



SEN. NATHAN LIBBY, SENATE CHAIR
REP. GENEVIEVE MCDONALD, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. KATHLEEN R.J. DILLINGHAM
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARGARET O'NEIL
REP. HOLLY STOVER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
April 23, 2021
Accepted May 14, 2021

Call to Order

The Chair, Sen. Libby, called the electronically conducted Government Oversight Committee to order at 9:03 a.m.

ATTENDANCE

Senators: Sen. Libby, Sen. Keim, Sen. Bailey, Sen. Bennett, Sen. Deschambault and Sen. Timberlake

Representatives: Rep. Arata, Rep. Millett and Rep. O'Neil
Joining the meeting in progress: Rep. McDonald, Rep. Dillingham and Rep. Stover

Legislative Officers and Staff: Lucia Nixon, Director, OPEGA
Amy Gagne, Senior Analyst, OPEGA
Kari Hojara, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA/Clerk, GOC

Executive Branch Officers:
And Staff Providing
Information to the Committee Heather Johnson, Commissioner, Department of Economic and
Community Development (DECD)
Todd Landry, Director, Office of Child and Family Services (OCFS),
Department of Health and Human Services
Kirsten Figueroa, Commissioner, Department of Administrative and
Financial Services (DAFS)

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

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Summary of April 9, 2021 GOC Meeting

The Meeting Summary of April 9, 2021 was accepted as written.

Sen. Libby asked if there was objection to taking agenda items out of order. Hearing none the Committee moved to **“Unfinished Business - Report back from Department of Economic and Community Development (DECD) on questions from the GOC regarding Pine Tree Development Zones (PTDZ) – Limited Scope Review”**.

Unfinished Business

- **Report back from Department of Economic and Community Development (DECD) on questions from the GOC regarding Pine Tree Development Zones (PTDZ) – Limited Scope Review**

Commissioner Johnson referred the GOC to her 4-12-21 memo which answers the Committee’s questions in their letter to her dated 3-11-21. (Copies of the memo and letter are attached to the Meeting Summary.)

Commissioner Johnson said DECD believes Pine Tree Development Zones (PTDZ) is an important program, but not a perfect program. As DECD looks at other national programs, they are seeing some similarities in other states trying to tackle the same challenges that Maine is. The PTDZ program was developed a long time ago to meet some very specific needs and those needs continue to evolve. It is DECD’s plan to do a more thorough review of the program. DECD issued an RFP that would do a review of what a new incentive and competitive package might look like for businesses. They have had those discussions and think a thorough review will cost about \$1 million. DECD received 5 responses to their RFP.

DECD feels strongly that the PTDZ program is an important stabilization factor and businesses need to have that predictability. They need to figure out how to grandfather one program into potentially a new program. That would be a legislative decision and not a decision of DECD, but they would like to make recommendations in the next session regarding that. Currently, DECD’s goal would be to be as efficient as they can be with PTDZ and continue that program for business stabilization as they look to the future.

Commissioner Johnson said one other piece that might be helpful to the GOC is that DECD has procured a new customer relationship management system that will allow them to do a better job of evaluating who is using the tool and is it impactful for them. DECD will get real time data so, as the Legislature wants data, they will be able to provide real time data to the Legislature and will have more information about the growth of those businesses. That system will be on-line this coming fall.

Sen. Libby looked for clarification that DECD wanted to propose changes in the upcoming January legislative session in 2022, or was the Commissioner referring to the next full Legislature.

Commissioner Johnson said DECD is not prepared, at this time, to answer that, but would like to look at a more competitive option to PTDZ that meets the businesses’ needs more effectively. They had to postpone that work, but thinks that work is important, so will get back to it as soon as possible.

Rep. Millett referred to the second full paragraph of DECD’s memo where the Commissioner talks about her answer to the question of does the Department believe that the publication of the economic strategy warrants a full review of the State’s economic development incentives. In that paragraph DECD does indicate “The intent is to have a proposal for any recommended policy changes prepared before the 2022 session” which Rep. Millett said would be the Second Regular Session of the 130th. He asked if that intent is limited to only that

issue when Commissioner Johnson commented that she was not ready to suggest whether it would be the 131st Legislature or the 2nd Regular Session of the 130th.

Commissioner Johnson said it is DECD's plan to have a proposal in the 130th Legislature's Second Regular Session, 2022. She is cautious until they have something done to commit to, but there is a project plan underway and that is their current plan. She said DECD is also working the budget piece with some budget items out to the Legislature for review. That may affect that timeline, but DECD thinks they have worked a plan that would allow them to do the study the way they need to and have it for the next Session.

Rep. Millett referred to the Commissioner's comment about budget issues and asked if she was referring to the biennial budget issues that are not yet addressed, or to the potential change package items that will be forthcoming in early May.

The Commissioner said DECD does not have the final package yet, but thinks they may also be able to use some other funding stream to support this work because it would be primarily about business recovery work. Incentive programs are about business recovery and business attraction, so there may be some other federal streams that they can utilize. DECD has applied for a couple of different grant programs through the Economic Development Administration (EDA) and other places that would give them the funding mechanism they would need.

Rep. Millett said Sen. Bailey, Rep. Arata and he are also members of the Appropriations and Financial Affairs (AFA) Committee and thinks they would look forward to those updates before getting serious about the biennial budget.

Sen. Keim said, for clarification, Commissioner Johnson said DECD is looking at a more robust program and possibly the PTDZ program would be grandfathered, but mentioned that a review of that was going to cost \$1 million. In the 130th Legislature's Second Regular Session in 2022, DECD thinks they will have something to tell the GOC about what that more robust program will look like. The part she missed and asked about was will DECD conduct that review and will it happen before they give the Committee an overview of what they want it to look like?

Commissioner Johnson thinks it is really important to have data to build forward looking programs. They need to have data on what Maine's businesses need and data on what other States Maine is competing with are doing. DECD also needs to collectively, and she says collectively because thinks this is a partnership between DECD, the Legislature, the business community and others, to think about what are their priorities. They should leverage a model that attracts Maine's priorities. Are the priorities good paying jobs, growth, etc. When the PTDZ program was created Maine was in double digit unemployment. Maine is not currently in double digit unemployment, so now the question may be a little different and is what they are trying to solve. She thinks it takes a real fresh look by everyone to ask what are the priorities that they are trying to incent and build a program for.

Sen. Keim said when DECD is doing the review of comparing to what other states are offering, are they not only looking at what Maine has to offer, but also what are Maine taxes like, what are the impediments to business growth, the structure of how do people get their business permit and whether Maine is an easy place to grow business. She asked if those things were going to be part of the review or is it just a dollar issue.

Commissioner Johnson said there are a number of factors that weigh heavily as businesses decide to stay and grow where they are. When DECD talks to existing Maine businesses, as well as, attracting new business, the workforce subject comes up in almost every discussion. Does Maine have the people, are the people trained and ready, what is the regulatory climate, etc. That is why the evaluation is more thorough and more expensive. Commissioner Johnson said she should have been clearer and said the \$1 million is a five year relationship with

the company to conduct evaluation work. The company would do the upfront incentive based work and then do a multi-year look at whether it is working and are there adjustments that need to be made. These are fairly large programs and there is a lot to learn and improve on, but we need to be careful so there is a predictable base for businesses to work from. There is also a way to optimize it for businesses without increasing the cost potentially and we need to be actively looking at those choices as well. That is DECD's intent and how they would go forward. The Commissioner thinks they need to be actively looking at if changes are made, are the outcomes what they want them to be, and while having predictable base, how do they continue to improve.

Commissioner Johnson thinks Sen. Keim's point is also why the "but for" piece is a little fluid. It is hard to say "but for" one thing people make decisions, it is a lot grayer than that. There is a lot of competition between states to try to attract investment and this is a chance for Maine to do this right as they make the adjustment. Sen. Keim said she is highly supportive of something that looks at the whole business environment and not just at what the State can handout for incentives. She agrees with looking at whether the State is attractive to business and looks forward to receiving that information.

Sen. Libby said OPEGA's PTDZ reports did point to the "but for" piece as highly concerning and is not an effective measure of whether an incentive is going to the right entity or not. It sounds like DECD is well plugged into some of the national conversation around alternatives to the "but for" and thinks the GOC is interested in hearing a report back from the Commissioner on what other States are able to employ to help ensure accountability in the program.

Sen. Libby said as a side note, he is pleased to see that DECD has taken the step in deploying a Customer Relationship Management tool (CRM). In the organization that he runs they also use Sales Force saying it is a very powerful tool for measuring activity and collecting and reporting out data.

Commissioner Johnson said one of the reasons DECD selected Sales Force is because they believe a lot of businesses are using it and a lot of other economic development entities are using it and will start to help create how we can share information and work together.

The Committee thanked Commissioner Johnson for attending the meeting and providing answers to their questions.

New Business

- **Pursuant to GOC request, report from Dr. Landry, Director, Office of Child and Family Services on status of prioritized initiatives to improve Maine's child protective system**

Sen. Libby noted that the GOC has been looking at child protective services for some time. He said Dr. Landry has been with OCFS for a while and has made a number of changes to that Office's programing. Sen. Libby said the Committee was looking for an update from Dr. Landry regarding the work OCFS has been doing since his last report back to the GOC in March of 2020.

Dr. Landry said his presentation will focus primarily on child welfare, with a particular focus on some of the areas that the GOC brought up during their March 26, 2021 meeting, including an update on the impact of Covid-19 on child welfare operations, as well as, an update on the child welfare information system. Before moving to child welfare specifically, he wanted to pay a short amount of attention to OCFS's two other primary areas that support Maine children and families, both of which have direct and indirect linkages to child welfare. These are Early Childhood Education and Children's Behavioral Health. Over the last year the Children's Behavioral Health team has made some significant progress in advancing the use of evidence based practices in the State, including free training for clinicians to be certified in trauma focused cognitive behavioral therapy.

OCFS is also in partnership with the Office of MaineCare who has also looked carefully at different rates and anticipates the final completion of a rate study in the near future.

Dr. Landry also wanted to point out that in 2020 OCFS was awarded a federal system care grant. With the federal funds, they are going to be able to improve the overall Children's Behavioral Health Services, including the restoration of some quality assurance activities, as well as, family navigators to serve children and families who are involved, or need, Children's Behavioral Health Services. For Early Childhood Education, the primary focus has been continuing to support the accessibility of child care for all Maine families. At times the pandemic has shifted their approach regarding that work, particularly as they sought to support existing providers who were negatively impacted by the pandemic. Over the last year, OCFS has provided nearly \$38.4 million in federal funds to childcare providers to offset revenue loss to support their workforce, to cover the cost of Personal Protective Equipment (PPE) and extra materials in cleaning supplies, as well as, to modify their spaces to ensure safety. OCFS is anticipating additional funding from the American Rescue Plan (ARP) Act, that was passed in March, which will make additional support available to childcare providers. They have not yet received guidance from the federal government on the ARP funds for childcare, but they hope to receive those as soon as the end of April. OCFS's data indicates the efforts to support childcare providers to safely stay open, or reopen, are having a positive impact. In mid-April of 2020, 47% of childcare providers were closed and that represented 57% of licensed childcare capacity statewide. Today, and which has been true since last fall, approximately 96% of their providers are open representing 95% of total license childcare capacity statewide.

While Covid-19 has dominated much of OCFS's work over the past year, it has offered them numerous opportunities to learn and adapt their practice. While the narrative around Covid-19 is often negative, OCFS has also approached the pandemic as an opportunity to examine the ways in which their work has been transformed and what has and has not benefitted children and families as a result. It is sometimes hard to find these silver linings during a global pandemic, but OCFS has tried to do exactly that. Examples of some of the improvements they plan to continue to support in the future include the use of telehealth in Children's Behavioral Health and use of video, or hybrid, meetings in Child Welfare. That has allowed for greater flexibility for a family's entire team to participate in supporting the family's rehabilitation and reunification goal. Dr. Landry mentioned that as OCFS plans for the future, they are also taking an opportunity to look back to find areas where they can permanently adapt their practice in a manner that benefits those that are involved with the various system OCFS oversees.

Dr. Landry went on to summarize his presentation on the update of work that has been done at OCFS. (A copy of the PowerPoint presentation is attached to the Meeting Summary.)

Sen. Bailey said one piece of information that she did not see in Dr. Landry's presentation was what is the average length of stay for a child in foster care and how does that compare to the national average? Dr. Landry said he will be happy to provide that information to her. She said Maine has a pretty strong law requiring, not only kinship placement, but placement with siblings and she did not see any information on the progress being made in that regard in terms of placement with siblings. Dr. Landry said he will get that information for Sen. Bailey.

Sen. Bailey referred to Dr. Landry's chart in his presentation about safety in State custody and asked for clarification because the information indicated that it was looking at the number of incidents of abuse or neglect while in State custody and asked what the definition is of abuse and neglect. Is it reported or substantiated? Dr. Landry said that would be substantiations of abuse and neglect while in care and it is based on a rate of 100,000 days in care. It is a little bit of a wacky federal definition, but it is the one that OCFS follows. He said it is also important to note that this would not necessarily be abuse and neglect in a resource parent's home, for example. OCFS has a number of youths that may be in a trial home placement, may have a number of youths that have visitation and may have a number of youths that may, regrettably, experience some type of abuse or neglect

while in care, but not on the part of the resource parent. He did want to make that clear, it is not just resource parents, it is any potential abuse or neglect that may occur regardless of the perpetrator while the child is in care.

Sen. Bailey thinks Dr. Landry mentioned the figure about the percentage of children in State custody as .8%, or another way of looking at it is the most recent number that she saw for 2020 was 8.9% per thousand children in State custody. She knows the number fluctuated and asked if he could share how that compares with the national average because she thinks the national average is more like 5.8%. Dr. Landry said that was correct. When you look at it on that basis of rate per 1,000, you can look at it as a percentage basis and as Sen. Bailey pointed out, Maine does have a higher rate and that has been consistent for the past decade. Maine is not at the highest end of that spectrum across the nation, but he will provide Sen. Bailey with the latest data. He thinks the latest federal data he can provide will probably be for federal fiscal year 2019.

Sen. Bailey said there was a recent report about the Social Security payments for children in State custody and asked what Maine's policy is for children who are in State custody and who are entitled to receive Social Security benefits. What does the State do with those benefits and how does the State ensure that those benefits go to those children once they exit State custody? Dr. Landry said Sen. Bailey is correct, there are some articles regarding the Social Security matter in some of the media reports, primarily in the national media over the course of the last few weeks. He said in the State of Maine, if a child has Social Security benefits and they come into the care and custody of the State, Maine does become the custodian of those benefits as the legal guardian of the child. The funds are separately maintained, from an accounting perspective. The funds that do come in while the child is in care go towards the State supporting the cost of providing the care for those children. At the end of their stay in State custody, Maine ensures that those dollars remain in the child's name and would be transferred to their legal guardian at that point, or to the child, if the child reaches the age of maturity.

Rep. Arata asked how many kids, if any, are housed at Long Creek, even though they have not committed a crime, but because there is no other place for them to go. Dr. Landry said as of today, he does not believe OCFS has any children in custody who are at Long Creek, but he would have to confirm that for her. Rep. Arata asked if that was something that was a regular occurrence – housing kids at Long Creek or is it a rumor. Dr. Landry said, to his knowledge it is not any type of regular occurrence. If a child does have some type of law violation and that child is in State custody, they are detained at Long Creek. But, without any law violation, he is not aware, since he has been at OCFS, of any children in the care and custody of DHHS that have been placed, absent a law violation, at Long Creek. He can confirm that for Rep. Arata. Rep. Arata said if Dr. Landry finds differently, she would appreciate knowing.

Sen. Keim asked that when Dr. Landry provides the answers to Sen. Bailey's questions, that it be shared with the whole Committee.

Sen. Keim said Dr. Landry mentioned the fact that the Courts were closed and were working to be as timely as possible. She asked if he could get the Committee more information about the delays - are there current delays and the impact that has been having on getting decisions made for children, whether it is placement or something else. Dr. Landry said OCFS can work with the Courts to see what kind of data can be provided, but said, to the Court's credit, one of the things they were able to continue relatively quickly, by the end of April 2020 was to restart many of the hearings related to children in custody. It was one of the Court's primary type of court cases that they continued to prioritize. There was a period of time beginning in mid-March through mid-April when there was an absolute hold on adoption hearings, for example. That did significantly increase the timing of some of their exits of children safely to permanency. There was a drop in April because the Courts were able to restart those proceedings, many of them in a virtual basis, particularly for uncontested adoption hearings in order to catch up. He thinks they are reasonably caught up. Somethings have taken longer because of the challenges related to Covid-19, but he will see what quantitative data OCFS can get with the help

of the Maine Judicial Branch to provide to the GOC. For the most part, Dr. Landry said, particularly in the second half of 2020, they were able to see a pretty reasonable return to timely hearings, although there has continued to be some delays related to technological or physical challenges when the Courts have determined that the hearings need to happen in person. In general, Dr. Landry would guess they are at an 85-90% mark compared to 2019.

Sen. Keim asked if it is recommended that the children in State custody get the Covid vaccine. Dr. Landry yes. There is a very careful process, procedure and policy that DHHS has in place regarding the vaccine and he would be happy to share the details of that policy and process. There is ample opportunity to ensure the youth, in this case, 16 and 17 years old, the resource parents, the family members and others have an opportunity to participate in that decision-making. The vaccine is not required, but DHHS is recommending it just as they do for all other childhood immunizations. Sen. Keim said the Covid vaccine is different because it does not actually have FDA approval and is why she asked the question.

Sen. Keim said Dr. Landry showed the service areas where children had been abused or neglected and 2 of the service areas stood out pretty dramatically and asked why the outcomes would be so different for children in care there. Dr. Landry said there are areas where the numbers are higher and not meeting the federal benchmark, specifically in D1 and D4 in the Rockland area. He does not have the exact details of why they may be higher in those areas versus other parts of the State off hand, but his Office will provide the Committee with more qualitative information. There could be a number of reasons associated with the higher number, particularly in D4. Keep in mind this is a rate calculation, so as a result of that, a small number of potential abuse and neglect situations could have a disproportionate impact on a rate calculation based on the denominator, the number of children in care. D4 has, in general, a lower number of children in care, so it may have a disproportionate kind of impact when you calculate on a rate basis. That is one example, but he said OCFS will provide the Committee with more qualitative information on those two locations in specific.

Sen. Keim referred to the pie chart of the children that are in State care showing the adoption rate was 3%. She asked if that was low nationally, if that number has fluctuated or if Dr. Landry sees possibilities of increasing that percentage. Dr. Landry said that chart may not be a licensed resource family, but they may be an approved adoptive family and children are placed there on a trial period before the adoption goes to court for finalization. That is why that number may look abnormally low. It is just 3% as an adoptive placement. Again, he would say that in federal fiscal year 2020, 34% of all exit to permanency were to adoption and this year, year-to-date, that number is 42% of all exits to permanency has been adoptions. The pie chart is a point in time placement data as opposed to an outcome report.

