

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1886

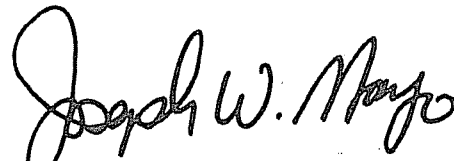
H.P. 1387

House of Representatives, February 15, 1994

**An Act to Implement the Recommendations of the Commission to Study
the Statutory Procedures for Local Property Tax Abatement.**

Reported by Representative NADEAU for the Commission to Study the Statutory Procedures
for Local Property Tax Abatement Appeals pursuant to Resolve 1993, chapter 41.

Reference to the Joint Standing Committee on Taxation suggested and printing ordered under
Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

2 **Sec. 1. 2 MRSA §6, sub-§5,** as repealed and replaced by PL
4 1993, c. 410, Pt. L, §1, is amended to read:

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

10 Director of Labor Standards;

12 Deputy Chief of the State Police;

14 State Archivist;

16 Director of Maine Geological Survey;

18 Executive Director, Maine Land Use Regulation Commission;

20 Chair, Maine Unemployment Insurance Commission;

22 Child Welfare Services Ombudsman;

24 Director of the Maine Drug Enforcement Agency; and

26 Executive Director, Maine Science and Technology
Commission; and

28 Executive Director of the State Board of Property Tax Review.

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

34 **1. Organization; meetings.** The State Board of Property Tax
36 Review, as established by Title 5, section 12004-B, subsection 6,
38 shall consist of 15 members appointed by the Governor for terms
40 of 3 years, except for initial appointments which shall be 1/3 of
42 the membership for one year, 1/3 of the membership for 2 years
44 and 1/3 of the membership for 3 years. Vacancies on the board
46 shall be filled for the remainder of the unexpired term. The
48 membership shall be equally divided among attorneys, real estate
brokers, engineers, retired assessors and public members. The
board shall annually elect a chair and ~~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 make-up of the board prior to
June 30, 1995 to determine if the number of members should be
reduced.

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

2 2-A. Executive director; powers and duties. The Executive
3 Director of the State Board of Property Tax Review shall be
4 appointed by the board to serve at the pleasure of the board.
5 The appointee must be experienced in the field of taxation,
6 assessing or law and shall perform all duties designated by law
7 and otherwise assigned by the board. The executive director
8 shall serve as secretary of the board and shall maintain a record
9 of all proceedings before the board. A board member may not
10 serve as the executive director.

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

14 **Sec. 4. 36 MRSA §271, sub-§3-A,** as enacted by PL 1993, c. 395,
15 §10, is amended to read:

16 **3-A. Filing.** Petitions for appeal and all other papers
17 required or permitted to be filed with the board must be filed
18 with the secretary of the board. Filing with the secretary may
19 be accomplished by delivery to the office of the board or by mail
20 addressed to the secretary of the board. The board shall
21 establish a fee schedule that sets the amount required to
22 accompany requests for appeals. All papers to be filed that are
23 transmitted by the United States Postal Service are deemed filed
24 on the day the papers are deposited in the mail as provided in
25 section 153.

26 **Sec. 5. 36 MRSA §271, sub-§5,** as enacted by PL 1985, c. 764,
27 §8, is amended to read:

28 **5. Hearings.** Upon receipt of an appeal, the chairman chair
29 of the board and the executive director shall determine if the
30 appeal is within the jurisdiction of the board. If the board
31 does not have jurisdictional authority to hear the appeal, the
32 executive director shall notify all parties within 10 days of
33 making the determination. If the board does have jurisdiction
34 over the appeal, the chair shall select from the list of board
35 members 5 persons to hear the appeal and shall notify all parties
36 of the time and place of the hearing. The selection of members
37 for an appeal hearing shall be based upon availability,
38 geographic convenience and area of expertise. Three of the 5
39 members shall constitute a quorum.

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

42 **§273. Nonresidential property exceeding \$1,000,000**

2 If the owner of nonresidential property with an equalized
municipal valuation of \$500,000 \$1,000,000 or greater appeals to
4 the State Board of Property Tax Review as provided in sections
843 and 844, the state board shall hold a hearing de novo. For
6 the purposes of this section, "nonresidential property" means any
property, excluding unimproved land, that is used primarily for
commercial, industrial or business purposes.

8
10 **Sec. 7. 36 MRSA §843**, as amended by PL 1993, c. 395, §12, is
further amended to read:

12 **§843. Appeals**

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

34 **1-A. Nonresidential property exceeding \$1,000,000.** With
regard to nonresidential property with an equalized municipal
36 valuation of \$500,000 \$1,000,000 or greater, either party may
appeal the decision of the local board of assessment review to
38 the State Board of Property Tax Review within 60 days after
notice of the decision from which the appeal is taken or after
40 the application is deemed to be denied. The board shall hold a
hearing de novo. If the board thinks that the owner is
42 over-assessed, it shall grant such reasonable abatement as the
board thinks proper. For the purposes of this subsection,
44 "nonresidential property" means any property, excluding
unimproved land, that is used primarily for commercial,
46 industrial or business purposes.

