

Legislative Review of a Provisionally Adopted Major Substantive Rule

LD 472, Resolve, Regarding Legislative Review of Chapter 104: Certain Payments Not Immediate, a Major Substantive Rule of the Treasurer of State

Committee of Jurisdiction: State and Local Government

Chapter and Title of the Rule: Chapter 104: Certain Payments Not Immediate

Agency Given Rulemaking Authority: State Treasurer

Emergency Adopted? Yes No

Date Rule Provisionally Adopted by Agency: January 5, 2021

Date Rule Accepted for Legislative Review: January 19, 2021

- Filed within the rule acceptance period
- Late filed

New Rule or an Amended Rule? New Amended

Rulemaking Authority: 5§ 131, sub-§2

Summary of the Rule or Amendments to the Rule: Rule Chapter 104 is a new rule that establishes procedures for a department or agency to accept payments using automated procedures, electronic processes and computer driven technology that is not immediately deposited into the State Treasury. The Office of the State Treasurer and the State Controller will have oversight and approval authority of a third-party payment processor for use by a state agency. The processor is required to make a payee aware that payments made through their services are not immediately received by the State.

History of the Rule: This major substantive rule was submitted for legislative review (after the rule acceptance period had passed) during the Second Regular Session of the 129th Legislature (LD 2132). The SLG committee voted OTP on the bill in March, 2020, but the bill was not reported out of committee before the session was adjourned due to the pandemic. The bill was carried over to any Special Session of the 129th Legislature by JO SP 788. The bill was reported out of committee as OTP in August, 2020. However, the Legislature did not convene a special session and the bill died in the possession of the House upon the conclusion of the 129th legislative session. Therefore, the agency was not authorized to finally adopt the rule.

Additional Notes about the Rule: No additional notes

Review Criteria: MRSA Title 5, section 8072, subsection 4, provides the following review criteria for the committee to consider:

- A. Has the agency exceeded the scope of its authority in approving the rule?
- B. Does the rule conform to the legislative intent of the statute it implements?
- C. Does the rule conflict with other rules or laws?
- D. Is the rule necessary to accomplish the objectives of the law?
- E. Is the rule reasonable?
- F. Could the rule be made less complex or easier to understand?
- G. Was the rule proposed in compliance with requirements of Administrative Procedures Act and other law?
- H. If a rule significantly reduces property value, is the reduction necessary or appropriate and does the rule avoid an unconstitutional taking?

Voting Procedure for a Major Substantive Rule filed within the rule acceptance

period: After reviewing the rule, the committee has the following options for voting on the resolve:

- **OTP** to authorize adoption of the rule with no changes
 - **ONTP** – A *failure to act* on a rule filed within the acceptance period authorizes adoption; killing the resolve is considered a failure to act on the rule; if the committee wishes to authorize the rule, an OTP vote is generally recommended.
- **OTP-A**
 - To authorize adoption of the rule if changes are made to the rule; or
 - Not to authorize adoption of the rule

Voting Procedure for a Major Substantive Rule that is submitted late: After reviewing the rule, the committee has the following options for voting on the resolve:

- **OTP** to authorize adoption of the rule with no changes
- **OTP-A**
 - To authorize adoption of the rule if changes are made to the rule; or
 - Not to authorize adoption of the rule (but note that ONTP has *the same effect* for late-filed rules)
- **ONTP** – for late-filed rules, the legislature must *affirmatively authorize* adoption of the rule or it may not be adopted; killing the resolve provides no authorization; if the committee wishes not to authorize the rule it can either vote ONTP on the resolve or OTP-A to expressly not authorize adoption of the rule.

SEN. TROY D. JACKSON
VICE-CHAIR

REP. RYAN FECTEAU
CHAIR

EXECUTIVE DIRECTOR
SUZANNE M. GRESSER



130TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

SEN. NATHAN L. LIBBY
SEN. ELOISE A. VITELLI
SEN. JEFFREY L. TIMBERLAKE
SEN. MATTHEW POULIOT
REP. MICHELLE DUNPHY
REP. RACHEL TALBOT ROSS
REP. KATHLEEN R.J. DILLINGHAM
REP. JOEL STETKIS

January 19, 2021

*Mr. Mathew Colpitts, Deputy Treasurer
State of Maine State Legislature
State Treasurer
39 State House Station
Augusta ME 04333-0039*

Re: Submission of provisional rule for legislative review

Dear *Mr. Colpitts*:

This letter is to acknowledge our receipt of the major substantive rule provisionally adopted by the *State Treasurer* and related materials filed pursuant to 5 MRSA §8072, sub-§2. They were received on *January 8, 2021*. The provisional rule is entitled: "**Chapter 104: Certain Payments Not Immediate,**" and is authorized pursuant to *5 § 131, sub-§ 2*.

