



SEN. ROGER J. KATZ, SENATE CHAIR  
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:

SEN. NATHAN L. LIBBY  
SEN. PAUL T. DAVIS, SR.  
SEN. BILL DIAMOND  
SEN. GEOFFREY M. GRATWICK  
SEN. THOMAS B. SAVIELLO  
REP. JEFFREY K. PIERCE  
REP. JENNIFER L. DECHANT  
REP. MATTHEW A. HARRINGTON  
REP. DEANE RYKERSON  
REP. PAULA G. SUTTON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**January 12, 2018**

**CALL TO ORDER**

The Chair, Rep. Mastraccio, called the Government Oversight Committee meeting to order at 9:22 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators:	Sen. Davis and Sen. Gratwick Joining the meeting in progress: Sen. Diamond Absent: Sen. Katz, Sen. Libby and Sen. Saviello
Representatives:	Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Rykerson and Rep. Sutton Absent: Rep. Harrington
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	George Gervais, Commissioner, Department of Economic and Community Development
Others Providing Information To the Committee:	Yellow Light Breen, President & CEO, Maine Development Foundation

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves.

**SUMMARY OF THE NOVEMBER 9, 2017 GOC MEETING**

The Summary of the November 9, 2017 meeting was accepted as written.

## NEW BUSINESS

- **Review Status of Legislation of Interest to GOC**

- **LD 367 “An Act to Implement Recommendations of Government Oversight Committee to Develop A Long-Range Strategic Plan for Economic Improvement in the State”**

Director Ashcroft reviewed the status of LD 367. The GOC introduced the bill which made it through the House and is currently on the Special Appropriation’s Table pending funding for the Maine Economic Growth Council (MEGC) to do the necessary work on the long term strategic improvement plan. Mr. Breen, the President of the Maine Development Foundation (MDF) was attempting to get some of that work started. Mr. Breen was at the meeting to give the GOC an update on the status of that work.

Mr. Breen said it was two years ago that the discussion began that has led to LD 367. He said MDF and the MEGC appreciated all the work done by the Legislature regarding a Long-Range Strategic Plan for Economic Improvement. Two years ago the genesis was the basic observation from the GOC and from their evaluative consultants that it is extremely difficult to evaluate the impact of any program or incentive if there are no goals and strategies against which to evaluate them. They asked MEGC and MDF to assist with that problem. MEGC over all these years has produced the Measures of Growth Report, which is a series of valued and valuable metrics to guide public policy discussion, but had not ever taken up the principal part of its mandate which was to develop a Long-Range Economic Strategy on a five to seven year planning horizon. That was why the GOC crafted LD 367 to refine that mandate, to tie it more to the frequency and sequencing of their program evaluation work so the strategy and evaluation went together.

The public hearing on LD 367 was held with the Labor, Commerce, Research and Economic Development (LCRED) Committee. Wonderful dialogue across three or four work sessions ultimately resulted in a unanimous Committee report and amendment with fairly minor refinements to the GOC’s original LD which is currently sitting on the Appropriation’s Table. The two most important parts of the dialogue from his point of view were first the idea that we were not setting out to do a one and done report that would sit on a shelf somewhere. The bill had bones. The strategy was designed to be a persistent, recurring continuously reported on and updated tool to be used by the Legislature and the State. Mr. Breen said that was an important piece. The second important piece are the resources because one of the reasons the MEGC never tackled the work was because they were never resourced to do so.

Mr. Breen said MDF was told that the Chief Executive did not believe that a new mandate for MEGC was necessary in the form of a bill or that new resources were necessary given all the resources across State government. The Department of Economic and Community Development (DECD) testified neither for nor against the bill and made some very positive comments about the concept. He said Commissioner Gervais has been a strong supporter at MEGC meetings in saying we should take this mandate seriously and do what is supposed to be done. MEGC did have meetings over the summer and tried to figure out what the path forward would be to get there without the bill, and if necessary, without any additional appropriations.

The MEGC, which is made up of four legislators, the Commissioner of DECD and fourteen public members, had five vacancies. Mr. Breen said there were only nine members and that all of their terms had expired so members were serving until being reappointed. Commissioner Gervais and Mr. Breen talked about this and the Commissioner felt they were not going to get any latitude for redeploying existing resources to the work unless the Governor, President of the Senate and Speaker of the House are committed to bringing the MEGC up to full speed. He noted that LCRED wrote a letter to make sure they retackled that. Mr. Breen said they feel positive that the Chief Executive would support bringing the MEGC up to full speed and hopes over the coming days, or weeks, that there will be a full strength MEGC appointed to tackle the work. With the credibility of that body comes the ability for him to keep working with the Commissioner to figure out what resources there are in DECD and other State agencies. Clearly you should not do a project like this with trying to leverage new staffing or new consultants when you have a State Economist and a team of

economist at the Department of Labor, strong minds at MTI and OPM and other State agencies. He said Commissioner Gervais is committed to helping MEGC tag the other State agencies that could be leveraged. MDF thinks they can come up with resourcing for this with the MEGC's existing budget, as well as some of the other agencies' resources that would be similar to what was in the fiscal note on the bill and move the project forward.

