

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 399

H.P. 295

House of Representatives, February 6, 1995

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

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NICKERSON of Turner.
Cosponsored by Representatives: JOYNER of Hollis, LIBBY of Buxton.

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2 **Sec. 1. 2 MRSA §6, sub-§5**, as repealed and replaced by PL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 Chair of the State Board of Property Tax Review.

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

32 **1. Organization; meetings.** The State Board of Property Tax
34 Review, as established by Title 5, section 12004-B, subsection 6,
36 ~~shall consist~~ consists of 15 members appointed by the Governor
for terms of 3 years, except for initial appointments, which
38 ~~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.
40 Vacancies on the board ~~shall~~ must be filled for the remainder of
the unexpired term. The membership ~~shall~~ must be equally divided
42 among attorneys, real estate brokers, engineers, retired
assessors and public members. The board shall annually elect a
44 chair and secretary. The secretary need not be chosen from the
members of the board. The joint standing committee of the
46 Legislature having jurisdiction over taxation matters shall
review the makeup of the board prior to June 30, 1996 to
determine whether to reduce the number of members.

48 **Sec. 3. 36 MRSA §271, sub-§3-A**, as enacted by PL 1993, c. 395,
50 §10, is amended to read:

2 notice of the decision from which the appeal is being taken or
after the application is deemed ~~to have been~~ denied, and, if the
4 board thinks the applicant is over-assessed, the applicant is
granted such reasonable abatement as the board thinks proper. If
6 the board of assessment review refuses to make the abatement
asked for, or fails to give written notice of their decision
8 within 60 days from the date of filing of the application, the
application is deemed denied and the applicant may appeal to the
10 county commissioners within 60 days after the notice of the
decision from which the appeal is being taken or within 60 days
12 after the application is deemed denied. If the county
commissioners determine the applicant is over-assessed, the
14 applicant is granted such reasonable abatement as the
commissioners think proper. If the applicant fails in the
16 appeal, the commissioners shall allow costs to the municipality,
taxed as in a civil action in the Superior Court, and issue a
18 warrant of distress against the applicant for collection of the
amount due the municipality. The commissioners may require the
20 assessor or municipal clerk to produce the valuation by which the
assessment was made or a copy of the valuation. Except with
22 regard to nonresidential property with an equalized municipal
value valuation of \$500,000 \$1,000,000 or greater, either party
24 may appeal from the decision of the ~~board of assessment review~~
county commissioners directly to the Superior Court, in
26 accordance with Rule 80B of the Maine Rules of Civil Procedure.
28 If the ~~board of assessment review fails~~ county commissioners fail
to give written notice of ~~its~~ their decision within 60 days of
30 the date the application is filed, unless the applicant agrees in
writing to further delay, the application is deemed denied and
32 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 **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 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-Aet.~~ If the board of assessment
11 review refuses to make the allotment asked for or fails to give
12 written notice of its decision within 60 days of the date the
13 application was filed, the application is deemed denied and the
14 applicant may appeal to the county commissioners within 60 days
15 after the notice of the decision from which the appeal is being
16 taken or within 60 days after the application is deemed denied.
17 If the county commissioners determine the applicant is
18 over-assessed, the applicant is granted such reasonable abatement
19 as the commissioners think proper. If the applicant fails in the
20 appeal, the commissioners shall allow costs to the municipality,
21 taxed as in a civil action in the Superior Court, and issue a
22 warrant of distress against the applicant for collection of the
23 amount due the municipality. The commissioners may require the
24 assessor or municipal clerk to produce the valuation by which the
25 assessment was made or a copy of the valuation. Except with
26 regard to nonresidential property with an equalized municipal
27 valuation of \$1,000,000 or greater, either party may appeal the
28 decision of the board of assessment review directly to the
29 Superior Court, in accordance with the Maine Rules of Civil
30 Procedure, Rule 80B. If the board of assessment review fails to
31 give written notice of its decision within 60 days of the date
32 the application was filed, unless the applicant agrees in writing
33 to further delay, the application is deemed denied and the
34 applicant may appeal to the Superior Court as if there has been a
35 written denial.

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

39 **4. Payment requirements for taxpayers.** A taxpayer must pay
40 an amount of current taxes equal to the amount of taxes paid in
41 the next preceding tax year or the amount of taxes in the current
42 tax year not in dispute, whichever is greater, by the due date in
43 order to enter an appeal under this section or to continue
44 prosecution of an appeal pending under this section. If an
45 appeal is in process upon expiration of a due date for payment of
46 taxes in a particular municipality, without the appropriate
47 amount of taxes having been paid, the appeal process must be
48 suspended until the appropriate amount of taxes, together with
49 any accrued interest and costs, has been paid. This section
50

2 applies to any property tax year beginning on or after April 1,
1993.

