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Legislative Document

No. 104

S.P. 46

In Senate, January 20, 2011

An Act Regarding Audits of State Agency Expenditures To Recover Overpayments and Lost Discounts

(EMERGENCY)

Reference to the Committee on State and Local Government suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator LANGLEY of Hancock.
Cosponsored by Senators: COLLINS of York, COURTNEY of York, MASON of
Androscoggin, THIBODEAU of Waldo, Representatives: BRYANT of Windham, FITTS of
Pittsfield, FLEMINGS of Bar Harbor.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** this legislation provides for the identification and recovery of payments
4 made in error by the State; and

5 **Whereas,** the current economic situation demands that the State take measures such
6 as those required by this legislation as soon as possible; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

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

12 **Sec. 1. 5 MRSA §1622** is enacted to read:

13 **§1622. Recovery of certain state agency overpayments**

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

16 A. "Overpayment" includes a duplicate payment made to a vendor for a single
17 invoice and a payment made to a vendor:

18 (1) When a discount available from the vendor was not applied;

19 (2) For a late payment penalty that was improperly applied by the vendor;

20 (3) For shipping costs that were computed incorrectly or incorrectly included in
21 an invoice;

22 (4) For a state tax imposed pursuant to Title 36; or

23 (5) For a good or service the vendor did not provide.

24 B. "State agency" means a department, commission, board, office or other entity that
25 is in the executive branch of State Government.

26 **2. Recovery audits for certain overpayments.** In addition to the audit authorized
27 pursuant to section 1621, the State Controller shall contract with one or more consultants
28 to conduct recovery audits of payments made by state agencies to vendors. The audits
29 must be designed to detect and recover overpayments to the vendors and to recommend
30 improved state agency accounting operations. A state agency shall provide the recovery
31 audit consultant with all information necessary for the audit. The State Controller may
32 exempt from the mandatory recovery audit process a state agency that has a low
33 proportion of its expenditures made to vendors, according to criteria the State Controller
34 adopts by rule after consideration of the likely costs and benefits of performing recovery
35 audits for agencies that make relatively few or small payments to vendors.

36 A. A contract under this subsection:

1 (1) May provide for reasonable compensation for services provided under the
2 contract, including compensation determined by the application of a specified
3 percentage of the total amount recovered because of the consultant's audit
4 activities or recommendations as a fee for services;

5 (2) May permit or require the consultant to pursue a judicial action in a court
6 inside or outside this State to recover an overpaid amount; and

7 (3) To allow time for the performance of existing state payment auditing
8 procedures, may not allow a recovery audit of a payment during the 180-day
9 period after the date the payment was made.

10 B. Notwithstanding any law to the contrary, the State Controller or a state agency
11 whose payments are being audited may provide a person acting under a contract
12 authorized by this subsection with any confidential information in the custody of the
13 State Controller or state agency that is necessary for the performance of the audit or
14 the recovery of an overpayment, to the extent the State Controller and state agency
15 are not prohibited from sharing the information under an agreement with another
16 state or the Federal Government. A person acting under a contract authorized by this
17 subsection, and each employee or agent of that person, is subject to all prohibitions
18 against the disclosure of confidential information obtained from the State in
19 connection with the contract that apply to the State Controller or applicable state
20 agency or an employee of the State Controller or applicable state agency. A person
21 acting under a contract authorized by this subsection or an employee or agent of the
22 person who discloses confidential information in violation of a prohibition under this
23 subsection is subject to the same sanctions and penalties that would apply to the State
24 Controller or applicable state agency or an employee of the State Controller or
25 applicable state agency for that disclosure.

26 **3. Payment to contractors and Federal Government.** A state agency shall pay,
27 from recovered money appropriated for the purpose, the recovery audit consultant
28 responsible for obtaining for the agency a reimbursement from a vendor.

29 A state agency shall expend or return to the Federal Government any federal money that
30 is recovered through a recovery audit conducted under this section. The state agency
31 shall expend or return the federal money in accordance with the rules of the federal
32 program through which the agency received the federal money.

33 **4. Reports.** The State Controller shall provide the following reports.

34 A. Within 7 days of receipt, the State Controller shall provide copies of any reports,
35 including those in electronic form, received from a consultant contracted with
36 pursuant to subsection 2 to:

37 (1) The Governor;

38 (2) The State Auditor; and

39 (3) The Legislative Council.

40 B. Not later than December 1st of each odd-numbered year, the State Controller shall
41 issue a report to the Legislature summarizing the contents of all reports received from

