

# MAINE STATE LEGISLATURE

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DATE: 1-30-04

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STATE OF MAINE  
SENATE  
121ST LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "E" to COMMITTEE AMENDMENT "A" to H.P. 1351, L.D. 1828, Bill, "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary for the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005"

Amend the amendment by inserting after Part CC the following:

PART DD

Sec. DD-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.

SENATE AMENDMENT

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

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

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

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

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

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

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

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

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

50           **Sec. DD-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. DD-8. 3 MRSA §995, sub-§§1 and 3**, as enacted by PL 2001,  
9 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. DD-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  
45 representatives of the state agency or other entity to

2 discuss methods of identifying and protecting privileged or  
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  
6 policies or agreements to protect information considered to  
be confidential or privileged. The office shall limit its  
8 access to information that is privileged or confidential by  
appropriate methods, which may include examining records  
without copying or removing them from the source.

10  
12 B. Documentary or other information obtained by the office  
during the course of a program evaluation under this chapter  
14 is privileged or confidential to the same extent under law  
that that information would be privileged or confidential in  
16 the possession of the state agency or other entity providing  
the information. Any privilege or statutory provision,  
18 including penalties, concerning the confidentiality or  
obligation not to disclose information in the possession of  
20 a state agency or other entity or its officers or employees  
applies equally to the office. Privileged or confidential  
22 information obtained by the office during the course of a  
program evaluation may be disclosed only as provided by law  
24 and with the agreement of the state agency or other entity  
subject to the program evaluation that provided the  
information.

26  
28 C. If the office accesses information classified as  
privileged or confidential pursuant to state agency or other  
30 entity policy or procedures or by agreement, the office  
shall comply with the state agency's or other entity's  
32 standards or procedures for handling that information. The  
office may include in its working papers the excerpts from  
34 information classified as confidential or privileged as may  
be necessary to complete the program evaluation under this  
36 chapter, as long as the use does not infringe on department  
policies or procedures applicable to the original provision  
of information.'

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

#### 44 SUMMARY

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

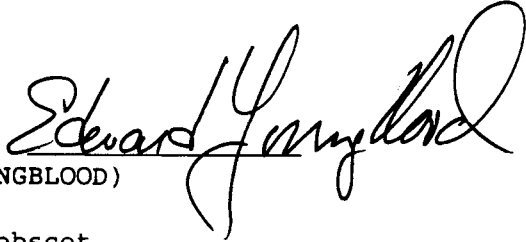
SENATE AMENDMENT "E" to COMMITTEE AMENDMENT "A" to H.P. 1351,  
L.D. 1828

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