LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
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NON-EMERGENCY LAWS IS
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IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2011

D. Draw on existing state data and studies rather than new analyses, including, but not limited to, analyses and data from the State's climate action plan pursuant to Title 38, section 577 and the progress updates to the climate action plan under Title 38, section 578, the comprehensive state energy plan pursuant to subsection 3, paragraph C, the Efficiency Maine Trust's triennial plan pursuant to Title 35-A, section 10104, subsection 4 and analyses completed by the Federal Government, nonprofit organizations and other stakeholders.

Sec. 3. Report. The Director of the Governor's Office of Energy Independence and Security shall submit the report required under the Maine Revised Statutes, Title 2, section 9, subsection 5 to the joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters by December 1, 2012 with any suggested legislation. The report must include a cost and resource estimate for technology development needed to meet the oil dependence reduction targets.

See title page for effective date.

CHAPTER 401

H.P. 54 - L.D. 66

An Act To Amend the Laws Governing the Capital Reserve Funds of the Maine Educational Loan Authority

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Educational Loan Authority will not be able to create or establish any capital reserve funds after June 30, 2011; and

Whereas, immediate enactment of this legislation is necessary to ensure that the Maine Educational Loan Authority's authority to create or establish capital reserve funds does not lapse; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §11424, sub-§1, as amended by PL 2009, c. 40, §1, is further amended to read:

1. Capital reserve fund. The authority may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of the sale by the authority of bonds to the extent determined by the authority and any other money available to the authority. The authority may not create or establish any capital reserve fund under this section after June 30, ~~2011~~ 2017.

Sec. 2. 20-A MRSA §11424, sub-§6, as amended by PL 2009, c. 40, §3, is further amended to read:

6. Bonds outstanding. The authority may not have at any one time outstanding bonds to which subsection 5 is stated in the trust agreement or other document to apply in principal amount exceeding ~~$300,000,000~~ $225,000,000. The amount of bonds issued to refund bonds previously issued may not be taken into account in determining the principal amount of the bonds outstanding, as long as the proceeds of the refunding bonds are applied as promptly as possible to the refunding of the previously issued bonds. In computing the total amount of bonds of the authority that may at any time be outstanding for any purpose, the amount of the outstanding bonds that have been issued as capital appreciation bonds or as similar instruments must be valued as of any date of calculation at their current accreted value rather than their face value.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 22, 2011.

CHAPTER 402

S.P. 352 - L.D. 1152

An Act To Amend the Child and Family Services and Child Protection Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §4002, sub-§9-D is enacted to read:

9-D. Resource family. "Resource family" means a person or persons who provide care to a child in the child welfare system and who are foster parents, permanency guardians, adoptive parents or members of the child's extended birth family.

Sec. 2. 22 MRSA §4012, sub-§1, as enacted by PL 1979, c. 733, §18, is amended to read:

1. Immediate report. Reports regarding abuse or neglect ~~shall~~ must be made immediately by telephone to the department and ~~shall~~ must be followed by a written report within 48 hours if requested by the department.

Hospitals, medical personnel and law enforcement personnel may submit emergency reports through password-protected e-mail submissions. A faxed report may also be accepted when preceded by a telephone call informing the department of the incoming fax transmission.

Sec. 3. 22 MRSA §4031, sub-§1, as amended by PL 1995, c. 694, Pt. D, §40 and affected by Pt. E, §2, is further amended to read:

1. Jurisdiction. The following provisions ~~shall~~ govern jurisdiction.

A. The District Court ~~shall have~~ has jurisdiction over child protection proceedings and jurisdiction over petitions for adoption from permanency guardianship filed by the department.

B. The Probate Court and the Superior Court ~~shall~~ have concurrent jurisdiction to act on requests for preliminary child protection orders under section 4034. As soon as the action is taken by the Probate Court or the Superior Court, the matter ~~shall~~ must be transferred to the District Court.

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title 18-A, section 9-205.

Sec. 4. 22 MRSA §4036-B, sub-§3-A is enacted to read:

3-A. Notification to relatives. Except as required by family or domestic violence safety precautions, the department shall exercise due diligence to identify and provide notice to all known grandparents and other adult relatives within 30 days after the removal of a child from the custody of a parent or custodian. Failure to comply with this provision does not affect service on a parent or custodian.

