

132nd Maine Legislature

An Act to Strengthen Legislative Oversight of Government Agencies and Programs by Reaffirming the Legislature's Access to Confidential Records

**L.D. 127 – Sponsor's Amendment for February 24 Work Session**

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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 and 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,

Be it enacted by the People of the State of Maine as follows:

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

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 shall prepare and present a biennial briefing to the committee on the confidentiality and non-disclosure policies, standards and procedures that the office adheres to when conducting program evaluations under this chapter. 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.

Sec. 2. 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 subsection 13, the committee may enter executive session to review, inspect or deliberate the working papers that were considered and referenced in a report of the office for the sole purpose of voting on a report pursuant to this subsection;

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

11. Information available to committee. To receive and review certain information, including information that is otherwise privileged or confidential, that the committee deems necessary to properly perform its constitutional functions by providing thorough oversight of government agencies, programs or other entities identified in section 991. Information that is made available to the committee is governed by section 997, which governs confidential or privileged information made available to the office, by chapter 21, which governs legislative investigating committees, and by Title 1, chapter 13, which governs public records and proceedings and executive sessions. Notwithstanding any provision of law to the contrary, privileged or confidential information that is made available to the committee pursuant to this chapter is and remains confidential and may not be disclosed to any person or released to the public; and

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Sec. 4. 3 MRSA §994, sub-§12, as enacted by PL 2005, c. 104, §3, is amended to read:

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

Sec. 5. 3 MRSA §994, sub-§13 is enacted to read:

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

At the beginning of each new Legislature, committee members must sign a code of conduct presented by the Presiding Officers to the Legislative Council for approval as authorization to enter an executive session pursuant to subsection 7. The Legislature has primary responsibility for adherence to this code of conduct. The code of conduct may:

A. Prohibit committee members from taking possession of any 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, that contain privileged or confidential information;

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

C. Require committee members to adhere to the office's confidentiality and non-disclosure policies, standards, and procedures that the office adheres to during program evaluations pursuant to this chapter; or

D. Impose any penalties on a committee member for violating the code of conduct, up to and including expulsion from the Legislature.

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

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~~ shall release that report to the committee and to the public simultaneously, except that the director may share a confidential draft of the report with the committee prior to its public release but not before the review and response period of the evaluated agency or other entity is completed pursuant to subsection 1. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director, whether or not the committee has conducted an executive session review of the report pursuant to section 994, subsection 7. 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.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY