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Date: (Filing No. S- )

**JUDICIARY**

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**STATE OF MAINE  
SENATE  
132ND LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 55, L.D. 127, “An Act to Strengthen Legislative Oversight of Government Agencies and Programs by Reaffirming the Legislature's Access to Confidential Records”

Amend the bill by striking out the the emergency preamble and substituting the following:

**'Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this legislation provides that the Government Oversight Committee may receive and review information that is privileged or confidential and exempt from public disclosure; and

**Whereas,** the Government Oversight Committee requires immediate access to information concerning children who died in the State in order to complete its evaluation of the Department of Health and Human Services, Office of Child and Family Services; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

**'Sec. 1. 3 MRSA §994, sub-§7,** as enacted by PL 2001, c. 702, §2, is amended to read:

**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. Notwithstanding any provision of this chapter to the contrary and pursuant to subsections 11 and 13, the committee may meet in executive session pursuant to Title 1, section 405 to review, inspect or deliberate the working papers that were considered and referenced in a report of the office for the sole

**COMMITTEE AMENDMENT**

1 purpose of voting on a report pursuant to this subsection. Personal identifying information  
2 contained in the working papers may not be made available to the committee unless  
3 necessary to the committee's deliberations as determined by an affirmative vote of 2/3 of  
4 the members of the committee;

5 **Sec. 2. 3 MRSA §994, sub-§11**, as amended by PL 2005, c. 104, §2, is further  
6 amended to read:

7 **11. Information available to committee.** To receive ~~certain~~ and review information,  
8 including information that is otherwise privileged or confidential, that the committee  
9 determines necessary to properly perform its constitutional functions by providing  
10 thorough oversight of government agencies, programs or other entities identified in section  
11 991 or identified in an annual work plan prepared by the director. Information that is made  
12 available to the committee is governed by subsection 13 and section 997, subsection 3,  
13 which govern privileged or confidential information made available to the office, by  
14 chapter 21, which governs legislative investigating committees, and by Title 1, chapter 13,  
15 which governs public records and proceedings and executive sessions. Notwithstanding  
16 any provision of law to the contrary, privileged or confidential information that is made  
17 available to the committee pursuant to this chapter is and remains privileged or confidential  
18 and may not be disclosed to any person or released to the public. Any release or disclosure  
19 of privileged or confidential information outside of the executive session in subsection 7 is  
20 not debate within the meaning of the Constitution of Maine, Article IV, Part Third, Section  
21 8, is not a part of the legislative process and is not a legislative act as described in Title 14,  
22 section 8104-B, subsection 1; and

23 **Sec. 3. 3 MRSA §994, sub-§12**, as enacted by PL 2005, c. 104, §3, is amended to  
24 read:

25 **12. Immediate review system.** To establish a system to provide immediate review of  
26 a program or function of a state agency or other entity in the event that there is a suspicion  
27 of a major mismanagement of public funds or functions. If the director determines it is  
28 necessary to proceed under the immediate review system and the committee approves  
29 proceeding under that system, qualified auditors and investigators may be retained by the  
30 director for that purpose. The director shall coordinate efforts with the Attorney General,  
31 State Auditor, State Controller and others considered appropriate by the director-; and

32 **Sec. 4. 3 MRSA §994, sub-§13** is enacted to read:

33 **13. Confidentiality; committee code of conduct.** To protect information that is  
34 otherwise privileged or confidential pursuant to this chapter; Title 1, chapter 13; and the  
35 joint rules of the Legislature.

36 At the beginning of each new Legislature, committee members must sign a code of conduct  
37 presented by the presiding officers to the Legislative Council for approval in order to  
38 receive authorization to meet in executive session pursuant to subsection 7. The Legislature  
39 has primary responsibility for ensuring committee member adherence to this code of  
40 conduct. The code of conduct must:

41 A. Prohibit committee members from taking possession of any papers or records,  
42 including books, accounts, documents, computer disks or memory or other electronic  
43 media and other materials regardless of the papers' or records' physical or electronic  
44 form, that contain privileged or confidential information;

1 B. Prohibit committee members from disclosing to any person or releasing to the  
2 public any privileged or confidential information the committee reviews, inspects or  
3 discusses in executive session;

4 C. Require committee members to adhere to the confidentiality and nondisclosure  
5 policies, standards and procedures that the office adheres to during program  
6 evaluations pursuant to this chapter; and

7 D. Provide for determining and imposing penalties on a committee member for  
8 violating the code of conduct, up to and including expulsion from the Legislature.

9 **Sec. 5. 3 MRSA §995, sub-§2**, as enacted by PL 2001, c. 702, §2, is amended to  
10 read:

11 **2. Duties.** The director shall supervise the staff of the office in accordance with  
12 policies adopted by the committee and consistent with the policies of the Legislative  
13 Council. The director shall prepare and present a biennial budget to the committee for its  
14 approval. Money appropriated or allocated to the office must be expended in the discretion  
15 of the director and the committee only. The director shall prepare and present a biennial  
16 briefing to the committee on the confidentiality and nondisclosure policies, standards and  
17 procedures that the office adheres to when conducting program evaluations under this  
18 chapter. The director also shall prepare and present an annual work plan to the committee  
19 for its consideration and approval. The director also may contract with private individuals  
20 or entities for the conduct of program evaluations under this chapter. The director may  
21 request the committee to issue subpoenas.

22 **Sec. 6. 3 MRSA §997, sub-§2**, as enacted by PL 2001, c. 702, §2, is amended to  
23 read:

24 **2. Submission of final report to committee.** The director shall notify the committee  
25 when each final program evaluation report under this chapter is completed. The report  
26 must then be placed on the agenda for a future committee meeting. At the meeting where  
27 a report appears on the agenda for the first time, the director ~~will~~ shall release that report  
28 to the committee and to the public simultaneously, except that the director may share a  
29 confidential draft of the report with the committee prior to its public release after the review  
30 and response period of the evaluated agency or other entity is completed pursuant to  
31 subsection 1. The committee shall treat the draft of the report as confidential until it is  
32 released to the public by the director. The committee, at its discretion, may vote to endorse,  
33 to endorse in part or to decline to endorse the report submitted by the director, whether or  
34 not the committee has conducted an executive session review of the working papers  
35 pursuant to section 994, subsection 7. If the committee determines it is necessary, the  
36 committee may report out to the Legislature legislation to implement the findings and  
37 recommendations of any program evaluation report presented to it by the office.'

38 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
39 number to read consecutively.

#### 40 SUMMARY

41 This amendment replaces the bill and the emergency preamble. The amendment  
42 requires the Director of the Office of Program Evaluation and Government Accountability  
43 to prepare and present a biennial briefing to the Government Oversight Committee on the

1 confidentiality and nondisclosure policies, standards and procedures that the office adheres  
2 to when conducting program evaluations. The amendment authorizes the Government  
3 Oversight Committee to meet in executive session to review, inspect or deliberate working  
4 papers that were considered and referenced in a report of the office for the sole purpose of  
5 voting on the report. The amendment requires committee members to sign a code of  
6 conduct in order to be authorized to meet in executive session for the purpose of reviewing  
7 working papers that were considered and referenced in a report of the office. The  
8 amendment authorizes the director of the office to share a confidential draft of a program  
9 evaluation report with the committee before it is released to the public.

10 **FISCAL NOTE REQUIRED**

11 **(See attached)**