



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

MEMBERS:

SEN. JAMES HAMPER
SEN. LISA KEIM
SEN. NATHAN LIBBY
SEN. LINDA SANBORN
SEN. JEFFREY TIMBERLAKE
REP. KATHLEEN R.J. DILLINGHAM
REP. AMY ARATA
REP. THOM HARNETT
REP. H. SAWIN MILLETT, JR.
REP. TERESA PIERCE

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

January 24, 2020

Accepted February 14, 2020

Call to Order

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

Attendance

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

Representatives: Rep. Mastraccio, Rep. Dillingham, Rep. Harnett, Rep. Millett, and Rep. Pierce
Joining the meeting in progress: Rep. Arata

Legislative Officers and Staff: Danielle Fox, Director of OPEGA
Ariel Ricci, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves. The Committee welcomed Sen. Hamper and Rep. Harnett to the Committee. The Chair noted that Sen. Hamper is replacing Sen. Davis and Rep. Harnett is replacing Rep. O'Neil.

Summary of January 10, 2020 GOC Meeting

The Meeting Summary of January 10, 2020 was accepted as written.

New Business

None

Unfinished Business

- **Further discussion and GOC action on OPEGA's Proposed Project Direction for the Review of Tax Expenditure Evaluation: Seed Capital Investment Tax Credit**

Director Fox introduced Ms. Ricci, lead OPEGA Analyst for the Seed Capital Investment Tax Credit review.

Director Fox referred members to the Taxation (TAX) Committee's comments regarding OPEGA's proposed parameters presented to the GOC at the January 10th meeting noting that they offered no changes.

Rep. Mastraccio asked for a brief recap of the proposed parameters' presentation from the last meeting.

Director Fox and Ms. Ricci said they will incorporate the updated information with what was provided at the last meeting. When OPEGA is reviewing tax expenditure programs, the statute provides that the GOC approve the parameters that guide OPEGA's work in their evaluations. Director Fox summarized the information provided to the Committee regarding the Proposed Parameters for Maine Seed Capital Tax Credit (Seed) Program. (Copies of documents regarding the Proposed Parameters for the Maine Seed Capital Tax Credit Program are attached to the Meeting Summary.)

The proposed amendment set forth by FAME does change the purpose of the credit as the bases of OPEGA's evaluation. The GOC may want to consider whether the proposed changes that FAME made in paragraph one would, in one way, narrow that public policy affected, and in another way, broaden it. Additionally, the Committee may want to consider whether the underlying ideas expressed in the changes could be addressed either in the performance measure section or are already included in Purpose section.

The next element of the parameters which statute requires the GOC to approve is - who are the intended beneficiaries of the program. OPEGA has derived this from the purpose statement and have proposed that when they are doing the evaluation, they will be looking at the intended beneficiaries as small, new and existing businesses, especially those that experience significant difficulty in the absence of investment incentives and obtaining equity financing to carry the businesses from startup through initial development and job seekers in the State. That is what OPEGA purposed as intended beneficiaries. Director Fox noted that FAME suggested an amendment to add a beneficiary to the program – (3) Municipalities and taxpayers that benefit from increasing tax bases and additional economic activity.

Rep. Mastraccio asked if the Director could elaborate on how the evaluation process would change if the Committee added the additional language suggested by FAME. Director Fox said first, it may be altering the Legislature's stated intent and intended beneficiaries of the program. OPEGA did not see where FAME's change came from based on what they reviewed which is why they did not propose it. In terms of affecting the evaluation work, OPEGA would look at what that means, what is the benefit that was intended to be given to taxpayers or municipalities or if it is just the broadening of the tax break. Director Fox said it may be helpful to look at the performance measures and see whether the ideas behind FAME's suggested edits are addressed. When discussing the performance measure the Committee members may want to ask if this will be addressed in the performance measures' evaluation objectives, rather than name them specifically as a beneficiary. With regard to whether OPEGA will be looking at the impact on municipalities, the broadening of the tax base and the impact of the additional economic activity. OPEGA often does look at the economic impacts and the ripple effects of these programs, so rather than name them specifically as a beneficiary, they look at the economic impacts because the program states that is one of its purposes. Rep. Pierce said in FAME's language it actually says that is one of the intents. Director Fox said it says one of the purposes is to increase municipal tax bases. It does not say a municipality is a beneficiary, so the program is not designed specifically to those entities as a

benefit. They get a downstream benefit in there is an economic impact that result if a benefit to them, but are they a specific beneficiary of the program. It is how tightly you want to look at the term beneficiary.

Director Fox moved to the Evaluation objectives. Rep. Pierce asked if it was typical to look towards pending legislation noting a lot of emphasis is being placed on LD 1200. Director Fox said it was not typical, and there is no specific existing statement of what the objectives of the program are, so OPEGA would just be gleaning them from what they could piece together from what is in statute. Evaluation objectives are being added more and more with tax expenditure programs when they are amended so that the GOC will have guidance in the future when they are directing OPEGA on tax evaluation reviews. It is true LD 1200 has not been enacted into law yet, but had a high level of support throughout the legislative process and the costs associated with it being on the AFA Table are unrelated to the performance measures. She agreed with Rep. Pierce that OPEGA got the evaluation objectives from LD 1200 and it is a departure from where OPEGA would normally derive information from.

Rep. Pierce asked if FAME presented their changes to the TAX Committee. Rep. Mastraccio said because these parameters are not in the current Seed Program and if LD 1200 did not exist, OPEGA would be trying to figure out what the legislative intent might have been because it is so unclear and not stated. Director Fox agreed and said it put OPEGA in the position of deciding between whether to discern on their own what is based in current law and ignore the fact that LD 1200 exists and had gotten a positive level of legislative support. Rep. Pierce noted that she did not mean that the work done on LD 1200 is not good, but just trying to understand the process.

Sen. Chenette clarified that OPEGA went through all the information thoroughly to make sure that the proposed parameters would be based on their own recommendations and they are not just blindly going along with whatever the Legislative Committee decided. Director Fox agreed and said OPEGA weighed the options of what they would propose and came to the conclusion that this was the best representation of what they believe the Legislature thinks are the objectives and intended beneficiaries of the Seed Program.

Director Fox referred to the performance measures noting they are to be clear, potentially more detailed and specific to the elements of the program. The source for the measures is from LD 1200. Generally speaking FAME's changes regarding performance measures are included in the work OPEGA would do during their evaluation with the exception of "(7) The amount of total investments made in eligible businesses leveraged by the tax credit eligible investments" which is not in OPEGA's Parameters or in LD 1200. OPEGA thinks that is a performance measure that is clear, targeted and could help them with analyzing the evaluation objectives, benefits the GOC's understanding of the program and OPEGA's evaluation of the program.

Director Fox said it is helpful when OPEGA is doing evaluations to have a clear understanding of what the GOC wants reviewed and, to the extent they have the resources and data to be able to do that work, they will look at those things.

Sen. Chenette said the only thing OPEGA is suggesting from what is written is to add (7) in FAME's suggested changes under performance measures because thinks in their proposed parameters that could be helpful in clarifying intent and moving the performance measure along. Director Fox agreed.

Rep. Mastraccio referred to Sen. Keim and Sen. Libby's concerns of businesses taking advantage of multiple or layers of programs because, in this case, the beneficiary, the person getting the tax credit, is not the company. She wanted to clarify that because the company that is having the money invested into it may be benefitting from PTDZ or ETIF programs, but this credit goes to the investor. Director Fox said it is private money that was invested into a business to help that business develop. They have to leave the money in the business for 5 years. The investor is taking the risk on the company and is why they are getting the tax credit. The business is getting the infusion of capital they need and the State wants to encourage private investors to invest in Maine companies. She noted in her review of the Seed Program statute that it does not address how and what would be included in the program evaluation. Director Fox agreed and said that is why when tax programs come up

for Committee discussion it is often suggested that evaluation objectives be added to the legislation so when they are evaluated it is clear what the purpose is and what we would measure against.

Sen. Chenette asked if Sen. Keim had any follow-up or concerns regarding her questions from the last meeting. Sen. Keim said the only thing she would add is that Sen. Libby made the point that the investor could also be the business owner. Ms. Ricci said there are restrictions for ownership, but there is the potential for some overlap and OPEGA can explore the extent to which there is or is not overlap. Rep. Dillingham noted that 2-A H. in the ME Seed Capital Tax Credit Program Relevant Statute and LD 1200 extract document on page 5 clarifies a private investor ownership and be a helpful clarification regarding overlap.

Rep. Mastraccio explained that the GOC would just have to say they wanted to make sure OPEGA evaluated the overlap issue as part of what is being evaluated in the performance measures. Ms. Ricci agreed. Director Fox said there is no statement in the Seed Program that says this should be the exclusive benefit for the investor and the business and there should not be any others available. OPEGA understands there is some interest in how many programs businesses or investors can take advantage of and can look at them.

Sen. Keim asked if it would be helpful to add the word municipality to performance measure (4). Director Fox thought municipality could be added, but feels confident OPEGA will be looking at it because of the elements of the program and one of the purposes is to impact municipalities in the tax base. Ms. Ricci referred back to purpose (3) to increase municipal tax base and said OPEGA would be looking at whether the program achieves its purpose and would be a central element of the evaluation.

