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BILL ANALYSIS

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House Bill 4412 (Substitute H-3 as passed by the House)
Sponsor: Representative Brandt Iden
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 12-4-18

CONTENT

The bill would amend the Tax Tribunal Act to do the following

- **Move the Tax Tribunal, for administrative purposes, from the Department of Treasury to the Department of Licensing and Regulatory Affairs (LARA).**
- **Allow Tribunal members to be full- or part-time, with certain employment and business restrictions.**
- **Require the Governor to consider a list of qualified candidates solicited from at least one appropriate professional association primarily operating in Michigan when making an appointment to the Tribunal.**
- **Require the Governor to designate a member of the Tribunal as chairperson.**
- **Allow the Governor to remove a member, after notice and an opportunity to be heard, for failure to substantially perform his or her duties under the Act, malfeasance, misfeasance, or nonfeasance in office, or other good cause.**
- **Require Tribunal members to receive training on matters relevant to the work of the Tribunal, including proper courtroom procedures, State and local tax issues, accepted appraisal practices, and proper assessing practices.**
- **Revise Tribunal member salaries.**
- **Allow the Governor, with the advice and consent of the Senate, to appoint not more than three members of the Tribunal pro tempore if it appeared to him or her that the services of an added member or members were advisable.**
- **List the circumstances under which a Tribunal member could be disqualified from a proceeding.**
- **Allow the Tribunal to operate regional offices in the State, and require the Department of Technology Management and Budget to extend suitable accommodations and equipment in these regional offices.**
- **Specify that only for proceedings before the Residential Property and Small Claims Division could the Tribunal appoint one or more hearing officers to hold hearings.**
- **Specify rules the Tribunal would have to implement.**
- **Specify that the jurisdiction of the Tribunal would be invoked by a party in interest if the final decision, ruling, or determination were one for which the Tribunal's jurisdiction was concurrent with the Court of Claims, within 90 days after the final decision, ruling, or determination, starting after September 30, 2017.**
- **Specify that a petition would have to be signed by the petitioner or the petitioner's authorized representative to be properly filed.**

- **Require an amount sufficient to maintain the operation of the Tribunal consistent with the Act to be deposited into the Michigan Tax Tribunal Fund annually beginning in fiscal year (FY) 2018-2019.**
- **Increase the dollar amounts under which property is subject to the Residential Property and Small Claims Division's jurisdiction.**
- **Specify circumstances under which a Tribunal decision would not be considered timely.**
- **Allow a party to file exceptions to a proposed order issued by a hearing officer or referee within 21 days, instead of 20.**

The bill would repeal Section 23 of the Act, which requires the Tribunal, annually, to elect one of its members as chairman who must assign matters, apportion business of the Tribunal, and perform other duties prescribed by law.

The bill would take effect 90 days after its enactment.

Tax Tribunal Membership and Duties

Currently, the Tax Tribunal consists of seven members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The bill would specify that a member could be a full- or part-time member.

When making an appointment, the Governor would have to consider a list of qualified candidates solicited from at least one appropriate professional association located and primarily operating in Michigan that was able to identify candidates qualified for the vacancy being filled. The full- or part-time status of a member, including any hourly basis for that status, could not be diminished during the length of his or her term without his or her consent.

The Governor would have to designate a member as a chairperson, who would have to assign matters, apportion business of the Tribunal, and perform other duties prescribed by law. The chairperson would have to serve in that capacity at the pleasure of the Governor.

The Act requires each member to devote his or her entire time to, and personally perform the duties of his or her office, and may not engage in other business or professional activity for remuneration. The bill would amend the provision to require each member to personally perform the duties of his or her office, including the maintenance of his or her docket as assigned and directed by the chairperson and in accordance with rules prescribed under the bill. Except as otherwise provided, a member could not engage in any other gainful employment or business or professional activity for remuneration, or hold any other office in or engage in any other profitable undertaking with any governmental entity of the State, another state, or the United States. Additionally, a member could not act as an attorney, representative, or accountant for others in a matter involving any tax imposed or levied by the State or any of its political subdivisions. However, a member could do any of the following:

- Own passive interests in business entities.
- Earn income from incidental teaching or scholarly activities.
- Receive compensation for extrajudicial activities described in Canon 4 of the Michigan Code of Judicial Conduct (which specifies the extrajudicial activities a judge may engage in) if the receipt of that compensation did not create an appearance of impropriety, including an appearance that the source of that compensation influenced the member in the performance of his or her duties.
- Act professionally on his or her own behalf, including as his or her own attorney or accountant.

