

Record of Government Oversight Committee Discussions of OPEGA’s BETR & BETE Report

Prepared: 01/07/2021

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1 Excerpt from GOC Meeting 02/14/2020 Presentation of BETR & BETE Report –

•Presentation of OPEGA Report on Business Equipment Tax Reimbursement (BETR) & Business Equipment Tax Exemption (BETE)

Sen. Chenette recognized Rep. Bickford and Rep. Matlack, members of the Taxation Committee, who were at the meeting.

Director Fox introduced Mr. Lee, lead, and Ms. Henderson the OPEGA Analysts on the BETR/BETE report.

Director Fox presented the report on BETR & BETE. (The report can be found at <http://legislature.maine.gov/opega/opega-reports/9149> and a copy of the report presentation document is attached to the Meeting Summary.)

GOC members’ comments and questions included:

Sen. Chenette asked when BETE was first implemented, was the objective to eventually phase out BETR and just have BETE or was it to still have the dueling programs. It seems to him that we are phasing out BETR based on what has been seen over the years. Director Fox said BETR will be mostly phased out because it is no longer accepting new assets and the assets in the program will eventually come to the end of their useful life. There is only a small percentage of new assets that are coming in under BETR, so that program is shrinking. Whether that was the actual intention, she could not say for sure, but knows there is a different mechanism for how BETR is implemented versus BETE. With BETR the State deals directly with each business claiming a reimbursement which is a large population of entities that MRS is dealing with. With BETE, the exemption is provided by the municipality and then MRS is reimbursing the municipality. She could not speak specifically to what the motivation was.

Sen. Chenette said if you were a small business, for example a hair salon, you would contact your municipal assessor to ask what assets could be eligible for either the BETR or BETE program. Director Fox said if your assets were under BETR you would be dealing directly with the State for what can be claimed.

If assets were under BETE, the municipality would likely be reviewing the exemption application and would be calling the State to determine if the exemption application qualifies for BETE or should it be under BETR. Sen. Chenette thought there would be a lot of calls figuring out which program the asset would fall under.

Rep. Pierce asked if they would pay a tax every year on that equipment. Director Fox said yes and you pay based on the value of the asset.

Rep. Pierce said a business that transfers equipment to their Maine business after being used in an out-of-state business is not making their decision based on the knowledge of the BETR and/or BETE program. They have already made their decision and then start interacting around their tax payments. Director Fox agreed.

Sen. Chenette wanted to tie the point that neither program is specifically encouraging capital investment to the goal. The GOC set the objective, it was not necessarily the intent of the original program. Director Fox said there are findings in both BETR and BETE indicating the goals. The findings were that the cost of owning business equipment in Maine is high and the State wants to lower that cost associated with doing business. The findings also say that if the State encourages capital investment that will benefit everybody. So, those are the findings, but it didn't state them as a goal with associated targeted program elements that effectuated that goal. For example, there is no baseline of this is what we understand capital investment to be now after the implementation of these programs and we want to see it increased by, whatever percentage. There are no elements in the program that do something specifically like that.

Rep. Pierce asked if there was historical data regarding those numbers fluctuating over the inception of BETE. Director Fox said OPEGA looked back and found the proportion is about the same. The ratio varies a bit, but is essentially the same. She asked who makes the determination of the 75%? Is it just a yearly assessment, is it done by a formula and who says who are the 8%? Director Fox said it depends on the assets claimed. There is a universe of businesses that apply for reimbursement under BETR and what OPEGA is saying is that of that universe 8% of them, because of how many assets they claimed and the value of those assets, got a larger proportion of that money. Rep. Pierce noted that is kind of based on formula and the Director agreed. It is based on what they paid first in personal property taxes to the municipality, how much the municipality charged in tax and then the age of the asset. So, you get a 100% reimbursement for what you paid on that asset for years 1 through 12 and then it is reduced incrementally until year 18 when the rate reaches 50%. Rep. Pierce said there is no one making a subjective determination of who the 8% are. Director Fox agreed.

Sen. Hamper referred to the four bullet points on page 17 of the report where it states "8% of the businesses received 75% of the \$29.1 million total BETR reimbursements", etc. and asked how big was the universe, did OPEGA look at the program as a total or survey a certain amount of businesses. Director Fox said these are BETR businesses and is representative of FY18, but the proportions historically do not vary to any great degree and is a good representation of how it has been. Sen. Hamper said OPEGA is looking at the reimbursements as a whole, the total packages of what is being reimbursed and was not that OPEGA surveyed, or polled, a certain number of businesses. The Director said it was the entire population of businesses for FY18.

Sen. Chenette said of those categories, if you take, for example, the 92% of BETR businesses that received an average benefit of around \$5,600, that number represents what to them and do we have an average

range of those businesses representing 2%. Director Fox said yes and later in her presentation when she talks about the benefits to businesses, the Committee will see the range of benefits in each program for each year.

Rep. Dillingham asked if OPEGA had the breakdown of the businesses that are applying for the programs which are small businesses and which are large manufacturers. Director Fox said OPEGA does not have that information in the report, but will see if they can get it.

Rep. Pierce followed up on Rep. Dillingham's question and asked what the size ranges of these businesses are. Director Fox said OPEGA did not report on that. Rep. Pierce said when the businesses apply for the programs they must have to say how many people it employs, etc. Director Fox did not have a good answer to that question, but OPEGA will see if they can get that information for the Committee.

Rep. Mastraccio said the State is not reimbursing the municipality at the full 100% under BETE and asked if that was the value. Director Fox was talking about the benefits to businesses this year and the exemption is 100% for the business, so that is the value. Rep. Mastraccio said that is not the exemption that is paid to the municipality. Director Fox said that was correct, it is the value to the businesses. In BETR, OPEGA talks about number of businesses because we had the business level data and in BETE talks about number of establishments because it is not consolidated by businesses, but consolidated by municipality when they are administering that reimbursement. There are businesses that may have locations in multiple towns so that also counts for why the average benefit may look lower under BETE than BETR because it is not by business, it is by establishment and that would diffuse the average value.

Sen. Chenette asked if when the Director referred to the value of the exemptions themselves, is she referring to just the total amount number or the percentage of the cost associated with that asset to the business. Director Fox said under BETR, the value is the reimbursement that they receive based on the taxes they paid to the municipality, that total number. Under BETE it is the value of the exemption, so is what they did not have to pay in personal property tax.

