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

August 23, 2017
Accepted September 25, 2017

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Libby, Sen. Davis and Sen. Diamond Joining the meeting in progress: Sen. Saviello Absent: Sen. Gratwick
Representatives:	Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Rykerson and Rep. Sutton Absent: Rep. Harrington
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Matthew Kruk, Principal Analyst, OPEGA Scott Farwell, Senior Analyst, OPEGA Jennifer Henderson, Senior Analyst, OPEGA Amy Gagne, Analyst, OPEGA Kari Hojara, Analyst, OPEGA Ariel Ricci, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
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.

SUMMARY OF THE MAY 12, 2017 GOC MEETING

The Summary of the May 12, 2017 meeting was accepted as written.

NEW BUSINESS

- **Presentation of OPEGA's Report on Pine Tree Development Zones**

  Director Ashcroft and Ms. Henderson presented OPEGA's Pine Tree Development Zones (PTDZ) Report. Director Ashcroft thanked OPEGA staff and management and staff at the Department of Economic and Community Development and Maine Revenue Services. (The Report is on OPEGA's website at http://legislature.maine.gov/opega/opega-reports/9149.)

  The Committee members' questions and comments included the following:

  Rep. Rykerson wanted to verify that OPEGA made a conclusion that discounted utility rates are not a tax benefit. Ms. Henderson said OPEGA noted that when a Pine Tree Zone business receives a discounted utility that there is not a direct impact on the State budget as a result of that discount.

  Sen. Katz asked Ms. Henderson to expand on that statement that areas with stronger employment environments get more value from PTDZ benefits than those in high unemployment ones. Ms. Henderson said that gets into the relationship of PTDZ and the Employment Tax Increment Financing program (ETIF). ETIF is a standalone program which an employer can receive reimbursement of a portion of the income taxes withheld from new employees when the employer hires at least five new employees. Depending on the unemployment rate in the labor market area the business is located in, the amount of reimbursement is 30%, 50% or 75% of the income tax withholdings. Employers in areas of strongest employment are reimbursed at 30% while those in high unemployment areas get 75%. PTDZ has a benefit that expands the ETIF benefits. Any business in a Pine Tree Zone, which is the whole State, can get the expanded ETIF reimbursement rate of 80%. Ms. Henderson noted that the increase in reimbursement amount from 30% to 80% is more significant than the increase from 75% - 80% that a business in a high unemployment area would receive under the standard ETIF program.

  Rep. DeChant asked how many jobs were created since 2003 or how many jobs were created for the $11.2 million a year. Ms. Henderson said the number of jobs created is unfortunately one of the data points that OPEGA is not able to report on to the GOC. There is some data collected about the number of jobs created, but as is detailed in Recommendation 4 of the Report, it would take significant additional work to verify that data and to get the level of detail that would be needed to do an analysis of how many of those jobs are attributable to the PTDZ program.

  Rep. DeChant understood that some information should be confidential but she did not understand what is so complex about reporting the number of people hired. Director Ashcroft said it is not that the job numbers are confidential. The business is asked to report the job numbers in an annual report. But what OPEGA is seeking to determine in the evaluations is how many of these self-report jobs are in fact attributed to this specific Program. It would take considerable effort to take the numbers that are self-reported and verify them and then to go even further and to try to determine, of those total jobs, how many are attributable only to the PTDZ, especially when there is a significant overlap with ETIF. OPEGA was not comfortable reporting the job numbers that have been collected by the State without having done that work themselves because there is significant risk that using just those numbers will either overstate, or understate, what the actual program outcomes are. She did not feel confident that using those numbers would be an objective, accurate reflection of this program.

Sen. Davis asked how many businesses had applied for sales tax exemption certificates. Director Ashcroft said there are 237 exemption certificates that were on file with MRS as of the time of MRS's most recent biennial tax expenditure report.

Rep. Mastraccio said in 2003 the whole State was not a Pine Tree Zone. She asked if OPEGA could say how the State has gotten to the present point of the whole State qualifying for extended ETIF benefits, in addition to some of the other benefits. Ms. Henderson said OPEGA has described the Tier 1 versus Tier 2 designations in the Report. She said since the tiers were put in place, its designations have changed over time with different areas and projects being allowed. When the Program first started, there was a process by which the Department had to designate what was a Pine Tree eligible zone and there were fairly extensive rules for how that was determined. She said there was legislative change in 2008 where the Legislature started designating in statute what were eligible Pine Tree Zones and at that time they created the tiers.

Sen. Diamond said the reason the Legislature created the tiers was because everybody wanted a piece of the pie, including Cumberland County and Sappi Mills and it went widespread.

Sen. Diamond noted OPEGA's observation that businesses can benefit for two years without hiring anybody and then if they hire just one, they can continue to get the sales tax and other benefits. He asked if that is also an erosion from the beginning or was it part of the original PTDZ rules and regulations. Ms. Henderson said she will have to recheck her information and will get back to the Committee on that.

Ms. Henderson noted that one thing discussed in the Report that did erode over time is the criteria for quality jobs. Jobs have to be of a certain level of quality in order to be able to be counted as the one new job and that did erode over time.

Rep. Sutton asked if Ms. Henderson could elaborate more on quality of jobs. Ms. Henderson said the jobs have to be new full-time employees hired to work in Maine in a qualified business activity. They cannot be shifted from a non-qualifying business activity or shift from a non-qualifying location to a qualifying location. They have to be provided access to a retirement plan and group health insurance and have an annual income derived from employment that is greater than the most recent per capita income in the county in which they are employed. Ms. Henderson noted that call centers have recently been allowed to start participating in a program in Aroostook and Washington counties and they are allowed to have lower minimum pay requirements for qualified new employees compared to other PTDZ eligible businesses.

Rep. Mastraccio noted the complexity of ETIF, PTDZ and municipal Tax Increment Finance (TIF) programs. She said one of the reasons municipalities like the TIF combined with the PTDZ is because you get the development but you can shield the value. All programs are tied together. She asked if that makes it more difficult to see what the real cost is. Ms. Henderson thought that was genuinely safe to say, but noted what she was talking about was ETIF and PTDZ. She said there is also overlap with the TIF program and PTDZ, but OPEGA did not focus on that significantly in the PTDZ review. What the PTDZ does with regard to TIF is to allow new TIF applicants to exclude from their acreage cap in their application any land that was designated as a PTDZ prior to 2008. DECD reported to OPEGA that this impacted 7 out of 46 new municipal TIF applications in 2015. Ms. Henderson said trying to get an idea of what is the cost impact of that, if anything, and on whom, is something OPEGA did not spend a lot of time on in the review. OPEGA did spend a lot of time trying to tease apart PTDZ and ETIF.

Sen. Katz asked if the vast majority of businesses that apply for one tax program apply for both and if OPEGA has a percentage. Ms. Henderson said she did not have the percentage on how many businesses applied for both but did note that 89% of the business projects that receive ETIF are PTDZ qualified. Sen. Katz said by definition 100% of the Pine Tree Zones are ETIF qualified. Ms. Henderson agreed and said she was talking about just the businesses getting the benefits and can get that information for the Committee. He said if the application is essentially the same, why would a business not apply for both programs to get the additional PTDZ benefits? He would like an explanation of that for the Public Hearing.

Director Ashcroft said a possibility is that to get the ETIF expanded benefit you have to hire at least five qualifying employees but the rest of the PTDZ benefits you only have to hire one.

Rep. Mastraccio said the company who has the sales tax exemption certificate does not have to provide information of what they have purchased with it. She asked if that is why there is no record of the amount. Ms. Henderson said that was correct.