- Provide professional services to family members, including legal, accounting, and tax services, so long as he or she was not paid for those services.

Tribunal Member Salaries

Under the Tax Tribunal Act, each Tribunal member must receive an annual salary as determined by law and must be reimbursed for his or her actual and necessary expenses at the rate determined by the Administrative Board. Under the bill, before October 1, 2017, each member would have to receive an annual salary as determined by law. After September 30, 2017, each member who worked for the Tribunal full time, as determined by LARA would have to receive an annual salary not less than the maximum salary paid to an administrative law manager or equivalent civil service classification. Each member who worked for the Tribunal part time, as determined by the Department would have to receive an annual pro rata salary proportionate to the salary of a member who worked full time. In addition to his or her annual salary, each member would have to be reimbursed for his or her actual and necessary expenses at the rate determined by the Administrative Board. "Actual and necessary" expenses would include fees incurred for the renewal of relevant and appropriate professional licenses and memberships in associations located in Michigan.

Pro Tempore Members

The Governor could, with the advice and consent of the Senate, appoint not more than three members of the Tribunal pro tempore if it appeared to him or her that the services of an added member or members were advisable. A pro tempore member would have to be qualified for membership, and would be subject to the duties and limitations of a member of the Tribunal under the Act. A pro tempore member would have to be appointed for not more than 12 months, on a full- or part-time basis, unless reappointed by the Governor. Pro tempore members would not count toward the number of members appointed under the bill.

Member Disqualification from a Proceeding

On a motion of a party to a proceeding or a Tribunal member assigned to the proceeding, or by order of the chairperson, a member assigned to the proceeding could be disqualified for any reason listed in Michigan Court Rules 2.003(c)(1) (which states that disqualification of a judge is warranted for reasons that include being biased or prejudiced for or against a party or attorney, or, based on objective and reasonable perceptions, having either a serious risk of actual bias impacting the due process rights of a party or having failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct).

A motion for disqualification by a party to the proceeding would have to be reviewed and either approved or denied by the Tribunal member presiding over the proceeding. If the motion were denied, the moving party could appeal to the chairperson unless the chairperson was presiding over the proceeding. If he or she were presiding, an appeal instead would have to be randomly assigned to another member who was qualified under the bill as an attorney. A motion for disqualification by a party to a proceeding would have to be filed not later than 14 days immediately succeeding the discovery of the grounds for disqualification. However, if a trial were scheduled on a date that was less than 15 days after the discovery, the motion would have to be made as far in advance of that trial date as was reasonably possible. Disqualification could be waived with the consent of all parties and would have to be in writing or placed on the record.

Regional Tribunal Offices

Under the Act, the principal office of the Tribunal and its chief clerk must be in the City of Lansing. In addition, the bill would allow the Tribunal to operate regional offices across the State as the chairperson considered necessary. The bill also would require the Department of Technology, Management, and Budget to extend suitable accommodations and equipment in these principal and regional offices.

Tribunal Rules

The Act lists the Tribunal's powers; these include promulgating rules for the implementation of the Act, including rules for practice and procedure before the Tribunal and for mediation, under the Administrative Procedures Act. The bill would require rules for the following:

- Practice and procedure before the tribunal.
- Mediation.
- Ethical standards governing the conduct of Tribunal members, which members would have to comply with, in addition to all other laws, rules, and standards applicable to his or her conduct professionally or otherwise.
- Initial training requirements for newly appointed Tribunal members.
- Continuing training requirements for all Tribunal members.
- Guidelines and policies governing docket maintenance by Tribunal members, including guidelines and policies setting forth the method by which the chairperson assigns a member or panel of members to a proceeding.