Sec. 5. 22 MRSA §4037-A is enacted to read:

§4037-A. Extended care

1. Extended care requirements. A person who is 18, 19 or 20 years of age and who attained 18 years of age while in the care and custody of the State may continue to receive care and support if the person:

A. Is enrolled in secondary school or its equivalent or is enrolled in postsecondary or career and technical school;

B. Is participating in a program or activity that promotes employment or removes barriers to employment;

C. Is employed for at least 80 hours per month; or

D. Is found to be in special circumstances, including but not limited to being incapable of qualifying under paragraphs A to C due to a documented medical or behavioral health condition.

2. Placement. A person who qualifies for care and support under this section may be placed in a supervised setting in which the person lives independently, in a foster home or in a group home.

3. Judicial review. The District Court shall hold a judicial review for each person who qualifies for care and support under this section at least once every 12 months. The court shall hear evidence and shall consider the original reason for the extended care and support of the person and the agreement of extended care and support between the department and the person. The court shall, after hearing or by agreement, make written findings, based on a preponderance of the evidence, that determine:

A. The safety of the person in the person's placement;

B. The services needed to transition the person from extended care and support to independent living; and

C. The compliance of the parties to the agreement of extended care and support.

In a judicial review order, the court may order either the department or the person or both to comply with the agreement of extended care and support but may not order the department to pay for a specific placement.

4. Termination; notice. A person receiving care and support under this section or the department may terminate the agreement of extended care and support without approval by the court. The department shall notify the court of the termination of extended care and support within 30 days of the termination.

5. Guardian ad litem; attorney. The appointments of the guardian ad litem and attorneys for the parents are terminated when a person receiving care and support under this section attains 18 years of age, and a new guardian ad litem or attorney may not be appointed for or on behalf of the person or the parents.

Sec. 6. 22 MRSA §4038-C, sub-§1, ¶C, as enacted by PL 2005, c. 372, §6, is amended to read:

C. Is willing and able to make an informed, long-term commitment to the child; ~~and~~

Sec. 7. 22 MRSA §4038-C, sub-§1, ¶D, as enacted by PL 2005, c. 372, §6, is amended to read:

D. Has the skills to care for the child ~~and to obtain needed information about and assistance with any special needs of the child.~~; and

Sec. 8. 22 MRSA §4038-C, sub-§1, ¶E is enacted to read:

E. Has submitted to having fingerprints taken for the purposes of a national criminal history record check.

Sec. 9. 22 MRSA §4038-C, sub-§13 is enacted to read:

13. Resource family license. The department shall issue a resource family license in accordance with standards adopted by the department to a resource family that meets the requirements and standards for permanency guardianship of children in foster care under subsection 1 and for a license fee established by the department.

Sec. 10. 22 MRSA §4038-D, sub-§2, as enacted by PL 2005, c. 372, §6, is amended to read:

2. Eligibility for guardianship subsidy payments. Subject to rules adopted to implement this section, the department may provide subsidies for a ~~special needs~~ child who is placed in a permanency guardianship or in a similar status by a Native American tribe, when reasonable but unsuccessful efforts have been made to place the child without guardianship subsidies and if the child would not be placed in a permanency guardianship without the assistance of the program.

Sec. 11. 22 MRSA §4038-D, sub-§3, as enacted by PL 2005, c. 372, §6, is repealed.

Sec. 12. 22 MRSA §4038-D, sub-§4, as enacted by PL 2005, c. 372, §6, is amended to read:

4. Amount of guardianship subsidy. The amount of a guardianship subsidy is determined according to this subsection.

A. The amount may vary depending upon the resources of the permanency guardian, the ~~special~~ needs of the child and the availability of other resources.

B. The amount may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

~~C. Except as provided in paragraph D, assistance may be provided only for special needs.~~

D. Subject to rules adopted by the department, ~~the amount may include up to $400 for~~ expenses of up to $2,000 per child may be reimbursed. This reimbursement is for legal expenses required to complete the permanency guardianship, including attorney's fees~~, incurred by the permanency guardian to complete the permanency guardianship in Indian tribal court cases~~ and travel expenses.

