

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2014 to July 16, 2015**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 15, 2015**

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

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**Augusta, Maine**  
**2015**

**5. Settings.** Require or cause an employee or applicant to alter, or request that an employee or applicant alter, settings that affect a 3rd party's ability to view the contents of a personal social media account;

**6. Employees.** Discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose or provide access to information as specified in subsection 1, 2 or 3 or for refusal to add anyone to the employee's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5; or

**7. Applicants.** Fail or refuse to hire an applicant as a result of the applicant's refusal to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to add anyone to the applicant's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5.

#### **§617. Exceptions**

**1. Publicly available information.** This subchapter does not apply to information about an applicant or employee that is publicly available.

**2. Duty to screen or supervise.** This subchapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization as defined by the federal Securities Exchange Act of 1934, 15 United States Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent necessary to supervise communications of regulated financial institutions or insurance or securities licensees for banking-related, insurance-related or securities-related business purposes.

**3. Investigation.** This subchapter does not prohibit or restrict an employer from requiring an employee to disclose personal social media account information that the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or a workplace-related violation of applicable laws, rules or regulations if requiring the disclosure is not otherwise prohibited by law, as long as the information disclosed is accessed and used solely to the extent necessary for purposes of that investigation or a related proceeding.

#### **§618. Workplace policies**

This subchapter does not limit an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement that an employee disclose to the employer the employee's user name, pass-

word or other information necessary to access employer-issued electronic devices, including but not limited to cellular telephones and computers, or to access employer-provided software or e-mail accounts.

#### **§619. Penalties for violation**

An employer who violates this subchapter is subject to a fine imposed by the Department of Labor of not less than \$100 for the first violation, not less than \$250 for the 2nd violation and not less than \$500 for each subsequent violation.

### **PART C**

#### **Sec. C-1. Appropriations and allocations.**

The following appropriations and allocations are made.

#### **LABOR, DEPARTMENT OF**

#### **Regulation and Enforcement 0159**

Initiative: Provides funds for a 1/2-time Labor and Safety Inspector position and related All Other costs for the additional enforcement requirements associated with the disclosure of personal social media account information and with employee rights regarding a leave of absence when the employee is a victim of violence.

GENERAL FUND	2015-16	2016-17
POSITIONS -	0.500	0.500
LEGISLATIVE COUNCIL		
Personal Services	\$23,867	\$32,372
All Other	\$22,600	\$22,600
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GENERAL FUND TOTAL	\$46,467	\$54,972

See title page for effective date.

### **CHAPTER 344**

### **S.P. 332 - L.D. 941**

#### **An Act To Improve Tax Expenditure Transparency and Accountability**

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

**Sec. 1. 3 MRSA §992, sub-§4-A** is enacted to read:

**4-A. Policy committee.** "Policy committee" means the joint standing committee of the Legislature having jurisdiction over taxation matters.

**Sec. 2. 3 MRSA §992, sub-§5**, as amended by PL 2003, c. 673, Pt. GGGG, §3, is further amended to read:

**5. Program evaluation.** "Program evaluation" means an examination of any government program that includes performance audits, management analysis, inspections, operations, research or examinations of efficiency, effectiveness or economy or the evaluation of any tax expenditure required under this chapter.

**Sec. 3. 3 MRSA §992, sub-§§6-A and 6-B** are enacted to read:

**6-A. Statistic.** "Statistic" means a numerical value computed from a set of data. "Statistic" includes, but is not limited to, a sum, mean, median, maximum, minimum, range and variance.

**6-B. Tax expenditure.** "Tax expenditure" has the same meaning as under Title 5, section 1666.

**Sec. 4. 3 MRSA §§998 to 1001** are enacted to read:

**§998. Process for review of tax expenditures**

**1. Assignment of review categories.** By October 1, 2015, the committee, in consultation with the policy committee, shall assign each tax expenditure to one of the following review categories:

A. Full evaluation for tax expenditures that are intended to provide an incentive for specific behaviors, that provide a benefit to a specific group of beneficiaries or for which measurable goals can be identified;

B. Expedited review for tax expenditures that are intended to implement broad tax policy goals that cannot be reasonably measured; and

C. No review for tax expenditures with an impact on state revenue of less than \$50,000 or that otherwise do not warrant either a full evaluation or expedited review.