Sen. Libby said MRS had a Fraud Investigation Unit and asked if they spend any time on auditing this in the PTDZ businesses. Ms. Henderson said they could do so in the course of any of their other audits. Director Ashcroft said it is OPEGA's understanding that MRS's auditing activity is more of a taxpayer-by-taxpayer basis rather than, for example, reviewing how the PTDZ benefit is being used.

Sen. Libby said the beneficiary goes to the vendor to make a purchase, they present their certificate and the vendor is only required to confirm that it exist, they are not required to record the certificate number or number of transactions made by a particular certificate number. He asked if this was correct. Ms. Henderson said she believes the vendor has to keep some records and those records could be subject to an MRS audit.

Sen. Libby asked if OPEGA took any time to evaluate MRS's estimate of $1 to $3 million a year and said it appears MRS really does not have any idea of what is really going on. Ms. Henderson said OPEGA did spend some time in trying to get an additional understanding of that. It is OPEGA's understanding, that is MRS's best estimate, but OPEGA really does not know for sure what the basis for that is.

Sen. Libby thought MRS's $1 to $3 million seemed to be a meaningless number and they do not really know the value of the benefit. Director Ashcroft referred to what the seller keeps for information. The point OPEGA was trying to make was that there might be a list of what was used or purchased, but there is no way to know from the seller's perspective whether that is being used in a qualifying business activity that was certified under the PTDZ Program. That is the link that OPEGA does not have nor would expect the seller to have. When OPEGA did last year's expedited reviews of tax exemptions, they were all sales tax exemptions and there was a write up in that Report to the Taxation Committee about how MRS goes about estimating some of these sales tax exemptions. In many cases, the experience of this sales tax exemption is no different than what the State sets up for any sales tax exemptions. Sen. Libby said what is different here is a qualifying entity makes $10,000 on purchases and the State has no idea of whether only $1,000 is part of the qualifying business activity or all of it. Director Ashcroft agreed.

Rep. Sutton said it appears there is concern about whether equipment purchased is used in the manner in which it was intended. When she files a return and takes a deduction for a vehicle, or piece of equipment she is going to use for her business, to her knowledge, nobody from the Government comes to see if she is actually using that equipment for the business. She did not understand why this would be any different. Director Ashcroft said OPEGA was not suggesting that it is radically different than some other scenarios, but was pointing out that it would be resource intensive for an agency to enforce the criteria for this benefit the way it is structured. OPEGA was not suggesting they should be making those efforts, but rather using it as an example of how enforcement would be very difficult.

Rep. Pierce asked if it was safe to say that when the vendor takes the sales tax exemption, he knows what he is selling but he does not know which program it came from, whether it is BETR or BETE or PTDZ. The vendor just knows that they have a sales tax exemption number. The vendor does not verify it is a PTDZ exemption. Ms. Henderson agreed and Director Ashcroft said it would be up to MRS when they are auditing to figure out which certificates were with which programs.

Sen. Diamond said there is a lot that is not known about the PTDZ Program, but we do know that it cannot be called a jobs program. The State is unable to track the tax exemptions and know because the program has been diluted so much it has been unable to focus on the most needy areas of the State. Ms. Henderson agreed with the caveat that OPEGA cannot report today what the program has actually achieved in terms of jobs. However, OPEGA can say that the design of the program does not guarantee that a vast number of jobs will be created. Sen. Diamond thinks that is a huge hole because that is one of the primary selling points of the program. He said he was concerned about not being able to track the sales tax exemptions too and that is an opening begging for manipulation and misuse.

Sen. Katz referred to the jobs creation issue and said the program is not necessarily designed in a way to ensure that goal being reached. He asked if there was a better way for the State to know whether the jobs in a company were created in large part because of the PTDZ benefits as opposed to the fact that, for example, the company is building a better mouse trap, therefore selling more of their product and needing to hire more people to produce the product. Director Ashcroft said OPEGA spent a lot of time thinking about how they might try to determine how many of the jobs that had been reported were due to the PTDZ Program. OPEGA had not come up with any good way to do that yet. When OPEGA did it for New Markets, staff went out to businesses that were part of that program and got a very good understanding of the projects they put forward and everything that went into their decisions to do those projects. In that scenario, OPEGA was able to draw its own conclusions of whether that program only went forward because of New Markets and were able to tell the Committee how it came to those conclusions. She said OPEGA has not done any of that work in PTDZ. DECD's evaluator did some of that work in their latest round and gave a scale of if "x" percent of the outcomes reported by businesses are attributable to the program, then you have broken even or you are above or below the break-even mark. OPEGA felt it would be valuable to try to get to something more specific. However, any possible approach to that is going to be labor intensive and, given that the program is sun-setting, OPEGA determined to stop at this juncture without further pursuing the attribution question.

Rep. DeChant noted that the "but for" letter explicitly says that the applicant is attesting that if not for this money I am asking for, these things would not happen with new hires. She asked what the disconnect or obstacle was in collecting that data. Director Ashcroft does not think there is an obstacle. There is data that is annually reported by the businesses to DECD that includes the number of new hires and payroll. She said if the GOC wants that number OPEGA can get that information for the Committee. However, Director Ashcroft said OPEGA was not comfortable that the fact a "but for" letter existed was a sound basis for attributing all the reported jobs to PTDZ. Ms. Henderson said the data that does exist regarding the creation of new jobs was not at a sufficient level of detail for the analysis OPEGA would need to perform. For example, the number of new jobs a business reports in any year is not the jobs created in that year. This is the number of new jobs they created over their base line since they began with the program. For example, a business reports five new jobs this year and last year reported three new jobs. The five they are reporting now includes the three reported last year so trying to say for each year how many new jobs were created in that year is a bit of a data analysis exercise. Director Ashcroft said another complicating factor is the significant overlap with ETIF and being able to say how many jobs are related to PTDZ rather than ETIF. ETIF is the most used benefit in the PTDZ Program. Understanding how many of the businesses had to have the PTDZ benefits versus just ETIF benefits in order to do what they did. She said OPEGA is currently evaluating ETIF and hopes to do a lot more data analysis than they did with PTDZ because it is where the biggest portion of the PTDZ benefits are. OPEGA will have things to say about ETIF that would also relate to PTDZ.

Rep. DeChant said the program has been going on since 2003. She asked if the Department ever said there was a problem in collecting the data. Why didn't the Department ever put up a flag saying this is not working because clearly in the statute it is one of the objectives? Ms. Henderson thinks for the way the Department needs to use the data, it is meeting their needs. They need to know if a business, in the first two years, managed to hire one new employee and the reporting they are receiving is allowing them to do that. She said it is not meeting OPEGA's needs in being able to assess the broader outcomes. Director Ashcroft added that some of the questions OPEGA is asking, not only for PTDZ, but for other tax expenditures also, are questions that nobody has asked and really expected an answer to before. It is new ground for the agencies to see what they have for data that OPEGA can use for evaluation purposes.

Director Ashcroft did want to give credit, both to OPEGA and DECD's evaluator that they have had over the years, raised the issue about lack of needed data. The fact that there has been limited data available for evaluations of these programs has been known since OPEGA did its first review of Economic Development Programs back in 2005. DECD's evaluator has also raised it in all of the reports they have issued. As noted during the GOC's work on economic development evaluation legislation earlier this year, those recommendations have just been falling through the cracks and not getting addressed. It is part of the reason why OPEGA still does not have that level of data at the State level today. It is not that it had not been raised as a concern.

Sen. Libby referred to Commissioner Gervais' response letter to OPEGA's PTDZ Report where he says how the program is a major tool for attracting investment and business for the State. He asked if OPEGA was able to verify, or corroborate, that statement or find any data to suggest that the program is a helpful tool. Ms. Henderson said OPEGA did not assess the degree to which the Program has attracted businesses to move into the State. Director Ashcroft said OPEGA did hear a lot about the ETIF expansion portion of the PTDZ program and how important that was to businesses in the State, but she is not sure OPEGA has any sense of the level of contribution of the other benefits at this point.