We have reviewed the filing and have concluded it is sufficiently complete for the purposes of beginning the review process and that the rule was filed within the legislative rule acceptance period as defined in 5 MRSA §8071-A, sub-§2. We will hold the rule until the Legislature convenes in regular session in January 2021, at which time the Legislature will review and act upon the rule. Please be advised that the *State Treasurer* may not finally adopt or implement the rule until the Legislature has completed its review.

A legislative resolve will be prepared and introduced in the House of Representatives to allow for legislative review and action upon the provisionally adopted rule. Once the resolve has been referred to the legislative committee having jurisdiction, the committee will review the rule at a meeting called for that purpose. As part of the review the committee may ask agency representatives to appear before it to explain certain provisions of the rule or answer questions. In addition the committee may request additional information from the agency that may assist the committee in its review.

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REP. JOEL STETKIS

MEMORANDUM

TO: Office of Revisor of Statutes

FROM: Suzanne M. Gresser, Executive Director
Legislative Council *SMG*

DATE: January 19, 2021

RE: Resolve for Major Substantive Rule

Please prepare a resolve for the following major substantive rule:

Portions of **Chapter 104: *Certain Payments Not Immediate***, which was provisionally adopted by the *State Treasurer*.

Thank you.

Rulemaking Cover Sheet

RECEIVED JAN 08 2021

10:12 am

MAPA-1

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

1. Agency: **Office of the State Treasurer**
2. Agency umbrella and unit number: **028A**
(2 digit umbrella # and 3 digit unit #)
3. Title of rule: **Certain Payments not Immediate**
4. Chapter number assigned to the rule **104**
(must be 3 digits or less)
5. Date(s)/method(s) of notice: **December 2, 2020**
6. Date(s)/place(s) of hearing(s): **December 21, 2020**
7. Type: new rule partial amendment(s) of existing rule
 suspension of existing rule repeal of rule emergency rule
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.
8. Name/phone of agency contact person: **Matthew Colpitts/207.907.6226**
9. If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following
 Provisional adoption **Final adoption**
(prior to Legislative review)
 emergency adoption of major-substantive rule

10. Certification Statement: I, Henry Beck hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by Office of the State Treasurer on 1-7-2021.
(name of agency) (date)

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: Henry Beck
(original signature, personally signed by the head of agency)

Printed name & title: Henry Beck, State Treasurer

11. Approved as to form and legality by the Attorney General on _____
(date)

Signature _____
(original signature, personally signed by an Assistant Attorney General)

Printed Name: _____

Rulemaking Cover Sheet

RECEIVED JAN 08 2021
10:12 am MAPA-1

TO: Secretary of State
ATTN: Administrative Procedure Officer,
State House Station 101, Augusta, Maine 04333.

- 1. Agency: Office of the State Treasurer
- 2. Agency umbrella and unit number: 028A
(2 digit umbrella # and 3 digit unit #)
- 3. Title of rule: certain Payments not Immediate
- 4. Chapter number assigned to the rule 104
(must be 3 digits or less)
- 5. Date(s)/method(s) of notice: December 2, 2020
- 6. Date(s)/place(s) of hearing(s): December 21, 2020
- 7. Type: new rule partial amendment(s) of existing rule
 suspension of existing rule repeal of rule emergency rule
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.
- 8. Name/phone of agency contact person: Matthew Colpitts/207.907.6226
- 9. If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following
 Provisional adoption (prior to Legislative review) Final adoption
 emergency adoption of major-substantive rule

10. Certification Statement: I, _____ hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by _____ on _____.
(name of agency) (date)

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: _____
(original signature, personally signed by the head of agency)

Printed name & title: _____

11. Approved as to form and legality by the Attorney General on 1/6/2021.
(date)

Signature [Signature]
(original signature, personally signed by an Assistant Attorney General)

Printed Name: Alison Ross, AAG of/b/o AAG Emily Atkins.

