

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1843

H.P. 1364

House of Representatives, March 6, 2012

**An Act To Implement the Recommendations of the Office of
Program Evaluation and Government Accountability and the
Government Oversight Committee Regarding Quasi-independent
State Entities**

Reported by Representative BURNS of Whiting for the Government Oversight Committee pursuant to the Maine Revised Statutes, Title 3, section 997, subsection 2.

Reference to the Committee on State and Local Government suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

2 **PART A**

3 **Sec. A-1. 5 MRSA c. 379, sub-c. 3** is enacted to read:

4 **SUBCHAPTER 3**

5 **QUASI-INDEPENDENT STATE ENTITIES**

6 **§12021. Definitions**

7 As used in this subchapter, unless the context indicates otherwise, the following
8 terms have the following meanings.

9 **1. Competitive procurement.** "Competitive procurement" means the transmission
10 of a written request for proposal, written request for qualifications or other invitation to
11 compete on price or qualifications to at least 3 responsible suppliers that is to be replied
12 to at a stated time.

13 **2. Contributions.** "Contributions" means payments for membership dues and fees,
14 gifts, donations and sponsorships, including those that result in public advertisement of
15 the entity.

16 **3. Governing body.** "Governing body" means a person or group of persons with the
17 responsibility or authority to manage an entity.

18 **4. Managing director.** "Managing director" means the person with overall day-to-
19 day responsibility for directing the operations of a quasi-independent state entity.

20 **5. Quasi-independent state entity.** "Quasi-independent state entity" means an
21 organization that has been established by the Legislature as an independent board,
22 commission or agency to fulfill governmental purposes and that receives revenues that
23 are derived, in whole or part, from federal or state taxes or fees.

24 **6. Reporting entity.** "Reporting entity" or "entity" means:

25 A. The Board of Licensure in Medicine under Title 32, section 3263;

26 B. The Child Development Services System under Title 20-A, section 7209;

27 C. The Combat Sports Authority of Maine under Title 8, section 522;

28 D. The ConnectME Authority under Title 35-A, section 9203;

29 E. The Efficiency Maine Trust under Title 35-A, section 10103;

30 F. The Finance Authority of Maine under Title 10, section 964;

31 G. The Loring Development Authority of Maine under Title 5, section 13080;

32 H. The Maine Community College System under Title 20-A, chapter 431;

- 1 I. The Maine Educational Center for the Deaf and Hard of Hearing and the Governor
2 Baxter School for the Deaf under Title 20-A, section 7401;
- 3 J. The Maine Educational Loan Authority under Title 20-A, section 11414;
- 4 K. The Maine Governmental Facilities Authority under Title 4, section 1602;
- 5 L. The Maine Health and Higher Educational Facilities Authority under Title 22,
6 section 2054;
- 7 M. The Maine Human Rights Commission under Title 5, section 4561;
- 8 N. The Maine Maritime Academy under Private and Special Law 1941, chapter 37;
- 9 O. The Maine Municipal and Rural Electrification Cooperative Agency under Title
10 35-A, section 4131;
- 11 P. The Maine Municipal Bond Bank under Title 30-A, section 5951;
- 12 Q. The Maine Port Authority under Title 23, section 4420;
- 13 R. The Maine Public Employees Retirement System under Title 5, section 17101;
- 14 S. The Maine State Housing Authority under Title 30-A, section 4722;
- 15 T. The Maine Technology Institute under Title 5, section 15302;
- 16 U. The Maine Turnpike Authority under Title 23, section 1963;
- 17 V. The Midcoast Regional Redevelopment Authority under Title 5, section 13083-G;
- 18 W. The Northern New England Passenger Rail Authority under Title 23, chapter
19 621, subchapter 2;
- 20 X. The Small Enterprise Growth Board under Title 10, section 384;
- 21 Y. The State Board of Nursing under Title 32, chapter 31, subchapter 2;
- 22 Z. The University of Maine System under Private and Special Law 1865, chapter
23 532;
- 24 AA. The Washington County Development Authority under Title 5, section
25 13083-A; and
- 26 BB. The Workers' Compensation Board under Title 39-A, section 151.

