

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1432

H.P. 1026

House of Representatives, May 3, 1989

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative McCORMICK of Rockport.

Cosponsored by Representative WENTWORTH of Wells and Senator CARPENTER of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Provide Property Tax Relief to Elderly Persons.



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

3 36 MRSA c. 105, sub-c. VIII-A is enacted to read:

5 SUBCHAPTER VIII-A

7 DEFERRED COLLECTIONS OF HOMESTEAD PROPERTY TAXES

9 §851. Definitions

11 As used in this subchapter, unless the context otherwise
13 indicates, the following terms have the following meanings.

15 1. Homestead. "Homestead" means the owner-occupied
17 principal dwelling, either real or personal property, owned by
19 the taxpayer and the tax lot upon which it is located. If the
21 homestead is located in a multiunit building, the homestead is
23 the portion of the building actually used as the principal
dwelling and its percentage of the value of the common areas and
the value of the tax lot upon which it is built. The percentage
is the value of the unit consisting of the homestead compared to
the total value of the building exclusive of the common areas, if
any.

25 2. Tax-deferred property. "Tax-deferred property" means
27 the property upon which taxes are deferred under this subchapter.

29 3. Taxes or property taxes. "Taxes" or "property taxes"
31 means ad valorem taxes, assessments, fees and charges entered on
the assessment and tax roll.

33 4. Taxpayer. "Taxpayer" means an individual who has filed,
or individuals who have jointly filed, a claim for deferral under
section 852.

35 §852. Deferral of tax on homestead

37 1. Eligibility. Subject to section 853, an individual, or 2
39 or more individuals jointly, may elect to defer the property
41 taxes on their homestead by filing a claim for deferral with the
municipal assessor after January 1st and on or before April 15th
of the first year in which deferral is claimed if:

43 A. The individual or, each individual in the case of 2 or
45 more individuals filing a claim jointly, is 60 years of age
47 or older on April 15th of the year in which the claim is
filed; and

49 B. The individual has or, in the case of 2 or more
51 individuals filing a claim jointly, all of the individuals
together have household income of less than \$28,000 for the

1 calendar year immediately preceding the calendar year in
2 which the claim is filed.

3 The municipal assessor shall forward each claim filed under this
4 subsection to the local legislative body which shall determine if
5 the property is eligible for deferral.

6 2. Effect of deferral. When the taxpayer elects to defer
7 property taxes for any year by filing a claim for deferral under
8 subsection 1, it shall:

9 A. Defer the payment of the property taxes levied on the
10 homestead for the fiscal year beginning on July 1st of that
11 year;

12 B. Continue the deferral of the payment by the taxpayer of
13 any property taxes deferred under this subchapter for
14 previous years which have not become delinquent under
15 section 860; and

16 C. Continue the deferral of the payment by the taxpayer of
17 any future property taxes for as long as the provisions of
18 section 853 are met.

19 3. Guardian or conservator. If a guardian or conservator
20 has been appointed for an individual otherwise qualified to
21 obtain deferral of taxes under this subchapter, the guardian or
22 conservator may act for that individual in complying with this
23 subchapter.

24 4. Trustee. If a trustee of an inter vivos trust, which
25 was created by and is revocable by an individual who is both the
26 trustor and a beneficiary of the trust and who is otherwise
27 qualified to obtain a deferral of the taxes under this
28 subchapter, owns the fee simple estate under a recorded
29 instrument of sale, the trustee may act for the individual in
30 complying with this subchapter.

31 5. Joint filing. Nothing in this section may be construed
32 to require a spouse of an individual to file a claim jointly with
33 the individual even though the spouse may be eligible to claim
34 the deferral jointly with the individual.

35 6. Appeal. Any person aggrieved by the denial of a claim
36 for deferral of homestead property taxes or by disqualification
37 from deferral of homestead property taxes may appeal to the
38 District Court as provided in the Maine Administrative Procedure
39 Act, Title 5, chapter 375.

40 7. Fund allowed. A local legislative body that allows
41 deferral of property taxes may establish a fund to offset the
42 cost to the municipality of deferring taxes.

1
3 **§853. Property entitled to deferral**

5 In order to qualify for tax deferral under this subchapter,
7 the property must meet all of the following requirements when the
claim is filed and as long as the payment of taxes by the
taxpayer is deferred.

9 1. Homestead. The property must be the homestead of the
11 individual or individuals who file the claim for deferral, except
for an individual required to be absent from the homestead by
13 reason of health.

