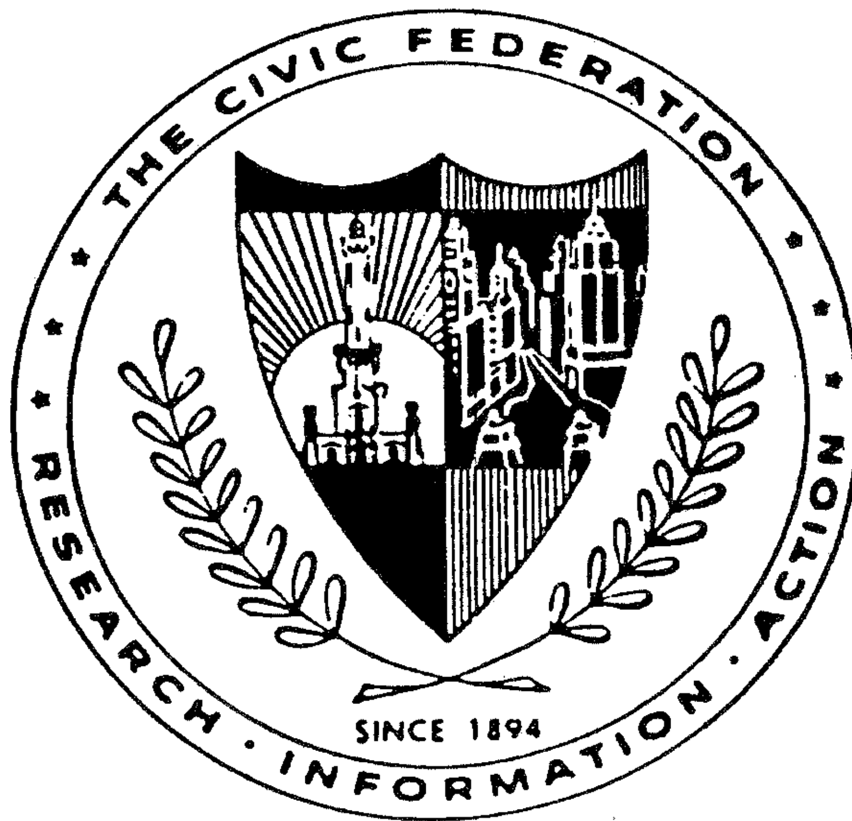
REPORT OF THE TASK FORCE ON THE REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS II

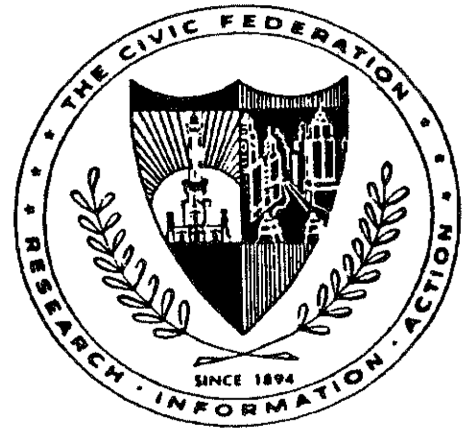


Proposed Amendments to the Illinois Property Tax Code and Commentary

April 1996

THE CIVIC FEDERATION
243 S. Wabash, Suite 850
Chicago, IL 60604

(312) 341-9603 Fax (312) 341-9609

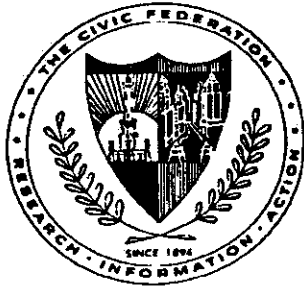


Contact:
William H. Hudnut, III, President
Myer Blank, Senior Research Associate
Roland Calia, Senior Research Associate
Kim Griffin, Communications Specialist

Mission:
The Civic Federation's mission is to forge a partnership of business, government and the community-at-large, to create a public policy vision and strategy that will advance economic opportunity and governmental effectiveness in the Chicagoland region.

Objectives:
Founded in 1894, the Civic Federation is an independent, non-partisan taxpayer watchdog and government research organization. The Federation seeks to improve the efficiency, effectiveness and accountability of local government in the Chicago region. It conducts research and generates public commentary and legislative testimony on important fiscal policy issues, such as:

- property taxes
- education finance
- transportation finance
- long-term tax and spending trends
- major capital projects
- public employee pensions and benefits.



TASK FORCE ON THE REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS II

John F. Ward, Jr., *O'Keefe Ashenden Lyons & Ward*, Board Chairman
Thomas J. McNulty, *Keck Mahin & Cate*, Task Force Chairman
Roland Calia, Senior Research Associate

J. Robert Barr
Sidley & Austin

Kevin Burke
Taslitz, Smith & Hemmesch

Mark Davis
O'Keefe Ashenden Lyons & Ward

Sean Fitzgerald
Law Offices of Terrance Kennedy

Timothy Hammersmith
Amari & Locallo

Patrick Heneghan
Schopf & Weiss

Thomas Jaconetty
Cook County Board of Appeals

J. Thomas Johnson
Grant Thornton

Randy Kemmer
Cook County State's Attorney's Office

Michelle Kitch
KPMG Peat Marwick

David Lehman
Lehman Real Estate

Ellis Levin
Jerome S. Lamet & Associates

Mary Nicolau
Cook County State's Attorney's Office

Charles A. Powell
Powell & Reilly

Hon. Theodore M. Swain
Gould & Ratner

Robert Tisdahl
Property Assessment Advisors

Guerino J. Turano

FOREWORD

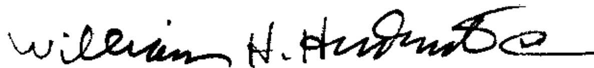
In these changing times, when corporations are restructuring, downsizing and streamlining, and when we all are pointing toward the dawn of a new century, government officials at all levels are beginning to rethink their missions and modes of operations. They understand that people are tired of business as usual, and want positive change. Most of them would probably agree with Lincoln that "we must think anew, we must act anew, we must disenthrall ourselves..."

To that end, the Civic Federation, with its mission to promote responsible governance, has been involved for the last two years in the effort to reform the Cook County property tax appeal process. When we started, the burden of proof in tax objection proceedings, was extraordinarily high, making it difficult for a taxpayer ever to win an appeal. "Constructive fraud" on the part of the Assessor had to be proved. Last year, in cooperation with others, we worked to achieve certain changes in the law governing the judicial real property assessment appeals process in Cook County. House Bill 1465 changed the burden of proof wording to "clear and convincing." It also ordered a restructuring of the Cook County Board of Appeals, now to become the Board of Review, and brought the Property Tax Appeals Board into Cook County.

After careful analysis and deliberation, we believe that in order to make the system work efficiently and effectively and address certain unintended consequences of HB 1465, some of the language in the law needs fine tuning and certain structural modifications in the process are required. To that end, we submit this report, with its recommendations for additional changes, which we hope, will be thoughtfully considered by the "decision makers" and other appropriate bodies. We realize not everyone will agree with our position on these issues, but feel that continuing to create positive change in the system is very much worth the effort.

We commend your attention to this report and welcome your comments, criticisms and suggestions. Thank you.

Sincerely,



William H. Hudnut, III
President

REPORT OF THE TASK FORCE
ON
THE REFORM OF THE COOK COUNTY
PROPERTY TAX APPEAL PROCESS II

PROPOSED AMENDMENTS
TO THE
PROPERTY TAX CODE
AND
COMMENTARY

APRIL 1996

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Introduction: In response to P.A. 88-642 (1994)[1] the Civic Federation of Chicago ("Federation") formed a Task Force ("Task Force I") in mid-1994 to evaluate the judicial remedy for property taxpayers and to draft remedial legislation. Among its concerns was whether the judicial remedy, as redefined by P.A. 88-642, was adequate to give taxpayers a fair opportunity to challenge an overassessment in court.

Task Force I: Apart from concerns about P.A. 88-642, there were those both within and outside the Federation who considered that the time was ripe to reform both judicial and administrative remedies available to a taxpayer for overassessment appeals.[2] Task Force I issued its report on February 22, 1995 recommending extensive changes in the judicial real property assessment appeals process. Virtually all of its recommendations were enacted in P.A. 89-0126 (commonly known as H.B. 1465), which became effective on July 11, 1995.

House Bill 1465's Other Changes: In addition to enacting the Task Force I recommendations (which dealt exclusively with the judicial remedy in assessment appeals), the General Assembly in enacting House Bill 1465, made several very significant changes in the administrative procedures affecting assessment appeals, which were:

- The Cook County Board of Appeals was abolished effective January 1, 1996;
- The Cook County Board of Appeals was replaced with a 3-member interim board of review until the first Monday of December 1998;
- An elected 3-member board of review would be constituted the first Monday of December 1998, following the November 1998 general election.
- The powers of the interim board of review and permanent board of review were expanded to permit its jurisdiction to be invoked on complaint, "request" and on motion of any one of the members of the board upon "good cause shown." Thus, for the first time, both the interim board and permanent board were given power to review assessments on their own motion, rather than merely to review assessments on complaint of a taxpayer;
- Also for the first time, taxing districts were expressly granted authority to file complaints before both the interim and the permanent Cook County Board of Review;

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[1]Public Act 88-642, among other things, attempted to soften the doctrine of constructive fraud, discussed infra at Part II. A.

[2]See 89th Illinois General Assembly, Transcription of Floor Debates, May 24, 1995 on HB 1465, pp. 1-92.

- The Illinois Property Tax Appeals Board's ("PTAB's") jurisdiction was extended to Cook County beginning with the 1996 tax year for residential property and the 1997 tax year for non-residential property;

- The General Assembly, by enacting as law the existing Cook County assessment districts and reassessment cycle system, effectively pre-empted the authority of the Cook County Board of Commissioners to determine any changes in these matters locally.

Task Force II: The legislative changes enacted by HB 1465, beyond those recommended by Task Force I, and especially those changes involving the method by which Cook County taxpayers could challenge assessments administratively, had not been considered by the Civic Federation prior to their enactment. After reviewing these changes, the Federation's Tax Committee concluded that many were ill-advised and detracted from the General Assembly's reform efforts. As a result, the Tax Committee appointed Thomas J. McNulty of the Chicago law firm of Keck, Mahin & Cate, an acknowledged expert in the field, to chair Task Force II. After a study of many months and numerous public meetings, Task Force II has issued this report.