Rep. Pierce referred to the pie graph in the presentation document and said the \$29 million was the whole pie and the tiny slice of 8% got the majority of it, is OPEGA saying the average benefit is 20,000, but really 92% of the people are getting an average benefit of \$5,600. Director Fox said that is correct.

Rep. Mastraccio said if the 50% is forever who and when is it audited? Director Fox said MRS reviews applications fairly carefully under BETR. Under BETE the municipality plays a larger role in terms of they accept the application from the business for what they want the exempt property to be. Every year during the normal course of their reviews, MRS audits the BETE applications so, MRS does get involved on an annual basis in reviewing the municipalities' BETE reimbursement applications.

Rep. Mastraccio said when a change was made, it was made in a way that does not benefit municipalities because we are reducing the municipal revenue sharing. At the time that was happening she was on the Sanford Council and did not really understand the tax programs. Seeing the reality of what that has meant and how Sanford tax rates have gone up asked if there is any data that says BETR has gone down and BETE has gone up.

Rep. Pierce said under BETE businesses are getting 100% reimbursement on the entire life of the asset. Director Fox said whatever the tax is that they would have paid, they are exempted from completely.

Rep. Mastraccio recalled that in 2010 Sanford's property taxes went up 10% and is now understanding why in a way she had not understood before.

Sen. Chenette referred to the pie graph and said in FY18 it shows 61% and in 2013 it is 50%, so there was a bump up. Director Fox said she was talking about the "careful initial roll out of the program". The State recognized that exempting personal property tax would have a significant impact on municipalities even though it is taxes they had not collected before. So, the program was rolled out in that the State reimbursed the municipality at 100% to start and then each year of reimbursement the rate to the municipality went down until it got to the Constitutional minimum of 50% and in 2013 it hit that. There are other elements of the program that contribute to that 61% municipal reimbursement average.

Rep. Pierce asked if it was in 1978 when the constitution put this into play and was changed for some other reason other than BETE. The Director agreed. The point she was making is that the State, long ago, realized that when State policies implicate local taxation that you need to accommodate for that and help the municipalities. That is generally applicable to any program that would do that.

Sen. Chenette asked for a list of the municipalities where the reimbursement is a lot higher and would it allow someone to be able to map out that there are certain municipalities that may have 75% reimbursement? Director Fox said it would.

Rep. Pierce asked if there is any recognition in BETR or BETE of the school funding model. Director Fox did not believe that either programs' statute mentions it specifically. Rep. Mastraccio said the TIF district and where property taxes can go, is another issue. Director Fox said municipal retention TIF money is usually set aside for municipal improvement projects and often includes debt service, so BETE recognizes they don't want to get in the way of that sort of thing and so will provide for assets located in that district up to 100% reimbursement. So, rather than the 50%, they will get more when there is a municipal retention TIF. Rep. Mastraccio said when the GOC sees the list of municipalities it has asked for, that will be self-evident.

Rep. Mastraccio noted that Director Fox had used the example of a company having a location in New Hampshire and a location in Maine and could move equipment from New Hampshire to Maine and then claim that as new property. Director Fox said they would not be calling it new property, but it would be assessed a personal property tax, so by nature of that, it is eligible under the program. Rep. Mastraccio said the State has no data on that because does not keep track of that information. Director Fox agreed. Rep. Mastraccio said the municipality would not know where the asset came from, it would just be new equipment to the business. For example, she used to pay personal property tax for her husband's office and she was never asked what she got new. You just wrote the asset down and then the Town assessed you on it. It was not necessarily that you purchased it.

Rep. Pierce wanted to clarify that we are doing 90% of \$2 so you do not get 100% (mandate reimbursement). Director Fox said the 90% is what the State is required to reimburse the process. Two dollars is what represents 90% of the cost and is what they came up with when BETE was enacted. There were other exemptions that required the involvement of municipalities at the time and that was the rate being used. Whether or not it accurately reflects what the actual cost is referenced in OPEGA's Finding #3.

Sen. Chenette asked if it is known what the dollar amount would be today. Director Fox said no, but there is a mechanism for potentially determining that and is in OPEGA's Finding #4.

Sen. Chenette asked why MRS would not know about a requirement for reporting. It seems like we make it clear to a lot of the agencies and departments that we expect reports and particularly if information is provided in the statute. Director Fox could not answer the why, but said the requirement is in statute. Sen. Chenette said he would be looking forward to MRS's response to that question.

Rep. Pierce asked what the impetus was for BETE. We had BETR, so why did BETE come into the foreground? Director Fox could not speak exactly to the legislative intent, but said under BETE the municipality does the work with the business and then MRS reimburses the municipality at 61% in FY18 so the cost to the State seemed to be less.

Rep. Mastraccio remembers the discussion about BETR and BETE back when she was a member of the Sanford Council. With a decrease in revenue sharing there was going to be an increase in the cost to the local municipalities.

Rep. Pierce said you can see the trend that we are moving toward a BETE world instead of a BETR world.

Director Fox referred to the BETR/BETE At A Glance document that highlights some of the points discussed, including the graph. (A copy is attached to the Meeting Summary.) The report and At A Glance document are posted to OPEGA's website.

Sen. Chenette said, as a process point, he appreciated how the Director laid the presentation out and thinks the power point worked out well and helped the Committee understand a complex subject. He appreciated OPEGA's work on the report.

Rep. Pierce asked what the Committee's next step will be regarding the report. Director Fox said the next step is that the GOC will hold a public comment period on the report and after that there will be work sessions about what the Committee might want to take for action on the report. There is also a role for the Taxation Committee to play and that will be talked about more at a future meeting. She reminded the GOC that February is a heavy meeting month because OPEGA wanted to provide the Committee with the reports they had close to completion in a manner that would allow them to take action, if they so choose, during the session. OPEGA will be presenting the MCIC report next Friday, February 21, and then the GOC will have a public comment on both the BETR/BETE and MCIC reports on Friday, February 28.

2 Excerpt from GOC Meeting 02/28/2020 Public Comment on BETR & BETE Report –

- **OPEGA Report on Business Equipment Tax Reimbursement (BETR) & Business Equipment Tax Exemption (BETE)**

- **Public Comment Period**

Kate Foye, Legislative Liaison for the Department of Economic and Community Development. Ms. Foye presented the testimony of Heather Johnson, Commissioner, DECD.