Rep. Mastraccio asked if OPEGA had data about how many businesses were decertified after the two years of taking advantage of the benefits. Ms. Henderson said part of the difficulty is that OPEGA does not know for sure which of them took advantage of some of the benefits. For example, did the business use the sales tax exemption or not. OPEGA knows they got a certificate, but does not know if they used it. Director Ashcroft said they could ask DECD to provide, if the Committee is interested, how many they have decertified in the last five years. OPEGA could probably get a number of businesses DECD issued decertification to. Ms. Henderson noted that businesses would also be decertified if they notify DECD that they are not going to be able to meet the one job requirement because things are not going as expected. Those businesses may not have used any benefits at that point so just having the number decertified would not necessarily tell how many were receiving benefits that did not create any jobs.

Sen. Katz asked for an estimate of the time line on OPEGA's ETIF review. Ms. Henderson said a lot of the complexity OPEGA has been describing today about PTDZ data also applies to ETIF. For example, trying to attribute how much hiring would not have happened except for ETIF. She said OPEGA is looking to find ways to address those challenges for the ETIF evaluation and it is time consuming. OPEGA has also run into a number of very significant delays with obtaining data and the ability to access confidential tax payer data needed for the analysis. OPEGA's ability to share that data with the consultant they use in the economic modeling is also limited to the degree that OPEGA may have to do the modeling itself with guidance from the consultant. Ms. Henderson said OPEGA is hoping for resolution of some of those issues with an opinion from the Attorney General's Office. All in all, however, she would not expect to have results before next spring.

Rep. Rykerson referred to the sales tax exemption and asked if it could just be a reporting requirement by rule making or would it have to change by legislative action and is there some privacy or confidential issues. Director Ashcroft believes both statute and rule change are possible ways to put in a reporting requirement that would have businesses self-report that information.

Sen. Saviello remembered when the legislation for PTDZ Program was introduced in 2003. At that time there was nothing and it was very limited as to what the State could do to draw businesses into the area other than TIFS and BETR. He said listening to the Report presentation it sounds to him that the program's time has come and gone and, unless they want to recommend doing a major overhaul of the program, the State should just move on because the Program is going to run out anyway. Director Ashcroft thinks from speaking with DECD Commissioner Gervais and representatives of the business community that there is still a need for some incentive program. She agrees with Sen. Saviello that the State needed something. What it seems has happened is that program has become something the Legislature did not originally imagine because DECD has needed different tools or something less restrictive to work with the various business scenarios. The opportunity to design a program that is current and that will include something that is workable for businesses and the State is an opportunity that should not be missed. Director Ashcroft was not sure trying to fix this program would be worth the time to figure it all out as opposed to designing something that is a better model.

Sen. Katz said hopefully when the GOC holds the public comment period on the PTDZ Report, the Committee may get some input on that question because they will be at a cross road as a Committee in deciding whether they should recommend fixes to this program consistent with the issues raised or not.

Rep. Mastraccio said this is an excellent example of why the State needs a long range strategy for economic development because it needs to know what works, what will work and what the businesses need. Sen. Saviello and Sen. Katz agreed.

Director Ashcroft reminded the GOC that under the Tax Expenditure review process the PTDZ report needs to be transmitted to the Taxation Committee for them to consider the recommendations. She said the Taxation Committee is in the process of determining when they are holding their interim meetings to address New Markets, PTDZ and the Expedited Reviews. If the GOC wanted to hold a public comment period at their September meeting and were prepared at the September meeting to vote to send the report to the Taxation Committee, that should work. GOC members agreed.

Sen. Saviello asked if the GOC could attach a cover letter to the Taxation Committee when transmitting the PTDZ report to them that says if they are going to do something with the program, they really need to start over as stated in some of the report recommendations. Director Ashcroft said when the GOC transmitted New Markets, they sent the report, everything that the GOC collected for public comments, and a letter that included anything in particular the GOC wanted to convey to the Taxation Committee.

Rep. Sutton asked if OPEGA kept track of their time involved in this review. Director Ashcroft said OPEGA does track their hours and that information will be provided to the Committee.

Ms. Henderson said she now had the answer to a question Sen. Diamond asked earlier about whether there has been a change in the number of required jobs since the program was first enacted. She reviewed the rules from 2004 and at that time it was still just one job that was required and the business had to have planned, or already hired, one job in order to get their initial certification.

Sen. Diamond asked if the provision was still there that allowed two years without hiring anybody and still qualifying. Ms. Henderson said that is a little more nuanced, but said some of the benefits did not even exists when the program was first created so she would have to look at when the various benefits came to be. Sen. Diamond asked whether, based on what OPEGA has done throughout the review, the State should expect some kind of a gold rush or flood of people trying to get under the wire before the December, 2018 deadline. Does the GOC need to say something to the Taxation Committee about that possible problem? Director Ashcroft said OPEGA wondered the same thing and she thinks it is a good question for DECD and maybe the business community representatives who are at the public comment period to ask what they think about it. She said OPEGA does not have any information at this time on whether there is potential for that.

Sen. Katz asked if there was objection to taking an item out of order. Hearing none, the Chair moved to **New Business – Discussion of Adding Another Project to OPEGA's Work Plan.**

- **Discussion on Adding Another Project to OPEGA's Work Plan**

Sen. Katz presented a topic that he and Chair Mastraccio, as well as a number of other GOC members have talked about. One of the things on the ballot in November is the approval of a citizen-initiated referendum for a casino for York County. He said it is unusual in that, if it passes, only one individual, or one entity would be eligible to get the operating license and take advantage of that. He said that person and his colleagues have spent millions of dollars to date to gather the signatures and put this on the ballot. Sen. Katz said the financing of the project has been the subject of a review by the Ethics Commission, but that is solely with respect to the funding of the campaign and the Commission is struggling to understand where all the money is coming from. Some of the money is coming from as far away as entities in other countries in Southeast Asia.

Sen. Katz said the GOC Chairs are suggesting that the Committee hold a public hearing with respect to the whole process and this particular initiative. The idea would be to shed light on what has been going on because frankly it smells and the individual and entities involved appear to be on the verge of spending millions more dollars to get the initiative passed. The concern is that there may not be an opportunity for a full light to shine on the matter before November. It is of interest to the GOC because the citizen initiated process may be being used in this particular case in a way that was never contemplated by anybody. He said the idea would be to ask OPEGA staff not do a review, but to gather information for the Committee from the Ethics Commission, or from whatever sources they can find, to inform the GOC with source materials in advance of a hearing and then to hold a hearing at the October GOC meeting and invite the proponents of the referendum. It is not to be a debate on a for or against, but rather a meeting to answer questions that many have about the process that is being used and to do it in a timely way so the information can be public prior to November.

Sen. Katz said that he and Chair Mastraccio have talked with Director Ashcroft about this request and she said there is OPEGA staff time to do this work. This will not be a full review, but rather information gathering for the GOC so everyone will be able to understand exactly how Maine has gotten to this point and what they are being asked to vote on.

Rep. Rykerson said basically the outcome will be just a transparency issue. Sen. Katz agreed and did not anticipate that any votes, recommendations or suggestions would come from the GOC.

Sen. Saviello was in favor of gathering information on the subject.

Rep. Pierce said this subject would be about the one referendum, but there are problems with the whole referendum process. He asked if the Committee should look at the whole citizen's referendum process. He said there appears to be other issues that have been raised and the casino referendum is only one of the problems. The GOC should look at the whole process.

