



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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

April 14, 2017

Accepted April 28, 2017

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Davis, Sen. Diamond and Sen. Saviello
Joining the meeting in progress: Sen. Gratwick and Sen. Libby

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Rykerson and
Rep. Sutton
Absent: Rep. Harrington

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Amy Gagne, Analyst, OPEGA
Joel Lee, Analyst, OPEGA
Kari Hojara, Senior Researcher, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Julie Jones, Senior Analyst, Taxation Committee

Legislators: Sen. Dana Dow, Senate Chair, Taxation Committee
Rep. Stephen Stanley, Member of the Taxation Committee

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 MARCH 24, 2017 GOC MEETING

The Summary of the March 24, 2017 was accepted as written.

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NEW BUSINESS

- **OPEGA Report on Children's Licensing and Investigation Services** (Separate Report)

- **Public Comment Period**

Melanie Collins, Child care provider. (A copy of Ms. Collins testimony was emailed April 17th and attached to the Meeting Summary.)

Committee members' questions and comments included:

Chair Mastraccio asked at what point did Ms. Collins think other parents should be notified that an investigation was going on?

Ms. Collins said it depends on the seriousness of the allegation or complaint. As a parent she understands wanting to know that there has been a complaint against somebody. She said sometimes a complaint is made because someone wants to get back at the daycare because the daycare has not been getting paid by a client and they inform that person they cannot bring their child there any longer. The client files a complaint to get back at the daycare. She would want to be notified when the complaint has been substantiated and believes there is a way, though she did not know how, to tease out a legitimate complaint versus a disgruntle parent or employee complaint.

Sen. Katz asked Director Ashcroft what the current rules are with regard to parental notification. Director Ashcroft said currently under statute there is no requirement for any parental notification. The language is that the Department "may" notify. She said the Department's own internal policy requires notification of the parents whose children are specifically named in the complaint at the outset of the investigation and also at the conclusion of the investigation. The Department's policy also says it "may" notify on a case-by-case basis other parents of other children depending upon the seriousness of the nature of the complaint and whether there are other parents involved in the investigation, or that got interviewed as part of the investigation. Director Ashcroft said there is no requirement to notify all parents at the outset, or conclusion, of an investigation. She said what she is referring to are complaints of potential child abuse and neglect because there is nothing at all that speaks to any notifications the Department has to make about other potential licensing violations that they may be investigating.

Sen. Diamond asked if there are certain levels of offense seriousness that mandate a reporting of any kind. Director Ashcroft said there is no specification, just that it depends on the severity, or whether DHHS thinks it is potentially a systemic issue in the childcare.

June Holman, Child care provider. (Did not provide a copy of her testimony.)

Rep. Rykerson thought it would be important to the provider to be on notice and take a complaint seriously so they can correct the problem and asked for Ms. Holman's suggestions.

Ms. Holman said if someone substantiates that she is abusing children, she wants the Department to come in and stop her from doing it and wants them to also do that with other providers. She said she is not trying to protect her ability to abuse children, but is trying to protect them and her ability to continue to take care of them. If someone is allowed to damage her business she will not be able to continue taking care of them. Ms. Holman said when she has an investigation and something is found to be unsafe in her building, she corrects it. She is not saying she does not want people to be investigated. What she is saying is she does not want the letters to go out that will ruin her business prior to knowing if she had done something wrong. She agreed that anybody has the right to file a complaint, but the part about notifying parents without the abuse having been substantiated is very concerning. Ms. Holman said when a letter from DHHS is received informing parents that they are investigating for abuse, people take that seriously and you assume at that

point that it is not just any complaint and something serious has caused this. Unfortunately, what really happens is any old complaint is investigated and she agrees with that. But if you allow the letters to go out her business would get ruined. She said if everybody pulled children from her child care every time her ex-husband said something nasty about her to DHHS, she would not be in business. Ms. Holman said there are so many reasons for filing a complaint, for example, disgruntled neighbors who do not want a child care nearby. She did not think that is what the process was meant for and may just be an unintended consequence of one simple word of “shall” or “may” in the law. If the law says they may send letters out, then that gives the Department the discretion and she would like to see more discussion about what that discretion is.

Rep. DeChant thinks she understands that Ms. Holman is not against the accountability and asked what Ms. Holman would suggest would be the accountability for those false accusations.

Ms. Holman said what she has heard is that we cannot hold people accountable for making those false accusations because you want people to make the accusation and do not want the person to worry about repercussions. So it is a flawed system. She did not know the solution for that, but had to come to grips with it very early on in her career. She agreed children need to be safe and agreed that complaints are how DHHS knows there may be problems. DHHS investigates. Ms. Holman said you also have parents who might say they do not think something is quite right and Ms. Holman said she wants that to continue. What she wants is to be very careful about what happens once that complaint is received.

Rep. DeChant asked Ms. Holman if she thought the best thing going right now is the difference between “shall” and “may”. Ms. Holman said yes, if the policy were executed fairly, reasonably and followed. Unfortunately, she does not think it is followed. She is aware of child cares who have had investigations and all of their parents were notified and they have endured loss of business. She said that is still happening even though the wording was changed. Ms. Holman would like to see more happen, but does not have an answer of what that should be. She said she appreciated the position of both sides because she does want children to be protected. She did not have an answer, but wanted the GOC to have her perspective in the forefront of their mind when making their decision in recommending legislative changes that DHHS automatically send those letters out.

Sen. Katz said part of the problem is that they want to protect good faith whistle blowers, but don't want to protect people who are doing it for retaliatory or other reasons. He said part of the problem is it is hard to know definitively which it is. If someone says Ms. Holman was yelling at a kid and berating them and she says she was not, they may find it unsubstantiated, but it is going to be very difficult to prove a negative. Ms. Holman agreed and said many times during the investigation there are details that might come out that will show that. She is hoping they were not assuming that all complaints where it is one person's word against another's are unsubstantiated. Sometimes unsubstantiated is that we investigated the other staff who saw the situation and said it really was truly unsubstantiated. She said people never get to know the details and the daycare is bound to not speak about it, which is unfortunate. She understands that they don't want them to sway the investigation, but that is a tough situation because the person who made the complaint is allowed to speak about it so that also ruins a business' reputation.

Sen. Saviello asked if Director Ashcroft could explain what OPEGA's Recommendation 5 is in the Report. He understood Ms. Holman's concerns, but the way he reads Recommendation 5 is that in the instances that OPEGA observed the parents were notified, it talks about them posting the information on the website and thinks the only debate is “shall” or “may” and it looks like DHHS is already using “shall”.

Director Ashcroft said OPEGA purposely did not make any recommendation about changing the statutory language. However, given the degree of discussions that had gone on with the GOC when OPEGA was first tasked with the review about the Committee's interest in parental notification, OPEGA wanted to point out that there is no statutory requirement to notify. The Department's policy does go further than the statute, but it is a policy and could be changed. OPEGA was just pointing that out. She said it had recently

been vetted in the bill that created the language in the first place, and OPEGA wanted the GOC to be aware of that. OPEGA did not make any recommendation about changing it.

Sen. Saviello said if the GOC sent this report to DHHS or the Health and Human Services Committee suggesting that they may want to review that, they can decide if there should be a change in the legislation. Director Ashcroft said that is certainly in the Committee's purview to take whatever information it hears and decide if they want to introduce a bill to get it into the process. Both are options.

Sen. Diamond asked Ms. Holman when she receives a letter from DHHS informing her she is going to be investigated, does she ever see a difference in the Department's approach. For example, if she was being accused of having a dirty, unclean facility versus a child being sexually abused, are all of those initial investigations approached in the very same way, or is DHHS' preliminary action to let's see before we trigger all the other sorts of things that take place. Are they all consistently the same?

Ms. Holman said no and said probably DHHS can answer that question better, but from her experience and what she understands it to be is if it is a licensing violation, you are not notified ahead of time of anything. Your licenser would just show up and say I am here for an investigation and it is because of a licensing violation and then would do a walk through, speak to your staff, conduct interviews, ask her questions. She could not say one hundred percent that you are told what it is about. If her child care was very unclean and unsanitary and there were exposures that would be harmful to children, DHHs would just automatically start an out of home abuse investigation. She said she has never had letters go out to parents, but that was prior to the agency's new process. Ms. Holman said many times when DHHS comes out she is told they have this complaint and she tells them she can probably pinpoint what it is about. I fired this employee, here is the write-up. DHHS still conducts the investigation, but they come to the conclusion that this is obviously retaliation for firing somebody. Ms. Holman said it is the same with parents when they have been told that they cannot come back because they missed four payments and she cannot continue care for their children. That angers some parents and they know making a complaint is an easy way to get back at her.

Sen. Diamond said so the Department's approach, regardless of the complaint, is the same each time. Ms. Holman said in her experience, she thought so. There may be some intricacies she does not know about. If it is just a licensing violation, just your licenser comes out. If it is an abuse violation your licenser comes out with the out of home abuse staff and, at times, with a police officer.

Chantel Pettengill, Child care provider. (Did not provide a copy of her testimony.)

Rep. DeChant said there are many complaints that can happen and if her child fell down, was bruised or had a rash, etc. that is a category that is different than if there was sexual abuse. She asked Ms. Pettengill how those complaints and allegations should be differentiated.

Ms. Pettengill said she thinks there needs to be different types of systems. If it is a violation and investigation of sexual abuse or just abuse, then you do want to talk to other parents. If there is a complaint of a child falling off a play structure and getting hurt that should be investigated to determine if it is systemic or is an incident that happened to one child. Depending on DHHS' findings would determine whether all parents should be informed. She said there needs to be a differentiation.

Rep. Pierce said predators who are in the child care business are not as willing as Ms. Pettengill, or the others who testified, and definitely want to hide things from the parents and that is why this review was done. He referred to the daycare that was the cause for the GOC/OPEGA review and asked Ms. Pettengill if she thought those parents should have been notified when there was suspicion because there was a systemic problem and parents were not notified. He understands her point about the agency sending out a letter. He asked if Ms. Pettengill documents it when she has to give a parent a letter because they did not pay. Ms. Pettengill said absolutely, everything is documented and she keeps records for ten years. Rep.

Pierce says when DHHS comes into a facility and they find the provider not cooperative, obviously that sets off a red flag and asked if she thought in that instance they should be looking to notify parents.

Ms. Pettengill said in the Child Care Licensing Book it states that child care facilities are required to cooperate so if they do not cooperate, they are violating a licensing requirement. She thinks if someone is not willing to cooperate that is a red flag. In her Center she wants what is best for the children, her own children and her employees and staff.

Sen. Katz asked Director Ashcroft if DHHS was informed or asked to be at the meeting. She said OPEGA inquired whether DHHS was planning on being at today's meeting and heard back that they were not. DHHS referenced Commissioner Mayhew's letter which outlines their action items. She said if the GOC has specific questions for the Department Director the GOC could submit a formal request for them to come to the Committee's Work Session on the Report. Director Ashcroft noted that the GOC had questions at their last meeting that OPEGA got additional information on and referred members to that information in their notebooks. She said the responses are from DHHS.

Sen. Katz closed the Public Comment Period on OPEGA's Children's Licensing and Investigation Services Report at 9:47 a.m.

- Committee Work Session

Director Ashcroft summarized the Information From OPEGA Follow-up on GOC Questions on Children's Licensing From the GOC's Meeting on March 24, 2017. (A copy is attached to the Meeting Summary.)

Rep. Sutton asked the difference between a Child Care Facility and a Family Child Care. Director Ashcroft said Child Care Facilities get a license and have the licensing procedure and Family Child Care facilities get a certificate so is a different process. She said there are two types of child care facilities and it is based on size.

Sen. Katz said several Committee members noted that they would like the opportunity to engage in a dialogue with someone from DHHS. He said unless he heard an objection the GOC will continue the work session at a later time and make a request that somebody from DHHS come to the next meeting.

Sen. Saviello agreed, but thinks the GOC should delineate what questions they want DHHS to answer. Director Ashcroft said that is part of the process.

