

TITLE 3, CHAPTER 37

LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND PROGRAMS

§991. Evaluation and Government Accountability

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 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.

§992. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Committee. "Committee" means a joint legislative committee established to oversee program evaluation and government accountability matters.

2. Director. "Director" means the Director of the Office of Program Evaluation and Government Accountability.

3. Office. "Office" means the Office of Program Evaluation and Government Accountability established in section 991.

4. Other entity. "Other entity" means any public or private entity in this State that may be subject to program evaluation under this chapter as the result of its receipt or expenditure of public funds. "Other entity" may include local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation.

4-A. Policy committee. "Policy committee" means the joint standing committee of the Legislature having jurisdiction over taxation matters.

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.

5-A. Qualified auditor. "Qualified auditor" means an auditor who meets the education and experience requirements of the Office of State Auditor as defined in Title 5, section 241.

6. State agency. "State agency" means each state board, commission, department, program, office or institution, educational or otherwise, of this State.

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.

7. Working paper. "Working paper" means 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.

§993. Committee membership; chairs

The membership of the committee and the selection of chairs are established by joint rule of the Legislature.

§994. Duties of committee

The committee has the following duties:

1. Director. 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;

2. Annual work plan. To review and approve the annual work plan of the office;

3. Direct evaluations. To direct the office to conduct program evaluations;

3-A. Auditing services. When the committee determines that an examination as part of a program evaluation requires the services of a qualified auditor, to request the Office of the State Auditor to conduct all or part of an examination or, if the Office of the State Auditor is unable to perform the examination within the time frame established by the committee, to direct the office to obtain the services of a qualified auditor;

4. Conduct hearings. To hold public hearings for the purpose of receiving reports from the office and questioning public officials about office findings and recommendations;

5. Examine witnesses. To examine witnesses and to order the appearance of any person or the appearance of any person for the purpose of production to the committee of 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;

6. Administer oaths. To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee determines the administration of an oath necessary and advisable, to determine if there is probable cause that a witness has committed perjury by testifying falsely before the committee and to direct the Attorney General to institute legal proceedings as provided by law;

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;

8. Subpoenas. To issue subpoenas upon a majority vote of the committee in the event of refusal to appear or to produce 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. A subpoena issued under this subsection must be issued pursuant to the provisions of section 165 and chapter 21;

9. Meetings. To conduct meetings at such times as the cochairs determine necessary;

10. Adopt rules. To adopt rules, as long as the rules are not in conflict with the Joint Rules of the Legislature. By January 1, 2005, the committee must develop a mission statement to be included in the rules;

11. Information available to committee. To receive certain information. Information that is made available to the committee is governed by chapter 21, which governs legislative investigating committees, and by Title 1, chapter 13, which governs public records and proceedings; and

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 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.

§995. Director

1. Appointment. Not earlier than April 1, 2003, the Legislative Council shall appoint by an affirmative vote of 8 members of the Legislative Council a nonpartisan director of the office for the purposes of conducting program evaluations pursuant to this chapter. The director must be appointed to an initial 5-year term, which is subject to renewal by the Legislative Council every 5 years thereafter. During the term of the contract, the director may be terminated only for cause by an affirmative vote of 8 members of the Legislative Council. The Legislative Council shall establish

the compensation of the director. The director's duties must be performed independently and in a nonpartisan manner but under the general policy direction of the committee.

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 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.

3. Employees. Employees must be nonpartisan. Employees of the office are employed by and are responsible to the director, who shall hire and fix the compensation of each employee, subject to the approval of the committee and within resources available in the biennial budget. Other than the director appointed pursuant to subsection 1, an employee of the office may not be employed prior to July 1, 2003.

4. Annual report. The director shall prepare an annual report of the office's activities for each calendar year and shall submit that annual report to the committee and the Legislature no later than January 15th of each calendar year.

5. Coordination with State Auditor; complaints alleging fraud, waste, inefficiency or abuse. The director may access confidential information disclosed by the State Auditor under Title 5, section 244-D, subsection 3 in order to ensure appropriate agency referral or coordination between agencies to respond appropriately to all complaints made under Title 5, section 244-D.

§996. Assistance to committee

The Department of the Attorney General, the State Auditor, the State Controller, the Commissioner of Administrative and Financial Services, the Director of the Office of Fiscal and Program Review and the Director of the Office of Policy and Legal Analysis shall assist the committee and office with program evaluations under this chapter if the committee and the director determine that such assistance is necessary.

The Commissioner of Administrative and Financial Services shall provide office space to house the office within the Burton M. Cross Building. This office space must be provided at no charge.

§997. Conduct and issuance of program evaluation reports

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter.

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

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 release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director. 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.

3. Confidentiality. Working papers in the possession of the director or an entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 are confidential and exempt from disclosure pursuant to Title 1, chapter 13, including disclosure to the Legislative Council or an agent or

representative of the Legislative Council. All other records or materials in the possession of the director or an entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.

4. Information available to office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or agreements to protect information considered to be confidential or privileged. The office shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

5. Disclosure to agency or entity subject to program evaluation. Except as provided in this subsection, working papers are confidential pursuant to subsection 3 and may not be disclosed to any person. 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.

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary.

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly

by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

§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:

- A. Full evaluation for tax expenditures that are intended to provide an incentive for specific behaviors, that provide a benefit to a specific group of beneficiaries or for which measurable goals can be identified;
- B. Expedited review for tax expenditures that are intended to implement broad tax policy goals that cannot be reasonably measured; and
- C. No review for tax expenditures with an impact on state revenue of less than \$50,000 or that otherwise do not warrant either a full evaluation or expedited review.