Sen. Katz thinks that looking at the whole referendum process is a much larger project than what OPEGA is capable of doing in that short a time. He said there have been a number of bills, some faring better than others, in this last session, and that is a subject for a more robust independent review, but that was not the intent here. The intent is for more of an informational meeting.

Sen. Diamond agreed that the GOC should gather as much information regarding transparency on the casino referendum as possible because it is a $150 to $200 million deal that is going down behind the curtain.

Sen. Katz asked for Director Ashcroft's input on OPEGA's staff availability. Director Ashcroft said OPEGA currently has time to do some research given the stage that their two current reviews are in. She would need to know what the timing might be in terms of inviting anyone the Committee would like to invite to a GOC meeting. Perhaps the Committee can wait until its September meeting to decide those things and get the request out prior to the October meeting.

Sen. Katz said the Chairs of the GOC will work with OPEGA staff to develop the list of possible individuals to invite for presentation to the Committee at the September meeting.

Motion: That the Government Oversight Committee asks OPEGA to gather information regarding the referendum question on a casino in York County. (Motion by Sen. Davis, second by Sen Diamond, passed unanimous vote 10 – 0.)

Sen. Katz said the Chairs will work with OPEGA staff and communicate with all Committee members in advance of the September meeting. He said if members have ideas of how it should be structured, or who the Committee might invite to a meeting, that they contact Rep. Mastraccio or him with that information.

Director Ashcroft was looking to have the GOC place one more topic on OPEGA's Work Plan.

Rep. Pierce thought the referendum process should be added to the On Deck List because that brings a higher level of concern to him than the seven topics currently on the List.

Rep. Sutton agreed with Rep. Pierce's concerns and suggestion of adding the referendum process to the List.

Rep. DeChant said the referendum process is part of the Constitution. Sen. Katz said some aspects of the process are and some are not.

Sen. Saviello said he wanted to stay with the GOC's process of going through topics and evaluating each one. He would prefer to take a topic from the current On Deck List and would like to add the Public Utilities Commission topic to OPEGA's Work Plan.

Rep. Pierce asked if the subject of the referendum process is in the Constitution why is the GOC going to gather information on the Casino referendum.

Director Ashcroft said she is looking for additional work for OPEGA staff. If there is interest in reviewing the referendum process, OPEGA could do their usual mode of gathering information for the GOC about what that review might look like.

Sen. Katz said he would like to stay with the GOC's typical process and referred to the 7 topics currently on the On Deck List. Committee members have previously ranked each one and OPEGA did preliminary work on each before they were added to the List. He asked what the next step would be if the Committee wanted to move Rep. Pierce's topic along in the same way they general do. Director Ashcroft said the next step would be for OPEGA staff to look at what the possible areas of the focus for that review would be, ask people what their concerns are of the referendum process, and what they think would be worthwhile for OPEGA to do. OPEGA would also assess if the topic is in the GOC's jurisdiction, and whether there is anything that the GOC could do about, or with, it given that it is in the Constitution. She said it would be determined if it was an appropriate review for the GOC and if OPEGA were to do the review, what the focus of the review would be.

Sen. Katz asked Rep. Pierce if he wanted to pursue that process and he said he would. Director Ashcroft said the Committee would treat the topic as a new request and would take a vote on what action they wanted to take. She said the Committee is considering asking OPEGA to do a preliminary inquiry only at this time to gather additional background information on the topic before making a determination about what to do with the request.

Sen. Katz asked Rep. Pierce to restate what he would like the project to be so the Committee members will be clear about what they are deciding on.

Rep. Pierce said the referendum subject has come up through different ballot initiatives and there is question as to whether the way it is working is the original intent of the referendum process. He has heard from a lot of different people who think the process has been hijacked so he would like to know the true intent of the referendum process in the Constitution and, looking at the York County Casino Referendum, does it fit with the intent and purview of the referendum process. The GOC is going to invite someone to a meeting to talk about whether he is doing something behind the curtain, but if he used the referendum process the way it is in the Constitution, then the Committee should leave him alone. He said if people are circumventing the referendum process he thinks the GOC should see whether the referendum questions that keep coming up that cause concern among people of the State, on both sides of the issue, are following the intent outlined in the referendum process in the Constitution. Rep. Pierce would like preliminary research done by OPEGA, including whether the topic is within the GOC's purview.

Motion: That the Government Oversight Committee ask OPEGA to do preliminary work on the referendum process in Maine including whether the topic is within the GOC's purview. (Motion by Rep. Pierce, no second, Motion failed.)

Rep. Rykerson thinks the scope of the GOC is vast but this is beyond what the Committee does. Reviewing Constitutional issues would be the job of the whole Legislature as well the people of the State.

Rep. Rykerson agreed with Sen. Saviello that the Public Utilities Commission topic should be put on OPEGA's Work Plan.

Rep. DeChant thought the GOC was trying to choose a topic from the On Deck List that the Committee has already had discussion about and vote to put one of those topics on OPEGA's Work Plan.

Sen. Katz said the GOC was going to choose a topic that is currently on the On Deck List to add to OPEGA's Work Plan. There will be a separate discussion with regard to Rep. Pierce's request for a review of the referendum process.

Sen. Katz asked Rep. Pierce if he would consider fleshing out in more detail his request for a review of the referendum process and the GOC will take his request up at the next meeting.

Rep. Mastraccio suggested that Rep. Pierce wait for the next two meetings and then decide what he wants to do after getting information from those meetings.

Rep. Pierce agreed to put his request for a review of the referendum process in writing and submit it to the GOC formally.

Sen. Libby said of the 7 topics on the On Deck List the State Law Enforcement Agencies Undercover Ops is the highest ranked topic and he would like to see that topic to be added to OPEGA's Work Plan.

Sen. Diamond recommended that the Substance Abuse Treatment Programs in Prison System be the topic added to OPEGA's Work Plan. He said the substance abuse program is more than shattered and jails are now stopping all human contact with family and inmates. It is not now just the prison, but also now in the jails and he would be in favor of adding the topic to OPEGA's Work Plan.

Rep. Pierce recommended adding the Commission on Indigent Legal Services topic to OPEGA's Work Plan. It is ranked the second highest on the On Deck List and will be a good fill-in project.

Rep. Mastraccio was going back and forth between the PUC and the Substance Abuse topics. She thinks the Substance Abuse Treatment Programs in Prison System might be more apropos right now because there is so many proposals for money. She would vote for either of those topics.

Sen. Davis said he was going back and forth between State Law Enforcement Agencies Undercover Ops and the Substance Abuse Treatment Programs in Prison System topics. Every time he opens a newspaper and sees someone who is 28 years old that has died, it is more often than not that person has been in jail. He moved that the Committee add Substance Abuse Treatment to OPEGA's Work Plan.

Motion: That the Government Oversight Committee adds the topic of Substance Abuse Treatment Programs in Prison System to OPEGA's Work Plan. (Motion by Sen. Davis, second by Rep. Mastraccio, motion passed, vote 7-3.)

Director Ashcroft said the Substance Abuse Treatment Programs in Prison System will be put on OPEGA's Work Plan and if OPEGA has the opportunity to start the review they will, but otherwise it will wait pending the completion of the reviews that are currently in progress.

- **Consideration and Approval of OPEGA Recommendation on Project Direction for Review of Beverage Container Recycling Program (Bottle Bill)**

Director Ashcroft explained the GOC/OPEGA process regarding OPEGA's recommendations on project direction for reviews and summarized the Recommendation on Project Direction for the Review of Beverage Container Recycling Program. (A copy is attached to the Meeting Summary.)