Sen. Katz asked that Committee members send the area of questions or specific questions they have to Director Ashcroft by April 19th. The Director will then make the request to DHHS that someone be at the next GOC meeting. Committee members agreed.

- Committee Vote

Not taken.

• Review and Discussion of Proposed Evaluation Parameters for the 2017 Tax Expenditure Reviews

Director Ashcroft explained that part of the process laid out for legislative review of tax expenditures is that prior to getting started on a tax expenditure evaluation, OPEGA proposes evaluation parameters. The parameters serve as the foundation for what is going to be accomplished in the review and it gives the opportunity to discuss and agree on the goals and purposes of this particular tax expenditure and who are the intended beneficiaries so everyone is focused on the same thing. She said the process also includes the opportunity for stakeholder input to the GOC before they approve the evaluation parameters. Director Ashcroft said that process is beginning at today's meeting. She said OPEGA will reach out to the Taxation Committee,

as is required by statute, to see if they have any specific input they would like to have the GOC consider. The Committee would then move to amend, or not amend, the proposed evaluation parameters at a future meeting.

Director Ashcroft summarized the Proposed Parameters for OPEGA's Full Evaluation of the Business Equipment Tax Reimbursement & Business Equipment Tax Exemption – BETR & BETE. (A copy of the Proposed Parameters is attached to the Meeting Summary.)

Sen. Saviello wanted to clarify a point, having been involved in both BETR and BETE when working at the mill. He referenced a decision by the mill to make an investment in Maine instead of North Carolina because of the BETR program. He said BETR is not a revenue loss, it is perhaps rather a revenue not obtained. Director Ashcroft said her distinction it is not a state level revenue. Most all of the tax expenditure programs included in MRS' tax expenditure report are about revenue the State would have otherwise gotten. She said this is not the case here. It is not really a foregone revenue at the State level. BETE is foregone revenue for the municipalities. Director Ashcroft said there will be some distinctions OPEGA will be drawing about this as they get into evaluating the programs.

Rep. Rykerson was not aware of the distinction between personal property and equipment owned by an entity and asked if that could be explained. Director Ashcroft thinks business equipment is all treated as personal property for the purposes of the municipal property tax. For the exceptions to reimbursement that are outlined in statute they are not trying to say this isn't personal property, they are trying to say this property is not eligible to participate in the program or to get a reimbursement.

Rep. Mastraccio clarified that a business technically gets the depreciation on the equipment as well as the property tax exemption. Director Ashcroft agreed and said the property tax exemption would reduce as the property is depreciated.

Rep. Mastraccio thought the tax exemptions were confusing. Director Ashcroft said one way to look at it is BETR and BETE are about property tax on equipment. The fact that it is depreciable equipment for these Programs really only affects how much the property tax is going to be. It is the same way your car devalues and the excise tax you pay goes down. MCIC, federal bonus depreciation and Section 179 depreciation is about how quickly a business is able to depreciate their equipment for income tax purposes. She said they are two different kinds of tax benefits and they would affect the business in two different ways.

Sen. Diamond said he suspected then that there are different businesses that would qualify for BETR and not qualify for BETE. Director Ashcroft said that is correct.

Rep. Sutton asked if part of the equation was that some municipalities charge personal property tax to a business and others do not. Director Ashcroft agreed. She thought each local taxing jurisdiction would have the same definition of personal property though, but OPEGA has not gotten into it at that level so she is not sure. Municipalities all have different mil rates so the amount of tax would theoretically be different.

Sen. Katz thought every municipality assesses property tax on personal equipment and he was not aware of any local governments that do not tax personal property.

Sen. Saviello noted that he had just moderated a town meeting where the town made an affirmative vote that they no longer were going to collect tax on a particular thing. The State says you shall or may and the town was told by MMA that they had to make that finding. He said it was a farm community that was taxing tractors and decided they were not doing that anymore. Sen. Saviello said there is a way a municipality can do a waiver.

Rep. Mastraccio noted that there are some communities that are being reimbursed at more than 50% under BETE and said that would be looked at because it would have a different impact in those communities. She was surprised when she looked at what Sanford is reimbursed, noting it is a significant amount of money and she asked if OPEGA will be able to see community differences. Director Ashcroft expected to be able to see

that information in the different reimbursement rates. As OPEGA currently understands, the different rates have to do with the municipalities' reliance on business property in its tax base.

Sen. Katz said the higher the reliance, the higher the reimbursement is. Director Ashcroft said that is what OPEGA understands to be the case.

Rep. Rykerson asked if most of OPEGA's quantification is done with its economic modeling program. Director Ashcroft said there were only two performance measures where they know economic modeling would be done just as it was in the New Markets Evaluation. She said those would be Net impact on state budget and Indicators of economic impact. OPEGA will pick out what seemed to be the most appropriate indicators of economic impact based on the type of program this is.

Sen. Saviello said when OPEGA reviewed the New Markets Credit they did a case study on one of the issues. He asked if OPEGA would expect a case study in these evaluations also or was New Markets an unusual situation because the Great Northern deal was so much in the headlines. Director Ashcroft thinks it will depend on whether OPEGA feels a case study approach illustrates something about the program that is best told through a case study. It is always a methodology OPEGA might use, but it will depend on the degree to which it seems that is needed for either understanding or illustrating some nuance about the program.

Sen. Katz asked if there were any other questions from the Committee regarding BETR and BETE. Hearing none he ask Sen. Dow for his input regarding BETR and BETE and whether he had any comments with respect to the BETR and BETE evaluation parameters Director Ashcroft was proposing.

Sen. Dow said he was familiar with the BETR Program, but BETE was newer to him. He said there were ten new members on the Taxation Committee and it will be a learning process for all of them. He and Rep. Stanley will be bringing the information from today's GOC meeting regarding the programs back to the Taxation Committee for discussion.

The GOC thanked Sen. Dow for his comments.

Rep. Mastraccio asked if there was anyone else at the meeting who wanted to comment on the BETR and BETE evaluation parameters.

Linda Capara, Maine State Chamber of Commerce. (Did not provide a copy of her testimony.)

Ms. Capara said OPEGA has done a great job on the evaluation parameters. She referred to "G Indicators of economic impact" and said the purpose of the programs is to level the playing field of companies in Maine with other states that don't tax personal property so employment is not an indicator of the success of the program. She said jobs is not a performance measure that would apply here.

Sen. Saviello commented that he would think looking at jobs would be fair game if promises regarding employment were made in the applications for the BETR and BETE programs.

Ms. Capara said no. The purpose of the BETR program is to level the playing field, it was not designed to create jobs. It is designed to make companies more competitive because personal property tax is a huge tax burden on companies. They have to pay it regardless of whether they are making money and the Legislature created these programs to level the playing field. It had nothing to do with job creation. She said some jobs may be eliminated depending on what type of machinery you put in.

Jonathan Block, Pierce Atwood, LLP. (A copy of Mr. Block's testimony is attached to the Meeting Summary.)

Sen. Saviello asked Mr. Block if there was ever a discussion of jobs in an application for the BETR or BETE programs or is it mute to that subject in those applications. Mr. Block said there is nothing about jobs in the applications.

Rep. Stanley said when the BETR Program first came into effect it was the added value that you put into a piece of machinery or business that would add value to that business. He said the program was not a job creator, but a job protector and would keep people working in some of the factories and mills and the jobs would be more secure. For example, in the paper mill he worked in they ran news print and then they went to directory paper which is a lighter sheet of paper. That saved jobs and it made more money for the mill so they could keep everybody working. He agreed with Mr. Block that the program was not to create jobs, but to help save jobs and that is why the Legislature, at that time, did what it did. The original intent was to add value to companies to save and preserve jobs that they had, but not to create jobs. Rep. Stanley had stressed to OPEGA to go back to the original intent of the bill compared to where it is today.

The GOC thanked Rep. Stanley for the information he provided.

Director Ashcroft pointed out to the Committee that OPEGA was proposing an objective for the BETR/BETE evaluation that focused on extent to which municipalities in the state are impacted by the program fiscally, administratively or otherwise.

Director Ashcroft also wanted members to give some thought to, the piece of the broad intent statement for this program that referenced promoting the general welfare of the people of the State of Maine. In the evaluations OPEGA has done so far, they have been trying to look for measures that speak to each piece of a program's stated intent or the goal. OPEGA has heard that the intent of these programs was not necessarily to increase jobs and that might not be a measure that is relevant to the goal. Director Ashcroft said OPEGA would like some direction on what would be of interest to the Legislature in terms of trying to measure something that reflected the intent of promoting the general welfare of the people of the State of Maine. What would legislators count as a success in that regard? What would they like to see as a measure of the welfare of the people of the State of Maine for these particular programs, or for any programs? That will help OPEGA figure out which indicators of economic impact or kind of impact would be most valuable for OPEGA to focus on. She said OPEGA would like to hear from the GOC, or Taxation Committee, members or anybody else about this.

Director Ashcroft summarized the Proposed Parameters for OPEGA's Full Evaluation of the Maine Capital Investment Credit (MCIC). (A copy of the Proposed Parameters is attached to the Meeting Summary.)

Albert DiMillo, Jr., Retired Corporate Tax Director & CPA. (A copy of Mr. DiMillo's testimony is attached to the Meeting Summary.)

Sen. Diamond asked if Mr. DiMillo had presented this information either recently or in the past to MRS. Mr. DiMillo said fourteen months ago the Taxation Committee was talking about extending the credit and its conformity and he testified against that. At that time he told some of the Taxation Committee members he thought there was a math mistake. He did not get any response. Then in February he emailed Director Ashcroft what he thought the problem was and that is when she told Mr. DiMillo he would need a legislator to sponsor his request. He contacted his representatives and met with legislative staff and referred to Attachment A of his testimony.

Mr. DiMillo said he talked with Mike Allen from DAFS, who did not investigate it, but he is not really the person to do it. The matter needs to go to the Director of Income Tax for MRS or someone who is senior and understands the corporate tax world.

Director Ashcroft said she understands Mr. DiMillo wanting to see a math error get corrected quickly, but she wanted to let the Committee know that OPEGA does envision the kinds of concerns he raised regarding who is getting benefit and how much would be covered by the Objectives listed in the MCIC parameters. She said he

is correct, it is going to take a while to do it, but it is also somewhat complex. He said OPEGA could go directly to MRS and ask them to look at it and say whether it is right or wrong and feed that back to the GOC. That would be an avenue for OPEGA to try to get some information from the Department, but it is not going to be the same as OPEGA doing the analysis themselves.

Sen. Saviello said he just reached out to Rob Weaver, Director of Government and Legislative Affairs, DAFS, to set up a meeting. He recommended that OPEGA not go to MRS, it is the responsibility of legislators to take this on.

Rep. Pierce suggested that someone from MRS come to a GOC meeting to address the matters presented by Mr. DiMillo. If there is a large amount of money that is going to be paid and the Legislature is going to miss another year in taking no action, that warrants being looked into.

Rep. Mastraccio asked if it would be more appropriate for the Taxation Committee to be addressing this issue. It seems to be a very specific issue around taxation, and if she was on the Taxation Committee she would think it would be under her jurisdiction. Sen. Dow agreed.

Rep. Mastraccio said the GOC could send a letter to the Taxation Committee asking them to look at the issue immediately. She said she did not want to put the topic on OPEGA's Work Plan and thinks the Taxation Committee can handle it.

Rep. Pierce said he was not suggesting putting the matter on OPEGA's Work Plan. He was just suggesting that MRS come to a meeting to give the Committee a briefing on what they thought of this, and then work with the Taxation Committee. Rep. Pierce said the MRS presentation may give OPEGA some guidance.

Rep. Rykerson said the only thing that may be in the GOC's purview is that it may not have been a mistake, but an intentional incentive to encourage out-of-state investment. He did not know how to get to the bottom of that. Director Ashcroft thought that would come out as part of the evaluation.

