

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1093

S.P. 326

In Senate, March 15, 2011

**An Act To Require the State To Pay Costs and Fees in Actions
against Certain State Agencies**

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator MARTIN of Kennebec.
Cosponsored by Senator: TRAHAN of Lincoln.

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

2 **Sec. 1. 14 MRSA §1523** is enacted to read:

3 **§1523. Costs to prevailing party in certain administrative or court proceedings**

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

6 A. "Administrative proceeding" means any procedure or other action before the
7 Department of Administrative and Financial Services, Maine Revenue Services or the
8 Department of Environmental Protection.

9 B. "Court proceeding" means any civil action brought in a court of this State.

10 C. "Position of the State" means:

11 (1) The position taken by the State in a judicial proceeding to which subsection 2
12 applies; and

13 (2) The position taken by the State in an administrative proceeding to which
14 subsection 2 applies.

15 D. "Prevailing party" means any party in any proceeding to which subsection 2
16 applies:

17 (1) That has substantially prevailed with respect to the amount in controversy; or

18 (2) That has substantially prevailed with respect to the most significant issue or
19 set of issues presented.

20 A party may not be treated as the prevailing party in a proceeding to which
21 subsection 2 applies if the State establishes that the position of the State was
22 substantially justified.

23 E. "Reasonable litigation costs" includes:

24 (1) Reasonable court costs; and

25 (2) Based upon prevailing market rates for the kind or quality of services
26 furnished:

27 (a) The reasonable expenses of expert witnesses in connection with a court
28 proceeding, except that no expert witness may be compensated at a rate in
29 excess of the highest rate of compensation for expert witnesses paid by the
30 State;

31 (b) The reasonable cost of any study, analysis, engineering report, test or
32 project that is found by the court to be necessary for the preparation of the
33 party's case; and

34 (c) The reasonable fees paid or incurred for the services of attorneys in
35 connection with the court proceeding.

36 **2. Application.** This section applies to any administrative or court proceeding that is
37 brought by or against this State in connection with:

1 A. The determination, collection or refund of any tax, interest or penalty under Title
2 36; or

3 B. The determination of any fine, penalty or interest under Title 38.

4 **3. Prevailing party if not the State.** In any proceeding described in subsection 2, if
5 the State is not the prevailing party, the prevailing party may be awarded a judgment or a
6 settlement for:

7 A. Reasonable administrative costs incurred in connection with an administrative
8 proceeding within the Department of Administrative and Financial Services, Maine
9 Revenue Services or the Department of Environmental Protection; and

10 B. Reasonable litigation costs incurred in connection with a court proceeding.

11 **4. Limitations.** A judgment for reasonable litigation costs may not be awarded
12 under subsection 2 in any court proceeding unless the court determines that the prevailing
13 party has exhausted the administrative remedies available to the party within the
14 Department of Administrative and Financial Services, Maine Revenue Services or the
15 Department of Environmental Protection, as applicable.

16 **5. Costs denied when party prevailing protracts proceedings.** An award for
17 reasonable litigation and administrative costs may not be made under subsection 2 with
18 respect to any portion of the administrative or court proceeding during which the
19 prevailing party has unreasonably protracted such proceeding.

20 **6. Period for applying for administrative costs.** An award may be made under
21 subsection 2 by the Department of Administrative and Financial Services, Maine
22 Revenue Services or the Department of Environmental Protection, as applicable, for
23 reasonable administrative costs only if the prevailing party files an application with
24 Maine Revenue Services or the Department of Environmental Protection for such costs
25 before the 91st day after the date on which the final decision of Maine Revenue Services
26 or the Department of Environmental Protection as to the determination of the tax, interest,
27 fine or penalty is mailed to the party.

28 **7. Right of appeal; court proceedings.** An order granting or denying, in whole or
29 in part, an award for reasonable litigation or administrative costs under subsection 2 in a
30 court proceeding may be incorporated as a part of the decision or judgment in the court
31 proceeding and is subject to appeal in the same manner as the decision or judgment.

32 **8. Right of appeal; administrative proceedings.** A decision granting or denying,
33 in whole or in part, an award for reasonable administrative costs under subsection 2 by
34 the Department of Administrative and Financial Services, Maine Revenue Services or the
35 Department of Environmental Protection is subject to the filing of a petition for review
36 with the Superior Court as a final agency action under Title 5, chapter 375.

37 **SUMMARY**

38 This bill authorizes the award of administrative costs or litigation costs to the
39 prevailing party in an administrative action or a court action involving the Department of

1 Administrative and Financial Services, Maine Revenue Services or the Department of
2 Environmental Protection if the State is not the prevailing party.

3 A judgment for reasonable litigation costs may not be awarded in any court
4 proceeding unless the court determines that the prevailing party has exhausted the
5 administrative remedies available to such party within Maine Revenue Services or the
6 Department of Environmental Protection, as applicable. An award for reasonable
7 litigation and administrative costs may not be made with respect to any portion of the
8 administrative or court proceeding during which the prevailing party has unreasonably
9 protracted such proceeding.

10 An application for costs must be filed within 90 days after the final decision is made.
11 The award of costs may be appealed.

12 A party may not be treated as the prevailing party in a proceeding if the State
13 establishes that the position of the State in the proceeding was substantially justified.