Rep. Pierce is a member of the Environment and Natural Resources (ENR) Committee and said they went through a lot of review regarding the bottle redemption program. He agreed with OPEGA's recommendation on the project direction, but would add to Recommendation 1, because of all of the recycling going on now, a question on whether the program makes the best use of plastics and is Maine getting the best value for its plastics.

In regard to Recommendation 4, Rep. Pierce said they have heard there is a lot of fraud in the programs, and he would like to know what the estimated dollar amount of the fraud is. The ENR Committee has heard numbers and it would be nice to see how much of it is verifiable.

Rep. Pierce said with the two above additions, he would recommend approval of OPEGA's Recommendation on Project Direction.

Director Ashcroft said if the GOC wanted to address Rep. Pierce's addition to Recommendation 1, she would suggest making it a separate question because it was not the intent of the Program to try to get value out of the plastics. If OPEGA is going to answer a question about intent of the Program, she would like to stay with what the intents were in statute.

Rep. Pierce said his additional question to Recommendation 1 would be is this the best value for Maine's plastics because recycling has changed dramatically since the 1970s. Would we get more plastics off the streets and into a system if there was more value to the recyclers. Director Ashcroft asked Rep. Pierce what he meant by who would get more value from the plastics. Rep. Pierce said there is money to recycling and would it be a better value to our trash and landfills, which are filling up, for the citizens to have their plastics going into recycling instead of 5¢ being crushed and sent to a landfill. Director Ashcroft said she would be looking to the OPEGA staff working on the review to see whether they think that is a question they could review. OPEGA could bring that information back at the next meeting about whether it is a question they think they could provide any benefit in trying to answer.

Sen. Saviello said with the information provided by OPEGA in their Project Direction Recommendation statement you can now see how complicated the whole process is. He said when the ENR Committee inherited the recycling issue in 2010 there were three things that constantly resonated. ENR had to address donations to charities, the businesses that are running by this and the litter question. He said the ENR Committee could never get to the level of detail that OPEGA has gotten to because the Committee Room filled with the environmental organizations who are afraid the ENR Committee is going to throw the baby out with the bath water and also with all of the redemption centers that come in and say you are going to put me out of a job. For the first time he thinks the Legislature has gotten someone to do an initial evaluation that lays out what is actually going on in the Beverage Container Redemption Program. He said the ENR Committee heard comments, but never has been able to get the necessary information.

Sen. Saviello supports OPEGA's Recommendation on Project Direction. He referred to Rep. Pierce's concern and thought it could be addressed under Recommendation 5. Some other states have done away with their redemption programs, or never entered into a program. There was something that helped them do what they wanted to do and that might help OPEGA in their work. So he would change question 5 to "How does Maine's program compare to other states' redemption container programs". He thinks there are places, for example, Delaware where they have changed some things and there may be a way to address it without specifically looking at the recycling. Sen. Saviello has been told that in a state where they have done away with their redemption program, they have a single sort system and people drop their containers and it does not have to go forward.

Director Ashcroft understood where Sen. Saviello was going, but she would like the opportunity to process the additional recommendation questions with OPEGA staff because they had internally had quite a bit of discussion about OPEGA's role in looking at policy alternatives. If they compared to other states' redemption programs it would be a comparison against Maine's current policy. If they were to extend it, as Sen. Saviello suggested, she wanted to be clear that all OPEGA would be doing is bringing back to the GOC some information on what other states are doing to recycle their containers. She would not want to commit to trying to say which system is more efficient or has a smaller footprint. OPEGA would just be giving the GOC a read on here is how other states are handling their containers. Sen. Saviello thought that was what Rep. Pierce was asking because it would then put it in the ENR Committee's hands and they could say let's look at this as a possible alternative. Director Ashcroft said Question 5 will be changed to incorporate Sen. Saviello's suggestion.

Sen. Saviello said no one knows what it costs the State and the impacts because that was in the background. Director Ashcroft said the State does not collect a lot of data. He would like to know what is needed in order to know that information because from the Legislature's standpoint, they have to make decisions and receive conflicting information. It would be helpful to know whether the cost and impact is on the State, the consumer or the company that makes the product. He thinks ultimately it is the consumer.

Director Ashcroft thinks the way OPEGA has the question currently worded they would be looking at the costs incurred by the State and the initiators of the deposit who, by virtue of the analysis OPEGA has already done, seem to bear the brunt of the costs. The proposed question asks how those costs are potentially offset by some of the other revenue streams that they have coming in. OPEGA is making the assumption that if they are not offset, they get passed on to the consumer. Sen. Saviello said any way OPEGA is identifying it is fine.

Sen. Saviello asked if the redemption centers liked the program. Mr. Kruk said the centers are fully supportive of the program because it is their livelihood. They were also in support of expanding the program to more products and would like to see things improved operationally, but that is a tweak and not a wholesale change.

Sen. Saviello asked how the redemption centers felt about the commingling agreements. Mr. Kruk said that was more conflicting because of the way commingling has been implemented. The way it is working the large initiators of deposit are partnering together. For example Coke and Pepsi, where there is already a sufficient volume flowing through redemption centers for the containers from each of those Initiators anyway. It appeared that where redemption centers would really benefit were from very low volume items and being able to throw all the random water bottles together.

Rep. Pierce agreed with Sen. Saviello and said that was the intent he was trying to get at. He thinks the recommendations for changes to the proposed questions are good for OPEGA to follow-up with.

Rep. Rykerson said the program intent was to remove the blight on the landscape and to reduce the costs of litter collection. He said to see whether it had reduced the blight on the landscape you would need a fleet of drones, but it is possible to maybe evaluate and get data on municipal solid waste. What are the costs and benefits to municipal waste collection so if the Legislature decides to add other containers to the redemption program next Session, what the possible savings might be. Director Ashcroft said what Rep. Rykerson has suggested would be a review of its own and what OPEGA is attempting to do is to give the GOC and Legislature a sense of how is the current program working so they would have that information to factor in when making policy decisions.

Rep. Rykerson referred to page 2 “Program intent”. He said out of the 3 intents listed that only 1 was being addressed. Director Ashcroft said what OPEGA is hoping to do is to be able to tell the GOC what the redemption rate is as a quantifiable indicator. She thinks Rep. Rykerson is right that other than walking along the side of the road and making observations, there is not going to be a lot of data available on the other intended outcomes.

Rep. Mastraccio referred to the exemption or the bottles that currently do not have deposits on them and assumed that would be covered under question 1. Choices are being made on which bottles will have a deposit and which won’t, and that is a concern for her. Director Ashcroft said OPEGA did envision capturing that issue in question 1.

Director Ashcroft said another thing OPEGA would get to in question 1, that might address Rep. Rykerson’s concern, is that OPEGA may be able to find some information about what percentage of the solid waste stream is represented by beverage containers so it would be known what portion of the solid waste problem is being tackled.

Sen. Saviello said, as talked about earlier in the meeting by Rep. Pierce, some of the products are using certain containers that have value and maybe they should now be added to the redemption program.

Sen. Diamond said in his area the independent redemption centers play a key role. He knows that they are compensated, but because of their efficiency and availability to the consumer, he wants to make sure that they are getting compensated enough so they will continue. A question he would like to ask is if we are compensating the independent redemption centers sufficiently. Director Ashcroft said OPEGA discussed that aspect but it was not the intent of the program to create the industry that has sprung up. OPEGA noted there are 460 redemption centers in Maine and has made the assumption they would not be in business if they were not making enough money to make it. By virtue of that, OPEGA determined that chasing down redemption centers’ profit margins may not be the best use of OPEGA resources. She also did not know what OPEGA would use as a base for determining whether the centers were getting an adequate profit margin. Sen. Diamond said the redemption centers serve an environmental need as well and he wants them to be compensated enough so they can stay in business. Director Ashcroft said if OPEGA heard from DEP or somebody else that we have a dirge of redemption centers because they can’t afford to be in the redemption business, she would have more of a concern about that. She said OPEGA has not asked those questions yet of DEP. Mr. Kruk said he noted in statute that the population criteria had been added to the consideration for licensing centers so it appears that more people are getting into the business than out. He noted that question 3 is directed toward redemption centers because commingling is supposed to benefit the redemption centers. OPEGA repeatedly heard that every time a can is touched, it cost money. So fewer touches is better for them and commingling directly impacts that.

