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MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

April 24, 2015

Approved May 8, 2015

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:07 a.m. in the Cross Office Building.

**ATTENDANCE**

Senators:	Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis, Sen. Diamond and Sen. Gerzofsky
Representatives:	Rep. Kruger, Rep. McClellan, Rep. Duchesne, and Rep. Mastraccio Absent: Rep. Campbell and Rep. Sanderson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Etta Connors, Adm. Secretary, OPEGA
Agency Officers and Staff Providing Information to the Committee:	Matthew Dunlap, Secretary of State David Cheever, State Archivist

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

**SUMMARY OF THE APRIL 10, 2015 GOC MEETING**

The Summary of the April 10, 2015 Government Oversight Committee meeting was accepted as witten.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Unfinished Business, GOC Consideration of Recommendations on Records Retention and Management From Working Group Report.**

## UNFINISHED BUSINESS

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report**

Director Ashcroft reminded the Committee that they had received the Working Group's Report with recommendations on Records Retention and Management at their April 10, 2015 meeting. The Report recommendations include how to ramp up compliance with what is currently in statute and rules with regard to both Archives' and agencies' responsibilities for records management and retention. The GOC is now in the position of determining what to do with the recommendations that are included in the report back to affect implementation of anything that seemed appropriate.

Chair Katz invited Secretary of State Dunlap, State Archivist Cheever, Brenda Kielty, FOAA Ombudsman, Attorney General's Office and Tammy Marks, Director, State Archives Records Management Division to address the records retention and management recommendations.

Secretary Dunlap distributed a Memorandum to the Committee regarding proposed first action items. (A copy is attached to the Meeting Summary).

Secretary Dunlap said Archives has worked closely with the Executive Branch on the records retention and management issues and has received good cooperation, but what remains is falling substantially short of what the law anticipates. He said there needs to be an action plan with due dates.

Secretary Dunlap said there are vacancies on the Archives Advisory Board (AAB) and noted that Ms. Kielty has done research on how AAB has evolved over the years. One of things that has not evolved is the Board's mission. Archive's challenges include lack of space, emerging digital records, and reduced staff. His agency would like to work with the Executive to fill the vacancies on AAB and, on parallel tracks, work on records retention policies and schedules and make sure that the State agencies' records officers have the support they need. He believes the AAB needs to meet twice a month as they work through all the current hurdles. The law stipulates that there be an AAB and for the Secretary of State's Office to work with it. He thinks that should be done and then in the next six months to a year, as we gain a better understanding of whether Archives' staff should be independent or working in concert with AAB and the GOC, then a determination can be made regarding the makeup, mission, scope, or continued existence of the AAB.

Chair Kruger noted that it was said that in 1979 there were thirty-five employees at the Archives Office and now there are only about a dozen. He asked if those cuts had occurred over fourteen biennial budgets. Secretary Dunlap said it had. Every agency tries to work with the Legislature and at budget times the question always comes up of whether an agency can do their job with a little bit fewer resources, but then it gets to a point where you cannot.

Chair Katz said, as discussed at the last GOC meeting, AAB seemed to be weighted with individuals interested in history as opposed to those with technical knowledge about the records issues. He asked the Secretary if it would be helpful to change statute to require particular expertise among the membership of the Board. Secretary Dunlap thinks it would be. Chair Katz asked if the Secretary could give his suggestion to the GOC of what AAB's makeup should be. The Secretary said he could do that and will get that information back to the Committee.

Sen. Johnson asked if the Secretary knew how much time would be needed for AAB to make strategic decisions on what technology was needed to properly archive records now and for the future. The Secretary thinks his Department has a good handle on that and has its own standalone Information Services Office that has been working on these issues. The Deputy Secretary of State has expertise in technology issues. He noted

that the 125<sup>th</sup> or 126<sup>th</sup> Legislature had allocated half a million dollars to study the issue of digital records retention and they have begun implementing a new program. The Secretary's Office would like to demonstrate that program to the Legislature this coming January.

Sen. Johnson asked Secretary Dunlap if additional staffing and equipment would be needed before moving forward. The Secretary said for the current scope his resources are sufficient. In their work over the next few months they will get a better understanding of the records management piece and working with State agencies to provide the support needed and will know whether it is sustainable or whether they need "x" number of people here and a level of devoted expertise at State agencies. He said it is too early to make such assessments.

Sen. Diamond thinks the records retention and management situation is in emergency situation and was not sure AAB was the way to go, or that even if the membership were changed, the AAB would be what was needed to meet the challenges currently facing the State. He asked for Secretary Dunlap's opinion of whether it should be looked at in a more aggressive group that could work on it almost daily and make more timely recommendations of how to deal with the situation. The Secretary said they are planning to pull together a stakeholder group to work closely with AAB and Archives staff. He agrees with Sen. Diamond and said the information of an age could be lost. Sen. Diamond clarified that he was not suggesting that AAB be done away with, but it may not be the group to get the State caught up. He noted that AAB should also include a legislative representative.

Sen. Burns noted that Secretary Dunlap said a half a million dollars was appropriated by the Legislature to study this matter and asked if it was to study or to implement. Secretary Dunlap said it was to implement. The allocation was to work on the issue and everyone knew it would not be enough to pay for the entire solutions, but it was a start. Sen. Burns asked if the bulk of money received in the past and money received in the future would be used for vendors and systems or used for staff. Secretary Dunlap said staff would be a headcount issue from the Legislature so that would be separate. He anticipated that it would be used more for software and hardware materials. The Secretary of State's Office reports the use of that money to the State and Local Government Committee.

Rep. Duchesne agreed with Sen. Diamond and said Boards are good at doing routine observations of how processes are going, reviewing budgets, etc., but not good at moving events along quickly. He asked if the AAB was needed. Secretary Dunlap said that will be included in his response to the GOC.

Rep. Mastraccio asked at what point was it going to be decided what documents should not be saved. Secretary Dunlap said if he had his way he would save everything, but they do not have the resources to do it. The permanent records in the State Archives represents one to three percent of all government activity. The question of what will be important to a future generation is the scary question.

Sen. Johnson referred to the Secretary of State's memorandum in which he recommends holding off accepting materials from agencies until they have records officers and he hoped it would be made clear that departments have to retain those records until they can be transferred to Archives. Secretary Dunlap said that was correct and that the vast majority of the records are actually retained by the agencies and not necessarily transmitted to Archives. The paper records are different than electronic records.

Sen. Johnson said it would seem that whatever is designed for the digital records retention and archiving should incorporate the retention periods and policies so cleaning out can become a matter of course automatically within the digital information system. He also hoped that Archives had some means of only allowing access to information that is in some immutable form so it is not possible to be hacked into. Another challenge Sen. Johnson had not heard addressed is that the tools necessary to access information is constantly changing and he wondered how the State is expecting to get on top of that additional challenge. Secretary Dunlap said security is something they work on continually and he has a lot of confidence in his Department. Regarding having the technology tools for the public to be able to access information, the Secretary said that has been the focus around digital archiving of not only how to save information, but how to retrieve it. One

model being seriously contemplated is a technology that would break every program down to binary code that could then be reconstructed.

Chair Katz referred to the Recommendations in the Working Group's Records Retention and Management Report and reviewed them with the Secretary to note whether he had questions or problems with them.

### **Improved Guidance & Model Policies**

Chair Katz asked who the people in the stakeholder group convened by Archives would be. Secretary Dunlap said members of the media, the GOC, representatives of the Executive Branch and appropriate technology people.

Chair Katz confirmed that once the group was up and running Archives would also issue policy directives and bulletins on a quarterly basis. The Secretary agreed.

### **Records Retention Schedules**

Regarding the recommendations related to the AAB, Secretary Dunlap said he would provide the GOC with suggestions on what should be included in potential legislation for AAB. Chair Katz said the GOC would welcome the Secretary or Archivist's suggestions on what the GOC should seek to clarify in any legislation regarding the AAB's role in the schedule approval process.