Rep. Arata asked if OPEGA would be looking at any detriments to the tax base based on other competing businesses losing business. Sen. Chenette said OPEGA talked about economic impact and assumed that would include positive and negative impact. Director Fox thinks they would look at the economic impact. OPEGA is looking at an overall economic impact and would have to look at what is available, but did not feel she could, at this time, answer Rep. Arata's question about the detriment to other businesses. For a lot of the tax program reviews, OPEGA does not know if that sort of information is available.

Sen. Chenette said on a flip side of Rep. Arata's question, he would also have a concern going back to the municipal tax base because there are a lot of businesses that take advantage of ETIF on the local level and it does negatively impact the property tax base and is pushing the burden on everyone else to pay their property taxes. It seems there may be a negative impact on the municipal tax base.

Rep. Harnett said looking at the purpose it is to increase the municipal tax base so when you are doing the evaluation you will be looking at what the tax base was and what the tax base became which is going to factor in both the negative and positive.

Motion: That the GOC accepts the Proposed Parameters for OPEGA's Full Evaluation of the Maine Seed Capital Tax Credit Program as written, plus FAME's suggested performance measure (7) The amount of total investments made in eligible businesses leveraged by the tax credit eligible investments. (Motion by Rep. Mastraccio, second by Sen. Sanborn.)

Discussion: Rep. Pierce asked if some of the suggestions by FAME were discussed at a public hearing during the legislative process. Rep. Mastraccio said she asked that question at the last meeting and FAME said they were in the room during the TAX Committee's discussion on LD 1200. She also noted that FAME was on the bill presented by Sen. Pouliot so they asked for the bill to go through. Rep. Pierce said if all of the suggestions were vetted through the TAX Committee that is one thing, but if these suggestions just came up now, that might have a different tone for her. While she understands this is a great source of information and great work done by the Committee, it is a deviation to be doing something that is not yet in law. Sen. Chenette said his understanding is that OPEGA would have come to a lot of these proposed evaluation parameters with or without any legislation. When the Legislature has not put evaluation parameters into statute, you have to start somewhere, so he views the draft legislation as a starting point for the discussion and it seemed like OPEGA, through their staff resources, evaluated and concluded that what was listed seemed liked something that they

would introduce anyway. This is not about a bill that is sitting on the AFA Table, it has nothing to do with that. This is about making sure that we are adequately evaluating a tax credit program for the State of Maine. The GOC's job is do they agree with OPEGA's proposed parameters and if a member has suggestions, or changes, about how the program is being evaluated, they need to talk about it. If not, the Committee has a good blueprint to move forward to adequately evaluate the program. Rep. Pierce said because she was not at the last GOC meeting was just checking if her concerns had been discussed.

Vote: Motion passed by unanimous vote 11 – 0. (Sen. Timberlake voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

- **Follow-up information on the Joint Standing Committee on Taxation's Tax Expenditure Review December 2019 Report**

Director Fox said at the last meeting the Committee members received copies of the Taxation (TAX) Committee's Tax Expenditure Review Report in regard to their review of OPEGA's expedited report, charitable sales tax exemptions and also their comments on OPEGA's Employment Tax Increment Financing (ETIF) Program report. The TAX Committee made two recommendations based on their review of OPEGA's evaluation of the ETIF program and is moving forward on that. The prospective prohibition on people claiming the same jobs for both ETIF and the Major Business Headquarters exemption in terms of qualifying for the credit. The other was to clarify some of the confidentiality issues in terms of what information is public in terms of who is benefiting from the ETIF program because the Maine Department of Economic and Community Development (DECD) and the Maine Revenue Services (MRS) have conflicting statutory provisions. DECD has a posture of having more information available, but the broader confidentiality provisions in Title 36, which applies to all sorts of tax payer information, are a little tighter for MRS. The TAX Committee's idea, as she understands it, is to specifically amend DECD's provisions, saying notwithstanding, this is the information that can be made available under ETIF. It is not necessarily any new information that should not be available now, it is just resolving that conflict between the two titles.

Director Fox reported that from speaking with Julie Jones, the TAX's Committee's Analyst, that they have named a subcommittee to look at the issues just referenced, as well as some other issues, with regard to the ETIF program and Rep. Arata is one of the members of that working group. The TAX Committee is moving forward and does not feel the need for the GOC's assistance in putting forward legislation at this time. She will be getting updates of where they are in terms of the recommendations and possible legislation. Rep. Arata noted that the TAX's subcommittee has not met yet.

Rep. Mastraccio asked if the TAX Committee had a timeline for the legislation on the two particular GOC recommendations because she thought the change regarding the Major Business Headquarters Expansion bill is an important change and if that was going to be occurring in the short session or recommended for the 130th Legislature. Rep. Arata said the TAX Committee has not gotten to that level of specificity.

The Chair, Sen. Chenette, asked the GOC members if they had objections to taking agenda items out of order. Hearing none, he moved to **Report from Director – Status of projects in process.**

Report from Director

- **Status of projects in process**

Director Fox reminded members that at the last meeting there was a Committee vote to focus attention on some of the scope areas under the **Maine Commission on Indigent Legal Services (MCILS)** review Scope areas 1 and 5, which are focused mostly on the financial and general oversight structure of the Commission. That work is anticipated to come to the GOC in April. The focus on MCILS means there will be a slow down on the final reporting of the **Maine Citizen Initiative Process (MCIP)** review. Unless the Committee puts a similar expedited request on the remainder of the MCILS review, OPEGA would pick up where they left off on the

MCIP review. In February the Committee can expect to receive two tax expenditure reports, the **Business Equipment Tax Exemption to Municipalities (BETE) Reimbursement for Taxes Paid on Certain Business Property (BETR)** and also the **Maine Capital Investment Credit (MCIC)**. Committee members will recall an email about if there are recommendations on either of the two Tax Expenditure reports it made sense to get them to the Committee quickly so they would have the opportunity to put forward legislation, if they chose to do so. Adding an extra meeting and amending the GOC's standard time period between the presentation of a report and the public hearing notice is further down the agenda. The **Pine Tree Development Zones Program, Part II** is in the planning stage. That review is a look back at whether the recommendations from the 2017 PTDZ report has impacted the current design of the program. Also, if possible, to see how the objectives of the program that have been newly stated since OPEGA's evaluation, line up with the newly released strategic long term economic plan.

The GOC can expect, sometime after the first of March, reports from policy committees who have oversight authority over quasi-independent agencies, such as, the Maine Turnpike Authority or Maine Human Rights Commission. This is a way for the policy committees to check in with the quasi-independent agencies every other year. The policy committees then submit a report to the GOC and may prompt the GOC to take a further look if they found something, for example, that may not be consistent with the procurement requirements process. Director Fox met with the Analysts from the Office of Policy and Legal Analysis to talk about the objectives of the quasi review process and offered OPEGA's assistance when evaluating those entities.

Director Fox anticipates an update at the next meeting regarding child protection services and reminded members about the tracking documents OPEGA had put together. The document takes all of the strategies that the Office of Child and Family Services (OCFS) decided were their priorities for improving the system. There are also specific things that either the Legislature or OCFS has put forward to achieve those objectives and OPEGA is seeing where those things are in the process. The document also lists where the initiatives or strategies came from, for example, the PCG report, the Ombudsman report, etc., so it lets you follow what they are doing based on what they said they were going to do. She knows the Judiciary (JUD) Committee is receiving a presentation from Dr. Landry, Director, OCFS, that will include some information on the Judicial impacts with the improvements planned for the child protection system, or issues that have been identified, that need work. Hopefully, by the next GOC meeting that will have all happened, as well as, bills related to that subject going before the JUD Committee scheduled for February 5th so she will be able to give an update. There was a piece in the biennial budget that puts forward money for the replacement of the DHHS case management system, otherwise known as MACWIS, and she will let the Committee know what the current appropriations for that are. Also, there may be some new legislation on point and will be able to draw the Committee's attention to and an update on the bills carried over on the AFA Table. The Committee may recall that at the October meeting when they met with the JUD and Health and Human Services (HHS) Committees, members came up with a list of action items they all agreed the Committees needed to do to stay on top of overseeing the improvements being put forth by OCFS to improve the child protection system. Director Fox sent a copy of the Action items identified to the Analysts of the JUD and HHS Committees so they could let the Chairs and Leads know that the GOC may be asking for an update. She thought the updates might be helpful in keeping the communications between the three Committees going. (A copy of the Action items document is attached to the Meeting Summary.)

Sen. Chenette noted that the combination of the Action items identified document, in addition to the presentation today from the Ombudsman, will guide the GOC's work on Child Protective Services. The Committee will work on scheduling a report back from Dr. Landry's Office at the beginning of March and will continue to check in with the Judiciary and HHS Committees.

Sen. Chenette reported that an additional GOC meeting has been added in February. The GOC will be meeting February 14, 21 and 28. The Committee will aim for Dr. Landry's report back for the beginning of March. He referred to the Action items identified sheet and asked Director Fox which of the items have been checked off versus the ones that have not been. Director Fox said #1 has been checked off because of the scheduled presentation from Dr. Landry, as well as, department bills related to the Judicial issues in the child protection system are scheduled to be heard.

Rep. Hartnett let the Chairs know that on February 14th the Judiciary Committee has all day hearings on the Land Claims Act Task Force so he will be unable to be at the GOC meeting. Sen. Keim is also on the Judiciary Committee.

Director Fox will make sure the link for the meeting audio and other material regarding OPEGA's BETR/BETE report presentation are provided to those members not at the meeting.

