

MAINE STATE LEGISLATURE

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LEGISLATIVE COUNCIL
July 13, 2004
2:00 p.m.
Room 334, Legislative Council Chamber

REVISED AGENDA

<u>Page No.</u>	<u>Item</u>	<u>Action</u>
	CALL TO ORDER	
	ROLL CALL	
1	SUMMARY OF THE JUNE 8, 2004 COUNCIL MEETING	Decision
	REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS	Information
6 12	<ul style="list-style-type: none">• Executive Director's Report• Fiscal Report (Pennoyer)• Office of Information Services' Report (Mayotte)• Update on Interim Studies (Patrick Norton)	
	REPORTS FROM COUNCIL COMMITTEES	
	<ul style="list-style-type: none">• Personnel Committee (Rep. Richardson, Chair) No Report• State House Facilities Committee (Sen. Gagnon, Chair) No Report	

OLD BUSINESS

None

NEW BUSINESS

13

Item #1: Background Information on the Office of Program
Evaluation and Governmental Accountability (OPEGA)

Information

COLLECTIVE BARGAINING (Executive Session)

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

SEN. BEVERLY C. DAGGETT
CHAIR

REP. PATRICK COLWELL
VICE-CHAIR



121st MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

SEN. SHARON ANGLIN TREAT
SEN. PAUL T. DAVIS, SR.
SEN. KENNETH T. GAGNON
SEN. CHANDLER E. WOODCOCK
REP. JOHN RICHARDSON
REP. JOSEPH BRUNO
REP. ROBERT W. DUPLESSIE
REP. DAVID E. BOWLES

DAVID E. BOULTER
EXECUTIVE DIRECTOR

MEETING SUMMARY
June 8, 2004

CALL TO ORDER

In the absence of the chair, the vice-chair, Speaker Colwell, called the Legislative Council meeting to order at 2:15 p.m. in the Legislative Council Chamber.

ROLL CALL

Senators:

Sen. Treat, Sen. Davis, Sen. Gagnon
Absent: President Daggett and Sen. Woodcock

Representatives:

Speaker Colwell, Rep. Richardson, Rep. Duplessie,
Rep. Bowles
Absent: Rep. Bruno

Legislative Officers:

Millicent MacFarland, Clerk of the House
David Shiah, Assistant Clerk of the House
David E. Boulter, Executive Director, Legislative Council
Grant Pennoyer, Director, Office of Fiscal and Program Review
David Elliott, Director, Office of Policy and Legal Analysis
Margaret Matheson, Revisor of Statutes
Lynn Randall, State Law Librarian
Paul Mayotte, Director, Legislative Information Services
Joy O'Brien, Secretary of the Senate (joined the meeting
in progress)

SUMMARY OF THE MAY 11, 2004 COUNCIL MEETING

Motion: That the Meeting Summary of May 11, 2004 be accepted and placed on file. (Motion by Sen. Treat, second by Sen. Davis, unanimous).

REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS

- **Executive Director's Report**

David Boulter, Executive Director, reported on the following items:

1. The State House and Capitol Park Commission met on June 2, 2004. The Commission voted to proceed to build the living memorial garden in Capitol Park, which was earlier authorized by statute. The memorial will be in the northwest section of Capitol Park. There is not enough money in its budget to do the entire project at this time; however, there are sufficient funds to complete approximately $\frac{3}{4}$ of the garden this year. The Commission will seek bids for the project. Mr. Boulter said he has a copy of the design plans in his office if anyone wants to review them. The garden is to be very natural with walk paths, plantings and benches.
2. Mr. Boulter announced that Patrick Norton, Deputy Director, Office of Policy and Legal Analysis, has now returned from his authorized leave of absence to attend the Muskie School of Public Service where he is pursuing his PhD. We welcome Mr. Norton's return.

No Council action required.

- **Fiscal Report**

Grant Pennoyer, Director, Office of Fiscal and Program Review, presented his report to the Council.