**2. Schedule.** By October 1, 2015, the committee, in consultation with the policy committee, shall establish a schedule of ongoing review of the tax expenditures assigned to the full evaluation and expedited review categories pursuant to subsection 1, paragraphs A and B. To the extent practicable, the committee shall schedule the review of tax expenditures with similar goals during the same year.

**3. Annual review of assignments and schedule.** By October 1st of each year, beginning in 2016, the committee, in consultation with the policy committee, shall review and make any necessary adjustments to the review category assignments and schedule pursuant to subsections 1 and 2, including adjustments needed to incorporate tax expenditures enacted, amended or repealed during the preceding year.

**4. Office responsibilities.** The office shall maintain a current record of the review category assignments and the schedule under this section.

**§999. Full evaluation of tax expenditures**

**1. Evaluation process.** Beginning January 1, 2016, the office shall evaluate each tax expenditure identified under section 998, subsection 1, paragraph A in accordance with the schedule established in section 998, subsection 2.

A. By January 31st of each year, the committee, after consideration of recommendations from the office, shall approve the following for each tax expenditure subject to full evaluation review in that year:

(1) The purposes, intent or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments and changes in the state economy and fiscal condition;

(2) The intended beneficiaries of the tax expenditure;

(3) The evaluation objectives, which may include an assessment of:

(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;

(b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;

(c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;

(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;

(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;

(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;

(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;

(h) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and

(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals; and

(4) The performance measures appropriate for analyzing the evaluation objectives. Performance measures must be clear and relevant to the specific tax expenditure and the approved evaluation objectives.

B. Before final approval pursuant to paragraph A, the committee shall seek and consider input from the policy committee and stakeholders and may seek input from experts.

**2. Action by office; report.** By December 31st of each year, beginning in 2016, the office shall complete the tax expenditure evaluations pursuant to subsection 1 scheduled for that year and submit a report on the results to the committee and the policy committee. The office shall seek stakeholder input as part of the report. For each tax expenditure evaluated, the report must include conclusions regarding the extent to which the tax expenditure is meeting its purposes, intent or goals and may include recommendations for continuation or repeal of the tax expenditure or modification of the tax expenditure to improve its performance.

**3. Action by committee.** The committee shall review the report submitted by the office under subsection 2, assess the report's objectivity and credibility and vote whether to endorse the report. By June 1st of each year, beginning in 2017, the committee shall submit a record of the vote on the report and any comments of or actions recommended by the committee to the policy committee for its review and consideration.

**4. Action by policy committee.** The policy committee shall review the results of the tax expenditure evaluations and of the committee's review based on materials submitted under subsections 2 and 3. By December 1st of each year, beginning in 2017, the policy committee shall submit to the Legislature a report documenting its activities under this chapter and any recommendations resulting from its review of the materials submitted under subsections 2 and 3. The policy committee may submit a bill to the next regular session of the Legislature to implement the policy committee's recommendations.

#### **§1000. Expedited review of tax expenditures**

**1. Expedited review process.** Beginning July 1, 2016, the policy committee shall conduct expedited reviews of tax expenditures and the associated tax

policies identified under section 998, subsection 1, paragraph B, in accordance with the schedule established in section 998, subsection 2.

A. For each tax policy subject to review, the policy committee shall assess the continued relevance of, or need for adjustments to, the policy, considering:

(1) The reasons the tax policy was adopted;

(2) The extent to which the reasons for the adoption still remain or whether the tax policy should be reconsidered;

(3) The extent to which the tax policy is consistent or inconsistent with other state goals; and

(4) The fiscal impact of the tax policy, including past and estimated future impacts.

