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**THE MAINE SENATE**  
132nd Legislature

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Augusta, Maine 04333

*Testimony of Senator Craig V. Hickman introducing*  
**LD 127, An Act to Strengthen Legislative Oversight of Government Agencies and Programs by Reaffirming the Legislature's Access to Confidential Records**  
*Before the Joint Standing Committee on Judiciary*  
Wednesday, February 12, 2025

Senator Carney, Representative Kuhn, honorable and esteemed colleagues on the Joint Standing Committee on Judiciary, my name is Craig Hickman, and I am proud to represent Senate District 14, twelve municipalities in southern Kennebec County including my beloved hometown of Winthrop. Thank you for the opportunity to present LD 127, "An Act to Strengthen Legislative Oversight of Government Agencies and Programs by Reaffirming the Legislature's Access to Confidential Records," to the Committee today.

This bill is about power. Not my power or your power but *our* power. Our power as elected members of the legislative branch of government, a separate but co-equal branch of government as provided by the Constitution of the State of Maine. The legislative branch of government is described first in Article IV Part First and Part Second. Its powers are described next in Article IV Part Third for a total of thirteen pages. All of this comes before Article V Part First which describes Executive Power in all of four-and-a-half pages.

This bill is vital to the ability of the Legislature to wield its power to conduct oversight of the executive branch. All of us have been elected and entrusted by our constituents to ensure that the government works for the people. However, a recent Law Court ruling has severely restricted our ability, for the time being, anyway, to do just that.

Recently, the Joint Legislative Committee on Government Oversight (GOC), where I serve as Senate Chair, hosted the Levin Center at Wayne State Law School as part of our committee orientation. Senator Carl Levin was the longest serving senator from Michigan, spending 36 years in the United States Senate. Senator Levin responded to injustice he saw from the U.S. Department of Housing and Urban Development toward his home city of Detroit, and he made it his mission to make government "accountable and responsible to its people through in-depth, fact-based, bipartisan legislative oversight and strong ethics laws." He led dozens of investigations that sought to expose fraud, corruption, and other nefarious schemes by powerful people and corporations. The Levin Center works to carry on his mission by training legislative staff and legislators from both sides of the aisle in "how to conduct bipartisan, fact-based oversight" and provide cutting edge research that advances government accountability across the country and throughout the world (The Levin Center).

The Levin Center facilitators told us that our statutory regime for government oversight was the best in the nation because we have an office staffed with consummate professionals who can do the work directed by a committee that is truly unique (see video of their testimony [here](#), starting around 9:35 a.m.). They recommend the adoption of our example wherever they perform their oversight trainings across the country. The Office of Program Evaluation and Government Accountability (OPEGA) has been recognized with many awards since its creation twenty years ago this January.<sup>1</sup> The GOC is composed of six members of the House and six members of the Senate, equally divided between the two major political parties. For that reason, all affirmative votes of the majority of the committee membership, including procedural motions, are inherently bipartisan and bicameral by design.

In our first orientation session, which came in the wake of the Law Court ruling in *GOC v. DHHS*, we heard from former senators David Trahan, Tom Saviello and Bill Diamond and former representative and current State Auditor, Matt Dunlap, some of the founding members of the Committee, who were among the biggest supporters of the legislation that established OPEGA (see video of their testimony [here](#), starting around 10:47 a.m.). They told us just how crucial it is to the mission of the GOC that we have full access to all relevant information and records possessed by the agencies we are evaluating, records that are necessary for us to perform our official duties. And yet we have had this crucial tool, this differentiating feature, this fundamental building block of oversight, denied just when we need it the most.

The safety and welfare of our most vulnerable children is on the line.

Speaking of our official duties, the first one listed in the implementing statute for GOC reads, “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.” (Title 3, section 994) How can we responsibly and judiciously perform that duty if we don’t have access to all the same information and records the director and the director’s staff analyze and evaluate to produce their deliverables? We trust their work, but how can the committee verify what we trust if we are denied access? Why would the Legislature through a Joint Rule establish a committee that would deny itself access to all the records needed to conduct or direct a study or investigation of all the entities and expenditures the implementing statute authorizes us to study or investigate? The committee’s power is broad. To wit:

“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

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<sup>1</sup> OPEGA has received one Impact Award (2008) and eight Certificates of Impact (2011, 2012, 2013, 2015, 2018, 2020, 2022, and 2023) from the National Conference of State Legislatures’ National Legislative Program Evaluation Society for various reports it has compiled.

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.” (Title 3, section 991)

So yes, the committee’s power is broad; it’s also pretty deep. “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.”

That said, the scope of the office’s studies and evaluations always begin narrowly and broaden or deepen if, and only if, the information and records lead to more open avenues or hidden tunnels of investigation. That is what the record reflects.

We have the opportunity today to clarify our power, as both the majority and concurring opinions of the court conclude, and so let us reaffirm our power to perform our official duties as members of the legislative branch of state government.

And so I stand before you today to introduce a bill that will restore the ability of the GOC to perform its investigative duties as enacted by the People of the State of Maine from its inception. These are the duties for which our constituents gave us their support with their votes and which are entrusted to us by the Presiding Officers of the Maine Legislature. Let us restore our ability to perform these duties while wielding judiciously, without fear or favor, the power vested in us by the Constitution of the State of Maine.