Chair Katz noted the recommendation for agencies and Archives to increase the number of retention schedule reviews done each year. He said that implies that the system is ongoing. Secretary Dunlap said that was correct. Chair Katz said they will have to go back to this recommendation.

### **Agency Records Officers**

Chair Katz referred to the recommendation that Archives not accept records from agencies unless there was an identified Records Officer for that agency. He asked if the Secretary could think of any other ways to help the agencies to comply with the rules. Secretary Dunlap acknowledged that agencies have had their resources reduced over the years just as Archives has. Assigning record officer's duties to current staff duties takes away staff time from their primary job but assigning a standalone records officer to each agency would be overly ambitious. Secretary Dunlap said Archives can provide training and support to an individual who will accept being a records officer as part of their duties.

### **Training & Accountability**

Chair Katz noted that a number of the recommendations in this area are assigned to Archives and asked if the recommendations made sense to the Secretary. Secretary Dunlap said they did.

### **Oversight & Compliance**

Chair Katz noted these recommendations involved actions that would need to be taken by Archives, particularly periodic Archive inspection of agency records management programs on a rotating basis, etc. He asked if that made sense to the Secretary. Secretary Dunlap said it did.

Chair Katz asked the Committee members what kind of a report back they would like to receive from the Secretary of State and Archives regarding records retention and management.

Director Ashcroft said the work that needs to be done regarding the Report Recommendations requires the cooperation of the agencies. She asked if there was a good view at Archives of what the state of affairs really is in the agencies with regard to their understanding of their records management responsibilities and the role of Archives in working with them. She wondered if there was any value to the Committee getting a sense from

the agencies what the situation looks like from their perspective in terms of what is going to be asked of them as part of the Report Recommendations. Secretary Dunlap said over the last couple of years, they have done outreach to State agencies on the importance of records management and it was then they realized that not a lot of agencies had records officers. He thinks agencies understanding this situation occurring at the CDC has resulted in their increased attention and interest, but as far as getting feedback from the agencies, he would leave to the Committee. Perhaps additional details can be provided by the Archivist or the Director.

Director Ashcroft asked if the Archives Office needed any additional authority to be able to motivate agencies to comply or is there already sufficient incentives built into law to require compliance and to define what happens when there is not compliance. Secretary Dunlap said the law does not apply simply to Archives. It applies to all State agencies and all the people so the law is sufficient in terms of their authority. You do not have to go much further than they have already gone before you start looking into constitutional issues of separation of power. He thinks what they currently have to work with is sufficient, at least to get them started.

Sen. Burns asked if it would be appropriate to ask the Chief Executive's Office whether this is something they feel there can be some compliance with and that should take care of all the agencies rather than going agency by agency. Secretary Dunlap thought a memorandum from the Executive to the Executive Departments would leave them with clarity as to what their responsibilities are and opportunities to cooperate with the Archive's Office.

Chair Katz asked what the GOC's next steps were. Director Ashcroft said starting with the Secretary of State's Memorandum, it seemed the Secretary would be coming back with suggestions about what needed to be done to change the membership of AAB and then that may be a piece of legislation the GOC could put forward. The Secretary has committed to getting ideas back to the GOC regarding that. If the GOC wants to hear anything from State agencies on their perspective on this matter, the Committee could invite agency representatives to come to a future meeting. The Secretary indicated in his Memorandum that there should be a directive to the State Agencies to identify a records officer at a managerial level, and she did not know whether that was something that should be sent from the Secretary or the GOC. As Sen. Burns mentioned, she did not know whether there are additional items they might ask the Executive Branch to do in terms of indicating their commitment to the effort as well.

Sen. Burns said he would start from the top and that would take care of the other issues. Director Ashcroft said what is needed is commitment on both sides to make it work so that is a possible action the GOC could take. She did not know if there was anything the GOC could do to support either the Office of the State Archives, or the agencies, in assessing the current state of their records management program and whether they have a good understanding of what is required to do that assessment. There is a self-assessment tool at the federal level that Ms. Marks and Ms. Kielty mentioned in the Report. Perhaps there should be some kind of an assessment like that that agencies do and that may be something included in a directive from the top of the Executive Branch.

Chair Kruger wondered if the records retention and management responsibilities at Archives had become a large enough task that it should be a separate position to the State Archivist. He wants somebody in the State Archivist position who is excited when they find an old document, but that person may not be the best person to deal with the technicalities of digital archiving for example. He said he was not talking about the current position holders or even recent past position holders, as much as looking towards the future and how are they going to get this done in the most efficient way. Secretary Dunlap said the State Archives represents a body of expertise people around them. Back when Archives had 35 staffers, the structure of a Director of Records Management, Director of Archive Services and the State Archivists acting in a triangle made sense. Now at a staffing level of a dozen people, having two of them be directors did not make sense. As a budget initiative they eliminated the Director of Archive Services, and now have modified the role of the Director of Records Management to act more as a Deputy Archivist. Secretary Dunlap said Chair Kruger's observation presents a somewhat different observation from a different perspective, but is one that is worth contemplating. The Secretary of State has a lot of resources they can make available to the Archivists and staff.

Archivist Cheever reassured the GOC that the current efforts highlighted by the Secretary around digital archiving are in progress. Ms. Marks is looking at all sides of this, not just the archives services piece. Archives received the allocation from the Legislature for that effort and is moving forward procedurally in small steps because they cannot afford to get it wrong. They cannot afford to go back before the Legislature and say they goofed. He said Ms. Marks, and other Archive staff, are poised to implement the digital archiving and records retention piece. Installing the systems and having staff conversant in digital archiving and the records retention puts them in good shape. He said the staff is energetic, dynamic and dedicated.

Sen. Diamond said in terms of the action plan, he liked the first recommendation regarding a stakeholder group and would like to see that happen sooner rather than later. Secretary Dunlap talked about a six month report back, but he asked if the GOC could have an interim report back prior to the six month period.

Secretary Dunlap said if it was the pleasure of the Committee to have updates earlier, or more often, he would be happy to report back whenever asked to because it is important work. He does not consider the request to be a burden.

Chair Katz said it is an important enough subject that the GOC should ask for a once a month update. Other Committee members agreed.

Director Ashcroft clarified that the Secretary of State and the Office of Archives will come back in the next month with their recommendations about whether and what should be in statute with regard to the constitution of the Archives Advisory Board so the GOC might initiate legislation. In concert with that, what their vision is of the stakeholder group and the status of getting that group together to work with the AAB around the recommendations in the report that envisioned the stakeholder groups' assistance. She said Secretary Dunlap encouraged the GOC to direct the records officers in each State agency to assess the status of their records management progress and she asked if that was something that might come from the GOC as a directive. They talked about whether or not that made sense to do from the top executive instead and that might be another piece to talk about further next time. The Committee asked for a report back in a month on the status of the items from the State Archives' group.

Sen. Johnson said aside from the fact that it is not the Legislative Branch's responsibility to direct Executive Branch agencies, he would advise that the GOC communicate the need and encourage them to step up to help meet the present challenge of getting Archives' policies and departments in shape so the GOC knows where they stand. He thinks the Committee should reach out to the Chief Executive and ask for his help in informing the records officers of the need.

Director Ashcroft will craft documents for the GOC's review at their next meeting in terms of communications to the Chief Executive.

Sen. Katz asked about the GOC's authority to report out a bill without Legislative Council approval. Director Ashcroft said the GOC has authority to submit legislation any time that is related to implementing recommendations in OPEGA's report, but since we are now a little far afield from the Healthy Maine Partnership Report, she will check with Linda Pistner, Chief Deputy Attorney General, whether introducing legislation here would still be in accordance with statute.

The GOC thanked Secretary Dunlap, Archivists Cheever, Ms. Kielty and Ms. Marks for attending the meeting and providing information.

