SEN. JUSTIN CHENETTE, SENATE CHAIR
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:
SEN. PAUL T. DAVIS, SR.
SEN. LISA KEIM
SEN. NATHAN LIBBY
SEN. LINDA SANBORN
SEN. JEFFREY TIMBERLAKE
REP. KATHLEEN R.J. DILLINGHAM
REP. AMY ARATA
REP. JENNIFER DECHANT
REP. H. SAWIN MILLETT, JR.
REP. MARGARET O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary

January 25, 2019
Accepted February 22, 2019

Call to Order

The Chair, Sen. Chenette, called the Government Oversight Committee meeting to order at 9:04 a.m. in the Cross Office Building.

Attendance

Senators:	Sen. Chenette, Sen. Keim, Sen. Sanborn and Sen. Timberlake Joining the meeting in progress: Sen. Davis Absent: Sen. Libby
Representatives:	Rep. Mastraccio, Rep. Arata, Rep. Millett and Rep. O'Neil Absent: Rep. DeChant and Rep. Dillingham
Legislative Officers and Staff:	Danielle Fox, Director of OPEGA Jennifer Henderson, Senior Analyst, OPEGA Joel Lee, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Andrea Smith, Director of Tax Incentive Programs, Department of Economic and Community Development

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

Sen. Chenette recognized that at the meeting were Representatives Bickford, Matlack and Stanley, members of the Taxation Committee.

New Business

Presentation of OPEGA Report on Employment Tax Increment Financing Program

Director Fox presented the Employment Tax Increment Financing Program report. (A copy of the report can be found at http://legislature.maine.gov/opega/opega-reports/9149.

Committee members' questions and comments included the following.

Rep. Mastraccio referred to the requirement of employee access to a group health insurance program and asked if the employer just had to offer the health insurance plan or does the employee have to take the benefits? Rep. Mastraccio also asked whether the plans have to be a certain quality or be affordable. Director Fox said that OPEGA does speak to that subject further in the report. She noted that an employee that otherwise qualified under ETIF may prefer a plan that is, for example, offered by their spouse's employer. Whether that employee should be considered to have met the health insurance requirement is something OPEGA points out in the report as an issue the Committee may want to look at.

Rep. Mastraccio thought it was important to note that the ETIF dollars are not an appropriation in the State budget. Director Fox said Rep. Mastraccio was correct. It is a statutory transfer that happens, but it is not an initiative that you would necessarily see in the budget document. OPEGA speaks on that issue further in the report.

Sen. Chenette asked if it was known why the intent was just for profit businesses because the nonprofit sector employs a lot of individuals in Maine. Director Fox noted that OPEGA did not have specific information as to what the program's creators had in mind in 1996 when they limited the program to for-profit businesses.

Rep. Millett asked if once information was entered into the State's AdvantageME accounting system is that information business specific and accessible by the public. Director Fox said the information is not accessible by the public. It is not that information becomes public, it is just the enhanced measures like the physical barriers and close network requirements are no longer applied. Rep. Millett asked if it would be possible under the open checkbook system that the public could ask for aggregate information relative to ETIF and obtain it. Director Fox said she would have to get back to Rep. Millett regarding his question.

Sen. Chenette noted that enhanced security measures are required to keep tax payer information confidential. He asked if that policy was supposed to be in place for all departments and if DECD was not following the policy to protect ETIF data without the enhanced security measure. Director Fox said DECD has different standards that apply based on the statute that governs them. It is not that DECD is not protecting the information from public disclosure, they are. It is that DECD has different levels of protections that are required. Both DECD and MRS are keeping the information confidential, but administratively they have to apply different standards.

Sen. Chenette asked if OPEGA was recommending that the GOC look at something to make it more seamless between OPEGA and the Departments to address the difficulties OPEGA had in obtaining access to information. He recognized that these challenges made OPEGA's evaluation process less efficient and limited what the Office was able to report. Director Fox noted that OPEGA's recommendation suggests the lack of clarity around protections required in maintaining confidential data. The Director said that OPEGA has the authority to access the information, and that OPEGA will err on the side of caution and be careful to abide by what they agreed to maintain as confidential.