27 **§12022. Financial policies and procedures**

28 A governing body of an entity:

29 **1. Consistency with authorizing law.** Shall ensure that all activities and
30 expenditures of the entity are limited to those necessary to accomplish the entity's mission
31 and to carry out the entity's duties consistent with the entity's authorizing law;

32 **2. Compliance with financial policies and procedures.** Shall ensure that the
33 governing body, management and staff of the entity comply with financial policies and
34 procedures established by the governing body;

1 **3. Selection of vendors.** Shall adopt by December 31, 2012 and implement by July
2 1, 2013 written policies and procedures governing the selection of vendors designed to
3 ensure that the entity secures the best value in its procurements. To the extent possible,
4 consistent with the entity's authorizing law, the policies and procedures must:

- 5 A. Establish competitive procurement as the standard procurement method;
- 6 B. Specify the conditions under which competitive procurement may be waived; and
- 7 C. For procurements exceeding \$10,000 that were not competitively procured,
8 require that written justification for and evidence of approvals are maintained on file
9 for 5 years;

10 **4. Contributions.** Shall adopt by December 31, 2012 and implement by July 1,
11 2013 written policies and procedures governing the use of the entity's resources for
12 contributions. To the extent possible, consistent with the entity's authorizing law, the
13 policies and procedures must:

- 14 A. Establish criteria to ensure that contributions are directly related to the entity's
15 mission and activities;
- 16 B. Require that for identification and reporting purposes contributions are budgeted
17 and accounted for separately from other expenditures in the entity's records;
- 18 C. Establish requirements for maintaining documentation to support each
19 contribution; and
- 20 D. Require that the governing body must approve the annual budget for contributions
21 and be provided periodic reports on contributions made by the entity;

22 **5. Travel, meals and entertainment.** Shall adopt by December 31, 2012 and
23 implement by July 1, 2013 written policies and procedures governing the use of the
24 entity's resources to pay costs of travel, meals and entertainment. To the extent possible,
25 consistent with the entity's authorizing law, the policies and procedures must:

- 26 A. Limit travel, meal and entertainment costs to those reasonable and necessary for
27 accomplishing the entity's mission and activities;
- 28 B. Describe the persons for whom the entity will pay travel, meal and entertainment
29 costs and specify the conditions under which those costs will be paid and whether
30 directly or through reimbursement;
- 31 C. Establish the requirements for supporting documentation and approval of travel,
32 meal and entertainment costs paid directly or through reimbursement;
- 33 D. Require for identification and reporting purposes that travel, meal and
34 entertainment costs are budgeted and accounted for separately from other
35 expenditures in the entity's records; and
- 36 E. Require that the governing body must approve the annual budget for travel, meal
37 and entertainment costs and be provided periodic reports on actual costs paid directly
38 or reimbursed; and

39 **6. Lobbying.** May not retain any person, other than entity staff, for the purpose of
40 lobbying as defined in Title 3, section 312-A, subsection 9.

1 **§12023. Reports to the Legislature**

2 **1. Adoption and implementation.** By February 1, 2013, a governing body shall
3 submit a report to the Legislature on the adoption and implementation status of written
4 policies and procedures required by section 12022 and describing the measures the
5 governing body intends to use to monitor compliance with those policies and procedures.
6 The report must be submitted to the Executive Director of the Legislative Council in a
7 manner established by the executive director, who shall refer it to the appropriate joint
8 standing committee or committees of the Legislature for review.

9 **2. Ongoing reports.** By February 1, 2014, and annually thereafter, a governing
10 body shall submit a report to the Legislature containing the following information:

11 A. A list of all procurements exceeding \$10,000 in the preceding year for which
12 competitive procurement was waived under the policies adopted pursuant to section
13 12022, subsection 3, including procurements exceeding \$10,000 that were made
14 under contracts previously entered into for which competitive procurement was not
15 required. The list must include the names of the vendors and costs associated with
16 those procurements;

17 B. A list of all persons to which the entity made contributions greater than \$1,000 in
18 the preceding year and the total amount contributed to each; and

19 C. A description of changes made in the preceding year to the written policies and
20 procedures required by section 12022 or to the procedures used by the governing
21 body to monitor compliance with those policies and procedures.

22 Reports to the Legislature required by this section must be submitted to the Clerk of
23 the House, the Secretary of the Senate and the Executive Director of the Legislative
24 Council.