## NEW BUSINESS

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

Director Ashcroft noted that what she wanted to do for this meeting was to give the history regarding OPEGA's Economic Development Programs in Maine Report and the current status of recommendations from that report that have not been fully addressed. Several years back the GOC took similar stock of recommendations in this report and the GOC directed OPEGA to begin thinking about what might be needed for legislation from the GOC to implement the recommendations that had not been addressed. OPEGA has been delayed in putting the matter back before the Committee because there were many things in the works around this topic that they wanted to see the outcome of before determining what that legislation might include.

Director Ashcroft reviewed with the GOC the Summary of Actions Taken Related to the Report Recommendations and the known status of Recommendations Not Fully Addressed as of April 2015. (Both documents are attached to the Meeting Summary).

The GOC's discussion and questions included:

### **Finding 1: Existing Programs May Be Ineffective or Inefficient**

Rep. Mastraccio, a member of the LCRED Committee, said that Committee has received the June, 2014 Comprehensive Economic Development Evaluation Report, but has not received a presentation by the Department of Economic and Community Development (DECD) of the second Report from that evaluation. All the Committee has ever seen is the preliminary report.

Rep. Mastraccio asked how much money is involved in the economic development programs that Director Ashcroft was talking about that are not getting evaluated well through the DECD evaluation. The Director did not have the dollar amount but will get it for Committee.

Rep. Duchesne said the most effective way to get reports implemented is for a legislator to continuously file bills until all report recommendations are on the table and discussed.

Sen. Johnson thought it ironic that the State is having a hard time coming up with the funding to look at the lack of oversight and control of the effectiveness of the programs and difficulty getting the data necessary to accomplish that. Just in the news was \$16 million the State is spending on something which is not providing jobs because 200 people were laid off, the company closed and the State is still making payments. He did not know how to get the funding addressed, other than creating an awareness in the Appropriations Committee of exactly how many critical recommended changes recurring in the CEDE Report and OPEGA's past analyzes need to be acted upon. Sen. Johnson said perhaps the State should defund those aspects of the departments until the controls are in place, although there may be too much harm created by that. He said the GOC has to act on this and the Executive Branch should feel a profound responsibility for fiscal oversight.

Chair Katz said the State spends economic development funds in two ways. One is with grants and the other is tax expenditures. He asked why these types of grants could not be subjected to the same kind of review the Committee has been working on over the past couple of years for tax expenditures. Chair Katz said why shouldn't the tax expenditure evaluation process include tax spending as well as tax breaks.

Sen. Johnson said if Chair Katz was saying that in addition to OPEGA's work in reviewing the tax expenditure programs that they also should be reviewing the grant programs under the economic development umbrella, he agreed, but he thinks there is evidence that those reviews have been done and the recommendations have not been acted on. Statute requires a report every two years which has made similar recommendations which have

not been acted on. He hoped the GOC, as a Committee, decided on some action to move the matter along because they already have evidence, in addition to what Chair Katz suggested of having a review of economic development programs.

Chair Katz thinks the GOC and OPEGA have done some great work in setting up a structure by which they are at least proposing that all tax expenditures will be regularly reviewed on a periodic basis and those reports will come to the GOC and also to the Taxation Committee. He did not know why tax expenditures, as opposed to outright grants, should be analyzed any differently because it is the same idea. The State is spending money one way or the other to reach an economic development goal and should be periodically measuring whether the money spent is a good bargain and whether the goals are being reached.

Rep. Mastraccio agreed they should be doing that, but the bigger problem is as long the company does not have to provide information that they say is confidential, then the State is never going to drill down to the information needed. You cannot do an evaluation until they give you the information. Director Ashcroft said that is an issue being worked through on the tax expenditure proposal as well. Part of the problem by setting it up with DECD doing the work with an independent evaluator is that the business community has the same concerns of safeguards around the handling of the confidential information that are being discussed with the tax expenditure review proposal. The Director is not advocating for more work but she thinks the way OPEGA is structured can satisfactorily address those concerns.

Sen. Johnson said, in light of Sen. Katz's observation about grants, perhaps the GOC should be proposing legislation to make it be a recurring duty of OPEGA, rather than the independent entity, for putting together the report and addressing the data collection requirement that is getting in the way of the ability to conduct that work.

Rep. Duchesne said he understood that, in the case of tax expenditures, the State was not actually giving out any money that they could retain part of to fund the evaluation. He suggested instead the State could require a company to write the State a check for a small percentage of the benefit they are getting in order to fund the evaluation. He said if they are going to get that kind of benefit there should be some kind requirement to provide the information to assess it.

Sen. Diamond thinks there is a problem with the third party getting confidential information and he would be concerned about turning confidential information over to a third party. He said that would not mean that he would feel the same way about turning that information over to OPEGA.

Rep. Duchesne said if a legislator simply put in a bill to sunset any one of the tax expenditures, you would get a lot of input in a hurry.

### **Finding 2: Insufficient Definition of Economic Development**

No Committee discussion or questions.

### **Finding 3: Lack of Statewide Coordination and Oversight**

Rep. Mastraccio said she has never been a BRED Committee member, but knowing how much work members have to do on LCRED, legislators are not able to follow everything going on. They have so many bills and for a committee to just get through those bills, they do not have time to explore and drill down into many of the other matters. She said economic development is very important and is getting lost because like the LCRED Committee there is too much work to do anything the right way.

**Finding 4: Inadequate Mechanisms to Assure Program Controls**

Rep. Mastraccio said it would be interesting for members of the Committee to know that when FAME came before the LCRED Committee to present the new markets' proposal that they wanted to do for this legislative session, DECD was not there to even offer input. Director Ashcroft said DECD has not been made part of the process for new proposals. This is an example of where the administration of a program is in a different agency than DECD, it is a tax credit so the Taxation Committee is also another place where it is probably getting discussed, but it is not being brought together anywhere. Rep. Mastraccio said common sense might tell you that DECD might want to be there to just say whether it is a good program or not even if they were not going to have an evaluation for the Committee.

Sen. Johnson said not having a portfolio coordinator or appropriate controls in place is a big part of the problem of not being able to get a handle on what is going on. There should be requirements on every program that there is sufficient and appropriate data being provided and that there are clear and measurable expectations and there will be penalties for failure to meet those expectations. That should be the case for not only what qualifies as an economic development program, but also for anything else that is a tax expenditure, or is another initiative that the State is putting money into and providing, or foregoing, revenues and should be part of all those programs whether they are under DECD's purview or not. The other element that is missing is the lack of someone coordinating the portfolio and the lack of their guiding documents as to what the objectives are and what is the overall picture for economic development. He believes that is a severe shortcoming in how the economic development programs operate as well as how the State's tax, or grant, spending programs generally have controls in place or don't within State government. Sen. Johnson said there should be a role for the GOC in implementing recommendations.

**Finding 5: Data Collected Does Not Provide Clear Picture of Results**

No Committee discussion or questions.

**Finding 6: Inadequate Reporting for Accountability**

Rep. Mastraccio noted the difficulty when a report comes in to a Committee in July of the second year of the session. Those reports just go on the shelf so there has to be a mechanism for ensuring that the committee of jurisdiction does review and understand the report. She used DECD as an example and said they do not want a close inspection because they submitted just a preliminary report on their last evaluation. There were so many questions about the Report at LCRED and she thinks because the Committee tried to delve into that report they have not received the next one. Some of the things that came out were not what DECD expected, or wanted to talk about. Rep. Mastraccio said how do you get around a two year legislative session with people who are transitioning and still keep track of it unless there is some other group that is looking over the tax expenditures, grant programs, etc.

