



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. H. SAWIN MILLETT, JR.
REP. MARGARET O'NEIL
REP. TERESA PIERCE

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY
January 10, 2020
Accepted January 24, 2020**

Call to Order

The Chair, Sen. Chenette, called the Government Oversight Committee to order at 9:08 a.m. in the Cross Office Building.

Attendance

Senators: Sen. Chenette, Sen. Keim, Sen. Libby and Sen. Sanborn
Absent: Sen. Davis and Sen. Timberlake

Representatives: Rep. Mastraccio, Rep. Dillingham, Rep. Arata, Rep. Millett, and
Rep. O'Neil
Absent: Rep. Pierce

Legislative Officers and Staff: Danielle Fox, Director of OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Amy Gagne, Analyst, OPEGA
Ariel Ricci, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

Summary of December 10, 2019 GOC Meeting

The Meeting Summary of December 10, 2019 was accepted as written.

New Business

- **OPEGA's Proposed Project Direction for the Review of Tax Expenditure Evaluation: Seed Capital Investment Tax Credit**

Director Fox referred members to the information in their notebooks regarding OPEGA's full evaluation of the Maine Seed Capital Tax Credit Program and Ms. Ricci, the OPEGA Analyst leading the evaluation summarized the Proposed Parameters for OPEGA's Full Evaluation of the Maine Seed Capital Tax Credit (Seed) Program. (A copy of the documents regarding the Proposed Parameters are attached to the Meeting Summary.)

Rep. Mastraccio noted that LD 1200 - An Act to Amend the Maine Seed Capital Tax Credit Program is on the Appropriation and Financial Affairs (AFA) Committee Table because it has a fiscal note to increase the Program's cap. She thinks the language in the parameters is appropriate because that bill could pass if the Legislature stripped the increased cap and changed the language. She is not sure that is what will be done, and hoping it doesn't.

Ms. Ricci said the cap is currently \$5 million. The LD 1200 proposal is to increase the cap and is the piece of legislation that has it on the Special Appropriation's Table.

Sen. Chenette said historically the GOC has tried to avoid having something in statute directing the GOC or OPEGA to do something and referred to the extract in LD 1200 to have a direction specifically for OPEGA.

Director Fox said what has generally been avoided is a date specific that interferes with the GOC setting the priorities of when OPEGA does what evaluation. Guidance from the Legislature about how those programs be evaluated, or what things we are going to measure them against, is actually helpful and does not change what the GOC decides in the end of what the parameters will be, as that authority is in the GOC's statute. Guidance gives a sense of what the Legislature may have had in mind when it was considering programs and the GOC can use that information when deciding on the parameters. What has been discouraged, and the GOC has supported, is altering the schedule, or setting the priorities for the GOC/OPEGA through statute, rather than at the Committee level.

Sen. Chenette said regardless of what happens with LD 1200 in the AFA Committee, the GOC is setting the parameters, basically incorporating the language in that LD.

Sen. Keim asked if LD 1200 is just adding in the evaluation piece or are there other differences.

Director Fox said, with regard to evaluation parameters, there is nothing in the current statute that provides similar guidance of how we would evaluate the program.

Sen. Libby would like to know if beneficiaries of the Seed Program are also receiving other income tax credits. In his reading of the statute there is nothing that prohibits a beneficiary of the Seed Program from also qualifying for another tax program. Ms. Ricci agreed.

Sen. Libby asked if OPEGA would be able to uncover, through their research, whether companies are taking advantage of the Seed Program, Pine Tree Development Zones (PTDZ) and Research Expense Tax Credit all at the same time and that would be covered in "(g)" under "Evaluation objectives".

Ms. Ricci's understanding is it would and will make a note to ensure that is looked at. Director Fox noted that was the type of guidance OPEGA would be looking for at the next GOC meeting when the Committee is talking about the Parameters.

Rep. Mastraccio thinks LD 1200 came about because of the work the GOC has done in other tax programs and is trying to put the evaluation pieces into legislation right up front. The GOC asked everyone who looks at that type of legislation to include what is expected and how we are going to evaluate it. She thinks that is why the LD went through the Legislature with no problems except for the fiscal note.

Rep. Millett referred to Committee Amendment A and was curious about what Committee Amendment A and the bill, as it sits on the Table, do for the cap. Was the fiscal note implication for fiscal years 21 and 22/23 and for the material that will go to the Taxation (TAX) Committee in the Parameters the GOC is discussing for the evaluation objectives, will the TAX Committee have sufficient time to respond to the complimentary supplemental or duplicative issues? The GOC is asking the TAX Committee to respond to the GOC by January 24th. He also asked if Sen. Libby's concerns about businesses taking advantage of multiple tax programs be addressed?

Ms. Ricci said the fiscal note in LD 1200 is to increase the cap for credits from \$5 million to \$15 million. In terms of whether or not the fiscal piece passes are irrelevant to how OPEGA evaluates the Seed Program. We would still need a decision on the evaluating parameters. As to the question about the TAX Committee's time line to respond, Ms. Ricci said OPEGA sent a memo to them shortly before Christmas explaining that they were being asked to comment on whether they are content with the proposals or have suggestions for changes? The TAX Committee was given more lead-in time because we wanted to give them time, in the hopes they would be able to meet and give input before the GOC's next meeting.

Rep. Millett referred to the cap being tripled from \$5 million to \$15 million and asked if the entire cap increase would incur immediately and if there was a calculated assumption if that bill were taken off the Table and then acted on in the short Session, what the impact would be in 2021, 2022 and 2023.

Ms. Ricci agreed that simply increasing the amount of the cap does not immediately translate into actual foregone revenue in that year because the way it is structured. Director Fox noted that the TAX Committee may have that information from when they did work on the bill.

Sen. Libby pulled up the fiscal note on LD 1200 and reported that for FY21 it is \$2.8 million, FY22 is \$4.2 million and FY23 is \$5.4 million.

Sen. Chenette thought it important for the GOC to know that their discussion today and moving forward is not related to the cap, it is about the parameters that just happen to also be in LD 1200. Other discussions related to the fiscal impact and whether a cap should be raised or not, happens outside of this Committee in the policy committees

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

Christopher Roney, Esq., General Counsel, Finance Authority of Maine. (A copy of Mr. Roney's testimony is attached to the Meeting Summary.)

Rep. Mastraccio referred to Mr. Roney's suggested changes under "Purpose" and asked if FAME ever had an opportunity to speak when LD 1200 went through the Committee process and if FAME had particular changes, they might want to present them at that point in the process.

Mr. Roney said yes and no. These were proposed by the Committee and FAME had the opportunity for input. He did not object to them because, at the time, did not feel they were exclusive so did not disagree that there might be things that should be looked at.

Rep. Mastraccio said now that Mr. Roney knows what the GOC is going to use the information for, looking down the road when writing legislation and helping the policy committees he will look at how we are trying to make it more helpful for the GOC and OPEGA.

Mr. Roney agreed with Rep. Mastraccio and will take note. He said all of the evaluation parameters came in the amendment process and were not part of the development of the original bill. He does not think there were any substantive changes to the original from the amendment standpoint, other than small language changes, but noted that Rep. Mastraccio's point was well taken.

Sen. Keim wanted to know about the overlap that happens when one program is being used to leverage eligibility for another State program and if there is too much State exposure when that happens. Is the total sum of the bundle that the State is investing worthwhile for the venture?

Mr. Roney said that is something FAME looks at and, internally, call it double dipping. His overall sense does not think there is too much of an overlap partly for the reason that some of the leverage is taking place outside the Seed Program. Whether these funds are matching, for example, the Maine Venture Fund, that may, or may not, be money that you could attribute to a tax credit. Recognizing that these tax credits go to the investors where, as some of these similar programs mentioned earlier, such as PTZ benefits, etc., go to the businesses themselves. Not that the business is not helped by the investment being made, but the tax credit allocations are to a different stakeholder. He thinks a good thing to look at is what is the degree of overlap and should there be overlap.

The Committee thanked Mr. Roney for his testimony and for answering their question.

Sen. Chenette said at the next GOC meeting members will be discussing the parameters for the Seed Program. He suggested that they go through the recommendations that FAME has suggested for edits and what OPEGA has provided for information and think about what they want included in the Program parameters. He noted members asked about double or triple dipping and there seemed to be consensus to look at that.

Director Fox reminded the Committee who receives the Seed Program, who gets the credit. It is the investors that get the credit. Sometimes when we are talking about benefits made specific to, for example, ETIF or PTZ, those are likely the businesses that possibly got the infusion of cash.

Sen. Libby said, in reading the statute, he understood a co-owner could also be a beneficiary, so there is still a potential for overlap among co-owners. Director Fox agreed and said OPEGA will make sure they look at that.

Timothy P. Agnew, Portland, Maine. (Mr. Agnew provided a copy of his comments, but did not speak at the meeting. A copy is attached to the Meeting Summary.)