Rep. Rykerson asked what the fiscal note on LD 367 is. Mr. Breen said the fiscal note was \$390,000 over the biennium and was to be on top of the MEGC's existing \$110,000 budget. Part of the amount was frontloaded because what was contemplated at that time was spending the first year to year and a half developing a robust resource-supported strategy document for the Legislature and then build a fund that would enable them to constantly monitor progress across the next biennium. There would be annual progress reports or status reports, a biennial update and every four or five years the entire strategy would be revisited to see if it was still germane and properly targeted. Mr. Breen said the appropriation was to build up the non-lapsing fund to support a continuous process. They have been talking with Commissioner Gervais and the Federal Economic Development Administration about whether MEGC can get a federal match for some part of this project. Those commitments are not final and MDF would have to apply to the feds for the match, but there is a lot of receptivity and enthusiasm for trying to work together to move that forward.

Sen. Gratwick asked if the MEGC's strategy was going to be to help the larger manufacturers, such as BIW, or is it going to be for a small machine shop in Aroostook County. What is MEGC's focus so the Legislature can see what their deliverables are when they come back before the Legislature in two or five years. Mr. Breen said their plan would be to be back before the Legislature early in the next Session. Twelve to fifteen months is an ambitious cycle to tackle something of this nature, but they also want it to be useful to the Legislature and to the next Administration. The MEGC hopes to do a lot of work over the course of calendar year 2018 and then be in a position for the next Governor and Legislature to put finishing touches on it and to take a lot of ownership over it.

Regarding Sen. Gratwick's question about the substance, Mr. Breen said the MEGC's role is going to be to convene a Council that is going to be very diverse, is going to represent many sectors, big and small, some legacy and some new and will have healthy and, occasionally, difficult debates to say what is the right balance. From his view, the planning process needs to tackle the economic environment in Maine so that cuts across all sectors. They need to figure out if there are some sectors that are really important to sustain or grow and what are some of the regional geographic variations in the State. The MEGC would have to debate what the right balance is between all three of those - economics, sector growth and regional opportunities. That is not an easy conclusion to reach in terms of the balance in policies that might sustain a mature, but declining industry and the policies that might support a small, but growing industry. He thinks it will be interesting debate and sometimes the debates will say let's focus on the factors that are common to everyone in terms of workforce, connectivity, and cost of doing business and not try to be too astute at picking sectors that look like winners. That is the kind of debate he would envision MEGC having and its work product would capture the reasoning and the research that supported where they came down on that debate.

Mr. Breen noted that MDF is prohibited from doing anything that would require them to register as a lobbyist. They are also prohibited from taking a position on bond issues and referendum questions. That occasionally has its drawbacks when so much public policy is being made by referendum and they do not have a voice in that part. He does think it protects the credibility and political objectivity of MDF to say we are trying to set the broad stage for legislators and in the case of referendums to the voters, to debate those precise bills regarding R&D. The Legislature does not need the MEGC and MDF to be one more lobbyist arguing which of the bills to support and to what extent. MDF and MEGC can give the Legislature the broad context of where legislators should be aiming to move and then the Legislature figures out how much overall progress can be made in a given session given budget realities and constraints.

The Committee thanked Mr. Breen for the information he provided.

Rep. Mastraccio asked if Commissioner Gervais would like to join the Committee's conversation.

Rep. Sutton said the minimum wage issue has loomed for a long time and affects many Maine businesses. She did not recall seeing anybody from DECD making any statements on whether increase to the minimum wage was going to be positive, negative or neutral and asked if DECD ever takes a position on issues. Commissioner Gervais said the Administration had a position on minimum wage and DECD is part of the Administration. Rep. Mastraccio noted that the Department of Labor took a position on the minimum wage issue.

Rep. DeChant said, as a member of the MEGC, she wanted to thank the Commissioner for his leadership because, as noted by Mr. Breen, over the years they have been doing good work but it has been stunted by not being able to take it to the next level. The MEGC did a lot of work over the summer moving this forward and in an industry that is built on incremental advances she said this is almost leap frogging into something that is so overdue and needed for the State and thanked the Commissioner for his work.

Commissioner Gervais said the first step has been to get the MEGC re-energized with a focus on tackling this plan because it has been of interest to a lot of people. In MEGC meetings he has been pushing on going down this path and is where MEGC should focus. He thinks they are in a good position assuming that all three parties agree on the MEGC's makeup and it has been thought through in a way that hopefully they will be in agreement with.

The GOC members thanked the Commissioner for the information he provided.

Mr. Breen said because MDF will devote the bulk of the MEGC's resources to this project the Legislature will not see a full Measures of Growth Report in 2018. They may only do an update or try to reinforce important issues. He said, as the Commissioner said, the work can be done within the existing statute but there is some language in the bill that Mr. Breen thinks is helpful, especially the sense that this is an ongoing process that is constantly updated, revised and refreshed. If this process takes off and everyone is comfortable with it they might be in a position to strip off the fiscal note and to move some of the helpful language forward in another way. Mr. Breen said the other question is, if we cobble together one-time resources for the first part of this project over the next year what do they do in the next biennium and beyond. He does not know if there are creative ways that the Legislature, without binding their successors, can put a marker down that they want to see the work supported in the future when MDF may not be able to cobble funds together in this ad hoc way.

