



The Civic Federation

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THE PROPERTY TAX APPEAL BOARD BACKLOG:

A History and Recommendations

June 13, 2019

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The Civic Federation is an independent, non-partisan government research organization working to maximize the quality and cost-effectiveness of government services in the Chicago region and State of Illinois.

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EXECUTIVE SUMMARY

The Property Tax Appeal Board (PTAB) is one of two property tax appeal options available to property owners and taxing districts after a county's Board of Review. While PTAB plays an important role in ensuring justice for property owners, it remains obscure to both the public and to state officials. It has been underfunded and understaffed and has a significant accumulation of cases that stood at 62,077 at the end of State fiscal year 2018. While many reforms have been proposed by different stakeholders to improve operations at PTAB, not enough has been done to significantly reduce the backlog, delaying justice for taxpayers who have been incorrectly taxed and resulting in a large overhang of possible refunds for taxing bodies, which must be paid from current revenues.

The Civic Federation in 2015 requested and received data from PTAB and analyzed it to verify the source of the backlog was Cook County, as had been supposed by observers for many years, and also look at the breakdown of cases by type of property. The Federation determined that the backlog is indeed centered in Cook County and is related to the high volume of both residential and commercial and industrial appeals. The volume of appeals and size of the backlog from Cook County is larger than can just be accounted for by the fact that the county holds nearly one-third of the state's 5.8 million parcels of property and 45% of its taxable value. Of the number of outstanding cases at PTAB as of the end of fiscal year 2018, 83.9% were from Cook County. Many of the largest counties in the state experienced a backlog in cases at PTAB after the nationwide crash in the property market in 2007-2008 precipitated an across-the-board increase in appeals. However, Cook County still has a more substantial backlog of cases outstanding for both residential and commercial and industrial properties.

The Federation also requested information from the Cook County Treasurer's Office about trends in the number and amount of PTAB refunds paid to Cook County property owners. Reducing the backlog of cases at PTAB by increasing the rate at which cases are processed and resolved would increase the speed of justice for taxpayers, but could also result in an increase in the number of refunds that need to be made by governments out of current revenues and therefore could impact the budgets of the county's schools, municipalities and community colleges. The data showed that both the number and total amount of refunds processed by the Treasurer's Office have increased in the last several calendar years, reaching 38,035 refunds paid totaling \$133,749,250 in 2017, the bulk of which were from six separate tax years. The following calendar year both the dollar amount and number of refunds paid declined by about 12% to \$117,788,535 and 33,154. The median refund has remained fairly constant between calendar years 2003 and 2018 and the average refund has decreased. Since data for the most recent tax years through 2017 are incomplete, it is not possible to extrapolate with confidence from the data whether refunds will increase again or continue the decrease seen in 2018. It will depend on both the volume of appeals and the speed with which the cases are moved toward resolution.

The fact that taxing districts must pay refunds out of current revenues is not a reason to further delay justice for taxpayers who have been incorrectly taxed, but it is a reason to proceed with measures to reduce the backlog in an orderly and transparent manner.

Civic Federation Recommendations

The Civic Federation offers recommendations to improve PTAB's workflow and enable it to reduce and eventually eliminate the backlog of cases, some of which could be implemented through rule changes and some of which would require budgetary or legislative changes.

The proposed rule changes were developed by an ad hoc committee of the Illinois State Bar Association in 2013 and supported by the Civic Federation, Taxpayers' Federation of Illinois and the Illinois Chamber of Commerce. While PTAB has made some progress in implementing changes, the recommendations still include:

- Case management for the largest cases;
- Expediting motions for extensions of time;
- Simplifying decision documentation procedures for residential properties; and
- Empowering Administrative Law Judges to actively move motions and cases to disposition.

If additional commonsense procedural and rule changes are first implemented, the Civic Federation could support an increase to the Property Tax Appeal Board's budget. However, such an increase would have to be accompanied by a multi-year plan to reduce the Cook County case backlog and prevent it from growing in the future.

The Illinois General Assembly should additionally expand the types of data on cases that PTAB is required to report in its statutorily required Annual Report (35 ILCS 200/16-190) to include information about residential cases, smaller commercial and industrial cases and narrative and analysis of all the data in order to assist the reader in evaluating the meaning of the report. This would improve transparency and provide additional information to the public about PTAB's activities.

WHAT IS THE PROPERTY TAX APPEAL BOARD?¹

The Property Tax Appeal Board (PTAB) is an independent, quasi-judicial state agency that hears appeals of board of review decisions regarding the valuation of assessed property. PTAB is made up of five members appointed by the Governor with the advice and consent of the Illinois Senate. The Board members appoint an Executive Director and are supported by a professional staff.²

Both taxpayers and taxing bodies are allowed to appeal Board of Review decisions. Additionally, a taxing district with an interest in a taxpayer's appeal is permitted to intervene and become involved in the appeal.³

While appeals to PTAB usually are filed before property taxes are due, they generally are not resolved until after property tax bills must be paid. Therefore, most taxpayers choose to pay the bill when due and a reduction in assessed value granted by PTAB will result in a refund of property taxes already paid.⁴ The governments on the taxpayer's property tax bill pay refunds out of their current revenues.

History of the Property Tax Appeal Board in Illinois and Cook County⁵

The Property Tax Appeal Board (PTAB) was created in 1967 to provide taxpayers outside of Cook County with an alternative to the courts when appealing a property tax assessment beyond the remedies provided at the county level. Its original purpose was to smooth out intercounty disparities in decisions by the boards of review by establishing a fair tribunal at the state level.

Implicitly, the PTAB's original mission was to provide uniformity among counties with similar systems of property tax assessment. The General Assembly exempted counties using classification from certain sections of the Property Tax Code, including those dealing with the PTAB. Since Cook County was and remains the only county to adopt a classification system under the authority granted by the 1970 Illinois Constitution to the state's most populous counties, PTAB's jurisdiction was excluded from Cook while it extended throughout the rest of the state's 101 other counties.

Thus, for a number of years, there was a dual property tax assessment appeals system in Illinois. In all counties except Cook, decisions of boards of review could be appealed to either the PTAB

¹ For more about PTAB procedures, as well as the entire property tax appeals process, see Civic Federation, Cook County Property Tax Appeals: A Primer on the Appeals Process with Comparative Data for 2000-2008, pp. 28-30, 2009. Available at <https://www.civicroad.org/civic-federation/publications/cook-county-property-tax-appeals-primer-appeals-process-comparative-da>.

² Most recently the Board appointed the immediate past PTAB Board Chairman as Executive Director.

³ 86 Illinois Administrative Code Section 1910.60(b).

⁴ 35 ILCS 200/16-185 (In the unlikely event that the property tax bill has not already been paid when the Board issues its decision, the law provides for an abatement of the unpaid property taxes).

⁵ This section adapted from Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," 2001, pp. 4-7. Available at <https://www.civicroad.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii->

or to Circuit Court. In Cook County, a decision of the Board of Appeals⁶ could be appealed only to the Circuit Court.

In the Circuit Court at this time, the doctrine of “constructive fraud” controlled judicial review of assessment appeals. This doctrine held that only upon showing that an assessment was “so grossly out of the way” that it could not be reasonably supposed to have been “honestly” made, could a taxpayer receive relief from the courts.⁷

In 1989 the Illinois Supreme Court modified the doctrine of constructive fraud in *In Re Application of County Treasurer, etc. v. Ford Motor Company*, 131 Ill.2d 541, 546 N.E.2d 506 (1989), further narrowing a taxpayer’s ground for challenging an assessment in court. The court in *Ford Motor Company* held that a taxpayer had to provide evidence in every case of “the circumstances surrounding the assessment,” in some cases calling the assessor to testify about those circumstances, before a court could find an actual or constructive absence of “honest judgment” by the assessing official in the assessment of the property.⁸ The decision rejected a theory frequently invoked in the Cook County Circuit Court contending that constructive fraud could be shown by a bare discrepancy of sufficient (but undefined) magnitude between the values for the subject property estimated by the assessor and taxpayer, without any evidence of how the assessment valuation had come about.⁹ But the Illinois Supreme Court held that only one previous appellate ruling had actually approved the theory.¹⁰ There was general agreement among assessing officials and a number of members of the property tax bar that this decision unnecessarily diverted attention away from a property’s value and onto the conduct of public officials in the ordinary valuation appeals that constituted the majority of cases in the Cook County court.¹¹ This led to several unsuccessful attempts to overrule the *Ford* decision legislatively.

Introduction of the Property Tax Appeal Board to Cook County¹²

The Civic Federation convened the first Task Force on Reform of the Cook County Property Tax Appeals Process to draft comprehensive and lasting statutory reform in response to the ruling in *Ford Motor Company*. The Task Force recommended that the doctrine of constructive fraud be expressly abolished. Instead, a taxpayer would be required to prove through “clear and convincing” evidence that the assessment was incorrect.¹³ The legislature adopted all of these

⁶ The Board of Appeals, a two-member assessment review board, was the predecessor agency to the current Board of Review. Public Act 89-0671, enacted in 1996, created the Board of Review and expanded it to three members. See discussion below.

⁷ *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876).

⁸ *Ford Motor*, 131 Ill. 2d at 553-54, 546 N.E.2d at 512.

⁹ *Ford Motor*, 131 Ill. 2d at 553-54, 546 N.E.2d at 511-12.

¹⁰ *Ford Motor*, 131 Ill. 2d at 552-53, 546 N.E.2d.

¹¹ The tax bar and members of the several task forces discussed below understood that circumstances in which an assessment as made were necessary elements of judicial inquiry in cases that raised constitutional issues or otherwise contested assessment practices, but it was believed that such cases would be relatively rare by comparison to cases that simply contested the market value of individual properties.

¹² This section adapted from Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III,” 2001, pp. 4-7. Available at <https://www.civiced.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii->

¹³ Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process,” 1995.

recommendations in Public Act 89-0126, which became effective July 11, 1995.¹⁴ In addition, the legislature made other changes to the property tax appeals process in Cook County. Most notably, the PTAB was introduced into Cook County.¹⁵

In order to analyze these additional changes, which had not been considered by the Civic Federation prior to their enactment, a second Task Force was convened. The Task Force II made several recommendations for revising P.A. 89-0126. A number of these recommendations were adopted by the legislature in P.A. 89-0671, which became effective August 14, 1996.

The PTAB was gradually introduced into Cook County and while many groups, including the Civic Federation, were apprehensive about its ability to handle the increased and complex caseload of appeals from the State's most populous and diverse county, many taxpayers in Cook County also welcomed the opportunity to appeal an assessment beyond the Board of Review without the formality and cost of judicial review.

However, there were a number of issues associated with integrating the longstanding practices of the PTAB that had been tailored to downstate property tax systems into the unique environment of Cook County. Specifically, the PTAB had to decide the appropriate application of the Illinois Department of Revenue's median levels of assessment as determined by its sales ratio study to the various classes of property in Cook County. Cook County officials strongly questioned the use and statistical accuracy of IDOR medians for any class but single-family residential property, and initially even questioned the use of such medians for that residential class. The Civic Federation's Task Force II report discussed the impending assessment level issue, as well as an expected upsurge of taxing district interventions or direct PTAB appeals by districts, and a longstanding conflict in the Property Tax Code provisions for PTAB and circuit court jurisdiction, whereby taxing districts might appeal to PTAB while a taxpayer simultaneously appealed to the court.¹⁶ Task Force II also recommended barring taxing districts from participation in PTAB appeals as a remedy for the latter two issues, and it recommended a delay in PTAB's Cook County jurisdiction to address the assessment level questions and various anticipated procedural problems.¹⁷ These recommendations were not enacted.

The PTAB's Cook County Assessment Level Rulings

The Civic Federation convened Task Force III in 2000 to consider the issues noted in the previous section, and to make recommendations following controversial commercial and industrial property rulings by PTAB that some argued created the potential for large losses in

¹⁴ See 35 ILCS 200/23-15.

¹⁵ See 35 ILCS 200/16-160.

¹⁶ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process II," April 1996, p. 14-23. See also, 35 ILCS 200/16-160. The election to appeal either to PTAB or court is exclusive, i.e. it forecloses the remedy that is not elected, *for the taxpayer*; but at the same time, a *taxing district's* right to appeal to PTAB is unqualified by any express language in the statute. The statute seems to allow such an appeal even when the taxpayer has elected the court process. Permitting appeals to different forums regarding the same matter—the same assessment and tax year—simultaneously, is legally anomalous. Over the last 20 years the conflict between the jurisdiction of PTAB and the court has arisen in a number of cases, but it has never been definitively resolved, and the contradictory statutory language remains unchanged.

