

S.B. NO. 1204

JAN 27 2021

A BILL FOR AN ACT

RELATING TO TAX APPEALS.

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

1 SECTION 1. Section 26-10, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) There shall be within the department of taxation a
4 board of review [~~for each taxation district~~] and a tax appeal
5 court. The composition of [~~each~~] the board of review and the
6 tax appeal court and [~~its~~] their respective functions, duties,
7 and powers shall be as [~~heretofore~~] provided [~~by law for the~~
8 ~~boards of review and tax appeal court existing immediately prior~~
9 ~~to November 25, 1959.~~] in chapter 232."

10 SECTION 2. Section 232-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§232-6 [Appointment] Taxation board of review;
13 appointment, removal, compensation. (a) There is created a
14 taxation board of review for [~~each taxation district.~~
15 ~~Additional boards may be created in any taxation district by the~~
16 ~~director of taxation where the number of disputes to be decided~~
17 ~~cannot be reasonably decided within one year. Each taxation~~

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1 ~~district shall have no more than three boards. Each board]~~ the
2 State.

3 (b) The board shall consist of [~~five~~] no more than ten
4 members who shall be [~~citizens~~] residents of the State [~~and~~
5 ~~residents of the district for which the board is appointed,~~
6 ~~shall have resided at the time of appointment for at least three~~
7 ~~years in the State,~~] and shall be appointed and be removable by
8 the governor as provided in section 26-34. The governor shall
9 designate a member of [~~each~~] the board to act as chairperson
10 thereof. In addition, the governor shall designate a member of
11 [~~each~~] the board to act as vice chairperson who shall serve as
12 the chairperson of the board during the temporary absence from
13 the State, illness, or disqualification of the chairperson. Any
14 vacancy in [~~any~~] the board shall be filled for the unexpired
15 term. Each member shall receive and be paid out of the treasury
16 compensation for the member's services at the rate of \$10 per
17 day for each day's actual attendance and the member's actual
18 traveling expenses. No officer or employee of the State shall
19 be eligible for appointment to [~~any such~~] the board.

20 (c) Any vacancy in the board shall not impair the
21 authority of the remaining members to exercise all the powers of
22 the board. The governor may appoint an acting member of the

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1 board during the temporary absence from the State, temporary
2 inability to act due to recusal, or illness of any regular
3 member. An acting member, during the acting member's term of
4 service, shall have the same powers and duties as the regular
5 member; provided further that an acting member appointed due to
6 a regular member's recusal shall be appointed for the case in
7 which the recusal occurred, and the acting member's appointment
8 shall terminate when the final decision is filed or the case is
9 withdrawn."

10 SECTION 3. Section 232-7, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§232-7 [~~Boards~~] Board of review; duties, powers,
13 procedure before. (a) The board of review [~~for each district~~]
14 shall hear informally all disputes between the assessor and any
15 taxpayer in all cases in which appeals have been duly taken and
16 the fact that a notice of appeal has been duly filed by a
17 taxpayer shall be conclusive evidence of the existence of a
18 dispute; provided that this provision shall not be construed to
19 permit a taxpayer to dispute an assessment to the extent that it
20 is in accordance with the taxpayer's return.

21 (b) [~~Each~~] At least three board members must be present at
22 any meeting or proceeding of the board to constitute a quorum.

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1 The board shall hold public meetings at some central location in
2 [~~its~~] each taxation district at least once annually and shall
3 hear, as speedily as possible, all appeals presented for each
4 year. At least one board member must be physically present at
5 each meeting, but whenever appropriate and practicable, the
6 other members of the board may utilize cost-efficient means such
7 as teleconferencing to conduct their proceedings. Taxpayers and
8 others appearing before the board may also participate via
9 teleconference or any other cost-efficient means of the board's
10 choosing.

11 (c) A taxpayer's identity and final documents submitted in
12 support or opposition of an appeal shall be public information;
13 provided that an individual taxpayer is authorized to redact all
14 but the last four digits of the taxpayer's social security
15 number from any accompanying tax return. [~~Each~~] The board shall
16 have the power and authority to decide all questions of fact and
17 all questions of law, excepting questions involving the
18 Constitution or laws of the United States, necessary to the
19 determination of the objections raised by the taxpayer in the
20 notice of appeal; provided that [~~no~~] the board shall not have
21 power to determine or declare an assessment illegal or void.
22 Without prejudice to the generality of the foregoing, [~~each~~] the

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1 board shall have power to allow or disallow exemptions pursuant
2 to law, whether or not previously allowed or disallowed by the
3 assessor, and to increase or lower any assessment.