Rep. Pierce noted that Mr. Breen said there could be some language stripped out the LD 367 or changed and asked if he had any specifics or is it something he could provide to the Committee for their review. Mr. Breen said there is some language in the current statute that is clunky and the bill refines some of that, but more importantly are the sections of the bill that set out the annual, biennial and quadrennial process. Director Ashcroft's summary and talking points of the bill lays that out well in terms of how that works, as well as how it interrelates to the evaluation cycle. The learnings from the evaluation reports should inform the strategy and vice-versa. Subsequent evaluations should be targeted to what the strategy is calling for. Most of the language in the bill does not really tie to the fiscal note and could stand on its own while waiting to make sure everyone is comfortable with why we are doing this work.

Rep. Mastraccio said her hope is that once the process is started it will be a product that people will buy into, including a new Administration. The work is being done in a public way and she is hoping it gets as much press as other things get because she thinks it is incredibly important in the next twenty years to what happens in Maine.

**- LD 1654 “An Act to Protect Economic Competitiveness in Maine by Extending the End Date for Pine Tree Development Zone Benefits”**

Director Ashcroft said LD 1654 may be of interest to the GOC given that OPEGA just released the Pine Tree Development Zones Report. LD 1654 has been introduced and would extend the deadline for the Pine Tree Development Zones (PTDZ) applications for another five years. The bill was referred to the LCRED Committee and the public hearing was held yesterday. On Tuesday OPEGA briefed the Committee on their PTDZ Report including the recommendations. OPEGA has been asked to provide some information for the LCRED Committee for the Work Session and is working on gathering that information. She wanted to make the GOC aware of the fact that LD 1654 was moving forward and as part of the work on the bill, OPEGA’s recommendations are getting considered by LCRED. The Taxation Committee will have input but recognized that the LCRED Committee was the policy committee of jurisdiction to deal with PTDZ and forwarded the responsibility for review of the Report recommendations, for the most part, to LCRED.

Rep. DeChant wanted to clarify the process. LD 1654 just extends the PTZD application deadline so it is now incumbent on the LCRED Committee to add some teeth, evaluation and iron out the many challenges that were discovered since this Program was implemented in 2003. Director Ashcroft said that was correct.

Rep. Mastraccio said Commissioner Gervais and others’ comments during the LCRED Committee’s public hearing on LD 1654 agreed with some of OPEGA’s Report recommendations. They were willing to make those kinds of corrections and stated that for the record, and also gave the LCRED Committee suggestions.

Sen. Gratwick said there is no work on PTDZ for the GOC other than talking about the most effective way to bring more data in, but that is now not in the GOC’s purview. Director Ashcroft agreed with Sen. Gratwick with the caveat that the whole Tax Expenditure process has not included what would be OPEGA’s normal follow-up monitoring on the recommendations that OPEGA has made. In a typical non-tax review OPEGA continues to follow-up for the GOC to say what has been implemented, what has not been implemented and does the GOC want to take any action to address things that have not been worked on. In the current statute it is silent as to what is envisioned for that for the tax programs. If OPEGA is going to continue to follow-up, is the GOC the Committee they would be bringing information back to. Until they know what that process looks like it is possible that somewhere down the road the GOC may again play a role in looking at what OPEGA has recommended and whether there is anymore that needs to be advanced that has not been addressed. As of right now, there is no further role for the GOC.

Sen. Gratwick said the tax policy is so complex and there are so many patterns that all have become used to. He thinks another valuable discussion is how we can have a longer range perspective on a more effective tax policy over time. But that is not in the GOC’s purview right now. Director Ashcroft said that was correct, but noted that it does relate to what the GOC just heard about which is strategy and plan that the MEGC is hoping to put forward. She thinks it is envisioned that that planning process would involve thinking about a lot of different things, tax policy perhaps being one of them, and then ultimately support pursuit of whatever strategies or goals that are in the plan. For some of these more detailed items, we would see where they fit better and whether they are a strong force for driving us forward or whether there are some that should fall by the wayside in favor of pursuit of other things.

Rep. Mastraccio said in a world where the Legislature has change every two years, they want to embed as much as possible in that follow-up process so that it becomes something that they are continually reviewing and evaluating and eventually it will get easier and will become something the Legislature does. She doesn’t see any reason why OPEGA would not come back in a few years to report on what they did. Although the report back would be different than the usual, she would like a future GOC to review the work that was done and decide how they can make it a little better. Her concern is where there is so much change as in the Legislature, there is a lot that can get lost.

**• Review Taxation Committee's 2017 Report on Tax Expenditure Review**

Director Ashcroft wanted to make the GOC aware of the work that did get done on OPEGA's Tax Expenditure Evaluations over the past year. The GOC's role in the Tax Expenditure process is to make sure OPEGA had a good objective product to pass on to the Taxation Committee. The Taxation Committee's role was to actually consider the recommendations in OPEGA's New Markets Investment Credit Report and the PTDZ Report. OPEGA also produced for the Taxation Committee a package of materials for Expedited Review of about 15 tax expenditures. This past year is the first time that the Taxation Committee has had some full evaluation reports from OPEGA to consider along with the expedited review. Under statute, the Taxation Committee is required by December 1<sup>st</sup> of each year to issue a report to the Legislature on the results of their review and what they did with the recommendations.

