIDED, That
11 nothing (~~shall~~) prevents the assessor or taxpayer, as a party to an
12 appeal pursuant to RCW 84.08.130, within twenty days from the date of
13 the receipt of the notice of appeal, from filing with the clerk of
14 the board notice of intention that the hearing be a formal one:
15 PROVIDED, HOWEVER, That nothing herein (~~shall~~) may be construed to
16 modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That
17 upon an appeal under RCW 82.03.130(1)(e), the director of revenue
18 may, within ten days from the date of its receipt of the notice of
19 appeal, file with the clerk of the board notice of its intention that
20 the hearing be held pursuant to chapter 34.05 RCW.

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

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

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

1 from the staff of the director of revenue as the board or any member
2 thereof may deem necessary or appropriate.

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

5 In all appeals involving a formal hearing before the board or any
6 of its members or tax referees, the board (~~(or its)~~), any member of
7 the board, and the board's tax referees (~~(shall)~~) have all powers
8 relating to administration of oaths, issuance of subpoenas, and
9 taking of depositions as are granted to agencies in chapter 34.05
10 RCW; and the board, and each member thereof, or its tax referees,
11 (~~(shall be)~~) are subject to all duties imposed upon, and (~~(shall)~~)
12 have all powers granted to, an agency by those provisions of chapter
13 34.05 RCW relating to adjudicative proceedings. The board, (~~(or its)~~)
14 any member of the board, and the board's tax referees(~~(, shall)~~) also
15 have all powers granted the department of revenue pursuant to RCW
16 82.32.110. In the case of appeals within the scope of RCW
17 82.03.130(1)(b), the board, or any member thereof, may obtain such
18 assistance, including the making of field investigations, from the
19 staff of the director of revenue as the board, or any member thereof,
20 may deem necessary or appropriate: PROVIDED, HOWEVER, That any
21 communication, oral or written, from the staff of the director to the
22 board or its tax referees (~~(shall)~~) may be presented only in open
23 hearing.

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

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

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

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

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

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

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

*Sec. 17 was vetoed. See message at end of chapter.

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

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

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

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

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

35 (2) The amount awarded a qualified party under subsection (1) of
36 this section shall not exceed twenty-five thousand dollars. The
37 board, in its discretion, may reduce the amount to be awarded
38 pursuant to subsection (1) of this section, or deny any award, to the

1 extent that a qualified party during the course of the proceedings
2 engaged in conduct that unduly or unreasonably protracted the final
3 resolution of the matter in controversy.

4 (3) Fees and other expenses awarded under this section must be
5 paid by the board over which the party prevails from operating funds
6 appropriated to the agency within sixty days. The board shall report
7 all payments to the office of financial management within five days
8 of paying the fees and other expenses. Fees and other expenses
9 awarded by the board shall be subject to the provisions of chapter
10 39.76 RCW and shall be deemed payable on the date the board announces
11 the award.

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

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

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

*Sec. 18 was vetoed. See message at end of chapter.

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."

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