General and Highway Fund Revenue Variances for May, 2004

The General Fund revenue for the month of May was ahead of budget by \$71.5 million, increasing the positive year-to-date variance to \$114.1 million. Approximately \$75 million of the year-to-date variance is related to the liquor wholesale privatization contract (a major one-time event budgeted to be received in June). After adjusting for that, the General Fund was under budget in May by \$3.5 million, but remains \$39.1 million above budget for year-to-date. Individual Income Tax revenue was \$8.7 million below budget for May but \$25.1 million above budget for year-to-date; Sale Tax revenue was above budget \$2.5 million in May and above budget \$11.1 million year-to-date; Corporate Income Tax revenue was above budget \$2.0 million in May and above budget \$4.9 million year-to-date; Liquor Revenue and Investment Income revenues are above budget for May and for year-to-date. Cigarette Tax revenue was under budget \$2.0 million in May and under budget \$3.1 million year-to-date; Estate Tax revenue was over budget \$1.0 million for May, but under budget \$1.9 million year-to-date; and Insurance Company Tax revenue was over budget \$3.2 million in May and remained under budget \$1.5 million year-to-date.

The total Highway Fund revenue was under budget by a minor amount in May, but has a positive year-to-date variance of \$6.6 million.

Cash Pool Status

Mr. Pennoyer reported that absent the Reserves and the TAN borrowing, the General Fund cash position would have been \$261.2 million negative.

Mr. Pennoyer said the balances are better than projections made a year ago. The revenue surpluses and last year's ending surplus have enhanced the State's cash position. The TAN should be able to be paid off and rolled over to the next fiscal year.

No Council action required.

- **Office of Information Services' Report**

Paul Mayotte, Director, Legislative Information Services, presented the current status of the bill drafting system being developed by HP/Compaq. He reiterated his position that the Legislature should not accept the bill drafting system until the eight items listed below are addressed:

1. Acceptable performance speed
2. Validation that the Cross Reference process works as required
3. Correction of the Conflict Checking process
4. Implementation of the Phrase Search function
5. Establishment of a manual database with audit and history at the user level
6. Correction of several functions with Joint Orders and Resolves processes
7. Submission of information related to the populating and maintenance of the database
8. Extension of a warranty period to cover a full legislative session

Mr. Mayotte believes several of the above items are easily resolved, for example, two would require only several weeks to complete.

HP has since disagreed with the Legislature's position on 3 items proposed to be corrected during the warranty period. The items are:

1. Laws of Maine output styles
2. Pre-engrosser printed date
3. Uniform Code Bill specific requirements

Based on Mr. Mayotte's review of the requirements of the contract, it is his position that HP has not met the requirements of the contract. His office is now working with the Attorney General's Office to develop the options to assure HP is in compliance with the contract.

Discussion: Rep. Bowles asked what HP's actions were at this time, if they were cooperative and working toward resolution. Mr. Mayotte believes HP is resistant to further system programming or improvements. Executive Director Boulter mentioned that HP's current position may be the result of a change in management personnel. The current manager at HP is taking a harder line and is treating discussion with legislative staff as first round negotiations. He believed that the time for negotiating system changes has passed, even though HP is clearly trying to negotiate away some of its requirements.

Speaker Colwell said it appeared the Legislature may be forced to litigate, with the Attorney General representing us. He noted that the system needs to be in place for the next session and asked if there was a contingency plan. Mr. Mayotte said there were two contingency plans: the first being continuing to use the Wang system and the other, assuming the code is available to his office, completing the items using in-house resources. Mr. Mayotte feels some of the items listed above could be done in-house with the right tools and others could be done with assistance from local software support.

Mr. Boulter said he and Mr. Mayotte would be meeting with the Attorney General's Office. He then asked for guidance from the Legislative Council. If the Attorney General's Office believes it to be prudent for the Legislature to pursue litigation to force HP to deliver a workable system, should the matter be brought back to the Legislative Council for authorization or is the Executive Director's office authorized to proceed in accordance with guidance from the Attorney General's Office?

Discussion: Sen. Treat said she felt that the Legislature was at a point where if the system was not running shortly, it would not be ready the upcoming session. She would like the Legislative Council to authorize all necessary legal action to compel delivery of a working system and hoped that action would be taken as quickly as possible. She noted that the problem had been going on for years and the Legislature cannot wait any longer. Speaker Colwell agreed. Rep. Richardson thought the Legislature should try one more time to negotiate a solution with HP as an alternative to litigation and pursue legal action if there was no solution in the next two weeks. Rep. Richardson suggested the Legislative Council give HP 2 or 3 more weeks of time to negotiate a resolution to the process with Mr. Mayotte, Mr. Boulter and Ms. Matheson and if that failed the Legislative Council would litigate. Discussion followed as to whether Mr. Boulter should bring the matter back to the Council prior to proceeding with the Attorney General's Office. Rep. Richardson preferred having more information about the facts and circumstances as to what the Attorney General says and where the Legislature is with negotiations before he would support a lawsuit. He would prefer that Mr. Boulter report back to the Council either by telephone or call a Council meeting.