Sen. Diamond said the way OPEGA addresses and approaches things, and this included, is the appropriate way to do it. Having said that, he thinks the GOC has enough indication now that they can't go through the long process. He liked the idea of sending a letter to the Taxation Committee suggesting that they take a look at Mr. DiMillo's concerns and at the same time the GOC continue with its process which is more thorough.

Motion: That the Government Oversight Committee send a letter to the Taxation Committee suggesting that they look at the matter raised in Mr. DiMillo's testimony and that OPEGA continue with its work on MCIC. (Motion by Sen. Diamond, second by Sen. Davis.)

Discussion: Rep. Sutton agreed with Rep. Pierce's request to have someone from MRS attend a GOC meeting because the information presented by Mr. DiMillo is alarming.

Sen. Saviello thought it was the Taxation Committee's responsibility and there has already been some initial contact that has been made. He did not think the GOC needed a formal update from MRS at this time.

Rep. DeChant asked if the GOC drafts a letter to the Taxation Committee and there are members from the Taxation Committee at this meeting, what is the level of action that can happen? Can they put out a bill that makes this happen? Didn't somebody say there has to be some kind of action or direction that happens or can it be as easy as going to MRS and tidying it up. She asked what the process is if indeed the GOC generates the letter. Where does it go and how does the Committee know something is going to happen at the end?

Director Ashcroft said the GOC has had similar approaches before in terms of sending a matter to the policy committee. When that has been done the GOC generally asks for that Committee to report back on what it is that they have done, or not done, or expect to do, with that subject matter. The ball ends up back in the GOC's court if there is not any action taken, or if the GOC doesn't think the action taken was sufficient. As regards to

the question about whether Taxation has authority to introduce legislation at any time, she thinks policy committees generally don't have that authority so the way that has worked in the past is if the policy committee has seen something that they thought they wanted to do that started at the GOC, then we work with them to use the GOC's authority to introduce legislation.

Rep. DeChant said the GOC generates a letter, it goes to Taxation Committee, Taxation determines what to do, the GOC has a hook that says come back and then it comes back and the GOC does the bill. Director Ashcroft said yes. Rep. DeChant asked why the GOC just didn't do the bill.

Rep. Mastraccio said the concern raised was incidental to what the Committee was doing and will go through the process, but the GOC is not a Committee that just decides to put legislation forward on something that came from a public comment.

Rep. Pierce asked Sen. Dow, if the GOC sent a letter, was the Taxation Committee in a position to act on it immediately and be able to report back to the GOC in a timely manner. Sen. Dow thought the Taxation Committee could fit something in. He referred to Julie Jones, Analyst for the Taxation Committee. Ms. Jones informed the GOC that the Taxation Committee does not have general authority to introduce legislation. There is some authority given to them to do that out of the evaluation processes, but she would have to look at the statutory language to see what fell within that authority. So other than that, the legislation would be going to the Presiding Officers for approval.

Rep. Pierce said his point was that he did not want to see a letter from the GOC to the Taxation Committee sit in the Committee for a couple of weeks before they discussed it. They are in the position to talk with MRS staff and Taxation Committee could send a letter back to the GOC before its next meeting.

Sen. Saviello said if Mr. DiMillo was correct that something needed to change in statute, it takes five minutes to get six signatures and the bill is in. He said he was going to call Mr. Weaver to talk about setting up a meeting with the Taxation Committee Chairs and perhaps Mr. DiMillo to talk about the issue.

Vote: Motion passed 11-0.

- **Stakeholder Comment Period on OPEGA's Proposed Evaluation Parameters**

Stakeholder comments were given as the Proposed Evaluation Parameters were presented.

- **Discussion of OPEGA's Proposed Changes to Tax Expenditure Evaluation Process**

Director Ashcroft referred to the document in the GOC's notebooks that provided an overview of what it is that OPEGA would like to propose doing with regard to the Tax Expenditure evaluation process. The conversation was started a while ago that OPEGA was going to make a proposal on needed changes now that we've had the experience of trying to do the three tax expenditure reviews in the past year. There have been some lessons learned about the capacity for doing them and the timing with which they can be done and reported out. She said most of the proposed changes are around that.

Director Ashcroft also is proposing making other changes as a way to deal with what she sees as barriers that have impeded OPEGA's efficiency with regard to data access and the use of data, specifically confidential tax payer data. Access to data has also been an issue brought up in multiple DECD evaluations and OPEGA has observed that even State agencies cannot be sharing data between themselves. For example, DECD is not able to get any information back from MRS on who is getting benefits and how much.

Director Ashcroft summarized OPEGA's Proposal for Revisions to Statute Governing the Legislative Tax Expenditure Review Process and Suggested Amendments to Statute to Implement OPEGA's Proposal for Changes to Legislative Tax Expenditure Review Process. (The Proposal and Suggested Amendments to Statute is attached to the Meeting Summary.)

Rep. Mastraccio referred to the Overall objectives of proposed changes and said the first two bullets are clean-up things from what has been learned from doing the first reviews, but the third bullet is more controversial. She wanted everybody to be upfront about what the GOC was reviewing. She said some GOC members are new and wanted to let them know what they are going to be asked to do. Director Ashcroft agreed that bullet three is going to be sticky. It was sticky when OPEGA did the first round of legislation when putting the process in place. There are a number of stakeholders obviously, including MRS and the business community itself, who would like to give input and those who are currently at the meeting may be prepared to give their comments.

Sen. Libby referred to number 4 of the Proposed Process Changes for Full Evaluations and asked why the GOC would not transmit the completed reports to the Taxation Committee at the time of completion. Director Ashcroft said they can. In statute it says by June 1st so they are sure to have it for interim work, but it can be sent whenever it is done. Sen. Libby thought it made sense to transmit a report when it is completed and not to hold them until a certain time of the year. Director Ashcroft said they could make that statutory change.

During the Director's presentation of number 5 proposed changes for Expedited Reviews the GOC's questions and comments included:

Rep. Mastraccio asked if Director Ashcroft thought the Analyst of Taxation could prepare the information on the Expedited Reviews OPEGA was currently preparing by using the template that OPEGA has developed. Director Ashcroft said that was one possibility and another was asking MRS to fill in a portion of the template. She did not know if the Taxation Committee found the information provided by OPEGA last yet useful.

Sen. Libby asked for the most recent example of what was provided to the Taxation Committee. Director Ashcroft said OPEGA had done the thirteen programs for the Necessity of Life category. Following the Taxation Committee's work, that Committee did put out a report that had a couple of recommendations to look at some of the exemptions.

Rep. Pierce noted that Ms. Jones was still at the meeting and perhaps could answer the question of whether the Taxation Committee Analyst was able to take on the information for the Expedited Reviews given their workload. Director Ashcroft said what she was proposing is to not require anybody to package up that information at the moment. She knows that is not ideal and Ms. Jones would probably have some suggestions about what would be good information.

Rep. Mastraccio said it may also be possible that the Reviews would not have to be done on the same schedule that was originally set.

Ms. Jones said in terms of what the Taxation Committee has the time to be able to take on, she could not speak to. She said the GOC would need to talk with the Committee Chairs to get their response and the Director of the OFPR about what the capacity of the Office is to replicate the kind of materials that it was anticipated that OPEGA would be providing to the Taxation Committee for the Expedited Reviews.

Director Ashcroft said number 5 was an idea to be able to put more OPEGA resources toward full evaluations of tax expenditures. OPEGA is in their second round of Expedited Reviews and will be providing the Taxation Committee that information by July 1st so the GOC could hold off on any decisions on the matter to see what the feedback is on what is being done with that information this coming year and whether it is useful or not.

The Proposed Changes for Expedited Reviews will be discussed at a later meeting.

Director Ashcroft moved on to Proposed Changes to OPEGA Access and Use of Confidential Taxpayer Data. The Committee's questions and comments included:

Rep. Mastraccio said for some of the tax incentive benefits the Legislature is trying to evaluate whether they are producing the effects that were intended and asked if OPEGA could not get the confidential information needed

to do that work. Director Ashcroft said OPEGA can get that information, but hired a Consultant to do the economic modeling and the information cannot be shared with the Consultant so they can use it in the model if it doesn't meet the particular parameters. She said right now the data OPEGA can share with the consultant is restricted by whether or not the consultant might possibly be able to identify who one of the companies is by combining it with other information in the public domain. If the consultant might be able to identify the taxpayer then the data does not meet the test of being classified so as to prevent identification of taxpayer data. Director Ashcroft said it has proven to be quite restrictive, even more so than OPEGA imagined it would be. OPEGA does have a non-disclosure and confidentiality agreement with the consultant, the Assistant Attorney General that works with MRS indicated to the Director that he is not sure why OPEGA should not be able to share data with their consultant under a confidentiality agreement. She said her proposal is that any information OPEGA shared with their consultant would be de-identified and would not have any taxpayer identification number or name, but it would not have to be as limited as it now is.

Sen. Gratwick asked if there were best practices that are done elsewhere in terms of confidential tax data for evaluation. Director Ashcroft was not sure there are any best practices yet developed in terms of evaluating offices having access to confidential tax data and how they can use it. Many states are just getting started in the realm of evaluating tax expenditure and she knows they all have the issue of confidential taxpayer data. Director Ashcroft said the states OPEGA has spoken to have taken various approaches and the states that have been doing it for a long time are doing things like economic modeling within their own offices so they do not have a need to share the information with a consultant. She said OPEGA does have a non-disclosure/confidential agreement with its consultant. OPEGA would have one anyway even without confidential tax data because all of OPEGA's information is confidential working papers so a consultant is always bound by that. The agreement can include particular terms and conditions on how the consultant needs to store and safeguard the information. Additionally OPEGA is proposing we would only provide the consultant de-identified data.

Rep. Mastraccio said the question is what would somebody from the public be entitled to look at in looking at the data being used for evaluation. She wanted to let companies know that the information is being used to evaluate a program and not intended to be released to the general public. The Legislature wants to accomplish its goals without putting businesses at any risk.

Sen. Libby recalled the intent when the Legislature enacted the legislation and referred to page 5 of the Statute. The Legislature said they wanted statistical information that does not include taxpayer identifiable information to be shared with a contractor so they could do analysis. The Legislature did not anticipate a situation where you have a taxpayer in a rural county that is identifiable still. He thinks the amendment being proposed is consistent with what the Legislature intended to begin with which is to allow the contractor to use this data.

Sen. Saviello announced that a meeting has been set up with MRS and the Chair of Taxation on Tuesday afternoon regarding MCIC.

Mr. Block said he represents a number of companies that use tax expenditure programs. He said when companies applied for these programs, for example, the Pine Tree Zone Program, there are all sorts of confidential information in those Programs including future business plans, salaries of people, etc. and when they submitted those applications it was confidential by law. He thinks there is a violation of trust to change the rules after they submitted the application and now say we are going to make this information available to the public. Mr. Block thinks it would have a chilling effect on future applications and the willingness of businesses to lay out what their plans are in those applications. He noted that he was not talking about BETR or BETE programs because those documents are public by law.

Rep. Mastraccio asked Mr. Block if he understood the Legislature's problem. The Legislature is asking the public to fund tax incentive programs and want to be able to evaluate them. How do you do that unless you have the necessary information to do it?

Mr. Block said all of his clients have been willing to sit down with OPEGA and explain anything or answer any questions, but they would not want their information to potentially show up in the newspaper. He said they were not talking about the information going to OPEGA, but about what information is going to the public.

Sen. Katz said there is a lot of information provided to MRS that is provided to a government entity and is confidential by statute. MRS is very committed to that confidentiality and there is trust in MRS that information is going to remain confidential. He asked if some of Mr. Block's, and others objections would go away if there was a system whereby another government entity, for instance OPEGA, came into possession of the information for the purposes of doing its analysis and there were safeguards put in place to make sure that the same integrity of confidentiality was preserved and if OPEGA had hired a consultant to assist with its analysis, and that consultant signed a confidentiality agreement and you had confidence that the integrity of that process were maintained.