15 2. Ownership. The person claiming the deferral shall,
17 alone or together with that person's spouse, own the fee simple
estate or be purchasing the fee simple estate under a recorded
19 instrument of sale, or 2 or more persons shall together own or be
purchasing the fee simple estate with rights of survivorship
21 under a recorded instrument of sale if all owners live in the
homestead and if all owners apply for the deferral jointly.

23 3. Conflicting laws. There shall be no prohibition to the
25 deferral of property taxes contained in any provision of federal
law, rule or regulation applicable to a mortgage, trust deed,
27 land sale contract or conditional sale contract for which the
homestead is security.

29 4. Amount of deferral. The amount of the tax deferral and
31 any fees must not, at the time the deferral is claimed, exceed
1/2 of the assessed value of the property or 1/2 of the equity
held by the person claiming the deferral.

33 **§854. Claim forms**

35 1. Contents. A taxpayer's claim for deferral under section
37 852 shall be in writing on a form supplied by the municipality
and shall:

39 A. Describe the homestead;

41 B. Recite facts establishing the eligibility for the
43 deferral under this subchapter, including facts that
establish that the household income of the individual or, in
45 the case of 2 or more individuals claiming the deferral
jointly, was less than \$28,000 for the calendar year
47 immediately preceding the calendar year in which the claim
is filed; and

49 C. Have attached any documentary proof required by the
51 department to show that the requirements of section 853 have
been met.

1 2. Declaration as to truthfulness. There shall be attached
2 to the claim a statement verified by written declaration of the
3 applicant to the effect that the statements contained in the
4 claim are true.

5 §855. State liens against tax-deferred property
6

7 1. Liens. The municipality shall have a lien against the
8 tax-deferred property for the payment of the deferred taxes plus
9 interest, and any fees paid to the municipal clerk by the
10 municipality in connection with the recording, release or
11 satisfaction of the lien. The liens for deferred taxes shall
12 attach to the property on July 1st of the year in which the taxes
13 are assessed. The deferred property tax liens shall have the
14 same priority as other real property tax liens except that the
15 lien of mortgages or trust deeds which are recorded prior to the
16 attachment of the lien for deferred taxes shall be prior to the
17 liens for deferred taxes.

18 2. Foreclosure. The lien may be foreclosed by the
19 municipality as if it were a purchase money mortgage. Reasonable
20 attorney's fees at trial and on appeal plus costs may be granted
21 the municipality in a suit for foreclosure of its lien.

22 3. Receipts from foreclosure. Receipts from foreclosure
23 proceedings shall be used to offset taxes owed the municipality.

24 §856. Listing of tax-deferred property; interest accrual
25

26 1. Entry. If eligibility for deferral of homestead
27 property is established pursuant to this subchapter, the local
28 legislative body shall notify the municipal assessor who shall
29 indicate on the current ad valorem assessment and tax roll which
30 property is tax-deferred property by an entry clearly designating
31 that property as tax-deferred property.

32 2. Tax statements. When requested by the local legislative
33 body, the tax collector shall send to the local legislative body
34 as soon as the taxes are extended upon the roll the tax statement
35 for each tax-deferred property.

36 3. Interest. Interest shall accrue on the actual amount of
37 taxes advanced to the municipality for the tax-deferred property
38 at the prevailing rate of interest.

39 4. Actual amount. The liens provided by section 855 and
40 recorded under section 857 shall be for the actual amount of
41 taxes advanced by the municipalities and not for the gross amount
42 of taxes for which the property would be liable as shown on the
43 tax statement for each tax-deferred property.

44 §857. Recording liens
45

1
2
3 1. Recording. In each municipality in which there is
4 tax-deferred property, the municipal assessor shall cause to be
5 recorded in the mortgage records of the municipality a list of
6 tax-deferred properties of that municipality. The list shall
7 contain a description of the property as listed on the assessment
8 roll together with the name of the owners.

9
10 2. Notices. The recording of the tax-deferred property
11 under subsection 1 is notice that the municipality claims a lien
12 against those properties in the amount of the deferred taxes,
13 plus interest, together with any fees paid to the municipal clerk
14 in connection with the recording, release or satisfaction of the
15 lien, even though the amount of taxes, interest or fees is not
16 listed.

17
18 3. Recording by municipality; no fee. Notwithstanding any
19 other provision of law relating to the time and manner of payment
20 of fees to the municipal clerk, the municipality shall not be
21 required to pay any filing, indexing or recording fees in
22 connection with the recording, release or satisfaction of liens
23 against tax-deferred properties of that municipality in advance
24 or at the time entry is made.