Motion: That the Executive Director continue to seek an administrative resolution with HP that will result in delivery of an acceptable bill drafting system. If no resolution is reached by July 1, 2004, then the Executive Director is authorized to proceed with the Attorney General, following consultation of the chair and vice-chair of the Legislative Council, to bring suit against HP to enforce the terms and conditions of the contract. (Motion by Sen. Gagnon, second by Rep. Duplessie, unanimous).

REPORTS FROM COUNCIL COMMITTEES

- **Personnel Committee**

Rep. Richardson, Chair of the Personnel Committee, reported that the committee met prior to the Council meeting, but had nothing of note to report to the Council at this time.

- **State House Facilities Committee** (Sen. Gagnon, Chair)

The State House Facilities Committee did not meet.

OLD BUSINESS

None

NEW BUSINESS

Item #1: 2004 Enacted Law Digest

David Elliott, Director, Office of Policy and Legal Analysis, confirmed that his office and the Office of Fiscal and Program Review had completed the work on the 2004 Enacted Law Digest for the 121st Second Regular and Second Special Sessions and the Digest has been distributed to all legislators.

COLLECTIVE BARGAINING (Executive Session)

None.

ANNOUNCEMENTS AND REMARKS

None.

ADJOURNMENT

The Legislative Council meeting was adjourned at 2:44 p.m. (Motion by Rep. Bowles, second by Sen. Treat, unanimous).

Fiscal Briefing for the Legislative Council

July 13, 2004 Meeting

Prepared by the Office of Fiscal & Program Review

1. Very Preliminary General Fund & Highway Fund Revenue Summary for FY04

- **General Fund**

- June 2004 General Fund revenue performance was very strong; and appears to be greater than \$20 million over budget for June after adjusting for the \$75M liquor wholesale privatization contract that was booked in May. For FY04, General Fund will likely have a positive variance of approximately \$60M. There are some closing transactions that may adjust these amounts.
- Overview of major revenue lines:
 - Sales Tax – Very close to budget in June but ends FY04 \$11M+ over budget;
 - Individual Income Tax – Over by \$2M+ in June and over by \$27M+ for FY04
 - Corporate Inc. Tax – Over by \$3.0M+ in June and almost \$8.0M over for FY04:
 - Cigarette Tax – Recovered a little in June but ends the year under budget by approximately \$1.5M;
 - Estate Tax – Over by \$2.0M+ in June to bring in line with budgeted amounts after being under budget for most of the year;
 - Investment Income – May end the year nearly \$1M over budget;
 - Liquor and Lottery Revenue (excluding liquor contract) – May be very close to budget on a combined basis; and
 - Other Revenue – May end the year \$15M+ over budget (abandoned property transfer, real estate transfer tax and revenue from fines providing most of this positive variance).

- **Highway Fund**

- Highway Fund revenue also ended FY04 very strong; more than \$7.5M over budget for FY04. Based on PL 2003, c. 690, Part I, this surplus will be transferred to the Highway and Bridge Improvement, Highway Fund account in the Dept. of Transportation.

2. Year-end Disposition of General Fund Unappropriated Surplus (see attached)

3. Cash Pool Status

- May 2004 Cash Pool Summary (see attached)
- General Fund and Highway Fund cash trends through June 2004 (see attached)
- FY05 Tax Anticipation Notes are \$190M, \$85M less than FY04 amount, \$275M.

Distribution of General Fund Unappropriated Surplus at Year's End

Detail for Fiscal Year 2003-04

Changes to Unappropriated Surplus over Budgeted Balance	
Prior Period and Other Accounting Adjustments	\$0
Total Lapsed Balances ¹	\$7,679,782
Less Budgeted Lapsed Balances ¹	(\$2,679,782)
Excess/Surplus Revenue ²	\$60,000,000
Total Increase (Decrease) of Unappropriated Surplus	\$65,000,000
 Distributions in Order of Priority	
1) Budget Stabilization Fund (32% of Unappropriated Surplus)	\$20,800,000
2) Retirement Allowance Fund (32% of Unappropriated Surplus)	\$20,800,000
3) Reserve for General Fund Operating Capital (16% of Unappropriated Surplus)	\$10,400,000
4) State Contingent Account ³ (up to \$350,000 to replenish account - 5 MRSA §1507)	\$350,000
5) Loan Insurance Reserve Fund (up to \$1,000,000 - 5 MRSA §1511)	\$1,000,000
6) Fiscal Year 2003-04 "Cascade" - PL 2003, c. 513, Part P ⁴	\$4,345,662
a) Finance Authority of Maine - Student Financial Assistance	\$564,287
b) Higher Education	
- University of Maine System	\$850,000
- Maine Community College System	\$350,000
- University of Maine System - Economic Improvement Fund	\$2,000,000
c) Library and Public Broadcasting	
- Maine State Library	\$57,538
- Maine Public Broadcasting Corporation	\$123,837
d) Conservation - Shore and Harbor Management Fund	\$400,000
Net Increase (Decrease) to Unappropriated Surplus after Year-end Transfers	\$7,304,338