Mr. Block said possibly. He said the consultant issue is they do not know who the consultants are, don't know how good their computer systems and their safeguards against hacking are. He said the consultant could be working on another contract with the competitors of a particular company and the information gets used for multiple purposes. Mr. Block said he just does not know who those consultants are. He said they were comfortable with OPEGA, who already has the right to the information, but it is like a blank check to authorize and share confidential information with consultants that no one has vetted, from the industry at least, who they are and what kind of safeguards they are going to have, how long are they going to retain the information, etc. Sen. Katz said maybe those standards could get developed.

Sen. Katz suggested that through the RFP process for hiring consultants perhaps one of the qualifications is that they have to have adequate systems in place to maintain confidential information. Mr. Block said the matter could perhaps be worked out.

Director Ashcroft thought there continued to be a disconnect between OPEGA's vision of the kind of information they want to be able to share and the business community's vision of all their taxpayer data being shared. She said perhaps being more specific about the level of detail or the type of data that would get transmitted to the consultant might help with some of the concerns. She said OPEGA is still talking about rolled up information and not someone's entire tax return, or even the data fields for someone's entire tax return, but are looking to get some flexibility around the pieces of data that are necessary for plugging in to the models at the very least.

Sen. Katz said it sounded like Mr. Block was objecting to the release of information, at least some of which OPEGA is saying they would not be asking for. He asked if the fields could be defined so the GOC can see what the real disagreements are.

Director Ashcroft said part of the hang-up is the idea that nobody should be able to tell what business is taking a benefit. That is what keeps OPEGA from even being able to use rolled-up data. She thinks there is a policy decision to be made about whether the State feels that it is okay for the public to know at least the names of the businesses that are taking the benefit because that is where we are running into issues,. For example, if there is less than ten businesses and somebody can take property tax records from the town and put it together with the de-identified rolled up data then you know who is getting this benefit and how much of a benefit they are getting. She said if that is really complete taboo for anyone to know, then OPEGA is in a different realm altogether. Director Ashcroft said right now the OPEGA tax team members cannot speak the name of beneficiaries that are getting these benefits in the OPEGA office when there is other OPEGA staff present.

Rep. Mastraccio said as a City Councilor in Sanford she knows all the companies that are taking Pine Tree Zone benefits by name. Mr. Block said it depends on the program. DECD publishes a list of every Pine Tree Zone certified company in the State, BETR and BETE records are public documents. Director Ashcroft said that is because there are provisions in statute that allow that. Those same kind of provisions is what OPEGA is looking for in other programs, to at least have the same level of information that is allowed for BETR and BETE for every one of the business assistance programs.

Rep. Mastraccio thinks the language in statute can be worked out because the GOC understands what Mr. Block wants and he understands what they want.

Rep. Pierce referred to page 6, 2. CCC and suggested language might be added to the list that will ease Mr. Block's concerns and also help OPEGA. Nobody wants competition getting a leg up, but businesses are taking public money and OPEGA has to do the evaluations so it is the chicken or the egg.

Director Ashcroft referred to page 6 and said OPEGA does recognize that the idea of allowing public disclosure of all the different documents and records might cause concern so an alternative idea is to reduce that to something like what is currently allowed under DECD's statute for disclosure. That language is on page 7 in the "for reference only" section. It is certain specified limited information that can be disclosed after provision of assistance. She said this kind of information, at the very least, would be helpful.

Rep. Mastraccio said OPEGA needs something that is really helpful. Director Ashcroft said it is not just about what OPEGA can evaluate, it is also about what they can report to the GOC. She said the information the GOC received on the New Markets was unusual because all of that information was public, OPEGA was able to use it and the businesses did cooperate and were very helpful in assisting OPEGA to pull together the numbers. There were only a small amount of them so OPEGA could do that, but the Office will not be able to do interviews with all beneficiaries with something like ETIF or BETR or BETE. OPEGA can talk to a few people and get a sense of things, but will not be able to pull numbers necessary from all of them.

Rep. Rykerson said if you changed the names of the companies for public disclosure is it then immediately obvious who they are if it is a company of this size and in this location. Director Ashcroft said that is the crux of the problem. MRS has said if you can determine the company by a zip code, how big it is, or the fact that it is the only car dealership in "x" county then you can deduce who the identity is. She was not sure why the identity of who is taking the public benefit is something that can't be known.

Sen. Gratwick said with BETR and BETE, that is public knowledge. Director Ashcroft said that is correct because there is a provision in statute that allows MRS to disclose that. He asked if that has been abused, are there instances where that information about BETR or BETE has been abused. Is that not a reasonable model to follow? Director Ashcroft said that is similar to what she is suggesting would be an alternative idea.

Mr. Block said BETR and BETE is strictly property tax information. The programs do not have information on business plans of the company and its marketing or the salaries of employees, etc. like a Pine Tree Zone or ETIF would. There is not much harm with BETR and BETE as property tax information has always been public.

Sen. Gratwick asked Director Ashcroft if that was a major point of contention. Director Ashcroft said what she has laid out in 2. CCC attempts to deal with that issue. It identified specifically that propriety information, credit assessment information, etc. would not be disclosed. She does understand the horror at the idea of public disclosure of all information that might be in an application, and you would need to be ensured that somebody would properly pick out these pieces that should not be disclosed. She referred to the "for reference only" section of the document noting it is what DECD is supposed to be allowed to disclose. She is suggesting that this could be a good compromise.

Rep. Mastraccio said she would question that they are able to actually get all of the information that they are supposed to be able to get under that language because she has heard from the same consultants that are doing the DECD evaluations about how they cannot get information. Director Ashcroft said they can't get the information because the provisions that are in Title 36, section 191 and various other statutory sections in Title 36 are overriding it. She said she has not had the time yet to meet with the Attorney General's Office and get them to figure out what pieces of the things OPEGA wants are confidential or not under all the different statutes, so OPEGA is currently operating within the limits of Title 36 provisions allow.

Rep. Sutton asked how a business plan gets tied into a tax return. Mr. Block said a business plan is on, for example, the Pine Tree Zone application it is not on a tax return. He thinks the tax return piece, which is a lot different than the property tax, and income tax things have historically been very confidential so every exemption or credit that show up on an income tax return has been confidential since the beginning of time.

Rep. Sutton said from what she sees, there is no danger of a business plan being revealed from a tax return because that is not where the information would be. Director Ashcroft said no, but there is a lot of different records that are considered to be as confidential tax records. The applications for some of the programs are wrapped up in that confidential taxpayer data. OPEGA has also found in the evaluations they have done so far that there is information on the application that they need, or could use, to do the evaluation. Rep. Sutton clarified that the Director was talking about the application for the program in addition to the tax return. Director Ashcroft agreed.

Motion: That the Government Oversight Committee introduce legislation from the suggestions from OPEGA Proposal for Revisions to Statute Governing the Legislative Expenditure Review Process For GOC Consideration Pursuant to 3 MRSA § 1001 sub-§ 2 with the understanding that number 6 and 7 will be included if Director Ashcroft is able to successfully negotiate the language. (Motion by Sen. Diamond, second by Sen. Saviello.)

Discussion: Ms. Capara said she shared Mr. Block's concerns and said they wanted to know what type of information on the tax return OPEGA is looking to find in doing their economic modeling. A tax return contains all sorts of information and if it fell into the wrong hands, that would present a competitive risk to the company.

Vote: Motion passed, vote 11-0.

Director Ashcroft noted the Expedited Review piece, number 5, is going to be left alone for now and discussed further at a future meeting.

UNFINISHED BUSINESS

• Review of OPEGA Work Plan for 2017 – 2018

Director Ashcroft said OPEGA was planning on presenting the **State Lottery Report** at the April 28th GOC meeting. OPEGA has started the **Temporary Assistance for Needy Families (TANF)** review. Director Ashcroft said OPEGA is in the Preliminary Research phase of that review and part of their standard work in that phase is to reach out to committees of jurisdiction or others who might have interest to find what there are for legislative questions and concerns. OPEGA expects to be in the preliminary research phase for a couple of months. If GOC members could provide whatever thoughts and input they may have as soon as possible, that would be helpful. **ETIF** is still in progress and will be through most of 2017. OPEGA had hoped to be reporting **Pine Tree Development Zones** out to the GOC at the end of April, but it now appears it may be closer to the end of May. **DHHS Audit Functions** stayed on OPEGA's Work Plan and the **Beverage Container Recycling (Bottle Bill)** was added to the Work Plan. Both are in the Planned category.

Director Ashcroft said on the GOC's On Deck List they now have the **Commission on Indigent Legal Services**. The motion to move that on to the Work Plan failed and there was no motion to take it off the On Deck List. **Independent Living Services** was voted off the Work Plan and added to the On Deck List. The motion to put **Maine Power Options** on the Work Plan failed, but there was no motion to take it off the On Deck List. The GOC voted to take **Public Utilities Commission** off the Work Plan and add it to the On Deck List and that motion passed. There were no motions made at the last meeting regarding **Publicly Funded Programs for Children Birth to Five Years** and **Substance Abuse Treatment Programs in Prison System** so both topics remain on the On Deck List.

Director Ashcroft said there were two topics where the GOC was taking votes to put them, or leave them, on the Work Plan. The Committee also had discussions about whether they wanted to put them on the On Deck List, but that needed to wait for the final votes on the Work Plan Motions. Those topics are the **State Law Enforcement Agencies Undercover Ops** and **Fund for Healthy Maine**.

Motion: That the GOC moves the Fund for a Healthy Maine topic on to the On Deck List. (Motion by Rep. Sutton, second by Rep. Pierce, passed 11-0.)

Motion: That the State Law Enforcement Agencies Undercover Ops topic be tabled until the next GOC meeting. (Motion by Sen. Davis, second by Sen. Katz, passed 11-0.)

REPORT FROM DIRECTOR

- **Status of Projects In Progress**

Discussed above.

NEXT GOC MEETING DATE

The next GOC meeting is scheduled for Friday, April 28, 2017 at 9:00 a.m.

ANNOUNCEMENT AND REMARKS

Rep. Mastraccio reminded the GOC members that on Wednesday, April 26 the two Government Oversight Committee bills will be heard in the LCRED Committee at 10:00 a.m. It will be preceded by the Maine Development Foundation Measures in Growth bill and another economic development bill that Rep. Tepler put in. Any GOC member is welcome to attend the meeting. Both Sen. Katz and Rep. Mastraccio will be at the meeting.

Director Ashcroft reported that she was before the State and Local Government Committee (SLG) regarding a bill on privatization contracts that had the GOC and OPEGA involved in it in an indirect way. After discussing it with the GOC Chairs, she did testify neither for nor against, but just gave the SLG some information on the impact to the GOC and OPEGA. She said there was some lack of clarity in the language in the bill that she also asked the Committee to look at if it was going to go forward.

ADJOURNMENT

Rep. Mastraccio adjourned the Government Oversight Committee meeting at 12:15 p.m. on the motion of Sen. Diamond, second by Sen. Saviello, unanimous vote.

Connors, Etta

From: Melanie Collins <melanieblease@yahoo.com>
Sent: Monday, April 17, 2017 9:59 AM
To: Katz, Roger; Mastraccio, Anne-Marie; Davis, Paul; Diamond, Bill; Gratwick, Geoff; Libby, Nathan; Saviello, Thomas; DeChant, Jennifer; Harrington, Matthew; Pierce, Jeffrey; Rykerson, Deane; Sutton, Paula; Connors, Etta
Subject: Melanie Collins testimony for Gov Oversight Committee

My name is Melanie Collins. I have a family childcare business out of my home in Falmouth.

This country protects the innocent. Our legal system is founded on the principal that we are all innocent until proven guilty.

If letters of unsubstantiated complaints are sent out to everyone who are clients of ANY business (restaurant or childcare), then it would seem to me that the state is putting itself at risk for liability for loss of business.

Of course, as childcare business owners, we accept that an investigation must be made for every complaint, even when it is obvious that it was made with the intention of retaliation or bullying. You must also realize that there are no repercussions to people who use complaints to harass, bully or cause financial harm to innocent people who care for children.