Sen. Chenette asked if the highlighting of overpayments and some erroneous records are a reflection of the fact that there is no software or internal system beyond the spreadsheet that the information is recorded in. Director Fox said yes and noted the recordkeeping is done within the existing resources so there is no associated appropriation for the administration of the ETIF program. Sen. Chenette asked if there was a way for DECD to share their software or be of any help to MRS. Director Fox noted that MRS and DECD are looking at different things and use the programs for differing purposes. Sen. Chenette asked whether other software existed that they could both utilize to avoid issues. Director Fox did not know if they could find something that would serve both of their purposes and OPEGA did not look specifically at what the solutions were, but that a manual entry system does increase the risks for errors.

Rep. Mastraccio asked about programs in other states where a business gets some benefit, but not as much, if they are in an area where there is less need for development. She thought that was an interesting concept because it is a way to address the areas that they want to address.

Rep. Mastraccio asked if OPEGA had any information about who conducts the in depth analysis in North Carolina regarding targeting geographic areas because there has been previous discussions about how you can do those evaluations up front before you award benefits to businesses. Director Fox said OPEGA has that information and will provide it to the Committee.

Sen. Chenette asked for clarification about whether the report is saying that 13.1% attribution rate applies to the pool of potential applicants or to those participating in the program. Director Fox said the 13.1% is an attribution factor about business decisions to expand, or locate. The attribution factor is based on econometric methods which indicate that a 2% reduction of a business's costs will affect 10% of business decisions.

Ms. Henderson said it was a big effort for OPEGA to decide how to approach getting an understanding of how many participating businesses can be reasonably believed to have hired people because of the ETIF money. Some Committee members may remember when OPEGA did the New Markets project and there were 10 businesses participating in that program. OPEGA went out and spoke to them individually and got a good understanding of what each project was about and what they needed to make it work. Then OPEGA was able to make a judgement about how critical the New Markets money was to making the projects happen. She said the ETIF program is much bigger, benefitting a couple of hundred businesses, and OPEGA could not go out and reasonably speak to all of them. Ms. Henderson said OPEGA did not feel comfortable using a survey and assuming that it would represent the wide range of businesses and circumstances, so what OPEGA did in this case, was turn to the research and to all of the others who have been looking at the data for years. As Director Fox had explained, the economists, in looking at all of the data over a long period of years, came to the conclusions that OPEGA is relying on: that a 2% reduction in costs would cause about 10% of businesses to make a decision based on that reduction. By allowing them a 2% reduction in the costs of their project, their expansion, their hiring, you would cause 10% of them to possibly make a different business decision. OPEGA looked at how much an ETIF benefit represents to a business with regard to the increased payroll costs associated with all the net new employees they are hiring and found that it is close to the 2% in the research, but it is actually 2.6%. When you scale the 2% to the 2.6% that is how OPEGA got the 13.1%.

Ms. Henderson referred the Committee to Appendix B of the report, the literature review that Mr. Lee did and also some of the caveats detailed there. She noted that critics of the econometric method OPEGA relied on have criticized the method as overstating the likelihood that a business is actually changing their behavior in response to the stimulus.

Sen. Keim asked if Ms. Henderson was agreeing that the 13% might be an over statement. Ms. Henderson said for OPEGA's own reasons, the Office believes the estimate is on the high side. Sen. Keim said if the ETIF is affecting 13% of the businesses that apply for the ETIF program, could it also be stated that their decisions are 13% affected. When you make a decision you look at all of your factors so they are all affected by 13% as opposed to only 13% of the businesses, it in fact entered into all of their decision-making. So it is a factor in every business's decision, but only at the rate of 13%. Sen. Keim asked if that would be the same as what Ms. Henderson said earlier if it was stated that way as well. Ms. Henderson said she would have to give that statement some thought because she was not sure it would be that easy a translation. She wanted to make it clear that OPEGA was using information based on years of data, but it is just an estimate. They cannot say, beyond a shadow of a doubt, that it is 13.1%. It is OPEGA's best estimate at this point. OPEGA is saying that based on ETIF's structure, it is the reasonable top bound at this point.

