

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

CHAPTER 701

S.P. 816 - L.D. 2197

An Act Concerning Disability Retirement Benefits under the Maine State Retirement System

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

Sec. 1. PL 2001, c. 443, §6 is amended to read:

Sec. 6. Restoration of benefit reductions. The Maine State Retirement System shall suspend implementation of Private and Special Law 1995, chapter 38, section 1 until ~~January 1, 2003~~ February 15, 2004 and shall reverse any permanent disability benefit reductions pursuant to that section that have occurred as a result of a benefit recipient's actual earnings in calendar years 1999 and 2000.

See title page for effective date.

CHAPTER 702

H.P. 1695 - L.D. 2193

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

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

Sec. 1. 3 MRSA §162, sub-§1-B is enacted to read:

1-B. Office of Program Evaluation and Government Accountability budget. To present the budget request of the Office of Program Evaluation and Government Accountability to the State Budget Officer as provided in Title 5, section 1665. If the budget presented pursuant to subsection 1-A differs from the budget request submitted by the Office of Program Evaluation and Government Accountability pursuant to this subsection, the Legislative Council shall simultaneously submit a report to that office and to the State Budget Officer explaining why the Legislative Council's budget request differs from the budget request of the Office of Program Evaluation and Government Accountability.

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**

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government. 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 agency purposes.

§992. Definitions

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

1. Committee. "Committee" means a joint legislative committee established to oversee program evaluation and government accountability matters.

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. Other entity. "Other entity" means any public or 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.

5. 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.

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

7. 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 membership of the committee and the selection of chairs are established by joint rule of the Legislature.

§994. Duties of committee

The committee has the following duties:

1. Director. To evaluate the director of the office and make a recommendation to the Legislative Council in writing regarding the reappointment of the director of the office before the Legislative Council considers the reappointment of the director of the office;

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

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

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

5. Examine witnesses. To examine witnesses and to order the appearance of any person or the appearance of any person for the purpose of production to the committee of papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other materials regardless of their physical or electronic form;

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

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

8. Subpoenas. To issue subpoenas under the signature of either of the cochairs in the event of refusal to appear or to produce papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other

materials regardless of their physical or electronic form. A subpoena issued under this subsection must be issued pursuant to the provisions of section 165 and chapter 21;

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

10. Adopt rules. To adopt rules, as long as the rules are not in conflict with the Joint Rules of the Legislature.

§995. Director

1. Appointment. Not earlier than April 1, 2003, the Legislative Council shall appoint by an affirmative vote of 8 members of the Legislative Council a director of the office for the purposes of conducting program evaluations pursuant to this chapter. The director must be appointed to an initial 5-year term, which is subject to renewal by the Legislative Council every 5 years thereafter. During the term of the contract, the director may be terminated only for cause by an affirmative vote of 8 members of the Legislative Council. The Legislative Council shall establish the compensation of the director. The director's duties must be performed independently but under the general policy direction of the committee.

2. Duties. The director shall supervise the staff of the office in accordance with policies adopted by the committee and consistent with the policies of the Legislative Council. The director shall prepare and present a biennial budget to the committee for its approval. Money appropriated or allocated to the office must be expended in the discretion of the director and the committee only. The director also shall prepare and present an annual work plan to the committee for its consideration and approval. The director also may contract with private individuals or entities for the conduct of program evaluations under this chapter. The director may request the committee to issue subpoenas.

3. Employees. Employees of the office are employed by and are responsible to the director, who shall hire and fix the compensation of each employee, subject to the approval of the committee and within resources available in the biennial budget. Other than the director appointed pursuant to subsection 1, an employee of the office may not be employed prior to July 1, 2003.

4. Annual report. The director shall prepare an annual report of the office's activities for each calendar year and shall submit that annual report to the committee and the Legislature no later than March 1st of each calendar year.

§996. Assistance to committee

The Department of 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 shall assist the committee and office with program evaluations under this chapter if the committee and the director determine that such assistance is necessary.

§997. 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. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office.

3. Confidentiality. 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 provisions of Title 1, chapter 13. 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 may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. 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 must be made available when necessary to the office for performance of its duties.

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

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

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office 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. 5 MRSA §1581, as corrected by RR 2001, c. 1, §8, is amended by adding at the end a new paragraph to read:

The Office of Program Evaluation and Government Accountability, established under Title 3, section 991, must be a separate appropriation not included under any other department or agency in the General Fund appropriation bill.

Sec. 4. 5 MRSA §1664, as amended by PL 1997, c. 655, §1, is further amended by adding after the 4th paragraph a new paragraph to read:

If the Governor submits legislation setting forth appropriations or allocations for the Office of Program Evaluation and Government Accountability that differ from the budget request presented by the Legislative Council on behalf of that office, the Governor shall simultaneously submit a report to the Legislative Council and the Office of Program Evaluation and Government Accountability explaining why the Governor's budget legislation differs from the Legislative Council's budget request.

Sec. 5. 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 beginning April 1, 2003 and start-up costs to establish the office, office space, general operating expenses and expenses of the Government Oversight Committee including one-time costs for furnishings and computers for 3 of the new staff. The office will be fully staffed and operational in fiscal year 2003-04 with a total of 7 full-time and one part-time positions.

General Fund	2001-02	2002-03
Positions - Legislative Count	(0.000)	(1.000)
Personal Services	\$0	\$29,000
All Other	0	57,154
Total	\$0	\$86,154

See title page for effective date.