Rulemaking Fact Sheet

(5 MRSA §8057-A)

AGENCY: Office of the State Treasurer

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:
Matthew Colpitts, 39 State House Station, Augusta, Maine 04333. 207.624.7477

CHAPTER NUMBER AND RULE TITLE:
104: Certain Payments not Immediate

TYPE OF RULE (check one): Routine Technical Major Substantive

STATUTORY AUTHORITY: 5 M.R.S.A. Section 131

DATE, TIME AND PLACE OF PUBLIC HEARING:

21 December 2020, 11:00AM, hearing will be virtual via the following link https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDViOGIyN2YtZjJjYi00Y2Y2LWJiNzUtMGM4NjcwYzFhMTlk%40thread.v2/0?content=%7b%22Tid%22%3a%22413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%22%2c%22Oid%22%3a%2281e57b5b-958f-42bb-a940-c7abe1192ce2%22%7d

COMMENT DEADLINE: : 28 December, 2020.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

5 M.R.S.A. Section 131 requires the Offices of the State Treasurer and State Controller adopt rules.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

Considered practical means for accepting 3rd party payments which maintain controls to ensure payments are received safely and timely.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

No fiscal impact anticipated.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Administrative Procedure Act CHECKLIST

Agency: Office of the State Treasurer

Chapter Number and Title of Rule: 104: Certain Payments Not Immediate

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? No
2. Date of notification of: Anyone on mailing list
Any trade, industry or professional group _____
Any trade publications _____
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: 11/24/2020
4. Date Fact Sheet sent to Executive Director of Legislative Council: 1/8/2020
5. Date of publication in Secretary of State's rulemaking ad.: 12/2/2020
6. Date of hearing(s): 12/21/2020 7. Comment deadline: 12/31/2020

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No
If yes, date of second notice publication in Secretary of State's rulemaking ad: _____
9. Is adopted rule consistent with what was proposed? Yes
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? Yes
11. Was the rule adopted within 120 days of the comment deadline? _____
12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? _____
13. Is a Basis Statement included? Yes Is a copy of the Fact Sheet included? Yes
Are comments, with names and organizations, and your responses included? No Comments Received

Chapter 104: Certain Payments not Immediate

Summary: The purpose of this rule is to establish procedures for a department or agency to accept payments using automated procedures, electronic processes and computer driven technology that is not immediately deposited into the State Treasury. Pursuant to 5 M.R.S.A. Section 131, as enacted by H.P. 1212 – L.D. 1697, the Treasurer of State and the State Controller shall adopt rules.

I. General.

In accordance with the Act, the Treasurer of the State and the State Controller have established the rules and regulations set forth in sections I to VIII, inclusive, governing the procedures to accept payments using automated procedures, electronic processes and computer driven technology that is not immediately deposited into the State Treasury.

II. Definitions.

As used in sections I through VII, inclusive, unless the context otherwise requires, the words and terms defined in this section, have the meanings ascribed to them below.

A. State. "State" means the State of Maine.

B. 3rd Party Payment Processor. "3rd Party Payment Processor" means a financial service provider who accepts and transmits payment from a consumer to the State.

III. Duties of a Department or Agency

A. Department or Agency seeking to contract with a 3rd Party Payment Processor must use the State's procurement process to issue a request for proposal (RFP) to select a vendor.

B. Must report to the State Controller and Treasurer of State the winner of the RFP for final approval. The Treasurer of State has the authority to deny the use of a selected winner.

C. Must have ability to review current balances of accounts held with vendor.

IV. Duties and Powers of the Treasurer of State.

A. The Treasurer of State or designee shall review all proposed 3rd Party Payment Processors and provide approval or denial for each request.

B. Track all approved vendors

C. Must have ability to review current balances of accounts held with each vendor.

V. Duties and Powers of the State Controller.

The State Controller or designee shall review all proposed vendors and make a recommendation to the State Treasurer to approve or deny as a 3rd Party Payment Processor.

VI. Prohibitions against deductions.

Nothing in these rules waive prohibitions against deductions on account of salaries, fees, costs, charges, expenses, refunds, claims or demands of any description what so ever.

VII. Requirements for a 3rd Party Payment Processor.

- A. The State shall not be held liable for funds collected until funds have been received by the State in its primary deposit account.
- B. Funds shall be deposited into the State Treasury within 3 business days of initial payment.
- C. Must make payee aware that funds will not be immediately deposited into the State Treasury.

