

# MAINE STATE LEGISLATURE

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L.D. 1886

DATE: 3/28/94

(Filing No. H- 978 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1387, L.D. 1886, Bill, "An Act to Implement the Recommendations of the Commission to Study the Statutory Procedures for Local Property Tax Abatement"

Amend the amendment by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 2 MRSA §6, sub-§5, as repealed and replaced by PL 1993, c. 410, Pt. L, §1, is amended to read:

5. Range 86. The salaries of the following state officials and employees are within salary range 86:

Director of Labor Standards;

Deputy Chief of the State Police;

State Archivist;

Director of Maine Geological Survey;

Executive Director, Maine Land Use Regulation Commission;

Chair, Maine Unemployment Insurance Commission;

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Child Welfare Services Ombudsman;

Director of the Maine Drug Enforcement Agency; and

Executive Director, Maine Science and Technology  
Commission; and

Executive Director of the State Board of Property Tax Review.

**Sec. 2. 36 MRSA §271, sub-§1**, as amended by PL 1989, c. 503,  
Pt. B, §165, is further amended to read:

**1. Organization; meetings.** The State Board of Property Tax Review, as established by Title 5, section 12004-B, subsection 6, ~~shall consist~~ consists of 15 members appointed by the Governor for terms of 3 years, except for initial appointments which shall be are 1/3 of the membership for one year, 1/3 of the membership for 2 years and 1/3 of the membership for 3 years. Vacancies on the board shall ~~be~~ are filled for the remainder of the unexpired term. The membership shall ~~must~~ be equally divided among attorneys, real estate brokers, engineers, retired assessors and public members. The board shall annually elect a chair and in the absence of an executive director a secretary. The secretary need not be chosen from the members of the board. The joint standing committee of the Legislature having jurisdiction over taxation matters shall review the makeup of the board prior to June 30, 1995 to determine if the number of members should be reduced.

**Sec. 3. 36 MRSA §271, sub-§2-A** is enacted to read:

**2-A. Executive director; powers and duties.** The Executive Director of the State Board of Property Tax Review is appointed by the board to serve at the pleasure of the board. The appointee must be experienced in the field of taxation, assessing or law and shall perform all duties designated by law and otherwise assigned by the board. The executive director shall serve as secretary of the board and shall maintain a record of all proceedings before the board. A board member may not serve as the executive director. The executive director shall notify all parties in writing within 10 days of any decision made by the executive director. Either party may appeal any decision of the executive director or any decision pursuant to section 271, subsection 5 relating to jurisdictional issues to the board within 30 days after receiving written notice of the decision. The board members assigned to the case pursuant to section 271, subsection 5 shall hear these appeals.

The salary of the executive director is established by the board within salary range 86 and may be adjusted by the board within the salary review procedures established in Title 2, section 6.

2           **Sec. 4. 36 MRSA §271, sub-§3-A**, as enacted by PL 1993, c. 395,  
3           §10, is amended to read:

4           **3-A. Filing.** Petitions for appeal and all other papers  
5           required or permitted to be filed with the board must be filed  
6           with the secretary of the board. Filing with the secretary may  
7           be accomplished by delivery to the office of the board or by mail  
8           addressed to the secretary of the board. The board shall  
9           establish a filing fee of \$200 that must accompany all requests  
10           for appeals. All papers to be filed that are transmitted by the  
11           United States Postal Service are deemed filed on the day the  
12           papers are deposited in the mail as provided in section 153.

13           **Sec. 5. 36 MRSA §271, sub-§5**, as enacted by PL 1985, c. 764,  
14           §8, is amended to read:

15           **5. Hearings.** Upon receipt of an appeal, the chairman chair  
16           of the board and the executive director, or the chair alone in  
17           the absence of an executive director, shall determine if the  
18           appeal is within the jurisdiction of the board. If the board  
19           does not have jurisdictional authority to hear the appeal, the  
20           executive director or the chair shall notify all parties in  
21           writing within 10 days of making the determination. If the board  
22           does have jurisdiction over the appeal or if either party appeals  
23           the determination that the board lacks jurisdiction, the chair  
24           shall select from the list of board members 5 persons to hear the  
25           appeal or jurisdiction issue and shall notify all parties of the  
26           time and place of the hearing. The selection of members for an  
27           appeal hearing shall be or appeal of a jurisdiction issue is  
28           based upon availability, geographic convenience and area of  
29           expertise. Three of the 5 members shall constitute a quorum.