Sen. Keim asked if the Family First Federal Program began in the previous Administration. Dr. Landry did not know if any discussions were held in the previous Administration. He can say that when he came to OCFS in May, 2019 no work had been formally done to prepare for the development of a State Plan. There may have been discussions about it that he is not aware of, but there were no draft plans in place. Sen. Keim said she should have been clearer saying that Program began in the Trump Administration. Dr. Landry said the Family First Act was passed by the federal government in December of 2017 or January of 2018. Sen. Keim asked if the change in federal Administration affected the Program and made it difficult for the State, or has the Program remained pretty much the same. Dr. Landry said, from his view, the Program has remained virtually unchanged during the changeover in federal Administrations. He has not seen, recognized or noticed any difference in the Administration of Family First Plans or approval of Family First Plans.

Sen. Keim thinks in every area of State government you see that the federal government attaches funding in order to tell States how to take care of our children, how to run our schools, etc. She always finds that concerning because it oversteps the State's right, and asked if there was anything in the Family First Program, since it is designed nationally and every State likes to think of themselves as unique, and she especially likes to think of Maine as unique, asked if there was anything that Dr. Landry feels would be better tailored if Maine

was allowed to do it based on their own perspective. Dr. Landry said he did not have any examples off hand that he could give Sen. Keim. He can think about that question and maybe share any other thoughts after today's meeting. Certainly, if the States are going to qualify for federal IV-E dollars through Family First, they have to meet the federal requirements that are associated with the Act and the regulations, or rules, that are put in place. One example of that, and is in complete alignment with the philosophy in OCFS as it relates to residential treatment, is the federal government has said in order for States to continue to access federal IV-E dollars for children who are in care and who are placed in a residential treatment setting, must now meet higher quality standards that are associated with the national level of care called a qualified residential treatment provider. There are a number of requirements to meet that national level of standard of care and OCFS believes all of those are absolutely appropriate. Those include fingerprint based background checks through the FBI, and using a trauma informed model of care that includes having effective discharge and aftercare services once the child leaves the setting and goes into a family based care setting or placement. OCFS believes all of those are appropriate higher level of standards that they should be meeting. He is happy to say that every single one of the children's residential providers in the State agree with OCFS and they are all working towards meeting that Qualified Residential Treatment Program (QRTP) higher level of standard of care before this goes into effect in October. On the State side, OCFS's commitment to them was working with their sister agency in the Office of MaineCare Services to conduct a new rate study that includes what the rate should be to support those higher levels of standards. That is one of the budget initiatives and that rate study is nearly complete, if not complete. They are hopeful that the Legislature will see this as a positive step forward. It will mean an increase in rates for the providers and OCFS looks forward to being able to receive legislative approval to implement those higher rates in order to support higher standards of care and will be able to continue to pull down federal IV-E dollars for those placements. In his opinion there is a benefit to them from a fiscal perspective in the State and there is a great benefit, and most importantly, a benefit to the quality of care that children will receive in those residential placements.

Sen. Keim asked if when Dr. Landry said there would be an increase in what the State pays for residential placements, does that include a foster family. Dr. Landry said foster families are not included.

Sen. Deschambault followed-up on what Rep. Arata asked about detainees at Long Creek. She said children between the ages of 12 and 18, have to commit a crime, go before a judge and if the judge is unable, or unwilling, to have that child return to the home, are placed at Long Creek as a detainee for usually about a 72 hour period and then the detainee returns before the judge within 72 hours. The 72 hours is usually just for a placement to find the child either a group or foster home. Some do remain a little longer because of the status of the family situation.

Sen. Deschambault said she felt the children held by the Department of Corrections (DOC) are in State custody, but under a different umbrella. There is a lot of parallel between the children with DOC and the children with DHHS. She knows Dr. Landry has been working with the DOC in an attempt to close Long Creek in terms of finding some therapeutic homes in the community and she asked if he could share with the Committee the role he has played with those children in the custody of DOC.

Dr. Landry said Colin O'Neill, Associate Commissioner of DOC and he have had monthly standard meetings specifically to address the topics that Sen. Deschambault spoke about. There is overlap between the DOC's responsibility on juvenile justice and DHHS or OCFS responsibility from their statutory perspective. He said he served on the Juvenile Justice Reinvestment Task Force because of the recognition of some overlap between their areas, particularly as it relates to Children's Behavioral Health Services. OCFS and DOC both have a commitment to increasing the capacity and access in the State to evidence based mental health and behavioral health treatment and is why they have partnered together to increase the availability of Multi Systemic Therapy (MST) and Functional Family Therapy (FFT). They have been able to braid funding, not share funding, but have been able to braid funding with things they are able to provide support for either through a MaineCare rate or through efforts of Children's Behavioral Health combined with some efforts by the DOC to support

providers. Their fundamental belief that they share is for the majority of kids, this won't be for all, but for the majority of kids, if they are able to provide strong evidenced based proven research tested models of intervention earlier on in the process, or earlier on in their life stages, the better outcomes they are generally going to have, including, hopefully, preventing most of those kids, from having to enter higher levels of care, such as residential treatment, or ultimately in some cases, perhaps detention at Long Creek.

Sen. Deschambault said if Maine does that, they will be national leaders. She noted that she worked at Long Creek when there were 100s of young people incarcerated, said currently there are less than 20. She appreciated Dr. Landry's involvement because having worked in the system knows trying to break into DHHS for help never worked and now that silo is coming down. She thanked Dr. Landry, Mr. O'Neill and Commissioner Laliberty for doing that work. Dr. Landry thanked Sen. Deschambault for her comments and said she is right, it is not just a challenge here in the State of Maine, it is a challenge across the entire country. He would say to Maine's credit, it is on the leading edge of trying to reduce the unnecessary detention, or commitment of youth, in a locked facility and hopefully will continue to believe that is, wherever possible, not where Maine wants their youth or children to be.

Rep. Millett said he has been impressed with Dr. Landry's reports to the GOC from the beginning and once again he finds in his prepared remarks and his response to the various questions, that he has been spot on in responsiveness and dealt exactly with the request that the Committee authorized OPEGA to provide to him back on March 26, 2021. The information he provided was very comprehensive and very informative. He has been impressed with the direction Dr. Landry has taken, the leadership he has demonstrated and the dashboard that he first talked about when he came before the GOC almost two years ago. He finds it extremely valuable in terms of the progress OCFS is making in the area of child welfare. It seems in Dr. Landry's charts it shows the guiding principles and strategies and the outcomes chart show how he responds to it and what is happening as a result of his responses.

Rep. Millett said the GOC's request was pretty much pandemic related and as he recalls, the Committee thinks Dr. Landry was in a critical place where parents and children have been cooped up for over 13 months now in a setting where they have been denied in person learning, access to child care, exposed to a family with changed demands and circumstances, affecting both their economy and the family unit. He asked if Dr. Landry had, above and beyond the data, a reaction to the level of child abuse and neglect that has occurred during that period. Has he drawn any conclusions that he could share with the GOC that measure the depth and seriousness of child abuse and neglect observed over that 13 month period where everything has been turned upside down for the family unit.

Dr. Landry shares the concerns of Rep. Millett, and many others, about the potential impact to children and families because of the realities of dealing with the global pandemic. On one hand he can point to the data, as he mentioned, that shows that their reports and assessments of and findings of child abuse or neglect have been about the same as OCFS sees in typical years except for the first few weeks of the pandemic. You might be inclined to look at that and say it is about the same so maybe it is not that much worse than before, but that is only part of the picture. The other thing that OCFS pays careful attention to is the situations reported to OCFS of what would rise to what they would consider a serious injury. Many times, these calls or reports come in from hospitals because a serious injury may be attributed to an abuse or neglect situation. When OCFS looks at those cases, what he can say is that in general, there have been time periods during 2020 to 2021 where the number and the severity of serious injuries have qualitatively appeared to be higher than in previous years, or more serious than in previous years. On the other hand, there have been significant periods of time where it has not been that way so OCFS has not been able to draw significant valid conclusions, except to say that, from what he remembers, at about the 8 to 10 week mark into the pandemic, there was a spike in the number of serious injuries. That may be somewhat logical because we all can adapt to short term challenges relatively easily, but when it becomes a longer duration, that is when everyone faces bigger challenges. OCFS saw a bit of an increase and have continued to see occasional situations where there tends to be spikes and serious

injuries. It has not been consistently above prior years, it has not been something that they can point to as something consistent that they need to react to, but they continue to watch that carefully. He said OCFS did see that increase they typically see at the beginning of the school term in the fall and attribute that, at least this year, to the fact that many school districts went to a hybrid mode of education where they were partially in person and partially virtual. OCFS did see that increase and thinks that was not necessarily a bad thing because it did indicate to them that perhaps more children were coming in contact with other associative caregivers in the communities, including school personnel. He thinks the hybrid schooling approach has benefited OCFS in Maine with additional caregivers having access to children.

Rep. Millett said Dr. Landry referred to behavioral health, and substance abuse as factors in reunification and said both of those issues are very much in front of legislators. There are so many issues on behavioral health and the impact that the pandemic has had on school age children leads him to think aloud that people like Dr. Landry who are seeing what is happening, or has happened, could be helpful in shaping any legislative strategies well outside of OPEGA and the GOC. There might be an opportunity for a conversation in a different forum tapping into Dr. Landry's knowledge and observations. The same with substance abuse because it is clearly an issue that Maine is not making great strides on, even though a great deal of attention has been placed on it. Rep. Millett would like to ask, if possible, to have a copy of OCFS's Family First State Plan. Rep. Millett said he and Sen. Deschambault are old school people and have both spent a good deal of time in the Executive Branch and realize there may be a stereotype about people in positions such as the one Dr. Landry is in. He used to be offended when people used the word "bureaucrat" in describing his role so wanted to say that Dr. Landry is the epitome of a leader, not a bureaucrat.

Dr. Landry appreciated Rep. Millett's kind comments. He said the Family First Plan DHHS presented to the federal government is available publicly and the link will be sent to that Plan to the Committee. He did remind the Committee the Plan has not been approved by the federal government.

Sen. Libby echoed some of the comments of other Committee members in applauding Dr. Landry's leadership and hard work and the effort of all the staff at OCFS and their community partners in recognizing the number of the challenges that caused the GOC to get involved in OCFS's work a few years ago after the deaths of Marissa Kennedy and Kendall Chick. The OPEGA reports pointed to a number of deficiencies in the system itself and challenges within OCFS at the staff level. Dr. Landry's various reports and presentation over the last couple of years gives him confidence that significant progress is being made in terms of reducing turnover, improving access to training, hiring additional staff and implementing the data management tool, which were all identified as deficiencies in the OPEGA reports.

Sen. Libby referred to the training of OCFS caseworkers and supervisors and said there appears to be a disagreement between OCFS and the Child Welfare Ombudsman, Ms. Alberi, in terms of where new training resources are at. In Ms. Alberi's letter to the HHS Committee back in January said "When caseworkers begin their employment, they participate in the new caseworker training. After the first year of training, there are no regular refresher trainings for general casework required." There are several trainings listed on page 10 of the Ombudsman's report, which are all valuable, but are not required and do not address the fundamentals of caseworker practice, such as initial investigations and ongoing assessment. Sen. Libby said he understands work is underway with the Muskie School, but the key question is to what degree these trainings have to do with the direct client work offered, what is the take rate and is the Department considering annual requirements for this form of training?

Dr. Landry said from the beginning he has routinely and regularly met with Ms. Alberi. They generally have been meeting monthly with those meetings including Ms. Alberi, the Chief of the Child Welfare Division of the Attorney General's (AG) Office, himself and others participate on a topic-by-topic basis. In many areas they agree and, in some areas, they disagree. He believes the training that OCFS has offered, and as he indicated, are offering is in a continuous review process with the Muskie School and OCFS is leveraging their expertise. He

was pleased they were able to re-engage the Muskie School in 2019 after a 7 to 8 year halt to that cooperative agreement. That has proved invaluable to OCFS and they have relied on the Muskie School to take a close and careful look at what the evidence is for both OCFS's new foundation training, as well as, the ongoing training. If part of that work is a recommendation that Muskie puts forward, OCFS works with them to make certain components of training on an ongoing basis is required, then OCFS is open to considering it, but they want to do it from an evidenced and research based perspective. The Muskie School enables them to leverage their expertise in order to do that. He said he should point out that OCFS also participates with the New England Association of Child Welfare Commissioners and Directors, which includes all six of the New England States. They participate collaboratively with them so they can share best practices and learnings across the six states and that has been invaluable, including during the pandemic. OCFS is also members of the Child Welfare League of America which offers an additional perspective of evidence, research and best practice. The combination of all of those, plus others, such as Casey Family Programs and the Annie E. Casey Foundation, enables OCFS to leverage that expertise so whatever changes they do make, are being made with the best set of research and evidence behind them. They are open, and will continue to be open, to potential changes, but they are letting their work with Muskie lead the way with the additional input of those national experts.

Sen. Libby asked about the Alternative Response Program and noted in Dr. Landry's presentation that the contracted providers for ARP are working with the lower risk cases. Some of the providers, when notified that their contracts would not be renewed, contacted legislators expressing concern, not only for losing that work, but also arguing that the Department's plan to replace dozens of individual contracted providers on the ground with 15 caseworkers at OCFS was challenging to wrap their heads around and felt that Maine is going in the opposite direction in terms of caseload. He asked if Dr. Landry was able to speak to that concern and potentially seeing the number of caseworkers dropping under that proposal.

Dr. Landry said OCFS has had a number of meetings with the ARP providers or contractors. He said the ARP contract includes two components. The first component of ARP under that contract is the investigation piece of the work that ARP does. A certain number, depending on ARP availability, staffing, etc. of low or medium risk cases that are deemed appropriate for investigations can currently and continue to be assigned to ARP for investigation. So that is the investigation work of ARP. When you look at the number of cases that have been assigned or referred to ARP for investigative and assessment purposes, that equates to approximately 15 full time positions. Those are the 15 new positions that OCFS proposes be added to their caseworker totals through their budget initiative. The second component of the ARP contract is follow-up case management referrals, and in some cases, direct services to those families. Those are the pieces that OCFS intends and believes belong best in an approach related to and assigned through the Family First process. So, for those cases, OCFS anticipates the vast majority of them will become what they could generically call Family First prevention cases. They meet the requirements of their State Plan, the federal government, etc. and the plan would include oversight by OCFS staff. It would include referrals to community-based services, such as Home Builders or Parents as Teachers through an expansion, or any of the MaineCare funded services as well. Those are the pieces that OCFS is going to redirect the funding for so they can add more services to their communities and can have those services available and then the follow-up will be the responsibility of OCFS staff to ensure that the family is participating in the services, they are completing the services, or if they are not, then a reassessment determination of whether or not the children have to come into the care and custody of the State. It is two different parts of ARP. The 15 positions are the number of FTE related to the assessment piece, the remaining component are the dollars OCFS proposes to reinvest in Family First and get a 50/50 match in General Funds, and brings in more resources to the State which provides more resources for the families and services to hopefully keep children safely out of the child welfare system and safely with their families.

Sen. Libby asked if OCFS would then intend to hire an additional 15 caseworkers at the beginning of next year, how many caseworker vacancies does OCFS currently have. Dr. Landry said of the 475 caseworkers statewide, as of this week, they have approximately 15 vacancies. The new positions would be assessment positions so that would be a subset of that 475 versus permanency caseworkers, adoption caseworkers or others. OCFS has

about a 3% vacancy rate, which is low and would say that rate is generally much lower than what the ARP providers have reported to OCFS of their vacancy rates during the life time of their contract. Dr. Landry believes the amendment that the HHS Committee put forward was for these positions to go into effect on October 1, 2021.

The members of the Committee thanked Dr. Landry for his presentation and for answering their questions.

- **Introduction to Proposed Parameters for OPEGA's Full Evaluations of the Credit for Rehabilitation of Historic Properties after 2007 and the Research Expense Tax Credit (memo dated 4-6-21)**

Director Nixon summarized her memo to the Committee regarding the proposed Parameters for OPEGA's Full Evaluations of the Credit for Rehabilitation of Historic Properties after 2007 and the Research Expense (R&D) Tax Credit. (A copy of the memo is attached to the Meeting Summary.)

- **OPEGA's Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit after 2007**

Director Nixon summarized the Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit after 2007. (A copy is attached to the Meeting Summary.)

Rep. Dillingham asked if it would be possible, for the next GOC meeting, to have the information on the number that take advantage of the Historic Rehabilitation Tax Credit for the affordable housing. The Director said that information will be provided for the next meeting.

- **Stakeholder Comment Period on OPEGA's Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit**

Elizabeth M. Frazier testified on behalf of the Maine Real Estate & Development Association and the Maine Historic Tax Credit Coalition. (A copy of Ms. Frazier's written testimony is attached to the Meeting Summary.)

Greg Paxton, Executive Director, Maine Preservation. (A copy of Mr. Paxton's testimony is attached to the Meeting Summary.)

The Chair, Sen. Libby, ended the public comment period on the Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit at 11:53 a.m.

- **OPEGA's Proposed Evaluation Parameters for the Research Expense Tax Credit (R&D Credit)**

Ms. Hojara summarized the proposed evaluation parameters for the R&D Tax Credit. (A copy is attached to the Meeting Summary.)

- **Stakeholder Comment Period on OPEGA's Proposed Evaluation Parameters for R&D Credit**

OPEGA received no written testimony and there was no one who testified at the meeting.

The Chair, Sen. Libby, ended the public comment period on the Proposed Evaluation Parameters for the R&D Credit at 12:03 p.m.

Sen. Libby noted that the GOC continues to accept written testimony and it can be sent to the Committee Clerk. He said the GOC will have a work session on the Proposed Evaluation Parameters on the Historic Rehabilitation Tax Credit and R&D Credit at the next GOC meeting.

Report from Director

- **Status of projects in process**

Director Nixon said OPEGA staff is working on preparing the report on the **Maine Citizen's Initiative Process** and with that report being presented to the Committee by the end of June. Staff is also working actively on the report on the **Seed Capital Investment Tax Credit** and that report will be presented later in the summer. On the **Maine Commission on Indigent Legal Services**, as follow-up to the first report, the GOC will be getting their first quarterly report-back from MCILS at the end of May. The Committee will get an update on progress and steps MCILS is taking to address issues raised in the first MCILS report and other matters. For the second part of OPEGA's work on **MCILS** of looking at indigency determination and collection of payments from the partially indigent, that project is actively in fieldwork. OPEGA is conducting surveys and having interviews in order to gather data. As mentioned by Dr. Landry earlier, the **Follow-up Survey of Frontline Workers at DHHS/OCFS**, OPEGA has not gotten to a point where they are ready to engage with the Department yet, but are thinking when they will get started with that and how it will proceed. As mentioned before, OPEGA has the previous survey to build on so hopefully they can get that worked started fairly efficiently. The Committee just had the presentation on the two tax expenditures that are up for evaluation and the information gather for today's meeting will be brought back at the next meeting for the GOC's work session on the tax credits. The Committee also got a report back from DECD on the PTDZ program.

Director Nixon noted that on the Wild Blueberry Commission review request, the Agriculture, Conservation and Forestry Committee has been actively working on it, but needs additional time before reporting back to this Committee. She said Rep. O'Neil, Co-Chair of the ACF Committee, intends to give an update at the next meeting.

Unfinished Business

- **Follow-up discussion with Department of Administrative and Financial Services (DAFS) regarding request for review of Workday Maine**

Sen. Libby said OPEGA had provided the GOC with an Annotated Table of Contents for Materials provided to the GOC by DAFS of Workday and an Overview of DAFS Materials. (Copies of those documents are attached to the Meeting Summary.)