• **Joint Standing Committee on Taxation's Tax Expenditure Review December 2019 Report**

Director Fox said the TAX Committee's report is in response to what the GOC/OPEGA provided to them. (A copy of the Taxation's Tax Expenditure Review December 2019 Report can be found at <http://legislature.maine.gov/doc/3614>.)

She thought it would be helpful for her to point out the highlights of where to look if Committee members want to know what the TAX Committee has done in response to the GOC's report. Page i and ii are the formal

recommendations that came out of the TAX Committee's work, noting that there were not many formal recommendations.

Director Fox said in the TAX Committee's report there is a worksheet that begins on page 5 where they go through each of the recommendations that OPEGA made in the ETIF report and also what the GOC commented on when presenting the report to the TAX Committee. Their response to those recommendations is included in the chart so you can see what they were thinking in terms of what lead to their final recommendations. There are several references to hold off acting on until the unveiling of the Long-range Economic Development Plan (Plan), which at the time of the TAX Committee's work, was not publicly available. On page 15 of the report the TAX Committee provides a response to the memo from the GOC which asked them if they could potentially seek more information with regard to the information that we have on the expedited items, the tax exemptions where MRS sometimes just provides a range or says there is not enough data to say exactly how much was exempted, what the dollar amounts were. The TAX Committee provides a response to that and to the GOC's memo in their report.

Rep. Mastraccio referred to the TAX Committee's recommendation and asked if the GOC could talk about what they can do in follow-up. There are a couple of recommendations regarding the ETIF program statute being amended and whether that could come from the GOC, or whether the TAX Committee is already in the process with something happening, which is not clear in the information received from the TAX Committee. On the expedited review, she was concerned that MRS could not figure out how many people are using the tax free sales. She is not concerned with who the individuals are, it is more that MRS could put that information together and give the Legislature a real figure, so was not satisfied with that response.

Sen. Chenette referred to Sen. Libby's earlier point on the other tax credit program of double dipping. One of the recommendations on page ii is to make sure that there is no double dipping between the ETIF Program and the Major Business Headquarters Expansion Credit so that is one of the recommendations going forward that the GOC can think about for the next meeting of whether we would like to report out a bill pertaining to that recommendation and, hopefully, will get a sense of what may, or may not, be in the works from the TAX Committee. He said the GOC's responsibility is to figure out, based on recommendations from reports, of whether to move forward with proposing legislation.

Director Fox said, as Sen. Chenette and Rep. Mastraccio mentioned, there are recommendations here. Recommendation 1 is a prospective recommendation meaning that if companies in the future were to be enrolled in both of these programs they couldn't count the same employees for each. Recommendation 2 responds to some of the recommendations and discussion in the ETIF report regarding confidentiality. There are multiple provisions in statute, both that govern the program specifically for the Department of Economic and Community Development (DECD) and then broader confidentiality provisions that deal with all tax payer information data and there can be reliance on one more than the other. That had some specific impacts with regard to the ETIF Program in terms of not always knowing who may be receiving the benefit. The TAX Committee's recommendation is specific to ETIF, maybe not the broader conflicts within the confidentiality provisions, but seems specific in that the information that OPEGA cited that might be useful and beneficial, be available publicly. Those are the two recommendations that the TAX Committee made.

Director Fox said between now and the next meeting she will contact the Analyst from the TAX Committee to see if there is any legislation that exists now addressing the Committee members' concerns. If legislation does exist, she will provide the GOC with copies and if legislation does not exist, she can provide them with draft language that gets at the basic level. The GOC could use their authority to introduce legislation to put those issues forward and can decide whether to move forward with putting out legislation that would probably go to the TAX Committee.

Rep. Mastraccio said TAX Committee cited a number of times when discussing, in particular, the ETIF report that they were waiting for DEDC's Plan. She asked if the Director could check with the TAX Committee about whether they are planning to follow-up with DECD to discuss the relationship of ETIF to the Governor's plan.

Sen. Chenette said at the next GOC meeting they will talk about what next actionable steps the Committee may want to take. Director Fox clarified that the Committee is not asking OPEGA for a formal presentation and the Committee agreed.

- **Discussion regarding prioritizing review topics and suggestions of topics to add to the Approved Projects List**

Sen. Chenette noted that at a previous meeting the Committee indicated that they wanted to accelerate some actions regarding the Maine Commission on Indigent Legal Services (MCILS) review.

Director Fox referred to the communications received from Roger Katz, as a member of the MCILS Board and the Judiciary (JUD) Committee. She thought the focus of prioritizing could start with the Committee discussing their priorities regarding the MCILS review. She suggested talking about different ways to prioritize that review and what that means to other reviews on OPEGA's work plan.

Sen. Chenette recalled hearing at the last meeting members' concerns about MCILS. The JUD Committee has its work and is moving forward with it, so for the GOC to wait a year or so for additional recommendations may not be prudent to what we are trying to accomplish. The question is how the Committee can get some recommendations that compliment the work of the JUD Committee that tackles the issue from different aspects being worked on while in Session so that some actionable steps could be taken. One of the discussion points today needs to be how do we make that happen without impacting some of our projects. Obviously, Child Protective Services is still at the top of everyone's list so we don't want that to be impacted, but there may be other elements to OPEGA's workload that can be shifted in terms of a timeline if the Committee wants to prioritize MCILS. He said it is totally up to the Committee to make that determination.

Sen. Keim agreed, but wanted to hear the options, what OPEGA's other work would look like if the Committee prioritized MCILS and how the time lines would change. She noted that the JUD Committee did vote unanimously to ask the GOC to prioritize the MCILS review.

Director Fox said if OPEGA's work was changed, the evaluation that would come most into play is the review of Maine Citizen Initiative Process (MCIP). The other reviews OPEGA is working on is the Out of Home Placements for Children Removed from Care by DHHS/OCFS. OPEGA is still in the preliminary research phase of collecting periodic data and then will come back to the GOC with a second project direction statement at which time the Committee can decide on the parameters for that review. That review would not be impacted that much. OPEGA is tracking developments and meeting with staff again on the Improvements to the Child Protection System. We do not think that work would be implicated if the GOC changed the priority of the work plan. Those reviews would stay on track as they have been.

If nothing changed on the work plan, Director Fox estimated that OPEGA can do a full review encompassing all 5 of the scope areas that were listed in the MCILS Project Direction Statement, a report could be released in approximately 9 months. That is without any changes in OPEGA's resources. To do the complete review OPEGA in a 6 month timeframe would take resources from the MCIP review and still considering all 5 areas in the MCILS review. The other option, which would provide information to the GOC, MCILS and the JUD Committee most quickly, would be if the GOC broke down the 5 areas of the evaluation scope and focused on two. Director Fox referred members to page 5 of the Project direction statement for the MCILS. (A copy is attached to the Meeting Summary.) If OPEGA took resources away from MCIP and focused on number 1 and 5, which are most closely associated with the original intent that the GOC gave OPEGA to review, MCILS

would become a two-stage process. Within a period of about 3 months OPEGA could have an evaluation on those two areas and, once that is complete, would continue on with the other 3 scope areas. Director Fox said that is a very preliminary statement, but thought helpful in considering if the Committee was thinking about timing. Her understanding is that the direction from the Presiding Officers is that policy committees should be completing their work on March 6. OPEGA would not be able to have a final report to the GOC by that time, but the Committee would have a report sometime around the time of statutory adjournment in April.

Sen. Chenette would like to have something earlier in the process, particularly when the JUD Committee is looking to the GOC to lead the effort. When we are zeroing in on the crux of where most of the concerns tend to be, at least in the interim, is the adequacy of the billing system, whether or not fraud has taken place, or is taking place, and particularly the oversight piece of the MCILS staff and how that relates to the core issue, would be helpful in figuring out what our path is moving forward in order to fix the problem. He likes the idea of receiving something within the Session time line. Whether or not legislation can then be turned around quickly in the last remaining days of Session should not be a hinderance to the GOC getting this information sooner rather than later. There needs to be a sense of urgency and as long as it is not impacting the Out of Home Placements review or anything related to child protective services, which is another top priority for the Committee, thinks the 3-month option makes sense. We can get 2 out of the 5 scope areas and then can continue the conversation throughout the remainder of the year.

Rep. Dillingham referred to the MCIP review and asked how the Director envisioned MCILS slowing that review down and what would be the timeframe, how would that impact that review. Director Fox has not yet met with OPEGA staff to see exactly what the timeframe would be for the MCIP report. OPEGA is at the end of the fieldwork on that review, although there is still some substantial work to do, and was hoping to get the MCIP report to the GOC in March, but that would not happen. She also does not think it would happen before the Legislature adjourned the Second Session.