Director Ashcroft summarized what action the Taxation Committee will be taking as stated in their Report. With regard to the Expedited Reviews of approximately fifteen different tax credits that were related to a policy of tax fairness, Taxation did not have any recommendations for statutory changes to any of those programs, but there are some administrative tweaks that they are going to make toward the end of having some better data available in the future. In regard to OPEGA's New Markets Capital Investment Credit Review, the Taxation Committee said they agreed with the recommendations and are going to introduce a bill to put into statute the rules that FAME had already adopted. Those rules had some restrictions on uses of investments in an effort to try to avoid situations where one day loans could happen and avoid issues that we had with those in the past. FAME already has that in rules and OPEGA had recommended that the Legislature consider putting those same things in statute. The Taxation Committee is going to be putting forth a bill to do that. The Taxation Committee is also going to be working with the Maine Revenue Services (MRS) to address the issues and recommendations OPEGA has raised about there being a lack of clarity around what is supposed to happen if the aggregate amount of credit claimed in any one year exceeds \$20 million. The Taxation Committee is going to work with MRS to see whether there is statute change that needs to be put in place in regard to that and, if so, the Taxation Committee will be putting a bill forward or wrapping it into an administrative bill MRS does every year.

Director Ashcroft said as far as the rest of the Report Recommendations around the design weaknesses and the need to enhance the data reporting, OPEGA has recommended that those get considered if there was going to be movement to authorize additional allocation for that program. So far there is no bill that has been put forward to increase the amount of allocation under that program and it will be all used up as of about March 2018. So the Taxation Committee said if there is a bill, then we should be considering these other recommendations that are in OPEGA's Report.

Director Ashcroft said that for the PTDZ report, the Taxation Committee recognized that there was a bill that had been introduced to extend the program and the LCRED Committee was going to be working that bill. So they have recommended and will be working with LCRED, as appropriate, to make sure that OPEGA's recommendations on design weaknesses and data issues get considered as part of that bill. In addition, the Taxation Committee agreed that they thought the expanded reporting by MRS in the biennial Maine State Tax Expenditure Report would be valuable for furthering OPEGA's evaluations. OPEGA had recommended those changes so there would be more transparency for the Legislature. The Taxation Committee thought it was a good idea and asked MRS to let them know if there were additional resources that would be needed to do any of those things. Director Ashcroft was unclear how the Taxation Committee is communicating to MRS that they want them to do this, so she has to follow-up to make sure, just for OPEGA's files and records, how they are going to convey that to MRS.

Rep. Mastraccio noted that Rep. Stanley and Sen. Dow were at LCRED's public hearing and she has been contacted by other members of the Taxation Committee who said they intend to stay very engaged in the process.

**• Discuss Possible Changes to Legislative Tax Expenditure Review Process**

Director Ashcroft noted the GOC/OPEGA has gotten through the first year of the tax expenditure process such that OPEGA has had reports go to the Taxation Committee and that Committee has worked them. Now one of OPEGA's reports has gone to the LCRED Committee. At this juncture, OPEGA has been interested in debriefing how all of that has gone and whether there are additional tweaks or adjustments to the process that need to be made going forward. The GOC has authority in statute to introduce legislation that would make changes to the tax expenditure review process as needed. So OPEGA is debriefing to let the GOC know whether there seem to be some areas where they might consider changes in statute. Director Ashcroft wanted the GOC to know some of the areas OPEGA has identified so far. Though they have not been real problems yet, they might possibly be problematic in the future. She was not sure at this time whether any of the observations require statutory change as much as just being aware that this might get to be a challenge. She also wanted to give the GOC members an opportunity to be thinking about whether they think there are things about the process from their role that they might want to adjust.

Director Ashcroft summarized the Tax Expenditure Reviews Possible Areas for Process Improvements or Clarifications as of January 2018. (A copy is attached to the Meeting Summary.)

Rep. Mastraccio asked if the Director thought there could be a time in the future where the Taxation Committee would not recognize that they might not be the best committee to take action. Director Ashcroft hoped that the Taxation Committee would always recognize that, but thinks it is something to watch to see what kind of situation we get into in the future. She is not sure how they would handle, for example, an OPEGA recommendation for FAME to do something. Is the Taxation Committee going to be the one to say it needs to go to the LCRED Committee?

Rep. Mastraccio said there are times when they have that discussion about referencing a bill, but in this case it would seem to her that the discussion would take place between representatives from both Committees. She said it is laid out what they need to do and it should not be a contentious issue. She did not see it as a turf war, but did not know how you would write it in statute. Director Ashcroft was not sure it needed statutory change. She just wanted to point out that the way the process is currently designed everything goes to the Taxation Committee with the assumption that Committee would be the one to act, but that has not been the case so far. The situation also has an impact on OPEGA's resources in trying to support the various committees as well. OPEGA has now presented this Report three times and she thinks it did need to be presented those three times. Rep. Mastraccio saw that as a good thing and the more information that is out there to more people, more people are familiar with it and she thinks it is a benefit for what the GOC/OPEGA is doing. Everyone is seeing that these things do cross over into other joint standing committees.

Rep. Rykerson asked if the Director was referring to OPEGA and not the GOC regarding the possible areas for process improvements. Director Ashcroft said she was referring to OPEGA.

Rep. DeChant asked for further explanation of how the observations the Director described would get considered and implemented.