¹⁷ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process II," April 1996, p. 19-23.

local government revenue and tax burden shifts onto homeowners.¹⁸ Estimates of such a potential revenue impact for public bodies varied dramatically: as the report of Task Force III described, the Cook County Assessor’s office estimated a revenue loss to all Cook County taxing districts of \$650 million, but at the same time IDOR estimated the potential loss as only ranging from \$56 million to \$79 million.¹⁹

The Civic Federation and the Task Force were equally concerned with the financial stability of Cook County taxing agencies and the rights of taxpayers to seek redress from inaccurate property tax bills. There was no doubt that the issues PTAB had ruled on—whether *de facto* assessment levels could be substituted under some circumstances for the levels prescribed by statute and Cook County ordinance—could be the focus of complex litigation between taxpayers and the Cook County taxing authorities. A significant increase in the involvement of taxing districts in such litigation was also anticipated.

Task Force II had voiced the concern that the mere expansion of PTAB to Cook County could cause a significant increase the involvement of taxing bodies in the appeals process. At PTAB taxing districts with an interest in the appeal are permitted to intervene and become involved in the appeal, regardless of the amount of the assessment reduction sought.²⁰ With the possible threat to their current revenues posed by the PTAB’s controversial rulings, Task Force III was concerned that taxing agencies were being “provoke[ed] ...into not only intervening in all major taxpayer appeals, but also filing under-valuation complaints and independently appealing decisions of the Board of Review.”²¹ Since Task Force II’s proposal to eliminate all issues related to taxing districts at PTAB by barring their participation failed to gain any legislative traction, Task Force III proposed to limit interventions to cases with larger amounts in controversy, and to limit the categories of districts who could intervene to municipalities, and school and community college districts.²²

The PTAB’s assessment level rulings in the *Bosch* and *Lurie* cases were similar to one another, differing only as to which assessment level derived from the Illinois Department of Revenue

¹⁸ These PTAB rulings, in what are commonly known as the *Bosch* and *Lurie* cases, substituted assessment levels derived from the assessment-sales ratio studies by the Illinois Department of Revenue (IDOR) for levels otherwise mandated by Cook County ordinance. As discussed briefly in the text below, *Bosch* and *Lurie* were ultimately reversed by the Illinois Appellate Court on purely procedural grounds. The details concerning PTAB’s use of the IDOR’s ratio studies rather than the ordinance levels to grant assessment relief for other than Class 2 property are not central to this report, although the PTAB’s capacity to handle issues of great complexity such as assessment level disputes is relevant as discussed in the Appendix. To read more concerning the controversy over the IDOR studies as it originally arose, see Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III,” April 2, 2001. Available at <https://www.civicfed.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii>.

¹⁹ Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III,” April 2, 2001, p. 10. While the lower IDOR estimates were not insignificant, in the broad context of the Cook County property tax system, which collected and spent approximately \$13 billion annually, the question of whose estimate was closer to reality—which was never resolved—was crucial.

²⁰ 35 ILCS 200/16-160; 86 Illinois Administrative Code § 1910.60(b). Additionally, at both the Board of Review and PTAB, taxing districts can file their own appeals, most commonly under-assessment claims.

²¹ Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III,” April 2, 2001, p. 12.

²² Civic Federation, “Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III,” April 2, 2001, p. 22-25.

(IDOR) sales ratio studies the PTAB would substitute for the level prescribed by the Cook County classification ordinance.²³ In both cases, the rulings were based upon PTAB's recognizing the results of the IDOR studies and according them binding effect. However, PTAB had not conducted any extensive evidentiary hearings nor heard any extensive legal argument as a predicate for the rulings. Task Force III believed there was a strong probability that the reviewing courts would reverse these rulings on procedural grounds, and thus would not establish clear rules on the merits for future assessment level disputes.²⁴

In *Cook County Board of Review v. Property Tax Appeal Board; Robert Bosch Corporation; et al.*, the appellate court held that, in six of eight consolidated cases, the taxpayers had failed to raise the constitutional issues the PTAB had addressed, and in the other two cases the taxpayers had failed to make an evidentiary record fit for appellate review.²⁵ In *Cook County Board of Review v. Property Tax Appeal Board and The Lurie Company*, the appellate court similarly held that the taxpayer had failed to raise the requisite constitutional uniformity issues for review.²⁶

These appellate decisions arrested the momentum in PTAB to resolve all assessment level controversies by automatically applying the IDOR levels.²⁷ While a full discussion of the assessment level issue is not central to this report, PTAB's actions do provide a context for evaluating the Board's capacity for reform.

Public Act 93-0758, effective July 16, 2004, was enacted to partially reverse the holdings in *Bosch* and *Lurie*, allowing new evidence that had not been introduced at a hearing of the county board of review, but not new issues. PTAB's rules were changed to reflect both the Appellate Court rulings and new law. The PTAB in residential cases is directed to consider the IDOR sales ratio study and other competent evidence to find the appropriate assessment level and to consider only the ordinance level for all other property.²⁸

HOW DOES A PTAB APPEAL WORK?²⁹

Taxpayers or taxing districts who filed a complaint at the Board of Review and who are unsatisfied with the Board of Review's decision, may appeal to PTAB. Natural persons may represent themselves in a PTAB appeal, although persons who wish to have a representative conduct the appeal for them, including all corporate taxpayers, must retain a licensed attorney.

²³ In *Bosch* the PTAB held that the ratio study levels for each class would be substituted for the ordinance level. In *Lurie*, it held that for the commercial and industrial classes, a level 2.5 times the ratio study level of the residential class would be substituted, based on the provision of Ill. Const. 1970, Art. IX, § 4(b) that the highest class level may not exceed the lowest by more than that factor.

²⁴ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 18.

²⁵ 339 Ill.App.3d 529, 534, 536, 791 N.E.2d 8, 13, 14 (First Dist. 2002), app. den. 205 Ill.2d 578, 803 N.E.2d 480 (2003).

²⁶ 345 Ill.App.3d 539, 546-47, 803 N.E.2d 55, 61 (First Dist. 2003), cert. den. 543 U.S. 821 (2004).

²⁷ For a more detailed account and history of the Task Force recommendations and PTAB outcomes, see the Appendix.

²⁸ 86 Illinois Administrative Code § 1910.50(c)(3).

²⁹ Adapted from Civic Federation, *Cook County Property Tax Appeals: A Primer on the Appeals Process with Comparative Data for 2000-2008*, November 17, 2009, pp. 28-30.

PTAB is directed by the statute to avoid the use of formal rules of pleading, practice and evidence “to the extent that [it] considers practicable.”

A party choosing to appeal to PTAB must file within 30 days of a decision by the Board of Review or within 30 days of the certification by the Board of Review of the assessments of the township in which the property is located, whichever is later.³⁰ The Board of Review then has 90 days within which to respond, but can request extensions.³¹ As a practical matter, while appeals to PTAB usually are filed before property taxes are due, appeals generally are not resolved until after property tax bills must be paid. Although payment is not a prerequisite, a PTAB appeal does not interrupt the collection process (including tax sale) and therefore most taxpayers choose to pay the bill when due. A reduction in assessed value granted by PTAB will result in a refund of property taxes already paid.³²

Unlike appeals to the Assessor’s Office or the Board of Review, appeals to PTAB are adversarial in nature. The Board of Review must respond to the appeal of the assessment it certified against the challenge made by either the taxpayer or other interested party.³³ The State’s Attorney often represents the Board of Review in these proceedings and therefore receives a copy of every appeal filed, although in smaller cases the State’s Attorney may not appear.³⁴ If an assessment reduction of \$100,000 or more is sought, the Board of Review must send notices of the appeal to all taxing districts listed on the tax bill.³⁵ Regardless of the amount of the assessment reduction sought, a taxing district with an interest in the appeal is permitted to intervene and become involved in the appeal.³⁶

In all cases, PTAB reviews each assessment *de novo*. This means that the assessment is examined as if the prior proceeding had not occurred in most contexts, though this interpretation was not applied in the *Bosch* decision and then was the subject of subsequent legislative action.³⁷ Instead, each assessment is reviewed as if it is equally likely that the assessment is correct as it is that the assessment is incorrect. However, the party making the complaint has the burden of going forward.³⁸ In other words, the party alleging the assessment is incorrect must provide substantive evidence or argument that brings the correctness of the assessment into doubt.

After all the parties to an appeal have had the opportunity to submit evidence, a hearing is scheduled if any party requests a hearing or if PTAB decides that a hearing is needed.³⁹ Notice of

³⁰ 35 ILCS 200/16-160

³¹ Taxpayers’ Federation of Illinois, “PTAB: Struggling to Remain Afloat in a Sea of Appeals,” *Tax Facts*, 71-8. September 2018.

³² 35 ILCS 200/16-185 (In the unlikely event that the property tax bill has not already been paid when the Board issues its decision, the law provides for an abatement of the unpaid property taxes.)

³³ 86 Illinois Administrative Code § 1910.40

³⁴ 86 Illinois Administrative Code § 1910.30(l)

³⁵ 35 ILCS 200/16-180

³⁶ 86 Illinois Administrative Code § 1910.60(b)

³⁷ See discussion in Appendix, footnote 86 and accompanying text.

³⁸ 86 Illinois Administrative Code §1910.63(a)

³⁹ 35 ILCS 200/16-170.

the hearing is provided to all parties.⁴⁰ A uniformity challenge under the Illinois Constitution alleging disparity in the assessments of similar properties must be proven by clear and convincing evidence.⁴¹ Clear and convincing evidence is a legal standard of proof requiring more than a preponderance of the evidence but less than proof beyond a reasonable doubt. An appeal alleging an error in the fair market value used for the assessment of a property must be proven by the preponderance of the evidence.⁴² The preponderance of the evidence standard of proof requires that the party making the complaint show that it is more likely than not that their allegation is correct.

A majority of PTAB's five members must agree on any decision; and every decision must be based on "equity and the weight of the evidence."⁴³ "Equity and weight of the evidence" is merely statutory language used to clarify that decisions at PTAB are to be based on the facts of the case rather than on the judicial doctrine of "constructive fraud," discussed above, which was used by courts at the time of PTAB's creation.

At the conclusion of every case, PTAB issues a written opinion explaining the basis of its decision. When a decision reducing an assessment is rendered, the excess taxes paid are refunded plus interest.⁴⁴ Any change in the assessed value of an owner-occupied home granted by PTAB is communicated to the local property tax officials and remains in effect until the property is reassessed at the next general reassessment.⁴⁵ Any party unsatisfied with the decision of PTAB may appeal the decision. If the party bringing the appeal sought a change in the assessed value of less than \$300,000, the appeal is taken to the circuit court in accordance with the Administrative Review Law.⁴⁶ If the complaint sought a change of more than \$300,000, the appeal is taken directly to the appellate court.⁴⁷

THE CASE BACKLOG AT PTAB

A number of different bills were introduced in the Illinois General Assembly in the years before and after the *Bosch* and *Lurie* cases were decided at the Appellate Courts that would have modified PTAB's jurisdiction. One of these bills was Senate Bill 620, which was introduced in 2003 and would have removed the PTAB's jurisdiction over commercial and industrial property tax appeals in Cook County, essentially limiting those classes of property to appeals in the Circuit Court. The Civic Federation opposed this measure as going too far. However, because of the potential significant reduction in its docket due to Senate Bill 620, PTAB's budget and staff

⁴⁰ 35 ILCS 200/16-170 and Illinois Administrative Code § 1910.67(d). Taxing districts with an interest in the property that have not intervened do not receive notice of the hearing since by law they are considered to receive notice of the hearing when the State's Attorney receives notice.

⁴¹ 86 Illinois Administrative Code § 1910.63(e)

⁴² 86 Illinois Administrative Code §1910.63(e)

⁴³ 35 ILCS 200/16-185 and Illinois Administrative Code § 1910.50(c)

⁴⁴ 35 ILCS 200/16-185 and 35 ILCS 200/23-20.

⁴⁵ 35 ILCS 200/16-185 and Illinois Administrative Code § 1910.50

⁴⁶ 35 ILCS 200/16-195

⁴⁷ 35 ILCS 200/16-195

were reduced by more than half in FY2003.⁴⁸ Senate Bill 620 was eventually voted down by a significant margin in the Illinois House after narrowly passing the Senate.

However, PTAB's budget was not restored after Senate Bill 620 was voted down and it closed its Cook County office in Des Plaines. At the same time as its budget and staff⁴⁹ were cut, the number of filings at PTAB continued to increase as the real estate bubble inflated and then collapsed. Additionally, local governments, looking to protect their tax bases, intervened in more PTAB cases.⁵⁰ With all of these pressures, a backlog of cases—particularly in Cook County—ballooned.