Sec. 13. 22 MRSA §4038-D, sub-§5, as enacted by PL 2005, c. 372, §6, is amended to read:

5. Duration of guardianship subsidy. A guardianship subsidy may be provided for a period of time based on the ~~special~~ needs of a child. The subsidy may continue until the termination of the permanency guardianship or until the permanency guardian is no longer caring for the child, at which time the guardianship subsidy ceases. If the child has need of educational benefits or has a physical, mental or emotional handicap, the guardianship subsidy may continue until the child has attained 21 years of age if the child, the parents and the department agree that the need for care and support exists.

Sec. 14. 22 MRSA §4038-D, sub-§8, as enacted by PL 2005, c. 372, §6, is repealed.

Sec. 15. 22 MRSA §4038-E is enacted to read:

§4038-E. Adoption from permanency guardianship

The department may petition the District Court to have a permanency guardian adopt the child in the permancy guardian's care and to change the child's name.

1. Contents of petition for adoption from permanency guardianship. The petition for adoption from permanency guardianship must be sworn and must include at least the following:

A. The name, date and place of birth, if known, of the child and the child's current residence;

B. The child's proposed new name, if any;

C. The name and residence of the permanency guardian and the relationship to the child;

D. The name and residence, if known, of each of the child's parents;

E. The name and residence of the former guardian ad litem of the child in the related child protection proceeding;

F. The names and residences of all persons known to the department that affect custody, visitation or access to the child;

G. A summary statement of the facts that the petitioner believes constitute the basis for the request for the adoption from permanency guardianship, including a statement that the permanency guardian intends to establish a parent and child relationship and that the permanency guardian is a fit and proper person able to care and provide for the child's welfare;

H. A statement of the intent of the biological parents to consent to the adoption;

I. A statement of the effects of a consent and adoption order; and

J. A statement that the biological parents are entitled to legal counsel in the adoption from permanency guardianship proceeding and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel.

2. Accompanying documents and information. The sworn petition must be accompanied by:

A. The birth certificate of the child;

B. A background check for each prospective adoptive parent, which must include:

(1) A screening of the permanency guardian for child abuse cases in the records of the department;

(2) The national criminal history record check for noncriminal justice purposes for each permanency guardian under subsection 7, paragraph A or updated check if the original was completed more than 2 years prior to the filing of the petition; and

(3) The state criminal history record check for noncriminal justice purposes for each permanency guardian under subsection 7, paragraph A or updated check if the original was completed more than 2 years prior to the filing of the petition;

C. The home study of the permanency guardian under subsection 7, paragraph B or an updated home study if the original was completed more than 2 years prior to the filing of the petition; and

D. The child's background information collected pursuant to subsection 7, paragraph B.

3. Scheduling of case management conference. On the filing of the petition, the court shall set a time and date for a case management conference.

4. Venue. A petition for adoption from permanency guardianship must be brought in the court that issued the final permanency guardianship appointment. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division.

5. Guardian ad litem; attorneys. The court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including the permanency guardians, in the same manner as guardians ad litem and attorneys are appointed under section 4005.

6. Service. The petition and the notice of the case management conference must be served on the parent whose rights were terminated and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

7. Background checks for each permanency guardian seeking to adopt the child. The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption from permanency guardianship, conduct background checks of each permanency guardian of the child and a home study.

A. The department may, pursuant to rules adopted pursuant to Title 18-A, section 9-304, subsection (a-2), request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of Maine conviction data.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 620.

(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section.

B. The home study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child.

8. Consent. Before an adoption is granted, written consent to the adoption must be given by:

A. The child, if the child is 12 years of age or older;

B. The child's biological parents, if parental rights have not been terminated; and

C. The permanency guardian who has legal custody of the child.

The consents to adoption must be written and voluntarily and knowingly executed before a judge. The judge shall explain the effects of the consent to adoption. Before the adoption is granted, the court shall ensure that each permanency guardian is informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

9. Dismissal. If the parents do not consent, the court shall dismiss the adoption petition and conduct a judicial review hearing consistent with section 4038-C, subsection 12.