4 **Sec. 7. 36 MRSA §844, sub-§1**, as amended by PL 1993, c. 395,
§13, is further amended to read:

6 **1. Municipalities without board of assessment review.**

8 Except when the municipality or primary assessing area has
10 adopted a board of assessment review ~~or has been designated as a~~
~~primary--assessing--area~~, if the assessors or the municipal
12 officers refuse to make the abatement asked for, the applicant
14 may apply to the county commissioners within 60 days after notice
of the decisions from which the appeal is being taken or within
16 60 days after the application is deemed to have been denied. If
the commissioners ~~think~~ determine that the applicant is
over-assessed, the applicant is granted such reasonable abatement
18 as the commissioners ~~think~~ determine proper. If the applicant
has paid the tax, the applicant must be reimbursed out of the
20 municipal treasury, with costs in either case. If the applicant
fails, the commissioners shall allow costs to the municipality,
22 taxed as in a civil action in the Superior Court, and issue their
warrant of distress against the applicant for collection of such
24 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~~ Except
26 with regard to nonresidential property with an equalized
municipal valuation of \$1,000,000 or greater, either party may
28 appeal from the decision of the county commissioners to the
Superior Court, in accordance with the Maine Rules of Civil
30 Procedure, Rule 80B. If the county commissioners fail to give
written notice of their decision within 60 days of the date the
32 application is filed, unless the applicant agrees in writing to
further delay, the application is deemed denied and the applicant
34 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~~
36 ~~Tax-Review.~~

38 **Sec. 8. 36 MRSA §844, sub-§1-A** is enacted to read:

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

46 **Sec. 9. 36 MRSA §844, sub-§2**, as enacted by PL 1985, c. 764,
§18, is amended to read:

48 **2. Nonresidential property exceeding \$1,000,000.**
50 ~~Notwithstanding--subsection--1,--the--owner--of~~ With regard to

2 nonresidential property with an equalized municipal valuation of
3 ~~\$500,000~~ \$1,000,000 or greater, either party may choose to appeal
4 the decision of the assessors or the municipal ~~effieials~~ officers
5 with regard to a request for abatement to the State Board of
6 Property Tax Review within 60 days after notice of the decision
7 from which the appeal is taken or after the application is deemed
8 to be denied. If the state board ~~think*s~~ determines that the owner
9 is over-assessed, ~~it~~ the state board shall grant such reasonable
10 abatement as the board ~~think*s~~ determines proper. For purposes of
11 this subsection, "nonresidential property" means any property,
12 excluding unimproved land, that is used primarily for commercial,
13 industrial or business purposes.

14 **Sec. 10. 36 MRSA §844-M** is enacted to read:

16 **§844-M. County board of assessment review**

18 **1. Organization.** A county board of assessment review, as
19 authorized by section 844, subsection 1-A, consists of 5 or 7
20 members who serve staggered terms of at least 3 but no more than
21 5 years. The members are appointed by the county commissioners.
22 The county commissioners also determine the number of members.
23 The terms must be determined by rule of the board. The board
24 shall elect annually a chair and a secretary from among its
25 members. A county official or the spouse of a county official
26 may not be a member or an associate member of the board. A
27 question of whether a particular issue involves a conflict of
28 interest sufficient to disqualify a member from voting on that
29 issue must be decided by a majority vote of the members,
30 excluding the member who is being challenged. The county
31 commissioners may dismiss a member of the board for cause before
32 the member's term expires.

34 **2. Meetings; records.** The chair shall call meetings of the
35 board as required and when requested by a majority of the board
36 members or by the county commissioners. A majority of the
37 members constitutes a quorum. The chair presides at the meetings
38 of the board and is the official spokesperson of the board. The
39 secretary shall maintain a permanent record of the board
40 meetings, the correspondence of the board and any other required
41 records of proceedings brought before the board. The records
42 maintained or prepared by the secretary must be filed in the
43 county commissioners' office and must be open to public
44 inspection in accordance with Title 1, chapter 13.

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

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

8 5. Testimony; public record; notice. Any transcript or
tape recording of testimony prepared by the board and the
10 exhibits, with all papers and requests filed in the proceeding,
constitute the public record. Decisions become part of the
12 record and must include a statement of findings and conclusions
with the reasons for those findings and conclusions upon the
14 material issues of fact, law or discretion presented and the
appropriate order, relief or denial of relief. Notice of a
16 decision must be mailed or hand delivered to all parties and the
county commissioners within 10 days of the board's decision.

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

28 7. Costs. All costs incurred by the county board of
assessment review are divided among the parties involved in a
30 particular case.

32 **Sec. 11. 36 MRSA §850,** as enacted by PL 1985, c. 764, §19, is
repealed.

34 **Sec. 12. Application.** This Act applies to appeals based on
36 assessments made for any property tax year beginning on or after
April 1, 1995.

40 STATEMENT OF FACT

42 This bill revises the abatement process and eliminates
appeals to the State Board of Property Tax Review for appeals
44 that are denied by a local board of assessment review or the
county commissioners and allows the county commissioners to
46 establish a county board of assessment review.