Planning for upcoming meetings

• Consideration of waiver of 14-day period between report presentation and public comment period

Director Fox said the Committee's Rules state there should be at least 14 days between the public presentation of an OPEGA report and the public comment period unless the Committee, with a majority vote, waives that requirement. In anticipation of a short Session and trying to give the GOC the opportunity to put forth legislation should they choose to, she suggested to the GOC Chairs that the 14 day requirement could be waived. The Committee will receive the BETR/BETE report presentation on February 14th and MCIC on February 21st and a combined public comment period for both reports on February 28th. That would mean that the time between the report presentation and public comment period on the MCIC report would only be 7 days instead of 14. BETR/BETE is the longer report so the Committee may not want to shorten the time period between the report and the public comment and OPEGA anticipates the MCIC report will be shorter so thought that was the better choice in terms abbreviating the public comment period requirement should the GOC decide to do that.

Motion: In accordance with Section 7 of the Committee Rules of Procedure of the Government Oversight Committee of the 129th Legislature, moves that the Committee schedule the public comment period for the final report of the Maine Capital Investment Credit seven days after presentation of the report. (Motion by Rep. Mastraccio, second by Rep. Pierce, passed by unanimous vote 11-0.) (Sen. Timberlake voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

• Child Welfare Ombudsman's Presentation of 2019 Annual Report

Christine Alberi, Executive Director, Ombudsman, Maine Child Welfare Services, presented her 117th Annual Report – 2019. (A copy is attached to the Meeting Summary.)

Sen. Chenette said there are two central recommendations that Ms. Alberi is providing. The first is zeroing in on the ongoing training. OCFS has been working with various partners, like the Muskie School, to provide on-board training to new staff and various beginning level trainings. It seems like Ms. Alberi is suggesting that this training is not just for the new staff and that it needs to be a constant, best practicing scenario, both on the front and back end of child protective services. He asked how she would recommend OCFS go about doing that.

Ms. Alberi did not have any specific recommendations about the type of training. However, she thinks it is generally true that child welfare work is very complex so the initial training, however good it has been under OCFS, or will be under the Muskie School, thinks there is a lot of training that needs to go on for new caseworkers and caseworkers who have been around for a long time and out in the field doing the work. She knows that part of OCFS plan, for example, is to have the training unit out in the field with the caseworkers and she thinks that is most valuable for caseworkers who are actually doing the work. The question of needing additional resources is a question for the Department to answer.

Sen. Chenette said one of the suggestions from the Governor's State of the State address was to add 20 new positions, but would need clarification on what those positions are. He noted from Ms. Alberi's report that she zeroed in on training and asked if she sees a need for additional staff and was the need for additional caseworker staff first or supervisors to the caseworkers.

Ms. Alberi thought Sen. Chenette's question was hard to answer from this round of information because it does not reflect the second round of hiring. She has seen immediate improvement, for example, in the phone calls she is receiving, which is not a scientific survey, but she is getting fewer calls saying I have not seen the caseworker for a couple of weeks. She does not know the answer to how it is going to affect actual practice, and thinks supervisors are the key to the success. It doesn't matter the circumstances, caseworkers have an incredibly difficult job, it is not for everybody and not for everybody long term, so there is always going to be turnover. Supervisors tend to stay in their positions longer, so giving them adequate caseloads of people to supervise, and effective and efficient training, is the key.

Rep. Pierce asked if there has been any discussion about giving more parent training or stress training to parents or the caregivers.

Ms. Alberi said that is a big key to the situation. The example being talked about a lot and implementing is the Families First Prevention Act which provides additional funding focused on trauma related issues, provides additional federal funding for mental health services for parents and in-home services for parents to prevent children from being removed from the home in the first place. She thinks some of the MaineCare studies that are happening now will also be helpful, for example, in making sure we have workers that are skilled in evidence-based practices and that will hopefully support families before the children need to be removed. She thinks it is everyone's goal to reduce the number of children in State custody, but it is going to take time to make that happen. For the purposes of the Ombudsman's work, said they are not the Ombudsman for MaineCare or Mental Health Services, and is why her report is focused solely on child protective and child welfare issues where DHHS is investigating children's safety and may take the children into custody.

Rep. Pierce asked how Maine fares across the nation for the number of kids in OCFS' system per population. Ms. Alberi said the Department just recently provided those numbers and Maine is not an outlier.

Rep. Mastraccio said for many years, reports were put on a shelf and not discussed. It appeared that DHHS was not defensive about Ms. Alberi's report and were willing to discuss specifically what they are doing to address the issues raised. Ms. Alberi said her office and DHHS are working well together and they have been transparent and willing to listen and implement her recommendations and to make sure the reports are used. The level of openness of transparency is high.

Sen. Chenette referred back to the training mentioned in Ms. Alberi's report and noted she is suggesting two adjustments to ongoing training. He asked if the ongoing training is for caseworkers specifically or would she include supervisors. Also, did she think one needed to be prioritized over another and does there need to be different training for the supervisors on an ongoing basis versus the caseworkers.

Ms. Alberi thinks that both the caseworkers and the supervisors need the training. Most of the supervisors have a lot of expertise in child welfare and are the key, but would not say that training for the caseworkers should be put aside in substitution for that. She cannot make specific recommendations about what OCFS actually needs, but thinks the question for the Legislature is does the Department need additional resources, need to hire an outside agency, for example, have the Casey Family Services come in and train supervisors and caseworkers or to train the trainers. Once the Muskie School contract is in place, they have to decide what needs to happen with the current training staff that exists, where are they best used, do they need more people, do they need different training, and what is the gold standard of training right now for child welfare workers. OCFS has been consulting with Casey Family Services and the Child Welfare League of America on many issues they are dealing with right now. She doesn't know what their needs are or what their budget is, but the question should be asked of the Department.

Rep. Mastraccio asked if Ms. Alberi will be presenting her report to the HHS Committee and the Education Committee, referring to truancy. She noted that in her District if a child is truant for a certain number of days they go to the house, but that does not happen everywhere so asked if Ms. Alberi is going to report to the Education Committee. Ms. Alberi is presenting her report to HHS Committee and will contact the Education

Committee to ask if they would like a presentation. She did note that all legislators received a copy of the report.

Sen. Chenette noted that the two adjustments for training have been discussed and asked if there was anything else that Ms. Alberi thought needed to be a takeaway from her report or prioritized moving forward. Ms. Alberi did not think there was necessarily anything legislatively that needs to be prioritized. Her biggest worry is that right now she is pleased to see that the State, in general, is very interested in child welfare and pushing for improvements and paying attention to the issues that kids are experiencing and the fact that they are often unsafe in the hands of their caregivers. She worries that in a couple of years that focus will be lost and that everyone needs to keep pushing to make sure kids are safe. The prevention of kids entering custody in the first place is crucial. Child protection is never going to come to an end, but maybe lessened and have fewer kids who are actually in difficult situations.

Rep. Harnett said one of the problems Ms. Alberi mentioned was criminal backgrounds and asked if she has seen improvement since the enhancements to the Background Check Unit pilot project. Ms. Alberi has seen improvement and said the Criminal Background Check Unit has been very helpful.

Rep. Mastraccio said being a member of the Government Oversight Committee for several legislative session noted there have been numerous child welfare issues before them. She thinks it is important that the GOC receive a presentation of the Child Welfare Services Ombudsman Annual report every year because it puts focus on the subject and gives legislators an opportunity for discussing concerns and to not lose focus on child safety.

The Committee thanked Ms. Alberi for her report presentation and for answering their questions.

Next GOC meeting date

The next GOC meeting is scheduled for February 14, 2020 at 9:00 a.m.

Adjourn

The Chair, Sen. Chenette, adjourned the GOC meeting at 10:29 a.m. on the motion of Rep. Mastraccio, second by Rep. Dillingham, unanimous.

SENATE

BENJAMIN M. CHIPMAN, DISTRICT 27, CHAIR
HEATHER B. SANBORN, DISTRICT 28
MATTHEW POULIOT, DISTRICT 15

JULIE JONES, SENIOR LEGISLATIVE ANALYST
DIANNE DUBORD, COMMITTEE CLERK



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STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON TAXATION

TO: Government Oversight Committee
FROM: Taxation Committee
DATE: January 17, 2020
RE: Proposed Parameters for OPEGA's Full Evaluation of the Maine Seed Capital Tax Credit

The Joint Standing Committee on Taxation has reviewed the information that you provided to us pursuant to 3 MRSA §999 regarding the proposed parameters for full evaluation of the Maine Seed Capital Tax Credit Program. The Taxation Committee has reviewed the materials and has no suggestions regarding changes to the proposed parameters. If you have any further questions, please do not hesitate to contact us. We look forward to the results of OPEGA's review.

Sincerely,

Handwritten signature of Benjamin M. Chipman.

Benjamin M. Chipman
Senate Chair

Handwritten signature of Ryan Tipping.

Ryan Tipping
House Chair

cc: Danielle Fox, Director, OPEGA
Christopher Nolan.



DANIELLE D. FOX
DIRECTOR

MAINE STATE LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

DATE: January 24, 2020
TO: Government Oversight Committee
FROM: Danielle D. Fox, Director *Sani*
RE: GOC Approval of Maine Seed Capital Tax Credit Program Evaluation Parameters

Worksheet for Committee Discussion

Enclosed is a worksheet for Committee members to consider for the purpose of approving/determining evaluation parameters for OPEGA's full evaluation of the Maine Seed Capital Tax Credit Program. Pursuant to 3 MRSA §999 (1)(A), the GOC is required to consider OPEGA's proposal and approve the following for every tax expenditure evaluation:

- The purposes, intents, or goals of the program;
- The program's intended beneficiaries;
- The evaluation objectives; and
- Performance measures appropriate for analyzing the evaluation objectives.

