

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 582

H.P. 425

House of Representatives, February 17, 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 NADEAU of Saco.

Cosponsored by Representatives: DiPIETRO of South Portland, DORE of Auburn, GREEN of Monmouth, KONTOS of Windham, MURPHY of Berwick, SIMONEAU of Thomaston, SPEAR of Nobleboro, TRUE of Fryeburg, Senators: CAREY of Kennebec, FERGUSON of Oxford, RUHLIN of Penobscot.

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

4 **Sec. 1. 2 MRSA §6, sub-§5,** as repealed and replaced by PL 1993, c. 410, Pt.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

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

8 Director of Labor Standards;

10 Deputy Chief of the State Police;

12 State Archivist;

14 Director of Maine Geological Survey;

16 Executive Director, Maine Land Use Regulation Commission;

18 Chair, Maine Unemployment Insurance Commission;

20 Child Welfare Services Ombudsman;

22 Director of the Maine Drug Enforcement Agency; and

24 Executive Director, Maine Science and Technology
26 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~~ consists of 15 members appointed by the Governor
40 for terms of 3 years, except for initial appointments, which
42 ~~shall be~~ are 1/3 of the membership for one year, 1/3 of the
44 membership for 2 years and 1/3 of the membership for 3 years.
46 Vacancies on the board ~~shall be~~ are filled for the remainder of
48 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 whether the number of
members should be reduced.

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

4 **2-A. Executive director; powers and duties.** The Executive
5 Director of the State Board of Property Tax Review is appointed
6 by the board to serve at the pleasure of the board. The
7 appointee must be experienced in the field of taxation, assessing
8 or law and shall perform all duties designated by law and
9 otherwise assigned by the board. The executive director shall
10 serve as secretary of the board and shall maintain a record of
11 all proceedings before the board. A board member may not serve
12 as the executive director. The executive director shall notify
13 all parties in writing within 10 days of any decision made by the
14 executive director. Either party may appeal to the board a
15 decision of the executive director or a decision pursuant to
16 section 271, subsection 5 relating to jurisdictional issues
17 within 30 days after receiving written notice of that decision.
18 The board members assigned to the case pursuant to section 271,
19 subsection 5 shall hear these appeals.

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

23 **Sec. 4. 36 MRSA §271, sub-§3-A**, as enacted by PL 1993, c. 395,
24 §10, is amended to read:

25 **3-A. Filing.** Petitions for appeal and all other papers
26 required or permitted to be filed with the board must be filed
27 with the secretary of the board. Filing with the secretary may
28 be accomplished by delivery to the office of the board or by mail
29 addressed to the secretary of the board. The board shall
30 establish a filing fee schedule that is prorated according to the
31 total assets of the appellant. The fee may not be lower than
32 \$100 or higher than \$2,000. All papers to be filed that are
33 transmitted by the United States Postal Service are deemed filed
34 on the day the papers are deposited in the mail as provided in
35 section 153.

36 **Sec. 5. 36 MRSA §271, sub-§5**, as enacted by PL 1985, c. 764,
37 §8, is amended to read:

38 **5. Hearings.** Upon receipt of an appeal, the chairman ~~chair~~ chair
39 of the board and the executive director, or the chair alone in
40 the absence of an executive director, shall determine whether the
41 appeal is within the jurisdiction of the board. If the board
42 does not have jurisdictional authority to hear the appeal, the
43 executive director or the chair shall notify all parties in
44 writing within 10 days of making the determination. If the board
45 does have jurisdiction over the appeal or if either party appeals
46 the determination that the board lacks jurisdiction, the chair
47 shall hear the appeal.
48 The board shall hear the appeal if the board has jurisdiction.
49 The board shall hear the appeal if the board has jurisdiction.
50 The board shall hear the appeal if the board has jurisdiction.

2 shall select from the list of board members 5 persons to hear the
3 appeal or jurisdictional issue and shall notify all parties of
4 the time and place of the hearing. The selection of members for
5 an appeal hearing ~~shall be~~ or appeal of a jurisdictional issue is
6 based upon availability, geographic convenience and area of
7 expertise. Three of the 5 members shall constitute a quorum.