Rep. Mastraccio asked if the MCIP review would still be done before the end of the year even if the Committee decided to expedite the two areas in the MCILS review. Director Fox said she would need to get more information from OPEGA Analysts because with the three month scenario, Analysts are pulled off that review to work on MCILS. She understands the question is whether or not it is something that this GOC can act on and make recommendations to the next Legislature. Rep. Mastraccio noted that it was her understanding that the MCIP review would not be done for this Session, but would have it before the end of the 129th Legislature so this Committee would have an opportunity to weigh in. She asked for clarification on the GOC's rules on voting when making changes to the work plan. If the Committee has a motion to expedite scope 1 and 5 of the MCILS review, would that require a 2/3 vote.

Director Fox said when the review was put on the work plan, it was not added as a rapid review. Now the Committee is talking about prioritizing work that has already been approved for the plan and it is not something she has had experience with in terms of voting procedure. She thinks that would have to be a Committee decision of whether or not this is something that rises to the level of the 2/3 vote requirement.

Sen. Chenette referred back to what Rep. Dillingham said regarding the MCIP review and understands Director Fox has to talk with staff to get timeline information, but said OPEGA was previously anticipating a report sometime in March if the GOC had left the schedule alone. That is only a couple of months away, and understands there are other items on the MCILS review that would then begin work post the expedited review, but there is still approximately two months of work left on MCIP. He is trying to analyze that timeframe. Director Fox said OPEGA will be pulling resources off that review to make the deadline for MCILS and then what the GOC decides for work on the second part of that review.

Sen. Chenette said once OPEGA gets through the 3-month expedited MCILS review, they could then have a Committee discussion about whether they want the MCIP in the next couple of months or if information is

received from the expedited MCILS review, they may decide that the rest of the scope areas need to be reviewed before doing anything else. If the Committee voted today on the expedited 3-month process on 1 and 5, nothing stops them from having something on the MCIP in the August/September timeframe. He asked the Director if that was correct. Director Fox said theoretically the Committee can reprioritize the work plan at any time. It is the August/September date for the MCIP report that she was not willing to commit to.

Rep. Dillingham clarified that it is not an either or question for her, but understood that clearly there would be impact, but the Director did not say what the impact would be. She was looking to Director Fox, in her determination, what work would be impacted, and her question was answered.

Sen. Keim said without prioritizing, the GOC would have actionable information for this legislative session on the MCIP review if they did not expedite the MCILS review. Director Fox said OPEGA could have a report to the GOC before statutory adjournment if nothing else changed, but whether it is actionable will depend on circumstances that she could not comment on.

Sen. Keim asked if the Director could talk about the process of doing the MCILS evaluation in part, making that information public and then going back and finishing the work on that evaluation. Would that affect OPEGA's work. Director Fox thinks because of the way the 5 scope areas are laid out and that 2, 3 and 4 are fairly discrete in terms of what they are looking at, this review would allow for that and is why we made this proposal, but every review is different.

Sen. Keim reiterated that the Sixth Amendment Center (Center) also looked at the statutory guidelines for MCILS and had already said it looks adequate to cover any changes that need to be made, it is just what information we need to gain from our process now and make the changes. The JUD Committee is waiting for MCILS to do their work and have asked them to report back to the Committee at the beginning of March with the changes they want to make now. So, if legislation is needed this Session, the JUD Committee will know by then. It looks like the GOC's expedited review will inform their work, not before the end of Session, but knowing that it is coming would be helpful. MCILS does not have a lot of resources and when the JUD Committee had that discussion, the Chair of MCILS came before them and spoke about all of the areas that needed to be worked on, looked at and revamped and basically said they had no staff. They are a Board of Commissioners so the JUD Committee is going to look at how they can help because MCILS is not set up statutorily to have staff.

Director Fox noted that MCILS Board members have broken down into working groups that are looking at discreet issues. Sen. Katz, former Chair of this Committee and Michael Carey, a former Representative and AFA Committee member, will be looking at the financial oversight piece of MCILS.

Rep. Mastraccio asked if the MCILS Board met all year. Sen. Keim said they do. They had been meeting once a month, but told the JUD Committee that they are going to start meeting more frequently until they get their arms around the issues that were raised and get some initiatives moving. Rep. Mastraccio thinks with the time line that is being proposed and the GOC getting an OPEGA report before the Legislature adjourns, will give them the information they need.

Rep. Arata said a concern for her is that the Center's report said very clearly that there was fraud and she did not see that being addressed anywhere in the evaluation scope areas. She wanted to make sure that issue was being addressed.

Sen. Keim noted that the Center's report highlighted areas that looked questionable because the recordkeeping is so poor. There are very questionable practices which is why a deeper look of how people are being paid and the money is being allocated to certain lawyers and law firms, etc. is needed, but there are no allegations of

fraud. Right now, it is that the system is messy and everybody recognizes that, but beyond that thinks they would be reaching to draw a conclusion that is not yet apparent.

Rep. Arata said the allegation was made that certain individuals were billing for more hours than what exists in a year, so in a roundabout way, she thought that might be an allegation of fraud or shows the need that investigations need to be done to see if there is fraud because it looks damaging in the Center's report.

Sen. Keim agreed that the Center's report definitely raises a lot of questions, but under the system in place, for example, someone could put in more than 24 hours of work done in a single day and the online system never flagged that or never eliminated that as a possibility. So, is it possible that someone just got sloppy and entered all of their hours in a day, that is a possibility and thinks it is better to get the information rather than throw the allegation out there. That is something that will come up with a deeper look at the system.

Director Fox hopes OPEGA's evaluation will help the GOC understand whether or not the systems in place are adequate to detect fraud if it is happening and prevent it. If the systems are good at detecting fraud then hopefully they would be good at preventing it. OPEGA will be able to take a look and separate instances that look like it was actually overbilling, when there may have been other explanations. Those are the things that OPEGA will be looking at. To see if the system allows for identifying potential overbillings, whether or not it was the manner by which attorneys are allowed to report, or whether the procedures are prescriptive enough to let MCILS staff break that information down. OPEGA is looking at the systems and whether they are adequate to prevent or detect fraud.

Sen. Chenette said it seems like scope 1 would get at Rep. Arata's concerns by analyzing whether or not the billing system is in any way flawed and whether or not MCILS' systems can do the checks and balances in the oversight piece to prevent fraud in the future. Whether or not fraud took place on an individual level, whether talking about an individual lawyer or law firm, that is a criminal matter and has to be handled by the Attorney General's Office and not for the GOC. The Committee is looking at it from a governmental standpoint of are the systems in place, are there inefficiencies in the system and how do we fix that structure to make it effective. He thinks that is the mission that the GOC is trying to direct OPEGA to review. There is a distinction between those two thought processes. Even though he agrees with Rep. Arata that if any fraud actually took place there needs to be consequences, but that is not necessarily the GOC's objective. The Committee's is government oversight and needs to make sure that the system in place is effective. If not, what are the recommendations to fix it. We need that information, otherwise there is no blueprint, no template to go on to fix those systems.

Sen. Keim said, outside of the Center's report, there are other allegations suggesting fraud. There have been a couple of lawyers that had some sort of sanctions against them for overbilling so it definitely has happened and thinks it is not a mistake on the GOC's part to say there is potential here that raises a great amount of concern.

Motion: The Government Oversight Committee approve changes to the work plan to expedite the completion of evaluation scope items 1 and 5 in the project direction statement: Maine Commission on Indigent Legal Services with the GOC recognizing the delay in the full evaluation of the Maine Citizen Initiative Process review. (Motion by Sen. Libby, second by Rep. O'Neil.)

Discussion: Sen. Keim wanted to make sure that scope questions 1 and 5 capture the GOC's discussion. It is her understanding that if there are issues of fraud that those are the two scope questions that would capture that concern. Director Fox said it would and that is how OPEGA views it.

Vote: The above Motion passed by unanimous vote of those voting - 9-0.

Unfinished Business

None

Report from Director

Director Fox reported that the new OPEGA office space is nearing completion and anticipating moving before Spring.

- **Status of projects in process**

Director Fox thinks the current projects where discussed earlier that are not tax expenditure reports. She will be inquiring for updates on the tracking document with regard to the Child Protective Services improvements. If there is only minor change, she may wait until there is more so that she is not producing a new document every time. If she does have information she will make sure that she sends it out by email and the updated document on line will be available. OPEGA will continue to make updates to the work page with regard to improvements to the system. The **Reimbursement for Business Equipment Tax Exemption to Municipalities (BETE) and Reimbursement for Taxes Paid on Certain Business Property (BETR)** will be reported out to the GOC in February along with the full report on the **Maine Capital Investment Credit**. OPEGA has started on the **Tax Expenditure Evaluation on Seed Capital Investment Tax Credit** and the GOC will be approving the parameters for that review at their next meeting. At some point the Committee will see some research expenditure credits, but not sure when that will happen because OPEGA has to understand where things are in terms of allocation of resources now that the GOC has taken the action on the MCILS review. OPEGA expects they will be receiving the ongoing data on the **CPS: Out of Home Placements for Children Removed from Care by DHHS/OCFS** and anticipates that work won't change. They will come back to the GOC in a year this past December to present a new project direction statement for a full review recognizing that the Department is in the process of changing a lot of things in the system. **Pine Tree Development Zones** was an evaluation OPEGA did as part of the tax expenditure review process and the GOC approved the parameters for that Special project. OPEGA still anticipates that this GOC will receive that report in time to make changes before the Department stops accepting applications.

