

MAINE STATE LEGISLATURE

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L.D. 2193

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DATE: *April 4, 2002* (Filing No. S-591)

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1695, L.D. 2193, Bill, "An Act to Create the Office of Program Evaluation and Government Accountability"

Amend the amendment by striking out everything after the title and before the summary and inserting in its place the following:

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

'Sec. 1. 3 MRSA §163-A, sub-§7, as enacted by PL 1985, c. 501, Pt. B, §5, is amended to read:

7. **Committee assistance.** To provide research, analysis and bill drafting assistance for joint standing or select committees, including, but not limited to, the Joint Standing Committee on Appropriations and Financial Affairs, the ~~Joint--Standing Committee-on-Audit-and-Program-Review~~ Joint Select Committee on Oversight and other legislative agencies;

Sec. 2. 3 MRSA c. 37 is enacted to read:

CHAPTER 37

LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND PROGRAMS

§991. Office of Program Evaluation and Government Accountability established; director appointment

The Office of Program Evaluation and Government Accountability is established as a nonpartisan office for the

SENATE AMENDMENT

purpose of providing program evaluation of state agencies. The
director of the office must be appointed by, report to and be
subject to the authority of the Legislative Council the same
manner as the directors of the other nonpartisan staff offices.

§992. Definitions

As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

1. Committee. "Committee" means the Joint Select Committee
on Oversight.

2. Director. "Director" means the Director of the Office
of Program Evaluation and Government Accountability.

3. Office. "Office" means the Office of Program Evaluation
and Government Accountability established in section 991.

4. Program evaluation. "Program evaluation" means an
examination of any government program that includes performance
audits, management analysis, inspections, operations or research
or examinations of efficiency, effectiveness, or economy and,
when determined necessary by the committee, financial audits and
post-audits.

5. State agency. "State agency" means an agency or
independent agency of State Government subject to review under
chapter 35.

6. Working paper. "Working paper" means all documentary
and other information acquired, prepared or maintained by the
office during the conduct of a program evaluation, including all
intra-agency and interagency communications relating to a program
evaluation and includes electronic messages and draft reports or
any portion of a draft report.

§993. Committee membership; chairs

The Legislature shall establish the membership of the
committee and the selection of chairs by Joint Rule.

§994. Duties of committee and office

1. Program evaluation. The committee shall conduct program
evaluation of state agencies with assistance from the office.

2. Review of state agencies. The committee and the office
shall assist the joint standing committees of the Legislature in

2 their review of state agencies pursuant to the State Government
Evaluation Act.

4 3. Annual schedule for program evaluation. The committee
6 shall establish an annual schedule of state agencies to be
subject to program evaluation and shall provide the schedule to
8 the Legislative Council on January 1st of each year.

10 4. Recommendations and comments. In establishing the
12 annual schedule pursuant to subsection 3, the committee shall
seek recommendations and comments from the joint standing
14 committees of the Legislature and from the Commission on
Performance Budgeting established pursuant to Title 5, section
1710-L.

16 5. Annual report. The office shall issue an annual report
18 to the Legislative Council on January 1st of each year, beginning
January 1, 2004. The report must:

20 A. Summarize the activities of the office for the prior
22 year;

24 B. Report the cost savings, if any, realized by State
Government as a result of the office's activities during the
26 prior year;

28 C. Summarize the expected activities of the office in the
coming year, including support for the committee schedule
30 established pursuant to subsection 3;

32 D. Present any recommended changes in the staffing,
structure or operations of the office; and

34 E. Present such other and further information as the office
36 determines appropriate.

38 **§995. Assistance to committee and office**

40 The Department of the Attorney General, the State Auditor,
the State Controller, the Commissioner of Administrative and
42 Financial Services, the Director of the Office of Fiscal and
Program Review and the Director of the Office of Policy and Legal
44 Analysis shall assist the committee and office with program
evaluations under this chapter if the committee and the director
46 determine that such assistance is necessary.

48 **§996. Conduct and issuance of program evaluation reports**

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter.

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection 3. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

2. Submission of final report to committee. The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director.

3. Public release. The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and exempt from disclosure pursuant to Title 1, chapter 13. All other records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the

2 provisions of Title 1, chapter 13. This subsection may not be
3 construed to prohibit or prevent public access to the records of
4 a state agency or other entity in the possession of the director
5 that would otherwise be subject to disclosure pursuant to the
6 provisions of Title 1, chapter 13. The director shall refer
7 requests for access to those records directly to the state agency
8 or other entity that is the official custodian of the requested
9 records, which shall respond to the request for public records.

10 4. Information available to office. Notwithstanding any
11 other law relating to the confidentiality of information, all
12 information in the files of a state agency or other entity
13 subject to program evaluation by the office under this chapter
14 must be made available when necessary to the office for
15 performance of its duties.