Basis for Recommendations: The Civic Federation's mission is to forge a partnership of business, government and the community-at-large, to create a public policy vision and strategy that will advance economic opportunity and governmental effectiveness. Accordingly, in reaching its findings and recommendations for corrective legislation, Task Force II was guided by a number of principles, among them:

- A property assessment appeals system should be "plain, speedy, and efficient." It should also be readily available to all taxpayers at a reasonable expense. It should furnish a fair and complete remedy.

- Further, the appeals system should have as its primary objective the determination of the correct assessment at as early a stage as possible since the maintenance of an incorrect assessment, or even an unnecessary delay in reaching the correct assessment, is in no one's interest.

- The taxpayer has a paramount interest in a determination of the correct assessment and final tax liability at the earliest possible point in time. Ideally, this determination ought to be made and reviewed promptly by county assessment officials rather than considerably later by state officials or courts.

- The taxpayer's welfare, not the administrative convenience of governmental agencies charged with administering the system or taxing districts funded in whole or in part by property tax dollars, is a major criterion of an effective appeals system.

Recommendations: Task Force II has concluded that these principles would best be accomplished by revising HB 1465 in the following respects:

(1) The Cook County Board of Appeals should not be abolished until its term expires December 7, 1998. Additionally, the uninterrupted succession of the new Cook County Board of Review to the power and duties of the expiring Cook County Board of Appeals should be made explicit.

(2) The jurisdiction of the Cook County Board of Review, when invoked by taxpayers, should be solely on written complaint; and the new language invoking jurisdiction "upon. . .request" should be eliminated. Further, the new power of the Cook County Board of Review to review assessments on its own motion should be time-limited consistent with the existing township-by-township framework.

(3) The newly authorized formal participation by taxing districts in a taxpayer's assessment appeal should be eliminated, both at the Cook County Board of Review and in any appeals to the PTAB. There are statutorily-appointed "defenders" to protect the tax base from assessment challenges; namely, the state's attorney and the county collector. Moreover, the permission which HB 1465 gives to Cook County taxing districts to appeal directly to PTAB, creates an irreconcilable conflict with the existing law's grant to the taxpayer of an election of remedies from final board action to either PTAB or to the Circuit Court by way of the tax objection process. Because of this conflict, a taxing body can always foreclose the taxpayer from exercising its court option simply by filing an appeal to PTAB before the taxpayer can proceed in court. This is true regardless of whether or not the board of review had granted any relief to the taxpayer; and whether or not the taxing body even participated at all at the board level. Eliminating separate formal appeals by taxing bodies to the PTAB is supported by sound principles of law and policy and is the most efficient and appropriate way to eliminate the jurisdictional conflict.

(4) The extension of the jurisdiction of the PTAB to Cook County should be delayed until the 1998 tax year, and should not proceed under the time schedule contained in HB 1465. This will enable the change to coincide with the time when the permanent Cook County Board of Review takes office. There are three main reasons for this recommendation:

- the current level of funding and staffing provided to the PTAB is plainly inadequate to deal with massive increases in the number and complexity of its caseload; and the recently announced proposed budgetary plans to provide funds for staff to alter this situation may not be adequate to the scope of the task being undertaken;

- even with the resources proposed in the FY 1997 budget, timely staffing and operation for the tax year 1996 appears to be an unreachable target;

- apart from the expanded staffing and organizational needs, there are basic, unresolved legal and valuation issues, relating to classification and median levels of assessment, that must be addressed and settled by carefully drawn rules or by legislation, before the first Cook County cases can be heard; and

- the need for the PTAB and the significant expenditure of tax money to fund it may, as a policy matter, need to be revisited in view of the reformed tax objection remedy contained in HB 1465: if the reformed tax objection remedy functions as anticipated, there may be no need or cost justification for any additional remedies or methods of assessment review.

The Civic Federation believes that delaying the PTAB until the 1998 tax year (a delay that may occur in any event as an indirect result of current litigation over other aspects of HB 1465), can work to the public's advantage by providing time to consider these issues.

(5) The board of review should not be required to function as a "super freedom-of-information source" for taxpayers: the county assessor and/or board of review should be obligated to furnish only relevant records and information which pertain to a specific property whose assessment is being reviewed at the board.

(6) Cook County should retain the power that it possessed under the Property Tax Code prior to HB 1465 to set its own reassessment districts and cycle. This is primarily an administrative matter which is best handled at the local level.

Conclusion

For the reasons more fully detailed in the report which follows, the Civic Federation asks that the foregoing recommendations be considered and implemented by the General Assembly. In the judgment of the Civic Federation, unless these corrective actions are taken before the scheduled implementation of the provisions of HB 1465, the well-intended reforms will turn sour; and the many established and smoothly functioning aspects of the tax collection machinery will break down at tremendous cost, not only to taxpayers but also to taxing districts. The result will be a property tax system that at best will be difficult to administer (especially in Cook County), and at worst, will prove utterly unworkable, grossly inefficient and unnecessarily adversarial. The opportunity to reform the system which has been presented to us will have been squandered.

II. PROPOSED PROPERTY TAX CODE AMENDMENTS AND COMMENTARY.

In order to understand the context within which Task Force II is making recommendations for change, it is helpful to consider the statutory schemes crafted by the General Assembly for assessment review in Illinois before and after the passage of House

Bill 1465. An outline, containing a general overview of those processes is exhibited in the appendix to this report.

At the outset it must be understood that even though units of local government derive revenue from the property tax, for constitutional reasons the tax assessment review system exists for the benefit and protection of the taxpayer. Dietman v. Hunter, 5 Ill.2d 486 (1955). Duties imposed on assessment officials, when designed to protect the taxpayer's interests, are mandatory. Andrews v. Foxworthy. 71 Ill.2d 13 (1978). In a very real sense, the tax assessment appeal system is one in which the taxpayer "audits the government" rather than vice versa.

A. The "Downstate" Process Before House Bill 1465.

Non-farm taxable property in all counties in Illinois except Cook ("downstate") is assessed for ad valorem property taxation at 33 1/3% of its fair market value. Section 9-145 of the Property Tax Code (35 ILCS 200/9-145). The initial responsibility for estimating the value of a taxpayer's property rests with the township assessor and supervisor of assessments for the county. Sections 3-5 and 3-65 of the Property Tax Code (35 ILCS 200/3-5 and 3-65). All property is reassessed every four years which is referred to as a "quadrennial assessment" or "general assessment". Sections 1-65 and 9-215 of the Property Tax Code (35 ILCS 200/1-65 and 9-215).

Township assessors and supervisors of assessments certify their assessments to county boards of review. Sections 9-230 and 9-240 of the Property Tax Code (35 ILCS 200/9-230 and 9-240). The board of review is a 3 member body. Section 6-5 of the Property Tax Code (35 ILCS 200/6-5).

Assessments certified to the county board of review may be reviewed upon complaint by any taxpayer or taxing body which has an interest in an assessment. Section 16-25 of the Property Tax Code and Section 16-55 of the Property Tax Code (35 ILCS 200/16-25 and 16-55). Upon such complaint the board has power to review the assessment and correct it as "appears to be just." Section 16-55 of the Property Tax Code (35 ILCS 200/16-55). In addition, whenever a taxpayer seeks a reduction in assessment in excess of $100,000, the board of review notifies the potentially affected taxing bodies and provides an opportunity to be heard, i.e., to intervene. Section 16-55 of the Property Tax Code (35 ILCS 200/16-55).

In addition to jurisdiction by complaint, the board of review in downstate Illinois also has independent power to increase, reduce or otherwise adjust the assessment of any property in order to make changes in the valuation "as may be just." Section 16-55 of the Property Tax Code (35 ILCS 200/16-55).

A dissatisfied taxpayer has a choice of remedies after the board of review certifies an assessment. The taxpayer may appeal to the Property Tax Appeal Board ("PTAB") under Section 16-160 of the Property Tax Code or may elect to pay the tax under protest and follow

the judicial tax objection process ("tax objection") pursuant to Sections 21-175 and 23-5 of the Property Tax Code. (35 ILCS 200-16-160; 21-175, 23-5). The "election of remedies" is exclusive: that is, when a PTAB complaint is filed by a taxpayer, the taxpayer may not also file a tax objection. Section 16-60 of the Property Tax Code (35 ILCS 200/16-60).

An affected taxing body also may appeal a board of review assessment decision to the PTAB whether or not it participated in the board of review proceeding. Section 16-160 of the Property Tax Code (35 ILCS 200/16-160). In addition, when an appeal involves a potential reduction of $100,000 or more in assessment, the affected taxing bodies are notified and permitted an opportunity to intervene. Section 16-180 of the Property Tax Code (35 ILCS 200/16-180).

The Illinois Property Tax Appeal Board ("PTAB") is a 5-member administrative agency which reviews board of review decisions (35 ILCS 200/16-160 et seq.) Its members are appointed by the Governor with the advice and consent of the Senate for 6 year terms. No more than 3 of its members may be from the same political party (35 ILCS 200/7-10).

The PTAB was established in 1967 to provide downstate taxpayers with a forum for the appeals of property tax assessments beyond that which was provided at the county level. Its original purpose was to smooth out intercounty disparities of decision of the boards of review by establishing a fair tribunal at the state level. Initially, the PTAB was an agency within the Department of Local Government Affairs and later, the Department of Revenue. In 1980 an amendment made the PTAB an "autonomous body within the Department" but not subject to the Department's director (P.A. 81-894); and in 1985 a further amendment made the PTAB totally independent of the Department (P.A. 83-264). The PTAB remains an independent agency today with its own budget, which as of fiscal 1996 was $736,000 (see bar graphs and charts attached as Exhibit 1.) Currently it has 16 employees, including 6 hearing officers and 6 clerical personnel, to aid it in performing its duties (see 35 ILCS 200/7-15). These 6 hearing officers handle the 8,000-10,000 cases which are filed each year, approximately 80% of which are for homes (see Exhibit 2 which summarizes the PTAB's current caseload).