Next GOC meeting date

The next GOC meeting is scheduled for January 24, 2020 at 9:00 a.m. Sen. Chenette noted that the Chairs received a request from a member of the Committee to start meeting at 8:30 a.m. instead of 9:00 a.m. An email will be sent out to poll members regarding the meeting start times. (The GOC Chairs kept the meeting start time at 9:00 a.m. as a result of the polling results.)

Adjourn

The Chair, Sen. Chenette, adjourned the GOC meeting at 10:42 a.m. on the motion of Rep. Dillingham, second by Rep. Arata, unanimous.



DANIELLE D. FOX
DIRECTOR

MAINE STATE LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

TO: Government Oversight Committee
FROM: Danielle D. Fox, Director *Dan*
DATE: December 20, 2019
RE: Proposed Parameters for OPEGA's Full Evaluation of the Maine Seed Capital Tax Credit Program

Enclosed for the GOC meeting on January 10, 2020 are:

- Proposed Parameters for OPEGA's Full Evaluation of the Maine Seed Capital Tax Credit Program, and
- Relevant statute (36 MRSA §5216-B and 10 MRSA §1100-T) and an extract from LD 1200 ('An Act to Amend the Maine Seed Capital Tax Credit Program'), Committee Amendment A.

The Maine Seed Capital Tax Credit Program is the next program on the GOC's approved tax expenditure review schedule.

As set out in OPEGA's statute (3 MRSA §999), the GOC shall consider recommendations from OPEGA and then approve the following for each tax expenditure subject to full evaluation:

- (1) The purposes, intent or goals of the tax expenditure, informed by original legislative intent, subsequent legislative and policy developments, and changes in the state economy and fiscal condition;
- (2) The intended beneficiaries;
- (3) The evaluation objectives, which may include an assessment of listed objectives (the listed objectives are included in a table in the proposed parameters document); and
- (4) The performance measures, which must be clear and relevant to the tax expenditure and approved objectives.

Before final approval, the GOC is required to seek input from the policy committee and stakeholders. A memo and the proposed parameters document will be sent to the Taxation Committee inviting input by January 17th. The proposed parameters document will also be sent to stakeholders through relevant legislative interested parties lists and informing them that stakeholder input on this document will be received at the GOC meeting on January 10th following presentation of the document.

Enclosures

**Proposed Parameters for OPEGA’s Full Evaluation of the
Maine Seed Capital Tax Credit Program
Presented to the Government Oversight Committee on January 10, 2020**

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
1987	36 MRS §5216-B 10 MRS §1100-T	Income Tax Credit	Business Incentive Financial Investment	FY20 \$4,250,000 FY21 \$4,500,000

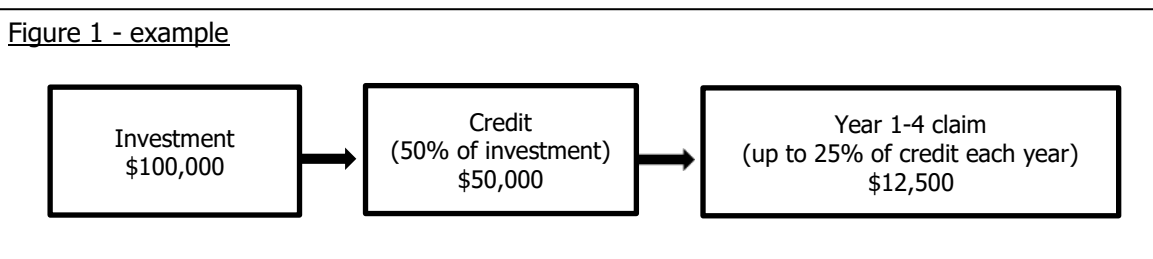
Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2020 – 2021.

Program Description

The program description is derived from a combination of statute, FAME rules and OPEGA’s understanding of the program.

The Maine Seed Capital Tax Credit Program (‘Seed credit’) provides an income tax credit to investors who provide investment to an eligible business in Maine. Up to 50% of the amount invested may be provided as a credit.¹ Eligible investors can be taxpayers or private venture capital funds. Investors cannot own more than 50% of the business. Principal owners of the business, their spouse, or specified family members with an existing ownership interest in the business are not eligible for the Seed credit. “Principal owners” means a person who controls the business, whether through ownership or direct involvement in the day-to-day management of the business.

Eligible investors may apply to the Finance Authority of Maine (FAME) for a tax credit certificate for a defined investment. Starting with the year of investment, the investor may claim up to 25% of the credit over each of the first four years. For private venture capital fund investors, the tax credit is received in the form of a refund. For other investors, it is received as a credit against the income tax due in a year. This credit cannot exceed 50% of income tax due in a year - if this limitation prevents the credit from being taken over four years, the credit may be carried forward for up to 15 years.



Investors are not limited in the total amount of tax credit certificates they may be granted; however, a qualified investment in a single business is limited to \$500,000 per investor over a consecutive three-

¹ Historically, the credit has varied - it has been 50% since January, 2014.

year period. For a private venture capital fund, the investment limit is \$500,000 times the number of investors in the fund, not to exceed \$4,000,000 per business in a consecutive three-year period. The program applies a \$5,000,000 lifetime limit on Seed credit eligible investment in any one business.

An eligible business must:

- be located in Maine;
- have annual gross sales of \$5,000,000 or less;
- be the full-time professional activity of at least one of the principal owners;
- be a manufacturer, value-added natural resource enterprise, provide a product or service that is (or projected to be) sold or rendered outside of the State, be engaged in development or application of advanced technologies, or is certified as a visual media production company; and
- certify that the amount of the investment is necessary to allow the business to create or retain jobs in the State.

Seed investments must be used on plant, equipment, research and development, or working capital for the business. The investment must be at risk for five years, meaning that the investment must remain in the business and may be lost if the business is unsuccessful. Tax credit certificates can be revoked in certain circumstances, including if application information provided to FAME is false, if the applicant violates any conditions for the credit, or (in the case of private venture capital funds only) if the eligible business moves its operations and assets outside of the State within four years after an investment.

Both FAME and Maine Revenue Services (MRS) have roles in administering this program. FAME determines eligibility for the program and MRS processes claims for the credit via income tax filings. Since 2016, pursuant to statute there has been an annual cap on the total available tax credit certificates of \$5,000,000 each calendar year.²

Evaluation Parameters Subject to Committee Approval

In developing the proposed purpose, beneficiaries and performance measures of the program, OPEGA looked to LD 1200 ('An Act to Amend the Maine Seed Capital Tax Credit Program'), as amended by Committee Amendment A. This was introduced in the First Regular Session of the 129th Legislature and in June 2019, this bill (as amended) was carried over on the Special Appropriations Table.³ In the absence of the bill, OPEGA would have gleaned the purpose and beneficiaries from the legislative findings sections of statute. However, given the bill's existence and progress, OPEGA considered it the most current and clear statement of legislative intent. OPEGA puts this forth as a starting point in worksheet form for the GOC to consider.

² Through 2013, the program had a cumulative cap that was periodically increased in statute. Annual caps started in 2014, with the \$5,000,000 annual cap being in place from 2016.

³ LD 1200 was reported out unanimously as "Ought To Pass as Amended" by the Taxation Committee, passed to be enacted by a 2/3 majority in the House (as an emergency measure), and placed on the Special Appropriations Table pending passage to be enacted by the Senate.

