

**DRAFT of Potential GOC Legislation to Improve Effectiveness and Efficiency of Economic Development Program Evaluation**

**Draft as of 10-5-16**

**Revisions made from prior draft based on discussions GOC has been having and input from Maine Development Foundation**

The comments in red text throughout this draft are meant to be help crosswalk the new draft language to what is in current statute or to otherwise explain where the language came from.

The comments in blue text are OPEGA reminders for ideas that need further consideration for possible additional changes to this draft.

The comments in green text are feedback/input from Maine Development Foundation on behalf of the Maine Economic Growth Council

**Act, To Implement Recommendation of the Government Oversight Committee to Improve the Efficiency and Effectiveness of Comprehensive Evaluations of Research and Development and Economic Development Programs**

Submitted by the Government Oversight Committee pursuant to Title 3, §997, sub-§2

(This portion of the draft legislation is intended to address when and how DECD's independent evaluations of state investments in economic development, to include research and development, are conducted and funded. It generally repeals current provisions Title 5, §§13056-A, 13056-B, 13056-C, 13107, 13108 and 13109 and creates combined and revised provisions below as new Title 5 §§13070-P, 13070-Q and 13070-R. It also incorporates revisions to DECD statute to reference the strategic plan developed by MEGC. OPEGA has been unable to review the most recent changes in this draft portion with DECD.)

(Looks like there should also be revisions to Title 5, §§13053 and 13058-5 to reference the economic development strategic plan developed by MEGC. Also §13051 Legislative Findings has language in it that is relevant to the description and objectives of a strategic plan that perhaps should instead go (or some language for it go) in MEGC statute or be repealed altogether.)

**Sec. 1.** 5 MRSA §13056-A is repealed.

**Sec. 2.** 5 MRSA §13056-B is repealed.

**Sec. 3.** 5 MRSA §13056-C is repealed.

**Sec. 4.** 5 MRSA §13070-J is amended to read:

(Think about whether the definitions currently in new §13070-P and what is in new §13070-Q should come into §13070-J instead or whether there are portions of things in §13070-J that should go into new §13070-P or §13070-Q instead – particularly around the Disclosure section and whether that should apply to R&D programs as well as economic development incentives.)

**1. Definitions.** As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Department" means the Department of Economic and Community Development.

D. "Economic development incentive" means federal and state statutorily defined programs that receive state funds, dedicated revenue funds and tax expenditures as defined by section 1666 whose purposes are to create, attract or retain business entities related to business development in the State, ~~including but not limited to:~~

- ~~(1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;~~
- ~~(2) The Governor's Jobs Initiative Program under Title 26, chapter 25, subchapter 4;~~
- ~~(3) Municipal tax increment financing under Title 30-A, chapter 206;~~
- ~~(4) The jobs and investment tax credit under Title 36, section 5215;~~
- ~~(5) The research expense tax credit under Title 36, section 5219-K;~~

~~(6) Reimbursement for taxes paid on certain business property under Title 36, chapter 915;~~

~~(7) Employment tax increment financing under Title 36, chapter 917;~~

~~(8) The shipbuilding facility credit under Title 36, chapter 919;~~

~~(9) The credit for seed capital investment under Title 36, section 5216-B; and~~

~~(11) The credit for Maine fishery infrastructure investment under Title 36, section 5216-D.~~

E. "Economic development proposal" means proposed legislation that establishes a new program or that expands an existing program that:

- (1) Is intended to encourage significant business expansion or retention in the State; and
- (2) Contains a tax expenditure, as defined in section 1664, or a budget expenditure with a cost that is estimated to exceed \$100,000 per year.

**2. Disclosure.** Each applicant for an economic development incentive described in subsection 1, paragraph D, ~~subparagraphs (1) to (4) and (7)~~ shall at a minimum identify in writing:

A. The public purpose that will be served by the business through use of the economic development incentive and the specific uses to which the benefits will be put; and

B. The goals of the business for the number, type and wage levels of jobs to be created or retained as a result of the economic development incentive received.

Applications filed under this subsection are public records for purposes of Title 1, chapter 13.