30           **Sec. 6. 36 MRSA §273**, as enacted by PL 1985, c. 764, §8, is  
31           amended to read:

32           **§273. Nonresidential property of \$1,000,000 or greater**

33           ~~If the owner of~~ With regards to appeals relating to  
34           nonresidential property or properties with an equalized municipal  
35           valuation of \$500,000 \$1,000,000 or greater appeals to the State  
36           Board of Property Tax Review either separately or in the  
37           aggregate, as provided in sections 843 and 844, the state board  
38           shall hold a hearing de novo. For the purposes of this section,  
39           "nonresidential property" means any property that is used  
40           primarily for commercial, industrial or business purposes.

2 excluding unimproved land that is not associated with a  
commercial, industrial or business use.

4 Sec. 7. 36 MRSA §471-A is enacted to read:

6 §471-A. Board of assessment review

8 The legislative body of a primary assessing area consisting  
of only one municipality may establish a primary assessing area  
10 board of assessment review. The executive committee of a primary  
assessing area consisting of more than one municipality may  
12 establish a primary assessing area board of assessment review.  
The primary assessing area board of assessment review has the  
14 powers and duties of a municipal board of assessment review,  
including those provided under section 844-N.

16 Sec. 8. 36 MRSA §843, as amended by PL 1993, c. 395, §12, is  
18 further amended to read:

20 §843. Appeals

22 1. Municipalities. If a municipality has adopted a board  
of assessment review and the assessors or the municipal officers  
24 refuse to make the abatement asked for, the applicant may apply  
in writing to the board of assessment review within 60 days after  
26 notice of the decision from which the appeal is being taken or  
after the application is deemed to have been denied, and, if the  
28 board thinks the applicant is over-assessed, the applicant is  
granted such reasonable abatement as the board thinks proper.  
30 Except with regard to nonresidential property or properties with  
an equalized municipal value valuation of \$500,000 \$1,000,000 or  
32 greater, either separately or in the aggregate, either party may  
appeal from the decision of the board of assessment review  
34 directly to the Superior Court, in accordance with Rule 80B of  
the Maine Rules of Civil Procedure. If the board of assessment  
36 review fails to give written notice of its decision within 60  
days of the date the application is filed, unless the applicant  
38 agrees in writing to further delay, the application is deemed  
denied and the applicant may appeal to Superior Court as if there  
40 had been a written denial ~~or--the--applicant--may--appeal--to--the~~  
~~State--Board--of--Property--Tax--Review.~~

42 1-A. Nonresidential property of \$1,000,000 or greater.  
With regard to nonresidential property with an equalized  
44 municipal valuation of \$500,000 \$1,000,000 or greater, either  
46 separately or in the aggregate, either party may appeal the  
decision of the local board of assessment review or the primary  
48 assessing area board of assessment review to the State Board of  
Property Tax Review within 60 days after notice of the decision  
50 from which the appeal is taken or after the application is deemed

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2 to be denied. The As provided in subsections 1 and 2, the board  
4 shall hold a hearing de novo. If the board thinks that the owner  
6 applicant is over-assessed, it shall grant such reasonable  
8 abatement as the board thinks proper. For the purposes of this  
section, "nonresidential property" means any property that is  
used primarily for commercial, industrial or business purposes  
excluding unimproved land that is not associated with a  
commercial, industrial or business use.

