

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

**Potato Cull Removal Fund**

All Other	\$15,000	\$15,000
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Allocates funds to authorize expenditures related to potato cull removal and enforcement.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 15, 1995.

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**CHAPTER 262**

**H.P. 425 - L.D. 582**

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

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

**Sec. 1. 36 MRSA §271, sub-§5,** as enacted by PL 1985, c. 764, §8, is amended to read:

**5. Hearings.** Upon receipt of an appeal, the ~~chairman~~ chair of the board shall determine whether the appeal is within the jurisdiction of the board. If the board does not have jurisdiction authority to hear the appeal, the chair shall notify all parties in writing within 10 days of making the determination. Either party may appeal to the board a decision of the chair relating to jurisdictional issues within 30 days after receiving written notice of that decision by filing a request with the board to have that decision reviewed by the board. If the board does have jurisdiction over the appeal or if either party appeals the determination that the board lacks jurisdiction, the chair shall select from the list of board members 5 persons to hear the appeal or jurisdictional issue and shall notify all parties of the time and place of the hearing. The selection of members for an appeal hearing shall be or appeal of a jurisdictional issue is based upon availability, geographic convenience and area of expertise. Three of the 5 members shall constitute a quorum.

**Sec. 2. 36 MRSA §273,** as enacted by PL 1985, c. 764, §8, is amended to read:

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

~~If the owner of~~ With regard to appeals relating to nonresidential property or properties with an equalized municipal valuation of \$500,000 \$1,000,000 or greater

~~appeals to the State Board of Property Tax Review either separately or in the aggregate, as provided in sections 843 and 844, the state board shall hold a hearing de novo. For the purposes of this section, "nonresidential property" means 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. 3. 36 MRSA §471-A** is enacted to read:

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

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

**Sec. 4. 36 MRSA §843,** as amended by PL 1993, c. 395, §12, is further amended to read:

**§843. Appeals**

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

**1-A. Nonresidential property of \$1,000,000 or greater.** With regard to 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 appeal the decision of the local board of assessment review or the primary

assessing area board of assessment review 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, as provided in subsections 1 and 2. The board shall hold a hearing de novo. If the 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 section, "nonresidential property" means 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.

**2. Primary assessing areas.** If a primary assessing area has adopted a board of assessment review and the chief assessor, municipal officer or the State Tax Assessor refuses to make the abatement asked for, the applicant may apply in writing to the ~~State Board of Property Tax Review~~ board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. ~~The decision of the State Board of Property Tax Review is deemed final agency action by that board under the 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 had been a written denial.

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

**4. Payment requirements for taxpayers.** A taxpayer must pay ~~If the taxpayer has filed an appeal under this section without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, provided that amount does not exceed the amount of taxes due in the current tax year, or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section~~, the appeal process must be suspended until the taxes, together with any accrued interest and costs, have been paid. 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 described in this subsection, 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. 5. 36 MRSA §844, sub-§1**, as amended by PL 1993, c. 395, §13, is further amended to read:

**1. Municipalities without board of assessment review.** Except when the municipality or primary assessing area has adopted a board of assessment review or has been designated as a primary assessing area, if the assessors or the municipal officers refuse to make the abatement asked for, or, with respect to a primary assessing area, the chief assessor, municipal officer or State Tax Assessor refuses to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over-assessed, the applicant is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, the applicant ~~must be~~ is reimbursed out of the municipal treasury, with costs in either 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 the~~ 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.~~

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

**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 commissioners. The board has the powers and duties of a municipal board of assessment review, including those provided under section 844-M.

**Sec. 7. 36 MRSA §844, sub-§2**, as enacted by PL 1985, c. 764, §18, is amended to read:

**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 valuation of ~~\$500,000~~ \$1,000,000 or greater either separately or in the aggregate, either party may choose to appeal the decision 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 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. 8. 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~~ If the taxpayer has filed an appeal under this section without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, provided that amount does not exceed the amount of taxes due in the current tax year, or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date in order to enter an appeal under this section or to continue prosecution of an appeal pending under this section, the appeal process must be suspended until the taxes, together with any accrued interest and costs, have been paid. 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 described in this subsection, 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. 9. 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, at least one of whom must be a licensed real estate appraiser and one of whom must be a member of the general public, 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 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 county commissioners' office and subject to public inspection in accordance with Title 1, chapter 13, unless excepted from the definition of public records under Title 1, section 402, subsection 3 or otherwise exempt from disclosure under 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.

**4. Evidence.** The board shall receive oral or documentary evidence and, as a matter of policy, provide for 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 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 municipal officer or the spouse of a municipal officer 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 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, unless excepted from the definition of public records under Title 1, section 402, subsection 3 or otherwise exempt from disclosure under 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.

**4. Evidence.** The board shall receive oral or documentary evidence and, as a matter of policy, provide for 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 municipal officers or the executive committee, where applicable, within 10 days of the board's decision.

**Sec. 10. 36 MRSA §850,** as enacted by PL 1985, c. 764, §19, is repealed.

**Sec. 11. Application.** This Act applies for any appeal filed that is based on assessments made for any property tax year that begins on or after April 1, 1996.

See title page for effective date.

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**CHAPTER 263**

**S.P. 550 - L.D. 1509**

**An Act to Prohibit the Sale of  
Firearms to Minors without Parental  
Approval**

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

**Sec. 1. 17-A MRSA §554, sub-§1, ¶B,** as enacted by PL 1991, c. 672, §1, is amended to read:

B. Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, cigarettes, tobacco, air rifles, ~~firearms~~ or ammunition for firearms; or

**Sec. 2. 17-A MRSA §554, sub-§2, ¶C,** as enacted by PL 1991, c. 672, §2, is amended to read:

C. The defendant was the parent, foster parent, guardian or an adult approved by the parent, foster parent or guardian who furnished a child under 16 years of age an air rifle, ~~a firearm~~ or