Sen. Chenette said it sounds like DECD is going to be on top of OPEGA's report and reviewing individual tax credits and breaks and asked if Ms. Foye had a timeline for that review. Ms. Foye did not know the date

that the statute requires DECD to do that work. DECD will be going out for RFP, so it will be an outside entity that will come in and look at all of the programs to see what works, what needs improvement, what they can be doing better, what is going well, what businesses are utilizing the programs and how DECD can package them better, if they need to do that.

Sen. Chenette asked if Ms. Foye had a list of incentive programs that are going to be under review. As far as she knows, it is going to be all of their incentive programs.

Rep. Mastraccio said there is now a long range strategic plan for economic development and that will be the lens through which DECD will evaluate the programs. That has not happened in the past because the State did not have a plan. Ms. Foye agreed.

Daniel D'Alessandro, Attorney, Office of Tax Policy, Department of Administrative and Financial Services. He presented the testimony of Michael Allen, Associate Commissioner for Tax Policy.

Sen. Chenette referred to the implementation of the new computer system at Maine Revenue Services (MRS), specifically replacing the manual process and asked the timeline for that implementation. Mr. D'Alessandro said it is going to be over the next 3 to 5 years, with the smaller programs that are not on the system going first, such as this one. He does not have the exact order that they are going to go, but noted that there are a lot of small taxes that are not yet on the computer system. That tax information will be added first and then MRS will switch to the more significant taxes.

Sen. Chenette referred to OPEGA's recommendation that the \$2 application reimbursement to municipalities is not sufficient and that Mr. D'Alessandro mentioned not hearing from municipalities suggesting that number should increase from when it was first instituted. Mr. D'Alessandro said he has not heard that municipalities have contacted MRS, but if a municipality came to MRS and said their costs were higher than what they were being reimbursed, MRS would listen to that. They also see that number come through the budget process, and is eventually set by the Legislature in the budget. During the Legislature's process there are public hearings that municipalities could go through. He said MRS does agree with OPEGA's recommendation on the reimbursement amount.

Sen. Timberlake said comments he gets about the BETR/BETE program is that the application process for small businesses is cumbersome and you need an accountant on staff. It is not that he is against the program because he thinks it does some good things in helping big business and moving new industry into the State of Maine, but asked how can we get it so smaller entities would qualify for the programs. If you review the list of businesses there are not many small entities that are involved. Mr. D'Alessandro said there are a couple of things that make the application process complicated. The taxation of personal property is complicated and you have to know what property to tax. That process continues, but then there is a reimbursement based on BETR. The exemption still needs to be assessed so MRS knows how much to reimburse municipalities and that is a complicating factor. The other thing that can make it complicated is that there are guidelines around what is in the program and what is not and, in some cases, those can also be complicated.

Sen. Timberlake asked if we could find a way for the program to help small businesses along with the large businesses. His complaint is that small local businesses are being run over by some of the corporate businesses because they don't qualify for the programs. The corporate businesses are getting a better tax

break than the local mom and pop businesses that have been there for generations. He is looking for a recommendation of how do we get more of our smaller mom and pop operations involved. Mr. D'Alessandro said they can look into what the statutory issues are that make it difficult for somebody to get into the tax program or to comply with the program. The program is open to large and small businesses, but as Sen. Timberlake said, if you do not have an accountant on staff, the program can be more difficult to access.

Sen. Keim referred to the part of the NCSL report that was in MRS' testimony and reading through the testimony said her first experience, or knowledge about taxing personal property in businesses, was when visiting local businesses, a metal working shop said basically anytime they buy new equipment the Town comes in and does a walk through of the facility and then assesses them at a higher property tax because they purchased more equipment. She thought that to be counterproductive and wondered if it was something that MRS/DAFS would consider should be looked at rather than trying to apply a State band aid with the BETR/BETE programs. Mr. D'Alessandro's said BETE, which is the program for most new equipment, exempts most new business property from taxation. The complicating factor is that the Constitution requires the State to reimburse the municipalities for the lost revenues due to these new exemptions, like BETE. So, that property still needs to be assessed so the State knows how much to reimburse the municipalities and he thinks that is the complicating factor.

Sen. Keim wanted to clarify that Mr. D'Alessandro was saying that we cannot address the whole aspect of taxing business property at the State level because it is a municipal decision? He said the State can address it, but if municipalities do not collect tax on the personal property because of a state program, the State has to reimburse the municipality for that lost revenue. It is complicated, and a lot of thought has gone into how to simplify the program, but it is complicated by the Constitution.

Rep. Mastraccio referred to page 4 of MRS's testimony about the task force, PL 2013, Ch. 368 which had five recommendations and asked if any legislation actually came out that directly related to BETR/BETE. Mr. D'Alessandro said there was legislation proposed by the previous Administration to phase property out of BETR and into BETE. Rep. Mastraccio noted that was seen in the report that because BETR was a direct reimbursement from the State to the business owner was a dollar-to-dollar, but in the exemption piece, BETE, the State does not reimburse at a full 100% so it ends up costing the municipalities a lot more. She asked what were the five recommendations because the task force did not just address BETR and BETE. Mr. D'Alessandro did not have that information with him, but will provide it to the GOC. Rep. Mastraccio was specifically interested in what legislation came out that actually related to BETR and BETE and if the only thing was to shift the cost to the municipalities. She agreed with Sen. Keim, that maybe they need to look at the bigger tax issue. He said as those proposals progressed, the way it would impact the municipal budget, was looked at, and later proposals did a better job of keeping that in mind. He will get the Committee the five recommendations.

Rep. Harnett said prior to serving as a legislator, he served as the Mayor of Gardiner. He loved when investment came into the community because there are benefits beyond the revenue that comes directly to the municipality. But, every time a municipality is reimbursed less than what they are losing, in terms of revenue, you have very few choices about what to do. The primary decision is usually to pass it on to the property tax payer, so he is very interested in the five recommendations from the earlier task force because it is a double edge sword for municipalities.

Sen. Chenette noted that the GOC has one request to MRS for the task force's five recommendations.

Linda Caprara, Maine State Chamber of Commerce.