Notes:

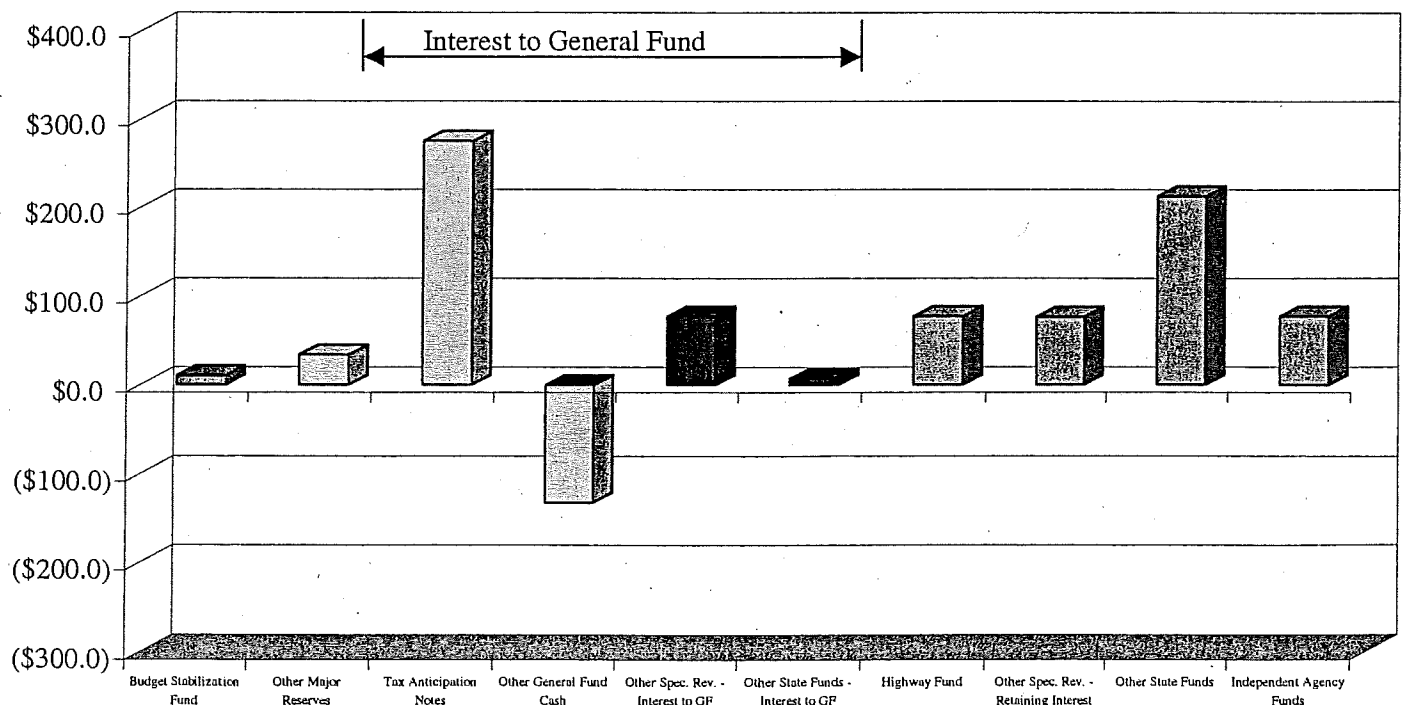
- ¹ Total of Lapsed Balances, the unobligated balance in non-carrying accounts, is assumed to be \$5.0 million more than the budgeted lapsed amounts.
- ² Excess Revenue is based on preliminary FY04 year-end amounts, but does not include some closing period transactions.
- ³ Assumes that the State Contingent Account will spend the full \$350,000 transferred in FY04.
- ⁴ Total Transfers authorized in Part P total "up to \$4,495,662", but detail only totals to \$4,345,662. These transfers are considered adjustments to appropriations (increasing total appropriations) in FY05.

