

MAINE STATE LEGISLATURE

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
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MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

To: The Honorable Dawn Hill, Senate Chair
The Honorable Margaret Rotundo, House Chair
Appropriations and Financial Affairs Committee

From: Senator Emily Ann Cain, Senate Chair 
Representative Chuck Kruger, House Chair 
Government Oversight Committee

Date: February 13, 2013

Re: Public Law 2011, Chapter 616 Regarding Quasi-independent State Entities

We are writing to make you familiar with Public Law 2011, Chapter 616 and what it means for your committee's oversight of quasi-independent State entities under your jurisdiction. This recent law was a by-product of OPEGA's review of the Maine Turnpike Authority as the GOC felt, and the Legislature agreed, it was appropriate to clarify legislative expectations and strengthen legislative oversight for all significant quasi-independent entities created by the Legislature.

Part A of PL 2011, Chapter 616 is now codified in statute as 5 MRSA §§12021-12024. Section 12022 of the statute establishes responsibilities, expectations and requirements for certain financial policies and procedures of the 24 quasi-independent entities currently defined as "reporting entities" in §12021-6. Attached is a list of the entities currently defined as "reporting entities" and a description of the general criteria used to select entities for this list.

Section 12023 of the statute also requires the "reporting entities" to submit annual reports to the Legislature regarding those financial policies and certain types of expenditures made by the entity. The designated entities are to file these reports with the Office of the Executive Director of the Legislative Council, the Clerk of the House and the Secretary of the Senate. The Executive Director is responsible for referring them to the appropriate joint standing committees of jurisdiction for review.

The first annual report from each "reporting entity" was due to the Legislature on February 1, 2013. Statute specifies that this report is to include a discussion of the adoption and implementation status for the written financial policies and procedures required under §12022. In accordance with statute, the governing

bodies of the entities were supposed to have adopted policies by December 31, 2012 and should be in position to fully implement the policies in their organizations by July 1, 2013. This first report is also supposed to describe the measures the governing body is going to use to monitor the organization's compliance with the adopted policies. Actions that the GOC envisioned your committee might take on this first report (if you have "reporting entities" that are under your jurisdiction) include:

- monitoring whether the entity has in fact adopted the policies required by §12022 and will be implementing them by July 1, 2013;
- reviewing the written policies the entity has adopted, and questioning the entity as necessary, to ensure that elements specified for each policy in §12022 have been incorporated to the extent possible; and
- assessing whether the measures the governing body intends to use to monitor compliance with policies seem reasonable and appropriate for preventing and/or detecting non-compliance.

Beginning in February 2014, the "reporting entities" annual reports to the Legislature are to include a list of all procurements greater than \$10,000 in the preceding year that were not competitively procured and a list of all contributions made in the preceding year that exceeded \$1,000. The terms "competitive procurement" and "contributions" are defined in §12021 of the statute. The GOC envisioned that your committee would review any of these reports from "reporting entities" under your jurisdiction and seek additional explanation and justification for any procurements or contributions you found concerning.

Should your committee be considering any bills that propose to create a new quasi-independent State entity as defined in §12021-5, then statute requires that you consider certain factors outlined in §12024. This section of the statute is intended to ensure that legislation establishing any new entity provides a foundation for strong governance and oversight.

Part B of Public Law 2011, Chapter 616 provides your committee with an opportunity to review the authorizing statutes and structures for any existing quasi-independent State entities currently under your jurisdiction and submit legislation to:

- c. add any of those entities to the list of "reporting entities" in §12021-6 if you deem them a significant quasi-independent State entity given the general considerations in the attached document; and/or
- d. amend the authorizing statute for any entity (including those defined as "reporting entities") to make the entity consistent with 5 MRSA §§12021-12024, particularly §12024.

The authorization to submit legislation is limited to the first regular session of the 126th Legislature.

OPEGA Director Beth Ashcroft is available to answer any questions you may have, or provide additional information and background on this Public Law and the oversight opportunities it provides your committee.