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

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

11 ~~If--the--owner--of~~ With regard to appeals relating to
12 nonresidential property or properties with an equalized municipal
13 valuation of ~~\$500,000~~ \$1,000,000 or greater ~~appeals to the State~~
14 ~~Board of Property Tax Review~~ either separately or in the
15 aggregate, as provided in sections 843 and 844, the state board
16 shall hold a hearing de novo. For the purposes of this section,
17 "nonresidential property" means property that is used primarily
18 for commercial, industrial or business purposes, excluding
19 unimproved land that is not associated with a commercial,
20 industrial or business use.

21
22
23 **Sec. 7. 36 MRSA §471-A** is enacted to read:

24 **§471-A. Board of assessment review**

25 The legislative body of a primary assessing area consisting
26 of only one municipality may establish a primary assessing area
27 board of assessment review. The executive committee of a primary
28 assessing area consisting of more than one municipality may
29 establish a primary assessing area board of assessment review.
30 The primary assessing area board of assessment review has the
31 powers and duties of a municipal board of assessment review,
32 including those provided under section 844-N.

33
34
35 **Sec. 8. 36 MRSA §843**, as amended by PL 1993, c. 395, §12, is
36 further amended to read:

37 **§843. Appeals**

38
39 **1. Municipalities.** If a municipality has adopted a board
40 of assessment review and the assessors or the municipal officers
41 refuse to make the abatement asked for, the applicant may apply
42 in writing to the board of assessment review within 60 days after
43 notice of the decision from which the appeal is being taken or
44 after the application is deemed to have been denied, and, if the
45 board thinks the applicant is over-assessed, the applicant is
46 granted such reasonable abatement as the board thinks proper.
47 Except with regard to nonresidential property or properties with

2 an equalized municipal value valuation of \$500,000 \$1,000,000 or
3 greater either separately or in the aggregate, either party may
4 appeal from the decision of the board of assessment review
5 directly to the Superior Court, in accordance with Rule 80B of
6 the Maine Rules of Civil Procedure. If the board of assessment
7 review fails to give written notice of its decision within 60
8 days of the date the application is filed, unless the applicant
9 agrees in writing to further delay, the application is deemed
10 denied and the applicant may appeal to Superior Court as if there
11 had been a written denial ~~or the applicant may appeal to the~~
12 ~~State Board of Property Tax Review.~~

13 **1-A. Nonresidential property of \$1,000,000 or greater.**
14 With regard to nonresidential property or properties with an
15 equalized municipal valuation of \$500,000 \$1,000,000 or greater
16 either separately or in the aggregate, either party may appeal
17 the decision of the local board of assessment review or the
18 primary assessing area board of assessment review to the State
19 Board of Property Tax Review within 60 days after notice of the
20 decision from which the appeal is taken or after the application
21 is deemed to be denied. The As provided in subsections 1 and 2,
22 the board shall hold a hearing de novo. If the board thinks that
23 the owner applicant is over-assessed, it shall grant such
24 reasonable abatement as the board thinks proper. For the
25 purposes of this section, "nonresidential property" means
26 property that is used primarily for commercial, industrial or
27 business purposes excluding unimproved land that is not
28 associated with a commercial, industrial or business use.

29 **2. Primary assessing areas.** If a primary assessing area
30 has adopted a board of assessment review and the chief assessor,
31 municipal officer or the State Tax Assessor refuses to make the
32 abatement asked for, the applicant may apply in writing to the
33 ~~State Board of Property Tax Review~~ board of assessment review
34 within 60 days after notice of the decision from which the appeal
35 is being taken or after the application is deemed to have been
36 denied, and if the board thinks the applicant is over-assessed,
37 the applicant is granted such reasonable abatement as the board
38 thinks proper. The decision of the State Board of Property Tax
39 ~~Review is deemed final agency action by that board under the~~
40 ~~Maine Administrative Procedure Act.~~ Except with regard to
41 nonresidential property or properties with an equalized municipal
42 valuation of \$1,000,000 or greater, either separately or in the
43 aggregate, either party may appeal the decision of the board of
44 assessment review directly to the Superior Court, in accordance
45 with the Maine Rules of Civil Procedure, Rule 80B. If the board
46 of assessment review fails to give written notice of its decision
47 within 60 days of the date the application was filed, unless the
48 applicant agrees in writing to further delay, the application is
49 deemed denied and the applicant may appeal to the Superior Court
50 as if there had been a written denial.