Maine Seed Capital Tax Credit Program – Proposed Evaluation Parameters

OPEGA recommendation	GOC discussion/decision
<p>Purpose Source: LD 1200, as amended by Committee Amendment A (Section 10)</p>	
<p>(1) To increase job opportunities for residents of the State in businesses that export products or services from the State; (2) To increase private investment in small new and existing businesses, especially those that experience significant difficulty in the absence of investment incentives in obtaining equity financing to carry the businesses from start-up through initial development; and (3) To increase municipal tax bases.</p>	
<p>Beneficiaries Source: Derived from the purpose</p>	
<p>(1) Small new and existing businesses, especially those that experience significant difficulty in the absence of investment incentives in obtaining equity financing to carry the businesses from start-up through initial development; and (2) Jobseekers in the State.</p>	
<p>Evaluation objectives Source: 3 MRSA §999(1)(A)(3) Each objective will be addressed to the degree possible based on its relevance, the level of resources required and the availability of necessary data.</p>	
<p>(a) The fiscal impact of the tax expenditure, including past and estimated future impacts; (b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices; (c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;</p>	

<p>(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;</p> <p>(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;</p> <p>(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;</p> <p>(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;</p> <p>(h) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and</p> <p>(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goal.</p>	
<p>Performance measures Source: LD 1200, as amended by Committee Amendment A (Section 10)</p>	
<p>(1) The number and geographic distribution of full-time employees added or retained during a period being reviewed who would not have been added or retained in the absence of the credit;</p> <p>(2) The amount of qualified investment in eligible businesses during the period being reviewed;</p> <p>(3) The change in the number of businesses created or retained in the State as a result of the credit;</p> <p>(4) Measures of fiscal impact and overall economic impact to the State; and</p> <p>(5) The amount of the tax revenue loss for each year being reviewed divided by the number of jobs created or retained.</p>	

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

36 MRS §5216-B - Seed capital investment tax credit

§5216-B. Seed capital investment tax credit

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

- A. "Certificate" means a tax credit certificate issued by the Finance Authority of Maine pursuant to Title 10, chapter 110, subchapter IX.
- B. "Investment" means an investment for which a certificate has been received.
- C. "Investor" means a taxpayer or private venture capital fund that has received a certificate.
- D. "Private venture capital fund" has the same meaning as under Title 10, section 1100-T, subsection 1-A.

2. Credit. An investor is entitled to a credit against the tax otherwise due under this Part equal to the amount of the tax credit certificate issued by the Finance Authority of Maine in accordance with Title 10, section 1100-T and as limited by this section. Except with respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2-C, in the case of partnerships, limited liability companies, S corporations, nontaxable trusts and any other entities that are treated as flow-through entities for tax purposes under the Code, the individual partners, members, stockholders, beneficiaries or equity owners of such entities must be treated as the investors under this section and are allowed a credit against the tax otherwise due from them under this Part in proportion to their respective interests in those partnerships, limited liability companies, S corporations, trusts or other flow-through entities. Except as limited or authorized by subsection 3 or 4, 25% of the credit must be taken in the taxable year in which the investment is made and 25% per year must be taken in each of the next 3 taxable years. With respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2-C, the credits are refundable and the investor shall file a return requesting a refund for an investment for which it has received a tax credit certificate in the calendar year following the calendar year during which the investment was made.

3. Limitation. With respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2 or 2-A, the amount of the credit allowed under this section for any one taxable year may not exceed 50% of the tax imposed by this Part on the investor for the taxable year before application of the credit.

4. Carry forward. Credits not taken because of the limitation in subsection 3 shall be taken in the next taxable year in which the credit may be taken, provided that the limitation of subsection 3 shall also apply to the carry-forward years. In no case may this carry-forward period exceed 15 years.

5. Recapture. In the event that the Finance Authority of Maine revokes a certificate, there must be added to the tax imposed on the investor under this Part for the taxable year in which the revocation occurs an amount equal to the total amount of credit authorized and revoked minus the amount of credit not yet taken.

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

10 MRS §1100-T - Tax credit certificates

§1100-T. Tax credit certificates

1. Legislative findings; authorization. The Legislature finds that the growth of new and existing small businesses in the State results in increased job opportunities for Maine residents, produces more spending in the State and increases municipal tax bases. Businesses that export their products or services out of the State bring capital into the State and help to develop export markets for Maine products. Small new and existing businesses can provide significant economic benefits to the State if they can obtain sufficient seed equity financing to carry them from start-up through the initial development phases of a business. The jobs created by such businesses tend to pay higher wages and offer more benefits than other businesses; however, the per capita level of private venture capital investment in businesses located in the State is substantially below the national average and the average of the other New England states. In order to encourage the increased availability of risk equity capital to enterprises that have the potential for rapid growth and that bring capital into the State, the authority is authorized to issue certificates of eligibility for the seed capital investment tax credit permitted by Title 36, section 5216-B, subject to the requirements of this section. This program is known as the Maine Seed Capital Tax Credit Program.

1-A. Private venture capital fund. As used in this section, "private venture capital fund" means a professionally managed pool of capital organized to make equity or equity-like investments in unrelated private companies using capital derived from multiple limited partners or members at least half of which, measured in dollar commitments, are unaffiliated and unrelated, and includes any venture capital fund licensed by the United States Small Business Administration. The authority may require such information as may be necessary or desirable for determining whether an entity qualifies as a private venture capital fund. An entity that otherwise qualifies as a private venture capital fund may elect not to be treated as a private venture capital fund for purposes of this section with respect to any investment.

2. Eligibility for tax credit certificate for individuals and entities other than venture capital funds. The authority shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement the program. Without limitation, the requirements for eligibility for a tax credit certificate include the following.

A. For investments made in tax years beginning before January 1, 2012, a tax credit certificate may be issued in an amount not more than 40% of the amount of cash actually invested in an eligible Maine business in any calendar year or in an amount not more than 60% of the amount of cash actually invested in any one calendar year in an eligible Maine business located in a high-unemployment area, as determined by rule by the authority. For investments made in tax years beginning on or after January 1, 2012, a tax credit certificate may be issued to an investor other than a private venture capital fund in an amount not more than 60% of the amount of cash actually invested in an eligible Maine business in any calendar year. For investments made in tax years beginning on or after January 1, 2014, a tax credit certificate may be issued to an investor other than a private venture capital fund in an amount not more than 50% of the amount of cash actually invested in an eligible Maine business in any calendar year. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. The Maine business must be determined by the authority to be a manufacturer or a value-added natural resource enterprise; must provide a product or service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; must be engaged in the development or application of advanced technologies; or must be certified as a visual media production company under Title 5, section 13090-L. The business must certify that the amount of the investment is necessary to allow the business to create or retain jobs in the State.

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

- C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for any one business as of the date of issuance of a tax credit certificate.
- D. The investment with respect to which any individual is applying for a tax credit certificate may not be more than an aggregate of \$500,000 in any one business in any 3 consecutive calendar years, except that this paragraph does not limit other investment by any applicant for which that applicant is not applying for a tax credit certificate and except that, if the entity applying for a tax credit certificate is a partnership, limited liability company, S corporation, nontaxable trust or any other entity that is treated as a flow-through entity for tax purposes under the federal Internal Revenue Code but not as a private venture capital fund, the aggregate limit of \$500,000 applies to each individual partner, member, stockholder, beneficiary or equity owner of the entity and not to the entity itself.
- E. For investments made in tax years beginning before January 1, 2014, the business receiving the investment must have annual gross sales of \$3,000,000 or less . For investments made in tax years beginning on or after January 1, 2014, the business receiving the investment must have annual gross sales of \$5,000,000 or less. The operation of the business must be a substantial professional activity of at least one of the principal owners, as determined by the authority. The principal owner and the principal owner's spouse are not eligible for a credit for investment in that business. A tax credit certificate may not be issued to a parent, brother, sister or child of a principal owner if the parent, brother, sister or child has any existing ownership interest in the business.
- F. The investment must be expended on plant, equipment, research and development, or working capital for the business or such other business activity as may be approved by the authority.
- G. The authority shall establish limits on repayment of the investment. The investment must be at risk in the business.
- H. The investors qualifying for the credit must each own less than 1/2 of the business.
- I. The business receiving the investment may not be in violation of the requirements of subsection 6.

2-A. Eligibility of private venture capital funds for tax credit certificate. The authority shall adopt rules in accordance with the Maine Administrative Procedure Act to implement application of the program to investment in a private venture capital fund. This subsection does not apply to credits claimed for tax years beginning on or after January 1, 2012. The requirements for eligibility for a tax credit certificate for investment in a private venture capital fund include the following.

- A. For investments made in tax years beginning before January 1, 2012, a tax credit certificate may be issued to an individual who invests in a private venture capital fund in an amount that:
- (1) Is not more than 40% of the amount of cash actually invested in or unconditionally committed to a private venture capital fund in any calendar year by the individual or entity, except that with respect to fund investments that are made in eligible businesses that are located in a high unemployment area, as determined by rule of the authority under subsection 2, the tax credit certificate may not be more than 60% of the cash actually invested in or unconditionally committed to a private venture capital fund in any calendar year by the individual or entity; and
 - (2) Does not exceed 40% of the amount of cash invested by the fund in eligible businesses, except that with respect to fund investments that are made in eligible businesses that are located in a high unemployment area, as determined by rule of the authority under subsection 2, a tax credit certificate may not be more than 60% of the cash invested by the fund in any calendar year in such businesses; provided that the authority may issue tax credit certificates in an amount not to exceed 20% of the amount of cash actually invested in or unconditionally

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

committed to a private venture capital fund in any calendar year if the authority determines that the private venture capital fund is located in this State, is owned and controlled primarily by residents of this State and has designated investing in eligible businesses of this State as a major investment objective. The credit may be revoked to the extent that the private venture capital fund does not make investments eligible for the tax credit in an amount sufficient to qualify for the credits within 3 years after the date of the tax credit certificates. Notwithstanding any revocation pursuant to this subparagraph, each investor remains eligible for tax credit certificates for eligible investments as and when made by the private venture capital fund.

