

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 3 in §151 in subsection 1 in the 7th line (page 1, line 29 in L.D.) by inserting after the following: "Court" the following: 'or before the board'

Amend the bill in section 3 in §151 in subsection 2 in paragraph C in the last line (page 2, line 21 in L.D.) by inserting after the following: "denied" the following: 'pursuant to this paragraph'

Amend the bill in section 3 in §151 in subsection 2 by striking out all of paragraph E (page 2, lines 30 to 42 in L.D.) and inserting the following:

'E. A reconsidered decision rendered on any request other than a small claim request constitutes the assessor's final determination, subject to review by either the board or directly by the Superior Court. A reconsidered decision rendered on a small claim request constitutes the assessor's final determination and final agency action and is subject to de novo review by the Superior Court. For purposes of this paragraph, "small claim request" means a petition for reconsideration when the amount of tax or refund request in controversy is less than \$5,000.'

Amend the bill in section 3 in §151 in subsection 2 in paragraph F in subparagraph (1) in the first line (page 3, line 2 in L.D.) by inserting after the following: "To the board" the following: ', beginning November 1, 2012,'

Amend the bill in section 6 in §151-D in subsection 9 in the first paragraph by striking out all of the last 2 underlined sentences (page 4, lines 22 and 23 in L.D.) and inserting the following: 'The Chief Appeals Officer is an unclassified employee at salary range 33. The Chief Appeals Officer serves at the pleasure of the commissioner. The Chief Appeals Officer shall:'

Amend the bill in section 6 in §151-D in subsection 10 in the first paragraph by striking out all of the first underlined sentence (page 4, lines 37 and 38 in L.D.) and inserting the following: 'Beginning January 1, 2013, appeals to the board must be conducted in accordance with this subsection.'

Amend the bill in section 6 in §151-D in subsection 10 in paragraph G in the 2nd line (page 5, line 34 in L.D.) by inserting after the following: "with" the following: 'or on behalf of'

Amend the bill in section 6 in §151-D in subsection 10 by striking out all of paragraph I (page 6, lines 1 to 13 in L.D.) and inserting the following:

'I. The board shall consider the recommended final decision on a timely basis. The board may not have any ex parte communication with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the board may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issue or position taken by the petitioner or assessor. After considering the recommended final decision, the board may:

(1) Adopt the recommended final decision as delivered by the appeals officer;

(2) Modify the recommended final decision;

(3) Send the recommended final decision back to the same appeals officer, if possible, for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules or for such other proceedings or considerations as the board may specify; or

(4) Reject the recommended final decision in whole or in part and decide the appeal itself on the basis of the existing record.

A determination by the board is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act. The decision, as adopted, modified or rejected by the board or appeals officer pursuant to this paragraph is the final administrative decision on the appeal and is subject to de novo review by the Superior Court. Either the taxpayer or the assessor may appeal the decision to the Superior Court and may raise on appeal in the Superior Court any facts, arguments or issues that relate to the final administrative decision, regardless of whether the facts, arguments or issues were raised during the proceeding being appealed, if the facts, arguments or issues are not barred by any other provision of law. The court shall make its own determination as to all questions of fact or law, regardless of whether the questions of fact or law were raised before the division within the bureau making the original determination or before the board. The burden of proof is on the taxpayer.

A person who wishes to appeal a decision adopted under this paragraph to the Superior Court must file a petition for review within 60 days after receipt of the board's decision. If a person does not file a request for review with the Superior Court within the time period specified in this paragraph, the decision becomes final and no further review is available.'

Amend the bill by striking out all of section 14 and inserting the following:

**'Sec. 14. Creation of Maine Board of Tax Appeals; elimination of appellate division; transition provisions.** The following provisions govern the elimination of the appellate division within the Department of Administrative and Financial Services, Bureau of Revenue Services and the creation of the Department of Administrative and Financial Services, Maine Board of Tax Appeals, established in the Maine Revised Statutes, Title 5, section 12004-B, subsection 10.

1. The appellate division is eliminated and the Maine Board of Tax Appeals is established on July 1, 2012.

2. The Commissioner of Administrative and Financial Services shall appoint the Chief Appeals Officer under the Maine Revised Statutes, Title 36, section 151-D no later than July 1, 2012.

3. Three authorized positions and any incumbent personnel in the appellate division are transferred to the Maine Board of Tax Appeals. These employees retain all the employee rights, privileges and benefits, including sick leave, vacation leave and seniority, provided under the Civil Service Law, collective bargaining agreements and current state personnel policies.

4. All property and equipment previously belonging to or allocated for the use of the appellate division become the property of the Maine Board of Tax Appeals.

5. Any funds appropriated for use by the appellate division must be transferred to the Maine Board of Tax Appeals.'

Amend the bill by inserting after section 15 the following:

**'Sec. 16. Appropriations and allocations.** The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Maine Board of Tax Appeals N135**

Initiative: Provides appropriations to fund the Personal Services and related All Other costs of 2 Staff Attorney positions, one Office Associate II position and one Chief Appeals Officer position at the newly created Maine Board of Tax Appeals within the Department of Administrative and Financial Services.

<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
POSITIONS - LEGISLATIVE COUNT	0.000	4.000
Personal Services	\$0	\$353,871
All Other	\$0	\$67,912
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GENERAL FUND TOTAL	\$0	\$421,783

**Maine Board of Tax Appeals N135**

Initiative: Provides an allocation to establish an operating account to receive fines imposed by the Maine Board of Tax Appeals to be used to support the expenses of the board.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
All Other	\$0	\$45,000
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OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$45,000

**Revenue Services - Bureau of 0002**

Initiative: Eliminates appropriations for the Personal Services and related All Other costs of 2 Staff Attorney positions, one Office Associate II position and one Public Service Manager II position due to the elimination of the Independent Appeals Office within the Department of Administrative and Financial Services, Bureau of Revenue Services.

<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
POSITIONS - LEGISLATIVE COUNT	0.000	(4.000)
Personal Services	\$0	(\$353,871)
All Other	\$0	(\$67,912)
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>(\$421,783)</b>

<b>ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS</b>	<b>2011-12</b>	<b>2012-13</b>
<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$0</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$45,000</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$45,000</b>

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

### SUMMARY

This amendment, which is the majority report, makes the review by the Superior Court of a final determination by the State Tax Assessor or the Department of Administrative and Financial Services, Maine Board of Tax Appeals a de novo review. It provides that the Chief Appeals Officer serves at the pleasure of the Commissioner of Administrative and Financial Services and is a confidential employee at salary range 33. It clarifies that the board may not have any ex parte communication with or on behalf of any party, but may have such communication related to administrative matters. It provides that either the taxpayer or the assessor may appeal a decision to the Superior Court. It provides that a person who wishes to appeal the board's decision to the Superior Court must file a petition for review within 60 days after receipt of the board's decision or the decision becomes final and no further review is available. It provides that the board begins to receive appeals on November 1, 2012 and begins to consider appeals on January 1, 2013. It eliminates provisions related to the transfer of cases between the eliminated appellate division within the Department of Administrative and Financial Services, Bureau of Revenue Services and the Maine Board of Tax Appeals, the continuation of rules, regulations, procedures and contracts and the use of related forms, licenses, letterheads and similar items. The amendment provides for the transfer of positions from the eliminated appellate division to the Maine Board of Tax Appeals and includes an appropriations and allocations section.

**FISCAL NOTE REQUIRED**  
**(See attached)**