Rep. Mastraccio asked if the State's structure was such that we knew all of Maine's ETIF businesses were in areas of need or under employment it would be a higher percentage that would say they would not have stayed unless the ETIF program existed. She was trying to figure out if the structure of Maine's program is such that it makes it harder to see that the business only expanded because of ETIF, the "but for" and the Pine Tree Development Zones (PTDZ). Ms. Henderson said if Rep. Mastraccio was talking about a different program with different requirements and different targeting, then OPEGA may have chosen not to even apply those methods. They may have chosen a completely different evaluation method to get at how likely is it that it impacted their behavior. In part, OPEGA went to that method because ETIF is broadly available. ETIF businesses can be anywhere and they have to hire some new employees, so there are not a lot of indicators built into the program that provide evidence of such things like financial hardship or that the business was considering relocating in other states or any other things OPEGA might have used as indicators that the program was really necessary to the creation of the jobs.

RECESS

The Chair, Sen. Chenette, recessed the Government Oversight Committee meeting at 10:34 a.m.

RECONVENED

The Chair, Sen. Chenette, reconvened the meeting at 10:46 a.m.

Director Fox wanted to clarify the attribution factor of what the 13.1% represents. OPEGA was tasked with looking at, and finding a way to measure, the number of jobs that have been reported to be created because of ETIF. OPEGA looked at how many we can actually attribute to ETIF since there are a host of other programs and reasons why that job could have been created. Out of all the jobs that have been reported to have been created because of ETIF how many actually were? That is what the 13.1% attribution factor estimates. OPEGA applied the attribution factor to the overall number of reported jobs and that gives an idea of how many you could reasonably estimate to have been created because of ETIF. There are a lot of ways to look at what attribution means and how attribution or behavior can be impacted. OPEGA chose this way to measure that impact, The econometric method was used and that is how it applies broadly.

Rep. Mastraccio asked if it is possible to have a database with all state tax programs in it, because that would make doing evaluations easier. Director Fox was not sure it is just the function of a database but maybe also the way in which the programs are designed. For example, if there was a sales tax exemption associated with a particular program and data is reported, collected, or separated out about the exemption's usage, then we would have data to work with. There are other factors beyond just the creation of a database. Rep. Mastraccio asked if there is a place where all of the tax incentives that a business is taking advantage of come together. Ms. Henderson said that did not exist in Maine, but does in other states. Rep. Mastraccio thought that knowing which states would be good information to have going forward.

Rep. Mastraccio asked if the total ETIF cost reported by OPEGA includes the payments that are made at 80% because they qualify under PTDZ. She wanted to make sure there was not another PTDZ payment. It is just that PTDZ increases the ETIF amount. Director Fox agreed that PTDZ increases the ETIF benefit and that the total reported by OPEGA includes all ETIF payments, including those at the PTDZ rate.

Sen. Chenette referred to the reporting requirements and how they could be potentially onerous and discourage eligible businesses from participation and asked if that was because of the application process. Director Fox said it is because of the annual reporting required. In order to maintain your certification as an ETIF business you have to file an annual report. That report informs the process that MRS uses to actually administer the payment. Sen. Chenette asked if it was an on-line system of reporting. Director Fox said DECD has an on-line reporting system via the BDTI data base.