The aggregate amount of credits issued to investors in a fund may not exceed 40% of the amount of cash invested by the fund in eligible businesses, except that with respect to fund investments in eligible businesses that are located in a high unemployment area, the aggregate amount of tax credits issued to investors in a fund may not exceed 60% of the cash invested by the fund in eligible businesses.

B. As used in this subsection, unless the context otherwise indicates, an "eligible business" means a business located in the State that:

- (1) Is a manufacturer;
- (2) Is engaged in the development or application of advanced technologies;
- (3) Provides a service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State;
- (4) Brings capital into the State, as determined by the authority; or
- (5) Is certified as a visual media production company under Title 5, section 13090-L.

C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for any one business for any one private venture capital fund as of the date of issuance of a tax credit certificate.

D. The investment with respect to which any individual or entity is applying for a tax credit certificate may not be more than an aggregate of \$500,000 in any one eligible business invested in by a private venture capital fund in any 3 consecutive calendar years, except that this paragraph does not limit other investment by any applicant for which that applicant is not applying for a tax credit certificate and except that, if the entity applying for a tax credit certificate is a partnership, limited liability company, S corporation, nontaxable trust or any other entity that is treated as a flow-through entity for tax purposes under the federal Internal Revenue Code, the aggregate limit of \$500,000 or \$200,000, as applicable, applies to each individual partner, member, stockholder, beneficiary or equity owner of the entity and not to the entity itself. This paragraph does not limit other investment by any applicant for which that applicant is not applying for a tax credit certificate.

E. Each business receiving an investment from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, must have annual gross sales of \$3,000,000 or less and the operation of the business must be the full-time professional activity of the principal owner, as determined by the authority. The principal owner and principal owner's spouse, if any, are not eligible for a credit for investment in that business or for an investment by the private venture capital fund in that business. A tax credit certificate may not be issued to a parent, brother, sister or child of a principal owner if the parent, brother, sister or child has any existing ownership interest in that business or for an investment by the private venture capital fund in that business.

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

F. Each investment received by a business from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, must be expended on plant maintenance and construction, equipment, research and development or working capital for the business or on such other business activity as may be approved by the authority.

G. The authority shall establish limits on repayment of the investment by an individual in and the investments made by a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate. The investments must be at risk in the private venture capital fund and the business, respectively.

H. The investors in a private venture capital fund are not entitled to the credit for collective ownership in excess of 50% of any business. An investor in a private venture capital fund determined by the authority to be a principal owner of a business and the principal owner's spouse, if any, are not entitled to a credit with respect to investment in that business, nor are the principal owner's parents, siblings or children entitled to a credit if they have any existing ownership interest in the business.

2-B. Eligibility of private venture capital funds for tax credit certificate until July 1, 2001.
[MRSA T. 10 §1100-T, sub-§2-B (RP)]

2-C. Eligibility of private venture capital funds for refundable tax credit certificate. This subsection applies to investments by private venture capital funds in eligible businesses made in tax years beginning on or after January 1, 2012. The authority shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement application of the program to investments in eligible businesses by private venture capital funds. The requirements for eligibility for a tax credit certificate for an investment by a private venture capital fund include the following.

A. For investments made in tax years beginning on or after January 1, 2012, a tax credit certificate may be issued to a private venture capital fund in an amount that is not more than 50% of the amount of cash actually invested in an eligible business. The tax credit certificate may be revoked and the credit recaptured pursuant to Title 36, section 5216-B, subsection 5 to the extent that the authority determines that the eligible business for which the tax credit certificate was issued moves substantially all of its operations and assets outside of the State during the period ending 4 years after an investment, except in the case of an arm's length, fair value acquisition approved by the authority. A private venture capital fund that received the 20% credit certificate under subsection 2-A, paragraph A, subparagraph (2) for an investment is not eligible for a tax credit certificate under this subsection for that investment.

B. As used in this subsection, unless the context otherwise indicates, "eligible business" means a business located in the State that has certified that the amount of the investment is necessary to allow the business to create or retain jobs in the State and that, as determined by the authority:

- (1) Is a manufacturer or a value-added natural resource enterprise;
- (2) Is engaged in the development or application of advanced technologies;
- (3) Provides a service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; or
- (5) Is certified as a visual media production company under Title 5, section 13090-L.

C. Aggregate investment eligible for tax credit certificates, including investments under this subsection and under subsection 2, may not be more than \$5,000,000 for any one eligible business.

D. The investment with respect to which any private venture capital fund is applying for a tax credit certificate may not be more than the lesser of an amount equal to \$500,000 times the number of investors in the private venture capital fund and an aggregate of \$4,000,000 in any one

Maine Seed Capital Tax Credit Program Relevant Statute and LD 1200 extract

eligible business invested in by a private venture capital fund in any 3 consecutive calendar years, except that this paragraph does not limit other investment by an applicant for which that applicant is not applying for a tax credit certificate. A private venture capital fund must certify to the authority that it will be in compliance with these limitations. The tax credit certificate issued to a private venture capital fund may be revoked and any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund is not in compliance with this paragraph.

E. For investments made in tax years beginning before January 1, 2014, an eligible business receiving an investment from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, may not have annual gross sales of more than \$3,000,000. For investments made in tax years beginning on or after January 1, 2014, an eligible business receiving an investment from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, may not have annual gross sales of more than \$5,000,000. The operation of the business must be a substantial professional activity of one or more individuals who are not managers of the private venture capital fund, as determined by the authority. A tax credit certificate may not be issued to a private venture capital fund if a manager of the fund is a principal owner of the eligible business or a spouse, parent, sibling or child of a principal owner and if the spouse, parent, sibling or child has any existing ownership interest in the business. A private venture capital fund must certify to the authority that it will be in compliance with these limitations. The tax credit certificate issued to a private venture capital fund may be revoked and any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund is not in compliance with this paragraph.

F. An investment received by an eligible business from a private venture capital fund for which the investment is used as the basis for the issuance of a tax credit certificate must be expended on plant maintenance and construction, equipment, research and development or working capital for the business or on such other business activity as may be approved by the authority.

G. The authority shall establish limits on repayment of the investments made by a private venture capital fund for which the investments are used as the basis for the issuance of tax credit certificates. The investments must be at risk in the private venture capital fund and the eligible business, respectively.

H. A private venture capital fund is not entitled to the credit if it owns in excess of 50% of the eligible business, except that, if the private venture capital fund is issued a tax credit certificate and later makes an additional investment that increases its ownership to more than 50%, the existing tax credit certificate remains valid and is not subject to revocation due to the ownership percentage as long as there was no intent to take controlling ownership at the time of the initial qualified investment.

3. Priority. The authority may reserve \$500,000 in tax credit authorization for "natural resource enterprises," as defined in section 963-A, subsection 41.

4. Total of credits authorized. The authority may issue tax credit certificates to investors eligible pursuant to subsections 2, 2-A and 2-C in an aggregate amount not to exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and including calendar year 1997, \$5,500,000 up to and including calendar year 1998, \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005, \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including calendar year 2007 and \$30,000,000 up to and including calendar year 2013, in addition to which, the authority may issue tax credit certificates to investors eligible pursuant to subsections 2, 2-A and 2-C in an annual amount not to exceed \$675,000 for investments made between January 1, 2014 and December 31, 2014, \$4,000,000 for investments made in calendar year 2015 and \$5,000,000 each

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

year for investments made in calendar years beginning with 2016. The authority may provide that investors eligible for a tax credit under this section in a year when there is insufficient credit available are entitled to take the credit when it becomes available subject to limitations established by the authority by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Revocation of tax credit certificate. The authority may revoke a tax credit certificate if any representation to the authority in connection with the application for the certificate proves to have been false when made or if the applicant violates any conditions established by the authority and stated in the tax credit certificate. The revocation may be in full or in part as the authority may determine. The authority shall specify the amount of credit being revoked and shall send notice of the revocation to the investor and to the State Tax Assessor.

6. Reports. Any business eligible to have investors receive a tax credit under this section must report to the authority, in a manner to be determined by the authority, the following information regarding its activities in the State over the calendar year in which the investment occurred and for such additional years as may be required by the authority:

- A. The total amount of private investment received;
- B. The total number of persons employed as of December 31st;
- C. The total numbers of jobs created and retained;
- D. Total annual payroll; and
- E. Total sales revenue.

The authority shall report annually to the joint standing committee of the Legislature having jurisdiction over taxation matters on the activity under this section during the prior calendar year.