Director Ashcroft said the statute that lays out the ongoing tax expenditure review process right now has a lot of procedural pieces in it that is intended to make sure that it flows consistently and does the same thing year-after-year. One of the pieces is for the GOC to have the authority to look at the overall process and say how it is working. OPEGA's ultimate goal is to put out good reports on an evaluation of the tax programs and have recommendations that are considered and thought about potentially for implementation. Are there things going on in the process that could be barriers to meeting that goal for the overall process? The GOC has the authority to introduce adjustments in statute if it is needed to make those challenges go away.

Rep. DeChant asked how this process related to the other evaluations that are contracted out. She was speaking specifically about a review of tax incentive programs, which she came across when doing research on the Ship Builders Tax Credit, and it was from a company that presented to the LCRED Committee and had

recommendations. That review included a variety of tax incentives. She asked how that would relate and would that still continue to exist or would OPEGA's report supersede or eliminate that. Director Ashcroft said all of Rep. DeChant's questions are good ones. Rep. Mastraccio asked if Rep. DeChant would be okay with getting together with Director Ashcroft after the meeting to talk about her concerns. If she thinks afterward it is something the whole GOC will benefit from, the topic will be added to a future GOC agenda for discussion. Rep. DeChant agreed to do that.

Sen. Gratwick thinks OPEGA staff goes through things in much greater detail than most of the policy committees and that it is important to keep on the policy committees especially when they keep changing every two years. He thinks it would be short changing what OPEGA does for the GOC to back off and say it is not in our tax purview to follow-up on recommendations from expenditure reviews. He views OPEGA as a gentle velvet covered hammer to make sure things change because if you do not do that what are you really doing. He thinks the continued follow-up and pushing by OPEGA is necessary, it is an important topic and the goal of what the GOC is. Director Ashcroft agreed and said it was finding the right lines to draw on roles and responsibilities. OPEGA wants to be supportive in helping the Legislature make change where they have an inclination to want to make change.

Director Ashcroft said if she finds there are places where she thinks it would be worthwhile to change something in statute then she will bring that back to the GOC for a possible consideration as to whether they want to introduce legislation to do that. She also said if GOC members have any places they felt the process did not make sense in terms of what we are all trying to accomplish, the Director would like to hear those as well.

- **Review Process for Joint Standing Committee Review of Quasi-independent Agency Annual Reports**

Director Ashcroft said this item is more of a heads up and will not apply to all GOC members. She summarized the History of Quasi-independent State Entity Reporting and Review Required by 5 MRSA § 12023 and Guide for Policy Committee Review of Quasi-Independent Reports. (A copy of the documents provided to the GOC are attached to the Meeting Summary.)

Director Ashcroft agreed with Sen. Gratwick that for the reviews of the quasi-independent entity reports to be meaningful, it is going to take some legislators who are interested in spending some time reviewing the reports. This is another instance where we will see how it plays out over time.

Rep. Mastraccio said the GOC had hoped that the agencies would brief the policy committees on their report and that would give committee members the opportunity to ask questions and review it. That was the GOC's intent rather than having the report emailed. The Legislature did not want to be in the same position they were in regarding the Maine Turnpike Authority and what happened there was because of not enough legislative oversight in how money was being spent.

## **UNFINISHED BUSINESS**

- **Continued Discussion and Annual Approval of the Classifications and Review Schedule for Tax Expenditures as Required by 3 MRSA § 998-3**

Director Ashcroft wanted to remind the GOC members that OPEGA is working toward the point where the GOC would formally approve the Tax Expenditure Classifications and Schedule. The Committee talked about that and reviewed it at the last meeting. Statute requires that the GOC get input from the Taxation Committee. Director Ashcroft was at the Taxation Committee meeting earlier in the week and shared with them the same documents regarding Tax Expenditures that the GOC has received. She explained the process OPEGA was following and that the GOC was looking for input from them as to whether they agreed with OPEGA's proposed changes that the GOC reviewed at the last meeting. Director Ashcroft was not certain when OPEGA would receive input from the Taxation Committee, but when it is received, she will add it to the GOC's agenda.



Director Ashcroft said that in addition the GOC had some questions for MRS about the programs or tax expenditures that they were no longer going to be reporting in the Biennial Report that they do. The GOC had asked OPEGA to dig in a little and understand MRS's reasoning. OPEGA sent MRS a specific set of questions about five of the tax expenditures and MRS is in the process of putting together responses. Hopefully OPEGA will have those responses in a couple of weeks and will share them with the Taxation Committee as well the GOC when they are received.

## REPORT FROM DIRECTOR

### Status of Projects in Progress

Director Ashcroft said OPEGA is still in fieldwork on the **Beverage Container Recycling (Bottle Bill)** review. OPEGA is hoping to have its report on this review to the GOC by the end of the first quarter of 2018. That date is, however, pending receipt of data that OPEGA is looking for from MRS to be able to complete an analysis for the Report. She wanted to be clear that OPEGA just made the request to MRS, it is not a matter that they have been putting OPEGA off.

OPEGA is in preliminary research on the **Review of Maine Citizen-Initiative Process**. OPEGA committed to coming back to the GOC at the January 26<sup>th</sup> meeting with a proposed project direction which would include suggestions for what questions OPEGA thinks would be worthwhile for them to try to answer for the GOC in detail.

OPEGA is in fieldwork on **Temporary Assistance for Needy Families (TANF)** and it is OPEGA's goal to have a report out to the GOC by the end of June.