VIII. Accounts Not Insured by or Obligation of the State.

Accounts are not insured by the State and any principal contributed and any investment return in an account is not guaranteed by the State. Sections I to VII, inclusive, may not be construed to create any obligation of the Treasurer of State, the State or any agency or instrumentality of the State, to guarantee for the benefit of any account owner or designated beneficiary the return of principal, any rate of interest or any payment of interest or other return on any account.

STATUTORY AUTHORITY: 5 M.R.S.A. § 131

DRAFT



STATE OF MAINE
OFFICE OF THE STATE TREASURER
39 State House Station, Augusta, ME 04333-0039
www.maine.gov/treasurer

RECEIVED JAN 08 2021 10:12 am

HENRY E.M. BECK, ESQ.
State Treasurer
MATTHEW COLPITTS
Deputy Treasurer

Certain Payments not Immediate

Summary:

The purpose of this rule is to establish procedures for a department or agency to accept payments using automated procedures, electronic processes and computer driven technology that are not immediately deposited into the State Treasury. Pursuant to 5 M.R.S.A. Section 131, as enacted by H.P. 1212 – L.D. 1697, the Treasurer of State and the State Controller shall adopt rules.

Statement of Circumstances:

In accordance with the Act, the Treasurer of the State and the State Controller have established the rules and regulations governing the procedures to accept payments using automated procedures, electronic processes and computer driven technology that are not immediately deposited into the State Treasury.

The Office of the State Treasurer and the Office of the State Controller will have oversight and ultimate approval of a Third-Party Payment Processor for use by a state agency. The processor must make a payee aware that payments made through their services are not immediately received by the state.

Statement of Economic Impact:

There is no expected economic impact from the implementation of this rule.

Chapter 104: Certain Payments not Immediate

Summary: The purpose of this rule is to establish procedures for a department or agency to accept payments using automated procedures, electronic processes and computer driven technology that is not immediately deposited into the State Treasury. Pursuant to 5 M.R.S.A. Section 131, as enacted by H.P. 1212 – L.D. 1697, the Treasurer of State and the State Controller shall adopt rules.

I. General.

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II. Definitions.

As used in sections I through VII, inclusive, unless the context otherwise requires, the words and terms defined in this section, have the meanings ascribed to them below.

A. State. "State" means the State of Maine.

B. 3rd Party Payment Processor. "3rd Party Payment Processor" means a financial service provider who accepts and transmits payment from a consumer to the State.

III. Duties of a Department or Agency

A. Department or Agency seeking to contract with a 3rd Party Payment Processor must use the State's procurement process to issue a request for proposal (RFP) to select a vendor.

B. Must report to the State Controller and Treasurer of State the winner of the RFP for final approval. The Treasurer of State has the authority to deny the use of a selected winner.

C. Must have ability to review current balances of accounts held with vendor.

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A. The Treasurer of State or designee shall review all proposed 3rd Party Payment Processors and provide approval or denial for each request.

B. Track all approved vendors

C. Must have ability to review current balances of accounts held with each vendor.

V. Duties and Powers of the State Controller.

The State Controller or designee shall review all proposed vendors and make a recommendation to the State Treasurer to approve or deny as a 3rd Party Payment Processor.

VI. Prohibitions against deductions.

Nothing in these rules waive prohibitions against deductions on account of salaries, fees, costs, charges, expenses, refunds, claims or demands of any description what so ever.

VII. Requirements for a 3rd Party Payment Processor.

- A. The State shall not be held liable for funds collected until funds have been received by the State in its primary deposit account.
- B. Funds shall be deposited into the State Treasury within 3 business days of initial payment.
- C. Must make payee aware that funds will not be immediately deposited into the State Treasury.

VIII. Accounts Not Insured by or Obligation of the State.

Accounts are not insured by the State and any principal contributed and any investment return in an account is not guaranteed by the State. Sections I to VII, inclusive, may not be construed to create any obligation of the Treasurer of State, the State or any agency or instrumentality of the State, to guarantee for the benefit of any account owner or designated beneficiary the return of principal, any rate of interest or any payment of interest or other return on any account.

STATUTORY AUTHORITY: 5 M.R.S.A. § 131