4 ~~[(e)]~~ (d) The board shall base its decision on the
5 evidence before it, and, as provided in section 231-20, the
6 assessment made by the assessor shall be deemed prima facie
7 correct. All decisions of the board shall be reduced to writing
8 and shall state separately the board's findings of fact and
9 conclusions of law. The board shall file with the assessor
10 concerned its decision in writing on each appeal decided by it,
11 and a certified copy of the decision shall be furnished by the
12 assessor to the taxpayer concerned by delivery or by mailing the
13 copy addressed to the taxpayer's last known place of residence.

14 ~~[(d)—Each]~~ (e) The board and each member thereof in
15 addition to all other powers shall also have the power to
16 subpoena witnesses, administer oaths, examine books and records,
17 and hear and take evidence in relation to any subject pending
18 before the board. The tax appeal court shall have the power,
19 upon request of the ~~[boards,]~~ board, to enforce by proper
20 proceedings the attendance of witnesses and the giving of
21 testimony by them, and the production of books, records, and
22 papers at the hearings of the ~~[boards,]~~ board.

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1 ~~[(c) If there exists more than one board of review in a~~
2 ~~taxation district, the chair of one board, administratively and~~
3 ~~without requirement of any formal action, may assign a member of~~
4 ~~that board to serve as a temporary member of the requesting~~
5 ~~board for purposes of establishing a quorum at a designated~~
6 ~~meeting of the requesting board. The temporary member shall~~
7 ~~serve only for the specific board meeting for which the~~
8 ~~assignment is made and only for the period necessary to~~
9 ~~establish and maintain a quorum. A temporary member may~~
10 ~~participate in discussion and vote on all matters before the~~
11 ~~board. Nothing herein shall prevent a member from being assigned~~
12 ~~multiple times under this subsection.]"~~

13 SECTION 4. Section 232-13, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§232-13 Hearing de novo; bill of particulars.** The
16 hearing before the tax appeal court shall be a hearing de novo.
17 Irrespective of which party prevails in proceedings before [a]
18 the state board of review or any equivalent administrative body
19 established by county ordinance, the assessment as made by the
20 assessor, or if increased by the board, or equivalent county
21 administrative body, the assessment as so increased, shall be
22 deemed prima facie correct. Each party shall have the right to

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1 introduce, or the tax appeal court, of its own motion, may
2 require the taking of such evidence in relation to the subject
3 pending as in the court's discretion may be deemed proper. The
4 court, in the manner provided in section 232-16, shall determine
5 all questions of fact and all questions of law, including
6 constitutional questions, involved in the appeal.

7 The jurisdiction of the tax appeal court is limited to the
8 amount of valuation or taxes, as the case may be, in dispute as
9 shown on the one hand by the amount claimed by the taxpayer or
10 county and on the other hand by the amount of the assessment, or
11 if increased by the board, or equivalent county administrative
12 body, the assessment as so increased.

13 Assessments for the same year upon other similar property
14 situated in the State shall be receivable in evidence upon the
15 hearing.

16 Upon the application of either the taxpayer, the county, or
17 the assessor, the judge of the tax appeal court, upon notice,
18 may allow and direct a bill of particulars of the claim of
19 either the taxpayer, the county, or the assessor to be delivered
20 to the other, and in case of default the judge shall preclude
21 the person so defaulting from giving evidence of the part or

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1 parts of the person's affirmative claim of which particulars
2 have not been delivered."

3 SECTION 5. Section 232-14, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The [~~boards~~] board of review shall have power,
6 consistent with this chapter and chapter 91, to make rules
7 relating to procedure, and to prescribe forms to be used,
8 including procedure and forms for the issuance of subpoenas and
9 other process by the [~~boards of review~~] board or members
10 thereof. The rules shall have the force and effect of law."

11 SECTION 6. Section 232-14.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~†~~]**\$232-14.5**[~~†~~] **Appeals relating to claims for refund.**

14 (a) The denial in whole or in part by the department of
15 taxation of a tax refund claim may be appealed by the filing of
16 a written notice of appeal to [~~a~~] the board of review or the tax
17 appeal court within thirty days after notice of the denial of
18 the claim.

19 (b) An appeal may be filed with [~~a~~] the board of review or
20 the tax appeal court for review of the merits of a tax refund
21 claim, upon a notice of appeal filed at any time after one
22 hundred eighty days from the date that the claim was filed;

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1 provided that the department has not given notice of a denial of
2 the claim within that period.

