

MAINE STATE LEGISLATURE

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R.S.

L.D. 1919

DATE: 4-14-04

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STATE OF MAINE
SENATE
121ST LEGISLATURE
SECOND SPECIAL SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1420, L.D. 1919, Bill, "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005"

Amend the amendment by inserting at the end before the emergency clause the following:

PART FFFF

Sec. FFFF-1. 3 MRSA §991, as amended by PL 2003, c. 451, Pt. KKK, §1, is further amended to read:

§991. Evaluation and Government Accountability

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government and, when determined necessary by the committee, local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds and any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of private money for the purposes of the agency or other entity.

2 **Sec. FFFF-2. 3 MRSA §992, sub-§4**, as enacted by PL 2001, c.
702, §2, is amended to read:

4 **4. Other entity.** "Other entity" means any public or
6 private entity in this State that may be subject to program
evaluation under this chapter as the result of its receipt or
8 expenditure of public funds. "Other entity" may include local
10 and county governments, quasi-municipal governments, special
districts, utility districts, regional development agencies or
any municipal or nonprofit corporation.

12 **Sec. FFFF-3. 3 MRSA §992, sub-§5**, as amended by PL 2003, c.
14 463, §1, is further amended to read:

16 **5. Program evaluation.** "Program evaluation" means an
18 examination of any government program that includes performance
audits, management analysis, inspections, operations or, research
20 or examinations of efficiency, effectiveness, or economy and,
~~when determined necessary by the committee, financial audits and~~
~~post-audits. All financial audits and post audits must be~~
22 ~~performed by the Department of Audit or, if the Department of~~
~~Audit is unable to perform the audit within the time frame~~
24 ~~established by the committee to complete the report, a qualified~~
~~auditor.~~

26 **Sec. FFFF-4. 3 MRSA §994, sub-§3-A** is enacted to read:

28 **3-A. Auditing services.** When the committee determines that
30 an examination as part of a program evaluation requires the
services of a qualified auditor, to request the Department of
32 Audit to conduct all or part of an examination or, if the
Department of Audit is unable to perform the examination within
34 the time frame established by the committee, to direct the office
to obtain the services of a qualified auditor;

36 **Sec. FFFF-5. 3 MRSA §994, sub-§9**, as enacted by PL 2001, c.
38 702, §2, is amended to read:

40 **9. Meetings.** To conduct meetings at such times as the
cochairs determine necessary; and

42 **Sec. FFFF-6. 3 MRSA §994, sub-§10**, as amended by PL 2003, c.
44 463, §3, is further amended to read:

46 **10. Adopt rules.** To adopt rules, as long as the rules are
not in conflict with the Joint Rules of the Legislature. By
48 January 1, 2005, the committee must develop a mission statement
to be included in the rules; and

50 **Sec. FFFF-7. 3 MRSA §994, sub-§11** is enacted to read:

2 **11. Information available to committee.** To receive certain
3 information. Information that is made available to the committee
4 is governed by chapter 21, which governs legislative
5 investigating committees, and by Title 1, chapter 13, which
6 governs public records and proceedings.

8 **Sec. FFFF-8. 3 MRSA §995, sub-§§1 and 3,** as enacted by PL
9 2001, c. 702, §2, are amended to read:

10 **1. Appointment.** Not earlier than April 1, 2003, the
11 Legislative Council shall appoint by an affirmative vote of 8
12 members of the Legislative Council a nonpartisan director of the
13 office for the purposes of conducting program evaluations
14 pursuant to this chapter. The director must be appointed to an
15 initial 5-year term, which is subject to renewal by the
16 Legislative Council every 5 years thereafter. During the term of
17 the contract, the director may be terminated only for cause by an
18 affirmative vote of 8 members of the Legislative Council. The
19 Legislative Council shall establish the compensation of the
20 director. The director's duties must be performed independently
21 and in a nonpartisan manner but under the general policy
22 direction of the committee.