History of the Backlog

The following chart shows the total number of appeals pending at PTAB in fiscal years 2002 through 2018 as of the end of each fiscal year on June 30. It also shows the backlog broken out to Cook County and Downstate. It is important to recognize that Cook County has by far the most property parcels in the State of Illinois. The number of parcels is currently nearly 1.8 million, or nearly one-third, of the statewide total of 5.8 million.⁵¹ It is also important to note that PTAB appeals can contain more than one parcel. Residential appeals generally involve a single parcel of property, while appeals involving commercial or industrial property generally have multiple properties bundled together in a single case.⁵² The chart shows a significant increase in

⁴⁸ Illinois Auditor General. "State of Illinois Property Tax Appeal Board Compliance Examination for the Two Years Ended June 30, 2010," May 12, 2011, p. 10. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY10-PTAB-Comp-Full.pdf>.

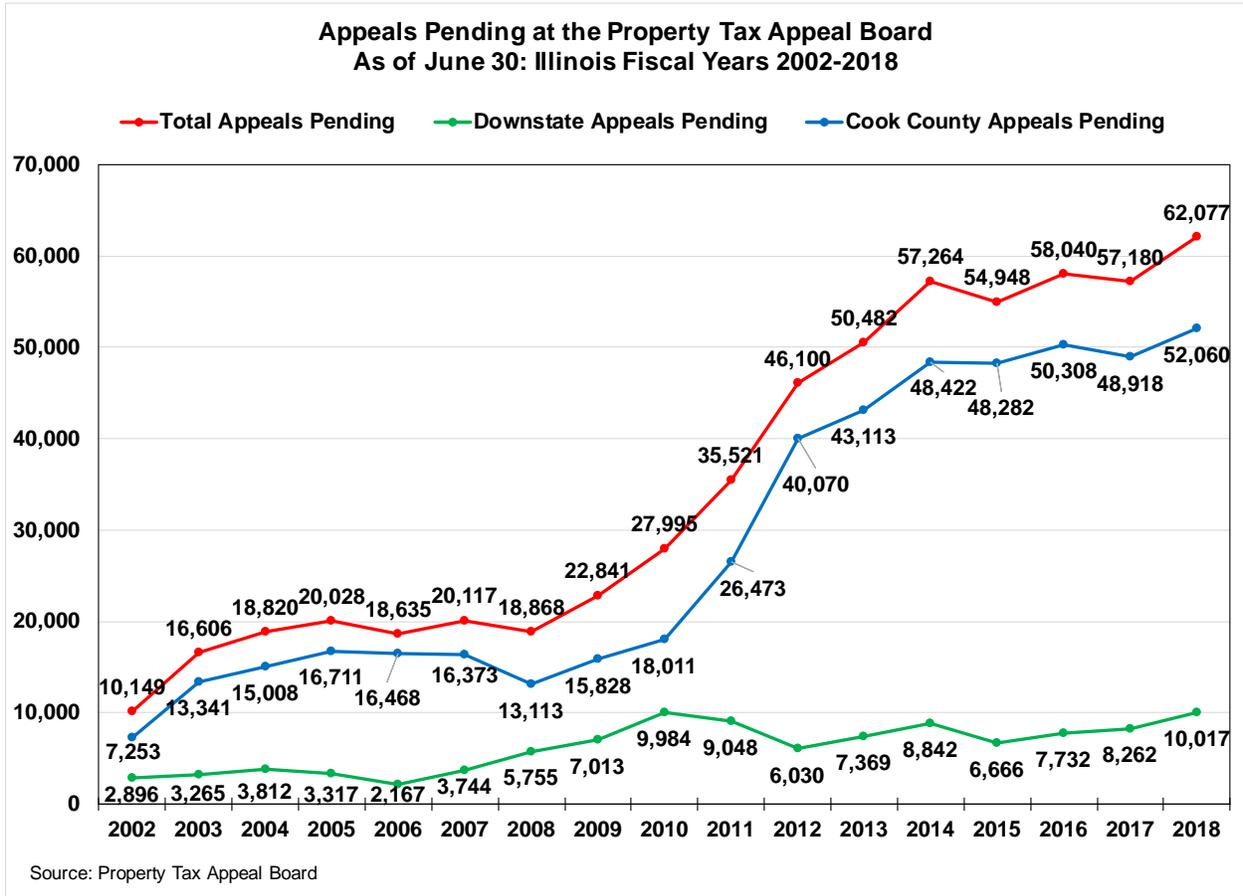
⁴⁹ See page 14 for a chart showing average staffing trends by fiscal year.

⁵⁰ Civic Federation analysis of data provided by PTAB.

⁵¹ Illinois Department of Revenue, "Table 17: Abstract of 2017 Locally Assessed Real Estate and Railroad Property by County, as Equalized before Exemptions." Available at <https://www2.illinois.gov/rev/research/taxstats/PropertyTaxStatistics/Documents/Y2017Tb117.xls>.

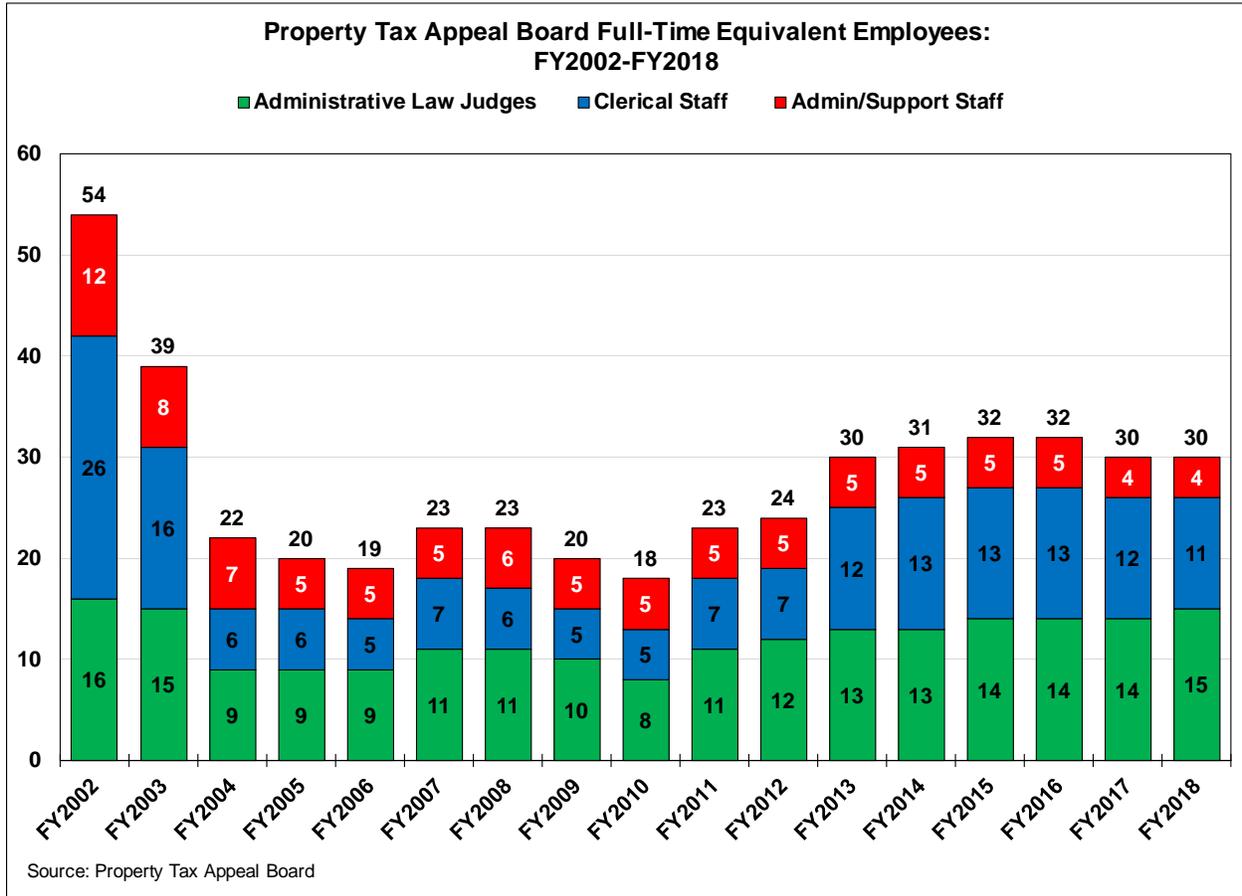
⁵² Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 9. Available at <https://www.civicfed.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii->

the number of appeals pending as of the end of the state fiscal year for both Cook County and downstate.



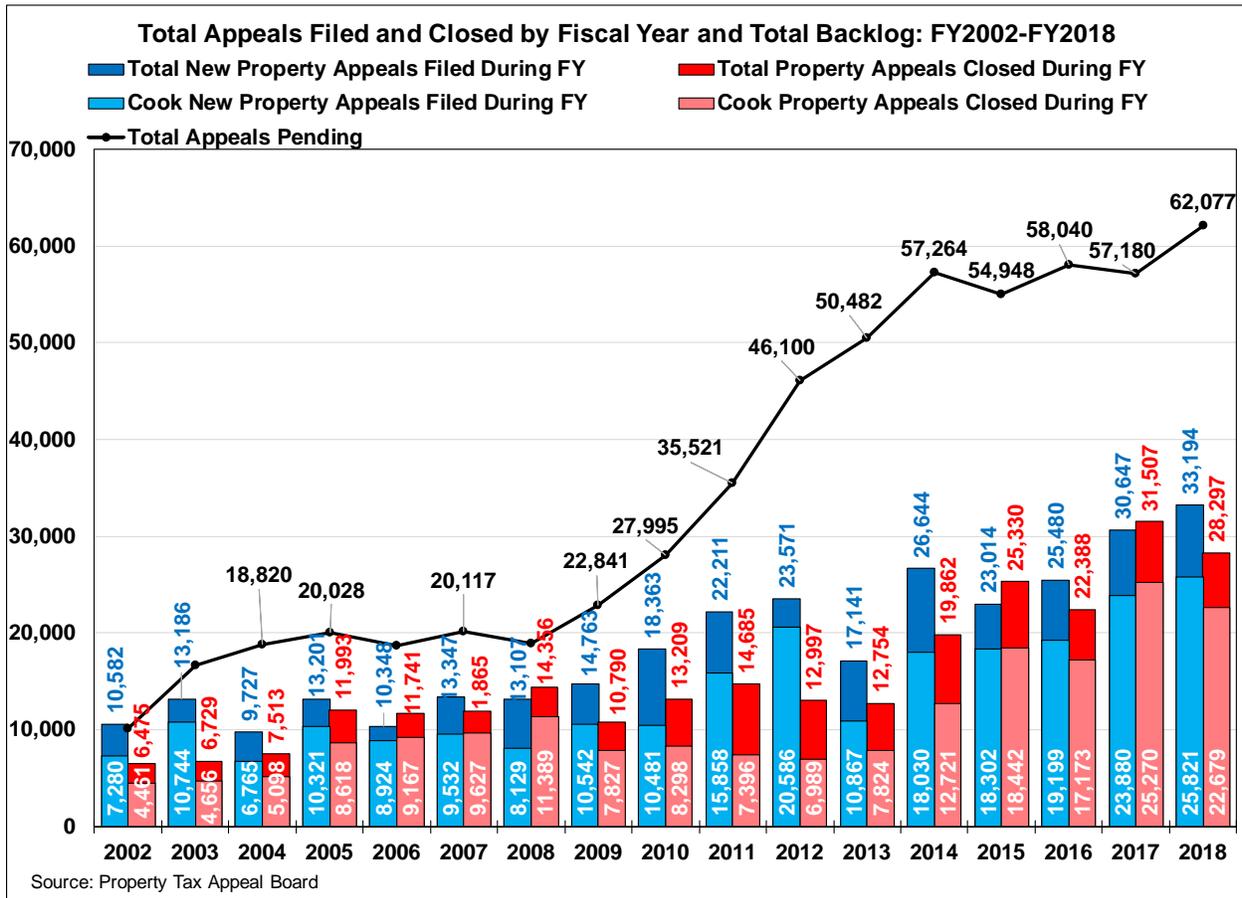
The following chart shows the number of employees at the Property Tax Appeal Board for the fiscal years 2002 to 2018 and shows the significant decrease in staffing due to Senate Bill 620,

which shows up in FY2004 staffing levels. Staffing levels have remained relatively flat since an increase in FY2013.