OPEGA is in fieldwork on the tax expenditure evaluation of the **Employment Tax Increment Financing Program** and is looking to releasing a report sometime this Summer. OPEGA has a lot of data analysis ahead still on this review.

The **Maine Capital Investment Credit** is in the planning phase. It is in planning because OPEGA developed the evaluation parameters for that review, presented them to the GOC, and the GOC approved. Other than that, however, OPEGA is not working on the review at this time because there are currently three other tax expenditure reviews and projects in process.

**BETR and BETE** is moving along a little bit more slowly because OPEGA does not have as many resources working on it.

The **Special Project Tax Expenditure: Design Evaluation for Major Business Headquarters Expansion Credit** is due to the Taxation Committee and to the GOC by the end of February. OPEGA is on track to put that out at that time. It is not going to look like a typical report because it is a special project. The suggestions that OPEGA will be making will be for the Taxation Committee primarily, but the report will be issued to the GOC at the same time and a GOC discussion of it will be scheduled for the first GOC meeting in March and at the meeting after it is issued they will talk about it.

There are also two "Planned" projects, **DHHS Audit Functions** and **Substance Abuse Treatment Programs in Corrections System** that OPEGA has not gotten to yet.

## ANNOUNCEMENTS AND REMARKS

Director Ashcroft said OPEGA's statutorily-required Annual Report to the Legislature on its performance and accomplishments is due January 15, 2018. She said that Report is going to be delayed until probably February because of OPEGA's other priorities they have been working on.

## **NEXT GOC**

The next Government Oversight Committee meeting is scheduled for Friday, January 26, 2018 at 9:00 a.m.

## **ADJOURNMENT**

The Chair, Rep. Mastraccio, adjourned the Government Oversight Committee meeting at 10:35 a.m. on the motion of Sen. Davis, second by Rep. Rykerson, unanimous.

## Tax Expenditure Reviews

### Possible Areas for Process Improvements or Clarifications as of January 2018

- The Taxation Committee may not always be the committee of jurisdiction in best position to consider and take action on OPEGA recommendations. Legislation related to the particular program or tax expenditure may have historically been referred to other committees (i.e. LCRED) which are, therefore, more familiar with the program and related tax expenditures. Also the State agency that is administering the tax expenditure may be under the jurisdiction of a different policy committee.
- The Taxation Committee has a statutory deadline of December 1<sup>st</sup> for reporting out to the Legislature the results of their work on Expedited Reviews and any Full Evaluations OPEGA has completed that have been transmitted to Taxation. However, OPEGA reports may be transmitted to Taxation at any point during the year including late in the year.
- The time and staff support resources that Taxation or other policy committees need to fully consider OPEGA recommendations and take action to implement, if any, may be more than what is available during Sessions and more than what can be committed to during Interims. Additionally, supporting a committee through this process is not a familiar role for policy committee staff and is likely to be an addition to their workload.
- There is no process or roles and responsibilities assigned in statute for follow up on OPEGA recommendations – particularly recommendations for Management Action that are directed to an agency.
- Consideration of the appropriate role and responsibilities for OPEGA in supporting policy committees wanting to take legislative action on OPEGA recommendations, particularly as regards impact on OPEGA's objectivity (perceived or actual) when evaluating the tax expenditure in the future.

## History of Quasi-independent State Entity Reporting and Reviews Required by 5 MRSA §12023

Title 5 §§12021-12023 contain requirements established for quasi-independent State entities in 2012 via Public Law 2011, Chapter 616. The law resulted from Government Oversight Committee (GOC) action related to a review of the Maine Turnpike Authority conducted by the Office of Program Evaluation and Government Accountability (OPEGA) in 2010 and 2011. The GOC felt, and the Legislature agreed, it was appropriate to clarify legislative expectations and strengthen legislative oversight for all significant quasi-independent entities created by the Legislature.

Section 12022 of the statute establishes responsibilities, expectations and requirements for certain financial policies and procedures of the 24 quasi-independent entities currently defined as “reporting entities” in §12021-6. The following general criteria were used to select entities for this list.

- They are established for a governmental purpose funded with revenues derived, in whole or part, from federal or state taxes or fees.
- They are a “component unit” of State government for purposes of the State’s financial statements. The criteria used by the State Controller’s Office to determine a component unit indicates both significant financial activity and a significant relationship to State government. (See general definition below).
- The statutory powers and duties of the quasi-independent state entity are considerably more than just advisory in nature and include such powers and duties as:
  - Right to sue and be sued;
  - Authority to enter into contracts;
  - Authority to hire staff and consultants;
  - Authority to establish and collect fees, issue bonds, accept grants, make loans etc.;
  - Authority to acquire and manage property; and
  - Authority to establish rules.
- Their organizational and accountability structure allows them to make significant policy and financial decisions independent of the Legislature and Executive state agencies.

Section 12023 of the statute also requires the “reporting entities” to submit annual reports to the Legislature regarding those financial policies and certain types of expenditures made by the entity. The designated entities are to file these reports with the Office of the Executive Director of the Legislative Council, the Clerk of the House and the Secretary of the Senate. The Executive Director is responsible for referring them to the appropriate joint standing committees of jurisdiction for review.

The first annual report from each “reporting entity” was due to the Legislature on February 1, 2013. This report included a discussion of the adoption and implementation status for the written financial policies and procedures required under §12022. In accordance with statute, the governing bodies of the entities were to have adopted policies by December 31, 2012 and be in position to fully implement the policies in their organizations by July 1, 2013. The first report was also supposed to describe the measures the governing body planned to use to monitor the organization’s compliance with the adopted policies.

