

An Act to Implement the Recommendations of the Office of Program Evaluation and Government Accountability and the Government Oversight Committee Regarding Quasi-Independent State Entities

Pursuant to 3 MRSA §997, sub-§2, be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 379. sub-c. 3 is enacted to read:

SUBCHAPTER 3  
QUASI-INDEPENDENT ENTITIES

**§12021. Definitions.**

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings:

- 1. Competitive bidding.** “Competitive bidding” means the transmission of a written proposal or invitation to bid to at least three responsible suppliers that is to be replied to at a stated time.
- 2. Contributions.** “Contributions” means payments for membership dues and fees, contributions, donations and sponsorships including those that result in some public advertisement of the entity.
- 3. Governing body.** “Governing Body” means a person or group of persons with the-responsibility or authority for management of an entity.
- 3-A. Managing director.** “Managing director” means the person with overall day-to-day responsibility for directing the operations of a quasi-independent state entity.
- 4. Quasi-independent state entity.** “Quasi-independent state entity” means an organization that has been established by the Legislature as an independent board, commission or agency to fulfill governmental purposes and that receives revenues that are derived, in whole or part, from federal or state taxes or fees.
- 5. Reporting entity.** “Reporting entity” or “entity” means:
  - A. Child Development Services System
  - B. Combat Sports Authority of Maine
  - C. Efficiency Maine Trust
  - D. Finance Authority of Maine
  - E. Maine Arts Commission
  - F. Maine Educational Center for Deaf & Hard of Hearing and Governor Baxter School for the Deaf
  - G. Maine Community College System
  - H. Maine Development Foundation
  - I. Maine Educational Loan Authority
  - J. Maine Governmental Facilities Authority
  - K. Maine Health and Higher Education Facilities Authority
  - L. Maine Historic Preservation Commission
  - M. Maine Human Rights Commission
  - N. Maine International Trade Center
  - O. Maine Maritime Academy
  - P. Maine Municipal Bond Bank
  - Q. Maine Municipal and Rural Electrification Cooperative Authority

- R. Maine Port Authority
- S. The nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services as provided in Public Laws 1991, chapter 848;
- T. Maine Public Employees Retirement System
- U. Maine State Housing Authority
- V. Maine State Library
- W. Maine State Museum
- X. Maine Technology Institute
- Y. Maine Turnpike Authority
- Z. University of Maine System
- AA. Workers' Compensation Board
- BB. Occupational and professional licensing boards listed under section 12004-A.

**§12022. Financial Policies and Procedures.**

The governing body of an entity shall:

1. **Consistency with authorizing law.** Ensure that all activities and expenditures of the entity are limited to those necessary to accomplish the entity's mission and duties consistent with the entity's authorizing law.
  
2. **Compliance with financial policies and procedures.** Ensure that the governing body, management and staff of the entity comply with financial policies and procedures established by the governing body.
  
3. **Selection of vendors.** Adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures governing the selection of vendors. To the extent possible, consistent with the entity's authorizing statute, the policies and procedures must
  - A. Establish competitive bidding as the standard procurement method;
  - B. Specify the conditions under which competitive bidding may be waived; and
  - C. For procurements exceeding \$10,000 that were not competitively bid, require that written justification for and evidence of approvals be maintained on file for five years.
  
4. **Contributions.** Adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures governing use of the entity's resources for contributions. To the extent possible, consistent with the entity's authorizing statute, the policies and procedures must:
  - A. Establish criteria to ensure that contributions are directly related to the entity's primary mission and activities;
  - B. Require that contributions be budgeted and accounted for separately from other expenditures in the entity's records for identification and reporting purposes;
  - C. Establish requirements for maintaining documentation to support each contribution; and
  - D. Require that the governing body approve the annual budget for contributions and be provided periodic reports on contributions made by the entity.
  
5. **Travel, meals, entertainment.** Adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures governing use of the entity's resources to pay costs of travel, meals and entertainment. Travel, meal and entertainment costs must be limited to those reasonable and necessary for accomplishing the

entity's mission and activities. To the extent possible, consistent with the entity's authorizing statute, the policies and procedures must:

- A. Describe the persons the entity will pay travel, meal and entertainment costs for and specify the conditions under which those costs will be paid, whether directly or through reimbursement;
- B. Establish the requirements for supporting documentation and approval of travel, meal and entertainment expenditures or reimbursements;
- C. Require that travel, meals and entertainment costs be budgeted and accounted for separately from other expenditures in the entity's records for identification and reporting purposes; and
- D. Require that the governing body approve the annual budget for travel, meal and entertainment costs and be provided periodic reports on actual costs paid or reimbursed.

**6. Lobbying.** Adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures prohibiting the entity from procuring services of a lobbyist to represent its interest before the Legislature or a state agency except under the following circumstances:

TBD

### **§12023. Reports to the Legislature**

**1. Adoption and implementation.** By February 1, 2013, an entity's governing body shall submit a report to the Legislature on adoption and implementation status of written policies and procedures required by §12022 and describing the measures the governing body intends to use to monitor compliance with those policies and procedures. The report must be submitted to the Executive Director of the Legislative Council in a manner established by the Executive Director who shall refer it to the appropriate joint standing committee or committees of the of the Legislature for review.