In other industries this just does not happen. I once took my young son to a restaurant and he ate some mac and cheese with ham. He was violently ill afterwards. I was convinced at the time that it was due to the food that he ate at the restaurant. I did not report it, but suppose that I did and the State of Maine sent notifications to **ALL** of the restaurants customers (as is being proposed should be done to my business), and then a sign was posted on the door of that restaurant that simply said, "This restaurant is under investigation by the State of Maine for potential abuse or harm to a child". And that sign and letter was sent out **BEFORE** any investigation, evidence of indicated liability for his illness, or substantiation that his illness was caused by the restaurant. My child could have gotten ill coincidentally having the onset of symptoms of a stomach bug shortly after eating at that restaurant. This scenario would not happen this way for a complaint about a restaurant. The State would not dream of making a law that requires such an injustice on a restaurant owner, even though s/he serves food to the children you want to protect. Even though other children will eat at that restaurant and their parents deserve to know there was a case of illness reported at that restaurant yesterday and the restaurant is under investigation right now. The State would investigate first and **ONLY** notify if and when it's concluded that evidence substantiates negligence or responsibility.

If suspected food poisoning or norovirus or other disease potentially contracted from an infected restaurant worker is reported, there should be an investigation but only when there is substantiated evidence that my child's illness was a result of the restaurants negligence should notifications be made to the public.

I know that children need to be protected. Children eat at restaurants too and we don't feel the need to notify parents of all children who ate there, that one child may have been harmed, until we have a substantial amount

of evidence of liability. The reason we would not do that is because the State of Maine's notification could dramatically decrease a businesses income and cause unnecessary harm that could be devastating to a business when all of this could simply be due to the fact that my child ate there just as he was coming down with a bug.

Once again, please note that I am agreeing that with every complaint there should be an investigation, but in the event of an investigation, letters warning parents of children who are not directly part of the investigation could cause excessive and unnecessary harm to private business owners. It is the States duty to investigate and determine what to do on a case by case basis based upon substantiated evidence indicating the validity, severity and likelihood that the complaint indicates a problem that is systemic in nature before determining that any notification is necessary and this should be done upon conclusion of the investigation. Any law that allows this to happen before conclusion of an investigation would be unfair in nature as it would only be applied to childcare businesses and no other businesses or individuals such as nurses or teachers. State law must uphold the Constitution and protect EVERY innocent person until proven guilty.

Respectfully,
Melanie A Collins RN
Owner/Operator Melanie's Home Childcare
Falmouth

**Information from OPEGA Follow-up on GOC Questions on Children's Licensing
from the GOC's Meeting on March 24, 2017**

Count of current total licensed/certified child care providers: 1,957

- 758 Child Care Facilities
- 1,139 Family Child Cares
- 60 Nursery Schools (outside OPEGA's scope)

Unduplicated provider count associated with reports of licensing violations or child abuse/neglect January 2015-May 2016:

- Child Care Facilities: 292 total reports
 - 180 unduplicated providers
- Family Child Cares: 234 total reports
 - 211 unduplicated providers

Children's Licensing update regarding fingerprinting requirement:

Children's Licensing continues to have a target date of 9/31/17 for implementation of the fingerprinting requirement. They have included the requirement in the draft Family Child Care Rule and plan to include it in the Facility Rule.

There are two bills this session regarding the fingerprinting requirement. Provided there are no statutory changes that prompt a change in direction, Children's Licensing anticipates this moving forward.

Bills related to fingerprinting requirement:

- LD 274 An Act To Implement the Recommendations of the Working Group To Study Background Checks for Child Care Facilities and Providers - Implements the recommendations of the Working Group to Study Background Checks for Child Care Facilities and Providers and clarifies requirements for criminal background checks for child care providers and child care staff members.
- LD 561 An Act To Remove the Requirement That Child Care Facility Workers and Family Child Care Providers Submit to Criminal Background Checks - Removes statutory language that requires DHHS rules for child care facilities and family child care providers to include a criminal background check requirement and prohibits DHHS from adopting or enforcing a rule that requires criminal background checks.

Additional bill related to the scope of OPEGA's review:

- LD 1177: An Act To Create an Appeals Process for Child Care Providers - Establishes the Child Care Appeal Review Panel to review disputes related to the licensing and certification of child care facilities (not including child abuse/neglect).

**Proposed Parameters for OPEGA’s Full Evaluation of the
Business Equipment Tax Reimbursement & Business Equipment Tax Exemption
BETR & BETE**

Program	Enacted	Statute(s)	Type	Category	Est. Revenue Loss
BETR	1995	36 MRSA Ch915	Property Tax	Business Incentive	FY18 \$26,800,000
			Reimbursement to Businesses	- Equipment Investment	FY19 \$23,420,000
BETE	2005	36 MRSA Ch105 subCh 4-C	Property Tax	Business Incentive	FY18 \$37,968,101
			Reimbursement to Municipalities	-Equipment Investment	FY19 \$42,968,623

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2018 – 2019.

Program Description

The Business Equipment Tax Reimbursement (BETR) and Business Equipment Tax Exemption (BETE) programs provide reimbursements or exemptions to businesses for municipal property taxes on specified business equipment. Under BETR, the State reimburses businesses directly for a portion of the property taxes paid to local tax jurisdictions, while under BETE, the State reimburses local tax jurisdictions for a portion of property taxes foregone due to property tax exemption. The similarities and differences between the two programs are discussed in the sections that follow.

Eligible Equipment Is Defined the Same for Both BETR and BETE

Both programs define qualified business equipment similarly as equipment that is depreciable, or has been fully depreciated, under the Internal Revenue Code including the following types of equipment:

- personal property that furthers a particular trade or business activity and is devoted to a business purpose;
- parts, additions & accessories;
- construction in progress; or
- inventory parts.

Both BETR and BETE exclude the following equipment:

- equipment owned by an entity that is otherwise exempt from property tax,
- natural gas pipelines, unless owned by a consumer of gas and less than 1 mile in length;
- pollution control facilities that are entitled to an exemption under §656 subsection 1 ¶E;
- certain gambling equipment;
- property used to transmit energy for sale;
- items from Title 36, chapters 111 & 112 (aircraft, house trailers, motor vehicles, watercraft); and
- equipment owned by public utilities, radio paging services, mobile telecommunications services, cable television companies, satellite-based direct television broadcast services, and multichannel, multipoint television distribution services.

Eligibility for BETR and BETE Varies Based on Type of Business

Most businesses in Maine can generally benefit from both BETR and BETE; however, particular property owned by the business can only be eligible for reimbursement or exemption in one program or the other. As shown in the table that follows, the property eligible for BETR or BETE depends on a business’s industry, the type of property purchased, and the date the property was placed in service.

Eligible Businesses	Eligible Equipment	
	BETR	BETE
Non-Retail Businesses	Equipment first placed in service in Maine after April 1, 1995 and before April 1, 2007 that is current on property tax payments to the municipality.	Equipment first placed in service in Maine after April 1, 2007 .
Large Retail Businesses (exceeding 100,000 square feet of interior sales space)	All equipment first placed in service from 1995 until April 1, 2006 . Equipment first placed in service on or after April 1, 2006 for large retail businesses that derive less than 50% of their total annual revenue (nationwide) from sales that are subject to Maine sales tax. (After April 1, 2007, large retail businesses that could be eligible for BETR and BETE may only use BETE.)	Equipment first placed in service after April 1, 2007 for large retail businesses whose Maine-based operations derive less than 30% of their total annual revenue from sales that are made at retail facilities located throughout Maine.
Small Retail Businesses (less than 100,000 square feet of interior sales space)	Equipment placed into service at any time from 1995 to date .	None.

BETR and BETE Differ in Who the State Makes Payments to and in How Much the State Pays

	BETR	BETE
Entity that Receives Payment from the State	The State reimburses businesses for a portion of the property taxes paid to a municipality on equipment eligible under BETR.	The State reimburses municipalities for a portion of the property taxes they would otherwise have collected on equipment eligible under BETE.
Amount of Payments	The State reimburses a percentage of the property taxes paid by a business. The percentage is specified in statute and varies according to the number of years the equipment has been in service. For some years the state has paid only a portion of the percentage designated in statute. In the years 2006, 2009, 2010, and 2013 businesses were reimbursed only 90% of the percentage allowed by statute. For 2014 they received 80% of the statutorily allowed amount.	The State reimburses a percentage of a municipality's foregone property taxes. The percentage started at 100% in 2008 when the program began and gradually reduced to 50% by 2013. Reimbursement is scheduled to remain at 50% for future years with exceptions for: <ul style="list-style-type: none"> • municipalities where total <i>business</i> property value (both taxable and exempt) exceeds 5% of the municipalities' <i>combined residential and business</i> property value (both taxable and exempt); or • municipalities with TIFs approved before 4/1/2008 that meet particular requirements.

As can be seen from the above table, municipalities receive all of their local property taxes from businesses under the BETR program. Under BETE they receive no taxes from business on eligible equipment, but they typically receive half of what the businesses would have paid from the State. The effect on businesses differs under the two programs as well. Businesses are exempt from the full amount of the property taxes on eligible equipment under BETE, while under BETR they must pay the full amount and are reimbursed for only a portion of that amount.

The Processes by Which Businesses Apply for Benefits Are Different for BETR and BETE

A business desiring to apply for the BETR local property tax reimbursement from the State must notify the local taxing jurisdiction of its intent, and request a statement of just value and the associated tax for the property. The business then submits an application to the State Tax Assessor who certifies qualified businesses, and must reimburse businesses with eligible equipment by November 1st, or within 90 days after receipt of the claim, whichever is later. The State Tax Assessor also certifies to the State Controller annually the amount to be transferred from the General Fund to the BETR reserve account to cover the cost of reimbursements.

To receive the BETE property tax exemption a business must apply to the local tax assessor every year, regardless of whether there has been any change to the equipment for which the exemption is being requested. The local tax assessor indicates on a standardized form whether each piece of equipment is BETE eligible, whether it is in a TIF district, and its assessed value. The local tax assessor then summarizes the amount of just value and exempted amounts and applies to the State Tax Assessor for reimbursement. MRS reviews the claims and determines the total amounts to be paid and then certifies the payments. The State Treasurer is required to pay the municipality by December 1st of the year in which the exemption applies.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals

Intent (BETR & BETE) — To overcome the disincentive to growth of capital investment in Maine stemming from the high cost of owning business property, thereby promoting the general welfare of the people of the State of Maine.

Goals – To reduce the cost of owning qualifying business property in Maine.

To encourage growth of capital investment by businesses in Maine.

(2) Beneficiaries

Primary Intended Beneficiaries (BETR & BETE) — Businesses investing in qualifying property.

Secondary Intended Beneficiaries (BETR & BETE) – The people of the State of Maine.

Other Impacted Parties (BETR & BETE) – Municipalities.

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) could potentially be applicable.

Each objective will be explored to the degree possible based on its relevance, the level of resources required and the availability of necessary data. Any substantial statutory changes since the program's enactment will be considered in addressing objectives impacted by those changes.

Objectives	Applicable Measures
1) The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E Qualitative
2) The extent to which the design of the tax expenditure supports achievement of the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
3) 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;	A, C, E, F, G, H, I Qualitative
4) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, C, E, F, G, H Qualitative
5) 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;	C, F, H, I Qualitative
6) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
7) The extent to which the tax expenditures (BETR & BETE) are coordinated with, complementary to or duplicative of each other or other similar initiatives;	Qualitative
8) The extent to which the tax expenditure is a cost-effective use of resources;	A, C, D, E, G, H, I, Qualitative
9) The extent to which municipalities in the state are impacted by the program fiscally, administratively or otherwise;	A, B, C, F, I Qualitative
10) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA's assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

(4) Performance Measures

Performance measures are coded to indicate which of the above objectives they could potentially help address. Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

Proposed Performance Measures for BETR & BETE

A	# Total businesses receiving reimbursement for local property taxes under BETR # Total businesses receiving tax exemptions under BETE # Total municipalities receiving reimbursements for BETE tax exemptions
B	Business participation rate: comparison of number of businesses receiving either BETR or BETE to number of businesses in the state Municipal participation rate: comparison of number of municipalities receiving BETE reimbursement to total number of municipalities
C	Total BETR reimbursement amount received by businesses Total BETE tax exemption amount received by businesses Total BETE reimbursement received by municipalities Total BETE property tax revenue foregone by municipalities net of State reimbursements
D	Direct program cost to state: state administration costs + amounts paid by the State to businesses or municipalities
E	Net impact on state budget (using economic modeling, as possible and appropriate, to include capture of indirect benefits and costs)

F	Average amount of BETR reimbursement and BETE exemption per business, including min & max Average BETE payment per municipality, including min & max Average BETE property tax revenue foregone per municipality, including min and max
G	Indicators of economic impact (using economic modeling to estimate impacts such as GDP or employment growth)
H	% reduction in the cost of eligible business property
I	Indicators of growth in capital investment

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts that would be considered, as appropriate, include:

- per capita,
- comparison to industry or geographic trends,
- by business sector,
- by new vs. continuing beneficiary,
- by county or municipality, or
- by firm size.