*(Note that this statement re: applications being public records appears to be in conflict with confidentiality provisions in Title 36 and in other sections of DECD statute. Also consider whether this is a place where additional reporting requirements of businesses receiving benefits should be added.)*

**4. Agency reports.** The following agencies shall submit the following reports.

A. The State Tax Assessor shall submit a report by October 1st annually to the Legislature and the Department identifying the amount of public funds spent and the amount of revenues foregone as the result of economic development incentives. The report must identify the amount of the economic development incentives under the jurisdiction of the Bureau of Revenue Services received by each business to the extent permitted under Title 36, section 191 and other provisions of law concerning the confidentiality of information.

B. The Commissioner of Labor shall report by October 1st annually to the Legislature and the Department on the amount of public funds spent on workforce development and training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the Department of Labor received by each business and the public benefit resulting from those economic development incentives.

- C. The Maine Community College System shall report by October 1st annually to the Legislature and the Department on the amount of public funds spent on job training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the system received by each business and the public benefit resulting from those economic development incentives.

(The changes to add language to 13070-J.4.A –B and C to specify the agency reports should go to the Department as well as to the Legislature were added at DECD’s request.)

(Should there be similar reports required by any other agency that is administering programs economic development incentives that fall within the scope of what DECD is supposed to coordinating and evaluating? According to the Inventory done by MDF in 2013, and OPEGA’s review in 2005, other agencies would include: FAME, Maine Dept of Agriculture, University of Maine Law School, Maine Rural Development Authority, a others? Also the scope of the economic development incentives – which are primarily for businesses – does not encompass the R&D investments and activities that are occurring at the Universities for example – like MEIF and is there a need for DECD and the Legislature to be getting reports on those (actually MEIF already does one) in order for DECD to do the reporting currently required under statute?)

Sec. 5. 5 MRSA §13070-P is enacted to read:

**§13070-P. COMPREHENSIVE EVALUATION OF STATE INVESTMENTS IN ECONOMIC DEVELOPMENT**

(Below seems to lend itself to combining with Definitions section on p. 2)

1. **Definitions.** For the purposes of this section:
  - A. “economic development incentives” means federal and state statutorily defined programs that receive state funds, dedicated revenue funds and tax expenditures as defined by section 1666 whose purposes are to create, attract or retain business entities related to business development in the State. (this part of the definition comes from §13070-J.1.D) (Current §13056-A.1-A and §13070-J.1.D include a specific listing of programs as part of the definition. The programs listed in each section do not match each other and both also have programs listed that have since been repealed. These specific program listings have not been brought forward into this draft and suggest not including them in the statute going forward. Earlier sections of this draft repeal §13056-A altogether and amend §13070-J.1.D to eliminate list of programs from current statute.)
  - B. “economic development investments” means commitments of state funds, dedicated revenue funds and tax expenditures as defined by section 1666 for research and development activities and economic development incentive programs (added for clarity)
  - C. “research and development activities” means activities that directly or through capital investment support basic and applied scientific research and related

commercial development funded by state appropriations and bond proceeds; and  
(this language is currently in §13109.2)

- D. “state economic development strategic plan” means the long-term strategic plan for the state’s economy developed by the Maine Economic Growth Council pursuant to 10 MRSA §929-B (added to specify)

2. **Conduct Evaluation.** By February 1, 2019, and every four years thereafter, the commissioner shall submit a comprehensive evaluation of state economic development investments, not to include programs subjected to independent evaluations required by federal programs, to the Governor and the Legislature. (modified from language currently in 13056-A and 13107) Note that with this timing the evaluations would be using a draft strategic plan from MEGC in the first round and then draft updates to the Plan in subsequent rounds as MDF proposes that the strategic plan would not be done and submitted until Dec 2018 and every four years thereafter so as to land outside the election cycle.

- A. **Programs identified for evaluation.** The scope of the evaluation shall include research and development activities and economic development incentives in this State. (this language is combined and somewhat modified from what is currently in 13056-A.1-A. and 13107.2)
- B. **Reviewers.** The evaluation shall be performed by independent, nonpartisan reviewers. (this language comes from language currently in §13056-A.2 and §13107.2, nonpartisan has been added but it should perhaps say “objective” instead?)
- C. **Evaluation objectives.** The evaluation objectives shall include, but not be limited to, an assessment of: (this entire section has been modified from what is currently in statute §13056-A.1-A and §13107.1 to reflect evaluation objectives that use the state’s economic development strategy as the foundation for evaluation. These are intended to be objectives for a macro level evaluation. The approach for evaluations of individual programs within portfolio similar to what is currently conducted for tax expenditures is still under discussion.)

