

MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

MAJORITY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1514, L.D. 2136, Bill, "An Act to Ensure Access to Confidential Records"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 5 MRSA §244-C is enacted to read:

§244-C. Access to confidential records

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

A. "Audit working paper" means all documentary and other information acquired, prepared or maintained by the State Auditor during the conduct of an audit or investigation, including all intraagency and interagency communications relating to an audit or investigation and includes draft reports or any portion of a draft report.

B. "Auditor" means the State Auditor or an agent of the State Auditor who is an employee of the Department of Audit.

2. Information available to the Auditor. Notwithstanding any state law relating to the confidentiality of information, all information in the files of any department, commission or agency

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2 of the State subject to an audit or investigation by the Auditor
3 must be made available when necessary to the Auditor for
4 performance of the Auditor's official duties.

5
6 A. Before beginning an audit or investigation that may
7 require access to records containing confidential or
8 privileged information, the Auditor shall consult with
9 representatives of the department, commission or agency to
10 discuss methods of identifying and protecting privileged or
11 confidential information in those records. During that
12 consultation, the department, commission or agency shall
13 inform the Auditor of all standards and procedures set forth
14 in department, commission or agency policies or agreements
15 to protect information considered by the department,
16 commission or agency to be confidential or privileged. The
17 Auditor shall limit access to information that is privileged
18 or confidential by appropriate methods, which may include
19 examining records without copying or removing them from the
20 department, commission or agency.

21
22 B. In making information available to the Auditor, the
23 department, commission or agency that is subject to the
24 audit or investigation or that provides the information may
25 remove information that identifies individuals or
26 institutions to protect privileged or confidential
27 information, provided the information necessary for the
28 Auditor to fulfill the Auditor's official duties is
29 disclosed to the Auditor. If names are removed, another
30 unique identifier must be inserted to enable verification of
31 audit results.

32
33 C. Documentary or other information obtained by the Auditor
34 during the course of an audit or investigation is privileged
35 or confidential to the same extent under law that that
36 information would be privileged or confidential in the
37 possession of the department, commission or agency providing
38 the information. Any privilege or statutory provision,
39 including penalties, concerning the confidentiality or
40 obligation not to disclose information in the possession of
41 any department, commission or agency or their officers or
42 employees applies equally to the Auditor. Privileged or
43 confidential information obtained by the Auditor during the
44 course of an audit or investigation may be disclosed only as
45 provided by law and with the agreement of the department,
46 commission or agency subject to the audit or investigation
47 that provided the information.

48
49 D. If the Auditor accesses information classified as
50 privileged or confidential pursuant to department,
commission or agency policy or procedures or by agreement,

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1 the Auditor shall comply with the department, commission or
2 agency standards or procedures for handling that
3 information. The Auditor may include in the audit working
4 papers only such excerpts from information classified as
5 confidential or privileged as may be necessary to complete
6 the audit, provided the use does not infringe on department
7 policies or procedures applicable to the original provision
8 of information.

10 3. Confidentiality of audit working papers. Except as
11 provided in this subsection, audit working papers are
12 confidential and may not be disclosed to any person. Prior to
13 the release of the final audit or investigation report, the
14 Auditor has sole discretion to disclose audit working papers to
15 the department, commission or agency subject to the audit or
16 investigation when such disclosure will not prejudice the audit
17 or investigation. After release of the final audit or
18 investigation report, working papers may be released as necessary
19 to:

20
21 A. The department, commission or agency that was subject to
22 the audit or investigation;

23
24 B. Federal agencies providing a grant to the audited entity;

25
26 C. Law enforcement agencies for the purpose of criminal law
27 enforcement or investigations; or

28
29 D. Other auditors in their work reviewing the Department of
30 Audit.

31
32 Sec. 2. 36 MRSA §191, sub-§2, ¶U, as reallocated by RR 1995,
33 c. 2, §91 and as amended by PL 1997, c. 526, §14, is further
34 amended to read:

35
36 U. The disclosure by employees of the Bureau of Revenue
37 Services to designated representatives of the Secretary of
38 State of information required by the Secretary of State for
39 the administration of the special fuel tax imposed by
40 chapter 459.

41
42 Sec. 3. 36 MRSA §191, sub-§2, ¶V, as reallocated by RR 1995,
43 c. 2, §92 and as amended by PL 1997, c. 526, §14, is further
44 amended to read:

45
46 V. The disclosure by employees of the Bureau of Revenue
47 Services, to designated representatives of the Department of
48 Labor, of all information contained on a joint return or
report submitted to the tax assessor and required by the tax

assessor and the Commissioner of Labor for the administration of the taxes imposed by Part 8 and by Title 26, chapter 13; and

Sec. 4. 36 MRSA §191, sub-§2, ¶W is enacted to read:

W. The disclosure by the State Tax Assessor to the State Auditor when necessary to the performance of the State Auditor's official duties.'

SUMMARY

This amendment replaces the bill. It authorizes the State Auditor to access confidential or privileged information in the files of departments, commissions and agencies that are the subject of an audit or investigation. It requires the State Auditor to meet with the department, commission or agency to discuss methods of identifying and protecting confidential or privileged information and requires the department, commission or agency to inform the State Auditor of department standards and procedures for handling information it considers confidential or privileged. The amendment allows departments, commissions and agencies to remove from the files information that identifies persons or institutions if necessary to protect confidential or privileged information, provided other unique identifiers are inserted in their place. It makes clear that provisions of law, including penalties applicable to department, commission or agency staff for handling or disclosure of confidential or privileged information, apply to the State Auditor and staff.

The amendment also provides that audit working papers are confidential, but may be disclosed under certain specified situations. Confidential or privileged information may be disclosed only if allowed by law and if agreed to by the department, commission or agency.