25 §858. Notice to taxpayer regarding duty to claim deferral
26 annually

27
28 1. Notice. On or before December 15th of each year, the
29 municipality shall send a notice to each taxpayer who has claimed
30 deferral of property taxes for the current tax year. This notice
31 shall:

32
33 A. Inform the taxpayer that the property taxes have been
34 deferred in the current year;

35
36 B. Show the total amount of deferred taxes remaining unpaid
37 since initial application for deferral and the interest
38 accruing as of November 15th of the current year;

39
40 C. Inform the taxpayer that voluntary payment of the
41 deferred taxes may be made at any time to the municipality;
42 and

43
44 D. Contain any other information that the municipality
45 considers necessary to facilitate administration of the
46 homestead deferral program, including, but not limited to,
47 the right of the taxpayer to submit any refund amount
48 received to reduce the total amount of the deferred taxes
49 and interest.

50
51 2. Method of notice. The municipality shall give notice
52 required under subsection 1 by an unsealed postcard or other form

1 of mail sent to the residence address of the taxpayer as shown in
2 the claim for deferral or as otherwise determined by the
3 municipality to be the correct address of the taxpayer.

5 **§859. Events requiring payment of deferred tax and interest**

7 Subject to section 860, all deferred property taxes,
8 including accrued interest, become payable as provided in section
9 860 when:

11 1. Death of taxpayer. The taxpayer who claimed deferment
12 of collection of property taxes on the homestead dies or, if
13 there was more than one claimant, the survivor of the taxpayers
14 who originally claimed deferment of collection of property taxes
15 under section 852 dies. Taxes deferred in section 852 shall
16 become due and payable with 60 days of the death of the taxpayer;
17

18 2. Transfer of ownership. The property on which deferment
19 of collection of taxes is claimed is sold, or a contract to sell
20 is entered into, or some person other than the taxpayer who
21 claimed the deferment becomes the owner of the property. Taxes
22 deferred under section 852 shall become due and payable no later
23 than the date of closing on the property;

24 3. Property no longer homestead. The tax-deferred property
25 is no longer the homestead of the taxpayer who claimed the
26 deferral, except in the case of a taxpayer required to be absent
27 from the tax-deferred property by reason of health; or
28

29 4. Income ineligibility. Taxes deferred under section 852
30 shall become due and payable within 60 days after the taxpayer's
31 annual household income is determined by the municipality to
32 exceed \$30,000.
33

34 **§860. Time for payments; delinquencies**

35 Whenever any of the circumstances listed in section 859
36 occurs:

37 1. Continuation until end of year. The deferral of taxes
38 for the assessment year in which the circumstance occurs shall
39 continue for the assessment year;
40

41 2. Date due. The amounts of deferred property taxes,
42 including accrued interest, for all years shall be due and
43 payable to the municipality on April 1st of the year following
44 the calendar year in which the circumstance occurs, except as
45 provided in sections 861 and 865; and
46

47 3. Delinquency. If the amounts falling due as provided in
48 this section are not paid on the indicated due date, or as
49 extended under section 865, these amounts shall be considered
50 delinquent.
51

1 delinquent as of that date and the property shall be subject to
2 foreclosure as provided in section 855.

3
4 **§861. Election by spouse**

5
6 1. Spouse may continue deferral. Notwithstanding section
7 859, when one of the circumstances listed in section 859 occurs,
8 the spouse who was not eligible to or did not file a claim
9 jointly with the taxpayer may continue the property in its
10 deferred tax status by filing a claim within the time and in the
11 manner provided under section 852, if:

12
13 A. The spouse of the taxpayer is or will be 60 years of age
14 or older not later than 6 months from the day the
15 circumstance listed in section 859, subsections 1 to 3
16 occurs; and

17
18 B. The property is the homestead of the spouse of the
19 taxpayer and meets the requirements of section 853,
20 subsection 2.

21
22 2. Ineligible spouse; previous deferrals. A spouse who
23 does not meet the age requirements of subsection 1, paragraph A,
24 but is otherwise qualified to continue the property in its
25 tax-deferred status under subsection 1, may continue the deferral
26 of property taxes deferred for previous years by filing a claim
27 within the time and in the manner provided under section 852. If
28 a spouse eligible for and continuing the deferral of taxes
29 previously deferred under this subsection becomes 60 years of age
30 prior to April 15th of any year, the spouse may elect to continue
31 the deferral of previous years' taxes deferred under this
32 subsection and may elect to defer the current assessment year's
33 taxes on the homestead by filing a claim within the time and in
34 the manner provided under section 852. Thereafter, payment of
35 the taxes levied on the homestead and deferred under this
36 subsection and payment of taxes levied on the homestead in the
37 current assessment year and in future years may be deferred in
38 the manner provided in, and subject to, this subchapter.

