

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

To: Members, Joint Standing Committee on State and Local Government

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SUMMARY

This resolve provides for legislative review of Chapter 104: Certain Payments Not Immediate, a major substantive rule of the Treasurer of State. This rule is required by legislation adopted in the 129th by this committee (See Attachment A)

TESTIMONYⁱ

Sponsor: Rep Matlack – submitted at request of Office of the State Treasurer

Proponents: State Treasurer, Henry Beck

- Major substantive rulemaking in response to 129th statutory change (unanimous OTP)
 - Statutory change in 129th to modernize payment requirements at request of agencies (e.g. DHHS Division of Support Enforcement Recovery, Surplus Property);
 - Prior law required payments from agencies be “immediate” – obstacle to use of electronic payment platforms
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Opponents: none

NFNA: none

QUESTIONS

1. Will payee be notified that deposit will not be immediate?
Section VII, sub-§C of the rule requires the 3rd Party Payment Processor “make payee aware that funds will not be immediately deposited in the State Treasury”
2. Why is this a Major Substantive Rule?
 - Major substantive rules are rules that, in the judgment of the Legislature, either (1) require the exercise of significant agency discretion or interpretation in drafting or (2) are reasonably expected to result in a significant increase in the cost of doing business, significant reduction in property values, significant reduction of government benefits or services, serious burden on the public or serious burden on units of local government.
 - During the 129th, the Treasurer proposed amending the bill to change the rule from RT to MS.

COMMITTEE'S ROLE IN RULEMAKING REVIEW

1. To recommend whether and how the rule shall be adopted.
2. Committee's recommendation must be reported out not less than 30 days before statutory adjournment (mid-May)
 - a. Authorize the final adoption of the rule with no changes (OTP)
 - b. Authorize the final adoption of a specified part of the rule (OTPA)
 - c. Authorize final adoption with certain specific amendments (OTPA); or
 - d. Disapprove final adoption of the rule (OTPA) – amendment
 - e. An ONTP vote is considered a failure to act which authorizes adoption.
3. Review Criteria (5 MRSA § 8072, sub-§4)
 - a. Has the agency exceeded the scope of its statutory authority in approving the rule?
 - b. Is the rule in conformity with the legislative intent of the statute the rule is intended to implement, extend, apply, interpret or make specific?
 - c. Does the rule conflict with any other provision of law or with any other rule adopted by the same or a different agency?
 - d. Is the rule necessary to fully accomplish the objectives of the statute under which the rule was proposed?
 - e. Is the rule reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it?
 - f. Can the rule be made less complex or more readily understandable for the general public?
 - g. Is the rule proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law?
 - h. Is the rule reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule?

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.

An Act Regarding the Timeliness of Payments to the State

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

Sec. 1. 5 MRSA §131, as amended by PL 1989, c. 501, Pt. P, §7; PL 1995, c. 502, Pt. E, §30; PL 2011, c. 657, Pt. W, §7; and PL 2013, c. 405, Pt. A, §24, is repealed and the following enacted in its place:

§ 131. Departmental collections

1. Departmental collections; immediate payment to State Treasury. A department or agency of the State collecting or receiving public money, or money from any source whatsoever, belonging to or for the use of the State, or for the use of any state department or agency, shall pay the money immediately into the State Treasury, without any deductions on account of salaries, fees, costs, charges, expenses, refunds, claims or demands of any description whatsoever. The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands may refund daily use and camping fees based on the bureau's standard refund policies. A department or agency may deposit such money to the credit of the State upon communicating with the Treasurer of State and receiving from the Treasurer of State instructions as to what state depository may be used for that purpose, and in every such case the depositor shall send to the Treasurer of State a statement of the deposits certified by the bank receiving it. This section does not apply to county or town officers.

2. Certain payments not immediate. Notwithstanding subsection 1, payments from a department or agency of the State made to the State Treasury through the use of automated procedures, electronic processes and computer-driven technology must be deposited in the State Treasury in accordance with the requirements established in rules adopted by the Treasurer of State and the State Controller. The Treasurer of State and the State Controller shall adopt rules to implement this subsection, including rules outlining procedures for the use of automated procedures, electronic processes and computer-driven technology for the collection of these payments pursuant to this subsection. Rules adopted pursuant to this subsection may not waive prohibitions against deductions on account of salaries, fees, costs, charges, expenses, refunds, claims or demands of any description whatsoever. Rules adopted pursuant to this subsection are major substantive rules as defined by section 8071.

¹ The section is not intended to reflect all comments and may include unintentionally errors.