Sen. Chenette asked Ms. Caprara about the opposition of the entirety of the BETR/BETE report from the State Chamber of Commerce because it seems like the report is just trying to articulate ways to improve the programs. He asked what her oppositions were to improving existing programs. Ms. Caprara said they take issue with the report stating that programs have limited influence on capital investment decisions. Another point she wanted to make was goal number 2, and that OPEGA stated that goals and intended outcomes against which BETR and BETE are to be evaluated are unclear. Public policy is for the welfare of the people of the State of Maine. We are talking about the dollars spent in this State and the multiplier effect. That impacts the people and welfare of the State of Maine and she did not understand how you can't determine that.

Sen. Chenette said they are also dealing with reality and heard from a number of businesses, other folks who have reached out throughout the process and Sen. Timberlake's point of there is an issue that small businesses are disproportionately not utilizing the program as effectively as larger businesses. He asked if Ms. Caprara had any suggestions for addressing the difficulties for the small businesses. Ms. Caprara said she was glad Sen. Chenette asked that question because the BETR/BETE programs are really aimed at capital intensive industries. To the extent that you invest in equipment that is capital intensive, and for a lot of companies around Maine, the market is driving this. They have to invest continually to upgrade their facilities in terms of productivity, quality of products, etc. and companies have to pay attention to that with respect to investment. She had asked OPEGA staff who they interviewed for this particular report, was it small, medium or large businesses. The response she got was they did interview some larger businesses, but the majority was the small and medium size businesses. She guessed, the determination as to whether or not it is impactful to your company, is how much capital investment you make. For a lot of these companies it depends on the capital investment and, to the extent that it is not administratively friendly, we need to look at that for the smaller businesses, but it is really going to depend on what they are putting in place for equipment.

Sen. Keim said, again going back to the NCSL report, it stated that several states have eliminated the tax on personal property and many states have limited the scope and simplified administration. She said there are Chambers in every state and asked if the Maine Chamber of Commerce has ever considered looking at what is happening in other States because it does seem if other states have been able to eliminate such programs, maybe Maine can as well. Ms. Caprara said the Chamber has looked at what has happened in the Northeast and she can try to get some data for the GOC of what is happening across the country. It is a question of whether or not, the Legislature wanted the municipalities to receive some reimbursement and is what the Legislature wanted at the time.

Sen. Keim knows she can get more information from NCSL, so she is not asking Ms. Caprara to do that. She thinks they hear what states are doing as opposed to how it is working, and other Chambers might have a different perspective on how it is working in their state, as opposed to just the straight up law change that NCSL has the data on.

Rep. Mastraccio asked if Ms. Caprara would agree that the switch over from BETR to BETE is a decrease of revenue to the communities. The decrease in municipal revenue sharing is what is producing the comment that, as a local official, which she was at the time, when they switched over they phased in the decreased reimbursement. Reimbursement was 100% at first and then gradually went down to 62%. In 2010 Sanford's property taxes went up 10% because of the decrease in revenue sharing and the switch

over from BETR to BETE. She said it may be a wonderful program, but if the results are that the burden of economic development is then on the local property tax payer, maybe that is a policy discussion the Legislature needs to have about how best to deal with it. That is why she finds OPEGA's report incredibly valuable because it does point that out very clearly in a way she had not seen before. Ms. Caprara said she was not familiar with the revenue figures, but said BETE is allowed only for new investment. She can't speak to the decrease, or whatever, but BETE is new and is not stuff that municipalities had on the books and that is how she would respond. Again, these programs have grown Maine's economy and you have two programs that are working the way they should be working.

Rep. Harnett noted that Ms. Caprara served on the Winthrop Town Council and asked if she had a view of the impact on municipalities when losing some revenue. She would know that at the local level the loss is typically moved to the property tax payer. Ms. Caprara said there are some companies in Winthrop that do take advantage of BETR and BETE, but she would answer it as she just answered Rep. Mastraccio's question, of would we have had this investment come if we did not have these programs in place. She is not sure that would have happened and she personally likes to see investment.

Rep. Harnett said there is an impact on municipalities and it doesn't mean we don't have these programs, but we do have to look at the financial burden that it places on municipalities. He understands that a 100% of nothing is zero so there is the benefit of economic development, but you still have to look at the cost to communities.

Jay McCrum, Mars Hill, Maine owner of a Maine farm. Mr. McCrum did not provide a written copy of his testimony, but did provide written comments from Donna Turner, Town Manager, Town of Washburn, Maine.

Sen. Timberlake said that he has visited Mr. McCrum's business in Aroostook and thanked him for building his business in Maine and he was being humble in what he has accomplished. Mr. McCrum spoke more about his business.

Sen. Keim said Mr. McCrum recognized that financially other states were better to do businesses in. She said for today's meeting had gathered information and some sources she reviewed rated states for being business friendly and the tax environment for business, etc. and Maine rates low, 49, 43 and 48. Mr. McCrum is correct that it is a difficult State for businesses to be successful in and be profitable. She appreciated him coming before the Committee to share how helpful the BETR and BETE programs are to him and is willing to work with the Legislature to make sure we can improve these numbers because it is testimony like his that will help them have the perspective they need in order to make the changes that are helpful.

Brian Boland, Vice President of Government Affairs and Corporate Initiatives, Nine Dragons (ND) Paper.

Sen. Keim was curious about what the actual dollar amount these programs have on the company. That might be proprietary information and something Mr. Boland could provide later. As we look at the whole business environment in Maine, she asked what is problematic to the paper industry. Maybe a complicated tax reimbursement structure is not the best option and maybe there are other things that could be done that would be helpful. Mr. Boland said the benefit ND receives is public information. NP announced that they are going to spend \$111 million in Rumford in capital and is safe to say that in Old Town alone they are going to spend in that same neighborhood of money. If you look at the mill rates, it is

\$22.86 in Old Town and it is \$30.50 in Rumford so a \$100 million in investment is worth \$3 million so it is absolutely substantial and factors into the calculus of whether they make those investments or not. He said Sen. Keim's other question of what are other problems to resolve in the State is a good question. ND's mills compete with other mills in Maine, other mills in the country and other mills across the globe. So, if you look at the major cost that impact their operation, putting the markets and taxes aside, it is fiber, transportation, both in and out bound, labor and energy. Fiber availability, if compared to southern states in the State of Maine, they are substantially higher. If you compare them to Brazil they are severely disadvantaged. Even within the State there are differences in the cost of wood from the north to the south. Their mills are further south so getting wood from the north is a big transportation component. He thinks if the State could help with transportation infrastructure to lowering the cost of delivering wood from the north to the south the loggers and the mill would be happy. On the energy front, natural gas prices are substantially higher due to the transportation. By virtue of being in the north they have to travel further distances than mills in the Midwest because most of their products go to the Midwest. He said those are some issues that impact NP on a daily basis.