Sen. Diamond asked if the Commissioner, or other members of DECD, were ever invited to a GOC meeting. Director Ashcroft said not since the time OPEGA issued the Report when Commissioner Richardson was talking with OPEGA and the GOC about DECD's action plan. There have been two changes of Commissioners since then. She thinks Commissioner Gervais is anxious to talk about the evaluation piece. Sen. Diamond asked if it would be appropriate to have the Commissioner come to a GOC meeting to answer questions. The GOC will invite Commissioner Gervais to the next meeting.

Rep. Duchesne said the Committee might want to consider inviting members of the LCRED Committee also.

The GOC members agreed to invite Commissioner Gervais and members of the LCRED Committee to the next meeting.

## UNFINISHED BUSINESS

### • Review and Adoption of Potential Revisions to GOC Rules

Chair Kruger asked members of the Committee to review the potential revisions to the Committee's Rules. A vote will be taken at the next GOC meeting.

### • Status of Actions Related to OPEGA Report on Healthy Maine Partnerships

#### -Status of LD 6 and LD 1347 (LR 1988)

Chair Kruger said LD 6 will be on the House Calendar on April 14<sup>th</sup>. The LD had about a million dollar fiscal note on it and several GOC members had questions about the nature of the fiscal note and whether it was really necessary. He requested and received a new fiscal note which is much less. The amended amount is \$58,500 for the first term and \$78,000 for 2016 and 2017 and that will be offered as a floor amendment. Chair Kruger said it would be helpful to have support from both sides of the aisle for the bill. He did receive feedback from a member of the State and Local Government Committee, and it appears to also be the Governor's position as well, who said the GOC should not be passing legislation affecting the Administrative Branch without doing the same for the Legislature. Chair Kruger said the Legislature is bound by a code of ethics, but would consider supporting that, but it should not be tied to LD 6. He noted that the 126<sup>th</sup> GOC was unanimous in support of the bill.

Director Ashcroft noted that a portion of LD 6 allows for the GOC to consider making a recommendation to the Legislative Council about additional ethics programs for the Legislative Branch.

Director Ashcroft said the other piece of legislation introduced coming out of Healthy Maine Partnerships is LD 1347. This LD is to clarify that the procurement competitive bidding provisions apply to grants. The bill has been referred to the State and Local Government Committee.

#### -Response From DAFS Regarding Timeline for Reporting Back on GOC Recommendations to Modify Procurement Rules and Policy on Amendments and Renewals

The GOC asked DAFS to make similar changes to the procurement rules and also to update their procurement policies for amendments and renewals of contracts and grants to provide additional guidance for situations like the CDC encountered. The Committee had received a letter from Commissioner Rosen saying the recommendations seemed reasonable, and DAFS would be giving them consideration and would get back to OPEGA about whether they were going to implement them. The GOC asked OPEGA to get a more specific response from the Commissioner about their time frame.

Director Ashcroft received Commissioner Rosen's response letter, dated April 24, 2015. DAFS does plan to include the suggested rule changes along with other changes to Rule 110, but they are not sure what the timeline on that is going to be. As it moves through the rule making process, those changes will be incorporated. Regarding updating and putting additional guidance in policies, DAFS does anticipate that recommended change no later than May 15, 2015.

Director Ashcroft said Commissioner Rosen also wanted to point out that Part A of the Governor's Biennial Budget includes a \$180,000 request to "provide funding for annual licensing fees for a state electronic procurement system" for the Division of Purchases. A direct link can be made between the budgetary line item and the goals sought by the GOC through the recommendations mentioned above. The budgetary request will allow the Division of Purchases to better direct, oversee and provide guidance for the State's current processes for handling contract and grants.

**-Status of Actions Taken by DHHS****-Response to GOC HMP-related Questions From Prior Meeting**

Director Ashcroft said at the time OPEGA released its report, DHHS was planning to do a new Request for Proposal process for the next round of Healthy Maine Partnership grant awards for FY16 and the DHHS Office of Continuous Quality Improvement was going to be working with the Maine CDC on the scoring processes to ensure that there was strict adherence to the State's RFP processes. DHHS has reported that effort is underway. Prior to the RFP DHHS sent out a "request for information" that is designed to give broad community input to the CDC on looking at what the programming structure and funding distribution should be for the HMP initiatives. That process has been completed with the assistance of a contractor. The contractor is in the process of working with Maine CDC staff to analyze the responses they received back.

Director Ashcroft said DHHS' planned next steps are determining the actual HMP programming structure and funding and integrating the information they received from the request for information into the RFP that they are going to be issuing. The Department expects the RFP could be in late fall of 2015 with applications due during the winter of 2015 and 2016.

DHHS had also planned for its legal team to work with State Archives to review and update DHHS's records retention and management policies and practices. The Department acknowledges that the GOC has had a lot of discussion about how that is an issue across State government. They recognize the critical nature of having appropriate policies and procedures in place to manage public records and they have a number of efforts that they feel are ongoing in the area. The legal team did get input from State Archives, as well as the public Ombudsman in the Attorney General's Office. Working with them the Department has developed a records management training that is available to all DHHS staff online, and have completed an inventory of active Commissioner-appointed records officers across DHHS. There are nine dedicated within the Department and they anticipate adding additional officers in the near future.

DHHS has completed an inventory of all the current Records Center cardholders and working to get all of them current and to put in a process to make sure it stays current.

Other ongoing work by DHHS is updating their records retention schedules across DHHS offices.

Lastly, DHHS, as a Department wide initiative, had planned to work on establishing quality performance measures for partners, including Healthy Maine Partnerships. They report they have been putting in process measures to monitor the performance of HMP's, a significant portion of that performance measurement work is incorporated in the work done around the request for proposals that were just talked about and the request for information that they sent out. They anticipate that also getting folded into whatever contracts are issued and awarded as a result of the RFP.

**• Quasi-Independent Agencies' Annual Reports to Legislature****- Draft Legislation to Add a Review Requirement to 5 MRSA §12023**

Director Ashcroft said the legislation requires that by April 1<sup>st</sup> of every second Regular Legislative Session beginning in 2016 that a Committee that has been receiving the annual quasi-independent agency reports would review them and gather additional information as necessary from the submitting entities to assess whether policies and procedures adopted by the governing body are in accordance with the requirements in statute, are consistent with expectations in the subsections, and whether all reported waivers of competitive procurement and all reported contributions made are in compliance with the adopted policies and procedures.

Director Ashcroft noted that April 1<sup>st</sup> of the second Regular Session does coincide with the timeframe in which a joint standing committee might be conducting a Government Evaluation Act review should that be an entity that is up for that review. The GOC talked about the review of those annual reports being part of

the GEA process. The April 1<sup>st</sup> of the second regular session does not line up with a budget review which happens more in the first regular session.

Rep. Mastraccio questioned what the value would be in reviewing reports at the end of the session when everybody is trying to get everything done quickly. She is concerned it will not mean anything because of the timing. Director Ashcroft said the date could be changed.

Director Ashcroft's other question for the GOC was that the language currently requires something more than just a review of the reports submitted. It anticipates that the joint standing committee is also going to go the extra step of looking at the policies the boards of the organizations have adopted in the context of what is required for those policies in statute. She said that is more oversight work and can be a difficult thing to find time to fit in so she wanted to be clear about whether the GOC wanted to do that. If not, the language could be stripped down to limit it to just a review of the reports.

Rep. McClellan said the GOC wanted to make it real and he would leave the language as written in the draft. Sen. Johnson agreed.

Chair Katz suggested, in response to Rep. Mastraccio's comments, that April 1<sup>st</sup> for Committee Review be changed to March 1<sup>st</sup>. Other members agreed.

Director Ashcroft noted that there was discussion about having the joint standing committee report out on their reviews, but she could not think of a good way to make that work so right now the language requires a review be done, but there is no requirement for the JSC to produce something to show that they have done it.

Chair Kruger wondered if there was a way to incorporate this responsibility into the Chairs training process. He said he did not know how to do that because it is the Office of the Executive Director who is responsible for the Chairs' training, but it is a bipartisan training process for the Chairs and Leads.