25 **§12024. Proposed quasi-independent state entities**

26 A joint standing committee of the Legislature that considers proposed legislation
27 establishing a quasi-independent state entity after January 1, 2013 shall:

28 **1. Additions to reporting entities.** Evaluate whether the proposed quasi-
29 independent state entity should be added to the list of reporting entities in section 12021,
30 subsection 6. The joint standing committee shall consider:

31 A. Whether the governmental purpose for which the proposed quasi-independent
32 state entity is being established is funded with revenues that are derived, in whole or
33 part, from federal or state taxes or fees;

34 B. Whether the powers and duties of the proposed quasi-independent state entity are
35 more than advisory as described in section 12004-I;

36 C. Whether the proposed quasi-independent state entity's organizational and
37 accountability structure allows the quasi-independent state entity to make significant
38 policy and financial decisions independent of the Legislature and executive branch;

1 D. Whether the proposed quasi-independent state entity is considered a component
2 unit of State Government for financial reporting purposes under the standards and
3 pronouncements issued by a governmental accounting standards board or for any
4 purposes under Part 4; and

5 E. Whether the proposed quasi-independent state entity will be subject to review
6 under the State Government Evaluation Act.

7 If the committee determines that the proposed quasi-independent state entity should be
8 added to the list of reporting entities under section 12021, subsection 6, the committee
9 shall include that determination in any report on the legislation; and

10 **2. Legislative standards.** Ensure that proposed legislation that establishes a new
11 quasi-independent state entity:

12 A. Provides, if applicable, for staggered terms of office for members of the
13 governing body, with terms not to exceed 5 years;

14 B. Requires that the governing body must be responsible for:

15 (1) Appointment, performance review and termination of the managing director;

16 (2) Establishing and ensuring compliance with organizational policies and
17 procedures, including those required by section 12022; and

18 (3) Ensuring adherence to all requirements of this chapter;

19 C. Specifies qualifications required or desired of the managing director;

20 D. Provides conditions under which members of the governing body and the
21 managing director may be removed from office and establishes the process for
22 removal;

23 E. Identifies the joint standing committee of the Legislature with oversight over the
24 entity and any matters that must be reviewed by that committee; and

25 F. Contains audit and reporting requirements.

26 **PART B**

27 **Sec. B-1. Legislation.** A joint standing committee of the Legislature having
28 jurisdiction over the subject matter of a quasi-independent state entity, as defined in the
29 Maine Revised Statutes, Title 5, section 12021, subsection 5, may submit legislation to
30 the First Regular Session of the 126th Legislature to add that entity to the list of reporting
31 entities under Title 5, section 12021, subsection 6 or to amend the laws governing the
32 quasi-independent state entity to be consistent with Title 5, chapter 379, subchapter 3.

33 **SUMMARY**

34 This bill implements recommendations of the Government Oversight Committee
35 stemming from the report on the Maine Turnpike Authority issued by the Office of
36 Program Evaluation and Government Accountability. The purpose of this bill is to
37 improve transparency, accountability, governance and financial practices in specified
38 areas for existing and future quasi-independent state entities.

1 Part A of the bill requires certain existing quasi-independent state entities to adopt
2 and implement policies and procedures related to procurement practices, contributions
3 made to outside organizations and travel, meal and entertainment expenses. It also
4 prohibits those entities from retaining persons other than entity staff as lobbyists. This
5 Part also clarifies that the entity's governing body is responsible for ensuring compliance
6 with the adopted policies and for reporting annually to the Legislature on certain
7 procurements and contributions. Part A also establishes a framework for joint standing
8 committees of the Legislature to use in assessing whether proposed quasi-independent
9 state entities should be required to follow these requirements and to help ensure that
10 strong governance structures are incorporated into legislation for future quasi-
11 independent state entities.

12 Part B of the bill gives a joint standing committee of the Legislature authority to
13 submit legislation to the 126th Legislature to add an existing quasi-independent state
14 entity to the list of agencies that must adhere to the requirements established in Part A for
15 financial policies and procedures and reporting to the Legislature or to incorporate the
16 provisions required for future quasi-independent state entities into the laws governing
17 existing entities that fall under the committee's jurisdiction.