Unless the above guidelines and policies provided otherwise, the Tribunal would have to assign members to a proceeding by lot.

Tribunal Invocation

The Act lists circumstances under which the jurisdiction of the Tribunal is invoked by a party in interest. Unless otherwise specified, the jurisdiction of the Tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination. The bill also would include in this provision, after September 30, 2017, if the final decision, ruling, or determination were one for which the Tribunal's jurisdiction was concurrent with the Court of Claims, within 90 days after the final decision, ruling, or determination.

Under the bill, to be properly filed, a petition would have to be signed by the petitioner or the petitioner's authorized representative. By that signature, the signer would certify all of the following:

- The signer had read the petition.
- To the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the petition met all requirements prescribed by the Act and by rule of the Tribunal; the petition was grounded in fact; the legal contentions supporting the petition had a good-faith basis under existing law or for extending, modifying, or reversing existing law or for establishing new law; and the petition was not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increasing the cost of litigation.

Tax Tribunal Fund

Under the Act, the Michigan Tax Tribunal Fund is created in LARA as a separate interest bearing fund. All fees collected under the Act must be deposited in the Fund. In addition,

subject to appropriation, beginning in FY 2018-19 and each year thereafter, the bill would require an amount sufficient to maintain the operation of the Tribunal consistent with the Act to be deposited into the Fund.

Residential Property and Small Claims Division Jurisdiction

Under the Act, property other than residential property may be included in a proceeding before the Residential Property and Small Claims Division if the amount of that property's taxable value or State equalized valuation in dispute is not more than \$100,000. Under the bill, after December 31, 2017, absent objection by either party made within a time limit prescribed by Tribunal rule, if the property's taxable value or State equalized valuation in dispute was more than \$100,000 and not more than \$250,000, the property could be included in a proceeding before the Division.

After December 31, 2017, the Residential Property and Small Claims Division also would have jurisdiction over a proceeding involving an appeal of any nonproperty tax or special assessment over which the Tribunal had jurisdiction if the amount of the tax or assessment in dispute was \$100,000 or less, or \$20,000 or less, respectively, adjusted annually by the inflation rate.

Timely Decision

The Act requires a decision and opinion of the Tribunal to be made within a reasonable period, to be in writing or stated in the record, to include a concise statement of facts and conclusions of law, stated separately, and to be officially reported and published. In addition, the bill states that, after December 31, 2017, a decision and opinion would not be timely for purposes of the above provision if, absent good cause, it were issued more than 120 days after the date that the last brief was filed following completion of the hearing or, if briefs were not filed following completion of the hearing, the date that the hearing was completed. A Tribunal member's repeated failure to issue timely decisions could be considered for purposes of a removal decision under the bill.

MCL 205.703 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have a negative fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would set the salary of full-time members of the Michigan Tax Tribunal to no less than the maximum paid to an Administrative Law Manager. This provision would result in an increase of about \$258,500 over current total salary costs for regular members and an additional \$407,700 for three full-time temporary members, for a total cost of approximately \$666,200. However, costs would be lower if some members served part-time and were paid pro rata.

The bill also would require the Department to reimburse members for the fees associated with relevant, Michigan-based professional licenses and association memberships. Temporary members also would be eligible for reimbursement for these and other expenses. Under current law, a total of \$6,890 in travel expenses was reimbursed to tribunal members in FY 2017-18.

The Department likely would incur additional administrative costs due to training needs and changes to the type of cases heard by the Small Claims Division. The magnitude of these costs would largely depend upon the number of cases affected. The Department also would

incur unknown costs if it established a regional Tribunal office as permitted by the bill. These offices would be housed in State-owned facilities.

Currently, the Michigan Tax Tribunal is funded through filing fees. However, revenue from these fees is insufficient to cover the Tribunal's current costs. An additional funding source would be required to cover the costs associated with the changes in the bill.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.