Director Ashcroft said based on the GOC’s discussion she did not think the OPEGA proposed questions needed to be amended other than adding a second question under 5 on how do states without redemption programs handle recycling of beverage containers? She was looking for a vote by the GOC on the Project Direction Recommendation.

Motion: That the Government Oversight Committee accepts OPEGA’s five questions in the Recommendation on Project Direction for Review of Beverage Container Recycling Program with the additional amendment suggested by Director Ashcroft. (Motion by Sen. Saviello, second by Rep. Pierce, passed unanimous vote, 8-0.)

- **Briefing on 2017 Expedited Reviews of Maine State Tax Expenditures – "Tax Fairness" Provided to the Taxation Committee**

  Director Ashcroft wanted to make the GOC aware that OPEGA did, as required by statute, deliver to the Taxation Committee and to this Committee the material that OPEGA is asked under statute to provide in regard to expedited reviews of the expenditures. This year's category is called "Tax Fairness" Tax Expenditures and there were a variety of different tax expenditure types that were captured in the fifteen different tax expenditures in this category OPEGA passed the report on to the Taxation Committee and they are going to be processing that material over the interim.

  Rep. Mastraccio asked if the Director would let the GOC members know by email when the Taxation Committee is going to meet to discuss the Tax Expenditures. Director Ashcroft said she would and noted that the Taxation Committee will also be working on the OPEGA reports on the New Markets and PTDZ Programs.

UNFINISHED BUSINESS

- **Children's Licensing and Investigation Services Report**

  - **Report Back from DHHS**
  - **Continued Committee Work Session**

    Director Ashcroft said back in March DHHS had a couple of action items that they had planned to have done by July 1, 2017 in regard to OPEGA's Children's Licensing and Investigation Services Report so the GOC had wanted DHHS to come to the meeting and report back on those items. OPEGA made a request to the Governor's Office that Janet Whitten and/or Nancy Beardsley, who are the managers over the programs, be able to be at the meeting. They declined that invitation, but did provide a status update in writing. Director Ashcroft noted that the update was sent late the day before and she had not had the opportunity to review their update. She said the GOC can either walk through DHHS' update together at this meeting or can review the information on their own and it be added to the next meeting agenda for further discussion.

    Rep. Mastraccio was concerned because there were some issues that came up at the end of the session, late July, in terms of licensing changes that were concerning and she is not sure what the status is of those. Director Ashcroft asked if it was in regard to rules and Rep. Mastraccio said it was and that some related to eliminating background checks, etc. Director Ashcroft said OPEGA noted in its Report that DHHS was going to be going forward with new rules. DHHS said they were going to try to capture certain things in rules. The Director suggested that OPEGA could see what the new rules are, let the Committee know how they have changed and whether it will have any impact on anything reviewed by OPEGA.

    Sen. Diamond agreed, but he was chagrinned when the Department refuses to come to a GOC meeting. He asked if they said they were not available for this meeting or just not available. Rep. Mastraccio said the Department did not get permission to come. Director Ashcroft said that was right and she would have to review the email she received from DHHS to be reminded of the exact wording. Sen. Diamond did not treat that lightly and if the GOC decides they would like to have Ms. Whitten and Ms. Beardsley at a meeting for very good and valid reasons, then he thinks they should be at the meeting. If they don't come voluntarily, the Committee should consider subpoenaing them. Sen. Saviello agreed.

    Rep. Mastraccio said at the next meeting the GOC can have an agenda item that specifically discusses the rules and the Committee can decide, if DHHS staff is not there, what action they would like to take.

- **Continued Discussion of GOC Action on OPEGA's Report on Maine State Lottery**

  - **Update on GOC Request for Veterans and Legal Affairs Committee Input on Recommendation**

Director Ashcroft said in the OPEGA Report on State Lottery there were some recommendations for possible legislative action in terms of making changes to statute around Lottery reporting. The GOC had sent a letter to the VLA Committee asking for their input on whether they thought that was worth pursuing and what they might like to see in that reporting. The VLA Committee received the GOC's letter, and intends to respond. VLA is not planning to meet over the interim, however, if they don't meet over the interim they will take it up as one of their first items when they convene in January. The GOC members agreed to wait for a response from the VLA Committee about what they will be doing in regards to OPEGA's recommendation.

- **Update on Taxation Committee Action Re: Maine Capital Investment Credit**

Director Ashcroft reminded the GOC there were concerns raised by Mr. DiMillo regarding the Maine Capital Investment Credit (MCIC). OPEGA does have this tax expenditure on its list to review, but will not be getting to that review for a while. She wanted to give the Committee a status on where the Taxation Committee is regarding its efforts on Mr. DiMillo's concerns. She said the Taxation Committee put out a Joint Order that would allow them to report out a bill with regard to the Credit. They held a hearing on that Joint Order on June 2nd and the Maine Chamber, at that time, said they would prefer to wait for OPEGA's evaluation analysis before doing anything to the credit. Mr. DiMillo spoke, MRS was not present and the Taxation Committee voted 10-0 to report out a bill addressing the issue that a couple of the members on the Taxation Committee were to work on. She said there has been nothing developed to date. They may pursue it next session, but there no definite plans on that yet.

Director Ashcroft said OPEGA has not pursued the issue any further. Rep. Mastraccio said she was fine with leaving it with the Taxation Committee for now and other GOC members agreed.

REPORT FROM DIRECTOR

- **Status of Projects In Progress**

As discussed earlier in the meeting, OPEGA will be heading into the fieldwork planning stage on the Beverage Container Redemption Program review.

Temporary Assistance for Needy Families is in preliminary research phase. OPEGA has been more delayed than they would like to be in getting information and responses back from the Department in regard to that review. She understands there was a lot of sensitivity around the subject during the budget process. She is hopeful that from here on out, communications with the agency will be turning around a little quicker and that OPEGA will have a project direction recommendation statement to present in October.

As for tax expenditure projects, OPEGA is working on the Employment Tax Increment Financing review as the primary project. Also is getting started on BETE and BETR which have the priority as far as the next tax expenditure review after ETIF. The Maine Capital Investment Credit is being used as a work filler. OPEGA has also started on the Special Project which is the Design Evaluation of the Major Business Headquarters Expansion Credit. She said there was legislation passed that established a new tax credit for major business headquarters expansions with part of that bill directing OPEGA to conduct a design evaluation. The design evaluation includes looking at what is in the statutes and rules. Director Ashcroft said that OPEGA is getting the opportunity to look at the program before it actually starts sending out any money as far as credits go. At the request of Rep. Mastraccio and the Chairs of the Taxation Committee, Director Ashcroft participated in reviewing the proposed bill and letting them know where she thought provisions, based on the tax expenditure work OPEGA has done so far, were missing or some other points that OPEGA might see from a future evaluation standpoint. Director Ashcroft said there were some amendments made to the bill that she thinks will be beneficial in terms of having a goal statement actually in the bill and having a performance measure in terms of types and number of jobs and some data reporting pieces that the Legislature has not had in the past. OPEGA's work now is to see if there are other things they may recommend doing to the design, as far as what is required under statute and rules, to align it with intended goals.