Christopher Pierce, principal owner, The Dingley Press.

Rep. Mastraccio said she did not know what recommendations Mr. Pierce was referring to in the OPEGA report because none of the five recommendations, or findings, say anything about eliminating or targeting the BETR/BETE programs. It is the Legislature's statutory job to evaluate the tax incentive programs that cost the tax payer of the State of Maine money and she would hope that he would appreciate the chance for the Legislature to evaluate them so they won't be targeted in the way they have been with misinformation. She thinks Mr. Pierce has the cart before the horse. OPEGA's BETR/BETE report will go before the Taxation Committee for their review and action. She hoped he appreciated that the GOC was just doing the job they were elected to do. Mr. Pierce said he appreciated that and can understand Rep. Mastraccio's comments. He has been before the Legislature and said the programs are important to him. In 2017 they needed to reinvest in the company and he went to multiple banks in the State of Maine to borrow \$20 million and said, without exaggeration, if they had not had these programs in place, he does not think the company would have been able to borrow the money. If it had not borrowed the money in 2017 the company would not exist. When you are making 1 or 2% a year the difference of having \$525,000 has a huge impact. The programs are about stability and predictability.

Sen. Timberlake said he appreciates what The Dingley Press does and what they stand for and for Sen. Keim's earlier comments about Maine's friendliness to businesses and where we rate in the country. He found it interesting about other states trying to lure Mr. Pierce's business to them and asked if he thought by eliminating a tax program like this it would have a dramatic effect, not just on his business, but all business in the State. Mr. Pierce said he could only address his business and his own perspective and went back to what he talked about earlier of what the company went through in 2017. It was hard to get the loan without the tax programs and the company needed to reinvest and was willing to do that.

Sen. Chenette said Mr. Pierce purchased the company in the early 80's and asked if he had to make any changes in terms of the operation on efficiencies or effectiveness of any operations at any of his locations. Mr. Pierce said absolutely. They bought the company and lost 95% of their business the first day when LL Bean left. In 1988 they built the plant in Lisbon, 60,000 square feet which is now 280,000 square feet. They made investments in the mid-90's particularly. In terms of Sen. Chenette's efficiency question he said yes. Their 2 biggest competitors both do \$4 billion a year. The Dingley Press does \$75 million. They

can compete because they have great employees and have been willing to reinvest in state-of-the-art equipment. They reinvested in 1999, 2004 and 2017 so they can compete with the bigger companies.

Kate Dufour, Director, State and Federal Relations, Maine Municipal Association.

Rep. Mastraccio said as a former municipal official, Ms. Dufour can understand it is an incredibly important program, but it makes it even more critical for her, as a legislator, to make her colleagues understand it costs municipalities money and we need to recognize that. It gives them something extra to use when talking to colleagues about why we need to fully fund municipal revenue sharing, which she is sure, as a group, Ms. Dufour was fully in support of. Ms. Dufour said they are.

Jana Lapoint presented the Manufacturers Association of Maine's testimony and also her own testimony regarding UF Strainrite and Packgen of Auburn.

Doug Hellstrom, CFO, Volk Packaging Corporation.

Dana Doran, Executive Director, Professional Logging Contractors of Maine.

Patrick Strauch, Executive Director, Maine Forest Products Council.

The Committee thanked those testifying.

The Chair, Sen. Chenette, closed the public comment period on the OPEGA BETR/BETE Report.

Other written testimony was received, but not presented at the public hearing. All written testimony can be found on the GOC/OPEGA website at: <http://legislature.maine.gov/opega/archive-of-previous-meeting/9181>.

3 Excerpt from GOC Meeting 03/13/2020 BETR & BETE Work Session –

- **OPEGA Report on Business Equipment Tax Reimbursement (BETR) & Business Equipment Tax Exemption (BETE)**

- **Committee Work Session**

Director Fox referred members to and summarized the memo she had provided to them previously. (A copy is attached to the Meeting Summary.)

She then referred members to the statute governing the action by the Committee. The statute requires the GOC to review OPEGA's reports and then to assess the report objectivity and credibility and vote to endorse, or not endorse, the report. As Sen. Chenette said, it is not that you agree with any recommendation/finding OPEGA makes, but whether OPEGA provided the GOC with objective and credible information to help them make whatever decisions they are going to make.

Sen. Chenette referred to the BETR/BETE worksheets that included questions of the Committee at a previous meeting. He recognized Dr. Allen who was at the meeting to answer those questions and any other follow-up questions.

Director Fox said associated with the Committee members' questions are handouts that are provided in direct response to some of those questions. She referred members to the list of businesses that have received reimbursement under BETR, listed by the amount of reimbursement and shows number of large and small businesses in the BETR program. Also provided are information sheets for the BETE reimbursement to municipalities. One lists the reimbursement to municipalities by amount so you will see who received the highest percentage of reimbursements to the lowest. There is also a spreadsheet with the same information, but organized alphabetically by town. Another question was what is going on in neighboring States in terms of ways in they may use the personal property tax for similar types of business property to provide incentives or benefits to business to reduce their costs. (Those documents are attached to the Meeting Summary.)

Rep. Mastraccio did not think a lot of Committee work was going to happen in the next couple of months because of the Covid-19, but wanted to make sure the TAX Committee had the opportunity to meet and discuss the BETR/BETE report.

Sen. Chenette asked if OPEGA's report presentation to the TAX Committee had been scheduled. Director Fox said she has not yet been contacted by the TAX Committee for a report briefing.

Sen. Chenette asked Rep. Arata, a member of the TAX Committee, if that Committee had finished their work. Rep. Arata was not sure if all their work was done, but they have slowed down. She did not know what work was forthcoming.

Director Fox said the GOC wanted MRS to speak about a prior Working Group report on BETR/BETE that they talked about at the public comment period on OPEGA's BETR/BETE report. She said she gave the agency advance notice on some of the GOC's questions.

Sen. Chenette said it seemed like MRS was unaware of a report requirement regarding information, particularly the BETE mandate, to DAFS. He asked how MRS would not know about a report requirement and what is being done to correct that.