Beginning in February 2014, the “reporting entities” annual reports to the Legislature are to include a list of all procurements greater than \$10,000 in the preceding year that were not competitively procured and a list of all contributions made in the preceding year that exceeded \$1,000. The terms “competitive procurement” and “contributions” are defined in §12021 of the statute.

In 2015, the GOC again initiated legislation that was enacted as Public Law 2015 Chapter 253, now codified in statute as 5 MRSA §12023 sub-§3. This statutory provision is intended to enhance legislative oversight of quasi-independent state entities by ensuring that joint standing committees of jurisdiction are monitoring the entities' compliance with requirements in 5 MRSA §§12022 and 12023. The GOC took this action after follow-up work by OPEGA determined that, while nearly all of the quasi-independent State entities had been submitting their annual reports, the annual reports had not been formally reviewed by the relevant legislative committees of jurisdiction. Title 5 §12023 sub-§3 now provides for review of the annual reports by those committees, with communication to the GOC on the results of the reviews and areas identified that perhaps should be examined in more depth.

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 379: BOARDS, COMMISSIONS,  
COMMITTEES AND SIMILAR ORGANIZATIONS

§12023. REPORTS TO THE LEGISLATURE

**1. Adoption and implementation.** By February 1, 2013, a governing body shall submit a report to the Legislature on the adoption and implementation status of written policies and procedures required by section 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 forward it to the appropriate joint standing committee or committees of the Legislature for review.

[ 2015, c. 102, §10 (AMD) .]

**2. Ongoing reports.** By February 1, 2014, and annually thereafter, a 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 procurement was waived under the policies adopted pursuant to section 12022, subsection 3, including procurements exceeding \$10,000 that were made under contracts previously entered into for which competitive procurement was not required. The list must include the names of the vendors and costs associated with those procurements; [2011, c. 616, Pt. A, §1 (NEW).]

B. A list of all persons to which the entity made contributions greater than \$1,000 in the preceding year and the total amount contributed to each; and [2011, c. 616, Pt. A, §1 (NEW).]

C. A description of changes made in the preceding year to the written policies and procedures required by section 12022 or to the procedures used by the governing body to monitor compliance with those policies and procedures. [2011, c. 616, Pt. A, §1 (NEW).]

For the purpose of this subsection, "the preceding year" means either the most recent January 1st to December 31st budget cycle or the most recent July 1st to June 30th budget cycle, depending on the fiscal year that the entity uses.

Reports to the Legislature required by this subsection must be submitted to the Clerk of the House, the Secretary of the Senate and the Executive Director of the Legislative Council in a manner determined by the Executive Director of the Legislative Council. The Executive Director of the Legislative Council shall forward each report to the appropriate joint standing committee or committees of the Legislature.

[ 2015, c. 102, §10 (AMD) .]

**3. Committee review and report.** By March 1st of every second regular session, beginning in 2016, a joint standing committee of the Legislature receiving reports pursuant to subsection 2 shall review the reports received within the past 2 calendar years, and gather additional information as necessary from the submitting entities, to assess whether policies and procedures adopted by a governing body in accordance with section 12022, subsections 3 to 5 are consistent with expectations established in those subsections and whether all reported waivers of competitive procurement and reported contributions made are in compliance with the adopted policies and procedures, including proper justification and documentation. The joint standing

committee shall report the results of its review, including any areas that should be reviewed in more depth, to the joint legislative committee established to oversee program evaluation and government accountability matters.

[ 2015, c. 253, §1 (NEW) .]

SECTION HISTORY

2011, c. 616, Pt. A, §1 (NEW). 2015, c. 102, §10 (AMD). 2015, c. 253, §1 (AMD).

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**Quasi-independent State Agency Reports as per Title 5 §12022 (due Feb. 1st each year)**

**Summary of Reports Received as of 1-8-18**

Agency Name	Reports Submitted					JSC*	GEA Review Schedule	Budget Review	
	2013	2014	2015	2016	2017				
Maine Public Employees Retirement System	X	X	X	X		AFA	2021	Y - GF	Payments to
Child Development Services	X	X	X	X		EDUC	None**	Y - GF	
Maine Community College System	X	X	X	X		EDUC	2017	Y - GF	
Maine Education Loan Authority	X	X	X	N/A		EDUC	2019	N	MELA merged with FAME
Maine Health & Higher Educational Facilities	X	X	X	X		EDUC	2019	N	
Maine Maritime Academy	X	X	X	X		EDUC	2017	Y - GF	
University of Maine System	X	X	X	X		EDUC	2017	Y - GF	
ConnectME Authority	X	X	X	X		EUT	None	N	
Efficiency Maine Trust	X	X	X	X		EUT	None	Y - GF	
Maine Municipal & Rural Electrification Cooperative Agency	X	X	X	X		EUT	2015	N	
Maine State Housing Authority	X	X	X	X		EUT	2015	Y - GF	Some programs
Maine Municipal Bond Bank	X	X	X	X		I&FS	2015	Y - GF	Rural Water Program
Maine Human Rights Commission	X	X	X	X		JUD	2017	Y - GF	
Finance Authority of Maine	X	X	X	X		LCRED	2017	Y - GF	Some programs
Loring Development Authority	X	X	X	X		LCRED	None	N	
Maine Governmental Facilities Authorities	X	X	X	X		LCRED	2021	Y - GF	Debt Service
Maine Port Authority	X	X	X	X		LCRED	None	N	Part of MDOT's budget?
Maine Technology Institute	X		X	X		LCRED	None***	Y - GF	DECD Office of Innovation
Midcoast Regional Redevelopment Authority	X	X	X	X	X	LCRED	None	N	
Small Enterprise Growth Board	X	X	X	X		LCRED	None	N	
Washington County Development Authority	X	X	X	X		LCRED	None	N	
Worker's Compensation Board	X	X	X	X		LCRED	2017	N	
Maine Turnpike Authority	X	X	X	X		TRANS	2021	Y	Trans Committee
Northern New England Passenger Rail Authority	X	X	X	X		TRANS	None	N	Some is part of MDOT's budget

