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Date: November 20, 2020

To: Senator Justin Chenette, Senate Chair
Representative Ann-Marie Mastraccio, House Chair
And Members, Government Oversight Committee

From: Danielle Fox, Director *Sami*

RE: Proposed amendment to statute governing confidentiality of OPEGA working papers

Below is draft legislation intended to provide clarification, in two ways, on the treatment of OPEGA working papers when in the possession of an evaluated state agency or other entity subject to an OPEGA review. Working papers are defined as: "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."

Statute is clear that these working papers are confidential in the possession of OPEGA, and are exempt from disclosure under the Freedom of Access Act (FOAA) in Title 1, chapter 13. The proposed language below would ensure that those same working papers are not disclosed when in the possession of a state agency or evaluated entity and also reference the same exemption from disclosure under FOAA.

If the Committee supports this change, a bill could be submitted pursuant to your authority under Title 3, §1001, sub-§2.

Sec. 1. 3 MRSA §997, sub-§5 is amended to read:

5. (Disclosure to agency or entity subject to program evaluation.) Confidentiality of working papers. Except as provided in this subsection, working papers in the possession of a state agency or entity subject to a program evaluation are confidential and should not be disclosed to any person pursuant to subsection 3. Working papers in the possession of a state agency or entity subject to a program evaluation are also exempt from disclosure pursuant to the provisions of Title 1, chapter 13. 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.

SUMMARY

This bill clarifies existing law governing the confidentiality of working papers related to an evaluation of a state agency or other entity by the Office of Program Evaluation and Government Accountability. It provides that working papers are confidential in the possession of the state agency or entity subject to the evaluation and adds a reference for the purpose of requests made under the Freedom of Access Act under Title 1, chapter 13.