

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2193

H.P. 1695

House of Representatives, March 20, 2002

**An Act to Create the Office of Program Evaluation and Government
Accountability.**

Reported by Representative McDONOUGH for the Joint Standing Committee on State and Local Government pursuant to Joint Order 2001, H.P. 1597.

Reference to the Joint Standing Committee on State and Local Government suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

4 **Sec. 1. 3 MRSA c. 37** is enacted to read:

6 **CHAPTER 37**

8 **LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND PROGRAMS**

10 **§991. Joint Legislative Oversight Committee established**

12 The Joint Legislative Oversight Committee, established in
14 Title 5, section 12004-G, subsection 26-F, is created for the
16 purpose of providing program evaluation of agencies and programs
18 of State Government. The committee also is established to ensure
20 that funds provided to local and county governments,
22 quasi-municipal governments, special districts, utility
24 districts, regional development agencies or any municipal or
nonprofit corporation are expended for the purposes for which
they were allocated, appropriated or contracted. The committee
may also 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 agency purposes.

26 **§992. Definitions**

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

32 1. **Committee.** "Committee" means the Joint Legislative
Oversight Committee.

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

36 3. **Office.** "Office" means the Office of Program Evaluation
38 and Government Accountability established in section 995.

40 4. **Other entity.** "Other entity" means any public or
42 private entity in this State that may be subject to program
evaluation under this chapter as the result of its receipt or
expenditure of public funds.

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

2 6. State agency. "State agency" means each state board,
commission, department, program, office or institution,
4 educational or otherwise, of this State.

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

12 **§993. Committee membership; cochaurs**

14 The committee consists of 6 members of the Senate and 6
16 members of the House of Representatives and must be evenly
divided between the 2 largest political parties represented in
18 each chamber. The majority party Senators are appointed by the
President of the Senate and the minority party Senators are
20 appointed by the Senate Minority Leader. The majority party
House members are appointed by the Speaker of the House and the
22 minority party House members are appointed by the House Minority
Leader. The terms of committee members coincide with the
24 beginning and the end of each Legislature. At the beginning of
each Legislature, members shall elect cochaurs, one of whom
26 represents the majority party and one of whom represents the
minority party. One cochair must be from the Senate and one
28 cochair must be from the House of Representatives.

30 **§994. Duties of the committee**

32 The committee has the following duties:

34 1. Director. To hire the director of the office;

36 2. Annual work plan. To review and approve the annual work
plan of the office;

38 3. Direct evaluations. To direct the office to conduct
40 program evaluations;

42 4. Conduct hearings. To hold public hearings for the
purpose of receiving reports from the office and interrogating
44 public officials about office findings and recommendations;

46 5. Examine witnesses. To examine witnesses and to order
the appearance of any person or the appearance of any person for
48 the purpose of production to the committee of papers or records,
including books, accounts, documents, computer disks or memory or

2 other electronic media and other materials regardless of their
3 physical or electronic form;

4 6. Administer oaths. To administer oaths to witnesses
5 appearing before the committee when, by a majority vote, the
6 committee determines the administration of an oath necessary and
7 advisable, to determine if there is probable cause that a witness
8 has committed perjury by testifying falsely before the committee
9 and to direct the attorney general to institute legal proceedings
10 as provided by law;

11 7. Vote on reports. To vote at the committee's discretion
12 to endorse, to endorse in part or to release a report of the
13 office without endorsement;

14 8. Subpoenas. To issue subpoenas under the signature of
15 either of the cochairs in the event of refusal to appear or to
16 produce papers or records, including books, accounts, documents,
17 computer disks or memory or other electronic media and other
18 materials regardless of their physical or electronic form. A
19 subpoena issued under this subsection must be issued pursuant to
20 the provisions of section 165 and chapter 21; and

21 9. Meetings. To conduct meetings at such times as the
22 cochairs determine necessary.

23 §995. Office established

24 The Office of Program Evaluation and Government
25 Accountability is established under the authority of the
26 committee to conduct program evaluations of state agencies and
27 other entities, both public and private, that receive public
28 funds. The office shall carry out the purposes of this chapter.

29 §996. Director

30 1. Appointment. The committee shall appoint a director of
31 the office for the purpose of conducting program evaluations
32 pursuant to this chapter. The director must be appointed to an
33 initial 4-year term, which is subject to renewal by the committee
34 every 4 years thereafter. During the term of the contract, the
35 director may be terminated only for cause by a 2/3 vote of the
36 committee. The Legislative Council shall establish the
37 compensation of the director. The director's duties must be
38 performed independently but under the general policy direction of
39 the committee.

40 2. Duties. The director shall supervise the staff of the
41 office in accordance with policies adopted by the committee and
42 consistent with the policies of the Legislative Council. The
43 director shall also coordinate the activities of the office with
44 the activities of the Legislative Council.

2 director shall prepare and present a biennial budget to the
3 committee for its approval. The director also shall prepare and
4 present an annual work plan to the committee for its
5 consideration and approval. The director also may contract with
6 private individuals or entities for the conduct of program
7 evaluations under this chapter. The director may request the
8 committee to issue subpoenas.

9
10 **3. Program evaluation authority and notice.** The director
11 may conduct a program evaluation without the approval of the
12 committee if, in the director's judgment, such an evaluation is
13 warranted. The director shall notify the committee of a program
14 evaluation initiated under this subsection within 10 working days
15 of the initiation of the program evaluation.

16 **4. Employees.** Employees of the office are employed by and
17 are responsible to the director, who shall hire and fix the
18 compensation of each employee, subject to the approval of the
19 committee and within resources available in the biennial budget.