3 (c) Notwithstanding any law to the contrary under title
4 14, this section shall apply to tax refund claims for all taxes
5 administered by the department of taxation. The procedures for
6 appeals from tax assessors, [a] the board of review, and the tax
7 appeal court provided under this chapter and under section 235-
8 114 shall apply to appeals relating to tax refund claims under
9 this section. Any claimed tax refund or credit appealed
10 pursuant to this section shall be awarded only if the claim
11 therefor was filed within the applicable statutory period of
12 limitation."

13 SECTION 7. Section 232-15, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§232-15 Appeal to board of review.** [~~The appeal to a~~
16 ~~board of review may be either to the board of review for the~~
17 ~~district in which the taxpayer has the taxpayer's principal~~
18 ~~place of business or to the board of review for the district in~~
19 ~~which the taxpayer resides or has the taxpayer's principal~~
20 ~~office or to the board of review of the first district.] The
21 notice of appeal to the board of review must be lodged with the
22 board and the assessor on or before the date fixed by law for~~

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1 the taking of the appeal. An appeal to the board of review
2 shall be deemed to have been taken in time if the notice thereof
3 shall have been [~~deposited in the mail, postage prepaid,~~
4 postmarked and properly addressed to the board and assessor, on
5 or before such date.

6 The notice of appeal must be in writing and any such
7 notice, however informal it may be, identifying the assessment
8 involved in the appeal and stating the grounds of objection to
9 the assessment shall be sufficient. [~~Upon the necessary
10 information being furnished by the taxpayer to the assessor, the
11 assessor shall prepare the notice of appeal upon request of the
12 taxpayer and any notice so prepared by the assessor shall be
13 deemed sufficient as to its form.]~~

14 The appeal shall be considered and treated for all purposes
15 as a general appeal and shall bring up for determination all
16 questions of fact and all questions of law, excepting questions
17 involving the Constitution or laws of the United States,
18 necessary to the determination of the objections raised by the
19 taxpayer in the notice of appeal. Any objection involving the
20 Constitution or laws of the United States may be included by the
21 taxpayer in the notice of appeal and in such case the objections
22 may be heard and determined by the tax appeal court on appeal

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1 from a decision of the board of review; but this provision shall
2 not be construed to confer upon the board [~~of review~~] the power
3 to hear or determine such objections. Any notice of appeal may
4 be amended at any time prior to the board's decision; provided
5 the amendment does not substantially change the dispute."

6 SECTION 8. Section 232-16, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) A taxpayer or county may appeal directly to the tax
9 appeal court without appealing to [a] the state board of review
10 or any equivalent administrative body established by county
11 ordinance; provided that a taxpayer appealing a real property
12 tax assessment shall first obtain a decision from an
13 administrative body established by county ordinance, prior to
14 appealing to the tax appeal court, if county ordinance requires
15 a taxpayer to do so. An appeal to the tax appeal court is
16 properly commenced by filing, on or before the date fixed by law
17 for the taking of the appeal, a written notice of appeal in the
18 office of the tax appeal court and by service of the notice of
19 appeal on the director of taxation and, in the case of an appeal
20 from a decision involving the county as a party, the real
21 property assessment division of the county involved. An

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1 appealing taxpayer shall also pay the costs in the amount fixed
2 by section 232-22."

3 SECTION 9. Section 232-17, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§232-17 Appeals from [~~boards~~] board of review to tax**
6 **appeal court.** An appeal shall lie to the tax appeal court from
7 the decision of [~~a~~] the state board of review, or equivalent
8 administrative body established by county ordinance. An appeal
9 to the tax appeal court is properly commenced by the filing, by
10 the taxpayer, or the county, or the director of taxation, of a
11 written notice of appeal in the office of the tax appeal court
12 within thirty days after the filing of the decision of the state
13 board of review or an equivalent county administrative body,
14 and, in the case of any appealing taxpayer, the payment of the
15 costs of court in the amount fixed by section 232-22, and
16 service of the notice of appeal on the director of taxation and,
17 in the case of an appeal from a decision involving the county as
18 a party, the real property assessment division of the county
19 involved. A notice of appeal shall be sufficient if it states
20 that the taxpayer, county, or director of taxation appeals from
21 the decision of the state board of review, or an equivalent
22 county administrative body, to the tax appeal court and may be

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1 amended at any time. The appeal shall bring up for
2 determination all questions of fact and all questions of law,
3 including constitutional questions involved in the appeal.

4 In case of an appeal by the county or the director of
5 taxation, a copy of the notice of appeal shall be forthwith
6 delivered or mailed to the taxpayer concerned or to the clerk of
7 the county concerned in the manner provided in section 232-7 for
8 giving notice of decisions.