B. For each tax expenditure related to the tax policy under review, the policy committee shall assess the continued relevance of, or need for adjustments to, the expenditure, considering:

(1) The fiscal impact of the tax expenditure, including past and estimated future impacts;

(2) The administrative costs and burdens associated with the tax expenditure;

(3) The extent to which the tax expenditure is consistent with the broad tax policy and with the other tax expenditures established in connection with the policy;

(4) The extent to which the design of the tax expenditure is effective in accomplishing its tax policy purpose;

(5) The extent to which there are adequate mechanisms, including enforcement efforts, to ensure that only intended beneficiaries are receiving benefits and that beneficiaries are compliant with any requirements;

(6) The extent to which the reasons for establishing the tax expenditure remain or whether the need for it should be reconsidered; and

(7) Any other reasons to discontinue or amend the tax expenditure.

**2. Action by the office.** By July 1st of each year, beginning in 2016, the office shall collect, prepare and submit to the policy committee the following information to support the expedited reviews under subsection 1:

A. A description of the tax policy under review;

B. Summary information on each tax expenditure associated with the tax policy under review, including:

(1) A description of the tax expenditure and the mechanism through which the tax benefit is distributed;

(2) The intended beneficiaries of the tax expenditure; and

(3) A legislative history of the tax expenditure; and

C. The fiscal impact of the tax policy and each related tax expenditure, including past and estimated future impacts.

**3. Report by policy committee; legislation.** By December 1st of each year, beginning in 2016, the policy committee shall submit to the Legislature a report on the results of the expedited reviews conducted pursuant to subsection 1 that year. The policy committee may submit a bill related to the report to the next regular session of the Legislature to implement the policy committee's recommendations.

#### **§1001. Tax expenditure evaluation process details**

**1. Information requests; confidentiality; reporting.** The following provisions apply to the performance of duties under sections 999 and 1000. These powers are in addition to the powers granted to the office and committee under this chapter.

A. The office may request confidential information from the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies as necessary to address the evaluation objectives and performance measures approved under section 999, subsection 1. The office shall request any confidential information in accordance with section 997, subsection 4. The office shall request that confidential tax information, other than beneficiary contact information, be made accessible to the office as de-identified tax data. If Maine Revenue Services is unable to provide such data, the office and representatives of Maine Revenue Services shall determine appropriate methods for the office to access the requested information.

B. Upon request of the office and in accordance with section 997, subsection 4, the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies shall provide confidential information to the office. The office shall maintain the confidentiality of the information provided, in accordance with section 997, subsections 3 and 4. This paragraph does not apply to federal tax information that is confidential under Title 36, section 191, subsection 3.

C. The office, the committee or the policy committee may consult with governmental agencies, other entities and experts, including members of the Consensus Economic Forecasting Commission under Title 5, section 1710.

D. The office may contract with other entities for the purpose of obtaining assistance in the review of tax expenditures. The office shall require a nondisclosure agreement as part of any contract entered into pursuant to this paragraph. The office may not disclose confidential taxpayer information to a contractor, except for:

(1) Contact information for specific beneficiaries of tax expenditures for the purpose of conducting interviews, surveys or other data collection; and

(2) Statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers.

The contractor shall retain physical control of any information obtained pursuant to this paragraph until the conclusion of the review for which the information was provided, after which the information must be immediately destroyed.

E. The office may report confidential information obtained under this section to Legislators, legislative committees, state agencies and the public only in the form of statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers.

F. Prior to the submission of a tax expenditure evaluation report under section 999, subsection 2, the office shall provide the State Tax Assessor an opportunity to review a draft of the report in accordance with the provisions of section 997, subsection 1. The State Tax Assessor may advise the office on compliance with paragraph E.

G. For purposes of this section, the following terms have the following meanings:

(1) "Beneficiary contact information" means the following information listed on a tax return or included in a tax return: the name, address, zip code, e-mail address and telephone number of the taxpayer, and of any related entity, officers, attorneys, personal representatives and other agents, tax preparers and shareholders of, partners of or members of the taxpayer or of a listed related entity.