(Of the below, 1 and 2 relate to alignment with strategic economic development plan; 3 relates to alignment if comparison to other states is included in the plan; 4 may not be needed if that is included in the plan’s analysis of various sectors, as it would be presumed to be; and, 5 and 6 relate to awareness and accessibility, rather than alignment)

- (1) the extent to which the state’s portfolio of economic development investments, particularly in terms of level and types of investments, aligns with and supports the state economic development strategic plan;
- (2) the extent to which individual activities and programs, or groups of activities and programs, within the state’s portfolio are contributing to the

achievement of particular goals, measurable objectives and performance targets associated with the state economic development strategic plan;

- (3) how the state’s portfolio of economic development investments, particularly in terms of level and types of investments, compares to investments in other states;
- (4) the extent to which the state’s established and emerging technology and industry sectors are competitive in regional, national and global arenas and the impact of the state’s economic development investments in improving their competitiveness; and
- (5) the extent to which the overall framework for the state’s economic development investments provides for sufficient transparency and accountability, effective and efficient coordination among the state’s activities and programs, and easy access for interested businesses and other entities.

**D. Recommendations.** The evaluation report shall include recommendations to the Department, Governor and Legislature on any identified: (significantly modified from current statutory language. Language regarding Recommendations in current statute can be found in §13056-A.3 and §13107.3. It has been modified here to add “Department and Governor” and to add specificity as to desired areas for recommendations.)

- (1) opportunities to modify the current portfolio of state economic development investments, particularly with regard to level of investment or types of activities and programs, in order to better align resources with the state economic development strategy; more cost-effectively support achievement of goals, objectives and performance targets associated with the strategy; ~~or improve competitiveness of the state’s established or emerging technology and industry sectors;~~  
 (1 seems particularly important to evaluate whether we have a portfolio that is consistent with and effective in supporting the plan; I think the underlined part above can be eliminated as it will be included in the plan)
- (2) opportunities to shift investments from economic development activities and programs to other state efforts in order to better align resources with the state economic development strategy; more cost-effectively support achievement of goals, objectives and performance targets associated with the strategy; ~~or improve competitiveness of the state’s established or emerging technology and industry sectors;~~ (consider eliminating)
- (3) opportunities to improve transparency and accountability for state economic development investments, coordination among economic activities and programs in the portfolio, or accessibility of business and other entities to those activities and programs; and

(3 is important because it speaks to coordination of agencies, etc. around the implementation of the plan)

(4) any other areas for improvement.

**E. Access to Confidential Information.** Consider section to specify here what access independent reviewer will have to confidential information.

**F. Resources and Assistance.** Consider section to refer to OPEGA evaluations and MEGC efforts/results as resources that should be referenced when conducting the evaluation. Consider whether OPEGA should or would need to play a role in facilitating independent reviewer access to confidential data.

**3. Action on Evaluation Reports and Recommendations.** By DATE ?February 1, 2019? and every four years thereafter, the Commissioner shall present the report and results from the most recent evaluation required under this section to the joint standing committee having jurisdiction over labor, commerce, research and economic development. The Commissioner shall report to the Governor and the committee on actions planned by the Department and other entities administering the programs to address the recommendations made. (should encourage agency buy-in) The committee shall also consider the independent reviewer's recommendations and may submit a bill to the Legislature to implement recommendations. (There is nothing like this already in statute.) (Should the commissioner also present the report to AFA and Taxation and the MEGC?)

By February 1, 2021 and by February 1st every four years thereafter, the Commissioner shall submit to the Governor and the committee a progress report related to evaluation required under this section that describes the implementation status of the recommendations and planned actions from the prior evaluation. (there was a progress report required in the last paragraph of §13107 but this language expounds on that and removes the independent evaluator from participating in submitting the progress report. )

Revisit this section for any coordination needed between this and efforts of the MEGC once the timing is established in those proposed amendments to statute. Also consider – given the revised objectives of the DECD evaluation – how many of the recommendations are likely something that DECD alone can implement?