Review at the PTAB is *de novo* and the PTAB is charged with making its determination based on the equities and the weight of the evidence. Section 16-185 of the Property Tax Code (35 ILCS 200/16-185). This includes the power to raise as well as lower the assessment. LaSalle Partners v. Property Tax Appeal Board, 269 Ill. App. 3d 621 (2nd Dist. 1995). Under PTAB rules interpreting appellate case decisions, "equity and the weight of the evidence" has been construed to mean that simple claims of valuation error may be proven by a preponderance of the evidence, but claims of disuniformity or inequity must be proven with clear and convincing evidence. Furthermore, PTAB rules require the submission of evidence in advance of the hearing and permit discovery at the discretion of the PTAB — although such permission is rarely allowed.

Once the PTAB has rendered its decision, administrative review is to the circuit court or (in cases involving a change in assessment of $300,000 or more) to the appellate court

directly. The burden there is to show that the PTAB decision was against the manifest weight of the evidence. Section 16-195 of the Property Tax Code (35 ILCS 200/16-195).

Before House Bill 1465 was adopted, the judicial tax objection procedure was *de novo* but required that the taxpayer show that the assessment was the product of "constructive fraud." The Court did not have authority to increase the assessment in the tax objection process; rather, the court was limited to ordering the assessment reduced if it found constructive fraud had been committed, or to leaving it undisturbed ("no change") when such fraud had not been established.

Judicial decisions resulting from the tax objection process or on administrative review could be reviewed by appellate courts. Further discretionary appeal would ultimately lie to the Illinois Supreme Court as in any other civil case.

There was no method by which taxing bodies could intervene as a matter of right in the tax objection proceeding since the only parties to the proceeding are the taxpayer and the county collector who is represented by the county's State Attorney. Opinion of the Illinois Attorney General No. 17 (1953); People ex rel. Thompson v. Anderson, 119 Ill. App.3d 932 (3rd Dist. 1983). In Anderson the court observed that it would be unrealistic to expect all taxing districts, if involved in such litigation, to agree to the manner in which it should be resolved. This, of course, would protract the matter and unnecessarily pit one governmental body against another. The court, therefore, confirmed the authority of the State's Attorney as follows:

> The State's Attorney as an elected official had a duty to conduct this litigation and had authority to enter into a compromise agreement without the approval of any of the taxing units that might ultimately be affected.

119 Ill. App.3d at 939.

Over the years, judicial decisions refocused the issue regarding constructive fraud from emphasizing solely discrepancies in value to requiring, in addition, proof of circumstances which would tend to show misconduct or "dishonesty" on the part of the assessment official. See Cushman, The Judicial Review of Valuation in Illinois Property Tax Cases, 35 Ill. L. Rev. 689 (1941); See also, In re: Application of County Collector v. Ford Motor Company, 131 Ill.2d 541 (1989); In re: Application of County Collector v. Atlas Corporation, 261 Ill. App.3d 494 (1st Dist. 1993); In re Application of County Collector v. J.C. Penney, Misc. No. 86-34, 1985 Obj. 721 (Cir. Ct. Cook County, June 15, 1994). The remedy, in the view of many, became inadequate, leading to the reforms recommended by Task Force I. Another result of the difficulty of proving constructive fraud was that downstate taxpayers overwhelmingly elected the PTAB as the next remedy following an adverse board of review decision.

Importantly, the Property Tax Code left open the issue concerning the resolution of the conflict arising in the situation in which a taxing body appeals to the PTAB and the

taxpayer wishes to elect the tax objection procedure as a method to review the same assessment. Given that downstate taxpayers overwhelmingly elected the PTAB for review, the issue has not resulted in any appellate cases on the point. Now that the tax objection process has been reformed through House Bill 1465, the potential for conflict is more readily apparent. This potential for conflict was not addressed by the framers of House Bill 1465 and will be discussed later in this report.

B. The Cook County Process Before House Bill 1465.

In Cook County, property is classified for purposes of assessment depending on its use. For example, residential property is assessed at 16% of its value while commercial property is assessed at 38% of value. Cook County Real Property Assessment Classification Ordinance. The chief assessment officer is the Cook County Assessor who has power annually to correct assessments but who generally assesses on a triennial basis consistent with the Cook County Real Property Assessment Classification Ordinance. Sections 3-50, 14-30 and 14-35 of the Property Tax Code (35 ILCS 200/3-50, 14-30 and 14-35). The Assessor certifies the assessment books to the Cook County Board of Appeals. Section 14-35 of the Property Tax Code (35 ILCS 200/14-35).

The Board of Appeals in Cook County is a two-member board which has authority to review assessments only upon "complaint." Sections 5-5 and 16-95 of the Property Tax Code (35 ILCS 200/5-5 and 16-95). Unlike downstate boards of review, the Board of Appeals has no power to review assessments on its own motion. Complaints may be filed at the Board of Appeals by any "taxpayer." Section 16-115 of the Property Tax Code (35 ILCS 200/16-115). This has been construed to mean that a taxpayer who is really acting on behalf of a taxing body may file such an appeal based upon his or her own individual standing. Dozoretz v. Frost, 145 Ill.2d 325 (1991). Dozoretz, therefore, carved an exception to the general principle that a taxing body, as an entity, does not have independent legal standing. See People ex rel Thomas v. Nixon, 353 Ill. 556 (1933); McDonough v. Marshall Field & Co., 355 Ill. 885 (1934). Because taxing bodies lack independent standing, there is no provision requiring the Board of Appeals to notify a taxing body when an appeal is filed and provide it with an opportunity to intervene.

There is no further administrative review of a taxpayer complaint after the Board of Appeals has adjourned. The only remaining remedy is for the affected taxpayer to file a tax objection complaint in the Circuit Court, and prior to HB 1465 the only permitted court results were either "no change" or a reduction in the assessment. As stated, before House Bill 1465 the burden in a tax objection case was to show that the assessment was the product of constructive fraud.

C. House Bill 1465.

Significantly, in HB 1465 the General Assembly embraced the reforms recommended by Task Force I in regard to the judicial process and abolished the barrier of constructive fraud in Cook and downstate counties. Now, a taxpayer must pay the taxes in

question within 60 days of the due date and file an objection in the circuit court within 75 days of the due date. The taxpayer must then show that the assessment is "incorrect" or "illegal." The showing of an incorrect assessment must be made by clear and convincing evidence.

House Bill 1465 also abolished the Cook County Board of Appeals effective January 1, 1996 and replaced it with an interim 3-member board of review which is to be appointed by the General Assembly. Section 5-5 of the Property Tax Code, as amended. (35 ILCS 200/5-5). A permanent board of review is scheduled to be elected by the voters in November, 1998 and to take office the first Monday of December, 1998. Id.

The new board is given jurisdiction to review assessments in Cook County upon complaint, request, or upon motion of one of the members of the board upon good cause shown. Taxing bodies are given express authority to file appeals. Section 16-95 of the Property Tax Code as amended (35 ILCS 200/16-95).

In addition, jurisdiction for the first time is placed in the Property Tax Appeal Board for Cook County beginning with the 1996 tax year for residential parcels containing 6 units or less. All other Cook County property is given the opportunity to be reviewed at the Property Tax Appeal Board starting with the 1997 tax year. Section 16-160 of the Property Tax Code as amended (35 ILCS 200/16-160).

Finally, new assessment districts have been established by the General Assembly, presumably pre-empting Cook County's power in this regard. Section 9-220 of the Property Tax Code, as amended (35 ILCS 200/9-220).

D. Recommendations for Change.

After a careful review and analysis of the foregoing items, Task Force II recommends that the General Assembly implement the following:

1. The Cook County Board of Appeals Should Not Be Abolished Until Its Term Expires December 7, 1998.

The Civic Federation has already adopted a position that the interim board of review should not be rushed into Cook County; rather, in order to effect a smooth, orderly and cost-effective transition, there should be sufficient time to plan this significant change in Cook County's property tax assessment machinery.[3]

[3]The Circuit Court of Cook County on October 23, 1995 preliminarily enjoined the provisions of HB 1465 which created the interim board. Frost v. Edgar 95 CH 8573. Notice of direct appeal was filed by the Attorney General on November 20, 1995 pursuant to Illinois Supreme Court Rule 302(a).

The Board of Appeals reported to Task Force II that a change in "mid-stream" on or about January 1, 1996, would result in a two or three month delay in the completion of the assessment review process for Cook County for the 1995 tax year. Standing alone, it is possible to dismiss this data as somewhat self-serving; but, it was the consensus of Task Force II that to accommodate an interim board's need for increased personnel and office space as well as the arrangements for a transition of power, would effect delay. Delay would also be occasioned if the new board published new rules of procedure which could change actions taken by the Board of Appeals.

The cost of delay in tax bill collection is significant. The County estimates that the cost of delay in tax bill collection is about $1,500,000 per month to the County of Cook. The South Cook Organization for Public Education has echoed the financial impact of delay in the collection of property tax bills. Some of those taxing bodies may not be able to bridge the gap in tax collection by selling notes so that the effect of delay is magnified in terms of cash flow.

Task Force II therefore reaffirms the position previously taken by the Civic Federation and it recommends that any change in the structure of the board of appeals should coincide with the next regularly scheduled election. Section 5-5 of the Property Tax Code, as amended by HB 1465, should be amended accordingly as follows[4]:

(35 ILCS 200/5-5)

Sec. 5-5. Election of board of review; counties of 3,000,000 or more.

(a) In counties with 3,000,000 or more inhabitants, on the first Tuesday after the first Monday in November 1994, 2 commissioners of the board of appeals shall be elected to hold office 4 years from the first Monday in December following their election ~~and until January 1, 1996~~. In case of any vacancy, the chief judge of the circuit court or any judge of that circuit designated by the chief judge shall fill the vacancy by appointment. The commissioners shall be electors in the particular county at the time of their election or appointment and shall hold no other lucrative public office or public employment. Each commissioner shall receive compensation fixed by the county board, which shall be paid out of the county treasury and which shall not be changed during the term for which any commissioner is elected or appointed. Effective ~~January 1, 1996~~ the first Monday in December 1998, the board of appeals is abolished. The board of

[4] Deletions are indicated by overstrike, additions by shading.

review hereinafter created shall succeed to the powers and duties of the board of appeals as previously constituted.