Sen. Diamond suggested that the Joint Standing Committee report to the GOC what their review of the report was and it could be as simple or complex as the joint standing committee wants it to be.

Director Ashcroft will revise the Draft and email it to Committee members for their approval or revisions before forwarding it to the Revisor's Office.

**- Enabling Statutes for Quasi-Independent Agencies That Appear to Have No Review by a JSC via Budget or Government Evaluation Act**

Director Ashcroft said at the last GOC meeting members talked about six quasi-independent agencies providing reports that do not seem to get any review by joint standing committees. She said that may be because some have specific reporting requirements that require them to make annual reports to their joint standing committees. The Director has not done a full assessment on that, but she will be prepared to give the GOC a sense of that at the next meeting. At the last meeting Rep. Mastraccio had asked for the enabling statutes for those six agencies and Director Ashcroft referred members to that information in their notebooks.

Chair Katz asked the Committee's permission to take a matter out of order. Members agreed. He wanted to give his thought for future discussion related to the subject of tax expenditures and the economic development programs. He said everyone is aware of the issue of New Market Tax Credits associated with Great Northern and Cate Street and it has been suggested by a couple of people that the Government Oversight Committee charge OPEGA with a review of what happened. Chair Katz said he was not advocating for a review because he thinks the GOC/OPEGA have a lot on their plate already, but he wondered if it might be helpful for GOC, at some point after the session is over, to hold a public hearing to review what happened, not with an eye toward casting blame, but to try and understand what they can collectively do to make sure it does not happen again. His reason for doing it later is because all the Committees are busy now and no one would have time to look at it

before the end of session. The GOC could set aside a day in July to try to add value to what might happen going forward.

Rep. Mastraccio said that was a good idea, but the Legislature was going to be getting something to consider soon because LCRED is looking at a bill that proposes to make some changes to the New Market Tax Credit. She thinks the Committee will be working that bill next week and there will be some changes that will be proposed. She said Chair Katz was right, but in the whole picture, they may be making changes without having the best information.

Sen. Johnson said he presented a bill yesterday to the Taxation Committee which was written long before the issue came to light, but would address some of the short comings. He wondered if they were going to have two committees working at odds with each other moving forward.

Chair Katz said a decision did not have to be made at this meeting, but asked members to think about it for discussion at the next meeting.

#### • **Update Status of Bills of Interest**

- LD 237 – An Act To Address Recommendations From the Report by the Office of Program Evaluation and Government Accountability Regarding the Public Utilities Commission. Has been passed by both the House and Senate as amended by Committee Amendment A which was to include an appropriation for the position. That bill will be going out for the Governor’s signature.
- LD 18 - Resolve, To Review and Audit the University of Maine System’s Finances and Governance Practices. Has been reported out of Committee unanimous ought-not-to-pass and is considered dead in legislative files.
- LD 769 - An Act to Reduce Tax Expenditures. Was reported out of Taxation as unanimous ought-not-to-pass. This bill was seeking to utilize OPEGA’s determination of which tax expenditures created jobs and get rid of all of the rest. Director Ashcroft believes the sponsor requested that it be withdrawn or reported out ought-not-to-pass.
- LD 941 - An Act To Improve Tax Expenditure Transparency and Accountability. The bill had a public hearing in the Taxation Committee on April 16<sup>th</sup> and the work session is Monday, May 4<sup>th</sup>. Director Ashcroft will be at that meeting to talk through details of the proposal.
- LD 1349 – An Act To Establish the Office of Inspector General in the Department of Health and Human Services. The bill includes a provision that would allow for OPEGA to conduct a review of the Office of the Inspector General should there be a complaint against that office filed. It is scheduled before the Health and Human Services Committee on May 7<sup>th</sup> at 1:00 p.m.

## **REPORT FROM DIRECTOR**

#### • **Status of Projects In Progress**

Director Ashcroft noted that the status of projects in progress had not changed since the last meeting.

## **NEXT GOC MEETING DATE**

The next meeting of the Government Oversight Committee is scheduled for May 8, 2015. Included on the agenda will be the public comment period on OPEGA’s Information Brief on DHHS Workplace Culture and Environment.

## **ADJOURNMENT**

The Government Oversight Committee was adjourned by Chair Kruger at 11:58 .am.



STATE OF MAINE  
OFFICE  
OF THE  
SECRETARY OF STATE

MATTHEW DUNLAP  
SECRETARY OF STATE

MEMORANDUM

**TO:** The Joint Standing Committee on Government Oversight  
**FROM:** Matthew Dunlap, Secretary of State   
**DATE:** April 24, 2015  
**SUBJ:** Records Retention and Management

Senator Katz, Representative Kruger and distinguished members of the Committee: In response to the recently-submitted Report to the Government Oversight Committee on Records Retention and Management, I offer the following approach to implement the recommendations in the Report.

First and foremost, we find the report to be comprehensive and an extremely helpful guide in making our offices a greater resource for the public. The public has a right to expect that they can access information about the activities of government, and our job is to insure that such access is not stymied because of poor understanding of what recordkeeping is and how state agencies should be meeting their responsibilities to the public.

Like every state agency, we've had our share of challenges. Unfortunately, the daily triage of functioning through staffing and budget cuts, retirements, staff changes, and rapidly changing technologies and all the challenges those conditions present have scattered our ability to remain focused on this aspect of our core mission. The Report lays out in great detail what is at risk, and offers us the opportunity to correct the situation.

We agree with the recommendations and will work to implement them. These issues did not emerge overnight, and will not altogether be addressed overnight. But we can begin our work immediately, by taking the following actions:

- 1) Work with the Executive to fill the vacancies on the Archives Advisory Board (AAB), and identify resources to support regular meetings;
- 2) Direct all state agencies to identify a Records Officer at the managerial level, as required by the Chapter 1 Rule, who can begin to assess the status of their agency's record management program; and
- 3) Notify all state agencies that Archives will defer acceptance of records from agencies until the name of a managerial level Records Officer has been provided.

In concert with these steps, we would encourage the GOC to direct the Records Officers in each state agency, over the next six months, to assess the status of their respective records management programs, including reviewing existing record retention schedules, identifying what

Memorandum to the Joint Standing Committee on Government Oversight  
April 24, 2015  
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schedules need to be updated and revised, and assessing the level of assistance from Archives that is needed in order to bring the agency's retention management program into full compliance with the Chapter 1 Rule.

Once this review is completed, we will have the information needed to develop the specific steps to further implement the recommendations in the Report.

**Summary of Actions Taken Related to Recommendations Included in  
OPEGA's 2006 Report on Economic Development Programs in Maine  
(based on OPEGA follow up as of April 2014)**

- 123<sup>rd</sup> Legislature passed LD 1163 (P.L. 2007, Chap. 434). This bill:
  - Required DECD Commissioner to develop a plan for comprehensive evaluation of state investments in economic development by 11-1-07;
  - Required DECD Commissioner to submit an annual comprehensive evaluation of state investments in economic development to Gov. and Legislature beginning in Feb. 2009. Evaluation was to establish and report on outcome measures, be performed by independent reviewers and include recommendations.
  - Required recipients of state economic development funding to collect, maintain and provide data as requested by DECD to assist in preparing the comprehensive evaluation.
  - Established the Maine Economic Development Evaluation Fund as a non-lapsing Special Revenue Account to be used to pay for the annual comprehensive evaluation. Payments to the fund were to come from assessments made on agencies or private entities receiving \$250,000 or more in GF or general obligation bonds for economic development. The assessment was supposed to be for 0.8% of the amount of economic development funding the entity was to receive. However, there was an error in the law that was passed as it only required an assessment of 0.08%. Maximum payments to the fund of \$150,000 in any fiscal year.
  - Established additional requirements for entities receiving economic development support in 5 MRSA §13070-O.
  - Required DECD to propose language amending the statutory definition of “economic development incentive” to provide more comprehensive guidance.
  - Required BRED Committee to seek proposals from DECD, MDF and others to fulfill the role of State’s economic development portfolio coordinator and authorized BRED to submit legislation to create such a role.
  