Consider adding unallocated language to the bill that would require the Commissioner to do the same progress reports in 2017 and 2019 on the recommendations made in the 2016 evaluations or do we want to wait and start with an evaluation that uses MEGC's strategy? (perhaps also 2014)

**Sec. 6.** 5 MRSA §13070-Q is enacted to read:

**§13070-Q. REPORTING REQUIREMENTS OF RECIPIENTS OF RESEARCH AND DEVELOPMENT AND ECONOMIC DEVELOPMENT FUNDING**

To assist the department in preparing the comprehensive evaluation of state investments in economic development pursuant to section §13070-P.1, a recipient of state funding for research and development activities or economic development incentives, including General Fund appropriations, dedicated revenue, tax expenditures as defined in section 1666 and general obligation bond proceeds for economic development, shall, in addition to any other reporting requirements required by law, collect, maintain and provide data as requested by the department. (this comes from language currently in §13056-B and §13108 with slight modification. The remainder of §13108 is not brought forward to this draft as per DECD it is no longer relevant. Sec. 8 of this draft repeals 13108.)

**Sec. 7.** 5 MRSA §13070-R is enacted to read:

**§13070-R. MAINE ECONOMIC DEVELOPMENT EVALUATION FUND**

**1. Fund established.** The Maine Economic Development Evaluation Fund, referred to in this section as "the fund," is established as a nonlapsing Other Special Revenue Funds account administered by the department for the purposes of funding the comprehensive economic development evaluation required pursuant to section §13070-P.1.

**2. Fund sources.** The fund receives money deposited by the Treasurer of State pursuant to this section and any other gift, grant or other source of revenue deposited for funding the comprehensive economic development evaluation required pursuant to section §13070-P.1.

**3. Payments to fund.** Notwithstanding section 1585 or any other provision of law:

**A. Economic development incentives.** The department shall assess agencies or private entities that receive General Fund appropriations or general obligation bonds for economic development incentives, as defined in §13070-P.1.A, an amount for contribution to the fund that is not to exceed 0.8% of General Fund appropriations received by or general obligation bonds issued to an agency or entity for economic development efforts. Private entities that receive funds from general obligation bonds for economic development efforts shall pay to the Treasurer of State in the fiscal year in which the general obligation bond was issued an assessment amount determined by the department that is not to exceed 0.8% of the proceeds from the bond issue in any fiscal year, which payment must be made from available resources other than bond proceeds. Only those 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 or more for economic development efforts in any fiscal year, as identified and certified by the department and the Office of Fiscal and Program Review, may be assessed pursuant to this subsection. The department shall provide to each agency or private entity an annual budget for the fund and a detailed account of each institution's required assessment. Total payments made pursuant to this section may not exceed \$200,000 in any fiscal year.

**B. Research and development activities.** Agencies or private entities that receive General Fund or general obligation bonds for research and development activities, as defined in §13070-P.1.B, shall contribute to the fund an amount not to exceed 0.8% of General Fund appropriations received by and general obligation bonds issued to an agency or entity for research and development efforts. Private entities that receive funds from general



obligation bonds for research and development efforts shall pay to the Treasurer of State in the fiscal year in which the general obligation bond was issued an amount not to exceed 0.8% of the proceeds from the bond issue in any fiscal year, which payment must be made from available resources other than bond proceeds. Only those programs that receive \$500,000 or more in research and development appropriations in any fiscal year, or those entities that receive funds from a general obligation bond issue of \$500,000 or more for research and development efforts in any fiscal year, as identified and certified by the Office of Innovation and the Office of Fiscal and Program Review, may be assessed. The Office of Innovation shall provide to each agency or private entity an annual budget for the fund and a detailed account of each institution's required assessment. Total payments made pursuant to this section may not exceed \$200,000 in any fiscal year.

Sec. 8. 5 MRSA §13108 repealed.

Sec. 9. 5 MRSA §13109 repealed.