The board of appeals shall maintain sufficient evidentiary records to support all decisions made by the board of appeals. All records, data, sales/ratio studies, and other information necessary for the ~~interim~~ board of review ~~appointed under subsection (b)~~ to perform its functions and duties shall be transferred by the board of appeals to the ~~interim~~ board of review on ~~January 1, 1996~~ the first Monday in December, 1998.

~~(b) (1) Effective January 1, 1996, in each county with 3,000,000 or more inhabitants there is created an interim board of review. The interim board of review shall consist of 3 members who are residents of the county, appointed by the members of the General Assembly whose legislative districts lie, in whole or in part, within a county with 3,000,000 or more inhabitants, in the manner provided in this subsection, to hold office for a term beginning January 1, 1996 and until the first Monday in December of 1998.~~ * * * *[Continue deletion of the balance of § 5-5(b).]*

(b)~~(c)~~ In each county with 3,000,000 or more inhabitants, there is created a board of review. The board of review shall consist of 3 members, one elected from each election district in the county at the general election in 1998 to hold office for a term beginning on the first Monday in December following their election and until their respective successors are elected and qualified. * * * *[Continue text of existing § 5-5 (c) as the text of amended § 5-5(b).]*

[Inasmuch as the revision proposed above provides that no "interim" board of review should be constituted in Cook County prior to the election of a permanent board in 1998, the various Property Tax Code sections amended by HB 1465 to insert cross-references to an "interim board of review" should also be amended to delete that term.]

The above suggested revisions also contain a technical amendment expressly providing that the board of review would succeed to the powers, duties and obligations of the board of appeals. For example, there is presently no statutory language which deals with the situation in which a complaint is filed with the board of appeals but cannot be adjudicated until after the board changes. The proposed change is designed to provide expressly for the power

of the board of review to act in such situations and to confirm the actions of the board of appeals taken prior to its abolition so that there is no "gap" in authority.

As previously stated, the Civic Federation and Task Force II have no opposition to a 3-member board of review as contemplated by House Bill 1465. The 3-member board, however, should result from the November 1998 general election with the newly elected board to take over the first Monday of December, 1998. There is sufficient time between now and then to process an orderly and effective transition.

2. Jurisdiction Of The Board Of Review Should Be Invoked Only On Complaint Or On Motion Of The Board.

As previously stated, HB 1465 has authorized the jurisdiction of the interim or permanent board of review to be invoked by "complaint," "request," or upon motion of any member of the board of review upon good cause shown. It is evident that the legislature intended to expand the jurisdiction of the Cook County board by giving it the authority, long possessed by downstate boards, to act on its own motion. However, several terms used in HB 1465 to describe the expanded authority of the Cook County board are unclear, and thus they may frustrate rather than enhance the ability of the board to perform its work in an orderly and efficient manner. This is particularly true of the provision for the board to act on "request."

Therefore, Task Force II recommends that the words "or request" be deleted and that the jurisdiction of the board of review thereby be limited to proceedings upon taxpayers complaints or upon motion of any one or more members of the board. Downstate boards do not have power to review upon "request;" and the term "request" is not defined by the legislation. The meaning of the term is thus an open invitation to litigation. Since the complaint process functions well, there is no compelling reason why jurisdiction should be invoked on "request."

In order to have a process that is easy to administer and understand, Task Force II also believes that jurisdiction for review of an assessment should be conferred on the board only by complaint filed or by its own motion made within a township-by-township framework; so that it is clear when and how the board's responsibility to review an assessment is invoked. This is consistent with the existing mechanism with which taxpayers are familiar.

Task Force II concurs with the General Assembly that it is helpful to maintain a separate statutory scheme for the Cook County Board of Review, so that certain necessary differences between the Cook County and downstate boards can be recognized. For example, unlike its downstate counterparts the Cook County board does not have the duty under Section 16-65 of the Property Tax Code to act as an inter-township equalizing authority inasmuch as assessments in Cook County do not originate at the township level. Also the participation by taxing bodies in proceedings before the board is recommended to be eliminated in Cook County for the reasons discussed in considerable detail later in this report.

Finally, Task Force II recommends the elimination of the current language of House Bill 1465 which provides that when the board wants to exercise its motion power, it must

do so "upon good cause shown." This language reads, and was apparently intended, as a jurisdictional limitation upon the power of the board. For example, a board member could propose to change an assessment of a given property, and it would be possible, under this limiting language, for the taxpayer to appear before the board on a special and limited basis to challenge the board's jurisdiction on the grounds that the reasons for the proposed change are not "good cause." Thus, there would be a "mini trial" within the assessment review process which in turn could be separately reviewed by the circuit court on writ of certiorari.

Task Force II believes that if the board is to have the broad power to review assessments on its own motion, the exercise of this power should not be contingent upon "good cause shown." Naturally, it is expected that any board member who would make a motion to review an assessment or to change it would have good reason to do so and would make the proposal in good faith. Any frivolous or bad faith motion brought by a board of review could otherwise be actionable.

Finally, the new language of HB 1465 that describes the method of the board's acting on its own ("upon written motion of any one or more members of the board"), is simplified to the clearer language used in the comparable authority of downstate boards contained in Section 16-30: "on its own motion."

Based on all of the foregoing, Task Force II recommends that Section 16-95 of the Property Tax Code, as amended by HB 1465, be further amended in the following respects:

(35 ILCS 200/16-95)

Sec. 16-95. Powers and duties of board of appeals or review; Complaints. In counties with 3,000,000 or more inhabitants, ~~until January 1, 1996~~, the board of appeals in any year shall, on complaint that any property is overassessed or underassessed, or is exempt, review and order the assessment corrected.

Beginning ~~January 1, 1996 and until~~ the first Monday in December 1998, in counties with 3,000,000 or more inhabitants~~, the interim board of review, and beginning the first Monday in December 1998 and thereafter~~, the board of review:

(1) shall, ~~upon~~ on written complaint ~~or request~~ of any taxpayer, ~~or any taxing district that has an interest in~~ that any property is overassessed or underassessed or exempt, review the assessment, and confirm, revise, correct, alter or modify such assessment, as appears to be just; ~~and upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of any real property; nothing in this Section, however,~~

> ~~shall be construed to require a taxpayer to file a complaint with the board;~~ and
>
> (2) may, ~~upon written~~ on its own motion, ~~of any one or more members of the board and~~ made on or before the dates specified in the notices given in pursuant to Section 16-110 for each township, revise, correct, alter, or modify any assessment as appears to be just. ~~upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of real property regardless of whether the taxpayer or owner of the property has filed a complaint or request with the board.~~
>
> ~~An assessment shall not be increased until the person to be affected has been notified and given an opportunity to be heard. Before making any reduction in assessments of its own motion, the board shall give notice to the assessor or~~ No assessment may be changed by the board on its own motion or on complaint of any person other than the person in whose name the property is assessed, until the person in whose name the property is assessed and the chief county assessment officer who certified the assessment~~, and give the assessor or chief county assessment officer~~ have been notified and given an opportunity to be heard ~~thereon. All~~.

It should perhaps be emphasized that one suggested change here contains a clarification as to timing. The board's power to change an assessment on its own motion is now proposed to be limited in time to the township filing deadline which is currently provided for in Section 16-110 of the Property Tax Code. While accommodating the legislative policy change granting the board the power to alter assessments on its own motion, the principle of finality in assessment indicates that at some point the exercise of this power must be time-limited. House Bill 1465 does not provide any time limit on the board. At present, taxpayers must seek review within the township time limits prescribed by law, usually a 20-30 day period after the Assessor completes his work and certifies his assessments for the respective townships. These time limits are considered reasonable for taxpayers, and allow for an orderly flow of the work of the board. For that reason, Task Force II recommends that motions by any member of the board of review also be made within the time for filing complaints for each township.

3. The Formal Participation of Taxing Bodies Should Be Eliminated At The Cook County Board Of Review And At Any Appeals To The PTAB

As stated, one of the differences between the downstate and Cook County assessment appeal processes has been the level of participation allowed to taxing bodies. Before House Bill 1465, taxing bodies in Cook County could file a complaint at the Board of Appeals

only through a friendly and cooperative "taxpayer". Dozoretz v. Frost, 145 Ill.2d 325 (1991). There was no statutory command to the Board of Appeals to require it to notify any taxing body when a taxpayer filed a complaint for an assessment reduction; and there was no corresponding right of the taxing body to intervene in such cases. In downstate counties, by contrast, taxing bodies have express statutory authority to file "undervaluation" complaints. They are also entitled to notice and an opportunity to be heard (i.e., to intervene) any time a taxpayer seeks an assessed valuation reduction of $100,000 or more. Downstate taxing bodies can also file an appeal to the Property Tax Appeal Board from a decision of the board of review, even though they did not participate before the board of review on their own complaint or by intervention in a taxpayer's complaint. A taxpayer could thus go through the assessment appeals process, obtain a satisfactory assessment revision, and then find itself defending the revised assessment when a taxing body challenges the reduction at the PTAB. If the taxpayer files its own PTAB complaint, the taxing body can intervene and even seek an increase in the assessment.

House Bill 1465 expands the holding of the Dozoretz case and provides Cook County taxing bodies with express statutory authority to file their own complaints without having a taxpayer act on their behalf. Consistent with prior law, however, there is no notification process imposed upon the board of review when a taxpayer files a complaint for an assessment reduction. Similarly, there is still no statutory right for a taxing body to "intervene." In bringing the Property Tax Appeal Board into Cook County, however, House Bill 1465 will provide a further opportunity for a taxing body to protest an assessment reduction or seek an increase, even though it does not participate on complaint at the board.

The wisdom of taxing body participation in the assessment appeal process was discussed extensively by Task Force II with substantial input from representatives of taxing districts who were invited to share their views on these issues.[5]

On the one hand, the taxing districts, which participated in the discussions on this issue, indicated a desire to "protect the tax base" in an appropriate situation. This, they reasoned, necessitated notification of Cook County taxing bodies whenever a taxpayer sought a reduction in assessment, and an opportunity to intervene. In addition, they argued that the filing of appeals by Cook County taxing bodies at the Property Tax Appeal Board would follow logically from their right to participate at the board of appeals level as an intervenor in the first place.