Rep. Arata referred to page 21 of the report where it has the number of direct jobs attributable and asked if the numbers across the line are repeats. Ms. Henderson said they are. Rep. Arata said that is far less than the 54, 844 jobs. Director Fox said the information Rep. Arata is referring to has the attribution factor that OPEGA struggled with. It is not the jobs reported that are associated with ETIF, but using the attribution factor, it can be attributed directly to the establishment and use of ETIF. It is what OPEGA applied the attribution factor to and is what brings it down to the 1,295. Ms. Henderson said there are three different data sets. The roughly 54,000 is all of the jobs that were claimed, including claims for the same job multiple times across ten years. OPEGA counted each time that they were claimed. As Director Fox said, OPEGA took the 54,000, divided it up by year and applied the 13% attribution factor. That is in the Table on page 21 as direct inputs. The 1,295 is a different set. For that, OPEGA took the 54,000 and analyzed it to identify the year when a job actually appeared for the first time. For that year, we considered the job to be net new. What is claimed the next year and the next year it is not a brand new job in those years. It is the continuing claims of the same job. OPEGA came up with the total of net new jobs created per year, then applied the 13.1% to figure out, out of the total jobs that were new, claimed for the first time, what percent may actually be attributable to ETIF benefits. That is the 1,295 figure.

Sen. Chenette asked if the expected increase in property taxes is assuming that a person moved to the State of Maine and purchased property. Director Fox believes it represents the property tax paid by the business and the employees.

Sen. Chenette referred to the comment in the report that the Shipbuilding Facility Investment Credit stipulates that there is an exclusion of other benefits and asked if that was the only one. Director Fox said there were some others that are no longer in existence where the ETIF statute said if you are using these jobs to qualify, you can’t use the same jobs to qualify for ETIF benefits, but those are not in effect anymore.

Rep. Mastraccio said even though the Legislature did a lot of work and thought they meant that in the legislation for the Major Business Headquarters Expansion Credit obviously they missed something. The Legislature did it in the Maine Shipbuilding Facility Investment Credit legislation, but didn’t in that one.

Sen. Keim referred to the sentence “Likewise, up until State capital improvement districts were repealed in 2003, ETIF statute disallowed any claims for benefits” and what she is questioning in that sentence is what are State tax increment financing districts. Ms. Henderson said OPEGA can report back to the Committee at another meeting what those State tax increment financing districts were. Sen. Keim referred to “Approximately 44% of this impact is due to expected increases in property taxes collected at the local level.” She noted that there are TIF districts active at the local level, but in the Report it says they have been discontinued. Director Fox said for this one provision in law that did provide for some tax financing districts that no longer exists, ETIF said you can’t use those jobs that were created under that benefit to qualify for ETIF benefits. Ms. Henderson noted that Sen. Keim might be referring to municipal tax increment financing districts, which are alive and well. It is just the State tax increment financing districts that went away. There are no longer State tax increment financing districts, but there are municipal ones and, as far as OPEGA knows, municipal TIFS and ETIF don’t have any exclusionary prohibitions.

Sen. Keim asked if the local TIFs would affect the 44% impact on property taxes collected. Rep. Mastraccio said in the municipality you might shelter that property tax, but you are still collecting the property tax. You collect the property tax at the municipal level and then you shelter a portion of it in a place in your TIF district so that the

State does not include that in your valuation. Director Fox suggested what was being asked is if these municipal tax increment financing districts have an impact on that 44% increase in property tax collections. OPEGA did not look at that specifically for the review, but could check if that is information they could bring back to the Committee.

Sen. Keim asked if the 1,295 new jobs included the jobs that were saved because the business was in economic trouble. Ms. Henderson said they are.

Sen. Chenette asked if OPEGA had the breakdown on the 1,295 jobs so we know which are new and which might be considered retained. Director Fox said when OPEGA got to the number of 1,295, which was after they applied the attribution factor, they did not break that information down specifically to know whether 20% of that 1,295 were from those jobs, but overall of the job years reported, 20% were associated with the financially troubled businesses. OPEGA can identify what percentage of those jobs represented the ones that were not necessarily new, but were counted as new for the business that was in trouble.

Rep. Mastraccio noted that in the Recommended Legislative Action in the report's Recommendation 1 that LD 367, which came out of the 128th GOC, passed through both Houses, but died on the Appropriations Table. She has resubmitted that legislation this session and is LD 50. The LD is in the form that it previously went under the hammer and will be heard in the Innovation, Develop, Economic Advancement and Business Committee on February 7th at 1:00 p.m.