The worksheet is similar to the one presented to the Committee at the January 10, 2020 meeting but now includes reference to comments received from stakeholders and OPEGA's comment regarding proposed changes. The worksheet also includes comments raised by Committee members suggesting items for OPEGA to consider when conducting the evaluation.

Committee Process for Approval

Since the parameters approved by the GOC govern OPEGA's work on the evaluation, it is important that intent of the Committee is stated clearly and supported by an affirmative vote.

If the Committee wishes to approve the parameters as proposed by OPEGA without change, this can be done with one motion/vote. If the Committee would like to make amendments to the proposed parameters, the motion(s) should reference the specific section (purpose, beneficiaries, evaluation objectives, performance measures) and the paragraph to be added, changed, deleted. Similarly, it would be helpful to OPEGA if the GOC votes on items which Committee members have requested or suggested OPEGA consider when conducting the evaluation. The worksheet before you include suggestions made by 2 members at the January 10, 2020 meeting.

Maine Seed Capital Tax Credit Program – Proposed Evaluation Parameters

Prepared by OPEGA for GOC meeting January 24, 2020

OPEGA proposal (submitted pursuant to 3 MRSA §999(1)(A))	Comment for GOC consideration/discussion
<p>Purpose Source: LD 1200, as amended by Committee Amendment A (Section 10)</p> <p><i>In developing evaluation parameters to perform the review, the office shall consider:</i></p> <p><i>A. That the specific public policy objectives of the credit provided under this section are:</i></p>	
<p>(1) To increase job opportunities for residents of the State in businesses that export products or services from the State;</p> <p>(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</p> <p>(3) To increase municipal tax bases.</p>	<p>FAME testimony includes proposed changes to the specific public policy changes as expressed in LD 1200. (Also see Agnew Testimony)</p> <p>The proposed amendment would impact OPEGA's work as the purpose of the credit serves as the basis of the evaluation which informs how we apply each evaluation objective and performance measure. The GOC may want to consider whether some of those proposed changes broaden (see 1) and/or narrow (see 2) the public policy objective as stated in LD 1200.</p> <p>Additionally, the committee may want to consider whether the underlying ideas expressed in the proposed changes could be addressed in the performance measures section. (See FAME proposal 4)</p> <p>(The addition of the term "phases" proposed by FAME would not have an impact on OPEGA's work.)</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</p> <p>(2) Jobseekers in the State.</p>	<p>FAME testimony proposed an additional beneficiary of the program. The GOC may want to consider whether this addition (municipalities and taxpayers) might be addressed under performance measure (4).</p> <p>(Agnew testimony supports OPEGA recommendation w/FAME change)</p>
<p>Evaluation objectives Source: 3 MRSA §999(1)(A)(3)</p> <p><i>Each objective will be addressed to the degree possible based on its relevance, the level of resources required and the availability of necessary data.</i></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) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goal.

FAME testimony suggests a non-substantive change to (i)

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

In developing evaluation parameters to perform the review, the office shall consider:

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;

FAME testimony proposes changes to (1) and (5) – these changes would specify OPEGA look at direct and indirect jobs created. This is something OPEGA would consider under the performance measures as written.

FAME testimony proposes the addition of a new performance measure – the program's net impact on revenue, inclusive of costs and economic benefits generated. The elements of this proposed performance measure are things that OPEGA would consider under performance measure (4) as written – with the possible exception of municipal property taxes.

- (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.

FAME testimony proposes another performance measure – the amount of total investments made in eligible businesses leveraged by the tax credit eligible investment. (OPEGA takes this to mean public and private funding sources). This new measure meets the standard set in statute for being clear and relevant to the program and may be helpful in analyzing the evaluation objectives.

Committee member comments/suggested considerations from 1/10/20 meeting:

(Sen. Libby) Are businesses benefiting from the investment (eligible for credit under Seed), also benefiting from other State tax credits? If yes, what is the extent of the overlap?

Is there potential/actual overlap between business beneficiaries and investors receiving the credit (whether by means of co-owners and/or pass throughs)?

(Sen. Keim) If a business is using multiple state programs, what does that mean for the state's exposure to risk? What is the value that the State receives in exchange for the total it has invested?

§999. Full evaluation of tax expenditures

1. Evaluation process. Beginning January 1, 2016, the office shall evaluate each tax expenditure identified under section 998, subsection 1, paragraph A in accordance with the schedule established in section 998, subsection 2.

A. Prior to the beginning of each evaluation, the committee, after consideration of recommendations from the office, shall approve the following for each tax expenditure subject to full evaluation:

- (1) The purposes, intent or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments and changes in the state economy and fiscal condition;
- (2) The intended beneficiaries of the tax expenditure;
- (3) The evaluation objectives, which may include an assessment of:
 - (a) The fiscal impact of the tax expenditure, including past and estimated future impacts;
 - (b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;
 - (c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;
 - (d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;
 - (e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;
 - (f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;
 - (g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;
 - (h) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and
 - (i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals; and
- (4) The performance measures appropriate for analyzing the evaluation objectives. Performance measures must be clear and relevant to the specific tax expenditure and the approved evaluation objectives. [

B. Before final approval pursuant to paragraph A, the committee shall seek and consider input from the policy committee and stakeholders and may seek input from experts.

2. Action by office; report. The office shall submit a report on the results of each evaluation to the committee and the policy committee. The office shall seek stakeholder input as part of the report. For each tax expenditure evaluated, the report must include conclusions regarding the extent to which the tax expenditure is meeting its purposes, intent or goals and may include recommendations for continuation or repeal of the tax expenditure or modification of the tax expenditure to improve its performance.

3. Action by committee. The committee shall review the report submitted by the office under subsection 2, assess the report's objectivity and credibility and vote whether to endorse the report. The committee shall submit a record of the vote on any reports submitted by the office and any comments of or actions recommended by the committee to the policy committee for its review and consideration.

4. Action by policy committee. The policy committee shall review the results of the tax expenditure evaluations and of the committee's review based on materials submitted under subsections 2 and 3. The policy committee shall submit to the Legislature by the later of 90 days after receipt of materials submitted under subsections 2 and 3 and the adjournment sine die of the regular session during which the materials were received, if applicable, a report documenting its activities under this chapter and any recommendations resulting from its review of the materials submitted under subsections 2 and 3. The policy committee may submit a bill to the Legislature to implement the policy committee's recommendations.



DANIELLE D. FOX
DIRECTOR

MAINE STATE LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

TO: Government Oversight Committee
FROM: Danielle D. Fox, Director *Dani*
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 MRSA §5216-B 10 MRSA §1100-T	Income Tax Credit	Business Incentive Financial Investment	FY20 \$4,250,000 FY21 \$4,500,000

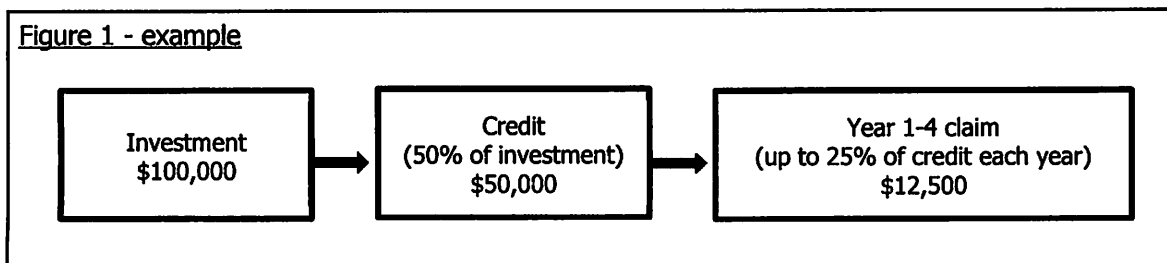
Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2020 – 2021.

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;</p> <p>(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</p> <p>(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</p> <p>(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;</p> <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;</p> <p>(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.

**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

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) 10 MRSA §1100-T(1)</p>	
<p>(1) To increase job opportunities for residents of the State in certain types of businesses, including those that export products or services from the State;</p> <p>(2) To increase private investment in small new and existing businesses that need additional capital to develop or grow, 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 phases; and</p> <p>(3) To increase municipal tax bases.</p> <p>(4) Stimulate additional economic activity through spending by businesses assisted with the credit.</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 phases; and</p> <p>(2) Job-seekers in the State.</p> <p>(3) Municipalities and taxpayers that benefit from increasing tax bases and additional economic activity.</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.