Proposed Parameters for OPEGA’s Full Evaluation of the Maine Capital Investment Credit (MCIC)

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2011	36 MRS §5219-GG	Income Tax Credit	Conformity with IRC	FY18 \$9,350,000
	36 MRS §5219-JJ			FY19 \$5,950,000
	36 MRS §5219-MM			
	36 MRS §5219-NN			

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2018 – 2019.

Program Description

The Maine Capital Investment Credit (MCIC) is a personal and corporate income tax credit for depreciable property placed in service in Maine. Although this credit is categorized as “conformity with IRC” (Internal Revenue Code), the credit does not actually conform to the federal tax code. Instead, it is a Maine-specific credit that is based on a federal depreciation deduction – both of which provide a tax benefit associated with purchases of new depreciable property.

The State’s response to the federal bonus depreciation deduction enacted in 2001 has varied over time from full conformity to a complete decoupling. Currently, MCIC allows a Maine taxpayer who claims the federal bonus depreciation deduction under US Code, Section 168(k) to claim a credit on their Maine taxes for a percentage of the federal depreciation reduced by the depreciation that would have been allowed in the first year if bonus depreciation did not exist. For tax year 2016, the credit was 9% for corporations and 7% for individuals.

$$2016 \text{ MCIC credit} = \left[\begin{array}{l} 9\% \text{ for corporations or} \\ 7\% \text{ for individuals} \end{array} \right] \times \left[\left(\begin{array}{l} \text{amount of federal} \\ \text{bonus depreciation for} \\ \text{Maine equipment} \end{array} \right) - \left(\begin{array}{l} \text{amount of federal} \\ \text{depreciation for Maine} \\ \text{equipment allowed in 1}^{\text{st}} \\ \text{year if bonus didn't exist} \end{array} \right) \right]$$

In prior years, the MCIC percentages have ranged from 8-10% and the calculation has varied as dictated by State statute, with a factor based on what proportion of the depreciable property is located in Maine. The calculations for this credit, as well as annual State and federal rule changes, are very complex as evidenced by the 60 page guidance document Maine Revenue Services (MRS) provides for taxpayers affected by bonus depreciation.

Property must be used within the State of Maine for the entire 12-month period beginning with the date the property is placed in service in Maine or else the credit may be recaptured. In addition, some property is excluded from the MCIC credit, including:

- property owned by a public utility;
- property owned by a person that provides radio paging services;
- property owned by a person that provides mobile telecommunications services;
- property owned by a cable television company;
- property owned by a person that provides satellite-based direct television broadcast services; and
- property owned by a person that provides multichannel, multipoint television distribution services.

The credit is non-refundable and may be carried forward for up to 20 years. Maine taxpayers are only eligible to take the MCIC credit if they qualified for, and claimed, the associated federal bonus depreciation deduction. To receive the MCIC tax credit, a business must complete the MCIC income tax

credit worksheet. The MCIC is administered solely by MRS, which reviews and processes the MCIC income tax return worksheets.

There is currently no sunset, or end date, for the MCIC credit in Maine statute. However, since the credit is based on the federal bonus depreciation it would become a \$0 credit if the federal bonus depreciation deduction ended. The federal bonus depreciation deduction is currently scheduled to sunset in 2019. However it is unclear whether the sunset will actually occur as the deduction has been extended beyond sunset dates in prior years.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals

Intent — To stimulate the Maine economy by encouraging businesses to expedite capital investments in Maine.

Goal — To encourage businesses to expedite purchases of qualifying business property in Maine.

(2) Beneficiaries

Primary Intended Beneficiaries — Businesses investing in qualifying business property in Maine.

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on its relevance, the level of resources required and the availability of necessary data. Any substantial statutory changes since the program’s enactment will be considered in addressing objectives impacted by those changes.

Objectives	Applicable Measures
1) The fiscal impact of the tax expenditure, including past and estimated future impacts;	B, C, G Qualitative
2) The extent to which the design of the tax expenditure supports achievement of the tax expenditure’s purposes, intent or goals and consistent with best practices;	Qualitative
3) 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;	A, B, C, E, F, G, H, I Qualitative
4) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, I, D Qualitative
5) 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;	B, D, E, F Qualitative
6) The extent to which the State’s administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
7) The extent to which the tax expenditure is coordinated with, complementary to or duplicative of federal bonus depreciation or other similar initiatives;	Qualitative
8) The extent to which the tax expenditure is a cost-effective use of resources; and	C, F, G, H Qualitative
9) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA’s assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

(4) Performance Measures

Performance measures are coded to indicate which of the above objectives they could potentially help address. Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving any benefits under the MCIC
B	Total \$ value of MCIC tax credits received by businesses (direct tax revenue lost)
C	Total direct program cost (credits plus administrative costs)
D	Average tax benefit per business, including min & max
E	Estimated value of eligible property associated with MCIC claims
F	Indicators of changes in the timing of business investments in qualifying business property
G	Net impact on State budget (using economic modeling, as possible and appropriate, to include indirect benefits and costs)
H	Indicators of economic growth associated with the program since its enactment (such as change statewide employment or GDP – using economic modeling, as possible and appropriate, to include capture of indirect benefits and costs)
I	Participation rate: comparison of number of businesses claiming MCIC to number of businesses filing taxes in the state

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts that would be considered, as appropriate, include:

- per capita,
- comparison to industry or geographic trends,
- by business sector,
- by new vs. continuing beneficiary,
- by county or municipality,
- by firm size.

**OPEGA Proposal for Revisions to Statute Governing the
Legislative Tax Expenditure Review Process
For GOC Consideration
Pursuant to 3 MRSA § 1001 sub-§ 2**

Overall objectives of proposed changes:

- To provide flexibility in scheduling, completion and reporting on full evaluations to allow for comprehensive and quality review of each program and better fit with legislative schedules.
- To adjust expectations for reviews to better reflect the realities of what comprehensive evaluations require and OPEGA's capacity for conducting multiple evaluations in any given time period.
- To remove, or reduce, barriers to efficient and effective evaluation presented by the confidential status of taxpayer data associated with the programs being evaluated.

Proposed Process Changes for Full Evaluations:

1. Tax expenditure programs would be grouped by Rationale and would be scheduled for full evaluation by group rather than by year. The GOC would set the schedule according to the priority for each group. The GOC, in consultation with Taxation, would continue to revisit and adjust prioritization annually.
2. OPEGA would have at least two evaluations "in progress" at any given time, with one of the evaluations being given priority until it is complete. Once the priority project is complete, the other "in progress" project would become the top priority and OPEGA would begin evaluation of the next program in the current group – or move to a program in the next group as appropriate.
3. GOC would continue to approve Evaluation Parameters, with input from stakeholders and Taxation, prior to OPEGA beginning an evaluation of any program. However, these would be presented to the GOC for consideration as a new evaluation is beginning rather than by a particular date each year.
4. OPEGA would present each report to the GOC at the time the evaluation is completed. By July 1st of each year, GOC would transmit to Taxation the reports on evaluations completed in the past year.

Proposed Changes for Expedited Reviews:

5. OPEGA would no longer be responsible for providing information to Taxation for use in conducting Expedited Reviews although Taxation's responsibility for conducting and reporting out on the Expedited Reviews would remain the same.

Proposed Changes to OPEGA Access and Use of Confidential Taxpayer Data:

6. Allow OPEGA to share confidential data obtained for an evaluation with consultants OPEGA contracts with for assistance on the evaluation under a Non-Disclosure/Confidentiality Agreement. Whenever possible, confidential data will be shared with consultant in a de-identified format that does not include taxpayer name or tax identification numbers.
7. Amend definition of “De-identified tax data” in 3 MRSA § 1001 sub-§ 1, paragraph G, sub-¶ (2) by removing “(c) Other information from which the State Tax Assessor determines that the identity of the taxpayer could be reasonably determined.” It is no longer relevant as over the course of the past evaluations it has been determined that MRS must provide even this data to OPEGA.

Proposed Changes to Confidential Status of Taxpayer Information Associated with State Economic Development Investments and other State Business Assistance Programs:

8. Add an exception to 36 MRSA § 191 to allow MRS and other State agencies to publicly disclose 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 or funding for research and development activities as defined in the statute governing DECD evaluations, as well as other State business assistance programs. This exception still would not permit the disclosure of taxpayer identification numbers, or proprietary info, credit info and matching of investors info as described in 5 MRSA section 13119-A.

**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.

Proposed Review Schedule for Tax Expenditures as of April 2017

ID #	Review Category	Expenditure Program Name	Rationale	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	FY17 Revenue Loss (estimate)*
3	Full	New Markets Capital Investment Credit	Business Incentive - Financial Investment	X						\$13,509,000
4	Full	Pine Tree Development Zones -Income Tax Credit, Sales Tax Exemption (Electricity & Tangible Personal Property), and Sales & Use Tax Reimbursement (Certain Tangible Personal Property)	Business Incentive - Job Creation	X						\$3,473,000
9	Full	Employment Tax Increment Financing	Business Incentive - Job Creation	X						\$13,860,381
146	Expedited	Grocery Staples	Necessity of Life	X						\$171,152,000
147	Expedited	Prescription Drugs	Necessity of Life	X						\$69,369,000
148	Expedited	Prosthetic Devices	Necessity of Life	X						\$7,286,500
149	Expedited	Meals Served to Patients in Hospitals & Nursing Homes	Necessity of Life	X						\$8,987,000
150	Expedited	Fuels for Cooking & Heating Homes	Necessity of Life	X						\$73,207,000
151	Expedited	Certain Residential Electricity	Necessity of Life	X						\$25,784,045
152	Expedited	Gas Used for Cooking & Heating in Residences	Necessity of Life	X						\$15,318,750
153	Expedited	Rental Charges for Living Quarters in Nursing Homes and Hospitals	Necessity of Life	X						\$250,000 – \$999,999
154	Expedited	Rental Charges on Continuous Residence More Than 28 Days	Necessity of Life	X						\$830,473
155	Expedited	Funeral Services	Necessity of Life	X						\$4,997,000
156	Expedited	Diabetic Supplies	Necessity of Life	X						\$1,210,797
157	Expedited	Water Used in Private Residences	Necessity of Life	X						\$21,755,000
158	Expedited	Positive Airway Pressure Equipment & Sales	Necessity of Life	X						\$284,802
NEW	Full	Maine Capital Investment Credit	Conformity with IRC		X					\$11,584,000
11	Full	Reimbursement For Business Equipment Tax Exemption to Municipalities (BETE)	Business Incentive - Equip Investment		X					\$36,948,340
12	Full	Reimbursement for Taxes Paid on Certain Business Property (BETR)	Business Incentive - Equip Investment		X					\$32,000,000
125	Expedited	Credit for Income Tax Paid to Other Jurisdiction	Tax Fairness		X					\$48,393,000
126	Expedited	Deduction for Active Duty Military Pay Earned Outside Maine	Tax Fairness		X					\$1,985,000