Rep. Mastraccio said with regard to Recommendation 3 she would like to find out if DECD's study says whether geographical limitations under the PTDZ program should be amended. She assumed that the study was received by the Legislature as required in January. OPEGA will check the status of that study and report back to the Committee.

Rep. Mastraccio hoped someone from DECD will be at the public comment period for OPEGA's ETIF report.

Rep. Arata noted that the amount of money the businesses received is based on the withholding of the employees. She wondered whether this created a disincentive for business to hire people with more allowances and hence lower withholding. She thought it created a conflict. Director Fox said the payment is based on the withholdings that were actually submitted. Elective withholdings are excluded, but Rep. Arata is right, that the basis of the payment is the withholding.

Rep. Arata noticed that other states had the benefit based on gross wages, not withholding, and asked if there was a reason why Maine decided to base the amount of withholding rather than gross wages. Director Fox said that OPEGA did not know the reason for this decision when the program was created in 1996.

Rep. Arata said in regard to confidentiality and detriment to competitors that the competitors do not know that a certain business has the ETIF benefit because it is confidential so would not know that their competitor, who is making cheaper widgets than they are, has an advantage. She asked if that was correct because whoever participates in the ETIF program is confidential information. Director Fox referred to the ETIF report where OPEGA notes that the criteria for the Commissioner of DECD approving an ETIF application is not very helpful and DECD has never denied an applicant. She said that the DECD Commissioner and the State Economist judge whether a proposed ETIF project would result in substantial harm to an existing Maine business. It is not a function of another business saying they are harming me. It is what the Commissioner looks at when reviewing an ETIF application. She said Rep. Arata is right, a business would not know if a competitor was receiving ETIF benefits. Rep. Arata said the confidentiality seems to impact the criteria.

Rep. Mastraccio cited the common assumption, referenced in the report, that any new business is good business. Director Fox said the criteria does say that if the benefits of a new ETIF project outweigh the detriment to another business, then under statute the new ETIF project would still be approved. OPEGA heard from those that review the applications, that they have never had to deny an application based on that and could not imagine a circumstance where the positive impact of the jobs would outweigh the negatives to the existing business.

Rep. Mastraccio asked if the Committee could get a list of all the PTDZ and ETIF businesses. Ms. Smith clarified that DECD, in their report to their legislative oversight committee, does indicate the companies that are participating in DECD's programs and an estimate they say they are to invest, the number of jobs and what that payroll amounts to. DECD does not release what a business may get from participation in those programs, but does in fact release the names of businesses who are participating.

Sen. Keim asked to confirm that DECD releases the businesses, but not what they may get. Ms. Smith said DECD is told by statute what to provide for information in the report to the Legislature. In order to protect taxpayer data DECD does not release information about the amount of ETIF benefits a company may qualify for, but DECD does provide a list of the companies who are participating, where they are located, when they got certified and then what they have told DECD their estimated real estate investment, property investment and job creation and what that payroll equates to. Ms. Smith said DECD basically reports the information from the businesses' applications that are not confidential.

Sen. Keim asked if the GOC could get a copy of DECD's list of businesses receiving program benefits and asked if the list contains where the business is located. Ms. Smith is pretty sure that the list that DECD provides does include locations because typically a legislator would want to know which business is in their area. She said DECD's next report is not due until this coming June, but she can provide their report from last year.

Director Fox said one of the points OPEGA made in the ETIF report is that the two agencies, DECD and MRS, who hold this information, disclose it or protect it in different ways. Ms. Smith agreed. Director Fox said that is a challenge for someone trying to get information from MRS with different confidentiality standards than DECD. If you are talking about the program itself, should the confidentiality protections for that program information be uniform regardless of who is holding what records. That may require listing what those records are specifically, but that is what the recommendation in the report addresses.

Ms. Smith said DECD agreed that it would be helpful for DECD to know what information they can give out and still protect data, but be able to provide people with information about who is participating and what they are intending to do.

Rep. Mastraccio said there is also the issue of transparency because as stewards of the tax payers' money, the Legislature needs to be able to know that information. She thought that by statute, DECD had to provide that information to the committee of oversight. Ms. Smith agreed, and said she believes the discussion in the past has been when people have wanted information that DECD has not been willing to give out, and that is where you get into what is confidential and what is not.