The following chart shows the total and Cook County number of new appeals filed at PTAB during each State of Illinois fiscal year 2002 through 2018 vs. the total and Cook County number of appeals closed during the same fiscal year. Note that appeals closed may be from any year with appeals pending at PTAB. The number of appeals filed and closed is compared to the total backlog as of the end of the fiscal year. The chart shows that while the number of appeals closed

each year by PTAB has increased, the number of appeals filed has increased faster, resulting in an increase in appeals pending.



As the backlog grew, a number of groups, including the Civic Federation, the Taxpayers’ Federation of Illinois and the Illinois State Bar Association, continued to push for compromise legislation that would resolve the level of assessment issue and reduce the backlog of cases by distinguishing between large and small cases and other procedural improvements.⁵³ None of this legislation was approved.

In addition to some proposed rule changes, the PTAB attempted to deal with the backlog by charging a filing fee to increase resources. This rule was not approved and eventually the Board requested additional funding in the State budget, receiving approval to hire additional Administrative Law Judges and clerical staff in FY2012. The Board also requested and received a 6% increase to its budget in FY2013 in order to increase its staff.⁵⁴ The PTAB’s staff has not

⁵³ See for example Senate Bill 1704, sponsored by Senator Don Harmon. <http://ilga.gov/legislation/BillStatus.asp?DocNum=1704&GAID=8&DocTypeID=SB&LegId=19896&SessionID=50&GA=94>.

⁵⁴ Illinois State Auditor, “State of Illinois Property Tax Appeal Board Compliance Examination For the Two Years Ended June 30, 2012,” p. 10. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY12-PTAB-Comp-Full.pdf>.

increased substantially since then,⁵⁵ even though the rate of appeals and the backlog in Cook County, as shown in the chart above, continued to grow and so has the backlog of downstate appeals after dipping in FY2012 and FY2015. In the Illinois Auditor General's 2016 compliance examination, PTAB reported that, "in Fiscal Years 2015 and 2016, it has received a combined 27% increase in cases from Cook County alone." The Auditor General's Office found, as it had in every previous audit dating back to FY2004, that the PTAB "did not allow for the speedy hearing of all appeals." The Auditor General considers resolution within one year as "speedy." The 2016 audit goes on to say, "Without the timely processing of property tax appeals, the Board jeopardizes compliance with its statutory mandate, the taxpayer is not adequately served, and the operations of the Board will become unmanageable."⁵⁶

Other Contributing Factors to the Backlog

In addition to insufficient staff and funding, as well as an increased caseload, observers have critiqued PTAB's procedures as contributing to or at least not improving the backlog.⁵⁷ Many of these procedures stem from the PTAB's self-described history and culture as a "'poor man's court' where a taxpayer can get a fair hearing without hiring an attorney or paying filing fees."⁵⁸ Similar procedures are followed in all cases, no matter the amount of reduction requested, the complexity of the case or whether a taxing district has intervened. Hearings are still scheduled for cases where the taxpayer has asked for a decision to be made on the weight of the documentary evidence alone. On the other hand, PTAB has recently adopted some rules that encourage settlement.⁵⁹ The Board has not introduced electronic filing, like many courts have in Illinois and across the United States. PTAB has taken some steps toward electronic records, including an online case tracking system and has started to electronically process files and interact with Boards of Review electronically. However, much of what PTAB does remains paper or PDF-based.

Some observers complain that PTAB gives too many extensions and its time is consumed by hearing motions for extensions of time, rather than cases.⁶⁰ This critique is borne out by even a

⁵⁵ During Fiscal Year 2018, PTAB contracted with 5-6 retired employees as "75-day workers" in order to help clear the backlog. See "Minutes of the Property Tax Appeal Board Meeting Held on January 9, 2018, Des Plaines, Illinois" available at <http://www.ptab.illinois.gov/Minutes/2018Meeting/minutes201801.pdf>. Under state law, certain state retirees can work for up to 75 days a year and still receive their pensions.

⁵⁶ Illinois State Auditor, "State of Illinois Property Tax Appeal Board Compliance Examination For the Two Years Ended June 30, 2016," p. 9. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY16-PTAB-Comp-Full.pdf>.

⁵⁷ Such observers include the Civic Federation, the Illinois State Bar Association State and Local Taxation Section Council, the Taxpayers' Federation of Illinois and the Illinois Chamber of Commerce, all signatories to a June 2013 set of recommendations to eliminate the case backlog and "improve the overall adjudication flow at the agency." The Civic Federation also made recommendations to improve PTAB procedures in the Task Force III report of April 2001.

⁵⁸ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 12. Available at <https://www.civicfed.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii->

⁵⁹ Taxpayers' Federation of Illinois, *Tax Facts*, "PTAB: Struggling to Remain Afloat in a Sea of Appeals," September 2018. Available at <https://www.illinoistax.org/index.php/ptab-struggling-to-remain-afloat-in-a-sea-of-appeals/>.

⁶⁰ Illinois State Bar Association State and Local Taxation Section Council et al., "Proposals to Address PTAB Backlog and Streamline Rules and Processes," June 20, 2013.

cursory review of the minutes of PTAB meetings.⁶¹ Much of the agenda is devoted to motions for extension of time as opposed to consideration of the cases themselves. In sum, the PTAB's rules and procedures have not changed significantly enough despite the major shock of the introduction of Cook County to its jurisdiction.

The Illinois State Bar Association and other parties, including the Civic Federation, have suggested that changes to procedures would modernize the PTAB and help it to clear the backlog. Those recommendations are discussed in more detail in the last section of this report, but they include case management for the largest cases and further simplifying decision documentation procedures for residential properties. The idea is that such changes would not alter the nature of the PTAB as a less formal post-Board of Review property tax appeal option than the Circuit Court for residential and smaller cases. Instead, the recommended changes would streamline the process and allow the PTAB to function more efficiently and effectively.

Impact of the PTAB Backlog

The backlog of cases at PTAB has delayed justice for taxpayers and prompted taxing districts to intervene to protect their tax bases and their future budgets. Both taxpayers and taxing districts are subject to a great deal of uncertainty—taxpayers as to when they will receive their refunds and taxing districts as to when their current revenues might be diverted to make refund payments.

Additionally, the backlog has impacted the Cook County Board of Review in particular, which defends its decisions at PTAB. The Board of Review testified at Cook County budget hearings in 2016 that with the huge increase in the volume of appeals it must handle—a record total of 476,000 parcels in Tax Year 2015—it could not mount a strong defense at PTAB with its existing resources. Instead, it relied on its staff working overtime for PTAB defense and it was still losing many cases at a cost of approximately \$79.5 million to taxing bodies in Cook County in FY2015 alone.⁶²

In fiscal year 2017, the Cook County Board of Review received extra funding in order to hire additional staff to defend the Board's decisions at PTAB. The funding was for three attorneys and two non-attorneys and was projected to save the County for cases it would otherwise lose due to its inability to spare staff for defense.⁶³ Hiring for the positions was delayed until June 2017 and in the FY2018 budget the Board of Review's staffing was cut by 19 full-time equivalent (FTE) positions due to the County's need to reduce expenditures after the repeal of the sweetened beverage tax.⁶⁴ The cuts essentially zeroed out the PTAB defense unit. However,

⁶¹ PTAB meeting minutes can be downloaded from its website: <http://www.ptab.illinois.gov/boardschedule.html>.

⁶² Cook County Board of Review, Cook County Business Case: Board of Review PTAB Defense Division, Attachment A: Rate of Return, October 19, 2016. Available at <https://cook-county.legistar.com/MeetingDetail.aspx?ID=511289&GUID=7183F82C-2C64-4687-9D00-89E2406A4CD4&Options=info&Search>.

⁶³ Cook County Board of Commissioners, Finance Committee Meeting, November 15, 2017. Video available at http://cook-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=1667.

⁶⁴ Cook County, Adopted Fiscal Year 2018 Annual Appropriation Bill, Volume 2, p. P-4.

the approved FY2019 Cook County budget added five positions to the Board of Review for PTAB defense at a cost of \$661,102.⁶⁵

ANALYSIS OF THE PROPERTY TAX APPEAL BOARD CASE BACKLOG

In 2015 the Civic Federation requested and received data from the Property Tax Appeal Board to supplement the data the Board is statutorily required to release in its Annual Report. Civic Federation members and staff organized and analyzed the data and set out to evaluate where the backlog was situated geographically and attempt to determine whether any particular class of property was responsible for the continuation and growth of the backlog.

Section 16-190 of the Property Tax Code (35 ILCS 200/16-190) requires the Property Tax Appeal Board to file an annual report that contains the following information for each county:

1. The total number of cases for commercial and industrial property requesting a reduction in assessed value of \$100,000 or more for each of the last five years;
2. The total number of cases for commercial and industrial property decided by the Property Tax Appeal Board for each of the last five years; and
3. The total change in assessed value based on the Property Tax Appeal Board decisions for commercial property and industrial property for each of the last five years.⁶⁶

PTAB includes seven years of data in its annual reports, “in order to show a more representative picture of the Board’s actual activity.”

The Civic Federation in mid-June 2015 requested additional information on commercial and industrial cases below \$100,000, residential cases and intervenor cases, broken out by county for the ten-year period of tax years 2005 to 2014. The Civic Federation received the information in September 2015, and the PTAB noted that the data provided for tax year 2014 were not complete.⁶⁷

Analysis of PTAB Filing Volumes and Case Clearance Rates

The following charts show the cumulative filing volumes by tax year for residential and commercial and industrial properties at PTAB for the counties with the largest number of filings. They show how many cumulative cases were filed by tax year. The highest total volume of residential case filings over the 10-year period analyzed was in:

- Cook County at 81,653 or 67.2% of the 121,584 residential cases filed in all counties during the 10 year period studied;

⁶⁵ Cook County Executive Budget Recommendation Fiscal Year 2019, Amendments to the Tentative Appropriation Ordinance, Amendment No. 8. Available at <https://cook-county.legistar.com/View.ashx?M=AO&ID=66553&GUID=a2f2d46e-1daa-47c9-9e47-ca846894a9c5&N=RlkgMjAxOSBDb3VudHkgOnVkJ2V0IEFtZW5kbWVudCBCb29rbGV0LnBkZg%3d%3d>.

⁶⁶ Property Tax Appeal Board, 2018 Annual Report, cover letter. Available at <http://www.ptab.illinois.gov/pdf/AnnualReport/2018AnnualReport.pdf>.

⁶⁷ Data was provided to the Civic Federation in September 2015, but the reports themselves were dated as of June 24-25, 2015, so the remainder of this report refers to June 2015 for dating as of when the data were current.

- Lake County was second at 9,760;
- DuPage County was third at 5,283;
- Madison County was fourth at 5,198;
- St. Clair County was fifth at 3,275;
- Peoria County was sixth at 2,877;
- Will County was seventh at 2,751;
- Kane County was eighth at 2,557;
- Sangamon County was ninth at 1,905; and
- McHenry County was tenth at 1,235.

While it is unsurprising that Cook County would have the highest percentage of the total residential filing volume, the percentage is much larger than the County's percentage of the total number of real estate parcels in the state. Cook County's nearly 1.8 million parcels make up 30.5% of the state's nearly 5.8 million parcels and holds 45.8% of the taxable value.⁶⁸

The highest volume of commercial and industrial cases filed over the 10-year period was mostly in Cook, Peoria and the collar counties:

- Cook County had 42,901 or 80.7% of the total number of 53,194 commercial and industrial cases in all counties;
- Peoria County was second with 1,735 cases;
- DuPage County was third with 1,682 cases;
- Kane County was fourth with 942 cases;
- Lake County was fifth with 774 cases; and
- Will County was sixth with 659 cases.

There were some additional significant commercial and industrial filings in other downstate counties such as: Madison County with 534, St. Clair County with 511 and Sangamon County with 399. It is important to keep in mind that while the number of commercial and industrial cases is smaller than residential cases, multiple parcels are more often bound up in commercial and industrial cases.

⁶⁸ State of Illinois, Department of Revenue, "Table 17 - Abstract of 2017 Locally Assessed Real Estate and Railroad Property by County, as Equalized before Exemptions" and "Table 15 - Comparison of Equalized Assessed Valuations by Class of Property." Available at <https://www2.illinois.gov/rev/research/taxstats/PropertyTaxStatistics/Documents/Y2017Tb117.xls> and <https://www2.illinois.gov/rev/research/taxstats/PropertyTaxStatistics/Documents/Y2017Tb115.xls>.

For almost half of Illinois counties (48) there are very few PTAB filings for commercial and industrial properties. There were 48 counties with 10 or fewer commercial and industrial PTAB filings in the 10-year reporting period. This included seven counties with no PTAB cases filed and 22 counties with \$0 in commercial and industrial PTAB assessment changes.

