

EHB 2777
Report



**WASHINGTON STATE
BOARD OF TAX APPEALS**

November 2018

Section 9
c.174 Laws 2018

***An act relating to
improving and updating
administrative provisions
related to the board of tax
appeals***

WASHINGTON STATE BOARD OF TAX APPEALS

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Introduction & Executive Summary

The Washington State Board of Tax Appeals (WSBTA) respectfully submits this report in accordance with Engrossed House Bill 2777 (*Improving and updating administrative provisions related to the board of tax appeals*).¹ The legislation directs the agency to provide the governor and appropriate legislative committees with statistics on the agency’s pending appeals and a detailed plan to address its backlog of cases.

Requested Statistics ²				
Dockets by Year	2018	1003	Dockets Filed Since June 7, 2018:	488
Filed with the Agency:	2017	1265		
	2016	1244		
	Other	<u>209</u>	Dockets Closed Since June 7, 2018:	543
	Total	3167		

Plan Elements	
A.	Increase number of hearing officers by 66%.
B.	Ensure all hearing officers have relevant and effective training.
C.	Provide paraprofessional support to hearing officers.
D.	Identify up to 45% of dockets for early dismissal.
E.	Leverage technology to simplify and streamline hearings.
F.	Upgrade legacy case management and electronic file systems.
G.	Reduce meritless filings by 10% through taxpayer education program.
H.	Implement alternative dispute resolution programs where feasible.

¹ c.174, Laws 2018

² Detailed statistics begin on page 3.



About the WSBTA

The WSBTA was created in 1967 as an independent tribunal for taxpayer appeals. The small, 16-person agency is an integral part of the state’s tax system and the final administrative option for taxpayers to contest assessments by county assessors and the state Department of Revenue. The agency processes an average of approximately 1,800 new dockets each year,³ many of which present complex legal or valuation issues.

The WSBTA is governed by a three-member board and employs an executive director, seven tax referees,⁴ and five administrative support staff. Board members and tax referees, collectively referred to in this report as “hearing officers,” must be knowledgeable in matters of state and local taxation, generally accepted appraisal principles, and the state’s Administrative Procedure Act.

Current State

The impact of the 2008 recession on Washington’s real estate market resulted in a dramatic increase in the number of property tax appeals filed with the WSBTA. By 2011, agency filings had increased nearly 250%.

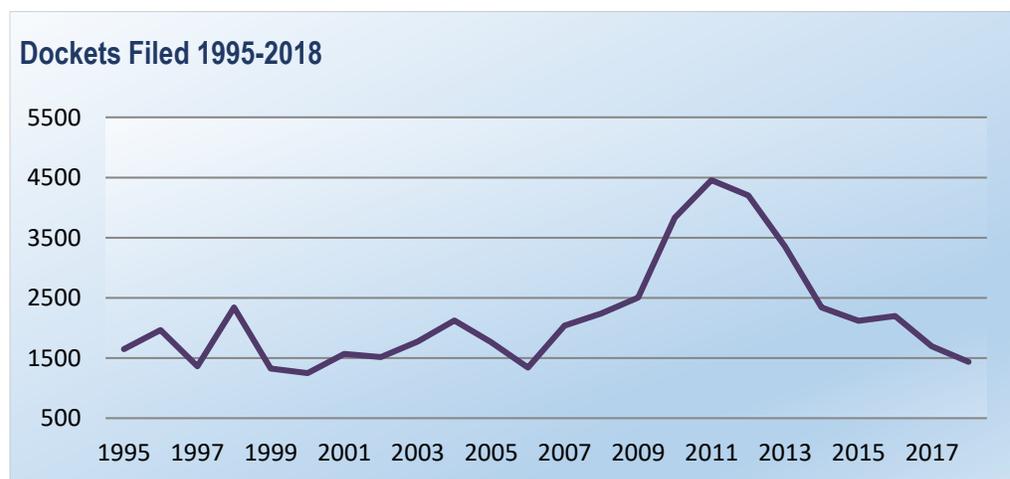


Figure 1 History of Dockets Filed

³ The average number of appeals filed annually since 1995, excluding data from 2010-2013, is 1,827. If the data from those four years is included, the average is 2,182.

⁴ This is an increase over the three tax referee positions funded in prior years.



At the peak of the filing increase, state budget cuts precipitated by the recession forced the WSBTA to eliminate one of its four tax referee positions. Without normalized funding, the agency was also unable to meet ordinary operating expenses except by the routine delay in replacing hearing officers who left or retired from the agency. As a result, the WSBTA generally operated with only 70% of its hearing officers during the same time period in which it faced an unprecedented increase in its workload.

The result has been a substantial, persistent, backlog and long delays in service. As of October 15, 2018, the WSBTA has 3,721 dockets in its system, at an average age of 891 days. The agency’s oldest cases are generally more complex matters, or those that have been continued because a related matter is progressing through the court system.