Composition of State's Cash Pool May 2004 Average Daily Balances

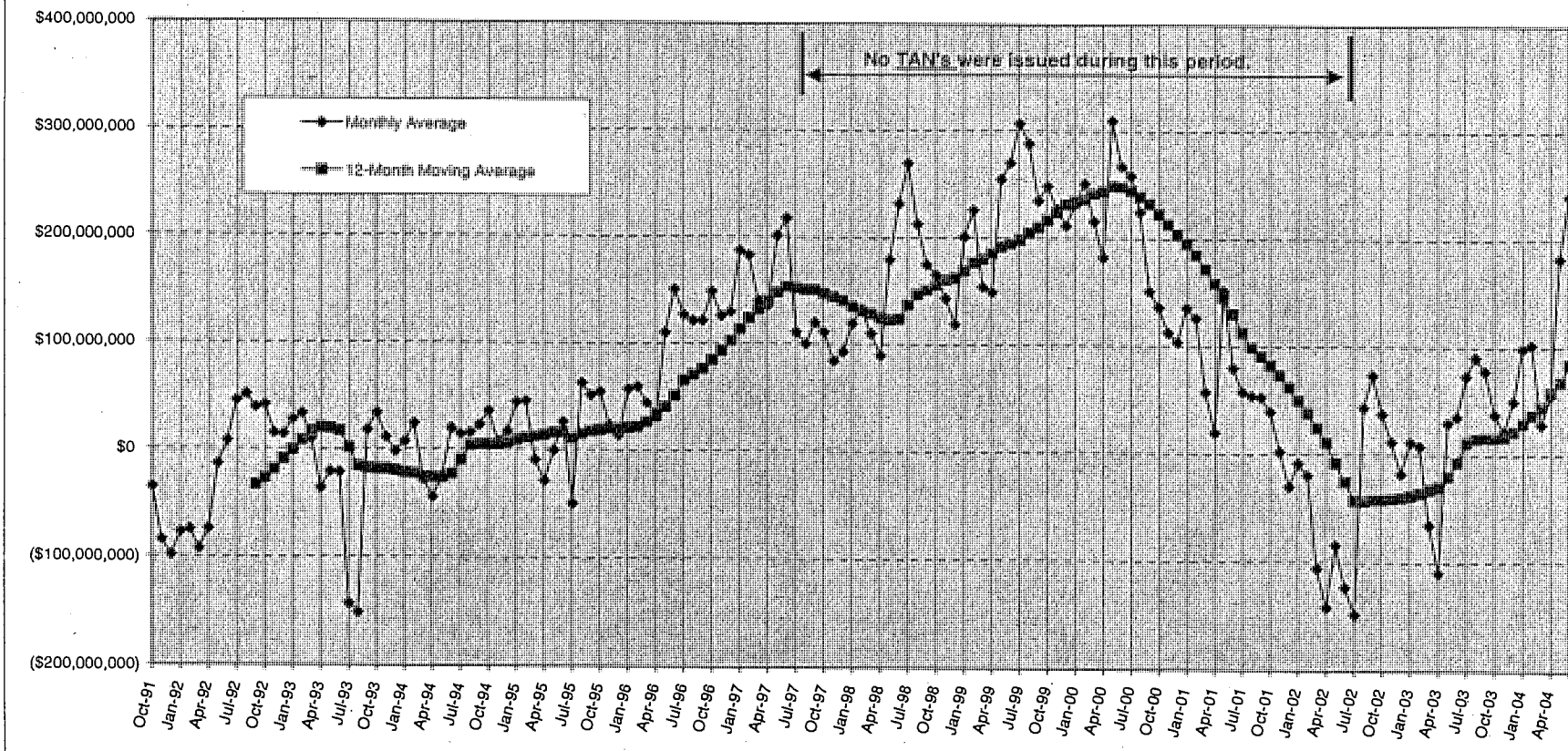
	May 2004
General Fund - Total	\$187,291,734
General Fund - Detail	
Budget Stabilization Fund (Rainy Day Fund)	\$10,640,560
Other Major Reserves *	\$33,842,639
Tax Anticipation Notes	\$275,000,000
General Fund - Other	(\$132,191,465)
Highway Fund	\$77,524,317
Other Special Revenue - Contributing to General Fund	\$77,421,220
Other Special Revenue - Retaining Interest Earned	\$76,786,271
Other State Funds - Contributing Interest to General Fund	\$7,233,946
Other State Funds	\$212,987,628
Independent Agency Funds	\$77,403,389
Total Cash Pool	\$716,648,505