Rep. Arata asked if there were any contractors currently working on the Workday Maine project. She heard that some were dismissed and some were retained and asked if the Commissioner had any details about that.

Commissioner Figueroa said DAFS currently does have a few different contractors working on the Workday project. DAFS currently has some State employees doing the work that she outlined in her earlier testimony. DAFS did recently release some project staff from the Workday project. As good stewards of the project and fiscal resources, while they are in this transition, DAFS released 15 independent contractors as of April 16th. The anticipated savings of that is about \$206,000 a month. There are many components of the Workday project, so there are still a number of staff and contractors working on the project. DAFS has some independent contractors, for instance, the third-party assessor, 7 independent contractors who remain attached to the Workday Maine effort and continue to complete those items that DAFS mentioned at the last GOC meeting, including the business processing mapping that was talked about which is reviewing the existing business requirements and identifying gaps. They have the legacy data effort whereby they are making strides toward transferring the data that are in the old legacy systems into what will be the new system and also have contractors helping with the supervisory organization structure, which is critical to the payroll component of

Workday. There is still work ongoing, but because of the implementation delay, DAFS did not need some of the contractors.

Rep. Dillingham referred to the cost savings on the \$206,000 a month with letting go of the 15 independent contractors, noting each of the contractors was making over \$13,000 a month? She said there had been reference to an IJA Assessment report and asked if that had been provided earlier. She also asked who the Director of Project Management Office is.

Commissioner Figueroa believes the \$206,000 for the 15 contractors comes to about \$108 an hour and is about the standard amount for an independent contractor. She said the IJA Assessment had been provided. Sen. Libby noted that in the Annotated Table of Contents prepared by OPEGA there is a hyperlink to the IJA report. Commissioner Figueroa said in response to Rep. Dillingham's last question, the Project Management Office is led by Doug Birgfeld. Mr. Birgfeld reports to Fred Brittain, who is the CIO. It is the position he holds now and held in the previous Administration.

Sen. Libby offered, for the GOC, his thoughts on the posture of the review request for Workday Maine and where they go from here. DAFS has provided an enormous amount of information to the Committee upon the Committee's request and thinks that information has helped the public better understand the timeline of the Workday project, the challenges the LePage and Mills Administration have had with two contractors. He admitted he has not had the time to personally review each document because there are several hundred pages of material. He did find the OPEGA Annotated Table of Contents to be a helpful reference in navigating the material that he was interested in. Given the material the Committee has been able to acquire and provide to the public, given the presentation of events that Commissioner Figueroa had provided at the last meeting and given the fact that the AG is involved in a potential settlement with the contractor and an agreement on terms of separation, and because that process is ongoing, he is concerned that an OPEGA review commencing at this time during that process may not be the most productive use of OPEGA or DAFS resources. Sen. Libby thinks, at the very least, the GOC has secured some information that has been helpful, there is a process ongoing that is very much outside of OPEGA's scope that he would like to see conclusion to before taking any vote on committing OPEGA resources to investigating Workday Maine. He welcomed other Committee member's thoughts or comments.

Rep. McDonald would be concerned, at this point, that the GOC may do work that is duplicative. She thinks the outcome of the mediation will help guide them in deciding what direction they want to go to be most helpful.

Rep. Arata did not want to let the request for review of Workday go completely. She agrees with Sen. Libby in most respects, but it would be good to have ongoing progress reports, although is not sure how frequently, and then if the GOC decides a review is warranted later based on new information, they will have that option.

Sen. Libby said he was open to asking DAFS to report back upon the conclusion of their negotiation. He is not sure what timeframe that would be, a month, quarter or longer.

Rep. Dillingham agreed with Rep. Arata and also with what Sen. Libby just referenced.

Rep. Millett echoed the comments from the previous 3 members and looking at the Meeting Summary of April 9, Sen. Libby and he were both open to the opportunity for Workday representatives to present information at a May meeting.

Sen. Libby said he is open to further discussion about whether the Committee would like to formally invite the implementors (Workday) to attend a meeting. He did review the response from the implementor and is reminded that the GOC's charge is primarily oversight of State agencies. The Committee does, from time-to-

time, direct OPEGA to investigate the activities of contractors, but that is not necessarily a typical course of action for the Committee. It was a bit overwhelming at the last meeting having received such a volume of documents and not fully being able to process everything in the moment given when they were received. On reflection, he is personally satisfied with where the GOC is at having gained a lot of material and an understanding of a process that has covered 2 Administrations. He is open to what other Committee members think in terms of their next step, but giving DAFS, the implementor, along with the support of the AG, the space to negotiate a settlement he thinks is where he is inclined to go and keeping this request for a review of Workday on the Committee's potential work list, but not committing any resources to further investigation at this time is what his preference would be.

Rep. Millett asked if Sen. Libby's comments would involve putting the request for review of Workday Maine on the table without no immediate commitment, but still keep it as an issue currently before the GOC. Sen. Libby said if it is the pleasure of the Committee, he thinks that in the past they have done 2 different things. The Committee has assigned requests to a Work Plan list as "Stand-by", which he does not know if that is necessary at this point and the other procedure is simply tabling a matter and it carries on the "Unfinished Business" portion of the GOC's agenda. He thinks that would be an appropriate avenue given where they are at. The Committee has other requests coming to them, including the Wild Blueberry Commission that the ACF Committee is going to report back on which may head them in a direction of looking at their work and, as returning members know, at all times of the year, the GOC receives request for reviews. It is a matter of prioritizing resources. A tabling motion and carry the request for the review of Workday Maine on the "Unfinished Business" might be an appropriate action to take.

Motion: To table the Consideration of the Workday Maine review request and add to the GOC's agenda under "Unfinished Business" for consideration at a future Committee meeting. (Motion by Rep. Dillingham, second by Rep. McDonald, motion passed by unanimous vote 10-0, 2 members absent. Sen. Deschambault, Sen. Timberlake and Rep. O'Neil voted on the motion in accordance with the GOC Rules.)

The Committee thanked Commissioner Figueroa and her staff for the materials provided at the last GOC meeting and for answering their questions at this meeting.

Planning for upcoming meetings

Sen. Libby wanted to make sure that all the Committee members know that typically they meet on the second and fourth Fridays of the month and that the second Friday in May is actually in 3 weeks. The next meeting will be Friday, May 14th at 9:00.

Sen. Libby said as noted earlier, the GOC has the work sessions on the Proposed Evaluation Parameters for the Historic Rehabilitation Tax and R&D Credits and will be scheduled for the May 14th meeting. That is the opportunity for the Committee to review the testimony they have received, make modifications to the Parameters, having that discussion and then direct OPEGA to start that work. The Committee will also have a report back from the ACF Committee on the Wild Blueberry Commission review request. That Committee has received a number of materials and have had several discussions and believes the ACF Committee will be coming to the GOC with a request for follow-up work. The GOC will have their first quarterly report back from the Maine Committee on Indigent Legal Services and is one of the requests the Committee made earlier in the year. The Committee will also continue its discussion on the process of tax reviews. Rep. Millett, Director Nixon and he had a discussion on the tax review process. He knows individual Committee members and members of the Tax Committee have had discussions about the tax review process and he and Rep. Millett have been having discussions. Sen Libby asked Rep. Millett if he wanted to have something on the Agenda for the May 14th meeting or the May 28th meeting. Rep. Millett said he would be comfortable putting that discussion on the agenda for the May 28th meeting. Sen. Libby said he might have misspoken about the report back from MCILS. That report back will be at the May 28th meeting and not the May 14th meeting.

Sen. Libby asked if any committee member had anything they wanted to add to a meeting agenda or had comments on any item that will be on an agenda for the May meetings, or if there were any other comments or questions of the Committee. There were none.

Next GOC meeting date

The next GOC meeting is scheduled for Friday, May 14, 2021 at 9:00 a.m.

Adjourn

The Chair, Sen. Libby, adjourned the meeting at 12:33 p.m. on the motion by Rep. Millett, second by Rep. Stover, unanimous.



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AND COMMUNITY DEVELOPMENT



HEATHER JOHNSON
COMMISSIONER

To: Government Oversight Committee, Maine State Legislature
From: Department of Economic and Community Development
Date: April 12, 2021
Re: Responses to questions about the Pine Tree Development Zone program

On March 11, 2021, the Government Oversight Committee sent the Department of Economic and Community Development (DECD) four questions regarding the Pine Tree Development Zone program. The Department's responses to the Committee's questions are as follows:

1. How might DECD address the alignment of the PTDZ program with the Maine Economic Development Strategy, 2020-2029 (Strategic Plan)?

Robust and well-targeted economic development incentives are a necessary tool for enabling business investments that will move Maine towards the goals of the state's Economic Development Strategy. A program like PTDZ can underpin projects supporting the primary strategies. For example, promoting innovation (Strategy C) can be bolstered by attracting an innovation-focused company with an incentive package anchored by PTDZ benefits. Attracting new talent (Strategy B) can be more viable for a Maine business when they receive the increased Employment Tax Increment Financing (ETIF) payments for new workers through PTDZ certification. Hubs of excellence (Strategy G) can grow further if the industries and businesses within these hubs receive State incentives to expand.

However, the Department does believe that the publication of the Economic Development Strategy, as well as the onset of economic changes due to the COVID-19 pandemic, warrants a full review of the State's key economic development incentives for businesses. While the PTDZ program does speak to some of the strategic plan methods in its current form, we believe the best approach is to review the State's incentive programs with the strategic plan as the starting point. The Department has already begun a review process to thoroughly consider what incentive programs would align best with the State's economic development goals, including benchmarking Maine against other states' programs and seeking input from Maine organizations and stakeholders involved in business attraction and expansion work. The intent is to have a proposal for any recommended policy changes prepared before the 2022 session of the Legislature begins.

The Department believes it is critical to the business community to maintain stability in the PTDZ program until this larger review is complete and input is incorporated from all interested parties. The original hope to complete this review in 2020 to coincide with the 2021 expiration of the PTDZ program was disrupted by the severe impact of the COVID-19 pandemic. As a result, the



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Department is supporting an extension of the program to allow for the comprehensive review and potential revision of current incentive policy.

2. How will DECD use the Strategic Plan in combination with the final report of the Governor’s Economic Recovery Committee in its work with the 130th Legislature on efforts to revive weakened sectors of the economy, particularly at the small business level?

The PTDZ program is available for specific sectors of the economy that both the Strategic Plan and the final report of the Economic Recovery Committee identify as important to growth and recovery. These include the food and marine, forest products, making and manufacturing, and technical services sectors.¹ The PTDZ program is one way the State can use existing mechanisms to provide direct support to businesses engaged in activity related to strategic goals and initiatives. Part of the work of implementing the Strategic Plan will be to attract innovative businesses to Maine and to foster homegrown entrepreneurship in the targeted sectors.

Businesses that may have been financially impacted by the COVID-19 pandemic could benefit from the PTDZ program as they chart a path towards recovery. The incentives can lower their cost of making purchases as they restart operations and provide them additional capital through the income tax credit and ETIF payments if they are able to start bringing on new workers. The PTDZ program is available to small businesses in these industries—the business needs to add at least one new employee to qualify. However, the post-performance nature of the PTDZ income tax credit and associated ETIF payments mean they are most useful to a business that has some capital cushion to grow their operations and receive the benefits the following year. For a small business whose primary need is capital to restart operations once the pandemic subsides, the program may help smooth the runway in future years but would not provide upfront funding to get the wheels turning again.

The Department will continue to examine ways to align the State’s economic development incentive tools with the stated goals and strategies for recovery and growth. Reviewing Maine’s incentive programs with an eye towards continuing to revive weakened sectors will be an important part of this process, alongside the existing workstreams to implement the Strategic Plan and report of the Economic Recovery Committee.

¹ Maine Department of Economic and Community Development, “Maine Economic Development Strategy 2020-2029,” December 2019, 14.



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3. How could DECD address the lack of a strong “but for” provision in PTDZ?

The Department implemented changes enacted by the Legislature in 2018 that enhanced the “but for” requirement by requiring companies’ “but for” letters be notarized. Still, the Department concurs in part with OPEGA’s finding that the “but for” provision in the PTDZ program—and the ETIF program—is not a guarantee that supported investments would not have occurred without the PTDZ program. We intend to identify better program administration and targeting methods as part of the ongoing incentive review process and do not want to presuppose the outcome of those discussions and research. However, we do not believe that strengthening the “but for” provision is a worthwhile objective at this time for the following reasons.

First, whether a project would or would not go forward “but for” the PTDZ benefits is not a question that can be answered objectively. The benefits last for ten years and cannot be predicted with substantial accuracy. The value of the PTDZ income tax credit depends on how much profit the company makes each year, and the ETIF payments depend on exactly how many people the company hires, their wages, the average income growth of the county they work in, and factors that affect their withheld income tax amounts.

Of the primary benefits, only the sales tax exemption provides a direct cost-savings that can be calculated ahead of time—but again, it depends on the businesses knowing how much they will purchase over ten years. No company is able to predict its income and expenditures that far in advance. Particularly for new projects, which is what PTDZ supports, businesses’ financial projections are best guesses and only extend two to five years. In this context, it is not possible to answer with certainty whether a project would only be financially viable with the PTDZ benefits. Department staff would be skeptical of a project’s prospects if the business’s plans relied entirely on the receipt of PTDZ tax credits and reimbursements to be financially viable, as the “but for” language implies.

An alternative understanding of the “but for” provision is that it leaves the Department to subjectively gauge whether a proposed investment project would not go forward “but for” the offered incentives. For the “but for” letter to be used this way, Department staff would need to use a combination of market knowledge and relationship-building to feel out whether a business executive is sufficiently influenced by the promise of incentives to commit to a PTDZ-eligible location for their project. This determination would be highly subjective.

This subjective view of the “but for” requirement is a poor fit for the PTDZ program, which is otherwise fixed by statute. The eligibility criteria and amount, type, and duration of benefits is set by law. The Department does not negotiate incentive packages with businesses, and it is not suited



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to subjectively gauge the validity of a business's "but for" statement when the rest of the law leaves little to subjective judgment. Absent explicit knowledge to the contrary, it would be questionable for the Department to decide a certain business is being dishonest when they submit a "but for" letter when there is no objective way to evaluate their statement and the Department otherwise has no leeway to negotiate the incentives offered to the business.

Whether "but for" provisions are appropriate tools for incentive programs is the subject of continuous discussion nationally. There is general consensus that it is an imperfect tool, but one without a perfect replacement, as OPEGA has noted. Some alternatives have included estimating the probability a certain proportion of projects are successfully incentivized, attempting to ensure at least a minimum positive return on investment.² The 2018 *Comprehensive Evaluation of Maine's Research & Development and Economic Development Incentive and Investment Programs* used this method to estimate the financial return to the State for varying levels of incentive probability.³ A recent report by the Center for Regional Economic Effectiveness proposed using a probability estimation for gauging the importance of incentives to a given project when evaluating proposals as well.⁴

One takeaway from this research is that it is an unreasonable standard to assume that business investments 100% *would* or 100% *would not* happen "but for" an incentive package. A better understanding of business incentives would be that they encourage certain behavior (e.g., investing in certain sectors, paying certain wages) and guide more capital towards sectors or regions that warrant State support.

Based on this ongoing research and the structure of the PTDZ program, DECD does not intend to pursue a strengthened "but for" provision. Instead, a major focus of the incentive program review the Department is undertaking will be the best methods for targeting State funds where needed, monitoring their use, and evaluating their effects.

² Timothy Bartik, "'But For' Percentages for Economic Development Incentives: What Percentage Estimates Are Plausible Based on the Research Literature?," *Upjohn Institute Working Papers*, no. 18-289 (July 1, 2018), <https://doi.org/10.17848/wp18-289>.

³ Barbara Strozzilaan, "Comprehensive Evaluation of Maine's Research & Development and Economic Development Incentive and Investment Programs" (Investment Consulting Associates, January 2018), 33-44, <https://www.maine.gov/decd/sites/maine.gov/decd/files/inline-files/Comprehensive%20Evaluation%20of%20Maine%E2%80%99s%20Research%20%26%20Development%20and%20Economic%20Development%20Incentive%20and%20Investment%20Programs%20-%20January%202018.pdf>.

⁴ Center for Regional Economic Competitiveness and Smart Incentives, "Estimating the Influence of Incentives on Investment Decisions: A New Approach to the but-for Question" (Smart Incentives, November 2020), <https://smartincentives.org/wp-content/uploads/Estimating-the-Influence-of-Incentives-Nov-2020.pdf>.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT



HEATHER JOHNSON
COMMISSIONER

4. What recommendations does DECD have to strengthen program management and oversight of PTDZ to help ensure the program is effective?

Strong recommendations for improved program management and oversight are a key goal of the ongoing incentive program review. For economic development incentives to be beneficial to Maine's economy, State funding (or foregone revenue) must go where it can have the greatest impact. For the impact of incentives to be accurately evaluated, they must be structured in such a way that data on spending and outcomes is easily tracked and reported. Streamlined program management can not only improve program effectiveness through State evaluation but make the program more appealing and accessible to businesses. To these ends, as part of the review process, the Department will seek out methods to improve targeting, provide clearer benefits and reporting, and supply more transparent data.

Crucially, the State's incentive policies can only be as effective as the tools used to manage them. The Department has begun implementation of Salesforce, which will be a more modern tool for business relations, reporting, and analysis to manage PTDZ and other DECD programs. The current program management system is outdated and severely constrains the level and accuracy of metric-based evaluations of the PTDZ program. The Department's initiative to implement Salesforce, a customer relationship management (CRM) tool, will significantly improve staff ability to connect businesses to the right programs, obtain and analyze program data, and reduce administrative burdens on staff and businesses. Upgrading to this tool had been delayed most recently by the COVID-19 pandemic and its effect on funding, but once implemented, the Department will have in place a key building block of strengthened program management and oversight.



SEN. NATHAN LIBBY, SENATE CHAIR
REP. GENEVIEVE MCDONALD, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
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REP. MARGARET O'NEIL
REP. HOLLY STOVER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

March 11, 2021

Heather Johnson, Commissioner
Department of Economic and Community Development
59 State House Station
Augusta, Maine 04333-0059

Dear Commissioner Johnson:

At its February 26, 2021 meeting the Government Oversight Committee received public comment and conducted a work session on the OPEGA report on the Pine Tree Development Zones (PTDZ) – Limited Scope Review (November 2020). During its work session, the GOC discussed four questions that would benefit from consideration and follow-up by DECD. We are writing to request that DECD, in consultation with MRS, respond to these four questions as follows:

- (1) How might DECD address the alignment of the PTDZ program with the Maine Economic Development Strategy, 2020-2029 (Strategic Plan)?
- (2) How will DECD use the Strategic Plan in combination with the final report of the Governor's Economic Recovery Committee in its work with the 130th Legislature on efforts to revive weakened sectors of the economy, particularly at the small business level?
- (3) How could DECD address the lack of a strong "but for" provision in PTDZ?
- (4) What recommendations does DECD have to strengthen program management and oversight of PTDZ to help ensure the program is effective?

We respectfully request that DECD report back to the GOC on these questions by April 12, 2021. Thank you for your attention to these important issues.