10 2. Primary assessing areas. If a primary assessing area  
12 has adopted a board of assessment review and the chief assessor,  
14 municipal officer or the State Tax Assessor refuses to make the  
16 abatement asked for, the applicant may apply in writing to the  
18 State Board of Property Tax Review board of assessment review  
20 within 60 days after notice of the decision from which the appeal  
22 is being taken or after the application is deemed to have been  
24 denied, and if the board thinks the applicant is over-assessed,  
26 the applicant is granted such reasonable abatement as the board  
28 thinks proper. The decision of the State Board of Property Tax  
30 Review is deemed final agency action by that board under the  
32 Maine Administrative Procedure Act. Except with regard to  
nonresidential property or properties with an equalized municipal  
valuation of \$1,000,000 or greater, either separately or in the  
aggregate, either party may appeal the decision of the board of  
assessment review directly to the Superior Court, in accordance  
with the Maine Rules of Civil Procedure, Rule 80B. If the board  
of assessment review fails to give written notice of its decision  
within 60 days of the date the application was filed, unless the  
applicant agrees in writing to further delay, the application is  
deemed denied and the applicant may appeal to the Superior Court  
as if there has been a written denial.

34 3. Notice of decision. Any agency to which an appeal is  
36 made under this section is subject to the provisions for notice  
of decision in section 842.

38 4. Payment requirements for taxpayers. A taxpayer must pay  
40 an amount of current taxes equal to the amount of taxes paid in  
42 the next preceding tax year or the amount of taxes in the current  
44 tax year not in dispute, whichever is greater, by the due date in  
46 order to enter an appeal under this section or to continue  
48 prosecution of an appeal pending under this section. If an  
50 appeal is in process upon expiration of a due date for payment of  
taxes in a particular municipality, without the appropriate  
amount of taxes having been paid, the appeal process must be  
suspended until the appropriate amount of taxes, together with  
any accrued interest and costs, has been paid. This section  
applies to any property tax year beginning on or after April 1,  
1993. This section does not apply to property with a valuation  
of less than \$500,000.

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2       **Sec. 9. 36 MRSA §844, sub-§1**, as amended by PL 1993, c. 395,  
§13, is further amended to read:

4       **1. Municipalities without board of assessment review.**  
6       Except when the municipality or primary assessing area has  
8       adopted a board of assessment review ~~or has been designated as a~~  
10       ~~primary--assessing--area~~, if the assessors or the municipal  
12       officers refuse or, with respect to a primary assessing area, the  
14       ~~chief assessor, municipal officer or State Tax Assessor~~ refuses  
16       to make the abatement asked for, the applicant may apply to the  
18       county commissioners within 60 days after notice of the decisions  
20       from which the appeal is being taken or within 60 days after the  
22       application is deemed to have been denied. If the commissioners  
24       think that the applicant is over-assessed, the applicant is  
26       granted such reasonable abatement as the commissioners think  
28       proper. If the applicant has paid the tax, the applicant ~~must be~~  
30       is reimbursed out of the municipal treasury, with costs in either  
32       case. If the applicant fails, the commissioners shall allow costs  
to the municipality, taxed as in a civil action in the Superior  
Court, and issue their warrant of distress against the applicant  
for collection of such amount as may be due the municipality.  
The commissioners may require the assessors or municipal clerk to  
produce the valuation by which the assessment was made or a copy  
of it. Either party may appeal from the decision of the county  
commissioners to the Superior Court, in accordance with the Maine  
Rules of Civil Procedure, Rule 80B. If the county commissioners  
fail to give written notice of their decision within 60 days of  
the date the application is filed, unless the applicant agrees in  
writing to further delay, the application is deemed denied and  
the applicant may appeal to the Superior Court as if there had  
been a written denial ~~or the applicant may appeal to the State~~  
~~Board of Property Tax Review.~~

34       **Sec. 10. 36 MRSA §844, sub-§1-A** is enacted to read:

36       **1-A. County board of assessment review.** The county  
38       commissioners in any county may establish a county board of  
40       assessment review to hear all appeals to the county  
42       commissioners. The board has the powers and duties of a  
municipal board of assessment review, including those provided  
under section 844-M.