48 **2. Primary assessing areas.** If a primary assessing area
has adopted a board of assessment review and the chief assessor,
50 municipal officer or the State Tax Assessor refuses to make the

2 abatement asked for, the applicant may apply in writing to the
3 ~~State Board of Property Tax Review~~ board of assessment review
4 within 60 days after notice of the decision from which the appeal
5 is being taken or after the application is deemed to have been
6 denied, and if the board thinks the applicant is over-assessed,
7 the applicant is granted such reasonable abatement as the board
8 thinks proper. ~~The decision of the State Board of Property Tax~~
9 ~~Review is deemed final agency action by that board under the~~
10 ~~Maine Administrative Procedure Act.~~ Except with regard to
11 nonresidential property with an equalized municipal valuation of
12 \$1,000,000 or greater, either party may appeal the decision of
13 the board of assessment review directly to the Superior Court, in
14 accordance with the Maine Rules of Civil Procedure, Rule 80B. If
15 the board of assessment review fails to give written notice of
16 its decision within 60 days of the date the application was
17 filed, unless the applicant agrees in writing to further delay,
18 the application is deemed denied and the applicant may appeal to
the Superior Court as if there has been a written denial.

20 **3. Notice of decision.** Any agency to which an appeal is
21 made under this section is subject to the provisions for notice
22 of decision in section 842.

24 **4. Payment requirements for taxpayers.** A taxpayer must pay
25 an amount of current taxes equal to the amount of taxes paid in
26 the next preceding tax year or the amount of taxes in the current
27 tax year not in dispute, whichever is greater, by the due date in
28 order to enter an appeal under this section or to continue
29 prosecution of an appeal pending under this section. If an
30 appeal is in process upon expiration of a due date for payment of
31 taxes in a particular municipality, without the appropriate
32 amount of taxes having been paid, the appeal process must be
33 suspended until the appropriate amount of taxes, together with
34 any accrued interest and costs, has been paid. This section
35 applies to any property tax year beginning on or after April 1,
36 1993.

38 **Sec. 8. 36 MRSA §844, sub-§1,** as amended by PL 1993, c. 395,
39 §13, is further amended to read:

40 **1. Municipalities without board of assessment review.**
41 Except when the municipality or primary assessing area has
42 adopted a board of assessment review ~~or has been designated as a~~
43 ~~primary assessing area,~~ if the assessors or the municipal
44 officers refuse to make the abatement asked for, the applicant
45 may apply to the county commissioners within 60 days after notice
46 of the decisions from which the appeal is being taken or within
47 60 days after the application is deemed to have been denied. If
48 the commissioners think that the applicant is over-assessed, the

2 applicant is granted such reasonable abatement as the
3 commissioners think proper. If the applicant has paid the tax,
4 the applicant must be reimbursed out of the municipal treasury,
5 with costs in either case. If the applicant fails, the
6 commissioners shall allow costs to the municipality, taxed as in
7 a civil action in the Superior Court, and issue their warrant of
8 distress against the applicant for collection of such amount as
9 may be due the municipality. The commissioners may require the
10 assessors or municipal clerk to produce the valuation by which
11 the assessment was made or a copy of it. Either Except with
12 regard to nonresidential property with an equalized municipal
13 valuation of \$1,000,000 or greater, either party may appeal from
14 the decision of the county commissioners to the Superior Court,
15 in accordance with the Maine Rules of Civil Procedure, Rule 80B.
16 If the county commissioners fail to give written notice of their
17 decision within 60 days of the date the application is filed,
18 unless the applicant agrees in writing to further delay, the
19 application is deemed denied and the applicant may appeal to the
20 Superior Court as if there had been a written denial of--the
applicant--may--appeal--to--the--State--Board--of--Property--Tax--Review.

22 **Sec. 9. 36 MRSA §844, sub-§1-A is enacted to read:**

24 1-A. County board of assessment review. The county
25 commissioners in any county may establish a county board of
26 assessment review to hear all appeals to the county
27 commissioners. The board has the powers and duties of a
28 municipal board of assessment review, including those provided
29 under section 844-M.

30 **Sec. 10. 36 MRSA §844, sub-§2, as enacted by PL 1985, c. 764,**
32 **§18, is amended to read:**

34 **2. Nonresidential property exceeding \$1,000,000.**
35 ~~Notwithstanding subsection 1, the owner of~~ With regard to
36 nonresidential property with an equalized municipal valuation of
37 \$500,000 \$1,000,000 or greater, either party may choose to appeal
38 the decision of the assessors or the municipal officials officers
39 with regard to a request for abatement to the State Board of
40 Property Tax Review within 60 days after notice of the decision
41 from which the appeal is taken or after the application is deemed
42 to be denied. If the state board thinks that the owner is
43 over-assessed, it shall grant such reasonable abatement as the
44 board thinks proper. For the purposes of this subsection,
45 "nonresidential property" means any property, excluding
46 unimproved land, that is used primarily for commercial,
47 industrial or business purposes.

48 **Sec. 11. 36 MRSA §844-M is enacted to read:**
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§844-M. County board of assessment review

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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 or an associate 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 open 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; public 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 public 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. Notice of a

2 decision must be mailed or hand delivered to all parties and the
3 county commissioners within 10 days of the board's decision.

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

12 **Sec. 12. 36 MRSA §850, as enacted by PL 1985, c. 764, §19, is**
13 **repealed.**

14 **Sec. 13. Application.** This Act applies for any appeal filed
15 that is based on assessments made for any property tax year that
16 begins on or after April 1, 1994.
17

20 STATEMENT OF FACT

21 This bill is the result of recommendations of the Commission
22 to Study the Statutory Procedures for Local Property Tax
23 Abatement Appeals, established pursuant to Resolve 1993, chapter
24 41. This bill establishes the position of the Executive Director
25 of the State Board of Property Tax Review, increases the
26 threshold for appeals to the board and redefines who may appeal
27 to the board.
28

29 This bill also eliminates appeals to the State Board of
30 Property Tax Review for appeals that are denied by a local board
31 of assessment review or the county commissioners and allows the
32 county commissioners to establish a county board of assessment
33 review.
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42 **This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.**