Action items identified at 10/15/19 meeting of the GOC with chairs and leads of JUD/HHS:

1. Presentation of strategies and initiatives to improve child welfare by Director Landry. *This presentation could be tailored to a particular audience/committee, if preferred. One presentation would be to the Judiciary Committee, with an invitation to representatives of the Judiciary Branch to be scheduled prior to January and the other to a wider legislative audience, possibly via a meeting of the Children Caucus.*
2. Increase understanding of participation of stakeholders representing those engaged in the judicial processes related to child protective matters. *Whom has OCFS engaged as stakeholders in the mapping of initiatives with regard to court system elements of child welfare system?*
3. Increase understanding of the impacts to the judicial system over the past year to 18-months as related to the reported increase of child protective cases.
4. Explore the feasibility of including information on the OCFS data-dashboard regarding impacts on the court system.
5. Track the receipt of federal Family First Program funds aimed at secondary prevention efforts. *Is this money flowing and how is it being spent? Are legislative actions required to receive or maximize these funds?*
6. Track the progress of related bills carried over on the Special Appropriations Table – specifically (the following LDs are included on the tracking document distributed on 10/15);
 - a. LD 115 An Act to Appropriate Funds for Home Visiting Services to provide Child Development Education and Skills Development for New Parents;
 - b. LD 633 An Act to Create a Permanent Navigator Position within DHHS;
 - c. LD 1039 Resolve to Establish and Fund Intervention for At-Risk Families and Children; and
 - d. LD 1417 An Act to Expand Access to Head Start to Assist Opioid-Affected and Other At-Risk Families.
7. [Communication] Develop a plan to facilitate communication between JUD and HHS committees.
8. [Big picture/process] Examine our structure with regard to addressing complicated, cross-jurisdictional issues with the assistance of NCSL.

Prepared by OPEGA at the request of GOC chairs

P:\OPEGA\GOC Committee\Committee Meetings\10-15-19\Action Items Identified At Oct 15 Meeting Re CPS.Docx

Maine
CHILD WELFARE SERVICES
OMBUDSMAN

17TH ANNUAL REPORT • 2019





CHILDREN'S OMBUDSMAN

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The 2019 Maine Child Welfare Ombudsman Annual Report was written and prepared by:

CHRISTINE E. ALBERI, Esq.
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I am honored to present the seventeenth annual report of the Maine Child Welfare Ombudsman. Maine Child Welfare Ombudsman, Inc., is an independent non-profit solely dedicated to fulfilling the duties and responsibilities promulgated in 22 M.R.S.A. § 4087-A. The Child Welfare Ombudsman provides neutral objective assessment of concerns raised about practices of the Maine Department of Health and Human Services, Office of Child and Family Services, Child Welfare Services (“the Department”). The Ombudsman also provides information about child welfare services to individuals who contact the program. Additionally, the Ombudsman provides systemic oversight of child welfare policy and programs and provides information to the public. The Child Welfare Ombudsman provides an independent, statewide, and professional overview of child welfare practices providing feedback on appropriate application of policy and practice, when families have been treated fairly, and children’s safety ensured.

The Department continues to sustain significant improvements and changes in the wakes of the deaths of Marissa Kennedy and Kendall Chick two years ago. The Department has focused on both strengthening child welfare and connected systems and rebuilding trust and providing increased transparency and insight into the successes achieved and challenges faced in child welfare. The Department has engaged with a great deal of outside expertise to enhance the significant knowledge already available within the Department. This expertise comes from organizations such as the Muskie School of Public Service, Casey Family Programs, the Annie E. Casey Foundation, and the Child Welfare League of America. The Department has plans for improving Children’s Behavioral Health Services which will benefit all children and is also committed to participating in the Family First Prevention Services Act. The Department has synthesized and prioritized the many recommendations gathered in 2018 and 2019 and is embarking on an ambitious and necessary plan to implement as many recommendations as possible.

During the past six years the Ombudsman’s office has completed 624 case specific reviews and made 1886 information and referral calls. Individuals contacting the program have risen steadily each year, especially in 2018 and 2019. During the 2011 fiscal year, the last year that the Ombudsman program was housed in the Maine Children’s Alliance and the contract amount was decreased, there were 313 individual contacts made to the Ombudsman. This year there were 611 individual contacts. Thanks to the support of the Governor and the Legislature, funding was appropriated for additional staff and office space for the 2020 fiscal year.

In the past year, the Ombudsman and the Department have been able to work collaboratively together both during case-specific reviews and in wider policy and systems improvement discussions. We look forward to continuing this productive relationship going forward. The Ombudsman’s central recommendations this year are to provide training and support to improve practice in two crucial areas of decision making: 1) in making the decision whether the child is safe during the initial assessment or investigation and 2) in making the decision whether the child will be safe in the home once reunified with parents.

At the end of October of 2019 there were 2198 children in state custody. This number has risen steadily since the spring of 2018. We all have a long road ahead to safely bring these numbers back down, and to ensure that children are safe everywhere they are.

Child Welfare Services is on a path of reform and progress, but there is still a great deal of work to do. I appreciate the statewide attention given to child welfare and to the Child Welfare Ombudsman and I would like to thank both Governor Janet Mills and the Legislature for their ongoing support to the program.



Christine Alberi

Christine Alberi, Child Welfare Services Ombudsman

WHAT IS *the Maine Child Welfare Services Ombudsman?*

The Maine Child Welfare Services Ombudsman Program is contracted directly with the Governor's Office and is overseen by the Department of Administrative and Financial Services.

The Ombudsman is authorized by 22 M.R.S.A. §4087-A to provide information and referrals to individuals requesting assistance and to set priorities for opening cases for review when an individual calls with a complaint regarding child welfare services in the Maine Department of Health and Human Services.

The Ombudsman will consider the following factors when determining whether or not to open a case for review:

1. The degree of harm alleged to the child.
2. If the redress requested is specifically prohibited by court order.
3. The demeanor and credibility of the caller.
4. Whether or not the caller has previously contacted the program administrator, senior management, or the governor's office.
5. Whether the policy or procedure not followed has shown itself previously as a pattern of non-compliance in one district or throughout DHHS.
6. Whether the case is already under administrative appeal.
7. Other options for resolution are available to the complainant.
8. The complexity of the issue at hand.

An investigation may not be opened when, in the judgment of the Ombudsman:

1. The primary problem is a custody dispute between parents.
2. The caller is seeking redress for grievances that will not benefit the subject child.
3. There is no specific child involved.
4. The complaint lacks merit.

MERRIAM-WEBSTER ONLINE
defines an *Ombudsman* as:

- 1: a government official (as in Sweden or New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials
- 2: someone who investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements

The office of the Child Welfare Ombudsman exists to help improve child welfare practices both through review of individual cases and by providing information on rights and responsibilities of families, service providers and other participants in the child welfare system.

More information about the Ombudsman Program may be found at <http://www.cwombudsman.org>

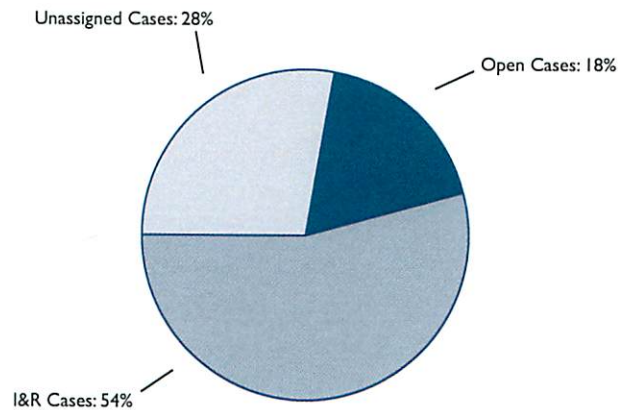
DATA

from the Child Welfare Services Ombudsman

The data in this section of the annual report are from the Child Welfare Services Ombudsman database for the reporting period of October 1, 2018, through September 30, 2019.

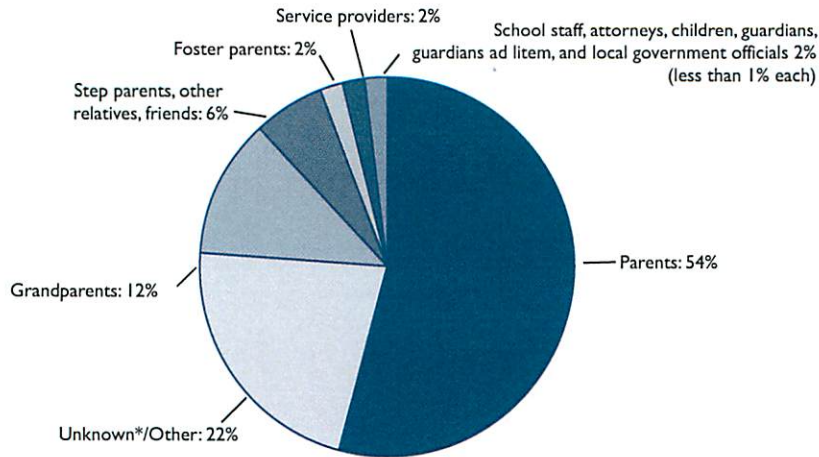
In Fiscal Year 2019, 611 inquiries were made to the Ombudsman Program, an increase of 6 inquiries from the previous fiscal year. As a result of these inquiries, 109 cases were opened for review (18%), 329 cases were given information or referred for services elsewhere (54%), and 173 cases were unassigned (28%). An unassigned case is the result of an individual who initiated contact with the Ombudsman Program, but who then did not complete the intake process. Our scheduling protocols allow each caller an opportunity to set up a telephone intake appointment.

HOW DOES THE OMBUDSMAN PROGRAM CATEGORIZE CASES?