**Maine Seed Capital Tax Credit Program
Relevant Statute and LD 1200 extract**

Extract from LD 1200 ('An Act to Amend the Maine Seed Capital Tax Credit Program'), Committee Amendment A

Sec. 10. 36 MRS §5216-B, sub-§6 is enacted to read:

6. Evaluation; specific public policy objective; performance measures. The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. The Office of Program Evaluation and Government Accountability shall submit an evaluation of the credit provided under this section to the joint legislative committee established to oversee program evaluation and government accountability matters and the joint standing committee of the Legislature having jurisdiction over taxation matters. In developing evaluation parameters to perform the review, the office shall consider:

A. That the specific public policy objectives of the credit provided under this section are:

- (1) To increase job opportunities for residents of the State in businesses that export products or services from the State;
- (2) To increase private investment in small new and existing businesses, especially those that experience significant difficulty in the absence of investment incentives in obtaining equity financing to carry the businesses from start-up through initial development; and
- (3) To increase municipal tax bases; and

B. Performance measures, including, but not limited to:

- (1) The number and geographic distribution of full-time employees added or retained during a period being reviewed who would not have been added or retained in the absence of the credit;
- (2) The amount of qualified investment in eligible businesses during the period being reviewed;
- (3) The change in the number of businesses created or retained in the State as a result of the credit;
- (4) Measures of fiscal impact and overall economic impact to the State; and
- (5) The amount of the tax revenue loss for each year being reviewed divided by the number of jobs created or retained.

Testimony by Christopher Roney, Esq.

General Counsel

Regarding Proposed Evaluation Parameters for OPEGA Evaluation of the

Maine Seed Capital Tax Credit Program

Government Oversight Committee

January 10, 2020

Senator Chenette, Representative Mastraccio, and Distinguished Members of the Government Oversight Committee:

My name is Chris Roney. I am the General Counsel at the Finance Authority of Maine (FAME). I live in Freeport and am here to testify in partial support of and partial opposition to the proposed evaluation parameters for the Office of Program Evaluation and Government Accountability (OPEGA) evaluation of the Maine Seed Capital Tax Credit Program.

FAME helped to develop the concept and has been tasked by statute since the program's creation in 1987 with administering this tax credit in partnership with Maine Revenue Services. We have taken our role as co-administrator of the program very seriously, and have sought to administer our portion of the program with fairness, transparency, and accountability.

We have over the years sought and obtained improvements to this credit and, while it remains an imperfect program worthy of further refinements, we continue to believe that it is overall a successful and worthwhile program with great benefits to the state's economic growth. Indeed, the Governor's recently unveiled state economic development plan, the Maine Economic Development Strategy 2020-2029, has as one of its key recommendations increasing the annual tax credit cap of the Maine Seed Capital Tax Credit Program from \$5 million to \$15 million, believing this would promote innovation in our economy and likely help about forty start-up companies and create 2,300 new jobs.

On past projects, FAME has enjoyed working closely with OPEGA staff and has appreciated their professionalism and thoroughness in approaching complex topics. We look forward to doing so again on this project.

We largely agree with the first two pages of the proposed parameters for evaluation; it is the last two pages (the worksheet) with which we have some disagreement and proposed edits, which I have handed out with my testimony. With respect to the first two pages with which we largely agree, I will note that on the bottom of page two, we wonder whether it is wise or correct to rely so heavily on a pending bill (LD 1200, which we supported), in setting forth the purpose and beneficiaries of the program. This bill has been carried over on the Appropriations Table

having received a unanimous Ought to Pass As Amended vote in Taxation Committee. But it may or may not pass and be funded this session (that will be up to you), and we think evaluation of the program, especially the program's purposes and beneficiaries, should rely on the actual existing statute. LD 1200, though instructive, is not yet a "clear statement of legislative intent" in our view and, thus, should not be the sole basis for evaluation of the program.

Our handout shows in redline form the proposed changes we suggest you make to the worksheet on pages three and four. Most of our suggested edits are based on the existing statute; the others are recommendations based on intimate experience and knowledge of the program gained over the thirty-two years FAME has administered it. Above all, we would urge an evaluation of the credit not just from a lost revenue perspective, but, rather, from a more dynamic fiscal impact evaluation. That is, the net gains/losses, direct and indirect, to the local businesses and economies stimulated by this program should be considered, for they likely would not have occurred without this incentive.

I am happy to respond to any of our suggested edits through your questions.

Thank you for your consideration and we look forward to working with you and OPEGA during this process.

Maine Seed Capital Tax Credit Program – Proposed Evaluation Parameters

OPEGA recommendation	GOC discussion/decision
<p>Purpose Source: LD 1200, as amended by Committee Amendment A (Section 10) <u>10 MRSA §1100-T(1)</u></p>	
<p>(1) To increase job opportunities for residents of the State in <u>certain types of</u> businesses, <u>including those</u> that export products or services from the State;</p> <p>(2) To increase private investment in small new and existing businesses <u>that need additional capital to develop or grow</u>, especially those that experience significant difficulty in the absence of investment incentives in obtaining equity financing to carry the businesses from start-up through initial development <u>phases</u>; and</p> <p>(3) To increase municipal tax bases.</p> <p><u>(4) Stimulate additional economic activity through spending by businesses assisted with the credit.</u></p>	
<p>Beneficiaries Source: Derived from the purpose</p>	
<p>(1) Small new and existing businesses, especially those that experience significant difficulty in the absence of investment incentives in obtaining equity financing to carry the businesses from start-up through initial development <u>phases</u>; and</p> <p>(2) Job seekers in the State.</p> <p><u>(3) Municipalities and taxpayers that benefit from increasing tax bases and additional economic activity.</u></p>	
<p>Evaluation objectives Source: 3 MRSA §999(1)(A)(3) Each objective will be addressed to the degree possible based on its relevance, the level of resources required and the availability of necessary data.</p>	
<p>(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;</p>	

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

Performance measures

Source: LD 1200, as amended by Committee Amendment A (Section 10)

- (1) The number and geographic distribution of full-time employees, both direct and indirect (using appropriate multipliers), added or retained during a period being reviewed who would not have been added or retained in the absence of the credit;
- (2) The amount of qualified investment in eligible businesses during the period being reviewed;
- (3) The change in the number of businesses created or retained in the State as a result of the credit;

(4) Measures of fiscal impact and overall economic impact to the State;
and

(5) The amount of the tax revenue loss for each year being reviewed divided by the number of jobs created or retained, both direct and indirect (using appropriate multipliers):-

(6) The amount of the tax revenue loss for each year being reviewed compared to the value of positive economic impact, direct and indirect, including additional property, payroll and sales taxes generated, as well as other economic benefits; and:

(7) The amount of total investments made in eligible businesses leveraged by the tax credit eligible investments.

TIMOTHY P AGNEW
196 PINE STREET
PORTLAND ME 04102
207-650-0945

January 8, 2020

Danielle Fox, Director
OPEGA
SHS 82
Augusta ME 04333-0082

Re: Maine Seed Capital Tax Credit Program Proposed Evaluation Parameters

Dear Ms. Fox,

I understand that OPEGA is proposing a series of evaluation parameters for your upcoming review of the Maine Seed Capital Tax Credit Program, a program I have been involved with in various ways since its inception.

I have reviewed the OPEGA recommendations and FAME's suggested edits, and I am in support of both. I would like to suggest the addition of an additional parameter under Performance Measures: "The amount of investment made with the Seed Capital Tax Credit that supports grants and investments by the Maine Technology Institute and/or the Small Enterprise Growth Fund." Both the Maine Technology Institute and Small Enterprise Growth Fund require private funding to at least match the amount of funding provided by those State entities, and in many cases that private funding depends on the Maine Seed Capital Tax Credit Program to attract that private capital.

Thanks for your consideration of these comments. Please let me know if you have any questions.

Sincerely,

/s/

Timothy P. Agnew

**Project direction statement: Maine Commission on Indigent Legal Services
Presented by OPEGA to the Government Oversight Committee - 129th Maine Legislature
December 10, 2019**

Purpose of a project direction statement in the course of a full review

After the Government Oversight Committee (GOC) added a review of financial oversight and economic use of resources related to the Maine Commission on Indigent Legal Services (MCILS) to the Approved Project List, OPEGA assigned a team of Analysts to conduct preliminary research. The preliminary research stage of the evaluation process provides the team with a broad, but comprehensive understanding of the program. Once preliminary research is complete, the team reviews themes that have emerged and identifies areas that may be of future concern to the program. This work results in a proposed project direction statement for the GOC to consider. The statement suggests a framework that will guide OPEGA in the next phase of the evaluation process, fieldwork. This document represents that work and is respectfully presented for the GOC's consideration.

OPEGA recommends that the GOC direct a full evaluation of MCILS specifically related to financial oversight and the economic use of resources, and within the scope described in this statement.

Overview of MCILS

Establishment of MCILS and Organizational Structure

MCILS is a Commission that was established in 2009. The Commission is currently made up of nine members and is supported by an office staff of 4 who conduct the day-to-day operations. Its statutory purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants, and children and families in child protective cases. This representation is provided in accordance with requirements established in statute and both the federal and state constitutions. Maine statute specifies that the Commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the state and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner. MCILS assumed responsibility for providing indigent legal services on July 1, 2010. Prior to MCILS, indigent legal services were arranged and funded by the Judicial Branch.