Sincerely,

Nathan L. Libby
Senate Chair

Genevieve McDonald
House Chair

cc: Members, Government Oversight Committee
Members, Joint Standing Committee on Taxation
Members, Joint Standing Committee on Innovation, Development, Economic Advancement & Business
Phoenix McLaughlin, Department of Economic and Community Development
Michael Allen, Department of Administrative and Financial Services
Julie Jones, Office of Fiscal and Program Review
Rachel Olson, Office of Policy and Legal Analysis
Lucia Nixon, Office of Program Evaluation and Government Accountability

Office of Child and Family Services 2021 Update

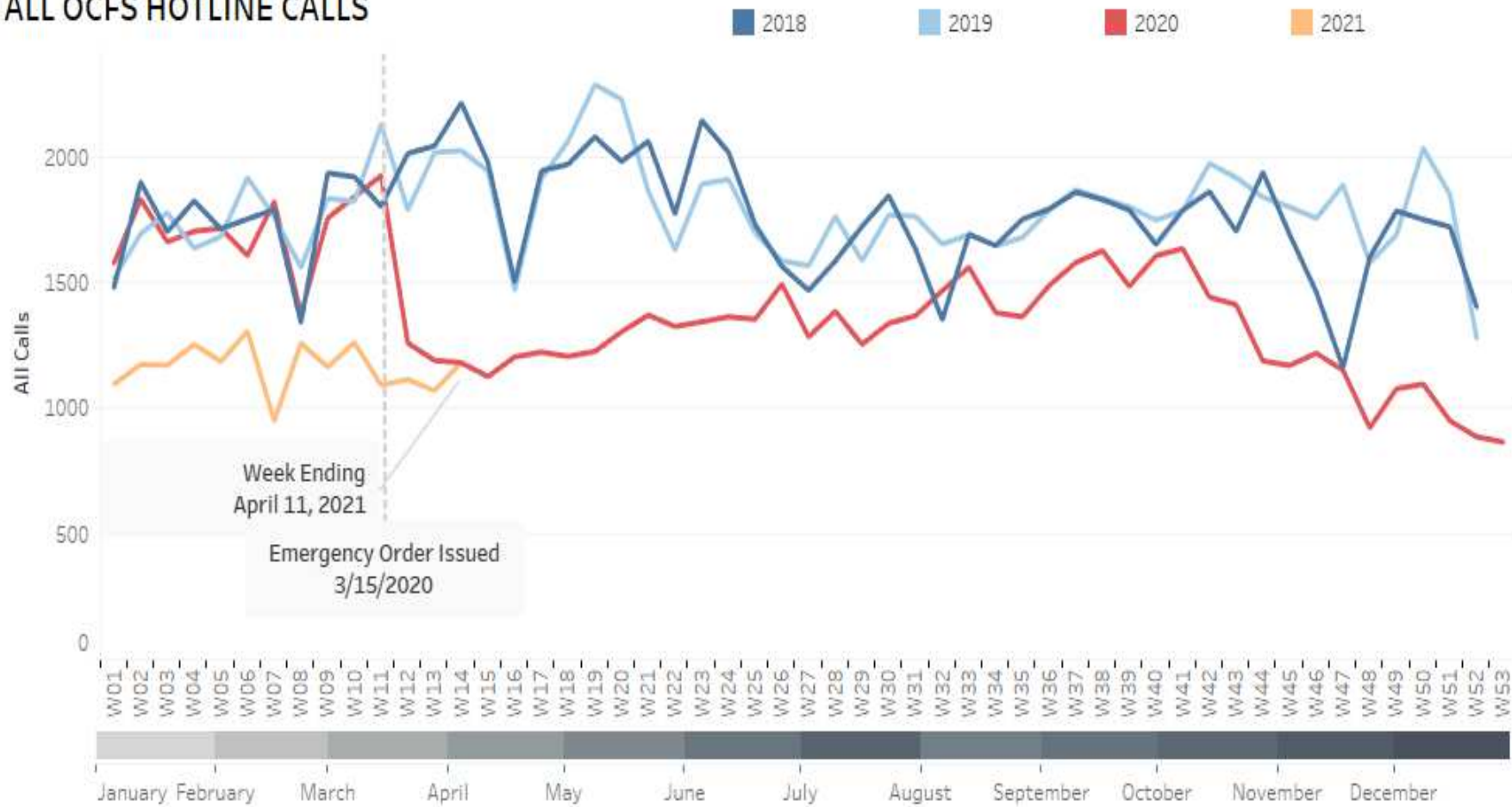
Dr. Todd A. Landry

April 2021



Impact of COVID-19 on Child Welfare

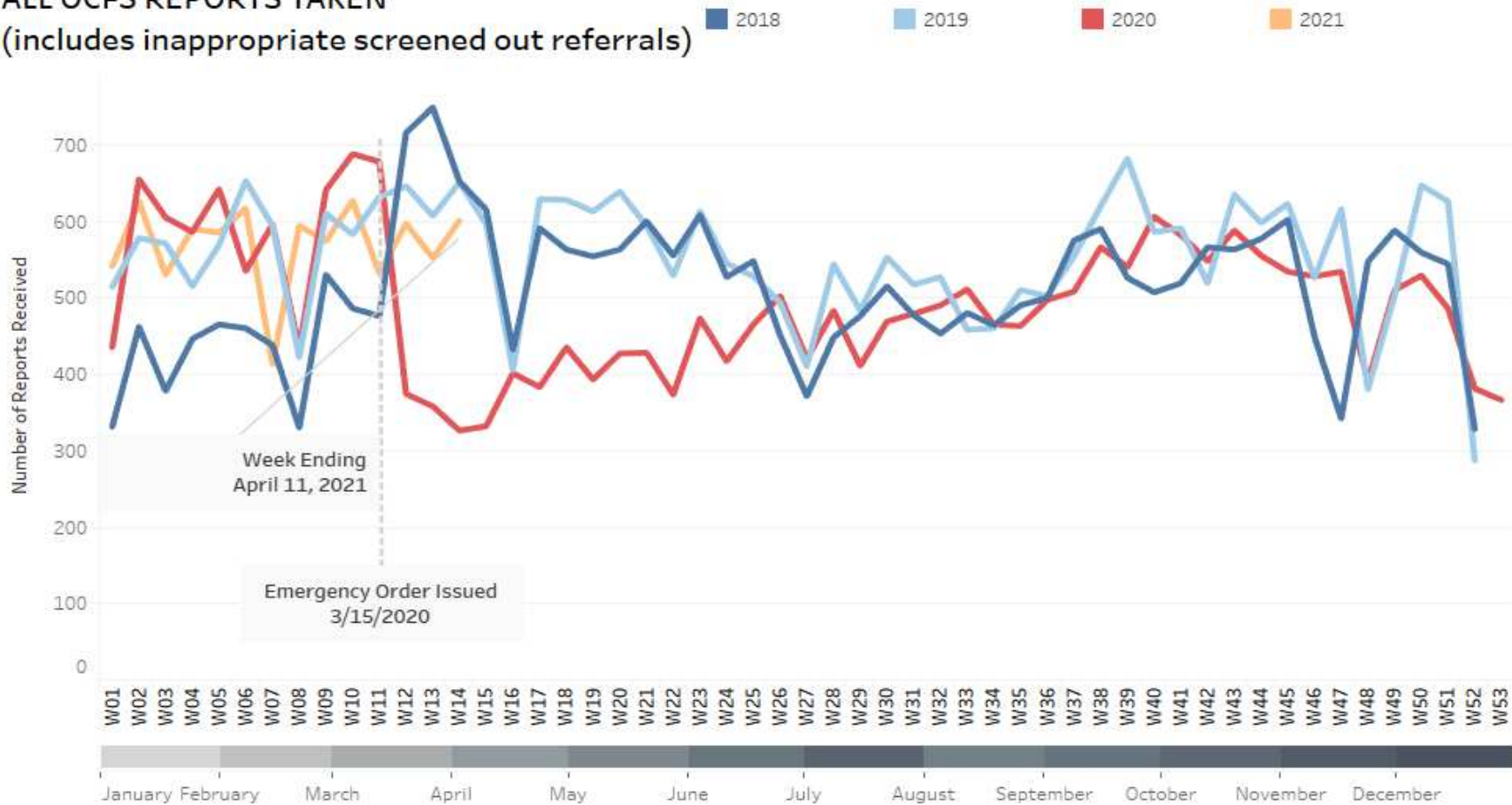
ALL OCFS HOTLINE CALLS



Impact of COVID-19 on Child Welfare

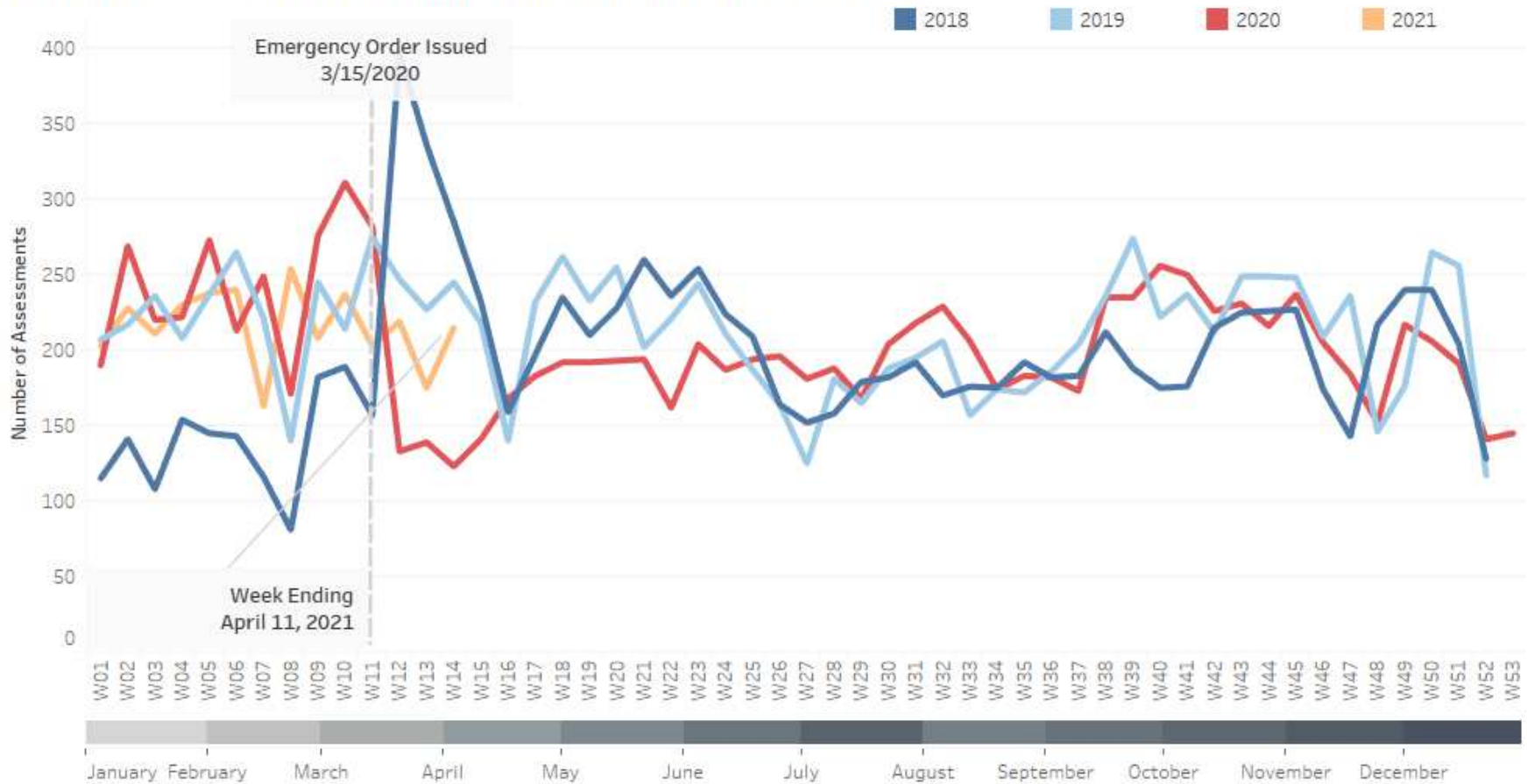
ALL OCFS REPORTS TAKEN

(includes inappropriate screened out referrals)



Impact of COVID-19 on Child Welfare

NUMBER OF REPORTS ASSIGNED FOR INVESTIGATION BY OCFS



Response to COVID-19 in Child Welfare

Beginning

- Briefly replaced in-person parent/child visits with virtual visits
- Set guidelines to ensure health and safety when in-person visitation resumed in June 2020
- Limited staff's in-person field contact in counties deemed to have "community transmission"

Ongoing

- Focus on permanency for children and working through pandemic-related delays in Court proceedings
- Ensuring children in custody receive well child checkups and regular childhood vaccinations during the pandemic
- Transitioning training for staff and resource parents to a virtual format
- Weekly COVID trend reporting
- 85% of staff dispatching from home
- Obtaining and distributing PPE for children in care, parents, and resource parents
- Finding opportunities to learn and improve practice

Recent

- Provided guidance on vaccinations for children in care

COVID-19 Within the Child Welfare System



Less than 3% of youth in care have tested positive for COVID-19



Very few resource parents have reported testing positive for COVID-19



Small number of staff who have tested positive, none connected to exposure while at work

Child Welfare Initiatives

Timely Permanency

Recruitment and Retention of Resource Parents

Policy and Training Improvements

Onboarding, Training, and Retaining Staff

Family First Prevention Services Act Implementation

Alternative Response Program (ARP)

CCWIS Development and Deployment



Maine Office of Child and Family Services

Focus on Outcomes

In July 2019, Maine's Office of Child and Family Services (OCFS) partnered with Casey Family Programs to map the major initiatives and strategies currently underway in Maine. This mapping was designed to help executive leadership and regional staff evaluate which strategies were working to produce outcomes and areas where duplication of effort or inefficiencies might exist. As a result of this work, OCFS streamlined their approach and prioritized strategies as shown below in the strategic framework.

Mission

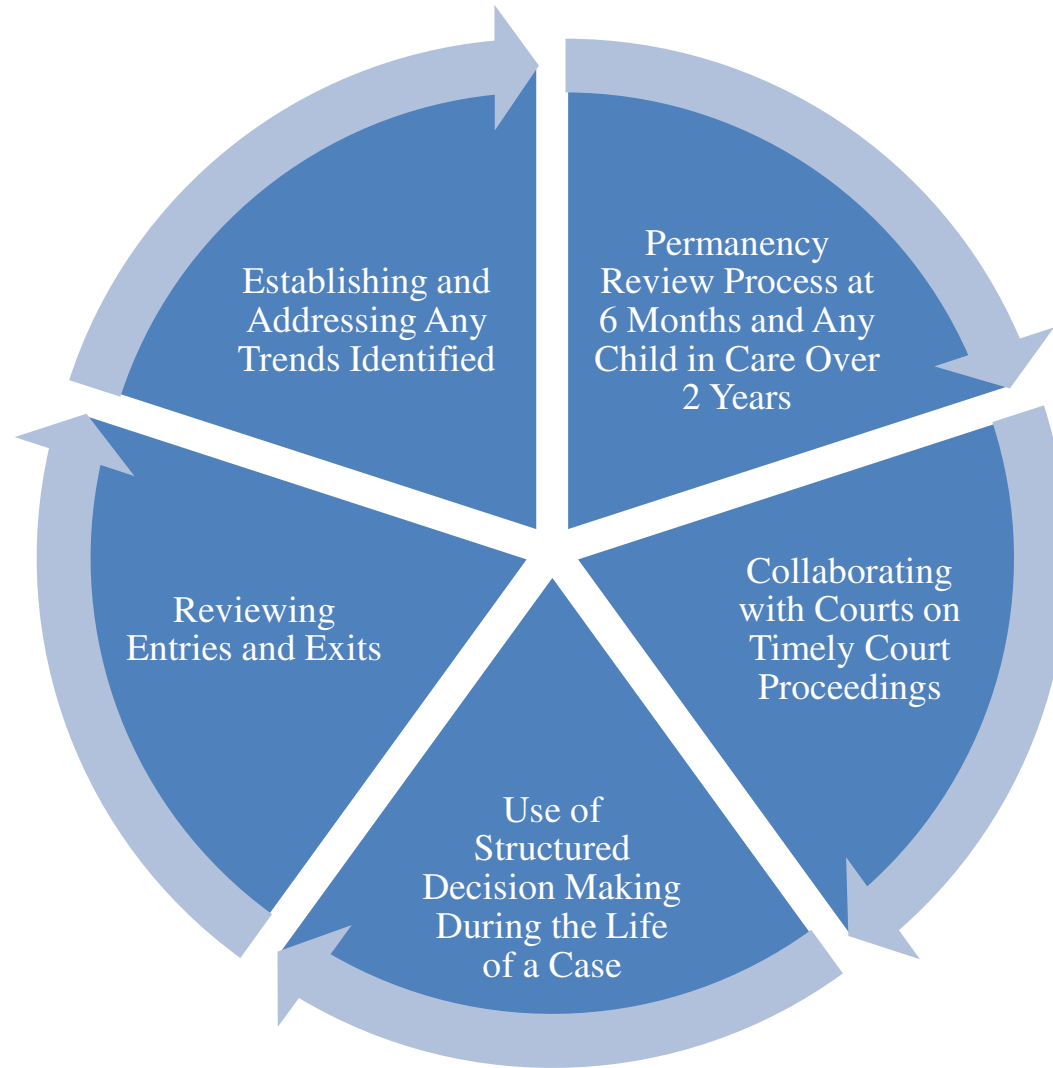
Child and Family Services joins with families and the community to promote long-term safety, well-being and permanent families for children.

Strategic Framework

In order to achieve their mission, Child and Family Services uses guiding principles as a foundation to employ strategies that lead to improved outcomes for children and families. The strategies listed below were prioritized by executive leadership and regional staff.