On the other hand, taxpayers generally felt that the presence of a taxing body in a property tax assessment appeal was usually of nuisance value only and made the procedures more adversarial than need be. The experience in downstate areas tends to support the suggestion that, due to the constraints of time, intervention by a taxing body at the board level

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[5] It should be noted that the taxing body representatives attended meetings as guests and not as members of Task Force II, and that this report represents only the views of Task Force II and not those of its guests.

simply does not lend itself to the required expeditious determination of the correct assessment for the property. Given the time constraints involved in responding to a taxpayer complaint for an assessment reduction, taxing bodies do not have enough time to obtain sufficient evidence to rebut the taxpayer's evidence. More often than not, the intervening taxing body shows up at the downstate board of review hearing, and if it does more than ask for a continuance, it merely asks a few perfunctory questions, perhaps cross-examines some of the taxpayer's witnesses, and then rests its case. Moreover, some taxpayers complain that, in addition to slowing down the process, the mere presence of the taxing body "chills" some local boards of review into inaction regardless of the quality of the evidence.

The Cook County Board of Appeals frequently schedules hearings within 7-10 days of the filing of a complaint. Furthermore, there were complaints affecting 93,500 parcels filed at the Board of Appeals for the 1994 tax year.[6] Requiring the Board to notify taxing bodies when a complaint is filed and to allow time to intervene would be cumbersome and would unavoidably delay the processing of the complaint. There are more than 700 taxing bodies in Cook County and often as many as 10 taxing bodies obtain revenue from any given property. There is simply no practical way to afford notice and a meaningful opportunity to intervene.

Finally, the fact that the tax objection process in Circuit Court has become more "taxpayer friendly" will likely result in many situations in which a taxpayer will elect to file in Circuit Court. The tactical advantages to the taxing bodies in filing a PTAB complaint are obvious. As the law is now framed, taxing bodies do not have a right to participate in the tax objection process, but they do have a right to complain to the Property Tax Appeal Board and seek an increase in the assessment. Any time they suspect a taxpayer may continue with an appeal by tax objection they would have an incentive to pre-empt that action by filing a "defensive" appeal at the Property Tax Appeal Board. Thus, there could be two competing proceedings at the same time with respect to the same assessment and with the potential for differing results. This clearly presents the opportunity for chaos and a never-ending chess game between taxpayers and taxing bodies. It is important to note that this problem is not confined to Cook County, as both the PTAB's jurisdiction and the reformed judicial objection process apply throughout the state under HB 1465.

Many of the proposals made to Task Force II relating to those issues underscored the complexity of the competing interests and the difficulty in resolving them. In considering the issues, it must first be noted that there is no constitutional right in a taxing district to notice of or to participate in any assessment appeal. Mr. Justice Schaefer, writing for the Illinois Supreme Court, used the following language on this point:

> We know of no authority which holds that due process requires a State to give its local taxing bodies a right to be heard with respect to the valuation of a taxpayer's property for taxing purposes. If

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[6]Source: Cook County Board of Appeals.

> local taxing bodies do not have a constitutional right to be heard, they do not have a constitutional right to notice. And since one taxpayer is not entitled to notice of proceedings affecting the assessed valuation of another taxpayer's property, the taxing bodies cannot assert any vicarious right to notice on behalf of other taxpayers.

Board of Review v. Department of Revenue, 48 Ill.2d 513, 518 (1971). Thus, any "right" to, and the degree of participation accorded to a taxing body in, the property tax assessment appeal process is purely a matter of legislative grace.

The lack of any constitutional right of the taxing body in this regard must also be viewed in the context that the taxpayer does have a constitutional right to assessment appeals. The appeal process exists because of the taxpayer and not the taxing body. The Illinois Supreme Court stated the rule in Dietman v. Hunter, 5 Ill.2d 486 (1955) as follows:

> [D]ue process requires that the property owner be given notice and an opportunity to be heard upon the valuation of his property at some point in the taxing process before his liability to pay becomes conclusively established. A failure in this regard renders the tax void and uncollectible.

5 Ill.2d at 489.

There is no compelling reason for taxing body participation in the typical property tax assessment appeal in which the valuation issues are not complex and the degree of error alleged by the taxpayer is not significant in any meaningful financial terms. Those who are elected to serve as assessors and members of assessment reviewing tribunals are trained in the appraisal art and are legally bound to concern themselves with the uniformity and fairness of assessments on a systematic basis throughout an assessment jurisdiction. This is in contrast with the selective interest of taxing bodies in pursuit of larger assessments against isolated taxpayers and their property.

Conversely, taxing bodies have neither the expertise nor the assets available to engage attorneys and appraisers to pursue or defend assessment appeals in the overwhelming majority of cases. These exercises divert the energies and assets of the taxing body away from its core mission which is to provide government services such as education, park and recreational areas, etc. Moreover, the downstate experience with taxing bodies' access to the appeals process suggests that taxing body involvement impedes the orderly process of assessment appeals. The "chilling" effect of a taxing body appearance at the board of review serves only to prolong the day of reckoning at the PTAB or in court when the taxing body is unable to support its case with competent evidence. In such cases, the taxing bodies really take a loan from the taxpayer to be refunded at 5% per annum when a final ruling is made. While perhaps expedient for the short term, this is unwise for the long term.

The arguments advanced by taxing districts regarding their perceived need to participate in the appeals process are not persuasive in that respect. What they clearly demonstrate is rather that the General Assembly (as previously urged by the Civic Federation) must devise a method to fund local government without so heavy a reliance on the property tax.

This is not to suggest that taxing bodies should have no input in the assessment process. It is only to say that a formal proceeding before the board of review is not the appropriate place. Taxing bodies are free to communicate their concerns and provide information and support to assessment officials. A positive example of the benefits of such cooperative efforts was the Ford case in which a taxing body furnished compelling appraisal testimony to the Cook County Collector enabling a successful outcome. Task Force II fully expects that taxing bodies will continue to work cooperatively along these lines in the future in appropriate situations.

Indeed, the Cook County State's Attorney's Office historically has encouraged the indirect participation of taxing bodies in assessment appeals in court (tax objections). The reformed assessment appeals process under HB 1465, including the tax objection remedy, will make such participation important, and it is anticipated that the State's Attorney would welcome this in the future. A taxing body's participation would be focused on the furnishing of appraisals, comparative sales information, and expert witnesses, as well as any funding to produce or procure relevant evidence in defending assessments located in its taxing district. In order to participate effectively, taxing bodies would need to monitor parcels in their districts and contact the State's Attorney with their concerns regarding the assessment of these parcels at the appropriate time. Task Force II expects that communication lines between taxing bodies and the State's Attorney's office will remain open at all times. It should be noted, however, that under established law the State's Attorney has sole discretion concerning how any matter is handled in court.

Since 1982, there have been in Cook County no more than two dozen or so Dozoretz type or pure taxpayer underassessment appeals annually. Usually, there have been less than a handful per year, and in several years, none at all. While there is no readily apparent reason for this, an inference can be drawn that there is no compelling need for formal taxing body participation at the level of assessment review. Similarly, Task Force II is unpersuaded that any useful function is served by permitting a taxing body to file an appeal to the PTAB.

Given the premise that the participation of taxing bodies should be eliminated, the worrisome conflict between the taxpayer's right to elect a remedy beyond the board of review level (PTAB vs. court) and the conflicting right of taxing bodies under current law to appeal to the PTAB, is automatically eliminated. Taxing bodies would not have independent authority to appeal to the PTAB so as to "drag" an unwilling taxpayer into that forum, and thereby preclude the taxpayer from exercising his election of remedies.

Taxing bodies also presently have the right to intervene in a taxpayer appeal under PTAB rules. The board of review, however, is represented at the PTAB by the States Attorney

in the same way the collector is represented by the States Attorney in a judicial tax objection proceeding. For the reasons expressed in the Anderson case, 119 Ill App. 3d at 939, and discussed in Section A above, taxing bodies should not be permitted to intervene as a matter of right at the PTAB any more than they are permitted to intervene as a matter of right in the judicial tax objection procedure.

Although Task Force II believes that as a logical matter these considerations have equal force in regard to the downstate appeals process, the primary focus of both the administrative appeal provisions of HB 1465 and the review of those provisions by Task Force II has been on Cook County. Furthermore, the scope of the practical problems posed by formal participation by taxing bodies is much greater in Cook County than in the downstate counties because of the vastly greater number and complexity of tax parcels in the former. Accordingly, statutory changes to eliminate the formal participation by taxing bodies in assessment appeals at the board of review level have been proposed only for Cook County. Although taxing bodies would thus retain their existing rights to appeal and intervene in downstate board of review proceedings, Task Force II suggests that the General Assembly may wish to revisit this issue after some experience has been gained in Cook County under the revised procedure.

Consistent with the philosophy stated in the preceding paragraph, Task Force II would have preferred to resolve the problem of taxing body participation at the PTAB level in the same fashion; namely, barring such participation on Cook County PTAB appeals only, and recommending to the legislature that they should probably give thought to a similar resolution downstate. However, taxing body participation in PTAB appeals poses a larger problem which must be resolved. The problem of the conflict of jurisdiction between the courts and the PTAB under HB 1465 extends throughout Illinois. It arises at this time because of improvements in the judicial remedy made in HB 1465. Before that, in the reign of the constructive fraud doctrine, downstate taxpayers were little inclined to opt for the tax objection route when they had the PTAB alternative. What was then only a theoretical problem now becomes real as taxpayers may find the court remedy considerably more attractive.

As a practical matter, leaving the conflict in place and unresolved downstate with its potential to interfere arbitrarily with the appeal rights of taxpayers, seems an irresponsible recommendation by the Task Force. Moreover leaving the conflict unresolved for some taxpayers while eliminating it for similarly situated taxpayers elsewhere might raise a constitutional issue as well. Accordingly, Task Force II recommends, in the suggested legislative changes which follow the next section, that formal taxing body participation in the PTAB be eliminated statewide.