PTAB Residential Filing Volumes by County: Tax Years 2005-2014												
As of June 2015												
Vol. #	County	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
1	Cook	5,056	8,425	7,384	6,919	10,681	10,836	8,433	9,087	9,839	4,993	81,653
2	Lake	704	534	737	993	1,137	876	1,328	1,280	1,241	930	9,760
3	DuPage	63	49	287	352	702	772	1,222	810	735	291	5,283
4	Madison	318	696	1,025	1,592	1,050	238	108	94	39	38	5,198
5	St. Clair	53	88	1,279	608	318	335	212	177	135	70	3,275
6	Peoria	44	29	825	735	229	153	334	245	147	136	2,877
7	Will	88	108	223	192	277	606	504	194	330	229	2,751
8	Kane	42	48	104	180	202	328	304	464	495	390	2,557
9	Sangamon	204	253	245	367	360	233	102	51	48	42	1,905
10	McHenry	69	58	54	103	189	143	149	159	179	132	1,235
	All Other Counties	379	432	850	722	625	437	595	503	290	257	5,090
Totals		7,020	10,720	13,013	12,763	15,770	14,957	13,291	13,064	13,478	7,508	121,584

Source: Property Tax Appeal Board data; calculations by the Civic Federation. Tax Year 2014 data incomplete.

PTAB Commercial and Industrial Filing Volumes: Tax Years 2005-2014												
As of June 2015												
Vol. #	County	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
1	Cook	3,210	3,575	3,576	4,069	5,443	5,161	4,785	5,228	5,016	2,838	42,901
2	Peoria	98	78	201	148	204	171	210	226	218	181	1,735
3	DuPage	67	37	89	183	204	235	325	233	205	104	1,682
4	Kane	32	44	59	81	125	122	136	126	114	103	942
5	Lake	25	34	53	85	51	57	102	105	103	159	774
6	Will	22	41	35	67	79	109	121	50	77	58	659
7	Madison	47	70	86	81	73	47	31	30	44	25	534
8	St. Clair	16	29	95	86	55	64	60	59	28	19	511
9	Sangamon	39	42	48	46	49	46	59	36	24	10	399
10	McHenry	17	19	37	63	57	36	37	19	19	16	320
	All Other Counties	218	220	224	321	275	319	347	327	275	211	2,737
Totals		3,791	4,189	4,503	5,230	6,615	6,367	6,213	6,439	6,123	3,724	53,194

Source: Property Tax Appeal Board data; calculations by the Civic Federation. Tax Year 2014 data incomplete.

The charts on the following page show the clearance rates by tax year for residential and commercial and industrial cases at PTAB for 2005 to 2014. Clearance means all cases that are closed, including decisions, withdrawals and dismissals.⁶⁹ The charts show the 10 counties with the largest number of cases at PTAB, which are Cook County, the five collar counties and downstate Madison, St. Clair, Peoria and Sangamon Counties. The data are cumulative: they show what percentage of cases from each tax year had been closed as of June 2015. Cook County's clearance rates were significantly lower than other counties for both residential and commercial and industrial properties.

For the Cook County residential cases, as of June 2015 there was a greater than 95% clearance rate through 2009 with the rate dropping to 56% for 2010 and down to below 40% for 2011 through 2014. However, the collar counties and high-volume downstate counties all had greater than 95% residential clearance rates through 2011. The exception here was Will County, which had 100% clearance rates through 2010 but a 66% clearance rate for 2011. In subsequent years' residential cases, the collar and downstate counties also had higher clearance rates than Cook County, with DuPage, Lake, Kane, Madison and Sangamon counties all posting 85% or higher clearance rates for 2012. From these clearance rates, it appears that in June 2015 the backlog of residential PTAB cases was effectively four years for Cook County and one to two years for all the rest of the counties except for Will County, whose backlog was three years.⁷⁰

For the commercial and industrial cases, the trend of Cook County cases experiencing greater backlogs continued. Cook County had a clearance rate of over 95% through 2008 and an 84% clearance rate for 2009 before the rate dropped to 44% for 2010 and below 40% for 2011 to 2014. But for the most part, in the other counties with the largest number of cases, there were over 80% clearance rates through 2011.⁷¹ For subsequent years, these other counties posted much higher clearance rates than Cook, with rates ranging from 77% to 90% for 2012. From these clearance rates, it appears that the backlog of commercial and industrial PTAB cases as of June 2015 was effectively four to five years for Cook County and between one and two years for the collar counties and higher volume downstate counties.

Based on the clearance rates and the filing volumes, it can be stated that the PTAB backlog is a Cook County backlog and is related to the high filing volume for both residential and commercial and industrial cases there.

⁶⁹ A **decision** is a case that is resolved either through a finding by PTAB based on a hearing or in writing based solely on the evidence submitted or through stipulation agreed to by the parties revising and correcting an assessment. A **dismissal** involuntarily terminates a case without a decision by the PTAB. A **withdrawal** is a voluntary dismissal of an appeal by the party bringing the appeal.

⁷⁰ The Civic Federation is not counting 2014 in the backlog here because data analyzed for that tax year were incomplete.

⁷¹ In comparison to the 100% clearance rates for residential properties, some collar and downstate counties had less than 90% clearance rates for commercial and industrial properties in tax years 2005 to 2008 as of June 2015.

PTAB Residential Clearance Rates 2005-2014 as of June 2015											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total Filings: 2005-2014
Cook	100%	100%	100%	100%	96%	57%	39%	22%	13%	2%	81,653
Lake	100%	100%	100%	100%	100%	100%	98%	91%	62%	7%	9,760
DuPage	100%	100%	100%	100%	100%	100%	99%	88%	50%	8%	5,283
Madison	100%	100%	100%	100%	100%	100%	101%	94%	54%	5%	5,198
St. Clair	102%	101%	100%	100%	100%	101%	100%	83%	76%	9%	3,275
Peoria	100%	100%	100%	100%	100%	101%	100%	64%	38%	1%	2,877
Will	100%	100%	100%	100%	100%	100%	67%	53%	27%	2%	2,751
Kane	100%	102%	100%	100%	100%	100%	100%	92%	38%	7%	2,557
Sangamon	100%	100%	100%	101%	101%	100%	98%	90%	90%	0%	1,905
McHenry	100%	100%	100%	100%	100%	101%	101%	79%	58%	5%	1,235

PTAB Commercial and Industrial Clearance Rates 2005-2014 as of June 2015											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total Filings: 2005-2014
Cook	96%	96%	98%	98%	84%	44%	33%	39%	13%	N/A	42,901
Peoria	100%	79%	99%	100%	97%	100%	97%	81%	68%	N/A	1,735
DuPage	99%	97%	97%	98%	100%	97%	97%	83%	63%	N/A	1,682
Kane	100%	93%	86%	99%	99%	98%	98%	79%	55%	N/A	942
Lake	100%	100%	92%	99%	98%	95%	93%	90%	78%	N/A	774
Will	100%	85%	89%	96%	99%	100%	98%	80%	36%	N/A	659
Madison	89%	81%	81%	88%	95%	98%	90%	77%	55%	N/A	534
St. Clair	81%	97%	68%	85%	98%	92%	98%	90%	75%	N/A	511
Sangamon	87%	83%	85%	85%	88%	98%	92%	86%	54%	N/A	399
McHenry	100%	95%	97%	97%	100%	97%	97%	84%	68%	N/A	320

Color Key:
+95%
80%-94%
60%-79%
40%-59%
Below 40%

Source: Property Tax Appeal Board Data; Civic Federation calculations. Tax Year 2014 data incomplete.

Perspective from the Boards of Review

The following are summaries of conversations the Civic Federation had in the fall of 2016 with the Boards of Review for some of the counties with the largest numbers of appeals to PTAB outside of Cook County. They confirm the Civic Federation's analysis that Cook County's backlog of cases is larger and more persistent than in other large counties and that the backlog had improved outside Cook County as of the time of the interviews.⁷²

Peoria County

A representative from Peoria County said the backlog was approximately two years at the time of the interview and said that the length of the backlog had improved due to increased PTAB staffing. Another reason for the improvement was that the Board of Review consolidates cases for settlement. This means that, for example, when a 2013 PTAB matter came up for hearing, the Board of Review also discussed settling the 2014 case as well. The PTAB cases are handled as they come to the Board, which is not always sequentially. The representative said PTAB would benefit tremendously by online filing.

DuPage County

The Board of Review of DuPage County said there was not much of a backlog at the time of the conversation with the Civic Federation. DuPage County handles matters at PTAB in the order that PTAB sends them. One issue the Board finds with PTAB is that even where the taxpayer marks the appeal box for PTAB to decide the matter on the evidence, PTAB still sets the matter for hearing. Another aggravating factor is that PTAB is constantly granting requests for extensions of time, especially to intervenors. There has been some improvement in the backlog, but part of the reason is that the Board of Review itself tries to consolidate for settlement.

Kane County

A representative from the Kane County Board of Review said that they try to handle cases sequentially, but it depends on whether PTAB sends them in sequence. As of the time of the conversation with the Civic Federation in fall 2016, a couple of 2012 cases were still unresolved, but mostly the Board of Review was working on 2013 cases. There has been an improvement in the backlog at Kane County. The representative from the Kane County Board of Review said PTAB would benefit from electronic filing, and does not agree with PTAB's historical reluctance to implement it because "it will increase filings." Additionally, the representative from Kane County said that PTAB needs more funding to hire more staff.

⁷² Data provided by PTAB to the Civic Federation in 2019 and included in the chart on page 13 of this report show a 50% increase in the downstate and suburban backlog between FY2015 and FY2018. PTAB attributes this increase in part to the State of Illinois' two-year budget impasse, which impacted PTAB operations, and to record numbers of downstate appeals in recent years.

Lake County

A Lake County representative said there was no serious backlog in Lake County. In fact they said PTAB was creating a reverse problem for them by sending the cases more quickly than Lake County could handle them. They were working at the time of the interview in on the 2015 cases, which caused overlap with the Board's work on the 2016 assessments. The representative said that PTAB has improved and increased staff has improved, but they need to adopt better electronic and technological methods, such as online filing. Even PTAB's use of online capabilities leaves something to be desired because they would send Lake County a single PDF file with 50,000 pages of data for multiple cases, which is extremely difficult to deal with. Lake was the first county to permit e-filing of Board of Review appeals, and the representative said PTAB should follow their example and create a system which addresses the needs of all the stakeholders—Assessor/Board of Review, taxpayers, intervenors—and should involve them in its development. Another suggestion was that PTAB cease granting so many extensions and stick more to established deadlines. A major benefit of resolving the cases quicker is fewer refunds, resulting in savings to taxing districts.

Cook County

The Civic Federation met with representatives from the Cook County Board of Review in June 2018, who provided the following information. Cook County representatives said that Board of Review staff over the last several years have worked on analyzing how best to use their limited resources for PTAB defense, in addition to working to settle cases and move the PTAB appeals process along. They said they had just wrapped up the last of the big tax year 2014 PTAB cases, but were expecting a difficult time working through a glut of tax year 2016 cases. Like the other counties, representatives from Cook County said they believed PTAB would benefit from electronic filing and management of data and information. They said they were developing workarounds to deal with PTAB's insistence on remaining a largely paper-based system that is now using electronic scanning to transmit electronic copies of paper-filed documents.

Perspective from Practitioners at PTAB

In addition to seeking the perspective of Boards of Review that defend their assessments at PTAB, the Civic Federation sought the viewpoint of lawyers who practice at PTAB. The following is a summary of their feedback.

PTAB has made strides in addressing the current Cook County case backlog, by working with the Cook County Board of Review in exchanging documents electronically and in setting periodic hearing dates that foster settlement. However, in order to fully address the backlog and help alleviate an increasing backlog in the future, PTAB needs to do several things: 1) implement an electronic filing/document submission system for use by the appellants and attorneys; 2) give more authority to the individual Administrative Law Judges (ALJs) to rule on routine motions such as document extension requests, thus freeing the PTAB board itself from dedicating time to this simple task; and 3) adopt a case management system which identifies and bifurcates complicated, high-value cases from routine matters shortly after the filing of appeals, and which enables the individual ALJ to contact the parties to establish time frames for exchange of appraisal reports, witness lists and issuance of subpoenas.