- 124<sup>th</sup> Legislature passed LD 1468 (P.L. 2009, Chap.337). This bill:
  - Clarified the obligation of recipients of economic development funding to collect, maintain and provide data as requested by DECD to assist in the conduct of the independent evaluation, and that the information available from the evaluation would be used in the DECD Commissioner’s report to the Governor and Legislature on the operation of the economic delivery system.
  - Increased the maximum payments to the Maine Economic Development Evaluation Fund to \$200,000 in any fiscal year.
  - Established the definition of an “economic development incentive”.
  - Eliminated some economic development data reporting requirements for recipients of funding and DECD with the expectation that the annual independent evaluations of economic development programs would substitute for this reporting.
  
- As a result of LDs 1163 and 1468:
  - The State now has an operational definition of what constitutes an economic development incentive program. (5 MRSA §13070-J.1.D)
  - An inventory of State programs that meet that definition was developed by the Maine Development Foundation in January 2008 and included basic information on each program.

- A plan, design and funding mechanism for regular independent evaluation of the portfolio of economic development programs was established. DECD contracted for an independent evaluation of a portfolio of economic development programs (identified in an inventory prepared by Maine Development Foundation) and how they are contributing, as a portfolio, to the State's economic development goals. That evaluation report was delivered to the Legislature in March 2009. The independent evaluations were meant to be an annual event. However, because of the error in statute on the 0.08% assessments not enough funding was set aside and the annual independent evaluation did not recur until 2013.
  - The evaluation report (Maine Comprehensive Economic Development Evaluation 2008) resulting from that first independent evaluation did contain some recommendations for improving the effectiveness of the portfolio of programs but did not specifically identify opportunities to reduce costs and improve efficiencies. The report also did not contain analysis that would allow Legislature to determine whether specific individual programs were strong or weak contributors although it appears there may have been some data gathered by the evaluators that would be helpful in identifying programs that warrant a more detailed review.
  - Legislature re-affirmed the intent for DECD to be the coordinator of economic development programs State-wide and intended to monitor how that role is being fulfilled.
- In 2010, the Legislature passed Resolve Chapter 199 directing the DAFS Commissioner to convene a working group to develop recommendations for how Maine might undertake a more rigorous review of tax expenditure programs. The DAFS working group issued a report to AFA in Nov. 2010 on ways to increase transparency and assess impact of tax expenditure programs such as BETR. To OPEGA's knowledge there has been no specific action or legislation to implement the recommendations in that report.
  - Title 5 §1666 requires that the Governor's Biennial Budget include tax expenditures and language asking the Legislature whether it wishes to continue funding for each tax expenditure. Title 36, Chapter 10 assigns certain authorities and duties for oversight and review of tax expenditures to the Taxation Committee.
  - During the 2<sup>nd</sup> regular session of the 124<sup>th</sup> Legislature (2010), the Taxation Committee established a subcommittee to review about 10 tax expenditures – most, if not all, of which were economic development programs. The subcommittee reported that some of those incentives may be meeting the intended objectives but that a better understanding of objectives and a stronger basis for evaluating tax expenditures was needed. There were no formal recommendations coming from the full Taxation Committee as a result of this review.
  - In the 1<sup>st</sup> regular session of the 125<sup>th</sup> Legislature (2011), the Taxation Committee submitted a bill (LD 1730) to create a process for the Taxation Committee to review proposed new or expanded tax expenditures. That Committee ultimately voted that bill out as ONTP with a plan to instead pursue a Joint Rule that would effectively establish the process envisioned in the bill. It does not appear that Joint Rule was ever established.
  - In the 2<sup>nd</sup> regular session of the 125<sup>th</sup> Legislature, LD 323 was passed and became Public Law 2011, Chapter 563. This law corrected the error in assessments for the Maine Economic Development Evaluation Fund, established that independent comprehensive evaluations would occur on biennial basis beginning February 2014, and specified certain economic development incentive programs and outcome measures that had to be addressed in the independent evaluations. DECD recently reports that despite the correction in assessments and the change to a biennial evaluation, this funding mechanism still does not provide nearly enough resources to cover the cost of the evaluation. According to DECD, there is currently only \$12,400 of funding from that mechanism available for the next Comprehensive Economic

Development Evaluation that is due to be completed and reported on in 2016. At this time, DECD is forgoing the planning for that evaluation due to lack of funding.

- LD 1437 passed in the 125<sup>th</sup> Legislature which required, to the extent funding was possible, the Maine Economic Growth Council (under the Maine Development Foundation) to develop the Maine Prosperity Action Plan – a comprehensive and specific action for a sustainable State economy with concrete proposals for legislative action. The bill required this effort to be supported by outside funding. Although no funding was obtained, the Growth Council did undertake a portion of the effort and planned to submit a report to the Legislature’s LCRED Committee. OPEGA has not followed up on whether this report was actually produced and submitted.
- In mid-2011, the GOC of the 125<sup>th</sup> Legislature directed OPEGA to draft legislation for the GOC to consider introducing that would implement any recommendations from the 2006 report that had not yet been satisfactorily addressed. OPEGA has delayed in preparing draft legislation due to the considerable effort that will be involved and also due desire to wait for the outcomes of continuing efforts by DECD and the Legislature that would potentially impact what the draft legislation would need to include. OPEGA is now seeking to move forward on this effort and is re-engaging the GOC in the discussion of what actions should be taken.
- In early 2013, DECD issued a Request for Proposal for a second Comprehensive Economic Development Evaluation (CEDE) and contracted with a firm to do that evaluation (first evaluation was done in 2008). In preparation for developing that RFP, DECD contracted Maine Development Foundation to prepare an updated inventory of Economic Development Programs. The updated inventory prepared by MDF was submitted June 2013 and is the State’s most current inventory. OPEGA provided input to DECD in developing the scope of the evaluation to be included in the RFP to help ensure that evaluation results would better meet the needs and expectations of the Legislature in areas where the first CEDE had fallen short.
- In early 2013, the GOC tasked OPEGA with a special project to develop a framework for on-going legislative review and evaluation of tax expenditure programs – some of which are also considered economic development programs. OPEGA categorized and analyzed the existing tax expenditure programs and outlined a possible framework for on-going review that specified the review objectives, what entity would perform reviews and how results would be conveyed and considered by legislators. Concurrent with OPEGA’s work on this special project, the Legislature established a special Tax Expenditure Task Force to convene during the 2013 legislative Interim (PL 2013 Chapter 368, Part S). The Task Force was directed to address several items including those that were in the scope of OPEGA’s Special Project, and the legislation specified OPEGA would assist in staffing and providing information to the Task Force. OPEGA shared the results of its categorization and analysis of tax expenditures with the Task Force and sought the Task Force’s input on key elements in designing a reasonable, efficient and effective process for on-going legislative review and evaluation. Incorporating the input received, OPEGA developed an outline of a proposed process to serve as a foundation for draft legislation to implement the process and shared this outline with the Task Force. The Task Force included the outline of the proposed process in its final report, which was submitted to the Appropriations and Financial Affairs (AFA) Committee in December 2013.
- The results of the second CEDE were submitted to the Legislature in two reports in 2014. The consultant made a number of recommendations that can be grouped as follows: Most Critical Recommended Changes (3 recommendations), Recommended Changes to Specific Programs (11 recommendations) and Additional Suggested Changes (6 recommendations). The 3 recommendations categorized as Most Critical relate to issues that remain unaddressed from OPEGA’s 2006 report and which hamper the State’s ability to adequately coordinate, oversee and evaluate these programs.