(This next portion of the draft legislation is intended to provide additional clarity, requirements and resources for the Maine Economic Growth Council's efforts to fulfill its current statutory mandate to develop, maintain and evaluate a long-term economic plan for the State. This will be accomplished by amending 10 MRSA §929-B as necessary. OPEGA is still working with Maine Development Foundation on what those proposed amendments will be. Current language in §929-B is below.)

## **§929-B. POWERS AND DUTIES**

**1. Develop and maintain a long-term strategic plan for the State's economy.** **By December 31, 2018** the council shall ~~d~~Develop and recommend a long-range economic development strategic plan, ~~goals, benchmarks and alternative strategies~~ for a sustainable state economy~~;~~. The council shall update the plan **every four years** thereafter. The plan shall be sufficiently broad in scope so as to address all relevant state, national and international economic, finance and demographic, natural resource and infrastructure factors. For the purposes of this section, the term "economic development" shall be broadly construed and may include, but is not limited to, job creation and retention, tax base enhancements, development of human capital, workforce availability and productivity, critical infrastructure, regional and global competitiveness, standard of living, environmental sustainability, energy cost and supply, quality of life, the effective use of financial incentives, and the utilization of public private partnerships where appropriate.

(The additional language on scope and economic development come from other states' statutes and should be modified to fit what MDF is envisioning. There is somewhat similar language or intent below in 929-B.3-D and E but that stuff still fits with "considerations" also.

~~B. Monitor progress in accomplishing the plan's vision, goals and benchmarks; and~~

~~C. Recommend changes in the plan to reflect the dynamics of the international, national and state economy.~~

~~**A.2. Process.** The council shall use the following guidelines when developing the plan described in subsection 1. In developing and maintaining the plan, the council shall:~~

~~(1)A. The process must be use a long-term and continuous process with a 5-to-710-year planning horizon. It must include clear authority for monitoring and evaluating on a regular basis.~~

~~(2)B. The process must have maintain a strategic focus and measurable outcomes, with clear goal setting and performance indicators include consideration of:-~~

~~(a) The types of industries and jobs with significant growth potential in the State;~~

~~(b) The State's evolving industrial base;~~

~~(c) The dynamic national and international markets;~~

~~(e) Other relevant studies and evaluations in the private and public sector dealing with the long-term economic growth of the State;~~

~~(f) challenges in the quantity and quality of the State's workforce; and~~

~~(g) Obstacles to the State's citizens reaching their fullest potential in the State's economy.~~

Some other issues to consider: intra- and interstate collaboration; impact on small businesses; differences within the state, particularly rural regions; economic diversity; foreign investment; assessment of Maine's strengths and weaknesses, and Maine regions' strengths and weaknesses, and strengths and weaknesses relative to other states or countries (comparative, competitive, and absolute advantages); maximizing return on investment

~~(3)C. use a public and private partnership approach that is objective and nonpartisan. The council may appoint with appointment of working groups and advisory committees as necessary; to representing stakeholders key concerned parties to accomplish the goals outlined in this section.~~

~~(4)D. The process must be statewide in scope, using available technology to ensure that all areas of the State have accessibility to the work of the council. (It appears this is striving for a transparent and accessible process – seems like it should be reworked to be clearer about this.) Agreed – we can come up with something that talks about transparency and visibility, along with the level of public involvement/input~~

~~E. Preparation and maintenance of the plan must be through a public and private partnership approach that is objective and nonpartisan.~~

~~**B.3. Contents.** The plan developed by the council must shall consist of: (Need to discuss with MDF what this section should include. At a minimum it should specify that it needs to have goals, measurable objectives and quantifiable performance indicators for assessing achievement of goals and objectives. Not sure if some of these other things here are needed or relevant. Check also what other states have in their statutes. Possibly something about assessment of State's strengths and weaknesses and discussion of emerging opportunities.) Agreed we should discuss further~~

~~(1)A.~~ A plan for the State's economy based on economic opportunity for all citizens and a shared commitment to sustainable development **among government business, and society**; ~~that recognizes that new forms of cooperation among government, business and society are required to achieve the goals;~~

~~(2)B.~~ Benchmarks for accomplishing the plan that are specific, quantifiable performance indicators against which each of the goals that have been set forth to accomplish the vision can be measured; and

