

**Suggested Amendments to Statute to Implement OPEGA's Proposal  
for Changes to Legislative Tax Expenditure Review Process**

**3 MRSA §998. PROCESS FOR REVIEW OF TAX EXPENDITURES**

**1. Assignment of review categories.** By October 1, 2015, the committee, in consultation with the policy committee, shall assign each tax expenditure to one of the following review categories:

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

**2. Schedule.** By October 1, 2015, the committee, in consultation with the policy committee, shall establish a prioritized schedule of ongoing review of the tax expenditures assigned to the full evaluation and expedited review categories pursuant to subsection 1, paragraphs A and B. To the extent practicable, the committee shall schedule group the review of tax expenditures with similar goals together during the same year.

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pursuant to subsections 1 and 2, including adjustments needed to incorporate tax expenditures enacted, amended or repealed during the preceding year.

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

**3 MRSA §999. FULL EVALUATION OF TAX EXPENDITURES**

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

A. ~~By January 31st of each year~~ Prior to the beginning of each evaluation, the committee, after consideration of recommendations from the office, shall approve the following for each tax expenditure subject to full evaluation review ~~in that year~~:

- (1) The purposes, intent or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments and changes in the state economy and fiscal condition;
- (2) The intended beneficiaries of the tax expenditure;
- (3) The evaluation objectives, which may include an assessment of:

- (a) The fiscal impact of the tax expenditure, including past and estimated future impacts;
- (b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;
- (c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;
- (d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;
- (e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;
- (f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;
- (g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;
- (h) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and
- (i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals; and

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

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

**2. Action by office; report.** ~~By December 31st of each year, beginning in 2016, the office shall complete the tax expenditure evaluations pursuant to subsection 1 scheduled for that year and submit a report on the results of each evaluation to the committee and the policy committee. The office shall seek stakeholder input as part of the report. For each tax expenditure evaluated, the report must include conclusions regarding the extent to which the tax expenditure is meeting its purposes, intent or goals and may include recommendations for continuation or repeal of the tax expenditure or modification of the tax expenditure to improve its performance.~~

**3. Action by committee.** The committee shall review the report submitted by the office under subsection 2, assess the report's objectivity and credibility and vote whether to endorse the report. By June 1st of each year, beginning in 2017, the committee shall submit a record of the vote on ~~the report~~ any reports submitted by the office in the prior year, and any comments of or actions recommended by the committee, to the policy committee for its review and consideration.

**4. Action by policy committee.** The policy committee shall review the results of the tax expenditure evaluations and of the committee's review based on materials submitted under subsections 2 and 3. By December 1st of each year, beginning in 2017, the policy committee shall submit to the Legislature a report documenting its activities under this chapter and any recommendations resulting from its review of the materials submitted under subsections 2 and 3. The policy committee may submit a bill to the next regular session of the Legislature to implement the policy committee's recommendations.

## **§1000. EXPEDITED REVIEW OF TAX EXPENDITURES**

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

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

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

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

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

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

~~A. A description of the tax policy under review;~~

~~B. Summary information on each tax expenditure associated with the tax policy under review, including:~~

- ~~(1) A description of the tax expenditure and the mechanism through which the tax benefit is distributed;~~
- ~~(2) The intended beneficiaries of the tax expenditure; and~~
- ~~(3) A legislative history of the tax expenditure; and~~

~~C. The fiscal impact of the tax policy and each related tax expenditure, including past and estimated future impacts.~~

If this section is eliminated, consider moving the remainder of Section 1000 to the portion of statute that deals with the Taxation Committee's review of tax expenditures which existed prior to this addition to OPEGA's statute.

**23. Report by policy committee; legislation.** By December 1st of each year, beginning in 2016, the policy committee shall submit to the Legislature a report on the results of the expedited reviews conducted pursuant to subsection 1 that year. The policy committee may submit a bill related to the report to the next regular session of the Legislature to implement the policy committee's recommendations.

### 3 MRSA §1001. TAX EXPENDITURE EVALUATION PROCESS DETAILS

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

A. The office may request confidential information from the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies as necessary to address the evaluation objectives and performance measures approved under section 999, subsection 1. The office shall request any confidential information in accordance with section 997, subsection 4. The office shall request that confidential tax information, other than beneficiary contact information, be made accessible to the office as de-identified tax data. If Maine Revenue Services is unable to provide such data, the office and representatives of Maine Revenue Services shall determine appropriate methods for the office to access the requested information.

B. Upon request of the office and in accordance with section 997, subsection 4, the Department of Administrative and Financial Services, Maine Revenue Services or other state agencies shall provide confidential information to the office. The office shall maintain the confidentiality of the information provided, in accordance with section 997, subsections 3 and 4. This paragraph does not apply to federal tax information that is confidential under Title 36, section 191, subsection 3.

C. The office, the committee or the policy committee may consult with governmental agencies, other entities and experts, including members of the Consensus Economic Forecasting Commission under Title 5, section 1710.