20
21 **5. Annual report.** The director shall prepare an annual
22 report of the office's activities for each calendar year and
23 shall submit that annual report to the committee and the
24 Legislature no later than March 1st of each calendar year.

25 **§997. Assistance to committee**

26
27 The Department of the Attorney General, the State Auditor,
28 the State Controller, the Commissioner of Administrative and
29 Financial Services, the Director of the Office of Fiscal and
30 Program Review and the Director of the Office of Policy and Legal
31 Analysis shall assist the committee and office with program
32 evaluations under this chapter if the committee and the director
33 determine that such assistance is necessary.

34
35 **§998. Conduct and issuance of program evaluation reports**

36
37 The director and the office shall adhere to the following
38 provisions relative to conducting and issuing program evaluation
39 reports under this chapter:

40
41 **1. Review and response.** Prior to the presentation of a
42 program evaluation under this chapter to the committee by the
43 office, the director of the evaluated state agency or other
44 entity must have an opportunity to review a draft of the program
45 evaluation report. Within 15 calendar days of receipt of the
46 draft report, the director of the evaluated state agency or other
47 entity may provide to the office comments on the draft report.
48 If provided to the office by the comment deadline, the comments
49 must be included in the final report when it is presented to the
50 committee.

2 committee. Failure by the director of an evaluated agency or
4 other entity to submit its comments on the draft report by the
6 comment deadline may not delay the submission of a report to the
8 committee or its release to the public.

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

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

40 **3. Public release.** The director shall issue program
42 evaluation reports, favorable or unfavorable, of any state agency
44 or other entity, and these reports are public records, except
46 that, prior to the release of a program evaluation report
48 pursuant to subsection 2 or the point at which a program
50 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
provisions of Title 1, chapter 13. This subsection may not be
construed to prohibit or prevent public access to the records of
a state agency or other entity in the possession of the director
that would otherwise be subject to disclosure pursuant to the
provisions of Title 1, chapter 13. The director shall refer
requests for access to those records directly to the state agency
or other entity that is the official custodian of the requested
records, which shall respond to the request for public records.

4. Information available to the office. Notwithstanding
any other law relating to the confidentiality of information, all
information in the files of a state agency or other entity
subject to program evaluation by the office under this chapter

2 must be made available when necessary to the office for
3 performance of its duties.

4 A. Before beginning a program evaluation under this chapter
5 that may require access to records containing confidential
6 or privileged information, the office shall consult with
7 representatives of the state agency or other entity to
8 discuss methods of identifying and protecting privileged or
9 confidential information in those records. During that
10 consultation, the state agency or other entity shall inform
11 the office of all standards and procedures set forth in its
12 policies or agreements to protect information considered to
13 be confidential or privileged. The office shall limit
14 access to information that is privileged or confidential by
15 appropriate methods, which may include examining records
16 without copying or removing them from the source.

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

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

43 5. Confidentiality of working papers. Except as provided
44 in this subsection, working papers are confidential and may not
45 be disclosed to any person. Prior to the release of the final
46 program evaluation report, the director has sole discretion to
47 disclose working papers to the state agency or other entity
48 disclose working papers to the state agency or other entity
49 disclose working papers to the state agency or other entity
50 disclose working papers to the state agency or other entity

2 subject to the program evaluation when disclosure will not
3 prejudice the program evaluation. After release of the final
4 program evaluation report, working papers may be released as
5 necessary to the state agency or other entity that was subject to
6 the program evaluation under this chapter.

7 6. Confidential sources. If data supplied by an individual
8 are needed to initiate, continue or complete a program evaluation
9 under this chapter, the director may, by written memorandum to
10 the file, provide that the individual's identity will remain
11 confidential and exempt from disclosure under Title 1, chapter
12 13, and this written memorandum protects the identity of the
13 person from disclosure under Title 1, chapter 13, notwithstanding
14 any other provision of law to the contrary.

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

27 **Sec. 2. 5 MRSA §12004-G, sub-§26-F** is enacted to read:

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31

<u>26-F.</u>	<u>Joint</u>	<u>Legislative</u>	<u>3 MRSA</u>
<u>Legislature</u>	<u>Legislative</u>	<u>Per Diem</u>	<u>§991</u>
	<u>Oversight</u>	<u>and Expenses</u>	
	<u>Committee</u>		

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33
34
35 **Sec. 3. 26 MRSA §979-A, sub-§4-A, ¶¶E and F,** as enacted by PL
36 1997, c. 741, §2 and affected by §12, are amended to read:

37 E. Who is a temporary, on-call employee; or

38 F. Who has been employed less than 30 days; or

39
40
41 **Sec. 4. 26 MRSA §979-A, sub-§4-A, ¶G** is enacted to read:

42
43
44
45 G. Who is an employee of the Office of Program Evaluation
46 and Government Accountability established in Title 3,
47 section 995.

48
49 **Sec. 5. Appropriations and allocations.** The following
50 appropriations and allocations are made.

2 Evaluation and Government Accountability with program evaluations
can be absorbed by the Department of the Attorney General, the
4 Department of Audit and the Department of Administrative and
Financial Services utilizing existing budgeted resources.

6

SUMMARY

8

10 This bill establishes both the Joint Legislative Oversight
Committee and the Office of Program Evaluation and Government
12 Accountability for the purposes of providing legislative
oversight of programs of State Government and to ensure the
14 appropriate use of funds of State Government. The bill describes
the duties of the committee and the office. It authorizes the
committee to hire a director to operate the office. It describes
16 the duties and powers of the director and the office. The bill
also describes the manner in which program evaluations are to be
18 conducted by the office and the manner in which reports are to be
released to the committee and to the public. The bill also
20 prohibits employees of the office from organizing or joining a
union. This bill includes an appropriations and allocations
22 section and a fiscal note.