10. Hearing on petition for adoption from permanency guardianship. The court shall hold a hearing prior to granting the petition for adoption from permanency guardianship. The department, as the petitioner, has the burden of proof.

A. The judge may interview the child. If the judge chooses to interview the child and the child is 12 years of age or older, the judge shall interview the child outside of the presence of a permanency guardian in order to determine the child's perspective about the adoption and other relevant issues.

B. The court shall grant an order of adoption if:

(1) All necessary consents have been duly executed;

(2) The permanency guardian is a suitable adopting parent and desires to establish a parent and child relationship with the child; and

(3) The adoption is in the best interest of the child.

C. If the judge is satisfied by a preponderance of the evidence with the identity and relations of the parties, the ability of the permanency guardian to bring up and educate the child properly and the fitness and propriety of the adoption and that the adoption is in the best interest of the child, the judge shall grant the adoption setting forth the facts and ordering that from that date the child is the child of the permanency guardian and must be accorded that status set forth in subsection 12 and that the child's name is changed, without requiring public notice of that change.

After the adoption has been granted, the department shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

The department shall notify the biological parents whose parental rights have been terminated and grandparents who were granted reasonable rights of visitation or access pursuant to section 4005-E or Title 19-A, section 1803.

11. Effect of consent to adoption by the biological parent. An order granting the adoption has the following effect.

A. An order granting the adoption of the child by the permanency guardian divests the consenting parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and the biological parent.

B. An adoption order may not disentitle a child to benefits due the child from any 3rd person, agency, state or the United States and may not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

12. Rights of adopted persons. Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parent would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption order so provides.

Sec. 16. 22 MRSA §4059 is enacted to read:

§4059. Reinstatement of parental rights

The department may petition the District Court to reinstate the parental rights of a parent whose parental rights have been previously terminated by an order of the District Court.

1. Contents of petition for reinstatement of parental rights. The petition for reinstatement of parental rights must be sworn and must include at least the following:

A. The name, date and place of birth, if known, of the child and the child's current residence;

B. The name and residence of the parent whose rights were terminated;

C. The name and residence of the former guardian ad litem of the child in the related child protection proceeding;

D. The names and residences of all persons known to the department that affect custody, visitation or access to the child;

E. A summary of the reasons for the termination of parental rights;

F. A summary statement of the facts that the petitioner believes constitute a substantial change in circumstances of the parent that demonstrate the parent has the capacity and willingness to provide for the health and safety of the child;

G. A statement of the intent of the parent whose rights were terminated to consent to the reinstatement of parental rights; and

H. A statement of the intent or willingness of the child as to the reinstatement of parental rights.

2. Permanency plan. The sworn petition must be accompanied by the permanency plan that provides for the health and safety of the child, outlines the transition services to the family and outlines the conditions and supervision required by the department for placing the child in the home on a trial basis.

3. Scheduling of case management conference. On the filing of the petition, the court shall set a time and date for a case management conference under subsection 7.

4. Withdrawal of petition. The department may withdraw the petition without leave of the court at any time prior to the final hearing.

5. Guardian ad litem. The court shall appoint a guardian ad litem for the child.

6. Service. The petition and the notice of the case management conference under subsection 7 must be served on the parent whose rights were terminated and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

7. Case management conference. Upon the filing of a petition for reinstatement of parental rights, the court shall hold a case management conference to review the permanency plan filed by the department to provide for transition services to the family. The permanency plan must outline the conditions and supervision required by the department for placing the child in the home on a trial basis.

8. Reinstatement of parental rights. Parental rights may be reinstated as follows.

A. The court shall hold a hearing prior to the reinstatement of parental rights.

B. The department has the burden of proof.

C. The court may order reinstatement of parental rights if the court finds, by clear and convincing evidence, that:

(1) The child has been in the custody of the department for at least 12 months after the issuance of the order terminating parental rights;

(2) The child has lived for at least 3 months in the home of the parent after the petition for reinstatement has been filed;

(3) The parent consents to the reinstatement of parental rights. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of reinstatement of parental rights;

(4) If the child is 12 years of age or older, the child consents to the reinstatement of parental rights; and

(5) Reinstatement of parental rights is in the best interest of the child.