9 An appeal shall be deemed to have been taken in time, and
10 properly commenced, if the notice thereof and costs, if any, and
11 the copy or copies of the notice shall have been deposited in
12 the mail, postage prepaid, properly addressed to the tax appeal
13 court, director of taxation, taxpayer or taxpayers, and, if
14 relevant, the real property assessment division of the county
15 involved, respectively, within the time period provided by this
16 section."

17 SECTION 10. Section 232-18, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§232-18 Certificate of appeal to tax appeal court.** Upon
20 the perfecting of an appeal to the tax appeal court, the tax
21 assessor [~~of the district from which the appeal is taken~~] shall
22 immediately send up to the tax appeal court a certificate in

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1 which there shall be set forth the information required by
2 section 232-16 to be set forth in the notice of appeal where an
3 appeal is taken direct from the assessment to the tax appeal
4 court.

5 The certificate shall be accompanied by the taxpayer's
6 return, if any has been filed; provided that the department of
7 taxation is authorized to redact all but the last four digits of
8 an individual taxpayer's social security number from an
9 accompanying tax return, a copy of the notice of appeal to the
10 state board of review, or an equivalent administrative body
11 established by county ordinance, and any amendments thereto, and
12 the decision or action, if any, of the state board of review or
13 equivalent administrative body. Failure of the assessor to
14 comply herewith shall not prejudice or affect the taxpayer's,
15 county's, or assessor's appeal and the certificate of appeal may
16 be amended at any time up to the final determination of the
17 appeal."

18 SECTION 11. Section 232-20, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§232-20 Certificate of appeal.** Upon the perfection of an
21 appeal, the judge of the tax appeal court shall send to the

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1 appellate court a certificate in which there shall be set forth,
2 among other things:

- 3 (1) A brief description of the assessment and the property
4 involved in the appeal, if any, in sufficient detail
5 to identify the same together with the valuation
6 placed on the property by the assessor;
- 7 (2) The valuation claimed by the taxpayer or county;
- 8 (3) The taxpayer's or county's grounds of objection to the
9 assessment;
- 10 (4) The valuation, if any, placed thereon by an
11 administrative body established by county ordinance
12 equivalent to [a] the state board of review; and
- 13 (5) The valuation placed thereon by the tax appeal court.

14 The certificate shall be accompanied by the taxpayer's
15 return, if any, a copy of the notice of appeal from the
16 assessment and any amendments thereof, the decision, if any, of
17 the state board of review or equivalent county administrative
18 body, a copy of the notice of appeal from the decision of the
19 state board of review, or equivalent county administrative body,
20 if any, and any amendments thereof, and a transcript or
21 statement of the evidence before and the decision of the tax
22 appeal court, and all exhibits, motions, orders, or other

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1 documents specified by either the taxpayer, the county, or the
2 assessor. No failure of the judge of the tax appeal court to
3 send or properly prepare the certificate or the accompanying
4 documents shall prejudice, limit, or in any manner affect the
5 taxpayer's, county's, or assessor's appeal, and the certificate
6 of appeal may be amended at any time up to the final
7 determination of the appeal."

8 SECTION 12. Section 232-24, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§232-24 Taxes paid pending appeal.** The tax paid upon the
11 amount of any assessment, actually in dispute and in excess of
12 that admitted by the taxpayer, and covered by an appeal to the
13 tax appeal court duly taken, shall, pending the final
14 determination of the appeal, be paid by the director of finance
15 into the "litigated claims fund". If the final determination is
16 in whole or in part in favor of the appealing taxpayer, the
17 director of finance shall repay to the taxpayer out of the fund,
18 or if investment of the fund should result in a deficit therein,
19 out of the general fund of the State, the amount of the tax paid
20 upon the amount held by the court to have been excessive or
21 nontaxable, together with from the date of each payment into the
22 litigated claims fund, the interest to be paid from the general

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1 fund of the State. For purposes of this section, the rate of
2 interest shall be computed by reference to section 6621(a) (with
3 respect to interest rate determination) of the Internal Revenue
4 Code of 1986, as of January 1, 2010. The balance, if any, of
5 the payment made by the appealing taxpayer, or the whole of the
6 payment, in case the decision is wholly in favor of the
7 assessor, shall, upon the final determination become a
8 realization under the tax law concerned.