2. Schedule. The committee, in consultation with the policy committee, shall establish a prioritized schedule of ongoing review of the tax expenditures assigned to the full evaluation and expedited review categories pursuant to subsection 1, paragraphs A and B. To the extent practicable, the committee shall group the review of tax expenditures with similar goals together.

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

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

§999. Full evaluation of tax expenditures

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

A. Prior to the beginning of each evaluation, the committee, after consideration of recommendations from the office, shall approve the following for each tax expenditure subject to full evaluation:

- (1) The purposes, intent or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments and changes in the state economy and fiscal condition;
- (2) The intended beneficiaries of the tax expenditure;
- (3) The evaluation objectives, which may include an assessment of:
 - (a) The fiscal impact of the tax expenditure, including past and estimated future impacts;
 - (b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;
 - (c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;
 - (d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;
 - (e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;
 - (f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;
 - (g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;
 - (h) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and

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

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

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

2. Action by office; report. The office shall submit a report on the results of each evaluation to the committee and the policy committee. The office shall seek stakeholder input as part of the report. For each tax expenditure evaluated, the report must include conclusions regarding the extent to which the tax expenditure is meeting its purposes, intent or goals and may include recommendations for continuation or repeal of the tax expenditure or modification of the tax expenditure to improve its performance.

3. Action by committee. The committee shall review the report submitted by the office under subsection 2, assess the report's objectivity and credibility and vote whether to endorse the report. The committee shall submit a record of the vote on any reports submitted by the office and any comments of or actions recommended by the committee to the policy committee for its review and consideration.

4. Action by policy committee. The policy committee shall review the results of the tax expenditure evaluations and of the committee's review based on materials submitted under subsections 2 and 3. The policy committee shall submit to the Legislature by the later of 90 days after receipt of materials submitted under subsections 2 and 3 and the adjournment sine die of the regular session during which the materials were received, if applicable, a report documenting its activities under this chapter and any recommendations resulting from its review of the materials submitted under subsections 2 and 3. The policy committee may submit a bill to the Legislature to implement the policy committee's recommendations.

§1000. Expedited review of tax expenditures

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

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

- (1) The reasons the tax policy was adopted;
- (2) The extent to which the reasons for the adoption still remain or whether the tax policy should be reconsidered;
- (3) The extent to which the tax policy is consistent or inconsistent with other state goals; and
- (4) The fiscal impact of the tax policy, including past and estimated future impacts.

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

- (1) The fiscal impact of the tax expenditure, including past and estimated future impacts;
- (2) The administrative costs and burdens associated with the tax expenditure;
- (3) The extent to which the tax expenditure is consistent with the broad tax policy and with the other tax expenditures established in connection with the policy;
- (4) The extent to which the design of the tax expenditure is effective in accomplishing its tax policy purpose;
- (5) The extent to which there are adequate mechanisms, including enforcement efforts, to ensure that only intended beneficiaries are receiving benefits and that beneficiaries are compliant with any requirements;
- (6) The extent to which the reasons for establishing the tax expenditure remain or whether the need for it should be reconsidered; and
- (7) Any other reasons to discontinue or amend the tax expenditure.

2. Action by the office. By July 1st in 2016 to 2018 and by December 15th of each year beginning in 2019 the office shall collect, prepare and submit to the policy committee the following information to support the expedited reviews under subsection 1:

- A. A description of the tax policy under review;
- B. Summary information on each tax expenditure associated with the tax policy under review, including:
 - (1) A description of the tax expenditure and the mechanism through which the tax benefit is distributed;
 - (2) The intended beneficiaries of the tax expenditure; and
 - (3) A legislative history of the tax expenditure; and
- C. The fiscal impact of the tax policy and each related tax expenditure, including past and estimated future impacts.

3. Report by policy committee; legislation. By March 1st of each year, beginning in 2020, the policy committee shall submit to the Legislature a report on the results of the expedited reviews conducted pursuant to subsection 1 that year. The policy committee may submit a bill related to the report to the Legislature to implement the policy committee's recommendations.

§1001. Tax expenditure evaluation process details

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

- A. The office may request confidential information from the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies as necessary to address the evaluation objectives and performance measures approved under section 999, subsection 1. The office shall request any confidential information in accordance with section 997, subsection 4. The office shall request that confidential tax information, other than beneficiary contact information, be made accessible to the office as de-identified tax data. If Maine Revenue Services is unable to provide such data, the office and representatives of Maine Revenue Services shall determine appropriate methods for the office to access the requested information.
- B. Upon request of the office and in accordance with section 997, subsection 4, the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies shall provide confidential information to the office. The office shall maintain the confidentiality of the information provided, in accordance with section 997, subsections 3 and 4. This paragraph does not apply to federal tax information that is confidential under Title 36, section 191, subsection 3.
- C. The office, the committee or the policy committee may consult with governmental agencies, other entities and experts, including members of the Consensus Economic Forecasting Commission under Title 5, section 1710.
- D. The office may contract with other entities for the purpose of obtaining assistance in the review of tax expenditures. The office shall require a nondisclosure agreement as part of any contract entered into pursuant to this paragraph. The office may not disclose confidential taxpayer information to a contractor, except for:
 - (1) Contact information for specific beneficiaries of tax expenditures for the purpose of conducting interviews, surveys or other data collection; and
 - (2) Statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers.

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

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

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

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

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

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

(a) Beneficiary contact information;

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

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

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