Dr. Allen believes the correction has already been made and provided the information to the Commissioner's Office. He had no explanation for how MRS missed the report requirement because they have detailed schedules that go out every quarter that list all the reports, due dates and who is responsible. His thought was that every two years, with the biennial budget, that information is provided in the Governor's budget. That budget is reviewed by the TAX Committee and goes through the legislative process, along with the Appropriations and Financial Affairs (AFA) Committee's review. The reporting date is out there and discussed, but he could not explain why MRS was not providing the report. Sen. Chenette asked if the report would be included on the detailed schedule and Dr. Allen said it would be.

Sen. Chenette noted OPEGA's report identified some challenges that municipal assessors and businesses had in terms of determining eligibility for either the BETR or BETE program. He asked how much communication MRS has had with local officials in trying to work through eligibility issues. Is it something that comes up in their work and they are aware of and what is being done, ahead of time, to address it so it does not bog down MRS' system.

Dr. Allen said MRS is aware of the complexity issue and has on their website a power point presentation that explains both the BETR and BETE programs. The Property Tax Division has an annual property tax

school that assessors and others who are interested in local assessing go to and BETR/BETE are usually an issue that comes up at the school every year. He believes MRS made a change a couple of years ago in a bill that clarified what a retail sales facility was and what businesses were not eligible for BETE, but were eligible for BETR. Since that bill was passed, he has not heard about as much confusion and thinks there is a better understanding of what is only in the BETR program and now allowed in the BETE program.

Sen. Chenette referred to Finding 5 in OPEGA's report where it specifically references MRS documentation to support adjustments to BETE payments is inadequate and, in particular, working with municipalities in trying to make sure those reimbursement payments are calculated the way they need to be, are equitable and municipalities feel it is in a timely fashion. He asked if Dr. Allen had any response to that finding.

Dr. Allen said MRS is in the process of installing a new accounting system and both the BETR/BETE programs will be installed on the new system. That should create the documentation referred to in OPEGA's report.

Sen. Chenette asked if MRS currently has an accounting system and Dr. Allen said the system MRS currently has was installed in the 1980's and the BETR/BETE programs are not on it. All the tax programs will be installed on the new system.

Sen. Chenette asked if staff training associated with the new system will be given and Dr. Allen said it would be.

Sen. Keim asked if there was any way of knowing how much the tax programs cost the State to administer. Also, the municipalities are involved with assessments and asked if there is a way to assess their administrative cost.

Dr. Allen thinks it can be burdensome on certain municipalities, particularly should you have a large manufacturing facility that has a lot of personal property, such as a paper mill or chip manufacturer, etc. Those are going to be complicated returns, but he did not know of any way to simplify it. The Constitution requires the State to reimburse municipalities for at least 50% in the BETE program and that requires a lot of documentation by the business reporting what property they believe is eligible and for the local assessor to review that list and determine if that is the case. The local assessor then sends their information to MRS for review to make sure it is properly being administrated.

Director Fox noted that OPEGA has the costs in their report, as well as, on the worksheets provided to the Committee and referenced earlier. They do not have the information by business, but noted there is potentially a mechanism for collecting information about what the actual costs are to municipalities that is provided in statute, but may necessitate some rule making so that municipalities could provide what the actual costs are. She was not certain all the municipalities are collecting and sorting that information out, but knows they got the \$2 per application mandate reimbursement which is the appropriation set aside each year. Sen. Keim noted it was a significant amount of money.

Sen. Chenette referred to Finding 3 in OPEGA's report, "Municipalities are not adequately reimbursed for mandated expenses." and particularly referencing the \$2 BETE application paid by MRS to reimburse municipalities. He asked if Dr. Allen has heard from municipalities that indicated \$2 is not adequate.

Also, has there been any recommendation from his office that an adjustment be made just based on inflation.

Dr. Allen was not aware of any communications from municipalities to the Property Tax Division that the mandate reimbursement was not sufficient. He again said every 2 years there is a biennial budget that has the line item for the reimbursement. There are public hearings and work sessions, but he has never heard the \$2 reimbursement issue brought up before the TAX or AFA Committees.

Sen. Chenette asked if MRS has made suggestions related to making sure inflation is keeping up with any reimbursements or fees. Is it typical for MRS to make any such recommendation to the Legislature?

Dr. Allen said when the biennial budget is presented and they think there needs to be additional costs, they would make recommendations within that budget.

Sen. Chenette asked if Dr. Allen would recommend the \$2 fee be adjusted. Dr. Allen thinks they need to review it and open communications with municipalities to see if the \$2 is sufficient or not, but he is not aware of hearing it being a problem or not sufficient for municipalities.

Director Fox said one of the questions the GOC had earlier about the reporting of mandate reimbursements by agencies is an across the board requirement. Any agency that administers a mandate, whether it is the Secretary of State's Office, Inland Fisheries and Wildlife, etc., that has a program under its jurisdiction that is associated with a municipal mandate is also required to submit that information. That is a place where she thought it was envisioned would provide that opportunity for the Legislature to review whether generally mandate reimbursements were sufficient program wide across the State. OPEGA mentioned it in the report because it does not seem to be happening for any of those agencies.

Sen. Keim said, not specific to MRS, did speak to someone about having to reimburse for property tax and that the Attorney General's Office (AG) has an opinion from 2005 that says a complete repeal of the personal property tax is not the same as a new exemption and would likely not trigger the 50% reimbursement requirement. In looking at the 33 pages of businesses having to consider their personal property tax and millions of dollars probably in the expenditure administratively, agreed with Rep. Mastraccio that it is something the GOC should recommend the TAX Committee discuss. It drives her crazy that this has been a problem and discussed for 20 years and there still has not been anything done about it. She can't see upping the municipalities' \$2 reimbursement fee when really the entire thing seems senseless to her and maybe the GOC should discuss other options.

Rep. Mastraccio said the GOC could look at other options and if they wanted to propose a legislative solution, could craft a bill.

Director Fox said the GOC has the authority to report out legislation from any OPEGA report, but she didn't think that was the way the statute envisioned the process to work. It also would not change the requirement that the TAX Committee has to receive and respond to OPEGA's BETR/BETE report. The GOC does not take action in lieu of the TAX Committee's involvement.

Rep. Mastraccio said the GOC could, following Committee discussion, craft legislation to be introduced in the 130th Legislature.