~~(3)C.~~ Alternative strategies to accomplish the benchmarks based upon the best practices in Maine, other states and other countries; and

~~(4)D.~~ A strategy for the overall economy, broadly defined and not limited to what is traditionally termed "economic development." ~~The plan must include consideration of education and training, redeployment of state resources, investments in science and technology and infrastructure; and~~

~~E. Identification of:~~

- ~~(1) The types of industries and jobs with significant growth potential in the State;~~
- ~~(2) The State's evolving industrial base;~~
- ~~(3) The dynamic national and international markets;~~
- ~~(4) Existing efforts to convert military economies to civilian economies;~~
- ~~(5) Other relevant studies and evaluations in the private and public sector dealing with the long-term economic growth of the State;~~
- ~~(6) The work force challenges faced by welfare recipients and strategies to address their economic and related needs; and~~
- ~~(7) Other relevant studies and evaluations in the private and public sector concerning the availability of child care.~~

**2. Monitor and assess progress.** Using the established performance indicators. Describe how MEGC will monitor and give status reports. Seems like this would be the Measures of Growth process. MDF suggests a first progress report submitted December 2020 with progress reports every four years thereafter as in between updates to the plan would be made – see #1 above. Might be desirable to include a mechanism for agencies or other entities who are assigned responsibility for certain items to report to MEGC/MDF; Question to consider: does MEGC/MDF have authority to assign tasks to agencies, etc.? Or just recommend?

**3. Report.** The council shall report to the joint standing committee of the Legislature having jurisdiction over housing and economic development matters. The council shall recommend its plan to the committee biennially at the beginning of each new Legislature, except that the first plan must be presented by January 1, 1995. The recommended plan must be used by the Economic Development and Business Assistance Coordinating Council as a guide to deliver economic development services. **This is the current wording in statute but need to revise this section to something more comprehensive ie. Submission, presentation or recommendation of**

**Plan.** Specify who plan and plan updates should be submitted, presented, or distributed to and when. Also to remove reference to the Coordinating Council.

4. Add a section here that somehow makes other agencies accountable to take plan into consideration when doing their own planning. Should possibly also somehow incorporate reference to this plan and expectation for considering it into statutes for these other agencies.

**5.4. Fiscal agent.** The Department of Economic and Community Development shall serve as the council's fiscal agent providing regular financial reports to the council on funds received and expended and an annual audit. The council shall seek funds and accept gifts, if necessary, to support the council's objectives.

**6.5. Staff support.** The council shall contract with the Maine Development Foundation for staff support to fulfill the requirements for carrying out the purposes of this section.

~~**6. Report.** The council shall report to the joint standing committee of the Legislature having jurisdiction over housing and economic development matters. The council shall recommend its plan to the committee biennially at the beginning of each new Legislature, except that the first plan must be presented by January 1, 1995. The recommended plan must be used by the Economic Development and Business Assistance Coordinating Council as a guide to deliver economic development services.~~

## Summary

(Summary will be modified as additional portions are added to the draft legislation)

The purpose of this bill is implement opportunities for improvement in the efficiency and effectiveness of statutorily-required independent evaluations of research and development activities and economic development incentives that are the responsibility of the Department of Economic and Community Development. The Government Oversight Committee identified these opportunities in its ongoing follow up of the recommendations included in the Office of Program Evaluation and Government Accountability's 2006 report on Economic Development Programs in Maine. Currently, statute requires the Department to conduct an independent evaluation of research and development activities, and then a separate evaluation of economic development incentives that are not covered in the research and development evaluation. Since the primary purpose of research and development activities is to support economic development, this bill combines the statutory provisions related to both these evaluations into a requirement for conducting and funding one, independent evaluation that encompasses both. The bill also changes the required cycle for evaluation from every 2 years, with results reported to the Legislature during second regular sessions, to every 4 years, with results reported during first regular sessions. This is intended to allow the Legislature more time to consider the recommendations from evaluation reports and allow for recommendations to be implemented in between evaluation periods. Lastly, the bill seeks to ensure that evaluation results are considered and acted on, as appropriate, by assigning responsibility for review and action to both DECD and the joint standing committee on labor, commerce, research and economic development.

## Timeline