D. The office may contract with other entities for the purpose of obtaining assistance in the review of tax expenditures. The office shall require a nondisclosure agreement as part of any contract entered into pursuant to this paragraph. The agreement shall include provisions to provide for protection and proper disposal of confidential information shared with the contractor and such agreement shall be executed prior to the office sharing any confidential

information with the contractor. The office may disclose contact information for beneficiaries of tax expenditures for the purpose of conducting interviews, surveys or other data collection. All other confidential information shared with the contractor will be de-identified tax data. The office may not disclose confidential taxpayer information to a contractor, except for:

- ~~(1) Contact information for specific beneficiaries of tax expenditures for the purpose of conducting interviews, surveys or other data collection; and~~
- ~~(2) Statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers.~~

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

~~E. The office may report confidential information obtained under this section to Legislators, legislative committees, state agencies and the public only in the form of statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers. to the extent that state agencies from which it was obtained may publicly disclose it.~~

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

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

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

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

- (a) Beneficiary contact information; and
- (b) Identification numbers including federal or state employer identification numbers, social security numbers and registration numbers; ~~and~~
- ~~(c) Other information from which the State Tax Assessor determines that the identity of the taxpayer could reasonably be inferred.~~

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

## 36 MRSA §191. CONFIDENTIALITY OF TAX RECORDS

**1. Basic prohibition.** It is unlawful for any public official or any employee or agent of the bureau to inspect willfully any return or examine information contained on any return, for any purpose other than the conduct of official duties. Except as otherwise provided by law, it is unlawful for any person who, pursuant to this Title, has been permitted to receive or view any portion of the original or a copy of any report, return or other information provided pursuant to this Title to divulge or make known in any manner any information set forth in any of those documents or obtained from examination or inspection under this Title of the premises or property of any taxpayer. This prohibition applies to both state tax information and federal tax information filed as part of a state tax return.

**2. Exemptions.** This section shall not be construed to prohibit:

AAA. The disclosure of information by the State Tax Assessor or the Associate Commissioner for Tax Policy to the Office of Program Evaluation and Government Accountability under Title 3, section 991 for the review and evaluation of tax expenditures pursuant to Title 3, chapter 37; ~~and~~

BBB. The disclosure to an authorized representative of the Department of Professional and Financial Regulation, Bureau of Insurance of information necessary to determine whether a long-term disability income protection plan or short-term disability income protection plan as described in section 5219-NN, subsection 1 qualifies for the disability income protection plans in the workplace credit provided by section 5219-NN; and

CCC. Notwithstanding any other provision of law, the public disclosure of information contained in applications, eligibility determination and certification records, claims records and receipts records for state reimbursements, credits, deductions or exemptions associated with state economic development incentives as defined in 5 MRSA § 13070-J, sub-§ 1, ¶D, funding for research and development activities as defined in the 5 MRSA § 13109, sub-§ 2, or other state business assistance programs. This exception does not permit the public disclosure of:

- (1) taxpayer identification numbers;
- (2) proprietary information as described in 5 MRSA § 13119-A, sub-§ 1;
- (3) credit assessment information as described in 5 MRSA § 13119-A, sub-§ 4; and
- (4) information on potential investors as described in 5 MRSA § 13119-A, sub-§ 5.

Note: If LD 1217 passes, references to the sections for definitions of economic development incentives and research and development activities will need to change. Also, if the proposed language here does not get accepted, then 191 should be amended to have an exception that at least allows the disclosure of the same information permitted by 5 MRSA section 13119-B. Also still need to resolve any conflict about application information not being confidential under DECD's statute 5 MRSA § 13070-J, sub-§ 2 compared to confidential status under section 191.

## 5 MRSA §13119-A. RECORDS CONFIDENTIAL

The following records are confidential for purposes of Title 1, section 402, subsection 3, paragraph A and are not open for public inspection:

**1. Proprietary information.** Information that is provided to or developed by the department or a municipality that has to do with a program of assistance and is included in a business or marketing plan or a grant application or provided or developed to fulfill reporting requirements, as long as:

- A. The person to whom the information belongs or pertains requests that it be designated as confidential; and
- B. The department or municipality determines that the information gives the person making the request opportunity to obtain business or competitive advantage over another person who does not have access to that information or will result in loss of business or other significant detriment to the person making the request if access is provided to others;

**2. Tax or financial information.** Any financial statement, supporting data or tax return of any person;

**3. Monitoring.** Any financial statement, supporting data or tax return obtained or developed by the department or the municipality in connection with any monitoring or servicing activity by the department or the municipality pertaining to any program of assistance provided or to be provided;

**4. Credit assessment.** Any record obtained by the department or the municipality that contains an assessment of the credit worthiness, credit rating or financial condition of any person or project; and

**5. Potential investors.** Any record, including any financial statement or supporting data, business plan or tax return obtained or developed by the department or municipality in connection with the matching of potential investors with businesses in the State by the department or the municipality through its maintenance of a data base or other record-keeping system.

Nothing in this section prevents the disclosure of any records, correspondence or other materials to authorized officers and employees of municipal government, State Government or Federal Government for authorized use, or that is allowed under 36 MRSA § 191, sub-§ 2.

----- **For reference only** -----

## **5 MRSA §13119-B. DISCLOSURE REQUIRED**

Notwithstanding section 13119-A, the department or the municipality shall make available, upon request, to any person reasonably describing the records to which access is sought or, if no request is made, in any manner and at any time that the department or municipality determines appropriate, the following information.

**1. Certain limited information.** The following must be released after provision of assistance:

- A. Names of recipients of or applicants for business assistance, including the business principals, if applicable;
- B. Types and general terms of assistance provided to those recipients or requested by those applicants;
- C. Descriptions of projects and businesses benefiting or to benefit from the assistance provided;

D. Number of jobs and the amount of tax revenues projected or resulting in connection with a completed project; and

E. Amounts and names of recipients of assistance provided under a program of assistance.

**2. Subject to waiver.** Any information pursuant to waiver determined satisfactory by the department must be released.

**3. Available to public.** Information that the department determines has already been made available to the public must be released.

**4. Not otherwise confidential.** Any information not otherwise confidential under section 13119-A or other applicable law must be released.