4. The Extension of The Jurisdiction of the PTAB to Cook County Should Be Delayed Until the 1998 Tax Year.

All of the foregoing must be considered within the context that the Civic Federation has serious concerns in the first place about bringing the Property Tax Appeal Board to Cook County on the current statutory schedule.

During the last legislative session the Civic Federation opposed SB 565, which, among its other provisions, would have given the PTAB jurisdiction in Cook County. In a May, 1995, statement the Federation said:

> The Civic Federation at this time strongly opposes extending the PTAB's jurisdiction to Cook County. The PTAB lacks the funding or the expertise to handle a potential flood of assessment appeals from the state's largest county and SB 565 makes no provision to assist PTAB in either respect. Currently, the Board of Appeals reviews over 60,00 assessment appeals annually as well as thousands of certificates of error and exemptions. If only 25,000 parcels were appealed from Cook County to the PTAB, its workload would increase by about 280%, imposing a tremendous strain on an already overworked and understaffed body.

For similar reasons Task Force I concluded that the goals of tax appeal reform in Cook County would best be met by improvements in the applicable court proceedings (i.e., the judicial tax objection process) rather than by an extension of the PTAB's jurisdiction (Task Force I, Report, at 3).

During the decade prior to the passage of HB 1465, the Illinois Taxpayer's Federation and the Real Estate Tax Committee of the Chicago Bar Association repeatedly proposed legislation which would have either lightened the burden of proof in judicial tax objection cases or extended the PTAB's jurisdiction to Cook County. Neither measure gained passage during this period. However, the advocates of the measures did not generally advance them both for passage but rather advanced them in the alternative, since it did not appear necessary to have both in order to produce genuine reform for Cook County taxpayers. Similarly, as noted in Task Force I's report, downstate taxpayers evidenced little pressing interest in gaining access to both remedies by reforming the tax objection process inasmuch as they already had access to and generally preferred the PTAB (see Task Force I Report, at 1, 6.).

As noted above, Task Force I also recommended that reform be accomplished by making changes in a single remedy: the judicial tax objection process. This remedy applied statewide, and in its prior form required the taxpayer to prove constructive fraud. Because potential constitutional problems would be created by limiting a previously uniform judicial procedure to one county, Task Force I recommended changing the tax objection process statewide. Additionally, the task force noted that although the tax objection remedy was little used downstate, there was no reason to deny downstate taxpayers the benefits of the reform; i.e., the court system downstate was already in place and was fully capable of hearing new tax objection matters (see Task Force I Report, at 6.). The converse, however, was not true: the PTAB was not already in place and was not fully capable hearing new matters brought to it from Cook County (see Task Force I Report, at 3.).

HB 1465 ultimately adopted Task Force I's recommendations to reform the tax objection remedy, essentially verbatim. However, late in the legislative session extensive changes to the Cook County administrative appeal system were also incorporated in HB 1465, including the extension of the PTAB's jurisdiction to Cook County contrary to Task Force I's recommendations on this point. Perhaps because of the haste in which the administrative appeal provisions were joined with the balance of HB 1465, a number of technical problems were created which have already been identified in this report. Beyond that, although the sponsors of HB 1465 in its final version stated that additional funding for the PTAB would be forthcoming to address the criticisms which had been identified in the context of SB 565, such funding was not incorporated in the bill. The Governor's recently announced proposed FY 1997 budget addresses this issue, but the members of Task Force II remain concerned about the wisdom and the cost of extending the PTAB to Cook County. For this reason Task Force II undertook a study of the issue in order to evaluate whether the PTAB possessed the resources to handle, in particular, the large number of complex commercial and industrial appeals which could be expected from Cook County.

While Task Force II's study of the PTAB and other issues related to HB 1465 was in progress, Judge Getty rendered his decision in Frost v. Edgar, 95 CH 8573, which may be interpreted as having indirectly delayed the advent of PTAB in Cook County until December of 1998 when the permanent board of review will be installed. As a consequence the PTAB may possibly not be extended to Cook County until tax year 1998. Although Frost v. Edgar is presently on appeal, considerable time is likely to elapse in any event before the issue is resolved. Task Force II believes that such a 3-year period of delay would actually constitute an advantage for the public, the legislature, and the other parties interested in this issue, since it would allow time in which to examine the effectiveness of the reformed tax objection remedy while at the same time reviewing the composition and resources of the PTAB.

Few could quarrel about the need for the PTAB in Cook County if the tax objection remedy were to prove inadequate during this trial period. Conversely, however, if the tax objection remedy proves to be adequate, then the need for the PTAB should be examined in this light. In any event, however, the resources and composition of the PTAB would need to be examined carefully before it could be extended to Cook County with any hope of effective operation.

Apart from the question of financial resources, Task Force II believes that before PTAB commences hearing Cook County cases, efforts need to be made to revise PTAB's procedure and rules governing non-residential property assessment appeals. For example, copies of all documents which comprise the record of proceedings should be served contemporaneously on the opposing party and should not be funneled through the PTAB as under the current practice. In general, practice under the current PTAB rules does not permit effective pretrial discovery to be conducted by the parties to the appeal. In complex, non-residential cases discovery becomes more important in achieving a fair and accurate result; and the prospect of many more such cases arising from Cook County than the PTAB is currently handling strongly suggests that revisions to the PTAB's rules should also be considered in this regard.

Further, urgent attention needs to be given to the complex issue of applying a median level of assessment to market values proven in appeals of Cook County properties. The PTAB's rules currently require the use of a 3-year county-wide median assessment level in such cases, which is applied to the "estimate of full market value of the subject property on January 1" indicated by the evidence. PTAB Rules, § 1910.40(e). This rule is derived from statutory provisions and interpretation of case decisions applicable only to downstate counties, in which the law requires assessments to be made at "33 1/3%" of full fair market value; the figure "33 1/3%" is actually a technical term defined by the statute in relation to the most recent 3-year county-wide average median assessment level shown by Department of Revenue sales ratio studies for the county in question. (See Section 1-55 of the Property Tax Code 35 ILCS 200/1-55.) It should be noted that these specific statutory and administrative provisions concerning assessment levels are independent of the general constitutional provisions for uniformity in assessments applicable throughout the state.

Cook County, however, classifies real estate and assesses the various classes at different percentages of fair market value, in accordance with provisions of the county ordinance, as authorized by the Illinois Constitution. None of the Cook County percentages are defined in terms of the statutory "33 1/3%" definition applicable downstate. (For example, commercial property is classified and assessed at 38% of fair market value in Cook County, industrial property at 36%, vacant property at 22%, and so forth.) Any attempt to apply such a single county-wide median to appeals of Cook County assessments classified at varying levels, as is currently required by the PTAB statute and rules, would produce absurd and indeed illegal results.

Moreover, an attempt to adapt the current PTAB rules of decision in this regard to the classified assessment system in place in Cook County would present a task of enormous complexity and difficulty. Although the Department of Revenue's studies of median assessment levels have been approved by the courts as necessarily adequate to the task of intercounty equalization (see Advanced Systems v. Johnson, 126 Ill.2d 484 (1989), and although they may be adequate to identify an accurate median level in downstate counties where a highly homogenous tax base is assessed at a single statutory level of assessment, serious flaws have been noted in the studies for assessment appeal purposes in the context of Cook County's highly heterogeneous tax base assessed at varying assessment levels for different statutory classes (see In Re Application (etc.) v. U.S. Steel Corp., 106 Ill.2d 311 (1985)).

Another problem which would be created by the PTAB's application of any 3-year county-wide average assessment levels to Cook County properties would be its effect on the triennial assessment system. Under this triennial system, which has now been codified (improperly, we believe) in HB 1465, each parcel is assessed once every 3 years based on its geographic location within the county. Use of any county-wide 3-year average would reflect not only the most recent assessments, but also assessments which are 1 and 2 years old.

Obviously, the older the assessment the more out of date it is, and the less valid a basis of comparison to other, newer assessments it provides. In a rising real estate market

application of a county-wide 3-year average would tend to reduce the overall average by including the older assessments, thus making decreases easier to secure and eroding the tax base. This would occur as a result of factoring invalid information into the assessment review process. Current assessments should only be reviewed on the basis of comparison to other current assessments.

Finally, Task Force II has noted that the conflict in jurisdiction between the PTAB and the courts, which technically existed in the statute prior to HB 1465, has become more acute in view of the improved tax objection remedy. The exclusivity of the taxpayer's election of remedies under the current law means there is no conflict between the jurisdiction of the PTAB and the courts in cases of taxpayer appeals. However, this is not true in the case of taxing body appeals, since taxing bodies are permitted to appeal to the PTAB even if the taxpayer has simultaneously elected to proceed in the courts. The reformed tax objection remedy makes it more likely (and appropriate) that taxpayers may elect to proceed in the courts, and it is imperative to resolve the conflict in jurisdiction in order to prevent endless litigation which could entirely frustrate the appeal rights of the affected taxpayers. As discussed elsewhere in this report, because of the lack of any justification for involving taxing bodies in the assessment review process in the first place, this jurisdictional conflict is best resolved by precluding taxing bodies from filing appeals to the PTAB.

To effect this delay to tax year 1998, (as well as to make certain technical corrections detailed immediately after the statutory text), Task Force II recommends that Sections 16-115, and 16-160 of the Property Tax Code, as amended by HB 1465, and sections 16-170 and 16-180 of the Property Tax Code, be amended as follows:

(35 ILCS 200/16-115)

Sec. 16-115. Filing complaints. In counties with 3,000,000 or more inhabitants, complaints that any property is overassessed or underassessed or is exempt may be made by any taxpayer acting solely on his, her or its own behalf. All complaints shall be in writing, identify and describe the particular property, otherwise comply with the rules in force, be signed by the complaining party or ~~his or her~~ attorney thereof, and be filed in at least duplicate with the board of appeals until ~~January 1, 1996, the interim board of review beginning January 1, 1996 and until~~ the first Monday in December 1998, and with the board of review beginning the first Monday in December 1998 and thereafter ~~in at least duplicate~~. The board shall forward one copy of each complaint to the county assessor.