**2. On-going reports.** By February 1, 2014, and annually thereafter, an entity's governing body shall submit a report to the Legislature containing the following information:

- A. A list of all procurements exceeding \$10,000 in the preceding year for which competitive bidding was waived under the policies adopted pursuant to §12022, subsection-3, including procurements exceeding \$10,000 that were made under contracts previously entered into for which competitive bidding was not required. The list must include the names of the vendors and costs associated with those procurements;
- B.. A list of all organizations to which the entity made contributions greater than \$1,000 in the preceding year, and the total amount contributed to each;
- C. A list of consultants or legal counsel paid to lobby state legislators, state legislative committees or state agencies in the preceding year, the reason they were retained and total payments to each in the preceding year. and
- D. A description of changes made in the preceding year to the written policies and procedures required by §12022 or to the procedures used by the governing body to monitor compliance.

Reports to the Legislature required by this section must be submitted to the Clerk of the House, the Secretary of the Senate and the Executive Director of the Legislative Council.

**§12024. Proposed quasi-independent state entities.**

A joint standing committee of the Legislature that considers proposed legislation establishing a new quasi-independent state entity after January 1, 2013 shall:

**1. Additions to reporting entities.** Evaluate whether the proposed quasi-independent state entity should be added to the list of reporting entities in §12021, subsection 5. The joint standing committee shall consider:

A. Whether the governmental purpose for which the proposed quasi-independent state entity is being established will be funded with revenues that are derived, in whole or part, from federal or state taxes or fees;

B. Whether the powers and duties of the proposed quasi-independent state entity are more than solely advisory as described in §12004-I;

C. Whether the proposed organizational and accountability structure allows the quasi-independent state entity to make significant policy and financial decisions independent of the Legislature and Executive state agencies;

D. Whether the proposed quasi-independent state entity would be considered a component unit of state government for financial reporting purposes under the standards and pronouncements issued by the Governmental Accounting Standards Board or for any purposes under Part 4; and

E. Whether the proposed quasi-independent state entity will be subject to review under the Government Evaluation Act.

If the committee determines that the proposed quasi-independent state entity should be added to the list of reporting entities under section 12021, subsection 5, the committee shall include that provision in any report on the legislation;

**2. Legislative standards.** Ensure that proposed legislation that establishes a new quasi-independent state entity that is to be added to the list of reporting entities:

A. Provides, if applicable, for staggered terms of office for members of the governing body of the proposed quasi-independent state entity with terms not to exceed five years;

B. Requires that the governing body of the proposed quasi-independent state entity be responsible for:

- (1) Appointment, performance review and termination of the managing director of the entity;
- (2) Establishing and ensuring compliance with organizational policies and procedures including those required by §12022; and
- (3) Ensuring adherence to all requirements of Chapter 379.

C. Specifies qualifications required or desired for the managing director of the entity;

D. Provides conditions under which members of the governing body and the managing director may be removed from office and establishes the process for removal;

- E. Identifies the joint standing committee of the Legislature with oversight over the entity and any matters that must be reviewed by that committee; and
- F. Contains audit and reporting requirements.

## **Part B**

**Sec. B-1. Legislation.** A joint standing committee of the Legislature having jurisdiction over the subject matter of a quasi-independent state entity, as defined in MRS, Title 5, section 12021 may submit legislation to the First Regular Session of the 126<sup>th</sup> Legislature to add that entity to the list of reporting entities under the MRS, Title 5, section 12021, subsection 5 or to amend the laws governing any existing quasi-independent state entity to be consistent with MRS, Title 5, chapter 379, subchapter 3.

## **Summary**

This bill implements recommendations of the Government Oversight Committee stemming from the report on the Maine Turnpike Authority issued by the Office of Program Evaluation and Government Accountability. The purpose is to improve transparency, accountability, governance and financial practices in specified areas for existing and future quasi-independent state entities.

Part A of the bill requires certain existing quasi-governmental state entities to adopt and implement policies and procedures related to procurement practices, contributions made to outside organizations, and travel, meal and entertainment expenses. It also generally prohibits those entities from hiring consultants or attorneys to lobby state legislators, committees and agencies. This Part also clarifies that the entity's governing body is responsible for ensuring compliance with the adopted policies and for reporting annually to the Legislature on certain procurements, contributions, and external lobbyists. Part A also establishes a framework for joint standing committees of the Legislature to use in assessing whether proposed quasi-independent entities should be required to follow these requirements and to help ensure that strong governance structures are incorporated into legislation for future quasi-independent state entities.

Part B of the bill gives joint standing committees of the Legislature authority to submit legislation to the 126<sup>th</sup> Legislature to designate an existing quasi-independent state agency that must adhere to the requirements established in Part A for financial policies and procedures and reporting to the Legislature that are established in Part A or to incorporate the provisions required for future quasi-independents into statutes governing existing entities responsible for subject matter under the committee's jurisdiction.