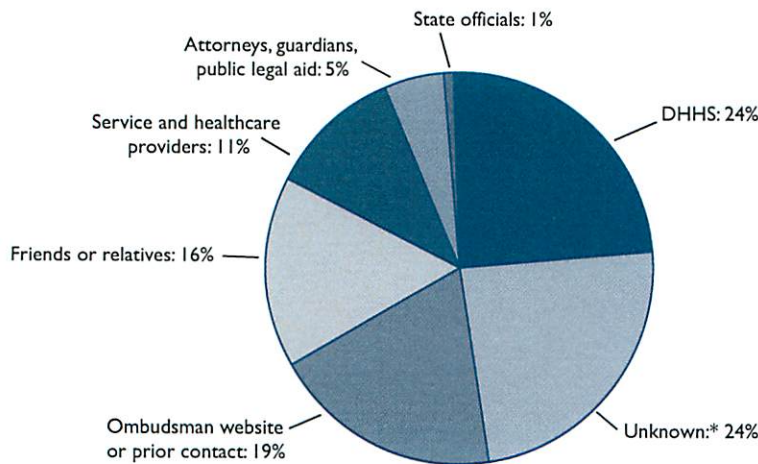
WHO CONTACTED THE OMBUDSMAN PROGRAM?

In Fiscal Year 2019, the highest number of contacts were from parents, followed by grandparents, then other relatives/friends, and foster parents, and service providers.



HOW DID INDIVIDUALS LEARN ABOUT THE OMBUDSMAN PROGRAM?

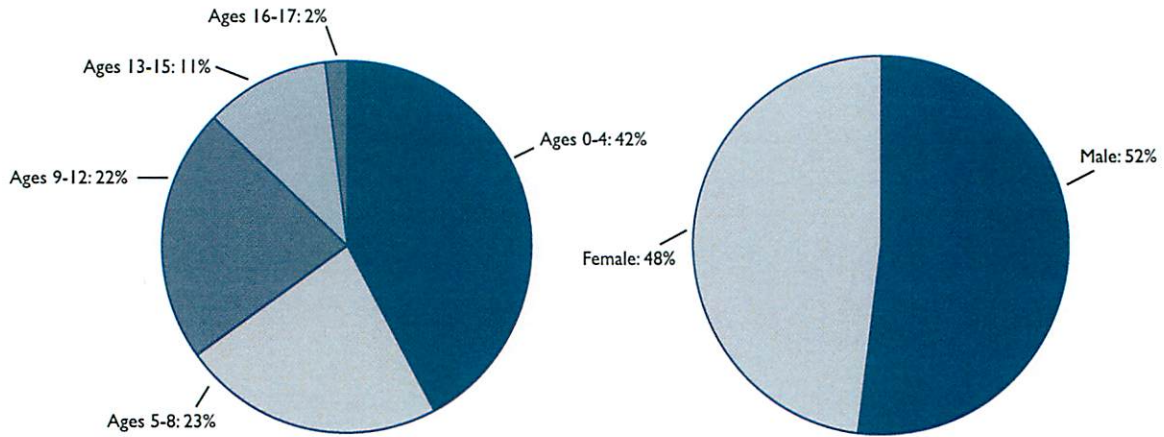
In 2019, nineteen percent of contacts learned about the program through the Ombudsman website or prior contact with the office. Twenty-four percent of contacts learned about the Ombudsman Program through the Department of Health and Human Services.



* *Unknown* represents those individuals who initiated contact with the Ombudsman, but who then did not complete the intake process for receiving services, or who were unsure where they obtained the telephone number.

WHAT ARE THE AGES & GENDER OF CHILDREN INVOLVED IN OPEN CASES?

The Ombudsman Program collects demographic information on the children involved in cases opened for review. There were 192 children represented in the 109 cases opened for review: 52 percent were male and 48 percent were female. During the reporting period, 65 percent of these children were age 8 and under.



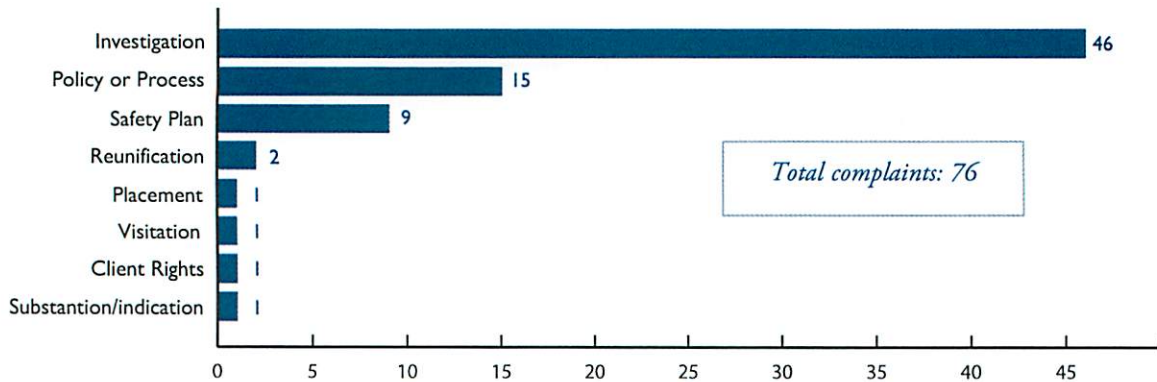
HOW MANY CASES WERE OPENED IN EACH OF THE DEPARTMENT'S DISTRICTS?

DISTRICT #	OFFICE	CASES	DISTRICT	CHILDREN	
			% OF TOTAL	NUMBER	% OF TOTAL
0	Intake	3	8%	3	2%
1	Biddeford	14	13%	29	15%
2	Portland	12	11%	24	13%
3	Lewiston	17	16%	33	17%
4	Rockland	5	5%	6	3%
5	Augusta	21	19%	36	19%
6	Bangor	15	14%	24	13%
7	Ellsworth	7	6%	12	6%
8	Houlton	15	14%	25	13%
TOTAL		109	100%	192	100%

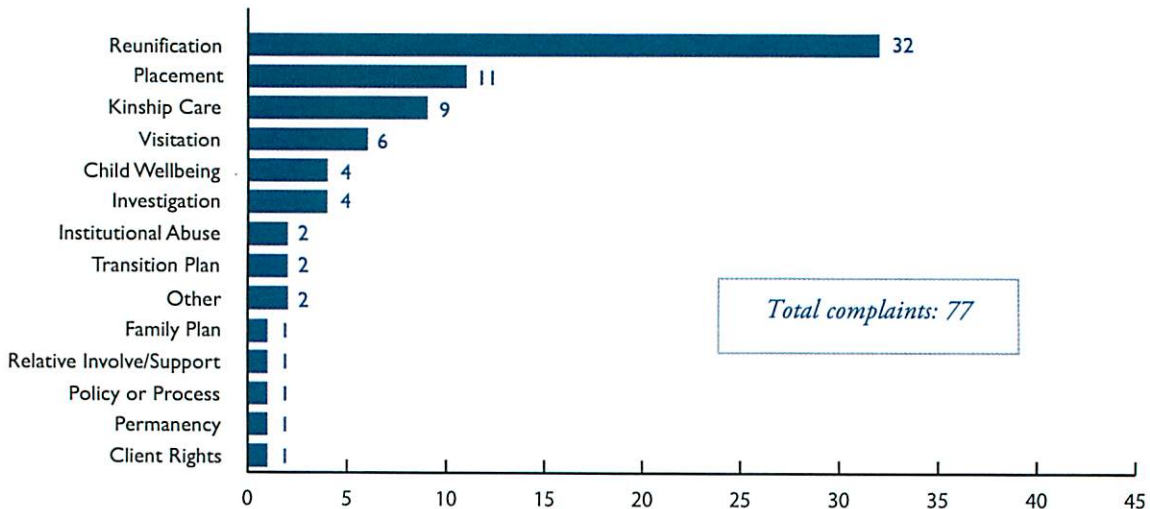
WHAT ARE THE MOST FREQUENTLY IDENTIFIED COMPLAINTS?

During the reporting period, 109 cases were opened with a total of 153 complaints. Each case typically involved more than one complaint. There were 76 complaints regarding Child Protective Services Units or Intakes, 77 complaints regarding Children’s Services Units, most during the reunification phase.

Area of Complaint: **CHILD PROTECTIVE SERVICES (INITIAL ASSESSMENTS)**



Area of Complaint: **CHILDREN’S SERVICES UNITS (REUNIFICATION)**



HOW MANY CASES WERE CLOSED & HOW WERE THEY RESOLVED?

During the reporting period, the Ombudsman Program closed 98 cases that had been opened for review. These cases included 146 complaints and those are summarized in the table below.

VALID/RESOLVED complaints are those complaints that the Ombudsman has determined have merit, and changes have been or are being made by the Department in the best interests of the child or children involved.

VALID/NOT RESOLVED complaints are those complaints that the Ombudsman has determined have merit, but they have not been resolved for the following reasons:

1. **ACTION CANNOT BE UNDONE:** The issue could not be resolved because it involved an event that had already occurred.
2. **DEPARTMENT DISAGREES WITH OMBUDSMAN:** The Department disagreed with the Ombudsman's recommendations and would not make changes.
3. **CHANGE NOT IN THE CHILD'S BEST INTEREST:** Making a change to correct a policy or practice violation is not in the child's best interest.
4. **LACK OF RESOURCES:** The Department agreed with the Ombudsman's recommendations but could not make a change because no resource was available.

NOT VALID complaints are those that the Ombudsman has reviewed and has determined that the Department was or is following policies and procedures in the best interests of the child or children.