**\*Joint Standing Committee of jurisdiction that received the submitted reports via the Executive Director of the Legislative Council.**

**\*\*No GEA review unless part of Dept of Education review in 2021**

**\*\*\*No GEA review unless part of Dept of Economic and Community Development review in 2021**



## **Guide for Policy Committee Review of Quasi-Independent State Entity Annual Reports and Related Financial Practices Pursuant to 5 MRSA §§12021 – 12023**

### **Documents Needed**

- Entity's current written policies and procedures governing procurement, contributions and donations, and travel, entertainment and meal expenses. (Get these documents from the entity.)
- Annual reports submitted by the entity pursuant to §12023 for at least the past two years. (These reports are submitted to the Executive Director's Office who has been forwarding them to the relevant JSCs.)

### **Review Process**

#### **Step 1 – Review of the written policy and procedures**

Policy committee compare substance of each policy to statutory requirements for that policy in §12022.

- a. Are there any areas where it appears policy is not compliant or where it is unclear whether the policy is compliant?
- b. Is there anything in the policy that raises questions as to whether expenditures and practices allowed under the policy are indeed consistent with the entity's authorized mission and duties (§12022 sub-§1)?

Policy committee question entity on:

1. When did the governing Board approve/adopt these current written policies and procedures?
2. How does the governing Board monitor the entity's compliance with each of these policies and procedures?
3. Have there been changes to the written policies or the way in which Board monitors compliance since the Board formally adopted the policies? If so, have these changes been reported in the entity's annual report as required by §12023 sub-§2, par. C?
4. Any areas identified by the committee in a. and b. above that require additional explanation.

#### **Step 2 – Review of entity annual reports re: procurements over \$10,000 that were not competitively bid for last two years**

Policy committee review list of non-competitive procurements over \$10,000

- a. Has the entity provided explanation or justification for why the procurement was not competitively bid and/or which waiver in its procurement policy the procurement applies to? If not, ask the entity to supply justification or the relevant waiver provision.

- b. Are there any procurements that appear non-compliant with the entity's policy, or where it is questionable or unclear whether it is compliant?
- c. Do any of the vendors/procurements listed raise questions as to whether those expenditures are indeed consistent with the entity's authorized mission and duties (§12022 sub-§1)?
- d. Are there any procurements where vendor name, dollar amount of the procurement, or repeated history of non-competitive procurements from this vendor raise questions or concerns for the committee?

Policy committee question entity on:

- 1. Will the entity testify that the list of procurements provided in the annual report is complete to the best of its knowledge?
- 2. What does the entity maintain for documentation explaining or justifying the choice to procure these goods/services through a non-competitive process?
- 3. Any areas identified by the committee in a. thru d. above that require additional explanation.

### **Step 3 – Review of entity annual reports re: contributions over \$1,000 for last two years**

Policy committee review list of donations and contributions over \$1,000

- a. Has the entity provided explanation of what the contribution was for if it is not evident from the name of the person/organization it was made to? If not, ask the entity to provide explanation.
- b. Are there any contributions that appear non-compliant with the entity's policy, or where it is questionable or unclear whether it is compliant?
- c. Do any of the contributions listed raise questions as to whether those expenditures are indeed consistent with the entity's authorized mission and duties (§12022 sub-§1)?
- d. Are there any contributions where the name, dollar amount of the donation or contribution, or repeated history of donations/contributions to the individual or organization raise questions or concerns for the committee?

Policy committee question entity on:

- 1. Will the entity testify that the list of contributions provided in the annual report is complete to the best of its knowledge?
- 2. What does the entity maintain for documentation explaining the purpose of the contribution?
- 3. Any areas identified by the committee in a. thru d. above that require additional explanation.

**Step 4 – Review annual reports re: changes to policies or governing Board oversight of compliance**

Policy committee review annual report to see if there are described changes to policies and/or the governing Board's processes for monitoring compliance. Note that the annual report would be expected in to include a discussion of any changes the entity informs the committee about in response to Step 1, question for entity #3.

If annual report describes changes, is there anything in those descriptions that are concerning or unclear to the committee? If so, question entity about them.

**Step 5 – Communication to GOC on the result of the review**

Policy committee communicate to GOC pursuant to §12023 sub-§3 on:

- a. results of the committee's review; and
- b. any areas the committee feels should be reviewed in more depth given the information in the entities annual report and any additional information and explanation provided by the entity.