



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1093

S.P. 326

In Senate, March 15, 2011

**An Act To Require the State To Pay Costs and Fees in Actions  
against Certain State Agencies**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator MARTIN of Kennebec.  
Cosponsored by Senator: TRAHAN of Lincoln.

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

2 **Sec. 1. 14 MRSA §1523** is enacted to read:

3 **§1523. Costs to prevailing party in certain administrative or court proceedings**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Administrative proceeding" means any procedure or other action before the  
7 Department of Administrative and Financial Services, Maine Revenue Services or the  
8 Department of Environmental Protection.

9 B. "Court proceeding" means any civil action brought in a court of this State.

10 C. "Position of the State" means:

11 (1) The position taken by the State in a judicial proceeding to which subsection 2  
12 applies; and

13 (2) The position taken by the State in an administrative proceeding to which  
14 subsection 2 applies.

15 D. "Prevailing party" means any party in any proceeding to which subsection 2  
16 applies:

17 (1) That has substantially prevailed with respect to the amount in controversy; or

18 (2) That has substantially prevailed with respect to the most significant issue or  
19 set of issues presented.

20 A party may not be treated as the prevailing party in a proceeding to which  
21 subsection 2 applies if the State establishes that the position of the State was  
22 substantially justified.

23 E. "Reasonable litigation costs" includes:

24 (1) Reasonable court costs; and

25 (2) Based upon prevailing market rates for the kind or quality of services  
26 furnished:

27 (a) The reasonable expenses of expert witnesses in connection with a court  
28 proceeding, except that no expert witness may be compensated at a rate in  
29 excess of the highest rate of compensation for expert witnesses paid by the  
30 State;

31 (b) The reasonable cost of any study, analysis, engineering report, test or  
32 project that is found by the court to be necessary for the preparation of the  
33 party's case; and

34 (c) The reasonable fees paid or incurred for the services of attorneys in  
35 connection with the court proceeding.

36 **2. Application.** This section applies to any administrative or court proceeding that is  
37 brought by or against this State in connection with:



1 Administrative and Financial Services, Maine Revenue Services or the Department of  
2 Environmental Protection if the State is not the prevailing party.

3 A judgment for reasonable litigation costs may not be awarded in any court  
4 proceeding unless the court determines that the prevailing party has exhausted the  
5 administrative remedies available to such party within Maine Revenue Services or the  
6 Department of Environmental Protection, as applicable. An award for reasonable  
7 litigation and administrative costs may not be made with respect to any portion of the  
8 administrative or court proceeding during which the prevailing party has unreasonably  
9 protracted such proceeding.

10 An application for costs must be filed within 90 days after the final decision is made.  
11 The award of costs may be appealed.

12 A party may not be treated as the prevailing party in a proceeding if the State  
13 establishes that the position of the State in the proceeding was substantially justified.