39
40 3. Late filing; good cause. Notwithstanding section 852,
41 if the local legislative body determines that good and sufficient
42 cause exists for the failure of a spouse to file a claim under
43 this section on or before April 15th, the claim may be filed
44 within 180 days after notice of taxes due and payable under
45 section 858 is mailed or delivered by the municipality to the
46 taxpayer or spouse.

47
48 **§862. Voluntary payment of deferred tax and interest**

49
50 1. Payment to municipality. All payments of deferred taxes
51 shall be made to the municipality.

1 2. Persons paying taxes. Subject to subsection 3, all or
3 part of the deferred taxes and accrued interest may at any time
 be paid to the municipality by:

5 A. The taxpayer or the spouse of the taxpayer; or

7 B. The next of kin of the taxpayer, heir of the taxpayer,
9 child of the taxpayer or any person having or claiming a
 legal or equitable interest in the property.

11 3. Payment by person other than taxpayer or spouse. A
13 person listed in subsection 2, paragraph B, may make payments
 only if no objection is made by the taxpayer within 30 days after
15 the municipality deposits in the mail notice to the taxpayer of
 the fact that payment has been tendered.

17 4. Application of payment. Any payment made under this
19 section shall be applied first against accrued interest and any
 remainder against the deferred taxes. Payment does not affect
21 the deferred tax status of the property. Unless otherwise
23 provided by law, payment does not give the person paying the
 taxes any interest in the property or any claim against the
 estate in the absence of a valid agreement to the contrary.

25 5. Satisfaction recorded. When the deferred taxes and
27 accrued interest are paid in full and the property is no longer
 subject to deferral, satisfaction of deferred property tax lien
29 shall be prepared and recorded in the municipality in which the
 property is located.

31 §863. Taxes unpaid before deferral as lien; effect on
33 foreclosure; exceptions

35 1. Effect of nonpayment on foreclosure. Notwithstanding
37 any provision of law to the contrary and section 866, upon
 compliance with section 864, taxes not in excess of \$1,000
39 assessed against a tax-deferred homestead for any tax year
 beginning on or after April 1, 1990, that were unpaid as of April
41 1st of the tax year for which the homestead property tax deferral
 was initially granted under this subchapter and remain unpaid,
43 shall remain a lien and shall become delinquent as otherwise
 provided by law, but shall not be subject to foreclosure until
45 August 15th of the calendar year following the calendar year in
 which one of the circumstances listed in section 859 occurs.

47 2. Application. This section does not apply if:

49 A. The tax-deferred homestead property is personal
 property; or

51 B. The owner of the tax-deferred homestead property has
 household income of \$28,000 or more for the calendar year

1 immediately preceding the calendar year in which application
2 is filed under section 864.

3
4 3. Removal from delinquency list. If the property to which
5 subsection 1 applies has been included on a foreclosure list, or
6 a decree of foreclosure entered, and taxes in excess of \$1,000
7 assessed against the property for the earliest year are paid, the
8 property shall be removed from the foreclosure list, or the
9 decree vacated, unless the preceding against the property
10 involves delinquent taxes other than those described in
11 subsection 1.

12
13 4. Effect or penalty. Upon removal from the foreclosure
14 list, or upon vacation of the decree, no penalty shall be
15 imposed. In lieu thereof, the penalty is abated, or if the
16 penalty has been paid, upon application made to the municipal
17 assessor on or before April 1st of the year immediately following
18 the year of vacation or removal, the penalty shall be refunded.

19
20 5. Removal from foreclosure list. Within 60 days after
21 approval of an application under section 864, with respect to any
22 property to which this section applies, the municipal assessor
23 shall make the proper entries on the tax roll and shall remove
24 the property from the foreclosure list and proceeding.

25
26 6. Decree void. If a decree has been entered foreclosing
27 liens for delinquent taxes against any property which is the
28 subject of an application filed under section 864, and the
29 delinquent taxes include only those taxes described in subsection
30 1, or taxes in excess of those described in subsection 1 are
31 paid, the decree shall be void and of no effect and the municipal
32 assessor shall make the proper entries on the assessment and tax
33 rolls to reflect the vacation of the decree and to acknowledge
34 the subsisting liens.

35
36 7. Unpaid taxes to remove valid liens. Nothing in this
37 section may remove or release property to which this section
38 applies from the lien of any unpaid tax thereon, but the unpaid
39 taxes shall remain valid and subsisting liens as though the
40 foreclosure proceeding had not been instituted or as though the
41 foreclosure proceeding had not been instituted and a decree
42 entered.