According to DECD, there are currently no efforts in that Department, or other efforts they are aware of within the Executive of Legislative Branches, to consider the recommendations made and take action as deemed appropriate. DECD indicated that the Department is not necessarily supportive of all the consultant's recommendations and/or that there may be additional relevant information the consultant was not aware of when preparing the recommendations.

- In the second regular session of the 126<sup>th</sup> Legislature (2014), the Legislature passed LD 1463. This bill directed OPEGA to develop a more detailed proposal on how an on-going legislative review process for tax expenditure programs - proposed through the report of the 2013 Task Expenditure Task Force - could be implemented, including specifics on which expenditures would receive full evaluations, what the evaluation parameters would be, and what resources would be required. A gubernatorial veto of the bill was overturned and it was enacted as Resolves 2013 Chapter 115.
- OPEGA's project to address Resolves 2013 Chapter 115 was called Special Project: Tax Expenditure Programs Phase II. OPEGA presented the proposal required by the Resolve to the GOC and the Taxation Committee in March 2015 and it is currently being considered by the Taxation Committee in conjunction with LD 941, An Act to Improve Tax Expenditure Transparency and Accountability. In the proposal, OPEGA notes that a number of the tax expenditures are programs currently subject to the statutorily required evaluations of research and development programs and economic development programs that DECD contracts for. Should the Legislature implement the proposed tax expenditure review process, consideration should be given to whether there should then be changes to DECD's evaluation requirements.

**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

**Finding 1: Existing Programs May Be Ineffective or Inefficient**

- A. Legislature should consider subjecting the following programs included in this review to more in-depth evaluations of effectiveness, efficiency and economic use of resources:
- All 15 tax incentive programs
  - Revenue Obligations and Securities Program
  - Economic Loan Recovery Program
  - Governor’s Training Initiative
  - Commercial Loan Insurance Program
  - Milk Commission
  - Regional Economic Development Revolving Program
  - Maine Manufacturing Extension Partnership
  - Agricultural Marketing Loan Fund
  - Agricultural Water Management and Source Development Program
  - Maine Apprenticeship
  - Potato Marketing Improvement Fund Program
  - Farms for the Future Program

**Current Status of Actions on This Recommendation**

Comprehensive Economic Development Evaluations

Statute (5 MRSA §13056-A) currently requires DECD to contract for an independent biennial evaluation of “state investments in economic development”. The evaluation report must establish outcome measures, including measures that assess the overall economic performance of identified programs, and include recommendations to the Legislature on existing and proposed state-supported economic development programs. Programs that are identified for evaluation include, but are not limited to: Maine Employment Tax Increment Financing Program; Loring Development Authority; visual media production certification program; promotion and marketing of state products; the Maine International Trade Center; municipal tax increment financing; and the pine tree development zone.

Statute (5 MRSA §13056-C) also establishes payments to a fund to support this evaluation. Payments are made by programs that receive \$250,000 or more in economic development appropriations in any fiscal year or those entities that receive funds from a general obligation bond issue of \$250,000 and are paid at an amount not to exceed .8% of General Fund appropriations received by or general obligations bonds issues to said entity.

There have been two Comprehensive Economic Development Evaluations conducted pursuant to this statutory requirement. The first was conducted in 2008 with report issued in March 2009. The second was conducted in 2013 and 2014 with two reports issued in January and June 2014.

There are currently several issues impeding the effectiveness and efficiency of these evaluations that present challenges, and raise questions about the cost-benefit, in proceeding with the next scheduled biennial evaluation. These issues are:

- Statute currently requires an biennial evaluation of Research and Development Programs (R&D Evaluation) that is separate from the biennial Comprehensive Economic Development Evaluation (CEDE). The R&D evaluation pre-dates the CEDE. The purpose of the R&D programs, however, is to support economic development. DECD and the most recent independent evaluator for both evaluations agree that combining all programs into one evaluation, perhaps

## **OPEGA Report on Economic Development Programs Recommendations Not Fully Addressed as of April 2015**

including a sub-analysis of R&D programs, would provide for a more effective and efficient evaluation.

- The funding mechanism for the CEDE is not producing enough funds to cover the cost of the evaluation. The R&D evaluation has a similar funding mechanism that appears to be producing sufficient funds because there are more programs against which a funding assessment can actually be made. According to DECD, there is currently only \$12,400 of funding from that mechanism available for the next CEDE that is due to be completed and reported on in 2016. At this time, DECD is forgoing the planning for that evaluation due to lack of funding.
- Currently, there does not appear to be any effort underway in the Executive or Legislative Branch to consider the recommendations in the most recent CEDE report and to take action as deemed appropriate. There is also no statutory requirement or structure established for doing so. The independent evaluator made 20 recommendations that can be grouped as follows: Most Critical Recommended Changes (3 recommendations), Recommended Changes to Specific Programs (11 recommendations) and Additional Suggested Changes (6 recommendations). The 3 recommendations categorized as Most Critical relate to issues that remain unaddressed from OPEGA's 2006 report, and are repeats of recommendations in the 2009 CEDE report. These recommendations address issues which hamper the State's ability to adequately coordinate, oversee and evaluate these programs. DECD indicated that the Department is not necessarily supportive of all the consultant's recommendations and/or that there may be additional relevant information the consultant was not aware of when preparing the recommendations.
- The access to, and availability of, data needed to perform an effective evaluation has been a barrier to the effectiveness of the two CEDE's completed to date. This issue is the subject of recommendations in OPEGA's (see Findings 5 and 6) and in both the 2009 and 2014 CEDE reports. The State has not yet addressed these issues.

### Legislative Review of Tax Expenditure Programs

An OPEGA-developed proposal for implementing an on-going legislative review process for tax expenditures is currently being considered by the Taxation Committee in conjunction with LD 941, An Act to Improve Tax Expenditure Transparency and Accountability. In the proposal, OPEGA notes that a number of the tax expenditures are programs currently subject to the statutorily required evaluations of research and development programs and economic development programs that DECD contracts for. By OPEGA's count, there are 20 tax expenditures captured in the 59 programs that part of the most recent R&D and CEDE evaluations. Should the Legislature implement the proposed tax expenditure review process, consideration should be given to whether there should then be changes to DECD's evaluation requirements.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. Legislature should consider reviewing existing portfolio of programs to identify opportunities for reducing the number of programs and/or administrative costs associated with them.

**Current Status of Actions on This Recommendation**

In 2008, DECD contracted the Maine Development Foundation to develop a portfolio, or inventory, of economic development programs. DECD also contracted with MDF to update that inventory in to have available for the independent evaluator for the 2013 CEDE. The updated inventory prepared by MDF was submitted June 2013 and is the State's most current inventory. While the inventory has been used to establish the scope of the evaluations as far as what programs are to be included, OPEGA does not know at this time whether this inventory was every utilized or reviewed in regard to the intent of this recommendation.

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- C. Legislature should consider establishing a process for assuring that future economic development proposals are compared to existing programs to determine if the purpose of the new proposal can be effectively met by modifying or replacing an existing program.

**Current Status of Actions on This Recommendation**

Sec. 11 of PL 2007 Chapter 434 (LD 1163) provided that the joint standing committee [BRED, at the time] "shall also consider the establishment of a new legislative process for review of all proposed legislation that involves economic development programs that would provide the joint standing committee and the department [DECD] with a clearly defined review process for these proposals." This process does not appear to have been developed or implemented.

**Finding 2: Insufficient Definition of Economic Development**

- A. Legislature should consider replacing the current definition of "economic development incentive" in 5 MRSA §13070-J.1.D with the criteria proposed by DECD and amended as necessary. The Legislature should also consider incorporating this definition into 5 MRSA §§13051-13060 to further define the roles and responsibilities of DECD.

**Current Status of Actions on This Recommendation**

Legislation was passed that revised the definition of "economic development incentive" as proposed by DECD. That definition is in 5 MRSA §13070-J. It does not appear that second portion of this recommendation has been met.