Complaints by taxpayers and certificates of correction by the county assessor as provided in this Code shall be filed with the

board according to townships on or before the dates specified in the notices given ~~in~~ pursuant to Section 16-110.

(35 ILCS 200/16-160)

Sec. 16-160. Property Tax Appeal Board - Process. In counties with 3,000,000 or more inhabitants, beginning with assessments made for the ~~1996~~ 1998 assessment year ~~for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property~~, and for all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer acting solely on his, her or its own behalf, not ~~dis~~satisfied with the decision of a board of review as such decision pertains to the assessment of his, ~~or~~ her or its property for taxation purposes~~, or any taxing body that has an interest in the decision of the board of review on an assessment made by any local assessment officer,~~ may, within 30 days after the date of written notice of the decision of the board of review, appeal the decision to the Property Tax Appeal Board for review. ~~In any appeal where the board of review has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. If an appeal is dismissed for failure to appear at a board of review hearing, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint.~~ However, the Property Tax Appeal Board shall have no jurisdiction to hear any appeal from the decision of a board of review dismissing a taxpayer's complaint therein for failure to appear at a board of review hearing of which the board of review has given written notice to the taxpayer 30 days before the hearing, unless the board of review has granted the taxpayer a continuance. Such taxpayer appealing to the Property Tax Appeal Board, ~~or taxing body~~, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth the facts upon which ~~he or she bases~~ the ~~objection~~ appeal is based, together with a statement of the contentions of law which ~~he or she desires~~ are sought to be raised, and the relief requested. If such a petition is filed ~~by a taxpayer on any property~~, the taxpayer is precluded from filing a tax objections complaint based upon valuation of that property, as ~~may~~ would otherwise be permitted by Sections 21-175, ~~and~~ 23-5 and 23-10. However, any taxpayer not satisfied with the decision of the board of review as such decision pertains to the assessment of

his, ~~or~~ her or its property need not appeal the decision to the Property Tax Appeal Board but may instead, and at the taxpayer's sole election, ~~before~~ seek~~ing~~ relief in the circuit courts under Sections 21-175, 23-5 and 23-10.

(35 ILCS 200/16-170)

Sec. 16-170. Hearings. A hearing shall be granted if any party of the appeal so requests, and, upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for a hearing, with proper notice to the interested parties. ~~Notice to all interested taxing bodies shall be deemed to have been given when served upon the State's Attorney of the county from which the appeal has been taken.~~ Hearings may be held before less than a majority of the members of the board, and the chairman may assign members or hearing officers to hold hearings. Such hearings shall be open to the public and shall be conducted in accordance with the rules of practice and procedure promulgated by the board. The board, any member or hearing officer may require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it and necessary for the making of a just decision.

(35 ILCS 200/16-180)

Sec. 16-180. Procedure for determination of correct assessment. The Property Tax Appeal Board shall establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal. The procedure, to the extent that the board considers practicable, shall eliminate formal rules of pleading, practice and evidence, and except for any reasonable filing fee determined by the board, may provide that costs shall be in the discretion of the board. A copy of the appellant's petition shall be mailed by the clerk of the Property Tax Appeal Board to the board of review whose decision is being appealed. ~~In all cases where a change in assessed valuation of $100,000 or more is sought, the board of review shall serve a copy of the petition on all taxing districts as shown on the last available tax bill.~~ The chairman of the Property Tax Appeal Board shall provide for the speedy hearing of all such appeals. All appeals shall be considered de novo. Where no complaint has been made to the board of review of the county where the property is located and the appeal is based solely on the effect of an

> equalizing factor assigned to all property or to a class of property by the board of review, the Property Tax Appeal Board shall not grant a reduction in assessment greater than the amount that was added as the result of the equalizing factor.

Section 16-115 as proposed contains a technical amendment to clarify that a "taxpayer" eligible to file a complaint at the board of review should be acting solely on his or her own behalf. That is, a taxpayer could not proceed on behalf of a taxing body. This would overrule Dozoretz in favor of the policy expressed by the appellate dissent in that case. See, Dozoretz v. Frost, 203 Ill.App 3d at 239-40 (Campbell, J. dissenting). Thus, a taxpayer would not be eligible to file an underassessment complaint seeking to raise the assessment of another property if the appeal is really brought on behalf of or at the behest of a taxing body, although a taxpayer would retain the right to file an underassessment complaint in his or her individual capacity. While the board would necessarily have to determine whether a taxpayer was acting "solely in his or her own behalf" on a case-by-case basis, it is expected that such determinations would be made promptly based on objective factors. Thus, where the expenses of such a "taxpayer's" complaint were borne by a taxing body, as in Dozoretz, standing to bring the complaint would be rejected.

Corrective technical amendments are also proposed in Section 16-160 to clarify the language barring a PTAB appeal to a taxpayer whose complaint was dismissed at the board of review for failure to appear.

5. The Board Of Review Should Not Be Used As A "Super Freedom-Of-Information Source."

Before House Bill 1465 was adopted, boards of review and the Cook County Board of Appeals had authority and continue to have authority under Sections 16-5 and 16-10 of the Property Tax Code (35 ILCS 200/16-5 and 16-10) to obtain relevant information from the chief county assessment officer. Section 16-5 of the Property Tax Code requires the chief county assessment officer to furnish to the board all books, papers and information requested by the board to assist it in the proper discharge of its duties. Similarly, Section 16-10 gives the board of review and board of appeals power to summon any assessor or deputy assessor or any other person to appear before it to be examined under oath "concerning the method by which any evaluation has been ascertained, and its correctness." Id.

House Bill 1465 expanded the foregoing statutory provisions and created Section 6-20(b) which is, in many respects, superfluous. However, Task Force II believes that this new statutory language could be used by a taxpayer in an attempt to burden unnecessarily the chief county assessment officer with sweeping information requests, unrelated to that taxpayer's own complaint, and thus turn the board of review into a "super freedom-of-information source." Any property tax assessment appeal has as its central issue the correctness of the assessment in question. However, the creation of Section 6-20(b) tends to allow or foster situations in which that focus will be lost.

The role of the board is to review assessments, and not to supervise the administration of the assessor's office. The new board of review will have power to review any assessment on its own motion; and thus it should make little difference, in most cases, how the chief assessment officer arrived at determinations. This is not to suggest that the chief county assessment officer should not willingly share all appropriate information with the board of review concerning a property being reviewed, especially in the context of administering a uniform system of assessment or adjudicating an assessment appeal based on uniformity issues. Section 16-5 and 16-10 already provide for such situations. Section 6-20(b) unnecessarily expands the scope of what would be expected or should be required in the form of informational exchanges between the two offices, which are expected to cooperate with one another in any event.

Based on the foregoing, Task Force II recommends that Section 6-20(b) of the Property Tax Code, as amended by HB 1465, be amended as follows:

> Sec. 6-20. Clerk of the board of review.
>
> * * *
>
> (b) In counties with 3,000,000 or more inhabitants, the county assessor shall annually make available to the board of review ~~or interim board of review~~ information utilized in the assessment of any property pending before the board either upon taxpayer complaint or upon the board's own motion. ~~including, but not limited to, reports generated from the multiple regression equation analysis if utilized with respect to the assessment of the property and sales/ratio studies, if any. The county assessor shall make available to the board of review or interim board of review, upon request by any member of the board, data used in compilation of the reports and studies. The Department shall make available to the board of review or interim board of review sales/ratio studies conducted by the Department.~~

6. Cook County Should Have The Power To Set Its Own Assessment Districts and Reassessment Cycle.

Finally, prior to House Bill 1465, Cook County defined its own reassessment districts and reassessment cycle. Section 9-220 of the Property Tax Code was amended by House Bill 1465 to transfer this clearly administrative matter from Cook County to the General Assembly. [This issue should not be confused with the question of determining the election districts for board of review members, which HB 1465 specifies shall be done for Cook County by the General Assembly; although the existing statute provides that in downstate counties this function is performed by the county board. Ill. Property Tax Code §6-40.]

The division of the county into assessment districts and the frequency of general reassessments is best left at the local level. Such issues are really management questions which should be handled by the chief county assessment official who knows the magnitude of the assessment work load in various portions of the county, and by the county board which is charged with allocating resources to the assessor's office sufficient to get the job done. If there is a need to change the cycle or the frequency of reassessments, it is far more expeditious to seek recourse at the county board than to wait for the General Assembly to convene and consider the question.

For this reason, Task Force II recommends that the changes to Section 9-220 of the Property Tax Code made by HB 1465 be reversed. Section 9-220(a) should be amended and section 9-220(b) should be deleted as follows:

> Sec. 9-220. Division into assessment districts; assessment years; counties of 3,000,000 or more.
>
> ~~(a)~~ Notwithstanding any other provision in this Code to the contrary, ~~until January 1, 1996,~~ the county board of a county with 3,000,000 or more inhabitants may by resolution divide the county into any number of assessment districts. If the county is organized into townships, the assessment districts shall follow township lines. The assessment districts shall divide, as near as practicable, the work of assessing the property of the county into equal parts but neither the area nor the number of parcels need by equal in the assessment districts. The resolution shall number the assessment districts and provide for a general reassessment of each district at regular intervals determined by the county board.
>
> ~~(b) Beginning January 1, 1996, assessment districts shall be subject to general reassessment according to the following schedule:~~
>
> ~~(1) The first assessment district shall be subject to general reassessment in 1997 and every 3 years thereafter.~~
>
> ~~(2) The second assessment district shall be subject to general reassessment in 1998 and every 3 years thereafter.~~
>
> ~~(3) The third assessment district shall be subject to general reassessment in 1996 and every 3 years thereafter. The boundaries of the 3 assessment districts are as follows: (I) the first assessment district shall be that portion of the county located within the boundaries of a municipality with 1,000,000 or more inhabitants, (ii) the second assessment district shall be that portion of the county that lies north of State Route 64 (North Avenue) and~~

~~outside the boundaries of a municipality with 1,000,000 or more inhabitants, and (iii) the third assessment district shall be that portion of the county that lies south of State Route 64 (North Avenue) and outside the boundaries of a municipality with 1,000,000 or more inhabitants.~~

Conclusion.