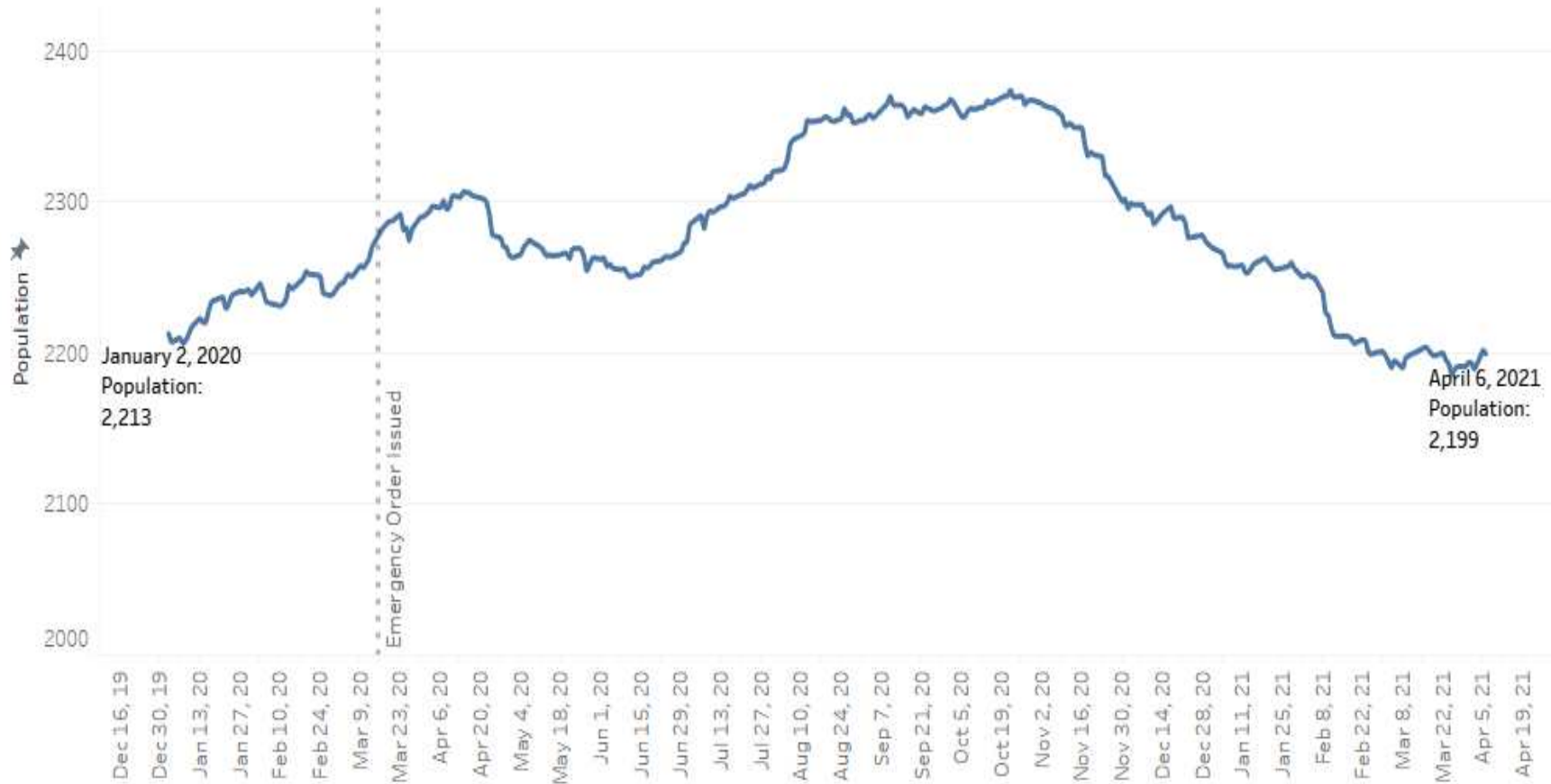
 Guiding Principles	 Strategies	 Outcomes
<ol style="list-style-type: none"> 1 Child Safety, First and Foremost 2 Parents have the Right and Responsibility to Raise their Own Children 3 Children are Entitled to Live in a Safe and Nurturing Family 4 All Children Deserve a Permanent Family 5 How We Do Our Work is as Important as the Work We Do 	<p>Safety</p> <ul style="list-style-type: none"> >Address Intake processes and improve staffing >Re-assess the Alternative Response Program >Enhance Assessment Processes <p>Permanency</p> <ul style="list-style-type: none"> >Develop a Permanency Review Process >Monitor the Family Visit Coaching pilot to develop best practices >Improve SDM tool consistency <p>Well-Being</p> <ul style="list-style-type: none"> >Develop family engagement tools and training >Improve resource parent outreach and support <p>Staff Training and Support</p> <ul style="list-style-type: none"> >Develop policy and training plan for new processes and tools >Establish workforce wellness teams and education >Update caseload size, standards, and ratios >Procure MACWIS replacement 	<p>Safety for children through timely response and thoroughly assessing and addressing safety and risk issues</p> <p>Improved timeliness to permanency</p> <p>Enhanced well-being of children through identification of individual needs and engagement with formal and informal supports.</p> <p>Strengthened child welfare practice through improved engagement with families and children.</p>

Focus on Permanency

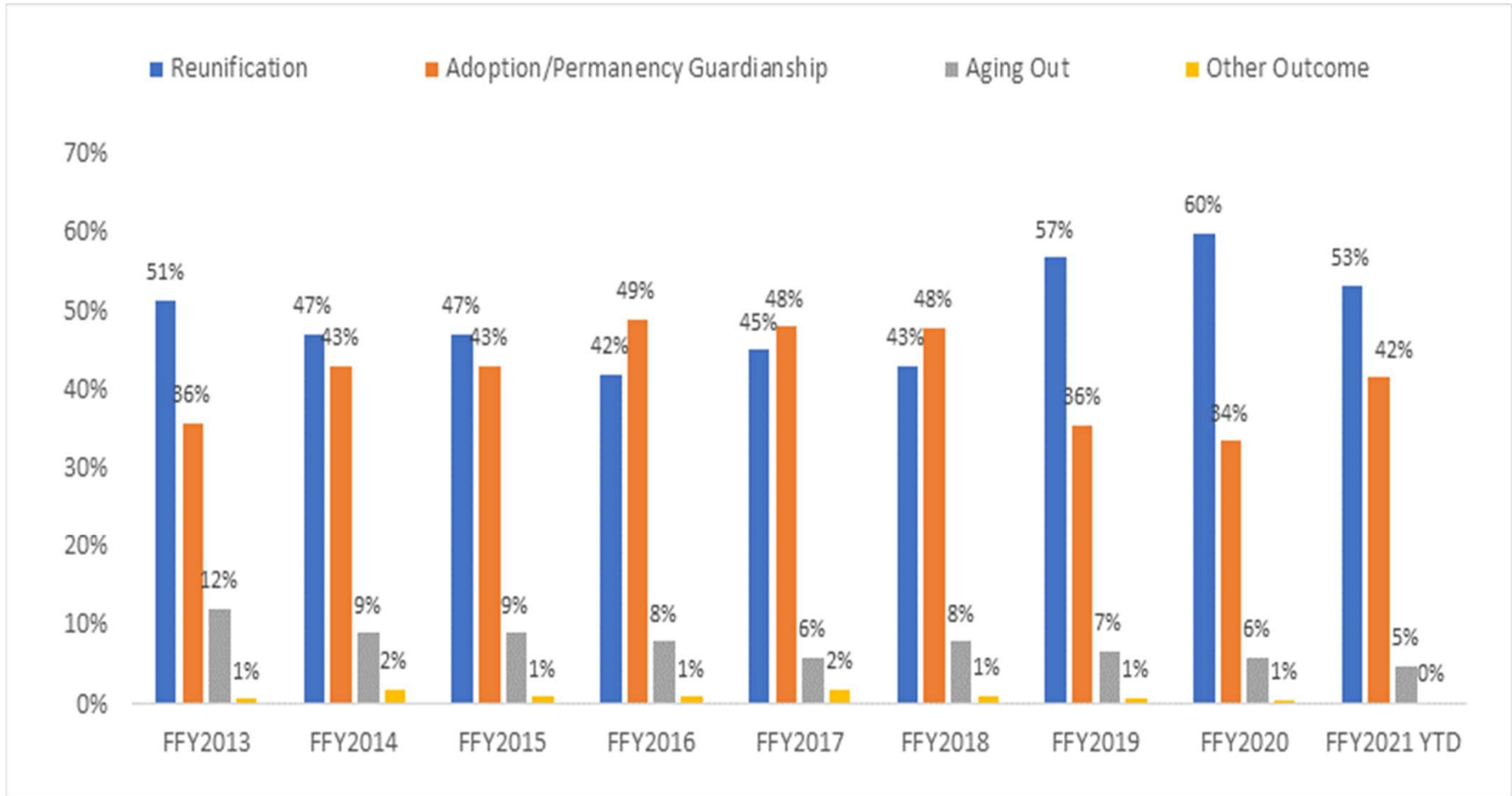


Focus on Permanency

CHILDREN IN DHHS CUSTODY (POINT IN TIME) TREND 2020-21



Permanency Outcomes



Safety While in State Custody

Safety While in State Custody

The goal for children while in State custody is to remain safe while in custody. This report shows the rate of abuse of children while they are in State custody. The number is calculated by dividing the number of instances of abuse/neglect by the total number of days that all children spent in State custody. The ratio of this report is per 100,000 days spent in State custody.

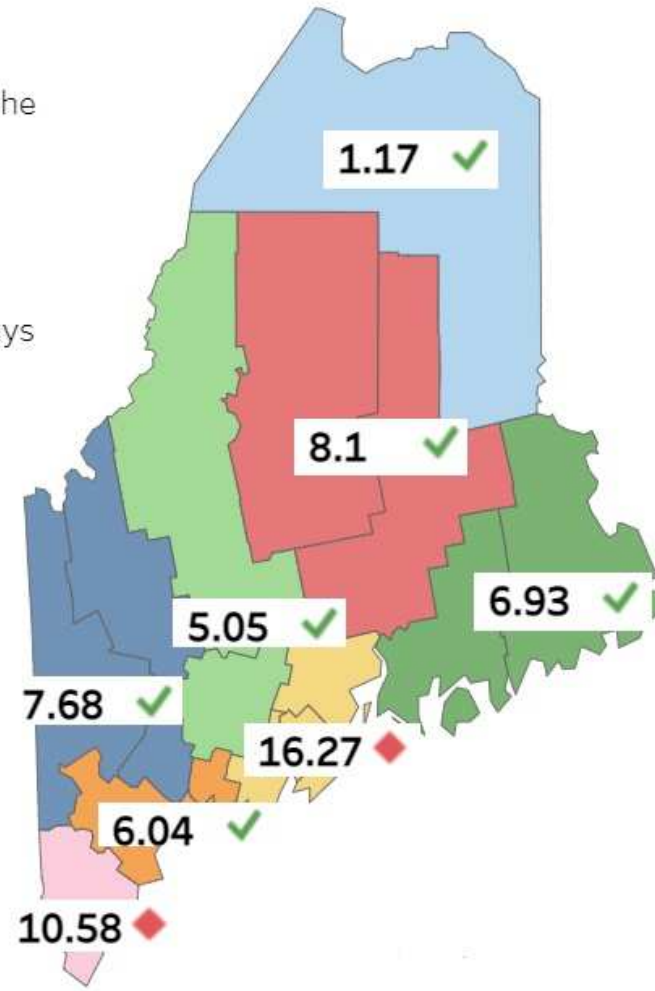
STATE AVERAGE

6.97 ✓

National Standard:

8.5 or less (a lower rate is better)

The National Standard is an average set by the Federal government to monitor each State's performance on key child welfare outcomes.



Resource Parent Support



Resource Parent Advisory Team

- Partnering with AFFM to co-lead
- Diverse group of experienced resource parents
- Providing insight on training and policy

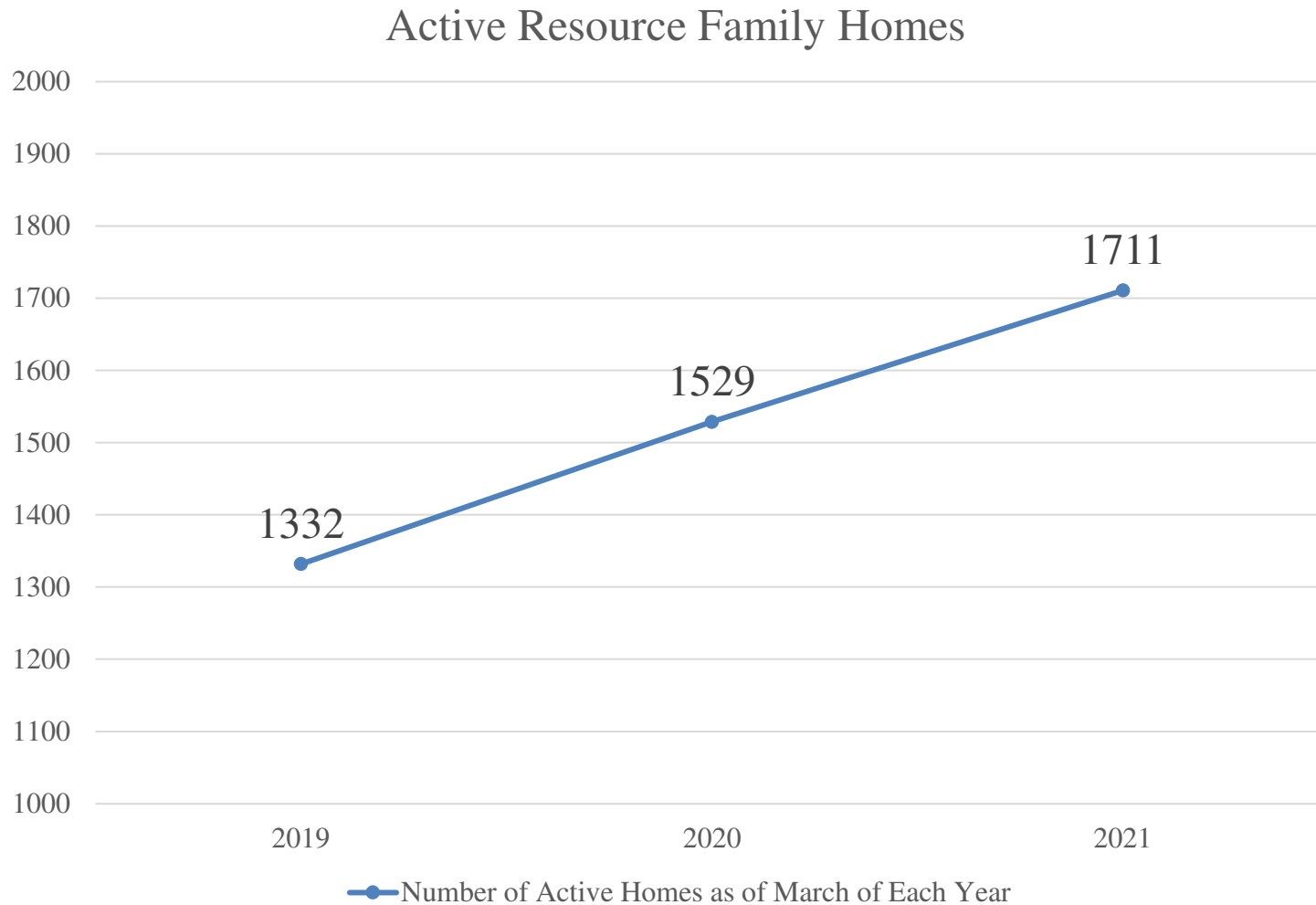
New Resource Parent Training

- Partnered with Muskie to identify a new training model for resource parents, NTDC
- Produced by national experts
- Prepares resource parents to effectively care for children exposed to trauma

Support for Resource Families

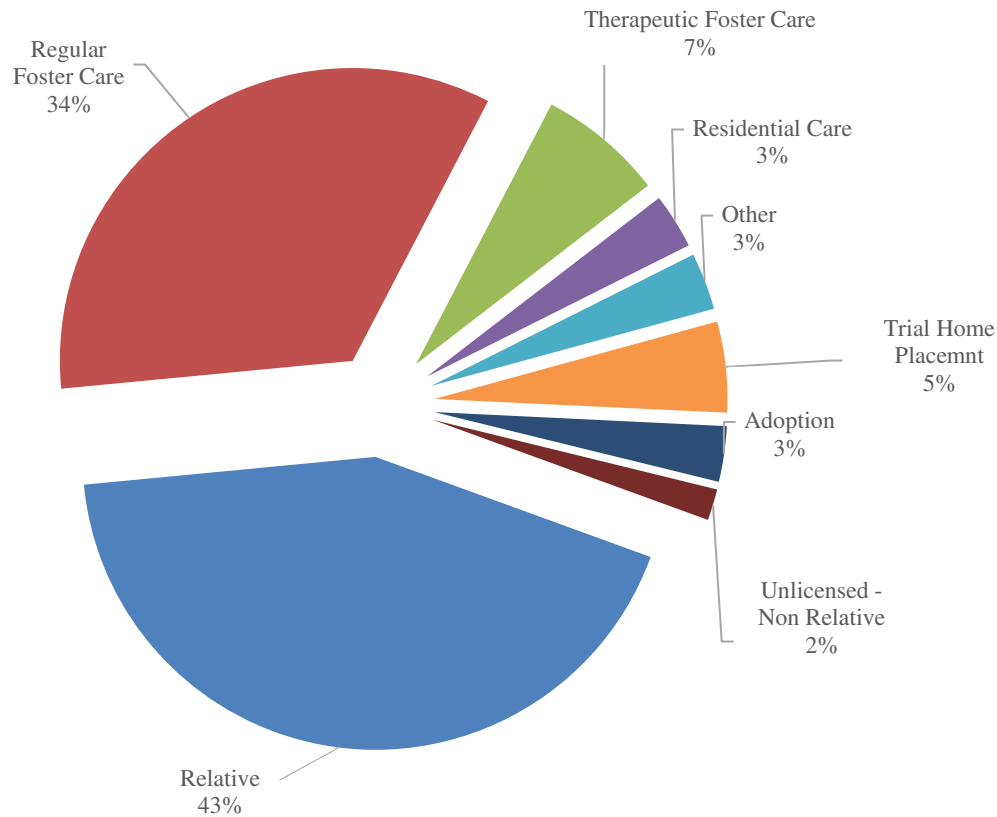
- AFFM
- Resource Parent Care Team
- Kinship Support