44       **Sec. 11. 36 MRSA §844, sub-§2**, as enacted by PL 1985, c. 764,  
§18, is amended to read:

46       **2. Nonresidential property of \$1,000,000 or greater.**  
48       Notwithstanding subsection 1, ~~the--owner--of~~ with regard to  
50       nonresidential property or properties with an equalized municipal  
valuation of \$500,000 \$1,000,000 or greater, either separately or  
in the aggregate, either party may choose to appeal the decision

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of the assessors or the municipal officials officers with regard to a request for abatement to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. If the state board thinks that the owner applicant is over-assessed, it shall grant such reasonable abatement as the board thinks proper. For the purposes of this subsection, "nonresidential property" means any property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with a commercial, industrial or business use.

Sec. 12. 36 MRSA §844, sub-§4, as enacted by PL 1993, c. 242, §2, is amended to read:

4. Payment requirements for taxpayers. A taxpayer must pay an amount of current taxes equal to the amount of taxes paid in the next preceding tax year or the amount of taxes in the current tax year not in dispute, whichever is greater, by the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section. If an appeal is in process upon expiration of a due date for payment of taxes in a particular municipality, without the appropriate amount of taxes having been paid, the appeal process must be suspended until the appropriate amount of taxes, together with any accrued interest and costs, has been paid. This section applies to any property tax year beginning on or after April 1, 1993. This section does not apply to property with a valuation of less than \$500,000.

Sec. 13. 36 MRSA §§844-M and 844-N are enacted to read:

§844-M. County board of assessment review

1. Organization. A county board of assessment review, as authorized by section 844, subsection 1-A, consists of 5 or 7 members who serve staggered terms of at least 3 but no more than 5 years. The terms must be determined by rule of the board. The board shall elect annually a chair and a secretary from among its members. A county official or the spouse of a county official may not be a member of the board. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue must be decided by a majority vote of the members, excluding the member who is being challenged. The county commissioners may dismiss a member of the board for cause before the member's term expires.

2. Meetings; records. The chair shall call meetings of the board as required. The chair shall also call meetings of the board when requested to do so by a majority of the board members



or by the county commissioners. A majority of the board's members constitutes the quorum necessary to conduct an official board meeting. The chair shall preside at the meetings of the board and is the official spokesperson of the board. The secretary shall maintain a permanent record of the board meetings, the correspondence of the board and the records that are required as part of the various proceedings that may be brought before the board. The records maintained or prepared by the secretary must be filed in the county commissioners' office and subject to public inspection in accordance with Title 1, chapter 13.

**3. Hearing.** The board shall adopt rules to establish the procedure for the conduct of a hearing, provided that the chair may waive any rule upon good cause shown.

**4. Evidence.** The board shall receive oral or documentary evidence and provide for, as a matter of policy, the exclusion of irrelevant, immaterial or unduly repetitious evidence. Each party may present its case or defense by oral or documentary evidence, submit rebuttal evidence and conduct cross-examination that is required for a full and true disclosure of the facts.

**5. Testimony; record; notice.** The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the board, and the exhibits, with all papers and requests filed in the proceeding, constitute the record. Decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for those findings and conclusions, upon the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. If the board determines that the applicant is over-assessed, it shall grant such reasonable abatement as the board determines proper. Notice of a decision must be mailed or hand delivered to all parties and the county commissioners within 10 days of the board's decision.

**6. Appeals.** A party may appeal the decision of the county board of assessment review to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

**§844-N. Primary assessing area board of assessment review**

**1. Organization.** A primary assessing area board of assessment review, as authorized by section 471-A, consists of 5

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2 or 7 members who serve staggered terms of at least 3 but no more  
3 than 5 years. The terms must be determined by rule of the  
4 board. The board shall elect annually a chair and a secretary  
5 from among its members. A municipal official or the spouse of a  
6 municipal official may not be a member of the board. Any  
7 question of whether a particular issue involves a conflict of  
8 interest sufficient to disqualify a member from voting on that  
9 issue must be decided by a majority vote of the members,  
10 excluding the member who is being challenged. The municipal  
11 officials or the executive committee, where applicable, may  
12 dismiss a member of the board for cause before the member's term  
13 expires.