**Total Agency Dockets as of 10/15/18
by Calendar Year Filed:**

Year	Dockets
2018	1003
2017	1265
2016	1244
2015	142
2014	31
2013	17
2012	19
Total	3721

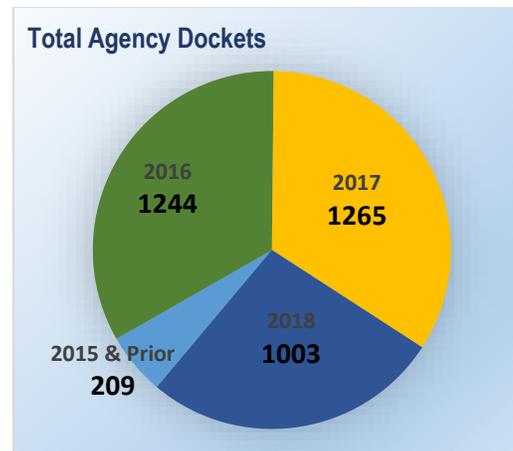


Figure 2 Total Agency Dockets by Calendar Year

Since the effective date of EHB 2777 (June 7, 2018), the agency has received 488 newly-filed dockets and closed 543 dockets.



Dockets Closed Since passage of EHB 2777 (all reasons) by Calendar Year Filed:

Year	Dockets
2018	44
2017	111
2016	156
2015	156
2014	55
2013	14
2012	7
Total	543

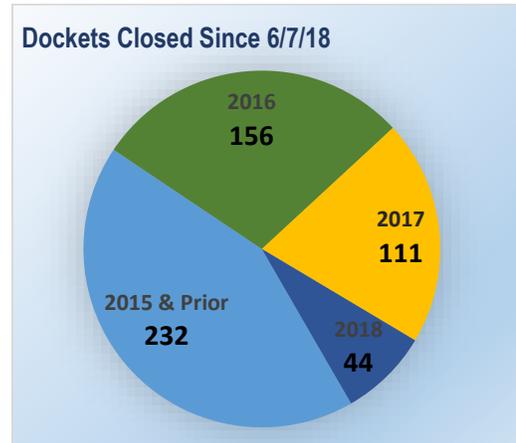


Figure 3 Closed June 7-Oct. 15 by Calendar Year

On average, some 35% to 45% of dockets filed with the agency are withdrawn or settled. An additional small percentage of appeals are dismissed for other administrative reasons, including appeals that are not timely prosecuted. The remaining dockets are set for hearing and disposed of by written decision.

Detailed Plan to Eliminate Backlog

In EHB 2777, the Legislature tasked the WSBTA with developing a detailed plan to address the backlog of appeals, and provided the agency with the first significant budget increase in more than a decade with which to do so. In the six months since the final vote of the Legislature on the bill, the WSBTA has developed, and taken steps to implement, a multifaceted approach to address its backlog.

Hiring More Hearing Officers

The WSBTA is the sole state-level administrative tribunal for tax matters in Washington. Each of its cases is entitled to a hearing, and by statute, every case must be decided in writing and include findings of fact. Thus, to eliminate its backlog, the WSBTA must hear, decide, and draft decisions for, more cases. This requires the agency to increase the number of hearing officers it has to undertake these core functions.



WSBTA has recently hired, or is in the process of hiring, an additional four hearing officers. Once these positions are filled, the agency will have a total of ten hearing officers, nearly doubling the number of hearing officers the agency has employed on average each year of the last decade.

Ensuring Adequate Training

Even with ten hearing officers, each hearing officer must issue decisions for at least 13 dockets per month, which can be as many as three to four decisions each week. To successfully handle this workload, hearing officers must be well-trained in administrative law proceedings, appraisal principles, and state excise tax laws.

With new funding from the Legislature, the agency has now provided six hearing officers with 60 hours each of training in valuation and appraisal theory. One officer has completed more than 30 hours of training in logic and opinion writing at a nationally recognized judicial college. Two hearing officers have completed a week of judicial training in administrative law proceedings. In addition, the agency has provided several hearing officers with a week of mediation training in preparation for a possible alternative dispute resolution program.

Improving Administrative Support

Most procedural dismissals and voluntary withdrawals occur at, or shortly before, the scheduled hearing. By this point in time, the hearing officer has already spent considerable effort reviewing the case file and preparing for the hearing.

With new funding from the Legislature, the agency has hired an additional administrative staff member to provide previously unavailable support for hearing officers. The new position is a paraprofessional role, and will be responsible to review all agency files to identify those cases that are likely to be withdrawn or that must be dismissed for procedural defect. This preview of files prior to scheduling should result in earlier dismissals and withdrawals, and reduce or eliminate the time hearing officers spend in unnecessary review of files.