Recruitment and Retention of Resource Parents



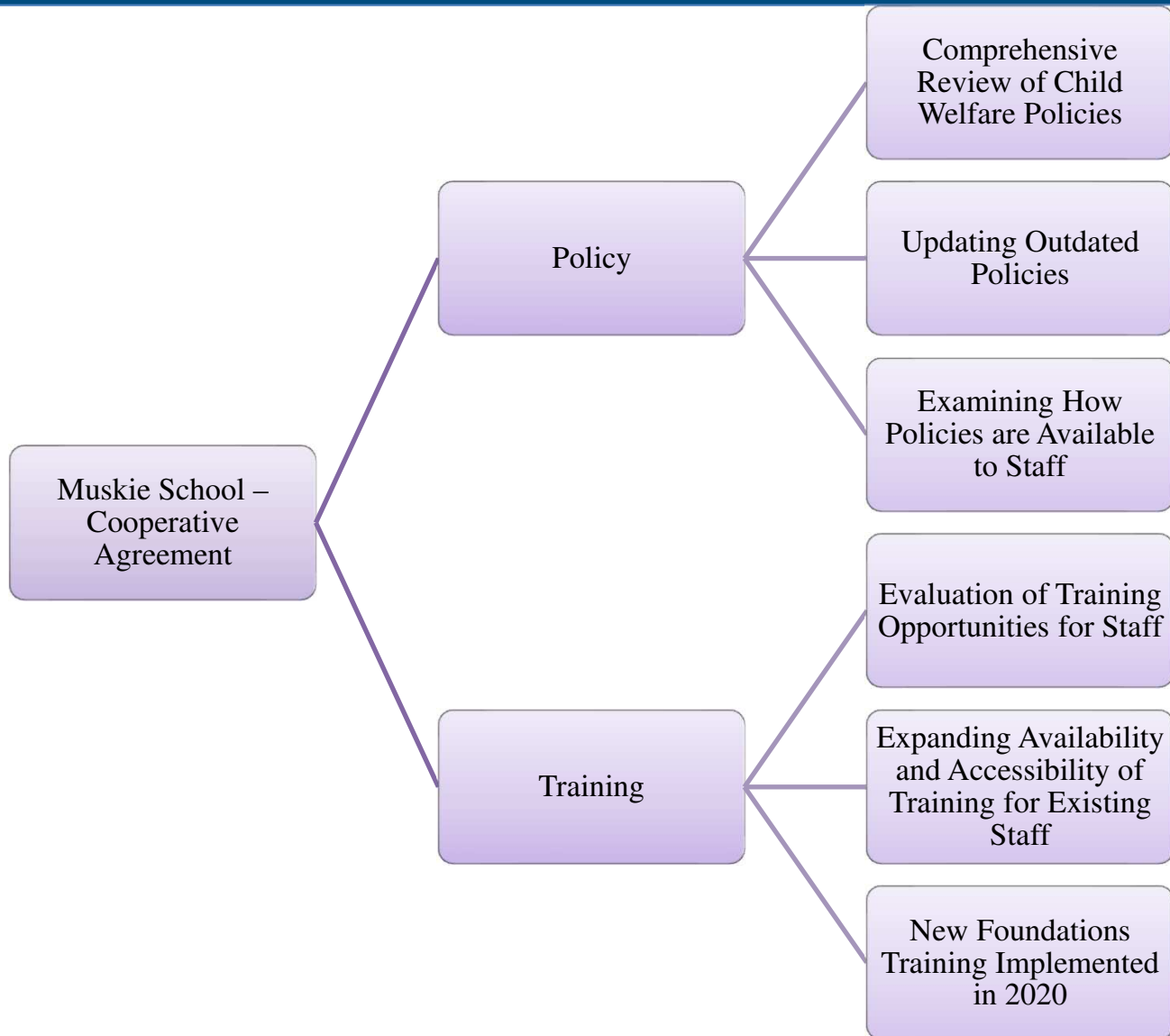
Kinship Placement in Child Welfare

Placements for Federal Fiscal Year 2020



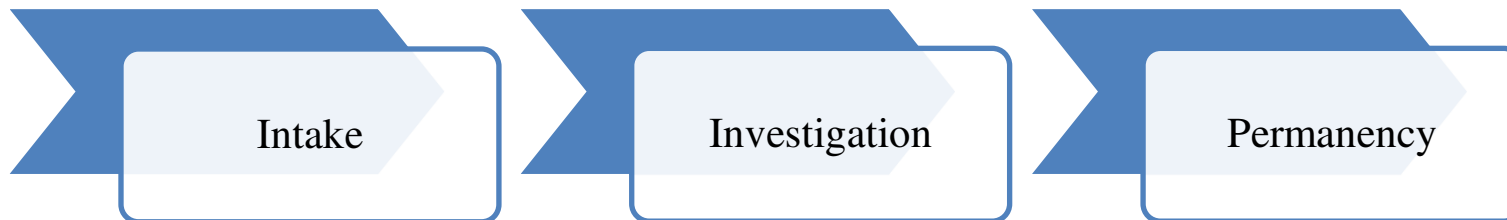
As of September 30, 2019, national data indicated only 32% of children in custody nationwide were placed with a relative caregiver.

Policy and Training Improvements



Structured Decision Making

Evidence-based tool used within Child Welfare Services to create **high-quality, consistent** statewide practice when determining **safety decisions** about child abuse and neglect and the assignment of appropriate services and supports.



Structured Decision Making

Should this referral be investigated?



**Intake
Assessment**

Can the child remain safely in the home?



**Safety
Assessment**

Should a case continue with ongoing services?



**Risk
Assessment**

What interventions could address child and family needs?



**Case Planning
Tool**

Can the child return home?



**Reunification
Assessment**

Should this case be closed?



**Risk
Reassessment**

Retaining Staff

New Staff

- In late 2019 OCFS added 33 additional caseworkers
- New supervisor positions to provide adequate supervisor oversight

Training

- Updated training for new workers
- Improvements in training for existing staff (including supervisors)

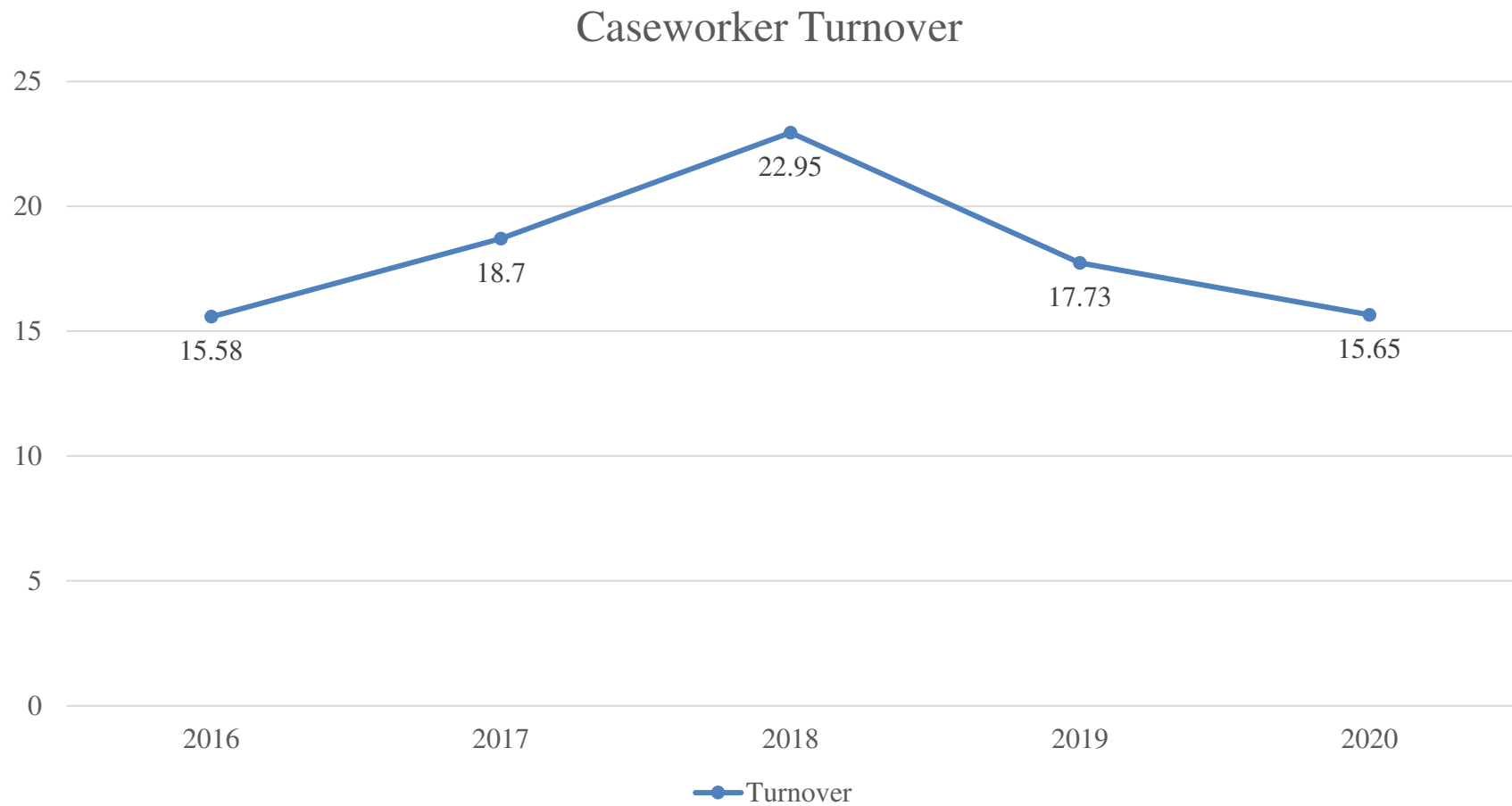
Time

- Time and experience needed to build the casework skills of new staff
- Large portion of OCFS supervisory workload are new and while experienced in casework need time to build their supervisor skill set

Support

- Use of Quality Assurance to evaluate casework practice and identify areas in need of improvement
- Ongoing support and training to address these areas, as well as new tools and policies implemented

Child Welfare Turnover



COVID-19 Operational Challenges

- Maintaining staff safety while at work
- Adjusting to a new work environment/setup, adapting to new challenges
- Personal challenges related to child care, working from home, etc.
- Number of investigations has remained high (in line with 2018 and 2019)

Response to Concerns

- Provided PPE for staff
- Adapted practices to ensure safety, including remote visits with case participants (early pandemic, community transmission counties)
- Continually updated guidance to staff, providers, and families based on public health guidance
- Temporary pause on in-person visitation
- Educated staff on vaccination priority decision impact
- Support and flexibility for staff dealing with personal challenges or illness
- Open communication around expectations, as well as any cases of COVID-19 among staff

Family First Prevention Services Act

- Implementation work is underway
- Strong focus on stakeholder engagement and support for staff as they implement
- Fully implemented by October 2021
- Awaiting Federal approval of Maine's State Plan
- Use of prevention funding is very targeted and intended to keep children safely out of state custody through the use of evidence-based services

Family First Prevention Services Act Focus Areas

Prevention Services
for Children and
Families

IV-E

Increased Quality &
Appropriateness of
Residential Care

Prevention of foster care placements
through:

- Trauma informed and evidenced based services including: mental health & substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services

Improving the well-being of children already in foster care by reducing placement of children in group care settings and enhancing quality of care for residential treatment programs. Establishment of Qualified Residential Treatment Programs (QRTP)

Prevention Services

Who

Eligibility:

- A child who is a victim of maltreatment in which safety and risk factors can be mitigated by the provision of in-home services and is able to safely remain at home with a child-specific Prevention Plan.
- Pregnant and Parenting Foster Youth
- Children who have exited foster care through reunification, guardianship, or adoptions and may be at risk of re-entry.

What

Services:

- Mental Health
- Substance Use Prevention and Treatment
- In Home Skill Based Parenting Support

That are....

- Evidenced Based
- Time Limited
- Trauma Informed
- Not already covered by MaineCare

How

Prevention Planning:

- Structured Decision making helps OCFS to identify candidates.
- A Prevention Services Family Plan will be completed with the family through the Family Team Meeting process. The plan will outline what services will be provided to the family to keep the child/ren safe in the home.
- The plan is reviewed every 90 days

Federally-Approved Evidence-Based Services Under Family First

Methadone Maintenance Therapy – MaineCare funds service.

Substance Use Disorder

Kinship Navigator

Mental Health Services

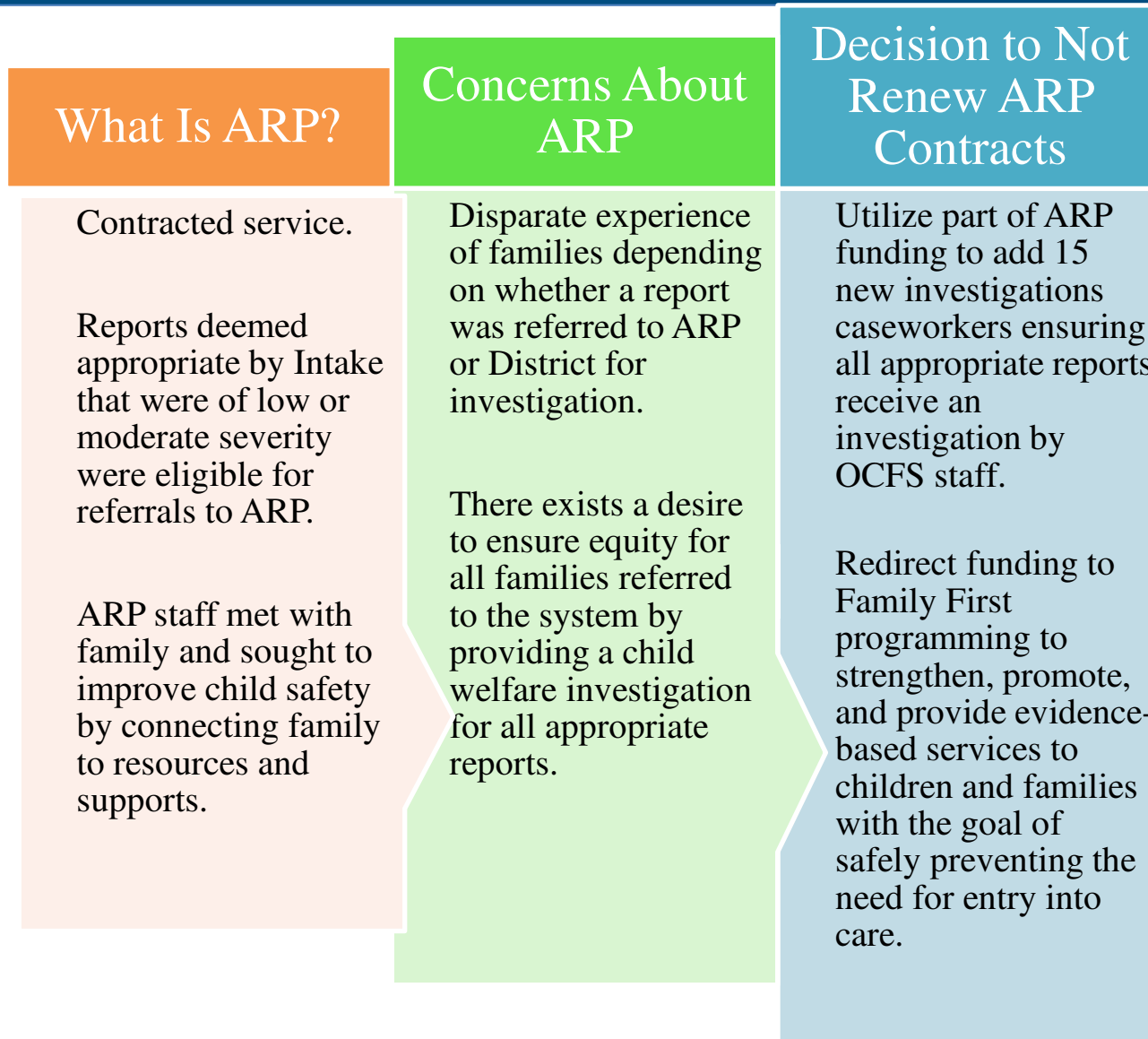
- **Functional Family Therapy (FFT)** – MaineCare funds service
- **Multisystemic Therapy (FFT)** – MaineCare funds service
- **Trauma Focused Cognitive Behavioral Therapy (TF-CBT)** – MaineCare funds service
- **The Incredible Years** – MaineCare funds service
- **Parent Child Interaction Therapy (PCIT)** – MaineCare funds service
- **Triple P – Positive Parenting Program** - MaineCare funds service

No kinship navigator programs have been federally approved at this time. Once evidence-based kinship navigator programs are identified, Maine will explore implementation through IV-E

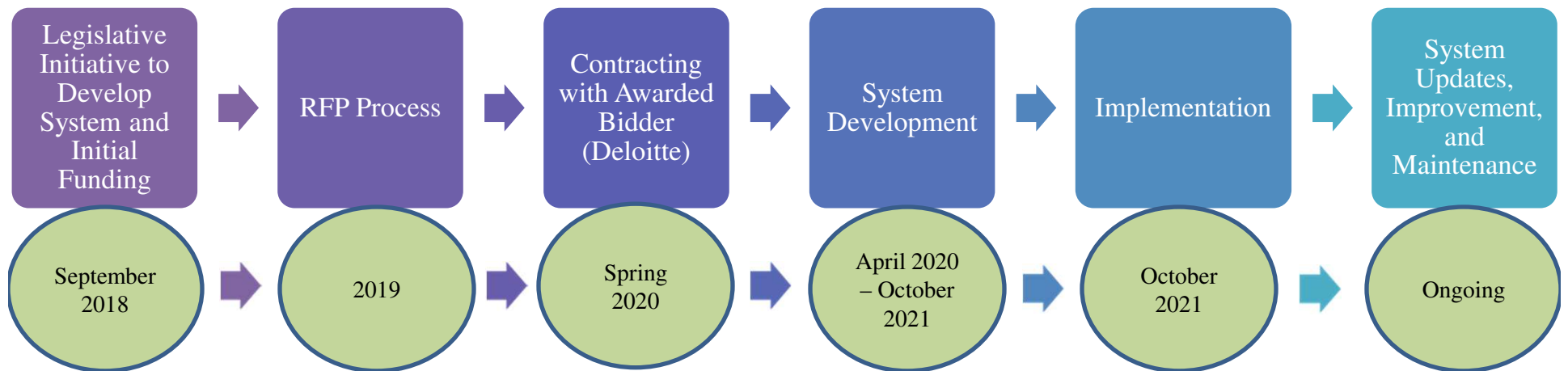
In-Home Parent Skill Building Services

- **Parents as Teachers (PAT)** – IV-E and State General Fund dollars fund the service which is currently provided as part of Maine's Home visiting Program
- **Homebuilders** – IV-E and State General Fund dollars will provide will provide for development and implementation statewide.

Alternative Response Program (ARP)



Comprehensive Child Welfare Information System (CCWIS)



Completing the System

In 2018, the Legislature provided funding for initial phases of development

Current budget initiatives provide funding for the remainder of the project

Child welfare staff have spent a significant amount of time contributing to the project to ensure the system meets operational needs

OCFS is preparing to train staff on the system in anticipation of implementation later this year

**Project is
on budget
and on
schedule**

CCWIS



Goals:

- Modernizing
- Eliminating inefficiencies
- Allowing for remote access
- Improve the experience of those who interact with child welfare system
- Ensuring system meets all current needs of child welfare
- Creating a system that can be easily updated as policies/procedures/processes change
- Implementing federal requirement of a comprehensive system

Thank You!

Todd A. Landry, Ed.D.
Director
Office of Child and Family Services





LUCIA NIXON
DIRECTOR

MAINE STATE LEGISLATURE

OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

TO: Members, Government Oversight Committee
FROM: Lucia Nixon, Director
DATE: April 6, 2021
RE: Proposed Parameters for OPEGA's Full Evaluations of the Credit for Rehabilitation of Historic Properties after 2007 and the Research Expense Tax Credit

The Credit for Rehabilitation of Historic Properties after 2007 (Historic Rehabilitation Tax Credit or HRTC) and the Research Expense Tax Credit (R&D Credit) are the next tax expenditures on the GOC's approved review schedule for full evaluations. As set forth in the statute governing tax expenditure reviews (3 MRSA §999), the GOC shall, for each full evaluation, consider recommendations from OPEGA and then approve the following parameters:

1. The purposes, intent or goals of the tax expenditure;
2. The intended beneficiaries;
3. The evaluation objectives; and
4. The performance measures.

OPEGA's recommendations regarding parameters for the evaluations of the Historic Rehabilitation Tax Credit and the R&D credit are ready for presentation to the GOC at the meeting on April 23, 2021. In preparation for that meeting, we are providing the following documents for your review:

- Historic Rehabilitation Tax Credit: proposed parameters for the evaluation; relevant sections of statute (36 MRSA §5219-BB; 27 MRSA §511; and 30-A MRSA §4722(1)(DD)); and
- R&D Credit: proposed parameters for the evaluation; relevant section of statute (36 MRSA §5219-K); and a copy of LD 977 'An Act to Restore the Super Credit for Substantially Increased Research and Development' proposed in the 129th Legislature, which included language regarding intent of the credit and performance measures.