14 2. Meetings; records. The chair shall call meetings of the  
15 board as required. The chair shall also call meetings of the  
16 board when requested to do so by a majority of the board members  
17 or by the municipal officials or the executive committee, where  
18 applicable. A majority of the board's members constitutes the  
19 quorum necessary to conduct an official board meeting. The chair  
20 shall preside at the meetings of the board and is the official  
21 spokesperson of the board. The secretary shall maintain a  
22 permanent record of the board meetings, the correspondence of the  
23 board and the records that are required as part of the various  
24 proceedings that may be brought before the board. The records  
25 maintained or prepared by the secretary must be filed in the  
26 primary assessing area board of assessment review office and  
27 subject to public inspection in accordance with Title 1, chapter  
28 13.

30 3. Hearing. The board shall adopt rules to establish the  
31 procedure for the conduct of a hearing, provided that the chair  
32 may waive any rule upon good cause shown.

34 4. Evidence. The board shall receive oral or documentary  
35 evidence and provide for, as a matter of policy, the exclusion of  
36 irrelevant, immaterial or unduly repetitious evidence. Each  
37 party may present its case or defense by oral or documentary  
38 evidence, submit rebuttal evidence and conduct cross-examination  
39 that is required for a full and true disclosure of the facts.

40 5. Testimony; record; notice. The transcript or tape  
41 recording of testimony, if such a transcript or tape recording  
42 has been prepared by the board, and the exhibits, with all papers  
43 and requests filed in the proceeding, constitute the record.  
44 Decisions become a part of the record and must include a  
45 statement of findings and conclusions, as well as the reasons or  
46 basis for those findings and conclusions, upon the material  
47 issues of fact, law or discretion presented and the appropriate  
48 order, relief or denial of relief. If the board determines that  
49 the applicant is over-assessed, it shall grant such reasonable  
50 relief.

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2 abatement as the board determines proper. Notice of a decision  
3 must be mailed or hand delivered to all parties and the municipal  
4 officials or the executive committee, where applicable, within 10  
5 days of the board's decision.

6 Sec. 14. 36 MRSA §850, as enacted by PL 1985, c. 764, §19, is  
7 repealed.

8 Sec. 15. Application. This Act applies for any appeal filed  
9 that is based on assessments made for any property tax year that  
10 begins on or after April 1, 1994.

11 Sec. 16. Appropriation. The following funds are appropriated  
12 from the General Fund to carry out the purposes of this Act.

13 1994-95

14 STATE BOARD OF PROPERTY TAX REVIEW

15	Positions	(1.0)
16	Personal Services	\$53,958
17	All Other	10,000
18	Capital Expenditures	5,000

19 Provides funds for a new Executive Director  
20 position, general operating expenses and  
21 computer equipment.

22 STATE BOARD OF PROPERTY TAX REVIEW  
23 TOTAL \$68,958'

24 Further amend the bill by inserting at the end before the  
25 statement of fact the following:

26 FISCAL NOTE

27 1994-95

28 APPROPRIATIONS/ALLOCATIONS

General Fund \$68,958

REVENUES

General Fund \$20,000

The State Board of Property Tax Review will require a General Fund appropriation of \$68,958 in fiscal year 1994-95 for a new Executive Director position, general operating expenses and a computer and printer. The bill also establishes a new filing fee of \$200 per appeal. The filing fee will increase General Fund revenue by \$20,000 in fiscal year 1994-95.

STATEMENT OF FACT

This amendment incorporates the committee amendment and also does the following:

1. Makes several technical changes and clarifies language in the original bill; and

2. Adds a process authorizing the establishment of a primary assessing area board of assessment review.

SPONSORED BY:  
(Representative MADEAU)

TOWN: Saco