16
17 A. Before beginning a program evaluation under this chapter
18 that may require access to records containing confidential
19 or privileged information, the office shall consult with
20 representatives of the state agency or other entity to
21 discuss methods of identifying and protecting privileged or
22 confidential information in those records. During that
23 consultation, the state agency or other entity shall inform
24 the office of all standards and procedures set forth in its
25 policies or agreements to protect information considered to
26 be confidential or privileged. The office shall limit
27 access to information that is privileged or confidential by
28 appropriate methods, which may include examining records
29 without copying or removing them from the source.

30
31 B. Documentary or other information obtained by the office
32 during the course of a program evaluation under this chapter
33 is privileged or confidential to the same extent under law
34 that that information would be privileged or confidential in
35 the possession of the state agency or other entity providing
36 the information. Any privilege or statutory provision,
37 including penalties, concerning the confidentiality or
38 obligation not to disclose information in the possession of
39 a state agency or other entity or its officers or employees
40 applies equally to the office. Privileged or confidential
41 information obtained by the office during the course of a
42 program evaluation may be disclosed only as provided by law
43 and with the agreement of the state agency or other entity
44 subject to the program evaluation that provided the
45 information.

46
47 C. If the office accesses information classified as
48 privileged or confidential pursuant to state agency or other
49 entity policy or procedures or by agreement, the office
50 shall comply with the state agency's or other entity's

standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

5. Confidentiality of working papers. Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary.

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

Sec. 3. Initial report of Office of Program Evaluation and Government Accountability. As part of its initial annual report to be issued on January 1, 2004 pursuant to the Maine Revised Statutes, Title 3, section 994, the Office of Program Evaluation and Government Accountability shall include an assessment of the long-term organization plans of the office, including any recommended alterations in the staffing, structure or operations of the office, and shall in addition, include in its initial report an analysis of the relationship of the legislative

oversight of government agencies and programs established in
Title 3, chapter 37 and the State Government Evaluation Act
established in Title 3, chapter 35, and recommend any changes
necessary to enhance the conduct of program evaluation.

Sec. 4. Appropriations and allocations. The following
appropriations and allocations are made.

LEGISLATURE

Office of Program Evaluation and Government Accountability

Initiative: Provides funds in fiscal year 2002-03 for one
Director position and one Secretary position beginning March 1,
2003 and start-up costs to establish the office, office space,
general operating expenses and expenses of the Joint Select
Committee on Oversight.

General Fund	2001-02	2002-03
Positions - Legislative Count	(0.000)	(2.000)
Personal Services	\$0	\$44,498
All Other	0	35,502
Total	\$0	\$80,000'

FISCAL NOTE

2002-03

APPROPRIATIONS/ALLOCATIONS

General Fund \$80,000

The bill as amended includes a General Fund appropriation to
the Legislature in fiscal year 2002-03 of \$80,000 to provide
funds for one Director position and a Secretary position
effective March 1, 2003, start-up costs to establish the Office
of Program Evaluation and Government Accountability, acquisition
of office space, general operating expenses and expenses of the
Joint Select Committee on Oversight. The General Fund costs in
fiscal year 2003-04 and 2004-05 are expected to be \$294,062 and
\$302,550, respectively. These estimates reflect the costs of the
2 positions, public hearing expenses, printing the required
reports and general operating expenses.

Additional General Fund appropriations may be required if
there are recommended changes in the staffing, structure or
operations of the office. These amounts can not be determined at

this time and will be dependent on the recommendations made by
the committee and approved by the Legislative Council.


Upon approval of the Legislative Council, the Director of
the Office of Fiscal and Program Review and the Director of the
Office of Policy and Legal Analysis will provide assistance to
the committee and the office during the interim between
legislative sessions utilizing existing budgeted resources. If
assistance is requested during the legislative session, the
Legislature may require an additional General Fund appropriation
to contract for staff services.

SUMMARY

This amendment strikes the committee amendment and makes
changes to the bill. It establishes the Office of Program
Evaluation and Government Accountability as a nonpartisan office
under the control of the Legislative Council. It authorizes the
creation of the Joint Select Committee on Oversight. The
membership of the committee and selection of the chairs must be
determined pursuant to the Joint Rules of the Legislature.

It authorizes the Attorney General, the State Auditor, the
State Controller, the Commissioner of Administrative and
Financial Services, the Director of the Office of Fiscal and
Program Review and the Director of the Office of Policy and Legal
Analysis to assist the Office of Program Evaluation and
Government Accountability and the Joint Select Committee on
Oversight. It requires the committee to establish an annual
schedule of state agencies to review, in collaboration with the
joint standing committees of the Legislature and the Commission
on Performance Budgeting. It requires the office to submit an
annual report to the Legislative Council.

It creates 2 positions within the Office of Program
Evaluation and Government Accountability, including the
director. The director must be hired by and report to the
Legislative Council. Finally, it appropriates funds for both
staff positions beginning January 1, 2003.

SPONSORED BY: 
(Senator TREAT)

COUNTY: Kennebec