Attachment

Cc: Maureen Dawson, Principal Analyst, Office of Fiscal and Program Review
Holly Mullen, Clerk
Members of the Government Oversight Committee

Current List of Quasi-independent “Reporting Entities” per 5 MRSA §12021-6

- A. The Child Development Services System under Title 20-A, section 7209;
- B. The ConnectME Authority under Title 35-A, section 9203;
- C. The Efficiency Maine Trust under Title 35-A, section 10103;
- D. The Finance Authority of Maine under Title 10, section 964;
- E. The Loring Development Authority of Maine under Title 5, section 13080;
- F. The Maine Community College System under Title 20-A, chapter 431;
- G. The Maine Educational Loan Authority under Title 20-A, section 11414;
- H. The Maine Governmental Facilities Authority under Title 4, section 1602;
- I. The Maine Health and Higher Educational Facilities Authority under Title 22, section 2054;
- J. The Maine Human Rights Commission under Title 5, section 4561;
- K. The Maine Maritime Academy under Private and Special Law 1941, chapter 37;
- L. The Maine Municipal and Rural Electrification Cooperative Agency under Title 35-A, section 4131;
- M. The Maine Municipal Bond Bank under Title 30-A, section 5951;
- N. The Maine Port Authority under Title 23, section 4420;[
- O. The Maine Public Employees Retirement System under Title 5, section 17101;
- P. The Maine State Housing Authority under Title 30-A, section 4722;
- Q. The Maine Technology Institute under Title 5, section 15302;
- R. The Maine Turnpike Authority under Title 23, section 1963;
- S. The Midcoast Regional Redevelopment Authority under Title 5, section 13083-G;
- T. The Northern New England Passenger Rail Authority under Title 23, chapter 621, subchapter 2;
- U. The Small Enterprise Growth Board under Title 10, section 384;
- V. The University of Maine System under Private and Special Law 1865, chapter 532; [
- W. The Washington County Development Authority under Title 5, section 13083-A; and
- X. The Workers' Compensation Board under Title 39-A, section 151.

How were the quasi-independent State entities selected to be “reporting entities” for the purpose of this legislation?

OPEGA researched and reviewed the authorizing statutes of more than 70 entities listed in the Maine State Government Annual Report and/or Title 5 Chapter 379 as quasi-independent agencies and/or independent boards, committees and commissions. OPEGA also collected information on staff size and level of revenues and/or expenditures for a selected subset.

The GOC ultimately selected 28 entities to include in its bill (LD 1843) that met most of the following criteria:

- They were established in statute for a governmental purpose funded with revenues derived, in whole or part, from federal or state taxes or fees.

- They are a “component unit” of State government for purposes of the State’s financial statements. The criteria used by the State Controller’s Office to determine a component unit indicates both significant financial activity and a significant relationship to State government. (See general definition below).
- The statutory powers and duties of the quasi-independent state entity are considerably more than just advisory in nature and include such powers and duties as:
 - Right to sue and be sued
 - Authority to enter into contracts
 - Authority to hire staff and consultants
 - Authority to establish and collect fees, issue bonds, accept grants, make loans etc.
 - Authority to acquire and manage property
 - Authority to establish rules
- Their organizational and accountability structure allows them to make significant policy and financial decisions independent of the Legislature and Executive state agencies.

As a result of its consideration of the GOC’s bill, the State and Local Government Committee further refined the list of “reporting entities” to the 24 entities currently in the law.

Current Language related to “component units” from the State’s Comprehensive Annual Financial Report (CAFR) and related GASB Standards provided by the State Controller

A. REPORTING ENTITY

For financial reporting purposes, the State of Maine’s reporting entity includes the “primary government” and its “component units.” The primary government includes all funds, organizations, agencies, boards, commissions and authorities. Component units are legally separate organizations for which the State is financially accountable. Component units can also be legally separate, tax exempt entities that raise and hold economic resources for the direct benefit of a governmental unit.

GASB Statement No. 14, The Financial Reporting Entity, defines financial accountability. The State is financially accountable for those entities for which it appoints a voting majority of the governing board and either is able to impose its will on that entity or the entity may provide specific financial benefits to, or impose specific financial burdens on, the primary government. Entities for which the State does not appoint a voting majority of the governing board may be included if the organization is fiscally dependent on the primary government or if the nature and significance of its relationship with the primary government is such that exclusion would cause the reporting entity’s financial statements to be misleading or incomplete.