* Includes Reserve for General Fund Operating Capital and Federal Relief Funds Reserve

Composition of Cash Pool Average Daily Balances in May 2004



GENERAL FUND DAILY STARTING CASH BALANCES

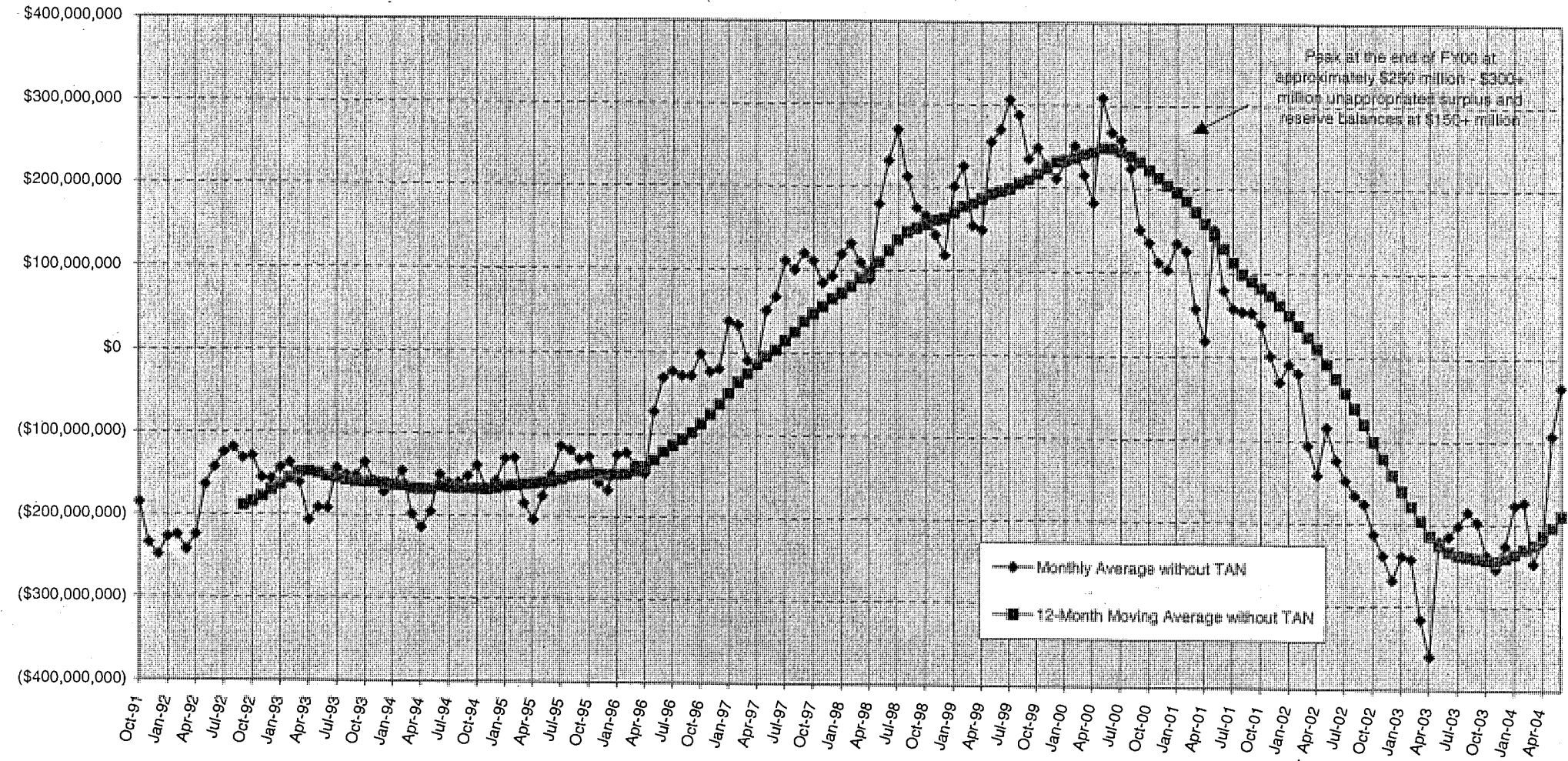


TAX ANTICIPATION NOTES (TAN's) - History from FY 1990-91 ⁽¹⁾

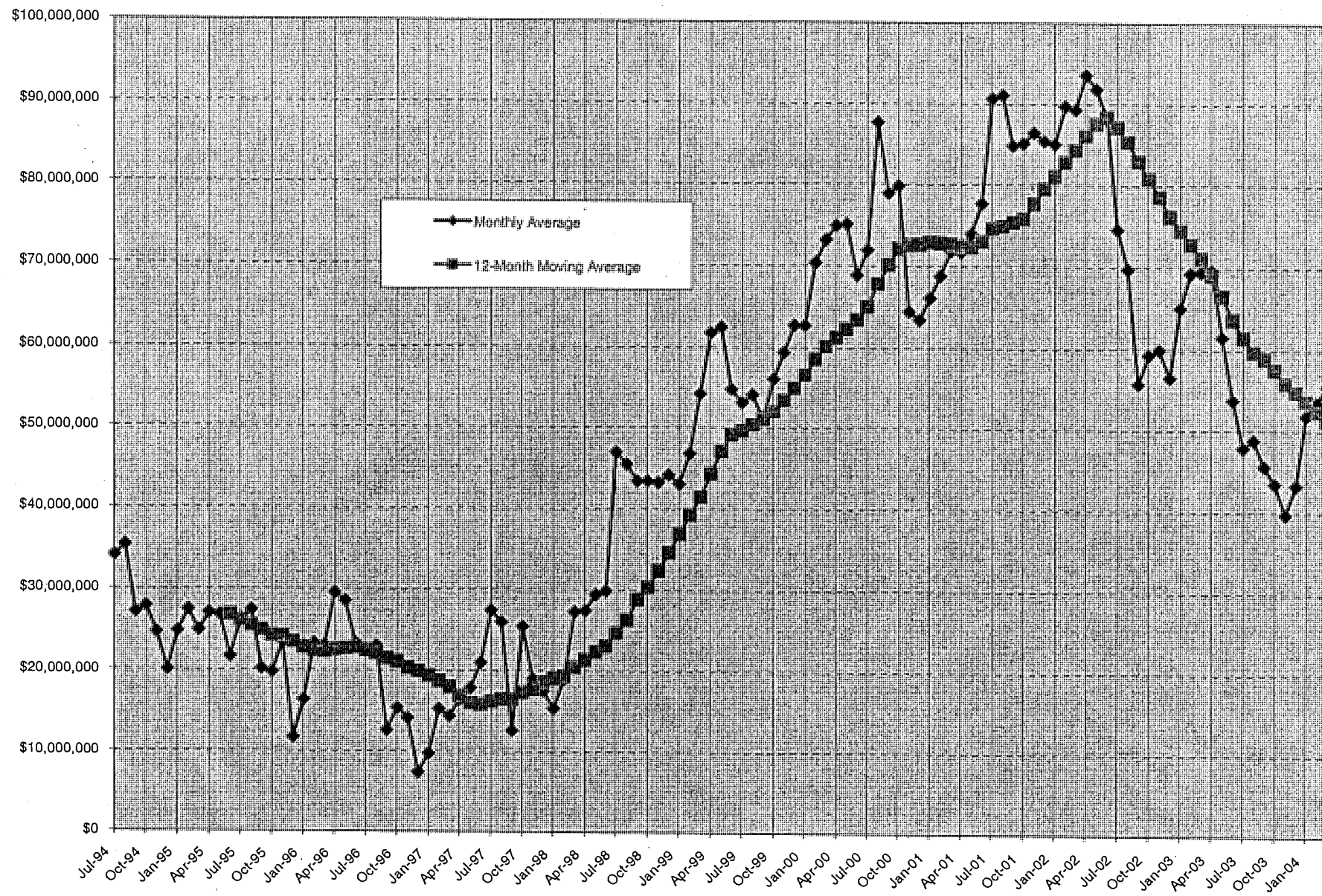
Fiscal Year	Amount Authorized	Amount Issued	Reference
2004-05 ⁽¹⁾	\$301,688,831 ⁽¹⁾	\$190,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2003-04 ⁽¹⁾	\$284,492,042 ⁽¹⁾	\$275,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2002-03 ⁽¹⁾	\$282,869,203 ⁽¹⁾	\$250,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2001-02	\$100,000,000	\$0	5 MRSA, §150 (as amended by PL 2001, c. 467)
1997-98	\$100,000,000	\$0	PL 1997, c. 24, §F-1 (Repealed by PL 1997, c. 643, §E-5)
1996-97	\$190,000,000	\$150,000,000	PL 1995, c. 665 §P-1
1995-96	\$182,000,000	\$182,000,000	PL 1995, c. 368, §V-1
1994-95	\$175,000,000	\$175,000,000	PL 1993, c. 707, §P-2
1993-94	\$170,000,000	\$170,000,000	PL 1993, c. 382, §1
1992-93	\$170,000,000	\$170,000,000	PL 1991, c. 780, §BB-1
1991-92	\$150,000,000	\$150,000,000	PL 1991, c. 589, §1
1990-91	\$125,000,000	\$115,000,000	PL 1991, c. 5, §1

