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Date: (Filing No. S-)

TAXATION

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 332, L.D. 941, Bill, “An Act To Improve Tax Expenditure Transparency and Accountability”

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

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:

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

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

6 C. No review for tax expenditures with an impact on state revenue of less than
7 \$50,000 or that otherwise do not warrant either a full evaluation or expedited review.

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

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17 expenditures enacted, amended or repealed during the preceding year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§1000. Expedited review of tax expenditures**

2 **1. Expedited review process.** Beginning July 1, 2016, the policy committee shall
3 conduct expedited reviews of tax expenditures and the associated tax policies identified
4 under section 998, subsection 1, paragraph B, in accordance with the schedule established
5 in section 998, subsection 2.

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

8 (1) The reasons the tax policy was adopted;

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

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

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

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

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

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

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

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

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

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

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

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

35 A. A description of the tax policy under review;

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

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

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

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

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

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

12 **§1001. Tax expenditure evaluation process details**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) Beneficiary contact information;

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

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

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

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

32 A budget document transmitted by the Governor or Governor-elect must include a
33 part that asks the Legislature whether it wishes to continue funding each individual tax
34 expenditure provided in the statutes. For purposes of this paragraph, "tax expenditures"
35 means those state tax revenue losses attributable to provisions of Maine tax laws that
36 allow a special exclusion, exemption or deduction or provide a special credit, a
37 preferential rate of tax or a deferral of tax liability. The part must include for each tax
38 expenditure a statutory section reference, a brief description of each tax expenditure and
39 the loss of revenue estimated to be incurred by funding source and fiscal year. The joint
40 standing committee of the Legislature having jurisdiction over appropriations and
41 financial affairs shall consider any reports regarding the evaluation of tax expenditures

1 completed during the previous 2 years pursuant to Title 3, sections 999 and 1000 and
2 shall hold at least one public hearing to receive public comment regarding those tax
3 expenditures when reviewing the continuation of tax expenditures pursuant to this
4 section. This paragraph applies with respect to the preparation of the budget document
5 for the 2008-2009 biennium and thereafter.

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

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

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

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

17 ZZ. The disclosure of information by the State Tax Assessor or the Associate
18 Commissioner for Tax Policy to the Office of Program Evaluation and Government
19 Accountability under Title 3, section 991 for the review and evaluation of tax
20 expenditures pursuant to Title 3, chapter 37.

21 **Sec. 8. Appropriations and allocations.** The following appropriations and
22 allocations are made.

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

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

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

28	GENERAL FUND	2015-16	2016-17
29	POSITIONS - LEGISLATIVE COUNT	2,000	2,000
30	Personal Services	\$143,884	\$212,280
31	All Other	\$25,000	\$25,000
32			
33	GENERAL FUND TOTAL	<u>\$168,884</u>	<u>\$237,280</u>
34			

35 **SUMMARY**

36 This amendment replaces the bill, which was a concept draft, and establishes a
37 process for legislative review of tax expenditures based on the report of the Office of

COMMITTEE AMENDMENT “ ” to S.P. 332, L.D. 941

1 Program Evaluation and Government Accountability pursuant to Resolve 2013, chapter
2 115.

3

FISCAL NOTE REQUIRED

4

(See attached)