Before final approval of evaluation parameters, the GOC is required to seek input from the Taxation Committee and stakeholders. This week, the proposed parameters documents will be sent to the Taxation Committee inviting their input and will also be sent to stakeholders, through legislative interested parties lists, informing them that stakeholder input will be received at the GOC meeting on April 23rd following presentation of the documents by OPEGA.

Enclosures

**Full Evaluation of Tax Expenditures:
Credit for Rehabilitation of Historic Properties
Background and Evaluation Parameters
Presented to the Government Oversight Committee on 4/23/21**

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss
2007	36 MRSA §5219-BB 27 MRSA §511	Approximately 30 individual and corporate taxpayers	FY22 \$8,950,000 FY23 \$9,200,000

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2022 – 2023.

Background Information

Program Description

The Credit for Rehabilitation of Historic Properties after 2007 36 MRSA §5219-BB, provides an income tax credit to taxpayers who rehabilitate certain income-producing¹ historic properties in Maine.²

The credit was enacted in 2007 and is available to taxpayers with qualified rehabilitation expenditures determined to meet program standards after January 1, 2008³ and on or before December 31, 2025.⁴

Taxpayers may qualify for one of two options for the Maine credit:

(A) The Substantial Rehabilitation Credit provides a tax credit for 25% of a taxpayer’s certified qualified rehabilitation expenditures on a certified historic structure in Maine for which the corresponding federal credit under the Internal Revenue Code (IRC) Section 47 is also claimed.⁵

(B) The Small Project Rehabilitation Credit provides a tax credit for 25% of a taxpayer’s certified qualified rehabilitation expenditures on a certified historic structure in Maine for projects which

¹The incentive is limited to income-producing properties by a reference in Title 36 to the Internal Revenue Code §47. The Code limits the tax incentive to “depreciable structures” which are those used in a business or income-producing activity (see IRS publication 946 irs.gov/pub/irs-pdf/p946.pdf).

² The program description is derived from a combination of statute, Historic Preservation Commission rules and OPEGA’s understanding of the program.

³ A previous form of the credit was located at 36 MRSA §5219-R.

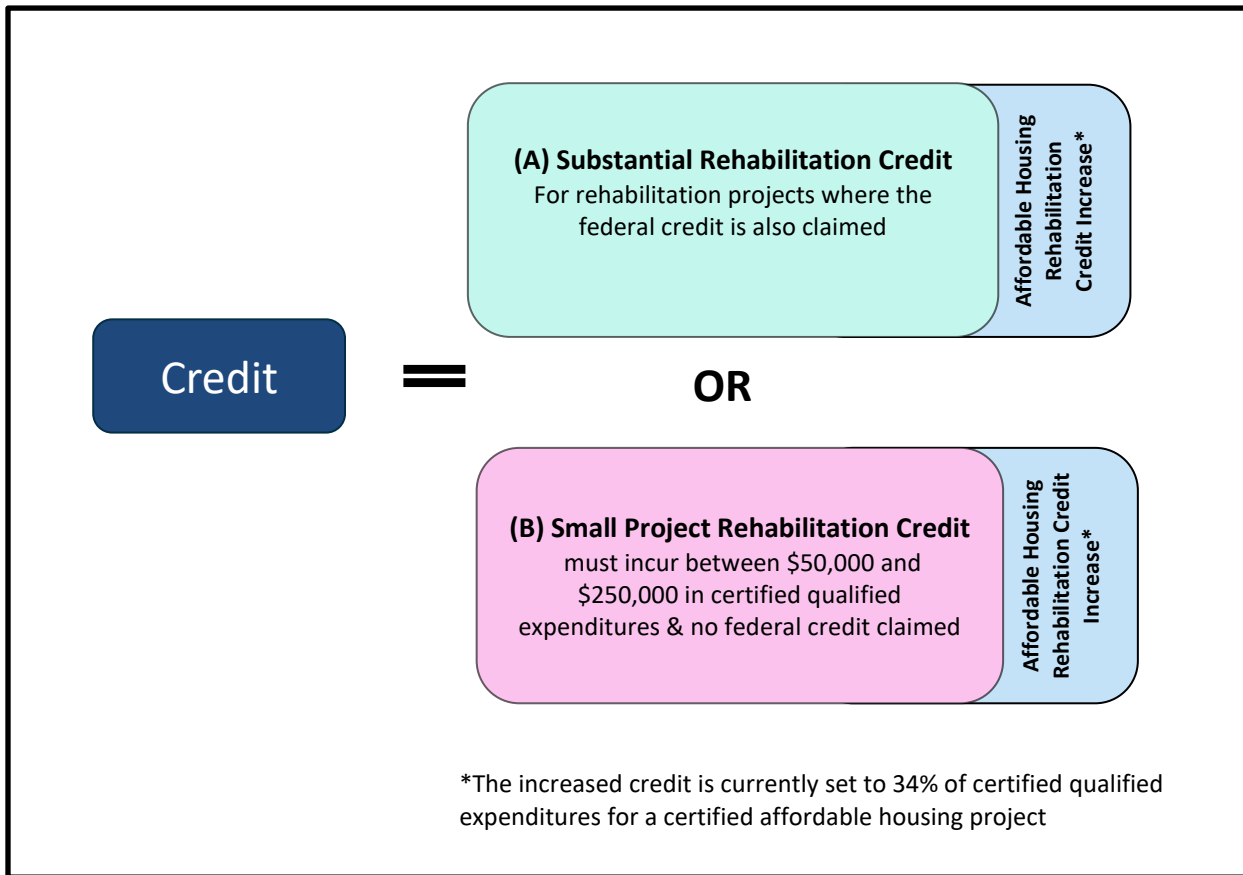
⁴ The timeline for determinations of eligible expenses (qualified rehabilitation expenditures) has been extended multiple times in the credit’s history. Most recently, PL 2019, ch. 659 extended the date from December 31, 2023 to December 31, 2025 as the date prior to which determinations of qualified expenditures must be made by the National Park Service or Maine Historic Preservation Commission.

⁵ According to the Maine Historic Preservation Commission, for a project to qualify it must meet the “substantial rehabilitation test.” In essence, this test requires that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building. See National Park Service guidance for the particulars of this standard: nps.gov/tps/tax-incentives/before-apply/eligibility-requirements.htm.

do not qualify for the federal credit under IRC §47. This credit is available to taxpayers who incur between \$50,000 and \$250,000 in certified qualified rehabilitation expenditures. This option makes a credit available for small projects in Maine that have not qualified for the federal credit.⁶

For affordable housing projects that are certified by the Maine State Housing Authority under 30-A MRS section 4722(1)(DD), the Substantial Rehabilitation Credit or the Small Project Rehabilitation Credit is increased. Currently, the increased credit is 34% of the certified qualified expenditures for a certified affordable housing project. The rate of the increased credit starts at 30% increases in one percentage point increments until a maximum 35% credit is achieved.⁷ The increased credit is subject to repayment if the structure does not remain an affordable housing project for 30 years.⁸

§5219-BB Credit for Rehabilitation of Historic Properties After 2007



⁶ These projects have not qualified for the federal credit because the amount of qualified rehabilitation expenditures do not meet the federal adjusted basis requirement. See [irs.gov/businesses/small-businesses-self-employed/rehabilitation-tax-credit-historic-preservation-faqs#Eligibility%20and%20Definitions](https://www.irs.gov/businesses/small-businesses-self-employed/rehabilitation-tax-credit-historic-preservation-faqs#Eligibility%20and%20Definitions).

⁷ The Commission and the Maine State Housing Authority are required to annually notify the State Tax Assessor if the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for the project. Upon notification of this fact, the State Tax Assessor increases the rate of the credit increase by one percentage point. See 36 §5219-BB(3) and 30-A §4722(1)(DD).

⁸ Under 30-A MRS §4722(1)(DD) the amount subject to repayment is the credit increase amount plus interest on that amount at the rate of 7% per annum from the date that the property is placed in service.

The Director of the Maine Historic Preservation Commission is required by statute (27 MRSA §511) to certify information for applicants to demonstrate eligibility for the Substantial Rehabilitation Credit or the Small Project Rehabilitation Credit under 36 MRSA §5219-BB. Eligibility for these credits requires certification that: (1) the rehabilitation of the certified historic structures is consistent with the United States Secretary of the Interior's Standards for Rehabilitation and (2) that the historic structure is listed in or are eligible for listing in the National Register of Historic Places or located in a certified local district.

The maximum credit allowed by law (36 MRSA §5219-BB(4)) may not exceed 5 million dollars (for projects with multiple eligible building components, this limit is 5 million dollars per building).

Twenty-five percent of the allowed credit must be taken in the taxable year the credit is first claimed and 25% in each of the next 3 taxable years. The credit is refundable. The credit is subject to recapture, meaning the credit can be required to be paid back to the state under certain conditions outlined in IRC §47.

Program Reporting

Under the law governing this tax credit, the Commission is required to produce an annual report on applications for the credit, the number of affordable housing units created, total housing units created, number of affordable housing units preserved, total aggregate square footage rehabilitated and developed, total aggregate square footage of housing, total aggregate square footage of affordable housing, total certified rehabilitation expenses and total new construction expenses.

On a biennial basis, the Commission is also required to submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters on (1) the use of the credit as an incentive for rehabilitation of historic structures and economic development, and (2) an analysis of whether the loss of revenue to the State as the result of the credit exceeds the tax revenue and other revenues generated by rehabilitation. Along with the analysis, the Committee is tasked with making recommendations as to whether the credit should be extended, repealed or amended.

Proposed Changes to the Credit

There is a bill before the 130th Legislature, LD 201, An Act To Reduce Greenhouse Gas Emissions and Promote Weatherization in the Buildings Sector by Extending the Sunset Date for the Historic Property Rehabilitation Tax Credit, that proposes to extend the date for incurring eligible rehabilitation expenses which qualify for the tax credit for rehabilitation of historic properties from December 31, 2025 to December 31, 2040.

Evaluation Parameters

Statutory Guidance

Pursuant to Maine Revised Statutes, Title 3, section 999, prior to the beginning of a full tax expenditure evaluation, the GOC is required to approve:

- (1) the purpose, intents or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments.
- (2) the intended beneficiaries of the tax expenditure
- (3) the evaluation objectives, and
- (4) performance measures appropriate for analyzing the evaluation objectives.

Purpose, intents or goals

Based on a review of the enabling statute and subsequent legislative developments, OPEGA did not identify a clear statement of legislative intent for the Credit for Rehabilitation of Historic Properties after 2007.

Given the absence of an explicit statement of legislative intent, OPEGA conducted additional research to identify goals that might be appropriate to consider in evaluating this tax credit. For this research, we reviewed: state statute associated Maine Historic Preservation Commission's and Maine Housing's administration of the credit, reports produced by Maine Historic Preservation Commission, and reports from the National Park Service on the federal credit. From that research, OPEGA identified some possible goals for the GOC to consider as they decide on the program intents for the purpose of OPEGA's evaluation. The GOC may determine that some or all of them are appropriate for evaluation or may determine different goals than OPEGA provides here.

Possible Goals to Be Evaluated	Sources
(1) Rehabilitation of Historic Properties	<ul style="list-style-type: none">• Statute directing MHPC to report on the credit (27 MRS §511(5)), refers to the credit as "an incentive for rehabilitation of historic structures and economic development."
(2) Historic Preservation	<ul style="list-style-type: none">• The Maine Historic Preservation Commission, which administers the credit, is established "in order to preserve the architectural, historic and environmental heritage of the people of the State of Maine, and to develop and promote the cultural, educational and economic benefits of these resources" in 27 MRS §501.

	<ul style="list-style-type: none"> • Additionally, reports from the National Park Service on the federal credit, upon which part of Maine’s credit piggybacks, state that historic preservation is a goal of the credit.⁹
(3) Community Revitalization	<ul style="list-style-type: none"> • The Annual Report for Fiscal Year 2019 on the Federal Tax Incentives for Rehabilitating Historic Buildings states that the credit is “to promote historic preservation and community revitalization through historic rehabilitation” and claim that the “program has been instrumental in...attract[ing] new private investment to communities small and large throughout the nation.¹⁰” • Community revitalization is related to Goal 3 (Economic Activity & Jobs) but different in that it refers to the development/redevelopment of communities in whole, not just jobs produced.
(4) Economic Activity & Jobs	<ul style="list-style-type: none"> • The biannual report required by 27 MRSA §511.5B and produced by MHPC includes measures of economic activity & jobs produced. Statute directing MHPC reporting on the credit (27 MRS §511(5)), refers to the credit as “an incentive for rehabilitation of historic structures and economic development.” • Reports on the federal credit “It generates much needed jobs and economic activity, enhances property values in older communities, creates affordable housing, and augments revenue for Federal, state, and local governments, leveraging many times its cost in private expenditures on historic preservation.”¹¹
(5) Affordable Housing	<ul style="list-style-type: none"> • The Annual Report for Fiscal Year 2019 on the Federal Tax Incentives for Rehabilitating Historic Buildings points to the creation of affordable housing as one of the benefits of the credit.¹² • The design of the credit allows a larger credit if affordable housing is created.

Intended Beneficiaries

Based on a review of the enabling statute and subsequent legislative developments, OPEGA did not identify a clear statement of intended beneficiaries for the Credit for Rehabilitation of Historic Properties after 2007.

Based on some of the possible goals identified for this credit, it could be seen as broadly providing public benefits to the State of Maine. The GOC may want to consider seeking input from administering

⁹ For instance, “to promote historic preservation and community revitalization through historic rehabilitation” Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019. *National Parks Service, U.S. Department of the Interior*, pg.4. [nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf](https://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf);

See also "The Tax Reform Act of 1976 first established Federal tax incentives for rehabilitating historic buildings. In its report on this law, the Joint Committee on Taxation of the United States Congress declared, 'Congress believes that the rehabilitation and preservation of historic structures and neighborhoods is an important goal.'" From “Report to the Secretary of the Interior on the Federal Historic Preservation Tax Incentives Program.” *National Park Service*. December 2016. [nps.gov/tps/tax-incentives/taxdocs/htc-program-final-report-2016.pdf](https://www.nps.gov/tps/tax-incentives/taxdocs/htc-program-final-report-2016.pdf)

¹⁰ Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019. *National Parks Service, U.S. Department of the Interior*, pg. 4. [nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf](https://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf)

¹¹ Ibid.

¹² Ibid.

agencies and stakeholders on whom the credit is intended to benefit. However, given the nature of the expenditure, the GOC may feel comfortable proceeding without specifying intended beneficiaries.

Evaluation objectives

The evaluation objectives specify what OPEGA will assess in its evaluation of the Credit for Rehabilitation of Historic Properties after 2007. The statute governing the full evaluation of tax expenditures outlines a menu of possible evaluation objectives which may include:

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A
(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 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.

For the Credit for Rehabilitation of Historic Properties after 2007, OPEGA recommends that the evaluation address each of objectives listed above ((a)-(i)) to the extent warranted based on assessment of the relevance of the objective to this tax credit, the availability of necessary data and the level of resources required.

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA’s assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

Performance measures for analyzing evaluation objectives

In accordance with statute, the performance measures used to address the evaluation objectives must be clear and relevant to the specific tax expenditure and the approved objectives. OPEGA’s preliminary research indicates that there may be readily available data for many of the measures offered below. In such instances, OPEGA’s approach will be to assess the adequacy of the existent information and

provide any additional context which may aid the GOC in its assessment of the program’s performance. Measures will be addressed in the report to the degree possible based on the level of resources required and the availability of necessary data.

Possible performance measures for GOC consideration
(a) \$ Amount of tax credits claimed (in past and future estimates)
(b) \$ Impact on State budget (revenue loss and net impact)
(c) \$ Federal credit leveraged for Maine projects
(d) \$ New construction generated by the rehabilitation of historic properties
(e) \$ Tax assessments of rehabilitated buildings (before & after)
(f) # Jobs created by the rehabilitation of historic properties (construction and in businesses housed in rehabilitated structures)
(g) # Affordable housing units preserved and generated by the rehabilitation of historic properties
(h) #, location, and types of projects supported by the credits

§5219-BB. Credit for rehabilitation of historic properties after 2007

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

A. "Certified affordable housing project" means a decent, safe and sanitary dwelling, apartment or other living accommodation that has been certified by the Maine State Housing Authority as an affordable housing project pursuant to Title 30-A, section 4722, subsection 1, paragraph DD. [PL 2009, c. 361, §28 (AMD); PL 2009, c. 361, §37 (AFF).]

B. "Certified historic structure" means a structure that has been certified by the Director of the Maine Historic Preservation Commission as a historic structure under Title 27, section 511. [PL 2009, c. 361, §28 (AMD); PL 2009, c. 361, §37 (AFF).]

C. "Certified qualified rehabilitation expenditure" means a qualified rehabilitation expenditure, as defined by the Code, Section 47(c)(2), made between January 1, 2008 and December 31, 2023. For purposes of subsection 2, paragraph B, qualified rehabilitation expenditures incurred in the certified rehabilitation of a certified historic structure located in the State do not include a requirement that the certified historic structure be substantially rehabilitated. [PL 2011, c. 453, §7 (AMD).]

D. [PL 2009, c. 361, §28 (RP); PL 2009, c. 361, §37 (AFF).]
[PL 2011, c. 453, §7 (AMD).]

2. Credit allowed. A taxpayer is allowed a credit against the tax imposed under this Part:

A. Equal to 25% of the taxpayer's certified qualified rehabilitation expenditures for which a tax credit is claimed under Section 47 of the Code for a certified historic structure located in the State; or [PL 2007, c. 539, Pt. WW, §4 (NEW).]

B. Equal to 25% of the certified qualified rehabilitation expenditures of a taxpayer who incurs not less than \$50,000 and up to \$250,000 in certified qualified rehabilitation expenditures in the rehabilitation of a certified historic structure located in the State and who does not claim a credit under the Code, Section 47 with regard to those expenditures. If the certified historic structure is a condominium, as defined in Title 33, section 1601-103, subsection 7, the dollar limitations of this paragraph apply to the total aggregate amount of certified qualified rehabilitation expenditures incurred by the unit owners' association and all of the unit owners in the rehabilitation of that certified historic structure. The credit may be claimed for the taxable year in which the certified historic structure is placed in service. [PL 2011, c. 240, §38 (AMD).]

A taxpayer is allowed a credit under paragraph A or B but not both. A credit may not be claimed for expenditures incurred before January 1, 2008 or after December 31, 2023.

[PL 2011, c. 240, §38 (AMD); PL 2011, c. 453, §8 (AMD).]

3. Increased credit for a certified affordable housing project. The credit allowed under this section is increased to 30% of certified qualified rehabilitation expenditures for a certified affordable housing project. If the certified affordable housing project for which an increased credit was allowed under this subsection does not remain an affordable housing project for 30 years from the date the affordable housing project is placed in service, the owner of the property is subject to the repayment provisions of Title 30-A, section 4722, subsection 1, paragraph DD. Upon notification by the Maine Historic Preservation Commission and the Maine State Housing Authority pursuant to Title 30-A, section 4722, subsection 1, paragraph DD, subparagraph (4), the State Tax Assessor shall increase the credit rate under this subsection that was in effect in the calendar year prior to the calendar year in which the notification was received by one percentage point for tax years beginning in the calendar year of that notification and for any subsequent tax year. In no event may the credit rate under this subsection exceed 35% of the taxpayer's certified qualified rehabilitation expenditures.