Let us not stand in fear of our power. Let us not fail to wield it as necessary in order to hold the government accountable to the people we represent. To check and balance the other branches of government in ways that only the Legislature has the power to check and balance. The Legislature can direct the other two branches of government to do, or not to do, whatever we please, so long as we have the affirmative votes to do it. So long as we stay within the bounds of legislative power as checked by judicial power. Through robust and effective oversight, elected members of the Legislature ensure that executive power is used to implement our policies as we intended.

The amendment to the bill as shared with interested parties by your committee analyst last Friday takes the conclusions from the Law Court [ruling](#) to heart.

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### **Majority Opinion Conclusion**

“The Legislature controls the authority and functioning of its own committees. For the reasons set out above, we conclude that the Legislature has determined the role of the Committee in the scheme of governmental oversight and review as well as the information available to it in that process. It is free to clarify or change the Committee’s role, the scope of its authority, and the nature of the information believed necessary for the Committee to carry out its work.”

## Justice Rick E. Lawrence Concurring Opinion Conclusion

“Accordingly, although I affirm the denial of the request to compel compliance with the subpoena at issue here, I do not believe that this ruling precludes the future issuance of a subpoena for the confidential child protection records or, if necessary, the filing of a motion to compel compliance with such a subpoena, so long as the Committee is taking such action in order to review and determine whether it endorses the OPEGA reports and to determine what, if any, legislation to propose to implement OPEGA’s findings and recommendations. Despite the circuitous nature of the authority to access confidential information fashioned by the Legislature at issue here, the Committee nonetheless has that authority and may bring it to bear in appropriate circumstances.”

Footnote 23: “Given the gulf between the views on this point expressed in the Court’s opinion and this concurrence, the Legislature may well want to consider clarifying the scope of the Committee’s authority to access confidential information in these circumstances.”

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And so here’s what the amendment to the bill proposes:

Section 1 clarifies that the Government Oversight Committee does have access to records that are otherwise privileged and confidential and that they must remain so.

Section 2 clarifies that the GOC is the standing investigative committee of the Legislature. In addition to the duties that are already set forth in statute, this makes it clear that the legislative investigative committee’s powers and duties apply to the GOC as a standing committee. Therefore, by affirmative vote of the committee, it can take up a matter that’s relevant to what it sees without further authorization of the Legislature, which is what would be required for a special investigative committee to be established by the Legislature.

Section 3 addresses a concern that because we are lawmakers up for reelection every two years that means we can’t be trusted with confidential information. I take issue with that. In the Joint Rules of the Legislature and the model rules of committee, it’s very clear that we have access to confidential information because the rules tell us that confidential information must remain confidential after we review it. The inherent power of the Legislature to access those records was affirmed by the Law Court in [\*Maine Sugar Industries, Inc. v. Maine Industrial Building Authority\*](#). In some ways, the Law Court’s recent ruling misinterpreted its own precedent, in my opinion. Therefore, we must make it clear again that we are a committee with the inherent power to receive confidential information and records.

A committee Code of Ethics would be established in conjunction with the committee members and the Presiding Officers at the beginning of each legislature. It would be a written document to be signed by members, and there might need to be training as well. There would be clear guidelines for how to deal with a committee member who may be found to have leaked confidential information. I don’t believe that would ever happen, but because people are concerned it might, this would be a way to put guardrails around the members of the committee

and how they conduct their work. I want to be sure this committee knows I take these concerns seriously.

Section 4 has been suggested by lawmakers over the years who have constituents who want them to be present at certain court proceedings for moral support. However, these lawmakers are often told when they arrive that they are not allowed to enter because the proceedings are confidential. I find it absurd that elected officials of the legislature, who are not considered members of the public for reasons of confidentiality, aren't able to attend with their constituents. Many times, the elected official is the only person in their life that the constituent trusts.

Section 5 solves a problem brought to me by the Child Welfare Ombudsman, following a specific occurrence in the GOC. Our last case file review with the Child Welfare Ombudsman included a file she had also reviewed for her own review. However, she could not tell us in open committee why she disagreed with part of the OPEGA report. Because the court had forestalled our ability to receive confidential information, we couldn't even go into an executive session to hear her explanation. This section and language in Section 1 would make it clear that by a majority vote of the committee, both the HHS Committee and the GOC, if necessary, could enter executive session to discuss case specific review summaries with the Child Welfare Ombudsman.

The section also clarifies language in this part of the statute regarding the legislative officials to whom confidential information must be disclosed as necessary. The language limiting the disclosure of personally identifying information unless necessary to perform those legislators' official duties has been there all along. I am just bringing it to the table so that people understand that this is not about going after people. It's about evaluating *processes*.

In short, we have the power to reaffirm our power, which I believe is being eroded by two branches of government. Restoration of our legislative power depends on the emergency passage of this bill. LD 127 will reaffirm GOC's ability to access confidential records necessary to the oversight and investigation process. If we can't affirm our own power, no one else will.

I urge the members of the Committee on Judiciary to unanimously vote out this bill to the full Legislature as amended.

Thank you for allowing me the opportunity to introduce this bill.

Craig V. Hickman  
State Senator, District 14