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

6 **4. Payment requirements for taxpayers.** A taxpayer must pay
an amount of current taxes equal to the amount of taxes paid in
8 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
10 order to enter an appeal under this section or to continue
prosecution of an appeal pending under this section. If an
12 appeal is in process upon expiration of a due date for payment of
taxes in a particular municipality, without the appropriate
14 amount of taxes having been paid, the appeal process must be
suspended until the appropriate amount of taxes, together with
16 any accrued interest and costs, has been paid. This section
applies to any property tax year beginning on or after April 1,
18 1993. This section does not apply to property with a valuation
of less than \$500,000.

20 **Sec. 9. 36 MRSA §844, sub-§1,** as amended by PL 1993, c. 395,
22 §13, is further amended to read:

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

2 application is deemed denied and the applicant may appeal to the
Superior Court as if there had been a written denial ~~or--the~~
3 ~~applicant-may-appeal-to-the-State-Board-of-Property-Tax-Review.~~

4
6 **Sec. 10. 36 MRSA §844, sub-§1-A** is enacted to read:

8 1-A. County board of assessment review. The county
commissioners in a county may establish a county board of
assessment review to hear all appeals to the county
10 commissioners. The board has the powers and duties of a
municipal board of assessment review, including those provided
12 under section 844-M.

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

16
18 **2. Nonresidential property of \$1,000,000 or greater.**
Notwithstanding subsection 1, ~~the--owner--of~~ with regard to
nonresidential property or properties with an equalized municipal
20 valuation of ~~\$500,000~~ \$1,000,000 or greater either separately or
in the aggregate, either party may choose to appeal the decision
22 of the assessors or the municipal ~~officials~~ officers with regard
to a request for abatement to the State Board of Property Tax
24 Review within 60 days after notice of the decision from which the
appeal is taken or after the application is deemed to be denied.
26 If the state board thinks that the ~~owner~~ applicant is
over-assessed, it shall grant such reasonable abatement as the
28 board thinks proper. For the purposes of this subsection,
"nonresidential property" means property that is used primarily
30 for commercial, industrial or business purposes, excluding
unimproved land that is not associated with a commercial,
32 industrial or business use.

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

36
38 **4. Payment requirements for taxpayers.** A taxpayer must pay
an amount of current taxes equal to the amount of taxes paid in
40 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
42 order to enter an appeal under this section or to continue
prosecution of an appeal pending under this section. If an
44 appeal is in process upon expiration of a due date for payment of
taxes in a particular municipality, without the appropriate
46 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
48 applies to any property tax year beginning on or after April 1,
1993. This section does not apply to property with a valuation
50 of less than \$500,000.

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

4 **§844-M. County board of assessment review**

6 **1. Organization.** A county board of assessment review, as
authorized by section 844, subsection 1-A, consists of 5 or 7
8 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
10 board shall elect annually a chair and a secretary from among its
members. A county official or the spouse of a county official
12 may not be a member of the board. Any question of whether a
particular issue involves a conflict of interest sufficient to
14 disqualify a member from voting on that issue must be decided by
a majority vote of the members, excluding the member who is being
16 challenged. The county commissioners may dismiss a member of the
board for cause before the member's term expires.

18 **2. Meetings; records.** The chair shall call meetings of the
board as required. The chair shall also call meetings of the
20 board when requested to do so by a majority of the board members
or by the county commissioners. A majority of the board's
22 members constitutes a quorum. The chair shall preside at the
meetings of the board and is the official spokesperson of the
24 board. The secretary shall maintain a permanent record of the
board meetings, the correspondence of the board and the records
26 that are required as part of the various proceedings brought
before the board. The records maintained or prepared by the
28 secretary must be filed in the county commissioners' office and
subject to public inspection in accordance with Title 1, chapter
30 13.