Leveraging Technology

Legislative funding has allowed the WSBTA to obtain WaTech services and join the state network. The agency will use the newly-available resources and technologies to simplify and streamline its hearings. For example, the agency will switch to Skype to hold, record, and transcribe its hearings. This will replace the existing outbound calling process, and is expected to eliminate three to ten minutes of time at the start of each hearing that its hearing officers currently spend connecting both parties on a conference call.

The agency will also upgrade or replace its case management and its document repository system to streamline hearing officers' access to case information.

Increasing Participant Education

A significant number of cases filed with the agency each year are withdrawn when the appellant determines that a successful outcome in the matter is unlikely. Similarly, some number of cases are dismissed each year upon a finding that the appellant has relied solely on one of several theories for which no legal relief is available under Washington law. Providing taxpayers with educational information through the agency's website may result in fewer such appeals filed. The agency is currently in communication with other tax tribunals and vendors offering such web-based educational programs.

Offering Alternative Dispute Resolution Options

The WSBTA is investigating whether to implement a pilot mediation program. Preliminary stakeholder work indicates low interest in mediations, especially for property tax matters, which make up approximately 95% of the agency's caseload. However, mediated settlements would resolve cases without written decisions or findings, which would increase the number of cases that could be closed by the agency in any given time period. For this reason, the agency continues to investigate the feasibility of, and the willingness of the parties to engage in, a mediation program.



Target

Prior to the 2008 recession, the WSBTA maintained an in-house caseload of between 500 and 750 dockets, resolving matters in six to nine months. The agency’s current goal is to reduce its in-house caseload to 1,500 dockets. This would generally allow the agency to resolve all cases within one year from the date of filing and maintain pace with the number of new appeals filed each year.

The WSBTA believes it can achieve this reduction no later than October 2023. This estimate is based on the following assumptions:

- 1,800 dockets filed annually
- 20% of existing dockets dismissed administratively
- 40% of new dockets dismissed administratively
- 10 hearing officers issuing decisions on 13 dockets per month

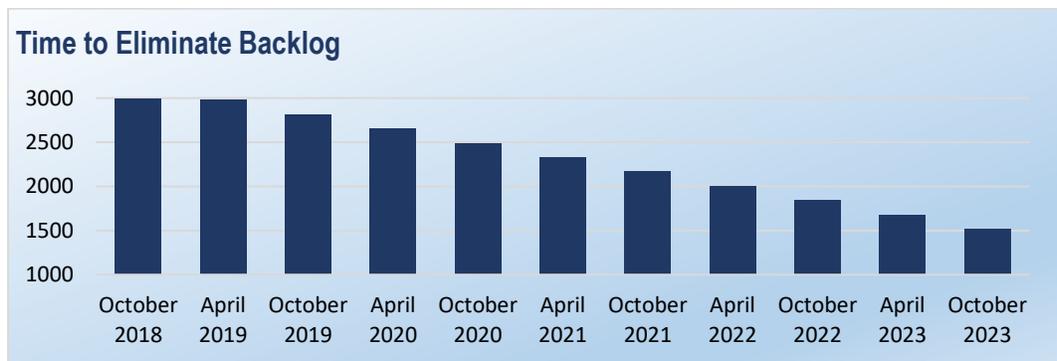


Figure 4 Biannual Reduction in Backlog

Risks

This section identifies the major identified risks that may impact the agency’s target estimate, and steps the agency will take to help mitigate those risks.



Loss of Hearing Officers

The most significant risk to the agency is the loss of its qualified hearing officers. Months of productivity are lost to the hiring and training process when the agency must replace hearing officers.

To mitigate the risk associated with hearing officer turnover, the agency will continue to seek budget funds necessary to cover competitive salaries and professional development costs. The agency will continue to offer flexible hours and schedules, as well as inclusivity and recognition programs.

Higher Annual Filings

A less likely risk, but one with greater potential impact, is that annual filings over the next five years may significantly exceed the agency's estimate. Annual filings are likely to increase if there is a major change in the economy. Filings may also increase if a change in the economy or property tax system results in a large disparity between assessed values and perceived market values. The agency cannot substantially mitigate this risk.

Critical Failure of Legacy System

In the absence of normalized funding, the agency has been unable to maintain or improve its case management and document repository systems. Both need to be upgraded or replaced to ensure hearing officers have efficient access to case information.

The agency's case management system has not been updated for more than a decade. As a result, the system is at risk for a critical failure, with the potential loss of agency data. Replacement of this legacy system is a multi-year process, however. The agency has requested supplemental funding to complete a feasibility study on replacing the system and will seek funding for total replacement in the 2021-2023 biennium. Until this system can be replaced, the agency will use current funding to purchase a minimum level of upgrades necessary to prevent system failure.



Conclusion

This concludes the WSBTA report. Requests for additional information should be directed to the agency's Executive Director at kate.adams@bta.wa.gov.