Notes: ⁽¹⁾ 5 MRSA, §150 provides the statutory authorization for Tax Anticipation Notes. As amended by PL 2001, c. 705, the limit is the same as that imposed by the Constitution of Maine, Article IX, Sec. 14, 10% of total General Fund appropriations and Highway Fund allocations or 1% of the State Valuation, whichever is less. The amounts authorized for fiscal years 2002-03 and 2003-04 reflect General Fund appropriations and Highway Fund allocations through the 121st Legislature, 1st Regular Session. Amounts for fiscal year 2004-05 reflect budgeted amounts at the end of the 121st Legislature, 2nd Special Session. Special exceptions to the general authorization levels are detailed in this table.

GENERAL FUND
DAILY STARTING CASH BALANCES - EXCLUDING TAX ANTICIPATION NOTES



HIGHWAY FUND DAILY STARTING CASH BALANCES



**121st MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL**

**Technology Report
July 13, 2004**

- **HP has agreed to correct three of the open issues**
 - **Add Pre-engrosser date printing**
 - **Correct Uniform Code Bill formatting**
 - **Correct Joint Order/Resolution items**
- **In preparation for the discussion with HP, the Legislature has reviewed the remaining issues in great detail and has developed a discussion position for each**
- **HP postponed a July 12th meeting to discuss their position**
- **The Legislature is working to reschedule the canceled meeting with HP within the week**

DAVID E. BOULTER
EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

Memorandum

To: Members of the 121st Legislative Council

From: *Dave*
Dave Boulter, Executive Director

Date: July 13, 2004

Re: OPEGA statutes

In response to some recent inquiries about the law that establishes the Office of Program Evaluation and Government Accountability (OPEGA), I have attached a copy of 3 MRSA, §991 *et seq.* for your reference. As you know, the law has been amended several times since it was first passed. This compilation is current law, including amendments made by the Legislature through the Second Special Session of the 121st Legislature, which becomes effective on July 30, 2004.

As you review the law, you will see that most of the administrative work and policy decisions are vested in the committee established to oversee program evaluation and governmental accountability matters, including hiring of staff, development of budgets and annual work plans and evaluating the director in his or her work performance. Much of the substantive work conducting program evaluations and audits and issuing reports is the work of the OPEGA staff.

However, I draw your attention to section 995 that vests authority in the Legislative Council to appoint the director of the office and establish the director's compensation. Under the law, the director must be nonpartisan and is appointed for an initial 5-year term upon an affirmative vote of 8 members of the Legislative Council. The Legislative Council has exclusive authority to appoint the director for an initial term. The oversight committee may make a recommendation to the Legislative Council regarding the reappointment of a director of the office but it has no authority to do so for the initial appointment.

I also draw your attention to section 996 that requires the Commissioner of Administrative and Financial Services to provide office space to house the OPEGA offices within the Cross Building, at no charge.

If you have any questions or would like additional information, please let me know. Thank you.

Attachment

G:\COUNCIL\121st\memo to legislative council re OPEGA.doc (July 12, 2004 10:20 AM)

(TITLE 3)
(LEGISLATURE)

CHAPTER 37
LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND
PROGRAMS
(PL 2001, c. 702, §2)

§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.

§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. "Other entity" may include local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation.

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.

5-A. Qualified auditor. "Qualified auditor" means an auditor who meets the education and experience requirements of the Office of State Auditor as defined in Title 5, section 241.

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;

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

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 upon a majority vote of the committee 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;

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

11. Information available to committee. To receive certain information. Information that is made available to the committee is governed by chapter 21, which governs legislative investigating committees, and by Title 1, chapter 13, which governs public records and proceedings.

§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 nonpartisan 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 and in a nonpartisan manner 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 must be nonpartisan. 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 January 15th 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.

The Commissioner of Administrative and Financial Services shall provide office space to house the office within the Burton M. Cross Building. This office space must be provided at no charge.

§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 office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and 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 its 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.