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

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

42 **5. Testimony; record; notice.** The transcript or tape
recording of testimony, if such a transcript or tape recording
44 has been prepared by the board, and the exhibits, with all papers
and requests filed in the proceeding, constitute the record.
46 Decisions become a part of the record and must include a
statement of findings and conclusions, as well as the reasons or
48 basis for those findings and conclusions, upon the material

2 issues of fact, law or discretion presented and the appropriate
4 order, relief or denial of relief. If the board determines that
6 the applicant is over-assessed, it shall grant such reasonable
8 abatement as the board determines proper. Notice of a decision
10 must be mailed or hand delivered to all parties and the county
12 commissioners within 10 days of the board's decision.

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

30 **§844-N. Primary assessing area board of assessment review**

32 1. Organization. A primary assessing area board of
34 assessment review, as authorized by section 471-A, consists of 5
36 or 7 members who serve staggered terms of at least 3 but no more
38 than 5 years. The terms must be determined by rule of the
40 board. The board shall elect annually a chair and a secretary
42 from among its members. A municipal officer or the spouse of a
44 municipal officer may not be a member of the board. Any question
46 of whether a particular issue involves a conflict of interest
48 sufficient to disqualify a member from voting on that issue must
50 be decided by a majority vote of the members, excluding the
member who is being challenged. The municipal officers or the
executive committee, where applicable, 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 municipal officers or the executive committee, where
applicable. A majority of the board's members constitutes a
quorum. 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 brought before the board. The
records maintained or prepared by the secretary must be filed in
the primary assessing area board of assessment review 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; however, the chair may
waive any rule upon good cause shown.

2 **4. Evidence.** The board shall receive oral or documentary
 4 evidence and, as a matter of policy, provide for the exclusion of
 6 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.

8
 10 **5. Testimony; record; notice.** The transcript or tape
 12 recording of testimony, if such a transcript or tape recording
 14 has been prepared by the board, and the exhibits, with all papers
 16 and requests filed in the proceeding, constitute the record.
Decisions become a part of the record and must include a
 18 statement of findings and conclusions, as well as the reasons or
basis for those findings and conclusions, upon the material
 20 issues of fact, law or discretion presented and the appropriate
 22 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 municipal
officers or the executive committee, where applicable, within 10
days of the board's decision.

24 **Sec. 14. 36 MRSA §850,** as enacted by PL 1985, c. 764, §19, is
 26 repealed.

28 **Sec. 15. Application.** This Act applies for any appeal filed
 30 that is based on assessments made for any property tax year that
 begins on or after April 1, 1995.

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

	1995-96	1996-97
36 STATE BOARD OF PROPERTY TAX REVIEW		
38 Positions	(1.0)	(1.0)
Personal Services	\$44,515	\$59,354
40 All Other	10,000	10,000
Capital Expenditures	5,000	
42		
44 Provides funds for a new		
Executive Director position,		
46 general operating expenses		
and computer equipment.		
48 STATE BOARD OF PROPERTY TAX REVIEW		
TOTAL	\$59,515	\$69,354

2

STATEMENT OF FACT

4

6 This bill is the result of recommendations of the Commission
8 to Study the Statutory Procedures for Local Property Tax
10 Abatement Appeals, established pursuant to Resolve 1993, chapter
12 41. This bill establishes the position of Executive Director of
14 the State Board of Property Tax Review, increases the threshold
16 for appeals to the board and redefines who may appeal to the
18 board.

12

14 The bill also eliminates appeals to the State Board of
16 Property Tax Review for appeals that are denied by a local board
18 of assessment review or the county commissioners and allows the
20 county commissioners to establish a county board of assessment
22 review.

18

20 The bill allows parties to appeal written decisions of the
22 chair or the executive director of the State Board of Property
24 Tax Review.

22

24 The bill exempts taxpayers with property with a valuation of
26 \$500,000 or less from paying an amount equivalent to the previous
28 year's property tax before appealing their tax.

26

28 The bill adds a process authorizing the establishment of a
30 primary assessing area board of assessment review and establishes
a sliding scale of filing fees based on total assets of the
appellant.