23 **3. Employees.** Employees must be nonpartisan. Employees of
24 the office are employed by and are responsible to the director,
25 who shall hire and fix the compensation of each employee, subject
26 to the approval of the committee and within resources available
27 in the biennial budget. Other than the director appointed
28 pursuant to subsection 1, an employee of the office may not be
29 employed prior to July 1, 2003.

30 **Sec. FFFF-9. 3 MRSA §997, sub-§4,** as amended by PL 2003, c.
31 451, Pt. KKK, §4, is further amended to read:

32 **4. Information available to office.** ~~Information that is~~
33 ~~made available to the office is governed by chapter 21, which~~
34 ~~governs legislative investigating committees, and~~ Upon request of
35 the office and consistent with the conditions and procedures set
36 forth in this section, state agencies or other entities subject
37 to program evaluation must provide the office access to
38 information that is privileged or confidential as defined by
39 Title 1, chapter 13, which governs public records and proceedings.

40 **A.** Before beginning a program evaluation under this chapter
41 that may require access to records containing confidential
42 or privileged information, the office shall furnish a
43 written statement of its determination that it is necessary
44 for the office to access such records and consult with

2 representatives of the state agency or other entity to
discuss methods of identifying and protecting privileged or
3 confidential information in those records. During that
4 consultation, the state agency or other entity shall inform
the office of all standards and procedures set forth in its
5 policies or agreements to protect information considered to
be confidential or privileged. The office shall limit its
6 access to information that is privileged or confidential by
7 appropriate methods, which may include examining records
8 without copying or removing them from the source.
9

12 B. Documentary or other information obtained by the office
during the course of a program evaluation under this chapter
13 is privileged or confidential to the same extent under law
that that information would be privileged or confidential in
14 the possession of the state agency or other entity providing
the information. Any privilege or statutory provision,
15 including penalties, concerning the confidentiality or
obligation not to disclose information in the possession of
16 a state agency or other entity or its officers or employees
applies equally to the office. Privileged or confidential
17 information obtained by the office during the course of a
program evaluation may be disclosed only as provided by law
18 and with the agreement of the state agency or other entity
subject to the program evaluation that provided the
19 information.
20

28 C. If the office accesses information classified as
privileged or confidential pursuant to state agency or other
29 entity policy or procedures or by agreement, the office
shall comply with the state agency's or other entity's
30 standards or procedures for handling that information. The
office may include in its working papers the excerpts from
31 information classified as confidential or privileged as may
be necessary to complete the program evaluation under this
32 chapter, as long as the use does not infringe on department
policies or procedures applicable to the original provision
33 of information.'
34

40 Further amend the amendment by relettering or renumbering
any nonconsecutive Part letter or section number to read
41 consecutively.
42

44

SUMMARY

46

This amendment makes the following changes to the statutes
47 governing the Office of Program Evaluation and Government
Accountability, or OPEGA.
48

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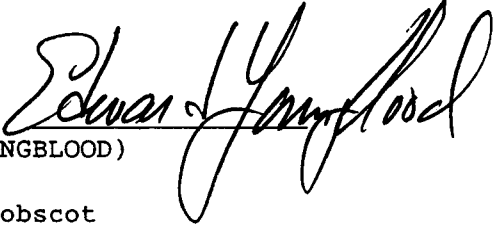
SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1420,
L.D. 1919

1. It authorizes the legislative oversight committee to
direct OPEGA to conduct evaluations of local government,
quasi-municipal entities and municipal or nonprofit corporations
when determined necessary by the committee and to examine
expenditures of private money by public officials or employees.

2. It removes language concerning the Department of Audit
from the subsection that defines program evaluation and instead
enacts language under the duties of the committee to give the
committee the discretion to request that the department conduct
an examination or, if the department is unable to perform the
examination in a timely manner, to direct OPEGA to obtain the
services of a qualified auditor.

3. It clarifies what information is made available to the
committee and to OPEGA.

4. It requires the director and employees of OPEGA to be
nonpartisan.

SPONSORED BY: 
(Senator YOUNGBLOOD)

COUNTY: Penobscot