

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

---

Legislative Document

No. 1882

H.P. 1322

House of Representatives, January 3, 2006

**An Act To Expand the Auditing Powers of the Department of Audit  
and To Clarify the Confidentiality of Audit Working Papers and  
Information**

---

Submitted by the Department of Audit pursuant to Joint Rule 204.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BARSTOW of Gorham.

Cosponsored by Representatives: CUMMINGS of Portland, MUSE of Fryeburg, Senator: SCHNEIDER of Penobscot.

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

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

**Sec. 1. 5 MRSA §243, sub-§8**, as amended by PL 1999, c. 208, §1, is further amended to read:

**8. Audit.** To perform audits of all accounts and financial records of any organization, institution or other entity receiving or requesting an appropriation or grant from State Government and to issue reports on such audits at such times as the Legislature or the State Auditor may require; and

**Sec. 2. 5 MRSA §243, sub-§9**, as enacted by PL 1999, c. 208, §1, is amended to read:

**9. Single audit.** To conduct financial and compliance audits of financial transactions and accounts kept by or for all state agencies subject to the Single Audit Act Amendments of 1996, 31 United States Code, Sections 7501 to 7507 (1998). The audits must be conducted in accordance with generally accepted governmental auditing standards; and

**Sec. 3. 5 MRSA §243, sub-§10** is enacted to read:

**10. Information system audit.** To conduct reviews and assessments of any computer system or network or security system established to safeguard a computer system that affects federal, state or local programs or quasi-governmental bodies subject to audit by the Department of Audit. Assessments of system vulnerability, network penetration, potential security breaches and susceptibility to electronic attack and electronic fraud are nonpublic and confidential pursuant to section 244-D. Results of the reviews that are not confidential may be released in the sole discretion of the State Auditor.

**Sec. 4. 5 MRSA §244-C, sub-§2**, as enacted by PL 1997, c. 703, §1, is amended to read:

**2. Information available to the Auditor.** Notwithstanding any state law relating to the confidentiality of information, all information in any form in the files of any department, commission or agency of the State subject to an audit or investigation by the Auditor must be made available when necessary to the Auditor for performance of the Auditor's official duties.

A. Before beginning an audit or investigation that may require access to records containing confidential or privileged information, the Auditor shall consult with representatives of the department, commission or agency to discuss methods of identifying and protecting privileged or

2 confidential information in those records. During that  
3 consultation, the department, commission or agency shall  
4 inform the Auditor of all standards and procedures set forth  
5 in department, commission or agency policies or agreements  
6 to protect information considered by the department,  
7 commission or agency to be confidential or privileged. The  
8 Auditor shall limit access to information that is privileged  
9 or confidential by appropriate methods, ~~which may include~~  
10 ~~examining records without copying or removing them from the~~  
11 ~~department, commission or agency.~~

12 B. In making information available to the Auditor, the  
13 department, commission or agency that is subject to the  
14 audit or investigation or that provides the information may  
15 remove information that identifies individuals or  
16 institutions to protect privileged or confidential  
17 information, provided the information necessary for the  
18 Auditor to fulfill the Auditor's official duties is  
19 disclosed to the Auditor. If names are removed, another  
20 unique identifier must be inserted to enable verification of  
21 audit results.

22 C. Documentary or other information obtained by the Auditor  
23 during the course of an audit or investigation is privileged  
24 or confidential to the same extent under law that that  
25 information would be privileged or confidential in the  
26 possession of the department, commission or agency providing  
27 the information. Any privilege or statutory provision,  
28 including penalties, concerning the confidentiality or  
29 obligation not to disclose information in the possession of  
30 any department, commission or agency or their officers or  
31 employees applies equally to the Auditor. Privileged or  
32 confidential information obtained by the Auditor during the  
33 course of an audit or investigation may be disclosed only as  
34 provided by law and with the agreement of the department,  
35 commission or agency subject to the audit or investigation  
36 that provided the information.

37 D. If the Auditor accesses information classified as  
38 privileged or confidential pursuant to department,  
39 commission or agency policy or procedures or by agreement,  
40 the Auditor shall comply with the department, commission or  
41 agency standards or procedures for handling that  
42 information. The Auditor may include in the audit working  
43 papers only such excerpts from information classified as  
44 confidential or privileged as may be necessary to complete  
45 the audit, provided the use does not infringe on department  
46 policies or procedures applicable to the original provision  
47 of information.