RESOLUTION	CHILD PROTECTIVE SERVICES UNITS	CHILDREN'S SERVICES UNITS	TOTAL
Valid/Resolved	1	4	5
Valid/Not Resolved*	15	15	30
1. Action cannot be undone	15	12	
2. Dept. disagrees with Ombudsman	0	0	
3. Lack of Resources	0	3	
Not Valid	42	69	111
TOTAL	58	88	146

* Total of numbers 1, 2, 3

During reviews of the 98 closed cases, the Ombudsman identified 10 additional complaint areas that were not identified by the original complainant. The 10 complaints were found to be valid in the following categories: 3 mental health services for child, 2 initial assessments, 2 ongoing assessment of reunification, 1 support of foster parents, 1 transition plan, and 1 child well-being.

POLICY AND PRACTICE

Findings and Recommendations

The 2019 fiscal year has marked enormous changes within the Department of Health and Human Services, Office of Child and Family Services (“the Department”). The Governor, Legislature, and the Department have worked to increase child welfare staffing. This will help social workers have sufficient time and resources to effectively and thoroughly complete the work that they are so dedicated to doing: keeping children safe and helping ensure that children have safe and permanent homes and families.

Additionally, the Department has re-affirmed its dedication to the prioritization of child safety. “Child Safety, First and Foremost” is at the head of new priorities. The framework of resources and personnel is being laid in place. However, during the fiscal year, there were still critical practice issues occurring statewide at two crucial points during child protective involvement: 1) when making the decision whether the child is safe during the initial assessment or investigation and 2) when making the decision whether the child will be safe in the home once reunified with parents.

A new investigation policy was implemented in November of 2018 and structured decision-making tools are now used during initial investigations of child safety. Policy changes and tools can be helpful, but frontline staff need continued ongoing training in investigation techniques. While the fiscal year reporting period for this annual report is from October 1, 2018 through September 30, 2019, the majority of case specific instances that are the basis of this annual report occurred between the summer of 2018 and the spring of 2019.

Out of 98 cases closed this year, the Ombudsman was in general agreement with 61 of the cases (there were no major policy or practice issues in the case). Out of the remaining 37 cases, there were 18 cases where initial assessment or investigation practice was at issue, 11 cases where reunification practice was at issue, and 7 other cases that involved truancy, transition planning, lack of mental health and behavioral services for children, and other issues. Some cases had more than one issue, but the primary issue in the case was used for this categorization. Practice issues that occurred before March of 2018 were not included.

The Department is partnering again with the Muskie School to provide training to new staff and there are other initiatives to increase training opportunities but training should stretch over the life of employment in child welfare. Fortunately, there were also many instances found in case-specific reviews where front line staff demonstrated a high level of competence fueled by dedication and experience.

1. INITIAL INVESTIGATIONS AND ASSESSMENTS

Some case specific reviews that were performed during the fiscal year involved previous assessment policy and some required the use of new investigation policy and structured decision-making tools. During a time of so much change and shifting policy, it is difficult to fully analyze causes of issues, but it seems that the change in policy alone has not yet led to significant improvement in accurately determining the safety of children at the outset of child welfare involvement.

The following are a sampling of cases where investigation and/or assessment policy were at issue:

- An assessment/investigation was open for six months during which multiple new reports were made. Collaterals were not contacted. This assessment was closed and another opened that stretched for four

months. The SDM risk tool was used and the outcome, that the risk level was high, was disregarded. Collaterals were again not contacted. Evidence that was collected was not recognized as evidence of risk.

- After parents did not cooperate, no other investigation activities were done. Truancy was not taken seriously as evidence of risk. The parents both had serious substance use issues that were only discovered many months later. The first series of investigations occurred over four months and were closed. A second series of investigations were opened, and despite sufficient evidence, the risk was not recognized or understood. Both parents had significant substance use issues.
- Despite the parent's long standing history of substance use the Department did not take seriously new risk to the child. When the child was left with a family that were acquaintances of the parent and because the family did not obtain guardianship the child was left without legal protection and resources, such as medical care. The family had a history with child protective services that was concerning given the circumstances.
- There was clear evidence of the parent's continual physical abuse of the young children. The children were placed in a foster home under a voluntary care agreement but were not taken into state custody, despite sufficient evidence. The children eventually entered custody and when a younger sibling was born, the safety of the sibling was not assessed and no new report was made to intake. The infant stayed in the care of the parent for over a month prior to entering state custody.
- No further assessment activities were completed after the initial interviews of one parent and the children. The assessment was not closed and not completed until five months later when one of the parents severely injured one of the children, an infant, causing life threatening and life-long injuries.
- There were insufficient activities to locate the parent or continue to investigate the children's significantly concerning initial disclosures. Three months later the investigation continued after a new report was made that found the children in unsafe circumstances.
- Three out of home parents were not contacted for months, the child's valid and credible disclosures were given less weight because they were made to professional collaterals and not to the Department, providers, including police who were called to the home during the assessment, were not contacted, parents were not asked to drug screen, and serious signs of risk and danger were not recognized for several months. The children were only taken into state custody once a parent became unresponsive due to substance use in front of the children.

Department's Response: On December 17, 2018, the Office of Child and Family Services (OCFS) implemented a new Investigation Policy to guide staff in their assessment work. OCFS has also implemented Structured Decision Making (SDM) to support staff in evaluating information gathered during the assessment and inform decisions regarding next steps. The implementation of both the policy and SDM have marked a significant shift in the process and procedures for conducting an assessment. OCFS recognizes that the implementation of both of these initiatives occurred at the same time in which OCFS experienced a tremendous increase in reports, assessments, and children in care. For example, in 2016 the Department received 7,463 reports of abuse and/or neglect that were deemed appropriate for assessment. In 2018, that number had surged to 11,831. In 2019, an additional 62 child welfare positions (effective 9/1/19) were authorized in the Biannual Budget, including new caseworker, supervisor, intake, and background check unit positions. These new positions are anticipated to reduce the workload associated with the dramatic increase in reports, assessments, and children in care.

Spurred by the concerns of staff and stakeholders (including the Legislature), OCFS worked throughout

2019 to study both caseload and workload. The initial report from this work was released on 10/1/19, in accordance with LD821. OCFS views the 10/1/19 report as version 1.0 in an ongoing effort to quantify both workload and caseload for frontline staff in order to ensure staffing is at a level that allows staff to complete their work in a timely fashion, as well as engage in professional development regarding assessment activities, family engagement, and other skills necessary to improve casework practice. The next report will be issued in January 2020, as required by LD821.

OCFS is also currently focused on the best way in which to train staff. This includes both new hires and experienced caseworkers. Recognizing that the need for high-quality training was substantial and the resources within OCFS to deliver trainings were limited, the Department has entered into a Cooperative Agreement with the Muskie School of Public Service at the University of Southern Maine. Staff from the Muskie School have considerable child welfare experience in jurisdictions throughout the country and bring expertise in effective staff training engagement. In conjunction with the Muskie School, OCFS will be working to update trainings to maximize staff engagement and learning. OCFS is exploring innovative technology to accommodate different learning styles and reduce the time staff spend travelling to and from trainings, ultimately reaching more staff. OCFS will also be partnering with the Muskie School to implement the Field Instruction Unit (FIU), which will allow OCFS to partner with students nearing completion of their studies to receive college credit for completing internships in OCFS' District offices. Students will develop critically important social work skills related to child welfare work in preparation to begin a career with OCFS upon graduation. This will result in new staff who are already trained and experienced with OCFS' policies and procedures. Additionally, staff from the Muskie School will be assisting OCFS in reviewing current policies, streamlining the policy manual where possible, and ensuring the manual is both accessible for staff and easy to navigate.

OCFS has also recognized the need to ensure that throughout the assessment process, staff have access to any and all available information that may influence child safety-related decisions. To that end, OCFS has developed and is in the process of implementing a Background Check Unit (BCU) within OCFS that will provide staff with information from national criminal history databases. The BCU has been operating as a pilot in Districts 1 and 2 for much of 2019, but with additional staffing provided in the Biannual Budget, the BCU is expected to expand coverage statewide in early 2020. This expansion will ensure that assessment staff statewide have access to information that provides a fuller picture of the risks to child safety that may be present within a family.

OCFS agrees that further work should be done to ensure consistent implementation of all OCFS policies and procedures. Over the last year, OCFS has had the opportunity to learn from staff and partner with national experts to improve casework practice. The result of that effort is a focused prioritization of strategies developed with staff, stakeholders, and national experts. Implementation of those strategies has begun. OCFS has only recently begun deploying the new caseworkers to fill the lines allocated in the Biannual Budget, effective 9/1/2019. In the coming year, OCFS hopes to reduce the workload demands on staff and improve training opportunities to ensure that staff have the time and ability to successfully learn and utilize the policies and procedures which guide their work, in particular new initiatives aimed at addressing gaps in casework practice.

2. REUNIFICATION

Once children enter state custody, the Department has a statutory obligation to reunify children with parents once the original danger that caused the children to enter state custody has been alleviated (unless the court relieves the Department of that duty.) One of the most complex decisions that is made during child welfare involvement is the decision whether to proceed towards terminating the parents' rights or to return the children to the parents.

In order to make this decision in a way that is physically and emotionally safe for the children, the Department must provide thorough ongoing assessment of the parent's progress. This includes regular face to face contact with parents, family team meetings, clear reunification plans that address all areas of risk, consistent contact with providers throughout the case, the tailoring of services to meet parents' needs, random substance abuse screening when indicated, mental health and substance abuse evaluations, and assessing additional issues and adding services as needed.