An amendment to statute in 2018 increased the number of members appointed to serve on the Commission from five to nine. The membership must include one member with experience in administration and finance, one member with experience in child protection proceedings, and two members (non-voting) who are attorneys providing indigent legal services.

MCILS staff includes an Executive Director, Deputy Director, Accounting Technician, and an Office Associate, working in an office in Augusta; eight financial screening staff, who work at various courthouses across the state; and one investigator, who works part-time remotely.

Determination as indigent or partially indigent

In Maine, services for those who have been determined indigent, or partially indigent, are provided by attorneys in private practice. The Court assigns representation to a person by selecting an attorney from a roster maintained by MCILS. In order to be listed on the roster, attorneys must meet certain requirements. If they provide specific types of services, or have a defense specialty, they are listed on specific rosters accordingly.

A client's status as indigent or partially indigent is determined by a judge based on financial information provided by the person requiring representation. In some Courts, a financial screener may be available. The screener interviews the client, gathers financial information, including the client's assets, income and expenses and makes a recommendation to the judge based on this information. The judge can deny representation at the public expense or make a determination that the person is indigent or partially indigent. A person determined partially indigent is ordered to make payments toward the assigned attorney's fees.

Attorney payments

MCILS is responsible for paying counsel fees and expenses to attorneys who have been assigned to indigent or partially indigent clients. Attorneys submit a voucher to MCILS through the electronic case management program, DefenderData. The MCILS Director and Deputy Director review vouchers and approve attorney payments. Services provided by vendors hired by the attorney such as investigators, interpreters, and medical and psychological experts require advance notice and approval by MCILS. The vendor sends an invoice for the services provided to the attorney which is then submitted to and processed by MCILS who makes payment to the vendor.

Until June 30, 2019, one fixed fee contract existed to facilitate providing representation in Somerset County. MCILS contracted with three private attorneys to provide indigent legal services, paying the attorneys a fixed monthly rate. Additionally, the attorneys were reimbursed for case related expenses, such as investigators and expert witnesses. At this time, MCILS has no contracted attorney services.

MCILS General Fund budget

The Legislature appropriated approximately \$17.7 million for MCILS in FY20, and \$17.6 for FY21.

GOC decision to consider review of MCILS

During the 128th legislative session, OPEGA received a request for a review of MCILS from a GOC member with concerns related to the application of financial eligibility requirements for court-

appointed counsel, attorney billing practices, and billing and collection efforts for clients who are required to pay a portion of counsel fees. On February 17, 2017, the GOC voted unanimously to place the MCILS review request on OPEGA's Standby List.

The 2017 Working Group

While this topic was on the Standby List, the 128th Legislature created the Working Group to Improve the Provision of Indigent Legal Services (the Working Group) as part of the biennial budget. The purpose of the Working Group was to develop recommendations to improve the delivery of indigent legal services to eligible people by focusing on:

- ensuring adequate representation;
- increasing the efficiency in delivering legal services;
- verifying eligibility throughout representation; and
- reducing costs while still fully honoring the constitutional and statutory obligations to provide representation.

In December 2017, the Working Group issued its report containing nine recommendations—the following four are related to the current scope of this request.

- Recommendation 2: Enhance the MCILS staff to provide better financial accountability and quality assurance by establishing specific responsibilities for a Chief Financial Officer and a Training and Quality Control Director.
- Recommendation 4: Strengthen the financial eligibility screening procedure.
- Recommendation 5: Remove the collections function from the MCILS and have the Judiciary Committee explore alternative methods of collecting from those recipients of legal services who have been ordered by the court to contribute to the costs of those services.
- Recommendation 7: Commission an outside, independent, nonpartisan study of Maine's current system of providing indigent legal services and whether alternative methods of delivery would increase quality and efficiency.

Sixth Amendment Center report

Recommendation 7 directly led to a report from the Sixth Amendment Center evaluating the services provided by MCILS. Issued April 2019, this report contained eight findings and seven recommendations—the following, from that report, relate to the current scope of this request.

- Finding 8: A significant number of attorneys bill in excess of eight hours per day, five days per week, for 52 weeks per year. MCILS does not exert adequate financial oversight of private attorneys.

- Recommendation 4: MCILS should use its current statutory power to promulgate more rigorous attorney qualification, recertification, training, supervision, and workload standards. The State of Maine should statutorily require financial oversight by requiring that MCILS limit the number of permissible billable hours, subject to waiver only upon a finding of need for additional capacity. The State of Maine should fund MCILS at a level to ensure rigorous training and effective substantive and financial oversight of attorneys.

While the Sixth Amendment Center report was being finalized, a GOC member brought forward a request for a review of MCILS noting concerns with the administration of the program, its efficiency, and its oversight of the quality and effectiveness of representation, and the screening procedure used to determine eligibility for legal services.

On April 12, 2019, the GOC voted to move a review of MCILS to OPEGA's Approved Projects List, with the scope limited to financial oversight and economic use of resources.

Preliminary research conducted by OPEGA

During the preliminary research phase OPEGA:

- sought input from GOC members and Judiciary Committee members and staff on their questions and concerns regarding MCILS;
- reviewed statute, legislative history, rules and guidance related to MCILS;
- interviewed the State Auditor to understand any identified areas of concern;
- interviewed the MCILS Director, Deputy Director, Accounting Technician, a selection of screeners, and the screener/investigator;
- interviewed the Chief Justice and a selection of Judges;
- interviewed a selection of MCILS rostered attorneys working in different areas of law;
- reviewed the data provided to the Sixth Amendment Center on voucher payments based on assigned attorney;
- reviewed data on work performed over three years by nine attorneys and considered correspondence related to MCILS' investigation into high earning attorneys;
- considered the Sixth Amendment Center report "The Right to Counsel in Maine" (April 2019) and interviewed the Executive Director;
- considered the report of the Legislative Working Group to Improve the Provision of Indigent Legal Services (December 2017);
- reviewed a State Controller's report on MCILS' case management system; and
- reviewed reports regarding the provision of indigent legal services in other states.

Evaluation scope

OPEGA examined the various themes that emerged from preliminary research and identified the following areas which potentially pose future risks to the elements of the program that are associated with financial oversight and economic use of resources.

1. Adequacy of systems and procedures used by MCILS staff to process payments and expenditures associated with providing legal representation to clients who have been determined to be indigent or partially indigent.
2. Reasonableness of and consistency in the application of standards, criteria and procedures which inform the determination of whether a defendant/client is indigent.
3. Reasonableness of and consistency in the application of criteria and procedures used in determining, ordering and monitoring payments towards counsel fees by those who have been determined to be partially indigent.
4. Sufficiency of response by MCILS, or MCILS staff, to internally identified concerns and to recommendations made in reports which examined or evaluated the operations of the Commission regarding financial oversight.
5. Adequacy of the oversight structure of MCILS in ensuring that operations align with and accomplish the organization's purpose.

If the GOC wishes to direct OPEGA to begin fieldwork for the purpose of conducting a full evaluation of, and report on, the financial oversight of MCILS, OPEGA proposes the areas listed above for the scope of that work. If approved, OPEGA Analysts will examine the effectiveness of MCILS' financial controls in the prevention, detection and correction of inappropriate or unnecessary expenditures and if those controls are adequate to guard against fraud, waste and abuse. Analysts will evaluate if the practices employed by MCILS staff (including screeners) relative to financial operations are being conducted in accordance with statute, rule and best practices, as well as whether they are effective, applied consistently, and when an appropriate standard, with efficiency. Generally, fieldwork will also evaluate the structure and management of the financial elements of the program and if the structure and management are appropriate and in alignment with the organization's purpose(s).

Although some of the areas noted in this statement have been examined to some degree by the Sixth Amendment Center Report and the 2017 Working Group, OPEGA's review will add to that work. With access to additional data, OPEGA will perform a more detailed analysis of attorney billing and expenditures made by MCILS for legal services. It is possible that this comprehensive analysis might allow for us to separate potential actual overbilling from outliers that may have been due to error or that just appear to be instances of overbilling. This work may also allow for a closer examination of the current systems employed to review billing and make expenditures to identify where such systems may not be adequate for an appropriate level of scrutiny and oversight.

In consideration of the parameters cited when the GOC voted to include a review of the financial operation and oversight of MCILS onto the Approved Projects List, it is important to be clear about what this review will not evaluate. The proposed scope does not include an evaluation of:

- standards for attorneys to be on the MCILS rosters;
- quality of representation provided;
- attorney rates of pay; or
- whether or not a public defender office should be introduced.

OPEGA thanks the Committee for their consideration of this project direction statement for a full review of the financial oversight and economic use of resources by the Maine Commission on Indigent Legal Services.