127	Expedited	Deduction for Dividends Received from Nonunitary Affiliates	Tax Fairness		X					\$10,200,000
128	Expedited	Exemptions of the Real Estate Transfer Tax	Tax Fairness		X					\$250,000 - \$999,000
129	Expedited	Refund of the Gasoline Tax for Off-Highway Use and for Certain Bus Companies	Tax Fairness		X					\$325,000
130	Expedited	Refund of the Special Fuel Tax for Off-Highway Use and for Certain Bus Companies	Tax Fairness		X					\$4,500,000
131	Expedited	Certain Returnable Containers	Tax Fairness		X					\$1,458,310
132	Expedited	Packaging Materials	Tax Fairness		X					\$12,720,500
133	Expedited	Certain Loaner Vehicles	Tax Fairness		X					\$251,730
134	Expedited	Mobile & Modular Homes	Tax Fairness		X					\$26,833,025
135	Expedited	Certain Property Purchased Out of State	Tax Fairness		X					\$1,000,000 - \$2,999,999
136	Expedited	Meals & Lodging Provided to Employees	Tax Fairness		X					\$151,050
137	Expedited	Trade-In Credits	Tax Fairness		X					\$27,299,115
138	Expedited	Motor Vehicle Fuel	Tax Fairness		X					\$128,817,694
6	Full	Seed Capital Investment Tax Credit	Business Incentive - Financial Investment			X				\$2,679,000
7	Full	Tax Benefits for Media Production Companies	Business Incentive - Targeted Industry			X				\$256,000
8	Full	Credit for Rehabilitation of Historic Properties	Business Incentive - Targeted Industry			X				\$13,172,000
10	Expedited	Job Increment Financing Fund - Brunswick Naval Air Station	Specific Policy Goal/Mandate			X				\$810,619 for Brunswick & Loring combined
NEW	Expedited	Job Increment Financing Fund - Loring	Specific Policy Goal/Mandate			X				\$810,619 for Brunswick & Loring combined
47 & 48	Expedited	Construction Contracts with Exempt Organizations	Charitable - Other			X				\$1,000,000 - \$2,999,999
49	Expedited	Sales of Certain Qualified Snowmobile Trail Grooming Equipment	Charitable - Other			X				\$86,184
50	Expedited	State and Local Government Exemption from the Gasoline Tax	Charitable - Government			X				\$2,235,102
51	Expedited	State & Local Government Exemption from the Special Fuel Tax	Charitable - Government			X				\$2,815,618

52	Expedited	Meals for Residents of Certain Nonprofit Congregate Housing Facilities	Charitable - Elderly			X				\$0 - \$49,999
53	Expedited	Certain Sales by an Auxiliary Organization of American Legion	Charitable - Veterans			X				\$50,000 - \$249,999
54 & 76	Expedited	Sales to the State & Political Subdivisions	Charitable - Government			X				\$171,178,538
56	Expedited	Providing Meals for the Elderly	Charitable - Elderly			X				\$366,899
58	Expedited	Meals Served by a Retirement Facility to its Residents	Charitable - Elderly			X				\$623,893
73	Expedited	Returned Merchandise Donated to Charity	Charitable - Other			X				\$50,000 - \$249,999
74	Expedited	Merchandise Donated from a Retailer's Inventory to Exempt Organizations	Charitable - Other			X				\$50,000 - \$249,999
75	Expedited	Free Publications	Charitable - Other			X				\$1,747,204
41	Full	Railroad Track Materials	Business Incentive - Targeted Industry				X			\$383,096
42	Full	Refund of Sales Tax on Purchases of Parts and Supplies for Windjammers	Business Incentive - Targeted Industry				X			\$85,500
184	Full	Partial Cigarette Stamp Tax Exemption for Licensed Distributors	Specific Policy Goal/Mandate				X			\$1,368,761
185	Full	Air & Water Pollution Control Facilities	Specific Policy Goal/Mandate				X			\$500,000 - \$1,999,998
193	Full	Sales Through Coin Operated Vending Machines	Administrative Burden				X			\$310,040
55	Expedited	Meals Served by Public or Private Schools	Charitable - Education				X			\$9,071,170
57	Expedited	Meals Served by Youth Camps Licensed by DHHS	Charitable - Youth				X			\$250,000 - \$999,000
59 & 77	Expedited	Sales to Hospitals, Research Centers, Churches and Schools	Charitable - Other				X			\$6,000,000 or more
60	Expedited	Sales to Certain Nonprofit Residential Child Caring Institutions	Charitable - Youth				X			\$50,000 - \$249,999
61	Expedited	Rental of Living Quarters at Schools	Charitable - Education				X			\$6,650,000
62	Expedited	Sales to Ambulance Services & Fire Departments	Charitable - Health & Safety				X			\$250,000 - \$999,999

63	Expedited	Sales to Comm. Mental Health, Substance Abuse & Mental Retardation Facilities	Charitable - Health & Safety				X			\$50,000 - \$249,999
64	Expedited	Sales to Historical Societies & Museums	Charitable - Education				X			\$50,000 - \$249,999
65	Expedited	Sales to Day Care Centers & Nursery Schools	Charitable - Education				X			\$50,000 - \$249,999
66	Expedited	Sales to Emergency Shelters & Feeding Organizations	Charitable - Health & Safety				X			\$50,000 - \$249,999
67 & 78	Expedited	Sales to Comm. Action Agencies; Child Abuse Councils; Child Advocacy Orgs.	Charitable - Youth				X			\$250,000 - \$999,999
68	Expedited	Sales to any Nonprofit Free Libraries	Charitable - Education				X			\$50,000 - \$249,999
69 & 79	Expedited	Sales to Nonprofit Youth Athletic & Scouting Organizations	Charitable - Youth				X			\$250,000 - \$999,999
70	Expedited	Sales by Schools & School-Sponsored Organizations	Charitable - Education				X			\$250,000 - \$999,999
71	Expedited	Sales to Nonprofit Home Construction Organizations	Charitable - Low Income				X			\$50,000 - \$249,999
72	Expedited	Sales to Nonprofit Housing Development Organizations	Charitable - Low Income				X			\$50,000 - \$249,999
19	Full	Credit for Educational Opportunity	Non-business Incentive - Education					X		\$9,376,000
23	Full	Deduction for Interest and Dividends on Maine State and Local Securities - Individual Income Tax	Non-business Incentive - Financial Investment					X		\$42,000
24	Full	Deduction for Interest and Dividends on U.S., Maine State and Local Securities - Corporate Income Tax	Non-business Incentive - Financial Investment					X		\$190,000
20	Full	Credit for Wellness Programs	Non-business Incentive - Health & Safety					X		\$319,000
5	Full	Research Expense Tax Credit	Business Incentive - Research Investment					X		\$498,000

13	Full	New Machinery for Experimental Research	Business Incentive - Research Investment						X		\$50,000 - \$149,000
159	Expedited	Gasoline Exported from the State	Interstate or Foreign Commerce						X		\$73,330,523
160	Expedited	Special Fuel Exported from the State	Interstate or Foreign Commerce						X		\$17,991,845
161	Expedited	Excise Tax Exemption on Jet or Turbo Jet Fuel - International Flights	Interstate or Foreign Commerce						X		\$146,849
162	Expedited	Ships' Stores	Interstate or Foreign Commerce						X		\$250,000 - \$999,999
163	Expedited	Certain Jet Fuel	Interstate or Foreign Commerce						X		\$5,608,406
164	Expedited	Certain Vehicles Purchased or Leased by Nonresidents	Interstate or Foreign Commerce						X		\$250,000 - \$999,999
165	Expedited	Certain Vehicles Purchased or Leased by Qualifying Resident Businesses	Interstate or Foreign Commerce						X		\$933,500
166	Expedited	Watercraft Purchased by Nonresidents	Interstate or Foreign Commerce						X		\$250,000 - \$999,999
167	Expedited	Property Used in Interstate Commerce	Interstate or Foreign Commerce						X		\$1,000,000 - \$2,999,999
168	Expedited	Sales of Property Delivered Outside this State	Interstate or Foreign Commerce						X		\$6,000,000 or more
169	Expedited	Sales of Certain Printed Materials	Interstate or Foreign Commerce						X		\$250,000 - \$999,999
170	Expedited	Sales of Certain Aircraft	Interstate or Foreign Commerce						X		\$415,236
171	Expedited	Sale, Use or Lease of Aircraft and Sales of Repair and Replacement Parts	Interstate or Foreign Commerce						X		\$648,806
NEW	Full	Credit for Modifications to Make Homes Accessible	Tax Relief - Individuals						X		\$0 (\$73,500 in FY18)
NEW	Full	Sales Tax Fairness Credit	Tax Relief - Individuals						X		\$31,849,020
NEW	Full	Adult Dependent Care Credit	Tax Relief - Individuals						X		\$142,500

21	Full	Earned Income Credit [#]	Tax Relief - Individuals							X	\$855,000
37	Full	Income Tax Credit for Child and Dependent Care Expense	Tax Relief - Individuals							X	\$3,676,000
38	Full	Deduction for Pension Income & IRA Distributions	Tax Relief - Individuals							X	\$26,647,000
39	Full	Deduction for Social Security Benefits Taxable at Federal Level	Tax Relief - Individuals							X	\$76,864,000
40	Full	Property Tax Fairness Credit	Tax Relief - Individuals							X	\$29,108,000
43	Full	Basic Cable & Satellite Television Service	Tax Relief - Individual or Targeted Industry							X	\$2,280,000
44	Full	Certain Telecommunications Services	Tax Relief - Individual or Targeted Industry							X	\$14,465,398
123	Expedited	Itemized Deductions	Conformity with IRC							X	\$68,941,000
124	Expedited	Sum of All Other Conformity Provisions	Conformity with IRC							X	\$804 million - \$905 million
NEW	Expedited	Fuel Used in Certain Agricultural Production	Inputs to Tangible Products							X	\$242,250
174	Expedited	Products Used in Agricultural and Aquacultural Production & Bait	Inputs to Tangible Products							X	\$3,372,500
175	Expedited	Fuel and Electricity Used in Manufacturing	Inputs to Tangible Products							X	\$28,392,883
176	Expedited	Machinery & Equipment	Inputs to Tangible Products							X	\$51,604,000
177	Expedited	Seedlings for Commercial Forestry Use	Inputs to Tangible Products							X	\$50,000 - \$249,999
178	Expedited	Property Used in Manufacturing Production	Inputs to Tangible Products							X	\$178,115,500
179	Expedited	Certain Sales of Electrical Energy	Inputs to Tangible Products							X	\$250,000 - \$999,999
180	Expedited	Refund of Sales Tax on Certain Depreciable Machinery and Equipment	Inputs to Tangible Products							X	\$2,888,000
191	Expedited	Non-Taxable Services	Non-Taxable Services							X	\$2,343,706,905

192	Expedited	Repair, Maintenance and Other Labor Service Fees	Non-Taxable Services						X	\$45,657,000
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4-14-17

Chairman Katz, Representative Mastraccio, Members of the Joint Standing Committee on Government Oversight, Good Morning. My name is Jonathan Block. I am an attorney in Portland specializing in Maine tax law and economic development. I am here today representing a group of 7 clients who are important users of the BETR and BETE programs. These clients include Sappi, Verso, Texas Instruments, Dingley Press, IDEXX, Tex-Tech Industries, Catalyst Paper, McCain Foods, and C&L Aerospace. I was also heavily involved in the design and creation of these programs back in 1995 for BETR and 2007 for BETE.

My first point is that I think OPEGA has generally done a very professional job of setting forth the parameters under which these programs should be evaluated. They have clearly put a lot of thought into and I certainly commend them for their work.

I would like to make just two brief suggestions concerning the evaluation parameters.

First, it is very important that these programs be evaluated with an eye toward how Maine fits in with other states, provinces and countries that either do not tax business equipment at all, do not tax manufacturing equipment, tax it at reduced rates, have lower property tax rates overall, or have other programs similar to BETR and BETE. It is only within that context that the need for the BETR and BETE program in Maine can be truly understood.