Perspective from the Illinois Auditor General Audit Reports

The Property Tax Code (35 ILCS 200/16-180) requires the chairman of the Property Tax Appeal Board to provide for the speedy hearing of all appeals. While “speedy” is not defined in statute, the Illinois Auditor General has used one year “as a general criteria to gauge speedy hearings.”⁷³ In the Auditor General’s biennial audits of the Property Tax Appeal Board, every audit since 2004 has had a finding on the timeliness of hearings. In each audit, PTAB has accepted these findings, and provided a response on why the backlog exists. The following is the Board’s response in the 2014 audit:

Board management stated it has accumulated a backlog of appeals since the end of Fiscal Year 2003 due to reductions in workforce and budget. In addition, with the reduction of property values since the year 2008, the Board has experienced a 100% increase in new appeals with insufficient staff and resources to properly address the workflow.⁷⁴

The 2016 audit notes PTAB management stated, “in Fiscal Years 2015 and 2016, it has received a combined 27% increase in cases from Cook County alone with no increases in staff and resources.” In the 2016 audit, the PTAB emphasized the information technology improvements it has made, which the Board believes will help reduce the backlog.⁷⁵ The minutes of the May 9, 2017 meeting of the PTAB include a short discussion of the 2016 audit findings. According to a statement by the PTAB Executive Director noted in the minutes, the auditors recommended that, “due to the ever increasing workload, PTAB should work to secure additional resources to complete appeals within a more reasonable time frame.”⁷⁶

Perspective from the Property Tax Appeal Board

The Property Tax Appeal Board in a communication to the Civic Federation said that it believes that its ability to issue timely decisions is affected by budget issues, the volume of appeals and the timeliness of the parties to the cases in submitting evidence. PTAB also noted that its operations were negatively impacted by the two-year State budget impasse that ended in June 2017. The Board outlined internal changes to technology practices it has already made, but said PTAB “finds while e-filing of appeals will streamline the filing process, e-filing may not necessarily increase the speed of the final resolution of appeals.”⁷⁷

⁷³ Illinois State Auditor, “State of Illinois Property Tax Appeal Board Compliance Examination For the Two Years Ended June 30, 2016,” p. 9. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY16-PTAB-Comp-Full.pdf>.

⁷⁴ Illinois State Auditor, “State of Illinois Property Tax Appeal Board Compliance Examination For the Two Years Ended June 30, 2014,” p. 9. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY14-PTAB-Comp-Full.pdf>.

⁷⁵ Illinois State Auditor, “State of Illinois Property Tax Appeal Board Compliance Examination For the Two Years Ended June 30, 2016,” p. 9. Available at <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/PTAB/FY16-PTAB-Comp-Full.pdf>.

⁷⁶ Illinois Property Tax Appeal Board, “Minutes of the Property Tax Appeal Board Meeting Held on May 9, 2017 Springfield, Illinois.” Available at <http://www.ptab.illinois.gov/Minutes/2017Meeting/minutes201705.pdf>.

⁷⁷ Property Tax Appeal Board, Communication with the Civic Federation, May 6, 2019.

PROPERTY TAX APPEAL BOARD REFUNDS ISSUED IN COOK COUNTY

As noted above, the multi-year backlog of property tax appeal cases at PTAB delays justice for taxpayers and causes uncertainty for taxing bodies, which must make refunds out of current revenues to taxpayers who are successful in challenging their assessment at PTAB. To put the backlog in perspective, the Civic Federation determined that it would be helpful to show how much in refunds have actually been made to Cook County property owners by tax year and by what year the refund was actually paid.

The Civic Federation requested and received data from the Cook County Treasurer's Freedom of Information Office on PTAB refunds by tax year and by payment year.⁷⁸ Requesting both tax year and payment year data allows the Civic Federation to show how long refund payments can be delayed. Available tax year refund data was provided for tax years 2000 through 2017. Payment calendar years for the same PINs were 2003 through 2018. Please note that all of the most recent years of tax year data are incomplete because cases are still being adjudicated or have not yet been filed.

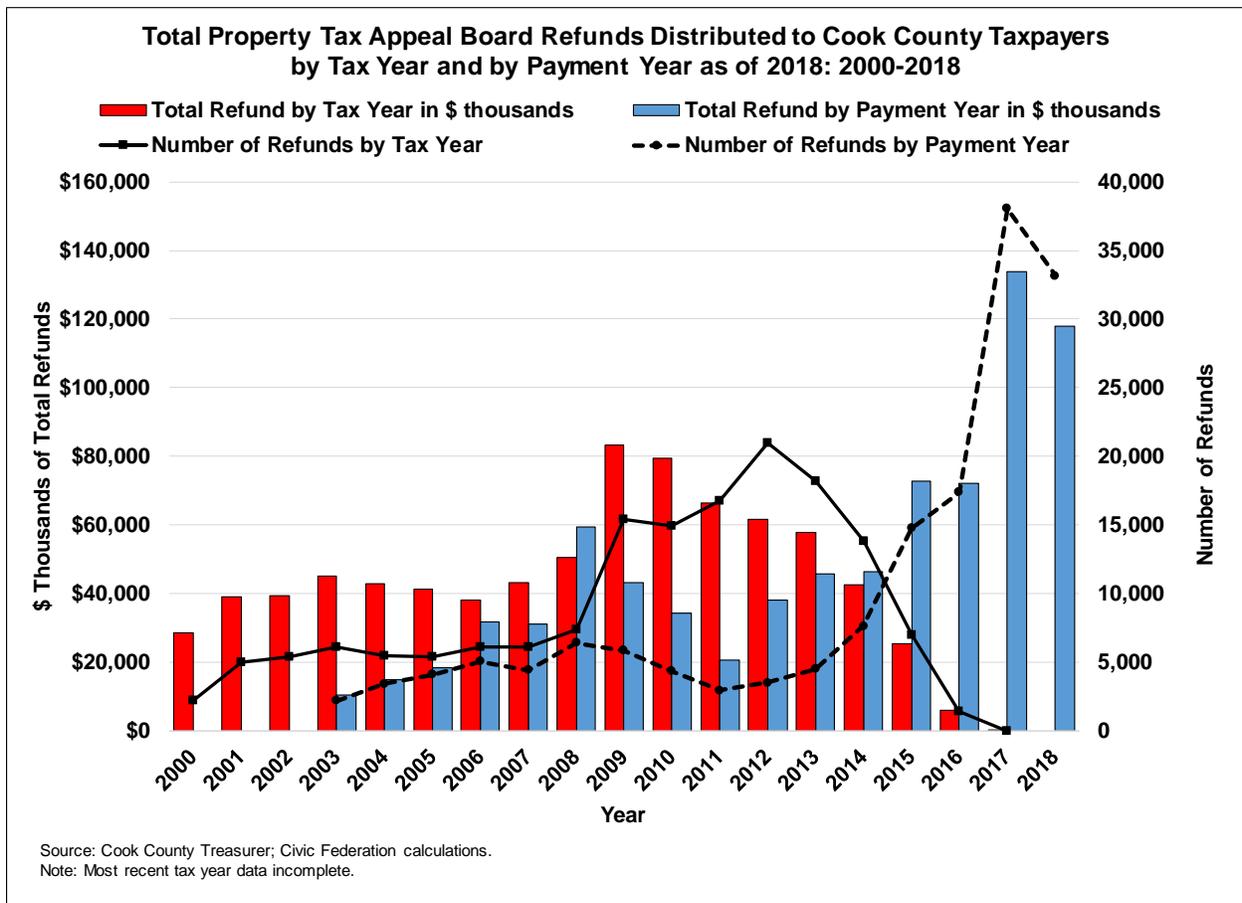
⁷⁸ The Civic Federation compared the two datasets and found there were minor discrepancies, amounting to 0.12% of the total number of refunds and 0.18% of the total value of refunds.

The following table shows how refund payments for cases from each tax year are paid out over many calendar years. Tax years are shown in the vertical columns and payment years are horizontal. For example, tax year 2000 refunds were mostly paid out over calendar years 2003 to 2008 and tax year 2001 refunds were mostly paid out over calendar years 2003 through 2010, with smaller numbers of payments made in the subsequent calendar years. Larger numbers of refunds were associated with more recent tax years, which generally matches up with the PTAB data provided above which shows growth in the number of appeals filed.

Number of Property Tax Appeal Board Refunds Made in Cook County by Tax Year and Check Date Year																					
		Tax Year																			
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	
Payment Year	2003	596	1,558	30																2,184	
	2004	721	1,359	1,365																	3,445
	2005	261	653	1,496	1,711																4,121
	2006	315	398	956	1,717	1,617	50														5,053
	2007	149	346	554	868	1,156	1,328	4													4,405
	2008	132	292	458	907	1,247	1,686	1,679	4												6,405
	2009	12	258	387	477	688	1,124	1,814	1,075												5,835
	2010	24	56	79	310	441	694	710	1,205	815											4,334
	2011	2	18	56	83	202	255	559	726	1,006	25										2,932
	2012	4	15	22	44	61	138	478	809	918	1,010	5									3,504
	2013	2	3	5	6	31	34	447	1,252	1,198	929	546	36								4,489
	2014				4	12	18	226	678	2,003	1,988	1,490	1,026	187							7,632
	2015				2	10	22	85	210	979	5,712	2,831	1,902	2,140	841						14,734
	2016		1		2	4	8	51	85	283	4,270	5,952	3,551	2,223	592	354	7				17,383
	2017		2	1	2	2	4	14	35	116	897	2,776	8,818	11,872	8,257	3,756	1,483				38,035
	2018	1			2		3	4	26	99	598	1,306	1,440	4,518	8,537	9,722	5,501	1,392	5		33,154
	Total	2,219	4,959	5,409	6,135	5,471	5,364	6,071	6,105	7,417	15,429	14,906	16,773	20,940	18,227	13,832	6,991	1,392	5	157,645	

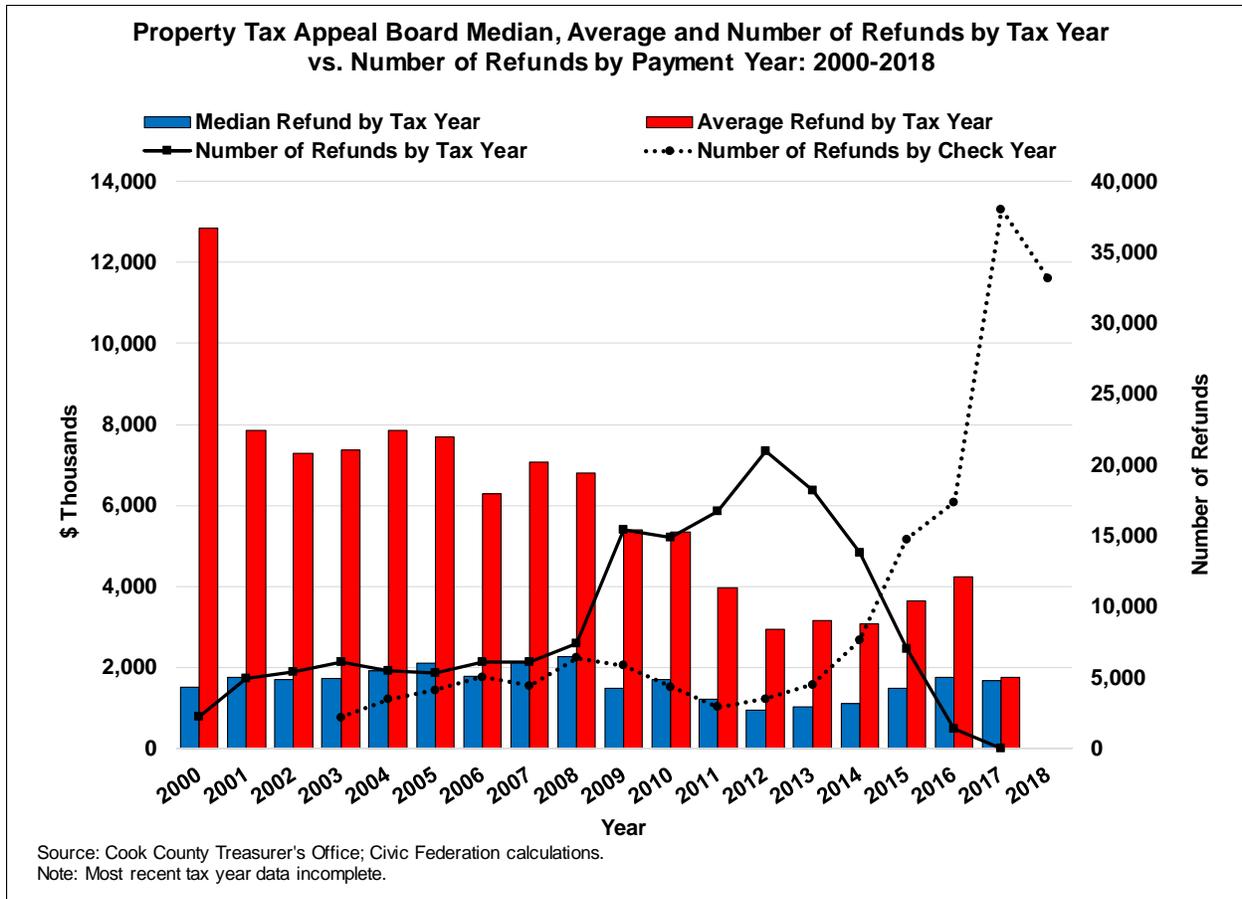
It is important to keep in mind when reviewing the next several charts that PTAB cases can take years to a) make it onto the docket because property taxes are paid in arrears; and b) be disposed of in hearing due to the backlog of cases. **Therefore, the number and amount of refunds shown below for the most recent tax years are not complete.**

The following chart shows the number of refunds (lines) and total dollar amount of refunds (columns) issued by tax year and by payment year. Again, note that data for the most recent tax years are incomplete. Both the number and amount of refund payments have been rising over the last several calendar years. Both the total number and total dollar amount of refunds paid spiked in calendar year 2017 with 38,035 refunds paid totaling \$133,749,250, compared to 17,383 refunds totaling \$72,204,725 the prior year. As shown in the previous chart, this could be due to a large number of refunds from the recent high filing years making their way through the system.⁷⁹ Calendar year 2018 shows a 12% decrease in both number and total dollar amount of refunds paid from the previous calendar year with 33,154 refunds totaling \$117,788,535. Since data for the most recent tax years through 2017 are incomplete, it is not possible to extrapolate with confidence from this data whether refunds in calendar year 2019 will increase again or continue the decrease shown in 2018. It will depend on both the volume of appeals and the speed with which the cases are moved toward resolution.