Rep. Millett noted that he found the analysis extremely comprehensive, very detailed and well presented. He was interested in the next steps from the GOC's perspective and the affected parties. He thinks, prior to the February 8 public comment period, it would be nice to receive agency responses to the ETIF report's 11 recommendations and maybe the affected stakeholders could therefore, on the 8th, comment on them or weigh in on whatever action plan emerges at the GOC level. Not being part of the process in the past, does not know how quickly the Committee can take the information and translate it into an action plan. He was looking to the Chairs for guidance and direction.

Sen. Chenette said today OPEGA presented the ETIF report and a separate meeting date is scheduled for February 8, 2019 for public comment and will also be an opportunity for the Committee to vote on accepting the report. He said the Committee vote is not whether you agree, or disagree, with the recommendations in the report. It is strictly about accepting the report from OPEGA. The GOC will also have a discussion about the recommendations and as Rep. Millett stated, hoped to hear the Departments' comments. Sen. Chenette said the GOC may have to vote on what action to take on the recommendations at another scheduled meeting. Some of the report recommendations are based on the Department versus a legislative recommendation so the Committee will have to decide if they want to send a letter to the Department regarding recommended action. He assumed that on either February 8 or 22 that they will have Committee movement if they decide to move in that direction, but depends on what the GOC wants to do as a whole.

Rep. Mastraccio reminded the Committee that the Legislature will be having the public hearing on LD 50. She stated that she thinks the ETIF report would be utilized by any committee that was looking at developing a long range strategy for economic development in Maine. The report recommendations do not just address ETIF, they address all the other programs that Maine uses and hopefully will use all the reports OPEGA has done on tax expenditure programs. In her experience the GOC has addressed report recommendations and will either ask the committee of jurisdiction to come up with the legislation or the GOC will do it themselves. Director Fox reminded the Committee that they have standing authorization to report out legislation and can happen at any time. The GOC does not vote on the legislation, they vote on reporting it out and it goes to the policy committee.

Director Fox thanked the staff at DECD and MRS for their cooperation throughout the review, as well as the Attorney General's Office for their research and guidance with regard to the confidential data and access to that data.

Director Fox said OPEGA is available to any policy committee to present their report, or part of the report, should a committee request a presentation.

Report from Director

No report.

Unfinished Business

Vote of Committee Rules of Procedure

No Committee vote was taken on the Rules of Procedure. The Chairs agreed that this will be the first agenda item on the February 8th.

Planning for upcoming meetings

Director Fox said the public comment period on OPEGA's ETIF report will be on February 8th and a second orientation will be done on the tax review process. There is a role that the GOC plays in terms of how tax expenditures in the whole universe of them get categorized and on what schedule they get reviewed. She will talk to the Committee about what they do and then in later meetings the GOC will actually do that work. On February 22nd OPEGA intends to provide the Committee the presentation on the Child Protective Services Special Project - reporting on the perspectives of frontline workers that work in Child Protective Services with the Department of Health and Human Services.

Sen. Keim thanked OPEGA for all the diligence that was put into the ETIF report. She asked if OPEGA had information on how much the report cost because thought it was an interesting way to consider, not only when the Legislature implements programs, but the oversight of programs is costly as well. The more programs Maine has the more oversight they have to create to make sure they are implementing them well. It would help the Legislature think about maybe having fewer programs, or marrying some of the programs. That was the intent behind her question, but said obviously there was a substantial amount of resources involved in the report and thinks that is something for the Legislature to consider because they have asked the GOC to look through all of the tax programs and report back on, which is important for accountability, but they also have to think about the costs of the work and the oversight.

Next GOC meeting date

The GOC meeting dates for February are 8 and 22, 2019. Both meetings will begin at 9:00 a.m.

Adjourn

The Chair, Sen. Chenette, adjourned the GOC meeting at 1:42 p.m. on the motion of Rep. Millett, second by Rep. Mastraccio, unanimous.