9 In a case of an appeal to [a] the board of review, the tax
10 paid, if any, upon the amount of the assessment actually in
11 dispute and in excess of that admitted by the taxpayer, shall
12 during the pendency of the appeal and until and unless an appeal
13 is taken to the tax appeal court, be held by the director of
14 finance in a special deposit. In the event of final
15 determination of the appeal in the board of review, the director
16 of finance shall repay to the appealing taxpayer out of the
17 deposit the amount of the tax paid upon the amount held by the
18 board to have been excessive or nontaxable, if any, the balance,
19 if any, or the whole of the deposit, in case the decision is
20 wholly in favor of the assessor, to become a realization under
21 the tax law concerned."

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1 SECTION 13. Section 235-114, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any person aggrieved by any assessment of the tax or
4 liability imposed by this chapter may appeal from the assessment
5 in the manner and within the time hereinafter set forth. Appeal
6 may be made either to the [~~district~~] board of review or to the
7 tax appeal court. The first appeal to either the [~~district~~]
8 board of review or to the tax appeal court may be made without
9 payment of the tax so assessed. Either the taxpayer or the
10 assessor may appeal to the tax appeal court from a decision by
11 the board or to the intermediate appellate court from a decision
12 by the tax appeal court; provided that if the decision by the
13 board or the tax appeal court is appealed by the taxpayer, or
14 the decision by the board in favor of the department is not
15 appealed, the taxpayer shall pay the tax so assessed plus
16 interest as provided in section 231-39(b)(4)."

17 SECTION 14. Any member serving a term of appointment to
18 one of the previously existing district boards of taxation
19 review on the effective date of this Act shall be considered to
20 be appointed to the new statewide board of review for the
21 remainder of the member's current term, notwithstanding section
22 232-6(b), Hawaii Revised Statutes; provided that, if more than

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1 ten members are still serving terms of appointment to their
2 respective district boards on the effective date of this Act,
3 priority preference for appointment to the new statewide board
4 of review shall be based on length of term remaining.

5 SECTION 15. Any appeal or pending appeal to one of the
6 district boards of taxation review in which a decision has not
7 yet been rendered as of the effective date of this Act shall be
8 automatically transferred to the jurisdiction of the newly
9 constituted statewide board of review for adjudication. This
10 Act shall not affect rights and duties that matured, penalties
11 that were incurred, and proceedings that were begun before its
12 effective date; provided that any affected taxpayer who has
13 already appeared before a board but has not yet had a decision
14 rendered in their appeal may elect to either have the new
15 statewide board issue a ruling based on all available
16 information in the case or request a new hearing before the
17 statewide board.

18 SECTION 16. This Act shall not affect county real property
19 tax appeals and the respective county boards of review to which
20 they are appealed, nor shall it abrogate any county ordinance
21 relating to a county's real property tax appeal procedures.

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1 SECTION 17. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 18. This Act, upon its approval, shall take effect
4 on January 1, 2022.

INTRODUCED BY: *Ann D. Hill*

BY REQUEST

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Report Title:

Tax Appeals; Tax Board of Review

Description:

Replaces the four district tax boards of review with a single statewide board of review appointed by the Governor, consisting of ten members with three required for quorum. Authorizes board members and taxpayers to appear and conduct official business using cost-saving measures such as teleconferencing.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TAX APPEALS.

PURPOSE: To replace the four district Boards of Review with a single statewide Board of Review appointed by the governor, consisting of ten members with three required for quorum, and authorize board members and taxpayers to appear and conduct official business using cost-saving measures such as teleconferencing.

MEANS: Amend sections 26-10(d), 232-6, 232-7, 232-13, 232-14(b), 232-14.5, 232-15, 232-16(a), 232-17, 232-18, 232-20, 232-24, and 235-114(a), Hawaii Revised Statutes.

JUSTIFICATION: Currently, the Department's existing Board of Review appeals structure, with a separate board for each of the four taxation districts, is overwhelmed with challenges to the point where it has become practically inoperable. A substantial number of tax appeals have been unable to be scheduled for hearing or have been substantially delayed in being heard due to the boards' inability to regularly and consistently achieve quorum. Nominal compensation and frequent conflicts of interest for practicing tax professionals have limited the pool of candidates who are qualified and willing to serve as board members, particularly on islands other than Oahu. Replacing the four district Boards of Review with a single, statewide Board of Review will allow appeals to be resolved more expeditiously.

Impact on the public: Taxpayers will benefit from a more streamlined and efficient appeals process; aggrieved taxpayers will more readily receive a chance to be heard and have their issues adjudicated.

Impact on the department and other agencies: The Department will benefit from streamlined and expedited appellate review and eliminating the substantial backlog of cases at the board of review level.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2022.