⁷⁹ Refunds issued by the Treasurer’s Office are reported on a calendar year basis, while filing volumes at PTAB are reported based on the State’s July-June fiscal year, so the years do not match up completely.

The increase in the dollar amount of refunds paid over the last several calendar years is related to the increase in the number of refunds, because median payments by tax year have been relatively flat and average payments have declined since tax year 2000. The following chart shows average and median payments by tax year (columns) compared to the total number of refunds by tax year and payments by tax year (lines). The Civic Federation does not have data as to why the average refund has declined, but it could be an avenue of inquiry for future research. Additionally, the data the Civic Federation requested did not enable an analysis of what classes of property have the longest delays in refund, but such an analysis could also yield interesting information about the PTAB backlog.



The Civic Federation is concerned with both the rights of taxpayers who have been incorrectly taxed to receive a timely refund and the financial viability of local governments that must accommodate PTAB refunds out of their current revenues. Therefore, it is imperative that the PTAB work with stakeholders and policymakers around the state to improve its procedures and reduce the case backlog in an orderly fashion. The following section provides the Civic Federation's recommendations to do just that.

RECOMMENDATIONS TO REDUCE THE BACKLOG AND IMPROVE PTAB'S ADMINISTRATIVE FUNCTIONS

In 2013 the Illinois State Bar Association State and Local Taxation Section Council, Illinois Chamber of Commerce, Taxpayers' Federation of Illinois and the Civic Federation issued a joint letter to PTAB making recommendations for improvements to its rules and procedures in order to improve the flow of work and enable the PTAB to significantly reduce the backlog of cases.

The recommendations were the result of the work of an *ad hoc* committee of the State and Local Taxation Section Council for a year and chaired by a former deputy director of PTAB. The recommendations remain relevant today and we incorporate them below, with the exception of recommendations that have been fully implemented.⁸⁰ Some of the recommendations have additionally been partially implemented, which we note following the list. The Civic Federation's Property Tax Committee additionally proposes some budgetary and longer-term proposals that would require action by the Illinois General Assembly, but could also assist PTAB as it works to become a more transparent and effective institution.

Improve PTAB's Rules and Procedures

1. Adopt a condensed short form for decisions relating to residential properties. The format allows for the capture of key evidence considered by the Administrative Law Judge (ALJ) in reaching his or her decision, but allows the PTAB to spend less time preparing these decisions. The form should be adequate for the purpose of the administrative review process, and advise the recipient of the basis for the decision with enough specificity for them to understand the factual or legal basis for the decision.
2. Expand the role of the ALJ and empower the ALJ to actively move motions and cases to disposition.
 - A) The practice of filing and ruling on Motions for Extensions of Time take an extraordinary and unnecessary amount of time to process and decide. This process could be dramatically expedited by:
 - 1) Allowing parties to file motions for extensions of time electronically;
 - 2) Directing that these motions be filed with and handled by a specific ALJ, who will consistently apply proper considerations for the motions;
 - 3) Making the granting of the extension effective from the date the previous deadline expired instead of the date processed by PTAB (This proposal is effective only if the PTAB establishes fast track motion procedure to swiftly rule on motions for extension of time);
 - 4) Using a form letter to advise all parties of record that an extension has been granted; and
 - 5) Prohibiting lack of diligence and dilatory tactics by parties who attempt to stall and prolong cases without just cause.
 - B) Enforce a policy creating a case management docket, and empower ALJs to place each case on a mandatory case management call at the appropriate time, once parties have had notice and have timely filed evidence. At this management call, *all* parties will be expected to arrive at the hearing and be prepared to discuss their evidence and

⁸⁰ A copy of the original letter is available at https://www.civicfed.org/sites/default/files/ad_hoc_committee_letter_june_20_2013.pdf.

- settle the cases. ALJs must take an active role in pushing parties to settle, and removing cases from the trial call. The parties must arrive with client authority to settle the matter. If no settlement can be reached, a trial date shall be set for the case, and a pretrial order entered on that date for the production of witness lists and any other pretrial matters. Also at the pretrial hearing, any party who has not filed evidence timely, shall be dismissed and not allowed to participate in the proceedings. Parties are allowed to file motions to compel a mandatory case management hearing if such is not ordered by the Board.
- C) Create a motion calendar and appoint a “Motion ALJ” assigned to receive motions other than motions for the extension of time, and to review said motions and within 30 days after receiving responses from the parties, make written recommendations to the Board, and issue a ruling on the motion. Parties filing motions of this nature are expected to send notice to other parties of record at the time said motions are filed with the Board.
3. Hire part-time and temporary ALJs with experience in PTAB matters and settling cases, to handle case management dockets and settle cases. Furthermore use 75-day employees under the Illinois personnel code to bring back retired state employees from the PTAB, IDOR or other agencies, who demonstrate the competency to manage a caseload and effectuate settlements regarding commercial and industrial tax appeal cases.⁸¹
 4. Create a PTAB agency liaison to coordinate with the local boards of review, county treasurers and assessors on any of the new procedures adopted herein.
 5. Consider ordering as a routine matter, at the conclusion of the offering of evidence in commercial and industrial hearings, the submission of proposed Findings of Fact and Conclusions of Law, not to exceed five pages in length, to assist the ALJ in summarizing evidence in the case, and expediting the release of a proposed decision for Board consideration. Further, enter a standing Board order that ALJs must submit within 30 days, a proposed decision following a residential hearing, and within 60 days following a C-2, C-3, I-2 or I-3 hearing for Board consideration. In extraordinary cases where the facts or law of the case is complex, the Board may order longer periods of time, but only in extraordinary matters.
 6. Consider telephonic or video hearings in the larger counties to facilitate less expensive travel costs and ALJ time commitments.

PTAB Actions Taken to Date

The Executive Director of the Property Tax Appeal Board says that PTAB has at least partially implemented some of the above recommendations.

- PTAB says it uses short form decision templates for several types of appeals. However, the Civic Federation believes their use can be expanded and their content could be further slimmed down.

⁸¹ The Property Tax Appeal Board has begun to implement the 75-day employee recommendation. In the minutes of the January 2018 Board meeting, it is noted that, “(6) 75-Day Workers will be working at both the Springfield and Des Plaines Offices in a continued effort to reduce the current backlog of cases pending before PTAB due to the volume of new appeals filed.”

- With regard to motions for extensions of time, PTAB notes that the Cook County Board of Review requests many of these extensions and said that PTAB itself has “recently begun to limit the number and length of extensions to submit evidence.” However, the Civic Federation notes that such motions still take up an enormous amount of the Board’s time and attention and could be further managed with some of the actions described in the original letter.
- With regard to case management, PTAB notes that it has amended its rules to conduct pre-hearing conferences for commercial and industrial appeals in Cook County to encourage settlement. The Civic Federation acknowledges this (see page 16 of this report) but believes that creating a case management docket would encourage even more settlements.
- PTAB says that the Executive Director works as a liaison on behalf of PTAB, sending out electronic updates about new rules and procedures. The Civic Federation suggests that while the PTAB Executive Director serves many important functions, including those of a liaison, the position also has many other duties that take up much time. Therefore, given the magnitude of the project of adopting new procedures to address the backlog problem in Cook County, as well as the project of transitioning to an electronic based filing system, PTAB might be better served by having a dedicated liaison to work with the various county offices to help with the adoption of these necessary changes.
- PTAB says that because each appeal is unique and ALJs have large workloads, it is difficult to establish deadlines. However, the bulk of PTAB’s Cook County workload is small residential cases. No matter how unique these cases are, PTAB should still be able to deal with them much more expeditiously.
- PTAB says that it is considering changing its rules to allow it to conduct hearings via interactive video conferencing. The Civic Federation encourages PTAB to follow through on this intention.

Increase PTAB’s Budget and Staff Only If More Procedural and Rule Changes are Implemented

As discussed above, a key precipitating factor to the current backlog of Cook County cases at PTAB dates from a major cut in the budget and staff in FY2003. The entire budget for PTAB in FY2018 was \$5.6 million. In comparison, the budget for the Board of Review in Cook County was \$10.3 million in FY2018. As the number of appeals from Cook County continues to grow, it is critical that the PTAB be given the resources it needs to end the backlog and ensure justice for taxpayers and taxing bodies.

However, the Civic Federation does not support increasing PTAB’s budget unless the Board first implements additional commonsense procedural and rule changes. Providing additional funding to PTAB will not markedly impact the backlog over the long term if the Board continues to maintain procedures that continue to delay case disposition. Taxpayers ought not pay more for PTAB services until and unless they can be sure those revenues will be spent efficiently, effectively and wisely. Further, before PTAB receives additional funding, it must produce a multi-year plan for how it would use these resources to reduce the Cook County case backlog and prevent it from growing again in the future.

End Paper-Based Filing at PTAB and Fully Implement Electronic Filing and Case Management

Across the United States, federal and state courts have been moving toward electronic filing of court documents since the 1990s. The federal judicial system is now entirely electronic, and state courts continue to move in that direction. While requiring an upfront investment, moving document filing and case management to an electronic format has benefits in significantly improved efficiency, particularly in the face of growing caseloads; more effective time management; improved public access to court documents; and decreased need for expensive storage of physical documents.

PTAB as a quasi-judicial entity has been an exception until very recently with its continued embrace of paper. All PTAB appeal forms are required to be submitted on paper; no submissions via email are accepted. While the PTAB website includes a status inquiry portal, it only provides a summary of activity and no documents. PTAB now allows decisions to be served by electronic means, distributes documents via email and receives evidence from Cook County electronically, but while all of this is an improvement over past practices, it is not true electronic case management. In meetings of the PTAB, there have been discussions of the Board pursuing an “on-line filing system” as the next step as it moves away from a paper-based system.⁸² PTAB says it must complete its internal automation of its office to move from paper-based processes to electronic processes before it can develop a web-based system that allows online filing evidence submission and then for the PTAB to process those appeals electronically.

Some of the Boards of Review in the larger counties around the state have already implemented e-filing of appeals, including Lake, Will and Cook Counties. With the advent of online banking and income tax filing and payment, among other activities, the public as a whole has become more familiar and more comfortable with using an online portal for important transactions. Filing and managing a property tax appeal at PTAB should be no different. The Civic Federation recommends that the Property Tax Appeal Board should include all stakeholders in the development process for a final e-filing and case management system to ensure a product that works well for all constituencies.

If the State of Illinois wishes to ensure justice for property taxpayers and taxing bodies, it is crucial that PTAB be accessible and transparent. Following through on a comprehensive e-filing system for appeals and electronic document and case management would be a step in the right direction toward that goal.

Longer-Term Recommendations

The Civic Federation also makes some longer range recommendations.

Procedural Changes Recommended by the ISBA Ad Hoc Committee

Longer-range procedural changes should require an intervenor to, upon receiving notice of the filing of a PTAB case, file a Petition to Intervene with the Property Tax Appeal Board within 60

⁸² See Minutes of the Property Tax Appeal Board August 14, 2018, p. 2. Available at <http://www.ptab.illinois.gov/Minutes/2018Meeting/minutes201808.pdf>.

days, and to file substantive evidence within 120 days. Failure to comply with these deadlines would prohibit the intervenor from any participation in the proceeding.