Rep. Mastraccio said if the GOC had met at the end of the session LD 1639 was a bill they would have discussed. The LD went through the Taxation Committee, which was initially going to carry it over. However, it was time sensitive so the Taxation Committee Chairs, Rep. Tipping and Sen. Dow, Director Ashcroft and a number of others tried to figure out what could be done to help ensure the credit would do what it was intended to do. She said there was extensive discussion in the Democratic caucus, although she did not know what happened in the Republican caucus, but legislators voted for it. She thinks as a template for things going forward, especially after having discussed the design problems with PTDZ Program, this is designed to try to figure out what the Legislature needs to do. They used OPEGA's New Markets Report to try to design something that everybody would be happy with and do what it was intended to do. Rep. Mastraccio said she was happy that the LD passed.

Rep. Sutton said one of the frustrations she has had as a member of on the GOC is the lack of data that exists to have the analysis done in any meaningful way. To actually have an intent going forward to rectify the situation makes a great deal of sense. She thanked those who worked on the LD.

- **Update on Status of GOC Legislation**

LD 367 is looking for the Maine Economic Growth Council to develop a long-range strategic plan for economic improvement. As mentioned by Sen. Katz earlier in the meeting, that LD is currently carried over on the Appropriations' Table. There was a lot of support for the idea voiced in the public hearing and work sessions before the LCRED Committee.

LD 1217 was the piece about changing statute to make DECD's evaluations of economic development programs more effective and efficient. That bill did pass to be enacted in an override of the Governor's veto. Rep. Mastraccio thanked the GOC members for helping with the LD.

Director Ashcroft said the same thing occurred with LD 1572 which were the small tweaks that the GOC/OPEGA suggested be made to the Tax Expenditure process statute so that we could have more flexibility in getting those reviews done.

NEXT GOC MEETING DATE

Rep. Mastraccio said the GOC members will be polled by email for their availability to meet during the interim. (Following the polling of Committee members the GOC will meet on the following dates: September 25, 2017 at 1:00 p.m.; October 18, 2017 at 9:00 a.m. and November 9, 2017 at 9:00 a.m.)

ADJOURNMENT

The Chair, Rep. Mastraccio, adjourned the Government Oversight Committee meeting at 12:17 p.m. on the motion of Sen. Davis, second by Rep. Rykerson, unanimous.

OPEGA Recommendation for Project Direction

Beverage Container Redemption Program

Background

The Maine Beverage Container Redemption Program (redemption program) was first voted onto the Government Oversight Committee's (GOC) "On Deck List" in March of 2009. On March 24, 2017, the GOC voted to move the review of the redemption program to OPEGA's Work Plan. OPEGA began preliminary research in May of 2017. During the preliminary research phase of this project, OPEGA completed the following tasks:

- reviewed redemption program issues discussed by the GOC at meetings in 2009, 2013 and 2017;
- sought input from GOC members and members and staff of the Environmental and Natural Resources Committee on concerns or questions regarding the redemption program;
- interviewed the current and former directors of the redemption program located in the Department of Environmental Protection (DEP) and the Department of Agriculture, Conservation and Forestry (DACF);
- interviewed representatives from Maine Revenue Services (MRS) and the Bureau of Alcoholic Beverages and Lottery Operations (BABLO) regarding their roles in the redemption program;
- interviewed a sample of redemption program participants on-site at their facilities including representatives of five redemption centers, two pickup agents, five initiators of deposit (mix of manufacturers and distributors), and one retailer;
- observed redemption processing in five redemption centers;
- interviewed Assistant Attorneys General (AAG) representing MRS and DEP for guidance on interpretation of parts of statute relating to commingling;
- reviewed statutes, legislative history, and rules related to the redemption program and its operations;
- reviewed departmental guidance documents related to the redemption program;
- reviewed reports regarding redemption programs in other states; and
- obtained redemption program data from redemption program participants and MRS.

Summary of Preliminary Research

Program Description

Relevant statutes and rules

The redemption program (also known as the Bottle Bill) was enacted by referendum in November 1976 and was implemented in January 1978. The redemption program was originally contained in

32 M.R.S. § 1861-1869, which included the purpose, intent, definitions, refund rate, responsibilities, application, rules, prohibitions, and penalties under law.

In 2015, legislation was enacted that transferred the administration of the redemption program from DACF to DEP.[1] This resulted in shifting the relevant statute to 38 M.R.S. § 3101-3118.

Program intent

The statutory intent of the program has not changed since its enactment in 1976. According to 38 M.R.S. § 3101, the Legislature found that beverage containers were a major source of non-degradable litter and solid waste in the State and the collection and disposal of this litter and solid waste was a financial burden for Maine citizens. Statute describes the intent of the redemption program as to:

- create incentives for manufacturers, distributers, dealers and consumers of beverage containers to reuse or recycle beverage containers;
- remove the blight on the landscape caused by the disposal of these containers on the highways and lands of the State; and
- reduce increasing costs of litter collection and municipal solid waste disposal.

Program scope

Maine's redemption program applies to bottles, cans, jars or other containers made of glass, metal or plastic that have been sealed by the manufacturer at the time of sale and contain 4 liters or less of a beverage, defined as:

- beer, ale or other drink produced by fermenting malt;
- spirits;
- wine;
- hard cider;
- wine coolers;
- soda;
- non-carbonated water; and
- nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for human consumption.

However, through statute and rules, the following beverages and container-types are specifically excluded:

- unflavored rice milk, unflavored soymilk, milk and dairy-derived products;
- certain containers composed of a combination of aluminum and plastic/paper filled with nonalcoholic beverages;
- beverages sold on airline flights;
- Maine produced apple cider and blueberry juice;
- syrups, concentrates, additives, extracts, sauces, and condiments;
- infant formula and drugs;
- nutritional supplements;

[1] P.L. 2015, ch. 166 "An Act to Promote Recycling Program Integration and Efficiencies"

- products frozen at sale or intended for consumption in a frozen state;
- broths and soups; and
- products in paper or cardboard containers.

Deposit and handling fees

The program's intent is achieved through creation of a financial incentive for consumers to return beverage containers to a redemption center. Statute establishes a container deposit that is paid upon purchase and refunded when the container is redeemed. The deposit and refund is set at not less than 15¢ for wine and spirit containers greater than 50 milliliters and not less than 5¢ for all other containers covered by the program.

The program also creates a financial incentive for redemption centers to return containers to the manufacturer or distributor that brought the containers to market in Maine. Statute requires that initiators of deposit, which are typically the manufacturers or distributors, pay a redemption center for the cost of handling beverage containers. The handling fees set in statute are:

(i) 4¢ per container as standard;
(ii) 3.5¢ for containers subject to a qualified commingling agreement; or
(iii) 3¢ for containers for a brewer that produces no more than 50,000 gallons of product or a water bottler that sells no more than 250,000 containers of up to one gallon annually.

The lifecycle of the deposit broadly follows the lifecycle of the container. In the simplest scenario, the retailer pays the deposit to the manufacturer upon purchase of product; the consumer pays the retailer upon purchase of the container; a redemption center pays the consumer the refund upon return of a container; and finally the manufacturer pays the redemption center for redeemed containers. In situations where distributors and/or pick up agents are also in the container delivery and return cycle, the deposit transfer includes them as well.

The manufacturer continues to hold the deposit for a container sold to a consumer that is not redeemed. These funds must be turned over to the State unless:

- the containers are part of a commingling group; or
- the containers are from a brewery that produces no more than 50,000 gallons of product or a water bottler that sells no more than 250,000 containers of up to one gallon per calendar year.

Attachment A depicts the flow of containers, deposits and handling fees among the various program participants.