Sen. Keim thinks it would have to go hand-and-hand with the Maine Municipal Association because they are the ones that would best be able to help advocate for the municipalities. It will be time consuming to figure out what changes are needed, but would be worthwhile. She asked if part of the problem is when the Legislature creates fiscal notes they do not consider the cost savings in doing away with the program. Director Fox said she could not speak to that exact question.

Dr. Allen asked if Sen. Keim was talking about repealing the BETE exemption. Sen. Keim said the idea of there being a personal property tax on business at all, should be looked at, noting other States do not have such programs. Dr. Allen believes any changes would require a Constitutional change. Sen. Keim said that was what she was reading from the AG's 2005 opinion and if we did a complete repeal of the personal property tax, it is not the same as a new exemption. Dr. Allen agreed and said if the Constitution was changed and exempted personal property there would not be any requirement that the State reimburse municipalities. Director Fox thinks two different Constitutional provisions were being talked about with regard to taxation generally and then the reimbursement requirement when State programs either exempt or offer credits for taxes collected at the municipal level. The AG's opinion is talking about changes to taxation generally. Repealing the personal property tax is not an exemption from it, or a credit, because it would not exist which is why it would not trigger that reimbursement. Director Fox asked Dr. Allen if he was invoking a different constitutional issue in terms of the personal property tax. Dr. Allen thinks if you want repeal of the local tax on personal property, you would have to do that through a constitutional amendment.

Sen. Chenette said he hears where Sen. Keim is coming from, but thinks it is a separate policy conversation and wanted to bring the conversation back to BETR/BETE. The GOC can discuss improvements, or elimination of a program based on a report, but outside of that scope, he thinks would start to veer off from their initial mission. It does not mean it is not a worthy conversation for the TAX Committee to take up. He said other members can correct him if he is wrong, but that is how he looks at the GOC's role versus the policy role of the TAX Committee. He had previously served on the TAX Committee and every year they had a bill related to the elimination of personal property tax and he does not see that as a direct correlation from the report and the findings.

Rep. Mastraccio said she was talking about, for example, municipalities are not adequately reimbursed for mandated expenses. That concerns her because that is another cost being shifted to the local property tax payer. She was talking about more specific things the GOC may be able to accomplish and not have to wait for the TAX Committee to start meeting in the 130th Legislature. Rep. Mastraccio would like for the GOC to endorse OPEGA's BETR/BETE report, send it on to the TAX Committee, but would like this Committee to continue their discussion.

Rep. Arata agreed with Sen. Keim about the absurdity of having to pay a tax and then fill out more paperwork to get the money back. But it being in the Constitution is a bigger issue than she realized. With regard to BETR/BETE she thinks a lot of businesses do not know about it and gave an example of receiving a personal property bill for a refrigerator she bought for an apartment she owns. For the first time, the city sent her a slip of paper saying she might qualify for the BETR or BETE program. Because she is on the GOC, she now knows what that is, but a lot of businesses are not aware of the programs. She thought encouraging municipalities to send out information about the tax exemption would be helpful to businesses, as well as, making the process simpler and easier to determine what qualifies for the programs. The report points out the complexity of the BETR/BETE programs.

Sen. Chenette asked if there were any other questions from the Committee for Dr. Allen regarding the BETR/BETE programs. Hearing none, he moved on to the Committee vote on the report.

- **Committee Vote on the BETR/BETE Report**

Motion: That the Government Oversight Committee endorses OPEGA's Report on Business Equipment Tax Reimbursement (BETR) & Business Equipment Tax Exemption (BETE). (Motion by Rep. Mastraccio, second by Sen. Sanborn.)

Discussion: Rep. Millett feels OPEGA's analysis was reasonably complete and a helpful research document and is not unwilling to address the 5 findings. He does feel the BETR/BETE programs are fulfilling a worthy role in assisting businesses, whether the outcomes are clear or not, and whether they are met, is not something he is in a position to make a judgment on. He thinks the public testimony was reasonably compelling that businesses, in general, are very supportive of the two programs. Rep. Millett asked if by voting on the pending motion, is the GOC saying this is a complete and accurate picture of the value of the two programs as they currently exist and that they support the report in its entirety? He is not in a position to say yes to the motion without acknowledging that he is not in a position to do anything to repeal BETR/BETE. He thinks they would be creating a lack of economic development tools if the GOC ventured down that path. He needed clarity of what the pending motion obligates him to say yay or nay to.

Director Fox said voting on the report, or acting on the report with regarding to endorsement, is something that is provided in the Tax Evaluation Process Statute. Specifically, in Statute it is to assess the report's objectivity and credibility and is what endorsement is based on. There have been times when the GOC members have asked for more guidance on that and would refer to the report's parameters document which lists what the GOC agreed they wanted OPEGA to review. Did OPEGA provide the Committee with information to have some sort of response to those questions, measures, etc. in the parameters. It is not whether, or not, any recommendations or findings OPEGA has made align with a Committee member's support of the program. It is simply whether, or not, as evaluators, OPEGA has provided the Committee with a credible and objective report that looked at the issues the GOC wanted OPEGA to look at. That is what endorsement represents. It is not recorded or reported out on a House or Senate calendar, it is just included as an action that happened today.

Rep. Millett said, as a member of the GOC, he failed to give OPEGA staff proper guidance on parameters because if he had done so, he would have asked that the preliminary findings be aired to the business community at a much broader level for input and feedback prior to the Committee's work session and the public hearing. He thinks that is the only area he is uncomfortable with saying it is credible and objective. He believes the report was objective, but that it was not completely aired to the extent he wished it had been, he is having a difficult time to say yes on the pending motion.

Director Fox said the report parameters were developed before Rep. Millett served on the Committee and were approved in 2017. You may recall that this GOC recently developed the parameters for the SEED Capital Investment Tax Credit program review. At the time the parameters were developed, there was a public comment period required. Those public comments could have been from the business

community, Maine Municipal Association, or anyone else. The GOC can make its decisions on the review parameters based on information received from the public comments. The proposed parameters are also provided to the TAX Committee for their input on the final parameters. Prior to that and, a less formal process, OPEGA will internally go back and forth with whoever the evaluated entity is and also, depending on what the review is, seeks input from those who would be considered stakeholders on the program when developing parameters. The current GOC may have offered different parameters, but the approval for the BETR/BETE report were approved by a previous Committee.