50

2           **Sec. 5. 5 MRSA §244-C, sub-§3**, as enacted by PL 1997, c. 703,  
§1, is amended to read:

4           **3. Confidentiality of audit working papers.** Except as  
provided in this subsection, audit working papers are  
6 confidential and may not be disclosed to any person. ~~Prior to~~  
~~the release of the final audit or investigation report, the~~  
8 ~~Auditor has sole discretion to disclose audit working papers to~~  
~~the department, commission or agency subject to the audit or~~  
10 ~~investigation when such disclosure will not prejudice the audit~~  
~~or investigation. After release of the final audit or~~  
12 ~~investigation report, working papers may be released as necessary~~  
to+ The Auditor has sole discretion to disclose audit working  
14 papers to the public at such time as the Auditor determines  
prudent whether before or after the final audit report.  
16 Confidential audit work papers may be released to the entities  
listed in this subsection without any breach of confidentiality  
18 or change in their nonpublic status:

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

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

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

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

30           E. The Office of the State Controller;

32           F. The Office of the Treasurer of State;

34           G. A department, commission or agency, not the subject of  
36 the audit or investigation, that is directly affected by the  
audit working paper; or

38           H. A department, commission or agency, not the subject of  
40 the audit or investigation, when the subject department,  
commission or agency agrees to the release.

42           **Sec. 6. 5 MRSA §244-C, sub-§4** is enacted to read:

44           **4. Confidentiality of tips or complaints.** Notwithstanding  
46 Title 1, section 402 and any other state law regarding public  
records, all investigatory records of the Department of Audit,  
48 including any tips, complaints or information provided by an  
individual, pertaining to possible violations of statute, rule or  
50 regulation are deemed nonpublic.

2           **Sec. 7. 5 MRSA §244-D** is enacted to read:

4           **§244-D. Confidentiality of audits of information security systems**

6           In the event a review by the State Auditor indicates a  
8           computer system is vulnerable or security over the system is  
10           lacking, those findings may not be disclosed publicly and are not  
12           considered public records. Notwithstanding Title 1, section 402  
14           or any other provision of law to the contrary, the work papers  
16           developed in connection with the review of the computer system  
18           and the security over the system are deemed nonpublic records and  
20           are not subject to disclosure. The State Auditor's findings may  
22           be disclosed at the discretion of the State Auditor to the Chief  
24           Information Officer within the Department of Administrative and  
26           Financial Services as well as the joint standing committee of the  
28           Legislature having jurisdiction over appropriations and financial  
30           affairs. Unless the State Auditor authorizes the release of  
32           information or findings gathered in the conduct of a review of  
34           computer system security, that information is deemed classified,  
36           confidential, secret and nonpublic.

38           **Sec. 8. 5 MRSA §244-E** is enacted to read:

40           **§244-E. Power to compel production of evidence**

42           The State Auditor may conduct hearings, summon witnesses,  
44           administer oaths, take the testimony of such witnesses and compel  
46           the production, inspection and copying of documentary evidence,  
48           including without limitation evidence in electronic form, all  
50           software and hardware that hold data, are part of the technical  
52           processes leading up to retention of data or are part of the  
54           security system and documentary evidence that is confidential or  
56           not available to the general public, at such time and place as  
58           the State Auditor may designate for the purpose of investigating  
60           and determining the status of accounts and records of any  
62           department of State Government. Notwithstanding any other  
64           provision of law, the State Auditor may inspect, compel  
66           production of and copy confidential information in any form  
68           unless the law making such information confidential expressly  
70           refers to this section and qualifies or supersedes it in that  
72           particular instance.

74           The confidentiality of information obtained pursuant to this  
76           section is as described in section 244-D.

## SUMMARY

2

This bill clarifies the authority of the State Auditor to  
4 conduct information system audits and the confidential status of  
information system audit findings and workpapers.

6

It clarifies that the State Auditor has access to  
8 information in electronic form or in another form and without  
limitation on copying and removing records from departments,  
10 agencies and commissions.

12

It clarifies the discretion of the State Auditor to release  
nonconfidential audit working papers to the public before any  
14 final audit report.

16

It allows the State Auditor to disclose, without any breach  
of confidentiality or change in their nonpublic status,  
18 confidential audit working papers to the Office of the State  
Controller, the Office of the Treasurer of State, affected state  
20 entities and other state entities if the audited department,  
commission or agency agrees to the disclosure.

22

It makes investigatory records, including tips and  
24 complaints and information provided by an individual, related to  
possible violations of statute, rule or regulation nonpublic.

26

It makes classified, confidential, secret and nonpublic any  
28 information resulting from a review by the State Auditor that  
indicates a computer system is vulnerable or security over the  
30 system is lacking.

32

It gives the State Auditor the power to compel the  
production of evidence.