Program Participants

Initiators of Deposit

There are currently 264 initiators of deposit (IoD) registered with DEP. IoDs are manufacturers or exclusive distributors who begin the deposit cycle by collecting deposits on containers they sell. IoDs also pay for the refund of the deposits to the redeeming consumers. Program rules specify that BABLO shall be the IoD for spirits sold in the State.

IoDs are generally responsible for marking beverage containers with the refund value prior to selling them to a distributor or retailer. Product labels must also be registered with DEP and registrations are renewed annually. Statute puts responsibility for registering labels on the IoD, but program rules specify that the manufacturer is responsible for label registration in cases where the IoD is a distributor or BABLO.

IoDs are also responsible for picking up redeemed containers for the beverages they sell that are empty, unbroken, and reasonably clean. Statute allows for initiators of deposit to fulfill this obligation indirectly through a contracted agent or "pickup agent."

Finally, some IoDs must report their sales and redemptions and remit their unredeemed deposits to MRS by the 20th of each month. This requirement does not apply to containers that are covered by commingling agreements or to IoDs that are breweries producing no more than 50,000 gallons of product or water bottlers that sell no more than 250,000 containers of up to one gallon per calendar year.

DEP has the ability to pull products from sale in the State in the event that IoDs are noncompliant with their obligations under the redemption program.

<u>Retailers</u>

Numerous retailers also play a role in the redemption program, selling eligible beverage containers and charging the deposit to consumers. Statute requires retailers to redeem empty, unbroken, and reasonably clean beverage containers of the kind, size, and brand they sell unless they are party to an agreement with a local redemption center approved by the DEP.

<u>Redemption Centers</u>

Redemption centers are businesses that deal in the acceptance of empty returnable beverage containers from either consumers, dealers (retailers), or both. Redemption centers pay out the redemption value of containers to consumers who return containers, sort the containers according to standards agreed upon with industry or per commingling agreements, make the sorted containers available for pickup, and receive back the redemption value of the containers plus a handling fee from the IoDs or their pickup agents.

There are currently 460 redemption centers licensed by DEP. The licensing process requires an inspection and $50 fee. Licenses must be renewed annually.

Redemption centers process containers and refund deposits in several different ways. Some redemption centers manually count and sort containers into bags and cartons specific to each IoD, pickup agent and/or commingling group. Others use reverse vending machines (RVMs) which read product barcodes to electronically charge IoDs and produce a credit slip for consumers to cash in. Each RVM is for a specific type of material which is crushed by the machine. Still others use a hybrid system of manual sort and RVMs. Finally, one of the State's large grocery chains contracts its redemption efforts to Clynk, a vendor that acts as a hybrid of a redemption center and pickup agent. Consumers create a Clynk account and leave bags of containers at designated drop-off locations. The bags are transported to the Clynk processing facility where every container barcode is scanned and containers sorted by material type and baled. Consumers' accounts are credited within 48 hours for valid redeems and IoDs are electronically billed for each valid container redeemed.

Pickup Agents

IoDs may contract with a third party pickup agent to collect their redeemed containers. The cost of a pickup agent service is variable and individually negotiated as part of the contract between the initiator and the pickup agent. Contracted costs can be impacted by a number of factors, including (but not limited to): container material and size, sales volume and whether the scrap material is the property of the initiator or the pickup agent.

There are two licensed pickup agents in the State, TOMRA and Maine Recycling, who pay an annual $500 fee to DEP. The licensed pickup agents annually provide DEP with current lists of IoDs they are contracted with and beverage containers which they pick up, and notify DEP when changes are made.

Pickup agents bring the pre-sorted and counted containers back to their processing location, crush them, bale them, and send them on to recyclers. While there is no obligation that pickup agents are responsible for the processing of commodities, this is the way that both pickup agents in Maine operate.

State Administration

DACF administered the redemption program for 38 years from its inception in 1978 until the recent transfer to DEP in November 2015. DACF continued to do the inspection and licensing of redemption centers and checks for product compliance at applicable retailers until the end of a memorandum of understanding with DEP in November 2016. DEP is now responsible for the overall administration of the redemption program including: maintaining the label and product registry; licensing and inspection of redemption centers, pickup agents and initiators of deposit; developing rules and regulations; and removing out of compliance containers from sale.

DEP's initial efforts after taking over the redemption program were focused on managing the re-registration process, meeting with stakeholders and adjusting rules for the transition. DEP is now moving into a phase of looking at improvements to the system, including:

- requirements and guidance for redemption centers;
- ongoing inspections;
- fraud auditing;
- a centralized complaint process; and
- potential enforcement mechanisms for noncompliance with program requirements.

MRS's role in the redemption program is to collect unredeemed deposits, known as escheat, from non-commingling initiators of deposit (currently there are 123). Initiators of deposit (IoD) submit deposit transaction fund reconciliation reports to MRS on a monthly basis. MRS can encourage compliance by assessing any of the tax penalties specified under the general provisions of Title 36[2], including understatement penalties, interest, and failure to pay penalties. Exhausting all other avenues, MRS can request DEP to remove a non-compliant initiator's product from sale in Maine.

[2] Title 36 is the taxation title which sets out the general administrative and enforcement provisions of the State Tax Assessor, including the tax penalties that can be imposed. The redemption program statute specifies that the return and the escheat fall within Title 36 in terms of obligations on filing returns or paying unredeemed deposits.

OPEGA observed that the State collects very little data on the program that can be used to assess the program's costs and impacts.

Commingling Agreements

In 2003, legislation was enacted to allow for commingling agreements between two or more IoDs allowing dealers and redemption centers to commingle the containers for which they have initiated deposits. This means that containers can be sorted by like size, material, or type of beverage container for all IoDs who are part of the group. Statute also requires that IoDs that enter into a commingling agreement shall permit any other IoD to become party to that agreement on the same terms and conditions as the original agreement.

Like product groups are those that are made up of the following products:

- Beer, ale or beverage produced by fermenting malt, wine, and wine coolers
- Spirits
- Soda
- Noncarbonated water
- All other beverages

Containers are considered to be of like materials if made up of one of the following materials:

- Plastic
- Aluminum
- Metal other than aluminum
- Glass

There are currently four qualified commingling agreements filed with DEP: Maine Beverage Association (Coca-Cola and Pepsi), Maine Beer & Wine Wholesalers Association (8 distributors), Polar and Nestle, and SoPo Wine Commingling. BABLO has also been deemed a qualified commingling group for spirits products, but no agreement exists.

Commingling agreements effectively transfer the burden of multiple, physical sorts of containers from redemption centers to the IoDs. Rather than physically sort the containers, the IoDs instead allocate the costs of deposit reimbursements, handling fees, and pick up of the containers via an accounting exercise performed by either agreement participants or a third-party administrator. In practice, commingling agreements are often unnatural partnerships between competitors that require trust and confidence in other agreement members' ability to track and record sales data throughout their respective distribution channels.

Parties to these qualified commingling agreements receive two primary benefits. The first is a ½ cent reduction in the handling fee paid to redemption centers for containers covered under the agreement. The second is an exemption from reporting and remitting unredeemed beverage container deposits to the State via MRS.

During preliminary research, OPEGA and program participants noted concerns with the interpretation and implementation of the statute governing commingling agreements.

OPEGA Recommendation on Project Direction

OPEGA recommends continuing this review of the Beverage Container Redemption Program with a focus on the following questions:

1. To what extent is the program accomplishing its intended purpose?
2. What types of costs are incurred by the State and Initiators of Deposit for the program and how are these costs potentially offset?
3. To what extent is commingling accomplishing its intended purpose?
4. To what extent are effective measures in place to address risks of non-compliance with program requirements and risks of potential fraud and abuse in the program?
5. How does Maine's program compare to beverage container redemption programs in other states?