43
44 8. Other foreclosures unaffected. Nothing in this section
45 may affect a foreclosure proceeding instituted, or a decree
46 entered, to foreclose liens for delinquent taxes against
47 properties subject to foreclosure if the delinquent taxes include
48 taxes other than those described under subsection 1. Such
49 foreclosure proceedings shall be instituted or continued without
50 regard to this section and such decrees shall be of full force
51 and effect as if this section did not exist.

1 9. Determination of interest. Interest on taxes to which
3 this section applies shall be determined from the same dates, in
5 the same manner and until paid as for other property taxes
7 remaining unpaid upon the due dates, upon preparation of the
9 foreclosure list in this section and upon entry and following a
11 decree of foreclosure.

13 §864. Application to delay foreclosure; effect of denial; appeal

15 1. Application. The owner of tax-deferred homestead
17 property desiring delay in foreclosure on account of delinquent
19 taxes as provided in section 863 shall make application for the
21 delay to the municipal assessor prior to the date the period of
23 redemption expires. The application shall contain or be
25 accompanied by a verified statement of total household income of
27 the owner for the calendar year immediately preceding the
29 calendar year in which the application is made.

31 2. Appeal. Upon receipt of an application under subsection
33 1, the municipal assessor shall approve or deny the application.
35 If the application is denied, the owner may appeal to the
37 District Court in the county where the tax-deferred homestead
39 property is located within 90 days after notice in writing of the
41 denial is mailed to the owner by the municipal assessor.

43 §865. Extension of time for payment upon death of claimant or
45 spouse

47 1. Extension. If the taxpayer who claimed homestead
49 property tax deferral dies, or if a spouse who continued the
51 deferral under section 861 dies, the local legislative body may
 extend the time for payment of the deferred taxes and interest
 accruing with respect to the taxes becoming due and payable under
 section 860 if:

A. The homestead property becomes property of an individual
 or individuals:

(1) By inheritance or devise; or

(2) If the individual or individuals are heirs or
 devisees in the course of settlement of the estate;

B. The individual or individuals commence occupancy of the
 property as a principal residence on or before August 15th
 of the calendar year following the calendar year of death;
 and

C. The individual or individuals make application to the
 municipality for an extension of time for payment of the
 deferred taxes and interest prior to August 15th of the
 calendar year following the calendar year of death.

1
2. Duration of extension. Subject to subsection 1,
3 paragraph B, an extension granted under this section shall be for
4 a period not to exceed 5 years after August 15th of the calendar
5 year following the calendar year of death. The terms and
6 conditions under which the extension is granted shall be in
7 accordance with a written agreement entered into by the
8 municipality and the individual or individuals.

9
10
11 3. Termination of extension. An extension granted under
12 this section shall terminate immediately if:

13 A. The homestead property is sold or otherwise transferred
14 by any party to the extension agreement; or

15
16 B. All of the heirs or devisees who are parties to the
17 extension agreement cease to occupy the property as a
18 principal residence.

19
20 4. Bond may be required. If the local legislative body has
21 reason to believe that the homestead property is not sufficient
22 security for the deferred taxes and interest, the local
23 legislative body may require the individual or individuals to
24 furnish a bond conditioned upon payment of the amount extended in
25 accordance with the terms of the extension. The bond shall not
26 exceed in amount double the taxes with respect to which tax
27 extension is granted.

28
29 5. Interest. During the period of extension, and until
30 paid, the deferred taxes shall continue to accrue interest in the
31 same manner and at the same rate as provided under section 856.
32 No interest may accrue upon interest.

33 **§866. Limitations**

34
35 Nothing in this subchapter is intended or shall be construed
36 to:

37
38 1. Prevent collection. Prevent collection, by foreclosure,
39 of property taxes which become a lien against tax-deferred
40 property;

41
42 2. Defer payment of special assessment. Defer payment of
43 special assessments to benefited property which assessments do
44 not appear on the assessment and tax roll; or

45
46 3. Affect mortgage. Affect any provision of any mortgage
47 or other instrument relating to land requiring a person to pay
48 property taxes.

49
50 **§867. Deed or contract clauses preventing application for**
51 **deferral**

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11

STATEMENT OF FACT

13

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17

19

After January 1, 1990, it shall be unlawful for any mortgage trust deed or land sale contract to contain a clause or statement which prohibits the owner from applying for the benefits of the deferral of homestead property taxes provided in this subchapter. Any clause or statement to this effect in a mortgage trust deed or land sale contract executed after January 1, 1990, is void.

This bill allows municipalities to defer collection of homestead property taxes from persons 60 years of age or older with \$28,000 or less annual income. Municipalities deferring taxes under this bill would hold liens against property on which the deferral is claimed. The bill is modeled after Oregon law.