Additional long-range changes should include the bifurcation of filing and hearing procedures for cases where more than \$200,000 in assessed value reduction has been requested. These changes would include early and regular pretrial conferences and status orders, as well as more sophisticated motion practice and mediation proceedings.

Longer-Term Changes Requiring Action in the Illinois General Assembly

The Illinois General Assembly should expand the types of data on cases that PTAB is required to report in its statutorily required Annual Report (35 ILCS 200/16-190) to include information about residential cases and smaller commercial and industrial cases. Additionally, PTAB should include narrative and analysis of the data in order to assist the reader in evaluating the meaning of the report. While PTAB was responsive to the Civic Federation's request for extra data, it would improve the transparency of PTAB's operations to publicly provide a wider variety of information and analysis about its operations.

If taxing districts worry that the volume of refunds that would be generated by reducing the PTAB backlog would cause them financial difficulties, they should support legislation in the General Assembly that would implement **recapture levies**.⁸³ A recapture levy would permit taxing districts to re-levy the amount of refunds paid out of current revenues due to PTAB and court decisions in the following tax year. This "recapture levy" should not be extended against the properties that had received refunds, however, so as not to impair their refund.

The recapture levy would allow the taxing district to recover revenue from a previously levied legal tax extension to which any rate limits and tax caps had already been applied and thus would not constitute a tax increase. The opportunity to recover refunded tax revenues through a recapture levy would also allow taxing districts to focus resources on their core mission rather than becoming involved in the assessment appeals process.

⁸³ For more about the Civic Federation's recommendation on recapture levies, see *Civic Federation Position on the Cook County Property Tax System: Recommendations for Reform*, pp. 19-20. Available at <https://www.civicfed.org/file/5797/download?token=Y48riXVG>.

APPENDIX: PTAB AND THE ASSESSMENT LEVEL CONTROVERSY

The following narrative is intended to provide the reader with a more detailed history of PTAB's early years in Cook County and how the Board responded or didn't respond to major differences in how property assessment is carried out in Cook County in comparison to the rest of the state. The additional context provides the reader with information with which to evaluate PTAB's capacity for reform.

* * *

The PTAB's assessment level rulings in the *Bosch* and *Lurie* cases were similar to one another, differing only as to which assessment level derived from the IDOR ratio studies the PTAB would substitute for the level prescribed by the Cook County classification ordinance.⁸⁴ In both cases, the rulings were based upon PTAB's recognizing the results of the IDOR studies and according them binding effect. However, PTAB had not conducted any extensive evidentiary hearings nor heard any extensive legal argument as a predicate for the rulings. Task Force III believed there was a strong probability that the reviewing courts would reverse these rulings on procedural grounds, and thus would not establish clear rules on the merits for future assessment level disputes.⁸⁵

In *Cook County Board of Review v. Property Tax Appeal Board; Robert Bosch Corporation; et al.*, the appellate court held that, in six of eight consolidated cases, the taxpayers had failed to raise the constitutional issues the PTAB had addressed, and in the other two cases the taxpayers had failed to make an evidentiary record fit for appellate review.⁸⁶ In *Cook County Board of Review v. Property Tax Appeal Board and The Lurie Company*, the appellate court similarly held that the taxpayer had failed to raise the requisite constitutional uniformity issues for review.⁸⁷

These appellate decisions arrested the momentum in PTAB to resolve all assessment level controversies by automatically applying the IDOR levels. In its opinion in *Bosch*, the appellate court did announce a rule that PTAB was limited to considering only issues and evidence that had previously been considered by the board of review.⁸⁸ This aspect of *Bosch* was partially reversed by the General Assembly within a year of the *Bosch* decision. Public Act 93-758, effective July 16, 2004, provided that the PTAB could consider *evidence* that had not been

⁸⁴ In *Bosch* the PTAB held that the ratio study levels for each class would be substituted for the ordinance level. In *Lurie*, it held that for the commercial and industrial classes, a level 2.5 times the ratio study level of the residential class would be substituted, based on the provision of Ill. Const. 1970, Art. IX, § 4(b) that the highest class level may not exceed the lowest by more than that factor.

⁸⁵ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 18.

⁸⁶ 339 Ill.App.3d 529, 534, 536, 791 N.E.2d 8, 13, 14 (1st Dist. 2002), app. den. 205 Ill.2d 578, 803 N.E.2d 480 (2003).

⁸⁷ 345 Ill.App.3d 539, 546-47, 803 N.E.2d 55, 61 (1st Dist. 2003), cert. den. 543 U.S. 821 (2004).

⁸⁸ See 339 Ill.App.3d at 537-38, 791 N.E.2d at 15-16 (on petition for rehearing, 791 N.E.2d at 23-25). Many lawyers considered this to be inconsistent with the PTAB's statutory mandate to conduct hearings *de novo*. 35 ILCS 200/16-180.

introduced or considered by the board of review, but it was silent as to whether *issues* not raised in the Board of Review could be raised in PTAB.⁸⁹

Anticipating the inconclusive termination of the *Bosch* and *Lurie* cases, Task Force III had recommended enactment of guidelines for further litigation which might arise in PTAB concerning Cook County assessment levels. The Task Force III considered recommending that the ability to consider this issue be removed from PTAB's jurisdiction, with the exception of the single-family residential property class, which would confine major assessment level disputes for the other classes to the courts.⁹⁰ However, this was rejected as "too much at odds with the fundamental intent of the 1995 legislation which brought PTAB to Cook County."⁹¹ Therefore the Task Force III recommended, although not unanimously, that the IDOR ratio studies should generally be excluded from evidence in PTAB, except as to the single-family residential class for which the studies' results were considered non-controversial.⁹² This recommendation made it clear that non-IDOR generated ratio studies could be considered by PTAB with respect to any property class, provided they conformed to accepted statistical principles.⁹³

All of Task Force III's recommendations were framed as proposed changes to the Property Tax Code provisions governing PTAB proceedings. None of the recommendations were enacted. PTAB did adopt a rule change related to assessment levels after the *Bosch* and *Lurie* controversy. The effect (if any) of this remains unclear, but it does shed some light on PTAB's thinking about how it wished to resolve issues of this nature and complexity.

The *Bosch* court noted that, in 1998, PTAB had proposed a rule that would have explicitly authorized its use of IDOR ratio studies for all classes of Cook County property.⁹⁴ The court further noted that the legislature's Joint Committee on Administrative Rules (JCAR) had objected to the proposed rule on grounds that it prejudged the studies' evidentiary value in Cook County proceedings. In response, PTAB changed the rule to the form it had at the time of the controversy, stating that it could "consider competent evidence...relevant to the level of assessment" of any property "applicable...under the Illinois Constitution, the Illinois Property Tax Code, and the Cook County Classification Ordinance..." without prejudging the validity of any particular evidence.⁹⁵

⁸⁹ See 35 ILCS 200/16-180, as amended by P.A. 93-758. The act provided that the language was a clarification "declarative of existing law," but there have been no cases from which to determine whether the courts would accept this qualification.

⁹⁰ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 19-20.

⁹¹ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 20.

⁹² Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 20.

⁹³ Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 20-21.

⁹⁴ See 339 Ill. App.3d at 545, 791 N.E.2d at 21-22. Prior to the 1998 proposal, the PTAB's rule had confined its use of the IDOR studies to Class 2 (single family residential) property. See discussion in Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 6-7.

⁹⁵ The compromise version of the rule adopted by PTAB was originally proposed by the Civic Federation. See Civic Federation, "Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III," April 2, 2001, p. 7.

In 2006, with the *Bosch* and *Lurie* decisions behind it, PTAB again proposed to change this rule. As before, it retained the provision allowing the IDOR ratio studies routinely to determine the assessment level for single-family residential property in Cook County. (This provision for assessing Class 2 property based on the IDOR median level rather than strictly based on the classification ordinance has been continuously in force throughout PTAB's jurisdiction in Cook County and it remains in force today.) For all other classes, PTAB proposed to alter the rule so that the agency would only consider a sales ratio study if the taxpayer had proven "by clear and convincing evidence that the studies are random, representative, properly edited and properly adjusted pursuant to Illinois case law."⁹⁶ A single objection was filed by a lawyer on behalf of a group of taxing bodies, claiming that the change would be inconsistent with the *Bosch* decision, and demanding that the rule specify that only the ordinance level of assessment would be applied by PTAB to any Cook County property outside of Class 2. JCAR asked PTAB to respond to the objection. In PTAB's response to JCAR, it pointed out that *Bosch* was consistent with the rule as proposed, but for reasons it did not explain, it accepted the objector's altered language.⁹⁷ This put the rule in the form it retains today, which is supposed to limit PTAB to applying only the ordinance level of assessment to any Cook County property in classes other than Class 2.⁹⁸

In at least one decision after adopting the change in mid-2006, PTAB held that it could still consider assessment level evidence on constitutional uniformity grounds.⁹⁹ On the other hand, in at least one subsequent decision, the PTAB has applied the rule to bar itself from considering assessment level evidence, regardless of the constitutional issues that required such evidence.¹⁰⁰

In reviewing the PTAB's various positions during the assessment level controversies, it appears that the agency's overarching goal has been to establish a practice in cases involving assessment level issues that would conform to its historical practice downstate. PTAB's downstate practice relating to assessment levels was, and remains today, routine: it simply applies the levels indicated by the IDOR studies. This practice was supported by a statutory provision expressly defining the *de jure* level of "33-1/3%" in terms of the IDOR studies, but that offered no help in Cook County cases where a different *de jure* level was defined by statute and ordinance.¹⁰¹ PTAB's original assessment level rule for Cook County, when it initially had jurisdiction of only residential (Class 2) cases, applied the levels from the IDOR studies in a similar mechanical fashion in the absence of competing evidence.¹⁰² When the first assessment level questions were imminent for other classes, in 1998, PTAB proposed simply to broaden its Class 2 rule to apply

⁹⁶ 30 Ill. Reg. at 1819-20 (February 10, 2006).

⁹⁷ 30 Ill. Reg. at 10107-08 (June 2, 2006); see also, Memorandum from James W. Chipman, Executive Director, PTAB, to Vicki Thomas, JCAR, at 2-3 (April 13, 2006) (available by FOIA request from JCAR).

⁹⁸ 86 Ill. Admin. Code § 1910.50(c)(3).

⁹⁹ *Appeal of Sears, Roebuck & Co.*, Nos. 0023299.001-C-3 through 04-01712.002-C-2 (December 16, 2006) (published in PTAB 2006 Synopsis of Decisions, at C-117, C-139).

¹⁰⁰ *Appeal of City of Chicago*, No. 06-31627.001-C-3, letter ruling, at 3-4 (August 29, 2012). The evidence that PTAB refused to consider was a privately compiled sales ratio study introduced by the property owner, in an attempt to defend against an undervaluation appeal by several taxing bodies. The fact that the taxpayer was an involuntary participant in the PTAB case—effectively the defendant—and that the assessment, let alone an increase in it, could violate the constitution, made the PTAB's refusal to consider the taxpayer's evidence particularly troubling.

¹⁰¹ See 35 ILCS 200/1-55 (defining "33-1/3%").

¹⁰² 86 Ill. Admin. Code § 1910.50(c)(2). This provision has remained unchanged throughout PTAB's existence in Cook County. This has provoked only a little resistance from the Cook County taxing authorities, due to general acceptance of the validity of the IDOR's studies of Class 2 property.

to all classes, as noted above. Although it was forced to modify the text, PTAB's application of the modified rule sparked controversy by applying the IDOR study conclusions mechanically, without testing them through evidentiary proceedings. When the *Bosch* and *Lurie* decisions rejected this mechanical application, PTAB proposed a modified rule that would have clearly required evidentiary proceedings. However, it then immediately abandoned this proposal based on an objection that PTAB itself stated was unfounded. This resulted in the present form of rule for assessment level issues outside Class 2, which on its face suggests that PTAB will simply refuse to consider such issues at all. And, as noted above, that is what PTAB has done on at least one occasion.

It is understandable that PTAB attempted to establish a solution to the assessment level disputes that was simple, clear and easily applicable. Unfortunately, constitutional issues cannot be made simpler by reordering an agency's rules and processes. Parties raise these issues when the facts demand it, and the cases must be adjudicated as they are presented despite the resulting complexity. Thus PTAB's apparent quest for a solution to these complex disputes that would simply duplicate its downstate practice was inherently unachievable.