D. In determining whether to reinstate parental rights, the court shall consider the age and maturity of the child, the child's ability to express a preference, the child's ability to integrate back into the home of the parent whose rights were terminated, the ability of the parent whose rights were terminated to meet the child's physical and emotional needs, the extent that the parent whose rights were terminated has remedied the circumstances that resulted in the termination of parental rights and the likelihood of future risk to the child.

E. The court shall enter its findings in a written order that further states that from the date of the order of reinstatement of parental rights, the child is the child of the parent whose rights were terminated and must be accorded all the same rights as existed prior to the order terminating parental rights, including inheritance rights. The order must further state that all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child are reinstated.

F. The reinstatement of one parent's rights does not affect the rights of the other parent.

Sec. 17. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 22, chapter 1071, subchapter 4, in the subchapter headnote, the words "protection orders" are amended to read "protection orders; permanency guardianship" and the Revisor of Statutes shall imple-

ment this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 403

S.P. 477 - L.D. 1515

An Act To Clarify the Workers' Compensation Insurance Notification Process for Public Construction Projects

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §1302-A, as enacted by PL 2009, c. 452, §1, is repealed.

Sec. 2. 26 MRSA §1312, sub-§1, as amended by PL 2009, c. 452, §2, is further amended to read:

1. Violation by contractor or subcontractor. Except as provided in section 1308, subsection 1-A, any contractor or subcontractor who willfully and knowingly violates ~~section 1302-A or~~ sections 1304 to 1313 is subject to a forfeiture of not less than $250.

Sec. 3. 39-A MRSA §105-A, sub-§6 is enacted to read:

6. Insurance coverage information for public construction projects. Insurance coverage information regarding construction subcontractors and independent contractors is controlled by this subsection.

A. At the onset of work on any construction project undertaken by the State, the University of Maine System or the Maine Community College System, the general contractor or designated project construction manager, if any, shall provide to the board a list of all construction subcontractors and independent contractors on the job site and a record of the entity to whom that construction subcontractor or independent contractor is directly contracted and by whom that construction subcontractor or independent contractor is insured for workers' compensation purposes. The list must be posted on the board's publicly accessible website and updated as needed.

B. The board and the Department of Administrative and Financial Services, Bureau of General Services shall cooperate and provide notice to each other regarding the letting of state-funded construction projects and any stop-work order, debarment or other action as either may take or issue.

C. This subsection provides minimum disclosure standards regarding construction subcontractors and independent contractors and does not preclude the contracting agency from setting more rigorous standards for construction work under its jurisdiction.

D. If the general contractor or designated project construction manager fails to provide the board with the information required by paragraph A, that person is subject to a fine of not less than $250.

See title page for effective date.

CHAPTER 404

H.P. 400 - L.D. 507

An Act To More Closely Coordinate the Classification of Forested Farmland under the Farm and Open Space Tax Laws with the Maine Tree Growth Tax Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §578, sub-§1, as amended by PL 2009, c. 213, Pt. O, §1, is further amended to read:

1. Organized areas. The municipal assessors or chief assessor of a primary assessing area shall adjust the State Tax Assessor's 100% valuation per acre for each forest type of their county by whatever ratio, or percentage of current just value, is applied to other property within the municipality to obtain the assessed values. Forest land in the organized areas, subject to taxation under this subchapter, must be taxed at the property tax rate applicable to other property in the municipality.

The State Tax Assessor shall determine annually the amount of acreage in each municipality that is classified and taxed in accordance with this subchapter. Each municipality is entitled to annual payments distributed in accordance with this section from money appropriated by the Legislature if it submits an annual return in accordance with section 383 and if it achieves the minimum assessment ratio established in section 327. The State Tax Assessor shall pay any municipal claim found to be in satisfactory form by August 1st of the year following the submission of the annual return. The municipal reimbursement appropriation is calculated on the basis of 90% of the per acre tax revenue lost as a result of this subchapter. For property tax years based on the status of property on April 1, 2008 and April 1, 2009, municipal reimbursement under this section is further limited to the amount appropriated by the Legislature and distributed on a pro rata basis by the State Tax Assessor for all