(2) "De-identified tax data" means tax returns and other confidential tax information that are redacted or otherwise modified or restricted by Maine Revenue Services so as to exclude the following:

(a) Beneficiary contact information;

(b) Identification numbers including federal or state employer identification numbers, social security numbers and registration numbers; and

(c) Other information from which the State Tax Assessor determines that the identity of the taxpayer could reasonably be inferred.

**2. Legislation.** The committee may submit to the Legislature any legislation it considers necessary to improve the process or availability of data for the review of tax expenditures.

**Sec. 5. 5 MRSA §1666, 3rd ¶,** as amended by PL 2007, c. 1, Pt. P, §2, is further amended to read:

A budget document transmitted by the Governor or Governor-elect must include a part that asks the Legislature whether it wishes to continue funding each individual tax expenditure provided in the statutes. For purposes of this paragraph, "tax expenditures" means those state tax revenue losses attributable to provisions of Maine tax laws that allow a special exclusion, exemption or deduction or provide a special credit, a preferential rate of tax or a deferral of tax liability. The part must include for each tax expenditure a statutory section reference, a brief description of each tax expenditure and the loss of revenue estimated to be incurred by funding source and fiscal year. The joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs shall consider any reports regarding the evaluation of tax expenditures completed during the previous 2 years pursuant to Title 3, sections 999 and 1000 and shall hold at least one public hearing to receive public comment regarding those tax expenditures when reviewing the continuation of tax expenditures pursuant to this section. This paragraph applies with respect to the preparation of the budget document for the 2008-2009 biennium and thereafter.

**Sec. 6. 36 MRSA §191, sub-§2, ¶¶XX and YY,** as enacted by PL 2013, c. 331, Pt. B, §5, are amended to read:

XX. The disclosure of information by the assessor to the board, except that such disclosure is limited to information that is pertinent to an appeal or other action or proceeding before the board; ~~and~~

YY. The inspection and disclosure of information by the board to the extent necessary to conduct appeals procedures pursuant to this Title and issue a decision on an appeal to the parties. The board may make available to the public redacted decisions that do not disclose the identity of a taxpayer or any information made confidential by state or federal statute; ~~and~~

**Sec. 7. 36 MRSA §191, sub-§2, ¶ZZ** is enacted to read:

ZZ. The disclosure of information by the State Tax Assessor or the Associate Commissioner for Tax Policy to the Office of Program Evaluation

and Government Accountability under Title 3, section 991 for the review and evaluation of tax expenditures pursuant to Title 3, chapter 37.

**Sec. 8. Lapsed balances; Office of Program Evaluation and Government Accountability; General Fund account.** Notwithstanding any other provision of law, the State Controller shall lapse \$62,000 from the Personnel Services line category and \$106,884 from the All Other line category in the Office of Program Evaluation and Government Accountability, General Fund account to the unappropriated surplus of the General Fund no later than June 30, 2016.

**Sec. 9. Lapsed balances; Legislature, General Fund account.** Notwithstanding any other provision of law, \$237,280 of unencumbered balance forward from the various program accounts and line categories in the Legislature, General Fund accounts as specified by the Executive Director of the Legislative Council lapses to the unappropriated surplus of the General Fund. By September 1, 2016, the Executive Director of the Legislative Council shall review the Legislature, General Fund accounts and notify the State Controller of the unencumbered balance forward amounts by account and line category totaling \$237,280 that the State Controller shall lapse to the unappropriated surplus of the General Fund no later than June 30, 2017.

**Sec. 10. Appropriations and allocations.** The following appropriations and allocations are made.

**PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY, OFFICE OF**

**Office of Program Evaluation and Government Accountability 0976**

Initiative: Establishes one Senior Analyst position and one Analyst position effective October 5, 2015 and provides funding for consultant services.

GENERAL FUND	2015-16	2016-17
POSITIONS -	2,000	2,000
LEGISLATIVE COUNCIL		
Personal Services	\$143,884	\$212,280
All Other	\$25,000	\$25,000
GENERAL FUND TOTAL	\$168,884	\$237,280

See title page for effective date.