There have been multiple cases reviewed during the fiscal year where the Department did not have enough information to determine what should happen next. There were instances when trial placements were started where the evidence did not indicate that the children would be safe with the parents. There were cases where there was insufficient evidence to convince the court to terminate parents' rights if a hearing were held. In general, lack of contact with parents and lack of contact with collaterals were the most common issues.

The following are a sampling of cases where ongoing assessment of reunification was at issue:

- After a year and half, the Department had not visited the parents in their home or assessed their living situation, despite the fact that the original jeopardy to the children included failure to recognize unsafe individuals and an unsafe living environment. Collaterals were not contacted and one parent was not assessed for mental health or substance abuse issues despite behaviors that would indicate that one or both existed.
- Providers were not checked in with or given information about the case that would allow them to treat the parent for significant mental health and cognitive issues. The current romantic partner of the parent was not assessed, and frequent unsafe individuals in and out of the parent's life were not assessed. The impact of the parent's lack of basic living and parenting skills was not assessed. The parent failed to understand or agree to the reasons the children entered custody, but this was not considered significant.
- A mental health evaluation gave one diagnosis and the parent's therapist was working under the impression that the parent had an entirely different diagnosis. The other parent had serious mental health issues and providers were not contacted. With no recent family team meetings and no documentation as to how the decision was reached, visits went from fully supervised to check-in status.
- The parents' previous child had died in an unsafe sleep incident several years earlier. The infant had died on the day of discharge from the hospital after birth (the safety of the child was not sufficiently assessed before discharge) when the parent rolled over and suffocated the infant. After the death the parent tested positive for multiple substances but no findings were made. When a new infant was born, the circumstances were similar to the previous child's and the infant was quickly taken into custody. The parents continued to exhibit concerning behaviors, but without clear reason visits started in the home with the parents and supervision was quickly reduced. The Department did not learn for nine months that the parents had not been in substance abuse treatment of any kind.
- The trial placement was started too soon and the case was dismissed without enough evidence to show that the children would be safe. The parent never completed recommended substance abuse treatment

and providers were not contacted. Trial placement was started two months after a positive substance abuse screen. After trial placement started there was no further substance abuse screening and no contact with providers.

Department's Response: OCFS agrees that ongoing assessment activities and strong parental engagement are key factors in the ability of OCFS staff to assess case progress and make informed decisions regarding permanency that ensure child safety. As outlined above, OCFS staff have been challenged with the current workload based on the increase in the number of calls, assessments, and children in care. This is an issue OCFS is actively working to quantify and address. Included in this work is the continued refinement of the Workload Analytic Tool developed during 2019. The initial report that resulted from the use of this tool was issued 10/1/19 and the first annual follow-up is due in early 2020. Currently, OCFS is focused on reviewing the tool to ensure it takes into account the additional time needed to address complex cases, such as those that involve larger sibling sets and the Federal Indian Child Welfare Act (ICWA). These additional refinements are likely to improve OCFS' ability to ensure an appropriate level of staffing within all areas of child welfare so that staff have additional time to conduct necessary assessment activities throughout the life of the case and devote more efforts to parental engagement.

OCFS also recognizes the efforts underway throughout the Department to improve the State's services to address substance use, including opioids. This includes increasing substance use treatment providers statewide, MaineCare expansion, and investments in new and innovative treatment options. A significant percentage of OCFS' cases involve at least one parent that is struggling with substance use disorder and substance use treatment is frequently a part of rehabilitation and reunification plans. OCFS believes that the efforts to improve substance use-related services statewide will increase the ability of parents to successfully engage in treatment and enable safe reunification of children with their parents.

Within OCFS there is an effort underway to increase the information available to staff as they make child safety related decisions. Within permanency, one of the new initiatives is the Family Visit Coaching Pilot currently underway in Penobscot County. This Pilot includes both evaluation and coaching components meant to aid the Department in decision making regarding permanency and child wellbeing. OCFS plans to evaluate the outcomes of this Pilot in 2020 and review how the information learned can be integrated into visitation practice statewide. OCFS is also continuing to train staff in the use of the Structured Decision Making (SDM) tool. As with the Initial Investigation and Assessment recommendation, OCFS believes that efforts underway to improve training for staff and improve the policy manual will also contribute to increase the skills of staff to make decisions regarding reunification and permanency.

3. Truancy

Truancy is considered to be abuse or neglect under the definitions section of the child protection statute (22 MRSA § 4002(1)). If the child is at least seven years of age and has not completed sixth grade and has the equivalent of seven full days of unexcused absences or five consecutive days of unexcused absences during a school year that child is considered truant. The existence of truancy, or educational neglect, alone constitutes jeopardy under the statute and is considered "serious abuse or neglect." Recent changes to the truancy statute have expanded the definition of truancy, but have not expanded the abuse and neglect definitions around truancy.

The Ombudsman does not recommend removal of children from the parents' custody due to truancy.

However, educational neglect rarely exists as an issue in isolation. Ombudsman case specific reviews reveal that it is often a sign of other serious underlying issues in the home that may indicate a high level of risk. The issue of the Department not recognizing truancy as a sign of risk to a child is a long standing pattern. Particularly for elementary aged students, it is unusual that a child is not consistently in school. In four cases reviewed this fiscal year that involved educational neglect (two with children between the ages of seven and sixth grade, one with a child who had been truant for many years but was now older than sixth grade, and one teenager) all of the children involved were unsafe.

Children are usually twelve years old at the end of sixth grade. Even if truancy of a thirteen, fourteen, or fifteen year old is not considered abuse or neglect under the statute, this still may be a sign of risk. Additionally, if truancy existed before sixth grade but the child is now older, this could also be taken as a sign of risk to a child. Finally, if a child is in kindergarten or preschool and starts experiencing significant attendance issues, the root cause of this should be determined. Educational neglect should be added to child protective investigative policy and structured decision-making tools. Inquiries around educational neglect should be broadened and whether or not a child is in school should be considered a sign of risk at all ages.

Department's Response: When truancy is an issue for a family, the assessment of the truancy issue and its cause(s) should be a part of a thorough and complete assessment of child safety and wellbeing. As outlined above, OCFS has undertaken a number of initiatives to improve casework practice throughout all areas of child welfare. OCFS will work with the Muskie School and our partners at the National Center for Crime and Delinquency (NCCD) which provides our Structured Decision Making (SDM) tools to determine how best to support staff in making informed decisions regarding the impact that truancy may have on child safety and wellbeing and the way in which such a risk factor should be considered in assessing and determining next steps within an assessment or case. OCFS is also partnering with the Department of Education to provide additional training and support to local school districts and district child welfare staff.

CONCLUSION

Maine is still struggling in the aftermath of the deaths of Marissa Kennedy and Kendall Chick. Many changes followed in the wake of these deaths, some necessary, some unnecessary, some implemented too quickly, some too slowly. Practice issues detailed above might have been rectified and this may become evident during the next fiscal year. The Department's current thorough and deliberative approach under the leadership of Dr. Todd Landry is appropriate and comprehensive. The Ombudsman's office looks forward to continued partnership with the Department in working towards keeping children safe.

ACKNOWLEDGMENTS

As the seventeenth year of the Maine Child Welfare Ombudsman Program comes to a close, we would like to acknowledge and thank the many people who have continued to assure the success of the mission of the Child Welfare Ombudsman: to support better outcomes for children and families served by the child welfare system. Unfortunately, space does not allow the listing of all of these dedicated individuals and their contributions.

The staff of public and private agencies that provide services to children and families involved in the child welfare system, for their efforts to implement new ideas and provide care and compassion to families at the frontline, where it matters most.

Senior management and staff in the Office of Child and Family Services, led by Acting Director Elissa Wynn and Director Dr. Todd Landry, for their ongoing efforts to make the support of families as the center of child welfare practice, to keep children safe, and to support social workers who work directly with families.

The Program Administrators of the District Offices, as well as the supervisors and social workers, for their openness and willingness to collaborate with the Ombudsman to improve child welfare practice.

The Board of Directors of the Maine Child Welfare Services Ombudsman, Ally Keppel, Allie McCormack, Virginia Marriner, and Katherine Knox for their support and dedication to our agency.

At the end of each case specific report of the Child Welfare Ombudsman a section lists positives noted during the review. Here are just a small number of examples from across the state: the caseworker did an excellent job of keeping the mother informed and involved; the initial assessments were extremely thorough and quickly done; the parent was immediately interviewed in jail and many collaterals were contacted; there have been regular family team meetings and both permanency workers have had consistent face to face and other contact with parents and providers; the caseworker supported the parent through anxiety at a random drug test so that it was successfully completed; the caseworker called for a welfare check on a distraught parent; the parents' progress in substance abuse services and recovery was thoroughly monitored with regular contact with providers and regular random substance abuse screens; in general the caseworkers offered excellent good faith reunification services to the parents and excellent ongoing assessment of the case; the caseworker was able to talk the relative placement into getting a foster license so the children did not have to move; after a concerning prenatal report was made the caseworker made a referral to public health nursing; the assessment worker formed a good relationship with the child and went out of the way to see the child during the reunification phase of the case; the assessment of the safety of the children and progress of the mother in this case was excellent initially and has been excellent on an ongoing basis; and the caseworker had a thorough understanding of the child's medical needs and the challenges in caring for the child. These examples are just the tip of the iceberg of the collective knowledge and compassion of child welfare staff in the state of Maine.



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