**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

**Finding 3: Lack of Statewide Coordination and Oversight**

- A. Commissioner of DECD will prepare a proposal for expanding the role of the Department to include coordination of the State's portfolio of economic development programs as determined by criteria set by the Legislature (see Finding 2). Proposal will include an assessment of the benefits and resources necessary to fulfill this role. The Commissioner will submit this written proposal to the BRED Committee by December 31, 2007.
- B. The BRED Committee should consider seeking similar proposals from the Maine Development Foundation and other existing non-State organizations with the capabilities necessary to carry out the responsibilities of a portfolio coordinator. BRED could then assess these proposals in conjunction with the one from DECD and make recommendations to the entire Legislature on whether and how to proceed with designating a specific entity as portfolio coordinator.

**Current Status of Actions on These Recommendations**

The Commissioner of DECD submitted a proposal to BRED and BRED also solicited and received a proposal from Maine Development Foundation. BRED determined that the potential duties described in OPEGA's report for the portfolio-coordinator role were already within the statutory authority of DECD and that such responsibility should fall to the Department. BRED intended to monitor how DECD was filling these roles. However, than updating the inventory of programs in 2013, DECD has not assumed the expected duties nor has the enabling statutory language for the Department been modified to explicitly state these expectations as part of DECD's responsibilities. According to DECD, current resources in the Department would be insufficient to perform these roles.

**Finding 4: Inadequate Mechanisms to Assure Program Controls**

- A. Effective with the first regular session of the 123rd Legislature, DECD will begin reviewing all new economic development proposals, put forth by DECD, as required by 5 MRSA §13070-0 and will submit written reports of its assessments to the appropriate joint standing committees.
- B. Legislature should create a process to ensure that DECD is made aware of all new economic development programs proposed in legislation. Once this is established DECD will also begin reviewing new proposals from other sources as required by 5 MRSA §13070-0 and will submit written reports of its assessments to the appropriate joint standing committees.

**Current Status of Actions on These Recommendations**

Sec. 11 of PL 2007 Chapter 434 (LD 1163) provided that the joint standing committee [BRED, at the time] shall consider establishment of a new legislative process for review of all proposed legislation that involves economic development programs. However, a process was never enacted and consequently, to OPEGA's knowledge, DECD has not been reviewing proposals for new economic development proposals that come from sources other than the Department itself. OPEGA is uncertain whether DECD has been reviewing and reporting on its own proposals, or whether it has even put forth new proposals since 2007.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- C. Pursuant to other statutory requirements, DECD will be providing an annual report on Pine Tree Development Zones to the Legislature by January 1, 2008. DECD will include in this report an assessment of this program against the criteria specified in 5 MRSA §13070-O.

**Current Status of Actions on This Recommendation**

PTDZ Reports are supposed to be submitted biennially. OPEGA has not yet reviewed any of these reports to determine whether DECD has reported on assessment of this program against the criteria in in 5 MRSA §13070-O.

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- D. Legislature should consider amending existing statutes in several areas to strengthen and clarify mandates for adequate program controls in economic development programs. See Full Report for details.

**Current Status of Actions on This Recommendation**

PL 2007 Chapter 434 (LD 1163) added some provisions into 5 MRSA §13070-O, such as needing to have a clearly defined purpose and incentives or penalties related to meeting program objectives, but OPEGA needs to review further to determine whether these changes are to the extent necessary to establish foundation for sufficient program controls.

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- E. Legislature should consider directing all administering agencies with programs meeting expanded definition of economic development to report to the joint standing committee of jurisdiction on whether each program adequately incorporates the criteria required in 5 MRSA §13070-O.

**Current Status of Actions on This Recommendation**

There does not appear to have been any action taken on this recommendation.

**Finding 5: Data Collected Does Not Provide Clear Picture of Results**

- A. In its response to Finding 3, DECD will also make recommendations regarding what additional data collection responsibilities it would need to take on to properly fulfill the role, and meet the related responsibilities, of portfolio coordinator.

**Current Status of Actions on This Recommendation**

It is OPEGA's understanding that both DECD and MDF submitted proposals for the "portfolio coordinator" but we have not obtained the written proposals and individuals involved with DECD's proposals are no longer with the State. It is uncertain at this time what was in those proposals with regard to data collection but neither has been implemented and DECD is not currently fulfilling any role the collector of program and performance data for the portfolio of economic development programs. Confidentiality issues related to data held by Maine Revenue Services and other agencies present a current barrier to DECD collecting, maintaining and reporting on all data that may be desirable.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. The Legislature should consider giving data collectors the authority needed to compel businesses to provide data required for measuring performance of economic development programs. Meaningful incentives and/or penalties should be established and should be included in enacting statutes or related rules.

**Current Status of Actions on This Recommendation**

In regard to authority, 5 MRSA §13056-B requires that recipients of state economic development funding shall collect, maintain and provide data as requested by DECD to assist in the CEDE. Further, 5 MRSA §13070-O, sub-§1.I notes that proposals for new economic development programs shall include provisions (to be included in enabling legislation) that require the program to “in addition to standard data, report performance data specific to its goals and objectives annually to the entity that is assigned to coordinate the State’s portfolio of economic development programs.” However, statute does not seem to provide any incentives or penalties associated with complying with the data requirements. For both Comprehensive Economic Development Evaluations that have been conducted, evaluators surveyed businesses receiving program benefits to try to collect the data necessary for effective evaluation. In both instances, survey response rates were low. Many businesses did not provide the data requested as required by statute.

**Finding 6: Inadequate Reporting for Accountability**

*Management Actions*

- A. If possible, the CEDE will be designed to provide adequate reporting on individual economic development programs in addition to reporting on the results of the State’s economic development strategy. If it is not possible to include sufficient reporting to allow legislators to understand and make decisions on individual programs, then DECD will make suggestions to the BRED Committee on how to achieve standardized reporting on all economic development programs that will provide adequate transparency and accountability.

**Current Status of Actions on This Recommendation**

The second CEDE conducted did attempt to evaluate individual programs and the reports issued did include recommendations for modification to specific programs. However, the ability to evaluate the individual programs was quite limited by the inability to access existing State data associated with the programs (due to confidentiality issues) and the lack of self-reporting by businesses through the evaluation survey. OPEGA’s observation is that the CEDE is not still not providing the performance information on individual programs that will allow legislators to understand and make decisions on specific programs. DECD has also not initiated any efforts, including making suggestions to LCRED, toward achieving standardized reporting to provide transparency and accountability.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. Legislature should consider modifying 5 MRSA §13058-5 to specify that the Commissioner reports be in writing.
- C. Effective 2007, the Commissioner of DECD will begin satisfying the reporting requirement in 5 MRSA §13058-5 by preparing and submitting a formal written report to the Governor and the full Legislature. DECD expects that this reporting requirement will be met in conjunction with the comprehensive economic development evaluation.

**Current Status of Actions on These Recommendations**

5 MRSA §13058-5 still does not specify in what form the Commissioner's report is to be made. Also, although the CEDE reports prepared by the independent evaluator have been submitted and presented to the Legislature, OPEGA has been unable to obtain any written report from the Commissioner to the Governor and Legislature that address all the points required by statute. The CEDE reports also do not appear to cover all the points that the Commissioner is required to report on under 5 MRSA §13058-5.

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- D. By July 1, 2007, DECD will establish a means to make legislators and the public aware of the reports submitted in accordance with 5 MRSA §13070-J.4 and 5 MRSA §13058-5, or that are otherwise submitted to DECD, and to facilitate access to them. In addition, as part of its proposal in response to Finding 3, DECD will make recommendations on how performance and cost information on all economic development programs can be made readily accessible to interested parties.

**Current Status of Actions on This Recommendation**

There does not appear to have been any action taken on this recommendation.