Rep. Mastraccio said having been on the GOC during the whole process for approving the parameters for the BETR/BETE program review noted that there were public comments and input. She thinks when you first see the report and have not been involved in the whole process and hearing testimony that makes it sound like the report recommended the programs be repealed, which the report does not suggest, gives members concern. She thinks of the BETR/BETE report as a tool for when someone puts a bill in to no longer reimburse businesses in those programs there is information available that people can look at to see what businesses testified and what was said. That is the reason the GOC/OPEGA does these tax reviews. By endorsing the report, the Committee is saying OPEGA did what the GOC asked them to do. It is now up to the Legislature to use the report in the way it was originally intended when the Legislature passed the tax evaluation statute.

Director Fox said the GOC, in 2017, said this is what we believe the goals of the programs are and that runs throughout OPEGA's entire evaluation. OPEGA sometimes makes recommendations if they are not clearly outlined in statute, but ultimately that is the decision of the Committee. Two of the primary goals for BETR/BETE were to reduce the cost of owning business equipment and to encourage capital investment are outline in the report and those informed the evaluation.

Director Fox said changes have now been made with the newly enacted tax incentive programs where the public policy goals are being stated directly in statute so there will be less of a need to figure them out when being evaluated. With each newly enacted incentive program, those goals are being more explicitly stated in statute so evaluations, such as this one, are more based on what the Legislature, at the time, thought those programs would be.

Sen. Chenette noted that because some Committee members were no longer at the meeting, the Committee was not going to have a quorum for the vote on the pending motion.

Rep. Arata, referring to the GOC's voting statute, said "the Committee may vote to endorse, to endorse in part, or to decline to endorse." Given the concerns of some of the Committee members with endorsing the report, she asked if they could endorse in part and then say OPEGA's work is complete and can move on.

Sen. Chenette asked if there is a specific section in the report that Rep. Arata disagreed with how OPEGA arrived at their conclusion. In particular, how that matches up and compares to the parameters that the GOC directed OPEGA to do. He said the endorsement of the report is specifically referencing how the GOC directed OPEGA to do that work. Did they do it based on how the GOC directed them, yes or no. To him the endorsement of the report is for OPEGA staff. Did the staff do a good job or not. The report recommends some changes to the existing tax incentive program based on the information collected during the reporting process, but there is nothing in the report that directs the GOC to take any specific

action. He asked Rep. Arata if there is a particular section with how the GOC directed OPEGA to look at something and they didn't.

Rep. Arata said her concern is the perception of the public that the GOC is endorsing the findings that they disagree with. That might be in error and asked if there was a way for the Committee to endorse the report with a notation of that.

Director Fox said it might be helpful to remind the Committee that they send a letter to the TAX Committee where they can say whether or not they agree with the report findings, that it would have been more helpful if something else happened, etc. This vote is more about OPEGA's credibility and objectivity in conducting its work. One of the really important things about OPEGA's independence is that the Legislature does not influence how they evaluate, that their evaluations are indeed objective and is why OPEGA does not go back and forth during their review process so they are immune from those sorts of influences. Also, that is why the GOC is a bipartisan – bicameral Committee, made up of 6 Senators, 6 Representatives, with equal representation of the two major parties. That is a filter that maintains the objectivity of OPEGA's work. Director Fox said the TAX Committee also has actions they can take regarding the report, including introducing legislation.

Sen. Keim agreed that the report is credible and objective and would vote in favor of the pending motion. She noted the Committee heard from businesses and municipalities that the programs are critical, so she would never think that the GOC would say erase these programs. She feels 100% able to vote in favor of the acceptance of the report and hoped the Committee would spend more time discussing what alterations should be made.

Director Fox recommended that members look at what the findings are in the BETR/BETE report. There are none about changing the programs, or they are not meeting their goals. OPEGA is just saying this one is less likely to achieve that broad based goal.

Sen. Chenette referenced Rep. Mastraccio and Sen. Keim's suggestion that the GOC take some time with how they want to craft their response to the TAX Committee. Do they want to take this on as one of their ongoing projects for the rest of the year as a Committee? Is it something they want to flush out a little and then send to the TAX Committee with a package of recommendations or details above and beyond what is in the actual report based on more of a policy conversation. That decision is totally up to the GOC.

Sen. Chenette said the Committee could not take a vote on the pending motion at this meeting so will have additional time to think about how they want to take this issue on. Several members have mentioned wanting to delve into this report more than what they typically do. Usually they send a letter to the TAX Committee and then they have more in depth conversations, but obviously the TAX Committee does not meet year round. Because the GOC does meet year round they have the opportunity to continue the conversations to flush out how to make the tax expenditure better. Unless there are any other lingering concerns, Sen. Chenette said the Committee will move on to OPEGA's report on Maine Capital Investment Credit (MCIC) while Dr. Allen is at the meeting to answer questions. Hearing no other comments or concerns, the Committee moved to MCIC.

4 Excerpt from GOC Meeting 11/20/2020 Committee Vote on the BETR/BETE Report

- **OPEGA Report on Business Equipment Tax Reimbursement (BETR) & Business Equipment Tax Exemption (BETE)**

- **Committee Work Session**

Director Fox reminded the Committee that they have had the presentation and held a public comment period on the BETR/BETE report and had started their work session on the report. The Committee has several options regarding the report. By law the report is required to go to the Taxation (TAX) Committee so at a minimum while we are still in the cohort of the 129th GOC they need to decide whether to make any recommendations. Regardless of that decision they should make a motion to move the report forward to the TAX Committee which is a requirement for OPEGA's tax expenditure evaluation reports. What that entails is generally saying we have reviewed the report, we find it credible and objective and the GOC is sending it on for review by the TAX Committee.

The Committee could offer other recommendations with regard to what members want the TAX Committee to look at, suggestions for legislation, findings that you think are useful, etc., but at a minimum because this GOC is ending and it will be going to the 130th, the law does require that there be a vote on sending it forward to the TAX Committee.

- **Committee Vote on the BETR/BETE Report**

Rep. Mastraccio made the following motion:

Motion: Pursuant to Title 3, section 999, subsection 3, which requires the GOC to assess this report's objectivity and credibility and submit it to the Taxation Committee for review and consideration, I move that we vote to endorse OPEGA's evaluation of the Business Equipment Tax Reimbursement & Business Equipment Tax Exemption (BETR & BETE) as credible and objective and submit it to the Joint Standing Committee on Taxation. (Motion by Rep. Mastraccio, second by Rep. Arata, motion passed by unanimous vote 7-0.)