Second, it is very important that BETR and BETE not be evaluated as a jobs program because it really was never designed as a jobs program. It is a program to encourage capital

investment, without which many jobs would wither away. While good jobs absolutely depend on capital investment, BETR was not designed to directly create jobs and it is almost impossible for a BETR user to tell you that a job was created strictly because of any one state program, such as BETR. The preservation of a job and the creation of a job depend on many things, including capital investment.

Thank you. I would be happy to answer any questions.

To: Joint Government Oversight Committee

From: Albert A. DiMillo, Jr., Retired Corporate Tax Director & CPA

Subject: Comments on OPEGA Review Of MCIC – 4/14/17

Good morning members of the Joint Government Oversight Committee. My name is Albert DiMillo and I am a retired corporate tax director and CPA with more than 30 years of tax experience with both Maine's tax laws and most other states. The first 17 years of my experience included working with major Maine corporations and individuals including over seven years as the Director of Taxes and Chief Tax Officer of Bath Iron Works. I then worked in senior management positions with two international corporations headquartered in Massachusetts including 7 years managing all federal and state taxes as the Director of Income Taxes and Audits for Raytheon Company (\$20 billion in sales). I am not a paid lobbyist and have testified before the taxation committee for sound tax policies over the past eight years.

MCIC CALCULATIONS FOR OUT OF STATE CORPORATIONS

In February of 2016, I contacted Beth Ashcroft about my concerns that the Maine Capital Investment Credit (MCIC) calculations for corporations that had less than 100% of their sales apportioned to Maine were receiving unintended tax benefits under the MCIC. I was told at that time, I as an individual could not request a review by OPEGA and that I had to have a legislator sponsor my request for a review. After meeting my state representative and my state senator, I was told that they would sponsor my review request. I had asked that my issue be a separate issue from the overall review of the MCIC, but they decided to have both issues combined.

Attachment A is the letter to this committee noting my concern with the "nature of the Credit, its calculation and the benefits accruing to out of state corporations."

Yesterday, I e-mailed to all members of this committee several files which I believe clearly illustrate the problems with the administration of the credit that could have resulting in as much as \$20 million in unintended credits going to less than 100% apportioned corporations. If not fixed by a technical corrections change to the Maine tax laws, another \$20 million in unintended credits may go to these less than 100% Maine corporations.

BACKGROUND

For several years prior to 2011, Maine did not conform to the federal tax depreciation system known as bonus depreciation. Under the bonus depreciation system, businesses were allowed to write off 50% of their purchase cost in year one versus writing it off over several years. In an effort to give investments in Maine this quicker write off, the Maine capital investment credit system was developed. The intent of the law was to provide a tax credit in year one, which would be offset by the Maine capital investment depreciation add-back in later years. The result was the benefit was mainly a timing issue not a permanent tax benefit. The Maine capital investment credit in combination with Maine capital investment bonus depreciation add-back is a very complicated system to approximate the benefit of bonus depreciation.

APPORTIONMENT ISSUE

The problem with the system is that while it works for a Maine corporation that is 100% in Maine (no apportioned sales out of Maine); it does not work for the hundreds of multi-state corporations who operate in Maine and claim the Maine capital investment credit. The problem is that the Maine capital investment credit is applied to offset Maine tax after Maine apportionment, while the depreciation add-back related to the credit is applied to income before apportionment.

COMPARISON OF TAX BENEFIT EXAMPLE

The result is what should be a timing issue becomes a very large permanent tax benefit much greater in value than bonus depreciation. **Attachment B** illustrates for the year 2014, the current system results in a net permanent tax benefit of only \$600 for a 100% Maine corporation that invests \$2.0 million in Maine in 2014 on 7 year property. The small \$600 permanent tax benefit results from the small difference between the 9% tax credit rate and the 8.93% corporate tax rate. This compares to a corporation that has a 10% apportionment to Maine (90% of sales outside of Maine), that gets a \$69,485 permanent tax benefit.

The magnitude of the problem could be in the millions just on the corporation side alone. To estimate the problem you would need to request from Maine Revenue Services a distribution analysis that breaks down the Maine capital investment credit by corporations by “apportionment” for the years 2011 through 2015. A significant amount of the Maine capital investment credits are claimed by corporations that have an apportionment factor of 10% or less. What a 10% apportionment factor means is that the corporation has 90% of its sales (revenues) outside of Maine and only 10% in Maine.

Companies like Walmart have more than 99% of their sales outside of Maine. But many businesses that you think of as Maine businesses are likely less than 10% in Maine. For example, BIW and Hannaford’s probably were less than 10% apportioned to Maine in 2014. In the past, before mergers with other companies many Maine businesses were mostly Maine companies with high apportionment to Maine.

SUGGESTED CHANGES TO THE OPEGA PARAMETERS FOR MCIC REVIEW

1). OPEGA should immediately review the calculation of the MCIC for less than 100% apportioned corporations. I believe my concerns over the calculation could be confirmed with Maine Revenue Services in less than a day. Once this is confirmed, I believe corrective action could be immediately developed and emergency technical corrections tax legislation could be acted on by the taxation committee and the legislature before end of this legislative session. In addition to the problem with corporations, there may be a problem with non corporate businesses that operate both in Maine and outside of Maine. Partnerships, S-corps and other pass through entities also have to apportion their income between Maine and other states. It is unclear if these less than 100% Maine apportioned businesses are also incorrectly receiving unintended tax benefits. The analysis of these businesses should also be undertaken immediately. However, that processes I believe will take significant more time to investigate.

2). The parameters should be expanded to provide information on the percentage of these credits utilized by manufactures vs. retailers and by the size of the businesses (for each year 2011 – 2015). Finally, Maine Revenue Services should provide a distribution analysis of the credits based on their Maine apportionment factor (sales in Maine vs. sales out of Maine).

Suggested distributive groups could be corporations with less than 10% Maine apportionment, 10% - 25%, 25%- 50% and those with more than a 50% Maine apportionment factor. A similar distribution analysis for non corporate businesses should be prepared. This analysis will give the committee a much better understanding of how much of the credits are going to large out of state businesses.

CORRECTIVE ACTION TO ELIMINATE UNINTENDED TAX CREDITS TO LESS THAN 100% MAINE CORPORATIONS

It should be noted that the problems with the Maine capital investment credits taken by out of state businesses in 2012 – 2014, can still be addressed in 2016 – 2022 because the Maine capital investment credit bonus depreciation add-back associated with those credits are taken on Maine tax returns for seven years after the credit years (for 7 year property). One fix would be to gross up the depreciation add-back by the apportionment factor. For example if there was a \$6,000 Maine capital investment credit bonus depreciation add-back, the add-back would be grossed up (divided by the apportionment factor % from the year of the credit). Accordingly, if the corporation's apportionment factor was 15% in the year of the credit, the depreciation add-backs in the later years would become \$40,000 (6,000/15%). For 100% Maine apportioned corporations the add-back would still be 6,000 (6000/1.0). This would have the impact of eliminating the permanent tax benefit and returning the benefit to just a timing issue and would create a system where in state and out of state businesses would get the same tax benefit.

An easier fix for years after 2016, would be to eliminate the entire MCIC system that grants a credit in year one that is then offset by the reversal of the benefit of the credit over the depreciable life of the asset, with a straight forward 1% credit in year one that does not get reversed.

Albert A. DiMillo, Jr.
South Portland, Maine
aadimillo@yahoo.com



Michael D. Thibodeau
President of the Senate

State of Maine
127th Maine Legislature

Mark Westwood Eves
Speaker of the House

April 14, 2016

Senator Roger Katz, Chair
Representative Kruger, Chair
Government Oversight Committee
Cross State Office Building, Room 220
Augusta, ME 04333

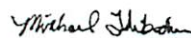
Dear Senator Katz and Representative Krueger,

In March, the legislature voted to fully fund the Maine Capital Investment Credit. We write to ask that the Government Oversight Committee and the Office of Program Evaluation and Government Accountability expedite a review of the efficacy of the Maine Capital Investment Credit. A full review of this program in the 2017 cycle is a responsible way to ensure we are proper stewards of tax payer dollars.

We have heard that OPEGA is already in possession of a review request pertaining to the nature of the Credit, its calculation and the benefits accruing to out of state corporations.

We urge you to consider this matter as part of the efficacy review.

Sincerely,


Michael D. Thibodeau
President of the Senate



Mark W. Eves
Speaker of the House

ATTACHMENT B

COMPARISON OF MAINE CAPITAL INVESTMENT CREDITS ON MULTI-STATE CORPORATIONS WITH 10% / 20% MAINE APPORTIONMENT TO 100% MAINE CORPORATION

ASSUMING A CORPORATION MADE \$2,000,000 IN MAINE INVESTMENTS IN 2014 (ASSUMED ALL 7 YEAR PROPERTY)

MAINE APPORTIONMENT - 100%		MAINE TAX DECREASE (INCREASE) - CORPORATION 100% APPORTIONED TO MAINE								TOTAL
		2014	2015	2016	2017	2018	2019	2020	2021	2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK APPORTIONMENT FACTOR	(1)	0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONED TO MAINE		1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
MAINE TAX INCREASE AT 8.93%	(B)	0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
NET TAX DECREASE (INCREASE)	(A)+(B)	0	(21,870)	(15,619)	(11,154)	(7,974)	(7,966)	(7,974)	(3,983)	(76,539)
		77,139	(21,870)	(15,619)	(11,154)	(7,974)	(7,966)	(7,974)	(3,983)	600 (C)

MAINE APPORTIONMENT - 10%		MAINE TAX DECREASE (INCREASE) - CORPORATION 10% APPORTIONED TO MAINE								TOTAL
		2014	2015	2016	2017	2018	2019	2020	2021	2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK APPORTIONMENT FACTOR	(F) (1)	0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONED TO MAINE		0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	
MAINE TAX (INCREASE) AT 8.93%	(B)	0	(24,490)	(17,490)	(12,490)	(8,930)	(8,920)	(8,930)	(4,460)	(85,710)
NET TAX DECREASE (INCREASE)	(A)+(B)	0	(2,187)	(1,562)	(1,115)	(797)	(797)	(797)	(398)	(7,654)
		77,139	(2,187)	(1,562)	(1,115)	(797)	(797)	(797)	(398)	69,485

MAINE APPORTIONMENT - 20%		MAINE TAX DECREASE (INCREASE) - CORPORATION 20% APPORTIONED TO MAINE								TOTAL
		2014	2015	2016	2017	2018	2019	2020	2021	2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK APPORTIONMENT FACTOR	(1)	0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONED TO MAINE		0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	
MAINE TAX (INCREASE) AT 8.93%	(B)	0	(48,980)	(34,980)	(24,980)	(17,860)	(17,840)	(17,860)	(8,920)	(171,420)
NET TAX DECREASE (INCREASE)	(A)+(B)	0	(4,374)	(3,124)	(2,231)	(1,595)	(1,593)	(1,595)	(797)	(15,308)
		77,139	(4,374)	(3,124)	(2,231)	(1,595)	(1,593)	(1,595)	(797)	61,831

(A) - INVESTMENT CREDIT IS 9% X 857,100. THE 857,100, EQUALS \$1.0 MILLION - 142,900, WHICH IS THE FIRST YEAR MACRS DEPRECIATION ON \$1.0 MILLION OF 7 YEAR PROPERTY.

(1) - UNDER MAINE CORPORATE LAW THE CREDITS ARE APPLIED AFTER APPORTIONMENT, BUT DEPRECIATION ADD-BACKS ARE APPLIED BEFORE APPORTIONMENT.

(F) - A SIGNIFICANT AMOUNT OF CORPORATE INCOME TAXES AND ME CAPITAL INVESTMENT CREDITS RELATE TO CORPORATIONS WITH LESS THAN 10% MAINE APPORTIONMENT.

(C) - THIS NUMBER WOULD BE ZERO IF THE TAX CREDIT WAS AT 8.93% (CORPORATE TAX RATE) INSTEAD OF THE 9.0% TAX CREDIT RATE.