On balance, House Bill 1465 represents a welcome step forward in reforming the Illinois property tax assessment appeal process. The changes suggested herein are designed to clear up the technical flaws as well as make recommendations to further the important goal that the property tax assessment appeal process be open, plain, speedy and efficient such that an incorrect assessment may be corrected at the earliest feasible opportunity. In the judgment of the Civic Federation, unless these corrective actions are taken before the scheduled implementation of the provisions of HB 1465, the well-intended reforms will turn sour; and the many established and smoothly functioning aspects of the tax collection machinery will break down at tremendous cost, not only to taxpayers but also to taxing districts. The result will be a property tax system that at best will be difficult to administer (especially in Cook County) and at worst, will prove utterly unworkable, grossly inefficient and unnecessarily adversarial. The opportunity to reform the system which has been presented to us will have been squandered.

APPENDICES

OUTLINE OF THE COOK COUNTY ASSESSMENT APPEALS PROCESS: OLD SYSTEM (1939-95)

COOK COUNTY		OTHER 101 COUNTIES
COUNTY ASSESSOR	**Internal Review**	TOWNSHIP ASSESSOR OR SUPERVISOR OF ASSESSMENTS
BOARD OF APPEALS Burden of Proof = Whatever Board feels is just	**Administrative Appeal**	BOARD OF REVIEW Burden of Proof = Whatever Board feels is just
OBJECTIONS IN CIRCUIT COURT Burden of Proof = Constructive Fraud	**Further *De Novo* Review**	TAXPAYER ELECTION: 1) Objections in Circuit Ct. Burden of Proof = Constructive Fraud **OR** 2) Property Tax Appeal Board Burden of Proof = Equity & Weight of Evidence *[Under PTAB rules, this means* *a) In valuation cases =* *preponderance of the evidence* **OR** *b) uniformity cases =* *clear & convincing evidence]*
APPELLATE COURT Ordinary appellate standard with deference to trial court on questions of fact	**Court Appeal**	APPELLATE COURT Ordinary appellate standard with deference to trial court on questions of fact [Under the Admin. Review Act, Valuation complaints <$300,000 appealed initially to Circuit Court; >$300,000 appealed initially to Appellate Court] Burden of Proof = Against the manifest weight of the evidence
ILLINOIS SUPREME COURT See Above	**Final Appeal**	ILLINOIS SUPREME COURT Ordinary appellate standard with deference to trial court on questions of fact

OUTLINE OF THE COOK COUNTY ASSESSMENT APPEALS PROCESS: NEW SYSTEM UNDER P.A. 89-126 (1995)

<u>COOK COUNTY</u>		<u>OTHER 101 COUNTIES</u>
COUNTY ASSESSOR	**Internal Review**	TOWNSHIP ASSESSOR OR SUPERVISOR OF ASSESSMENTS
BOARD OF REVIEW Burden of Proof = Whatever Board feels is just	**Administrative Appeal**	BOARD OF REVIEW Burden of Proof = Whatever Board feels is just
TAXPAYER ELECTION: 1) Objections in Circuit Ct. Burden of Proof = Clear and Convincing Evidence (of incorrect assessment) **OR** 2) Property Tax Appeal Board Burden of Proof = Equity & Weight of Evidence *[Under PTAB rules, this means* *a) In valuation cases = preponderance of the evidence* **OR** *b) uniformity cases = clear & convincing evidence]*	**Further *De Novo* Review**	TAXPAYER ELECTION: 1) Objections in Circuit Ct. Burden of Proof = Clear and Convincing Evidence (of incorrect assessment) **OR** 2) Property Tax Appeal Board Burden of Proof = Equity & Weight of Evidence *[Under PTAB rules, this means* *a) In valuation cases = preponderance of the evidence* **OR** *b) uniformity cases = clear & convincing evidence]*
APPELLATE COURT Ordinary appellate standard with deference to trial court on questions of fact	**Court Appeal**	APPELLATE COURT Ordinary appellate standard with deference to trial court on questions of fact [Under the Admin. Review Act, Valuation complaints <$300,000 appealed initially to Circuit Court; >$300,000 appealed initially to Appellate Court] Burden of Proof = Against the manifest weight of the evidence
ILLINOIS SUPREME COURT See Above	**Final Appeal**	ILLINOIS SUPREME COURT Ordinary appellate standard with deference to trial court on questions of fact

EXHIBIT 1

PTAB APPROPRIATIONS: FY90-FY97

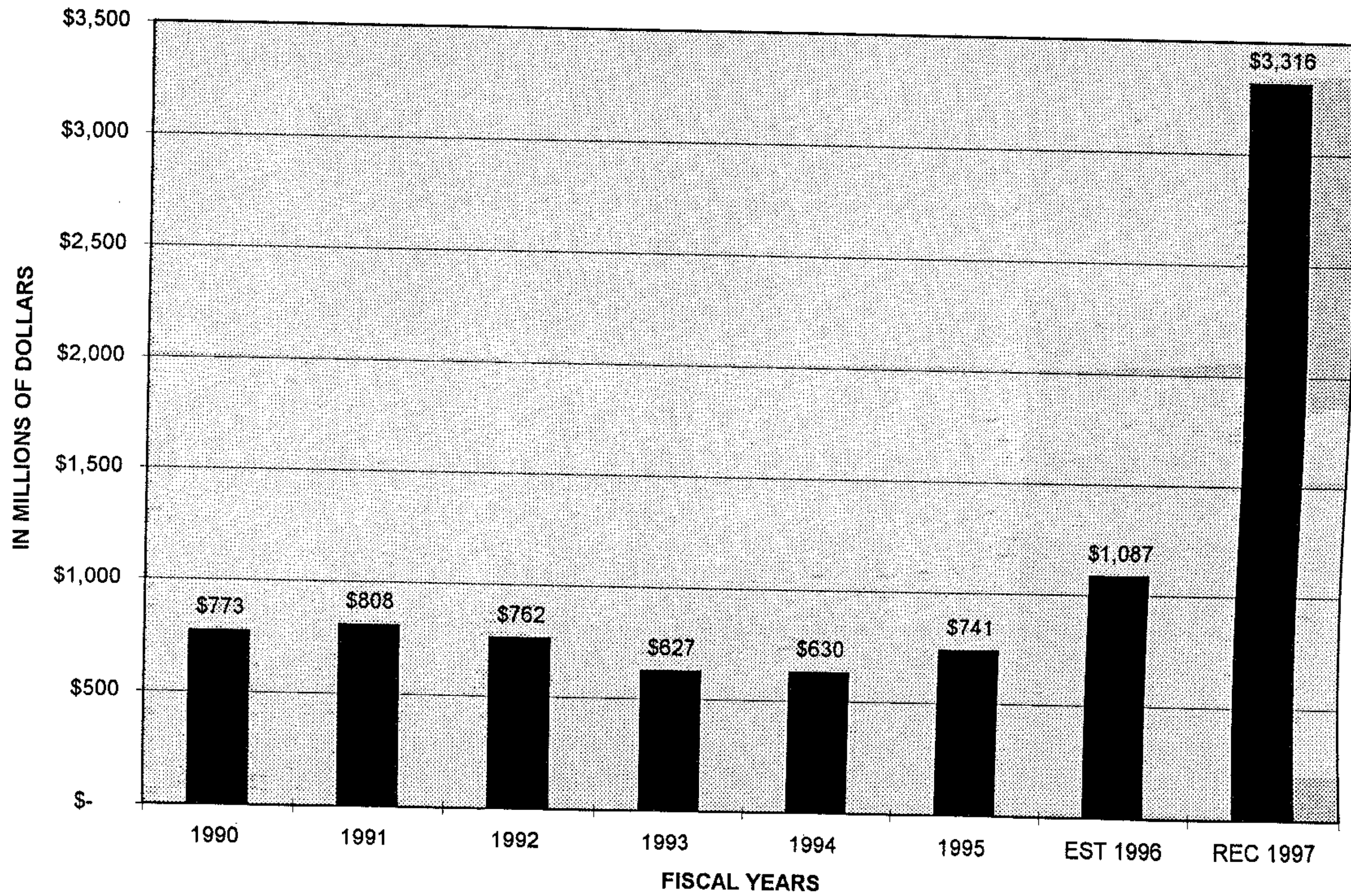

EXHIBIT 2

PROPERTY TAX APPEAL BOARD CASELOAD ANALYSIS

PTAB CASELOAD ANALYSIS

As of 6/30/92	1990	1991	1992	TOTAL
Total Parcels Appealed	6,700	10,114	0	16,814
Total Cases Closed	2,332	289	0	2,621
Total Properties Pending	4,368	9,825	0	14,193

Source: Auditor General. Property Tax Appeal Board Compliance Audit.
(For the Two Years Ended June 30, 1994)

PTAB CASELOAD ANALYSIS

As of 6/30/93	1990	1991	1992	TOTAL
Total Parcels Appealed	7,135	9,226	9,282	25,643
Total Cases Closed	4,193	2,587	283	7,063
Total Properties Pending	2,942	6,639	8,999	18,580

Source: Auditor General. Property Tax Appeal Board Compliance Audit.
(For the Two Years Ended June 30, 1994)

PTAB CASELOAD ANALYSIS

As of 6/30/94	1990	1991	1992	TOTAL
Total Parcels Appealed	7,010	9,116	9,359	29,628
Total Cases Closed	6,416	7,350	4,950	18,975
Total Properties Pending	594	1,766	4,409	10,653

Source: Auditor General. Property Tax Appeal Board Compliance Audit.
(For the Two Years Ended June 30, 1994)

Exhibit 3

SELECTED DOCKET STATISTICS, 1987-1993

Assessment Year	No. of Appeals	Percent Change	Residential	Residential < $25,000	Commercial	Commercial > $100,000
1987	4,701	......	58%	44%	28%	15%
1988	4,129	-12%	64%	55%	24%	12%
1989	6,015	46%	68%	59%	22%	9%
1990	6,405	6%	70%	63%	21%	9%
1991	9,159	43%	65%	58%	22%	11%
1992	9,504	4%	77%	77%	15%	3%
1993*	6,432	-32%	69%	63%	21%	9%

* Partial Year

Source: PTAB, FY96 Budget Narrative

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