[PL 2019, c. 379, Pt. C, §4 (AMD).]

4. Maximum credit. The credit allowed pursuant to this section and section 2534 may not exceed the greater of:

A. Five million dollars for the portion of a certified rehabilitation as defined by the Code, Section 47(c)(2)(C) placed in service in the State in the taxable year; and [PL 2013, c. 550, §1 (NEW); PL 2013, c. 550, §2 (AFF).]

B. Five million dollars for each building that is a component of a certified historic structure for which a credit is claimed under this section. [PL 2013, c. 550, §1 (NEW); PL 2013, c. 550, §2 (AFF).]
[PL 2013, c. 550, §1 (RPR); PL 2013, c. 550, §2 (AFF).]

5. Timing of credit. Twenty-five percent of the credit allowed pursuant to this section must be taken in the taxable year the credit may be first claimed and 25% must be taken in each of the next 3 taxable years.
[PL 2009, c. 361, §28 (AMD); PL 2009, c. 361, §37 (AFF).]

6. Credit refundable. The credit allowed under this section is refundable.
[PL 2017, c. 170, Pt. E, §6 (AMD).]

7. Allocation of credit. Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property must be passed through to the partners, members or owners respectively pro rata in the same manner as under section 5219-G, subsection 1 or pursuant to an executed agreement among the partners, members or owners documenting an alternate allocation method. Credits may be allocated to partners, members or owners that are exempt from taxation under Section 501 (c)(3), Section 501 (c)(4) or Section 501 (c)(6) of the Code, and those partners, members or owners must be treated as taxpayers for the purposes of this subsection.
[PL 2007, c. 693, §32 (AMD); PL 2007, c. 693, §37 (AFF).]

8. Recapture. A credit received under subsection 2 is subject to the same recapture provisions as apply to a credit received under Section 47 of the Code.
[PL 2009, c. 361, §28 (AMD); PL 2009, c. 361, §37 (AFF).]

9. Limitation. A taxpayer who is eligible to claim a credit under section 5219-R, whether or not a credit is actually claimed, may not claim a credit under this section. In addition, a credit may not be claimed under this section with respect to expenditures incurred for rehabilitation of Building No. 2 in the Lockwood Mill Historic District in the City of Waterville.
[PL 2007, c. 539, Pt. WW, §4 (NEW).]

REVISOR'S NOTE: §5219-BB. Dental care access credit as enacted by PL 2007, c. 690, §1 was repealed by PL 2009, c. 141, §1

SECTION HISTORY

PL 2007, c. 539, Pt. WW, §4 (NEW). PL 2007, c. 690, §1 (NEW). PL 2007, c. 693, §32 (AMD). PL 2007, c. 693, §37 (AFF). PL 2009, c. 141, §1 (RP). PL 2009, c. 361, §28 (AMD). PL 2009, c. 361, §37 (AFF). PL 2011, c. 240, §38 (AMD). PL 2011, c. 453, §§7-9 (AMD). PL 2011, c. 548, §31 (AMD). PL 2013, c. 550, §1 (AMD). PL 2013, c. 550, §2 (AFF). PL 2017, c. 170, Pt. E, §6 (AMD). PL 2019, c. 379, Pt. C, §4 (AMD).

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§511. Support for state rehabilitation tax credits

1. Program. The director shall administer, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, a program in support of state rehabilitation tax credits for income-producing historic structures pursuant to Title 36, section 5219-BB. [PL 2007, c. 539, Pt. WW, §1 (NEW).]

2. Certification. The director shall certify information necessary for applicants to demonstrate eligibility for an income tax credit under Title 36, section 5219-BB, including, but not limited to:

A. That rehabilitations of certified historic structures are consistent with the United States Secretary of the Interior's Standards for Rehabilitation; and [PL 2009, c. 361, §1 (AMD); PL 2009, c. 361, §37 (AFF).]

B. That historic structures are listed in or are eligible for listing in the National Register of Historic Places or are in certified local districts. [PL 2009, c. 361, §1 (AMD); PL 2009, c. 361, §37 (AFF).]

C. [PL 2009, c. 361, §1 (RP); PL 2009, c. 361, §37 (AFF).]

When performing the certification required by this subsection, the director shall interpret the provisions of this subsection in a manner consistent with the provisions of the federal Internal Revenue Code, Section 47.

[PL 2009, c. 361, §1 (AMD); PL 2009, c. 361, §37 (AFF).]

3. Administration. The director may provide forms, instructions and guidelines necessary for an applicant to apply for certification under the program. [PL 2007, c. 539, Pt. WW, §1 (NEW).]

4. Fees. The director may establish a schedule of processing fees, the proceeds of which must be used by the director solely for the support of the administration of certifications under this section. The processing fees collected by the director must be placed in a nonlapsing historic rehabilitation certification fund to be used solely by the director for the administration of certifications required under this section.

[PL 2007, c. 539, Pt. WW, §1 (NEW).]

5. Reports. The Maine Historic Preservation Commission shall issue the following reports.

A. The Maine Historic Preservation Commission shall issue a report by March 1st of each year that identifies the approved and certified state historic preservation certification applications and documents the number of affordable housing units created, total housing units created, number of affordable housing units preserved, total aggregate square footage rehabilitated and developed, total aggregate square footage of housing, total aggregate square footage of affordable housing, total certified rehabilitation expenses and total new construction expenses. [PL 2007, c. 539, Pt. WW, §1 (NEW).]

B. By January 15, 2013, the Maine Historic Preservation Commission shall review the tax credit provided under Title 36, section 5219-BB and shall make recommendations to the joint standing committee of the Legislature having jurisdiction over taxation matters regarding specific proposals for funding the credit. By January 15, 2015 and every 2 years thereafter, the Maine Historic Preservation Commission shall analyze the use of tax credits provided under Title 36, section 5219-BB as an incentive for rehabilitation of historic structures and economic development, analyze tax and other revenues generated by the rehabilitation to determine in relation to the cost of the credit if they exceed the costs of the credit and report the results of its analysis to the joint standing committee of the Legislature having jurisdiction over taxation matters with recommendations as to whether the credits under Title 36, section 5219-BB should be extended, repealed or amended. The recommendations must include specific proposals for funding the credit after fiscal year 2014-15

and appropriate transition provisions in order that projects in the development or planning states are not adversely affected. The joint standing committee may submit legislation related to the report. [PL 2011, c. 453, §1 (AMD).]

[PL 2011, c. 453, §1 (AMD).]

SECTION HISTORY

PL 2007, c. 539, Pt. WW, §1 (NEW). PL 2009, c. 361, §1 (AMD). PL 2009, c. 361, §37 (AFF). PL 2011, c. 453, §1 (AMD).

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§4722. Maine State Housing Authority established; powers, duties and restrictions

The Maine State Housing Authority is established and is a public body corporate and politic and an instrumentality of the State. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Powers and duties. In addition to the powers granted by section 4741, the Maine State Housing Authority shall have the powers and duties to:

A. Gather information and statistics on housing and housing-related socioeconomic conditions, using existing sources and data to the fullest extent possible and request reports and obtain information from all state departments, agencies, boards, commissions, authorities and instrumentalities about their respective expenditures for housing and housing-related services and facilities, and about their respective functions and activities related to the financing, construction, leasing or regulation of housing and housing-related services and facilities; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Develop plans, finance, conduct and encourage in cooperation with other public and private national, state, regional and local agencies, research and demonstration of model housing programs, dealing with, but not limited to, planning, styles of land use, types of building design, techniques of construction, finance techniques, municipal regulations and management procedures; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Provide or coordinate technical assistance and consultation about housing and housing-related activities for or on the behalf of the municipalities, private industry, municipal housing authorities, nonprofit housing corporations, state departments, agencies, boards, commissions, authorities and instrumentalities, the Judicial Department, other organizations and individuals; administer or operate housing or housing-related programs for or on the behalf of municipalities, municipal housing authorities, nonprofit housing corporations, state departments, agencies, boards, commissions, authorities, instrumentalities and the judicial branch and in so doing comply with the programmatic, regulatory or statutory standards as required by that entity, which may take precedence over the authority's eligibility requirements; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. Prepare, publish and disseminate educational materials dealing with, but not limited to, the topics listed in paragraph B; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. Encourage and coordinate effective use of existing and new resources and available services for housing; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

F. Act as the public agency of the State for the purpose of accepting federal funds or other assistance, or funds or other assistance from any other source, in relation to housing activity and for those projects authorized under section 4741, subsection 2 and other relevant provisions of this chapter; [PL 2017, c. 234, §10 (AMD).]

G. Carry out renewal projects and all other powers and duties of an authority under chapter 203; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

H. Issue revenue bonds as provided in this chapter. The authority for the issuance of bonds in any subchapter of this chapter constitutes a complete, additional and alternative method for the issuance of bonds authorized by that subchapter. Any limitation or restriction as to the use of proceeds, total authorized amount of obligations or interest rate, or any other limitation or restriction, applies solely to bonds issued under the subchapter in which the limitation or restriction appears; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

I. Purchase, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, on any terms and conditions that the Maine State Housing Authority specifies, any mortgage loan, any mortgage pass-through certificate, any pledge including any pledge or mortgage revenue, any mortgage participation certificate or any other mortgage-backed or mortgage-related security. In connection with the purchase or sale of a mortgage loan or of a beneficial interest or participation in a mortgage loan, the Maine State Housing Authority may enter into one or more agreements providing for the custody, control and administration of the mortgage loan. Any such agreement may provide that:

(1) The Maine State Housing Authority or a financial institution will act as trustor, trustee or custodian under the agreement; and

(2) With respect to mortgage loans governed by the agreement, title to a mortgage loan, or to a beneficial interest or participation in a mortgage loan, is deemed to have been transferred on terms and to the extent specified in that agreement and that the effect of a sale of a beneficial interest or participation in a mortgage loan is the same as a sale of a mortgage loan; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

J. Adopt bylaws for the regulation of its affairs and the conduct of its business; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

K. Perform other functions necessary or useful for carrying out any of its powers, duties or purposes; [PL 2017, c. 234, §11 (AMD).]

L. Contract with any financial institution to make mortgage loans on behalf of the Maine State Housing Authority and to make mortgage loans without contracting with a financial institution. The mortgage loans must be made under one or more mortgage loan programs governed by standards established in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

The Maine State Housing Authority may also make construction loans, grants, noninterest-bearing loans, deferred payment loans, unsecured loans and other similar types of loans. Any mortgage loan made under this paragraph does not pledge the faith and credit of the State. Any bonds issued by the Maine State Housing Authority to finance mortgage loans authorized by this paragraph are subject to the limitations of sections 4905 and 4907; [PL 1993, c. 175, §5 (AMD).]

M. [PL 2017, c. 234, §12 (RP).]

N. With respect to any bonds that the Maine State Housing Authority is authorized to issue in accordance with the limitations and restrictions of this chapter, covenant and consent that the interest on the bonds will be includable, under the United States Internal Revenue Code of 1986, or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this

paragraph are not subject to any limitations or restrictions of any law that may limit the Maine State Housing Authority's power to so covenant and consent.

(1) Notwithstanding any other provision of this chapter, proceeds of bonds issued under this subsection may be used for persons other than persons of low income.

(2) The income on any bonds issued by the Maine State Housing Authority must be included in gross income under the Maine Income Tax Law if the income on those bonds is includable in the gross income of the holders of the bonds under the United States Internal Revenue Code of 1986, or any subsequent corresponding revenue law of the United States; [PL 2017, c. 288, Pt. B, §4 (AMD).]

O. Issue or cause to be issued certificates or other instruments evidencing the holder's fractional undivided interest in a pool of mortgage loans. Whether or not the certificates or instruments are of such form or character as to be negotiable instruments under Title 11, article 8-A, the certificates or instruments are deemed negotiable instruments within the meaning of and for all the purposes of Title 11, article 8-A, subject only to any registration requirements that the Maine State Housing Authority may establish; [PL 2017, c. 234, §13 (AMD).]

P. In accordance with the limitations and restrictions of this chapter, cause any of its powers or duties to be carried out by one or more nonprofit corporations organized and operated under Title 13-B; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

Q. Modify or waive the requirements of section 4902, subsections 1 and 2, and section 4903; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

R. Guarantee or ensure the timely payment in whole or part of principal on, premium on or interest of any bond or of any instrument or security identified in paragraph I or O; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

S. Purchase, sell, service, pledge, invest in, hold, trade, accept as collateral, administer or otherwise deal in, acquire or transfer, contract for benefits to recipients on behalf of the Federal Government or otherwise and do those things necessary to issue or cause to be issued federal mortgage credit certificates as authorized and created by the Federal Tax Reform Act of 1984, Public Law 98-369, Section 612(a); [PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD); PL 1989, c. 581, §7 (AMD).]

T. Approve or disapprove, in accordance with rules adopted under the Maine Administrative Procedure Act, Title 5, chapter 375, a project that is multi-family or single-family residential property, when authorized or required by Title 10, chapter 110, subchapter IV; [PL 1991, c. 528, Pt. E, §35 (AMD); PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 591, Pt. E, §35 (AMD).]

U. Consult with the Statewide Homeless Council, established pursuant to Title 30-A, section 5046, with respect to the implementation of housing programs to make the best use of resources and make the greatest impact on the affordable housing crisis; [PL 2005, c. 380, Pt. B, §3 (AMD).]

V. Administer energy conservation programs; [PL 1991, c. 9, Pt. I, §7 (NEW); PL 1991, c. 9, Pt. I, §8 (AFF).]

W. Pursuant to the purpose of the Act to provide housing assistance to persons of low income and in accordance with rules adopted under the Maine Administrative Procedure Act, operate programs to provide energy conservation and fuel assistance on behalf of persons of low income in connection with single-family or multi-unit residential housing and accept, obtain, distribute and

administer federal and state funds, including block grants, for energy conservation and fuel assistance for the purpose of operating those programs; [PL 2017, c. 234, §14 (AMD).]

X. Advise the Governor and other officials of State Government on matters relating to energy conservation; [PL 2005, c. 261, §1 (AMD).]

Y. [PL 2017, c. 234, §15 (RP).]

Z. Condition approval of funding of a housing project upon an applicant's compliance with municipal health, safety and sanitation standards. The Maine State Housing Authority may condition approval of funding for a housing project upon a municipality's representation that the applicant, an affiliate of the applicant or any owner controlled by the applicant has no record of a material municipal code violation of health, safety or sanitation standards; [PL 2007, c. 326, §1 (AMD).]

AA. Certify transfers of multifamily affordable housing property that qualify for the deduction under Title 36, section 5122, subsection 2, paragraph Z or Title 36, section 5200-A, subsection 2, paragraph Q. The affordability restrictions that apply under this paragraph must be contained in a declaration signed by the transferee and recorded in the appropriate registry of deeds at the time of the sale or transfer.

(1) For the purposes of this paragraph, "multifamily affordable housing property" means a decent, safe and sanitary dwelling, apartment building or other living accommodation that includes at least 6 units, that meets at least one of the following affordability restrictions and for which those affordability restrictions, as applicable, expire in 10 years or less from the date of the sale or transfer of the property:

(a) At least 20% of the units have restricted rents affordable to households earning no more than 80% of the area median income as determined by the United States Department of Housing and Urban Development;

(b) The property is assisted by the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Maine State Housing Authority; or

(c) The property qualifies for low-income housing credits under the United States Internal Revenue Code of 1986, Section 42.

(2) For the purposes of this paragraph, property does not qualify as multifamily affordable housing property unless:

(a) The transferee agrees to maintain the property as multifamily affordable housing property for an additional 30 years from the scheduled expiration;

(b) If the existing federal, state or other assistance is not available to maintain the property as multifamily affordable housing property, the transferee agrees to ensure that 1/2 of the units are affordable to persons at 60% of the area median income as determined by the United States Department of Housing and Urban Development for 30 years from the expiration of the then-existing affordability restrictions; or

(c) The transferee agrees to an alternative affordability agreement approved by the Maine State Housing Authority; [PL 2007, c. 645, §1 (AMD).]

BB. Make a loan, or contract with a financial institution to make a loan on behalf of the Maine State Housing Authority, to pay off an existing loan or to pay amounts past due on an existing loan on an owner-occupied single-family residence to assist a homeowner who is in default of the existing loan or in danger of losing the residence through foreclosure. Prior to receiving a loan under this paragraph, a homeowner must receive counseling with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a

housing financing agency of this State or the regulatory agency that has jurisdiction over the creditor; [PL 2009, c. 361, §2 (AMD); PL 2009, c. 361, §37 (AFF).]

CC. Encourage and provide incentives to individuals and entities that conserve energy; support and participate, with resources derived from sources except the conservation program fund under Title 35-A, section 10110, subsection 7, in markets that reward energy conservation and use the proceeds from this participation to support affordable housing programs under its jurisdiction; and create and administer programs that encourage individuals and entities to conserve energy; [PL 2017, c. 234, §16 (AMD).]

DD. Certify affordable housing projects for the purpose of the income tax credit increase under Title 36, section 5219-BB, subsection 3; administer and enforce the affordability requirements set forth in this paragraph; and perform other functions described in this paragraph and necessary to the powers and duties described in this paragraph.

(1) For purposes of this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended.

(b) "Affordable housing project" means a project in which:

- (i) At least 50% of the aggregate square feet of the completed project is housing of which at least 50% of the aggregate square feet of the completed housing creates new affordable housing; or
- (ii) At least 33% of the aggregate square feet of the completed project creates new affordable housing.

(2) An affordable housing project for which the owner of the property received the income tax credit increase under Title 36, section 5219-BB, subsection 3 must remain an affordable housing project for 30 years from the date the affordable housing project is placed in service. If the property does not remain an affordable housing project for 30 years from the date the affordable housing project is placed in service, the owner of the property shall pay to the Maine State Housing Authority for application to the Housing Opportunities for Maine Fund established under section 4853 an amount equal to the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. The affordability requirements and the repayment obligation in this subparagraph must be set forth in a restrictive covenant executed by the owner of the property and the affordable housing project for the benefit of and enforceable by the Maine State Housing Authority and recorded in the appropriate registry of deeds before the owner of the property claims the income tax credit increase under Title 36, section 5219-BB, subsection 3.

(3) If the repayment obligation in subparagraph (2) is not fully satisfied after written notice is sent by certified mail or registered mail to the owner of the property at the owner's last known address, the Maine State Housing Authority may file a notice of lien in the registry of deeds of the county in which the real property subject to the lien is located. The notice of lien must specify the amount and interest due, the name and last known address of the owner, a description of the property subject to the lien and the Maine State Housing Authority's address and the name and address of its attorney, if any. The Maine State Housing Authority shall send a copy of the notice of lien filed in the registry by certified mail or registered mail to the owner

of the property at the owner's last known address and to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property that is properly recorded in the registry of deeds in which the property is located. The lien arises and becomes perfected at the time the notice is filed in the appropriate registry of deeds in accordance with this subparagraph. The lien constitutes a lien on all property with respect to which the owner receives the income tax credit increase under Title 36, section 5219-BB, subsection 3 and the proceeds of any disposition of the property that occurs after notice to the owner of the repayment obligation. The lien is prior to any mortgage and security interest, lien, restrictive covenant or other encumbrance recorded, filed or otherwise perfected after the notice of lien is filed in the appropriate registry of deeds. The lien may be enforced by a turnover or sale order in accordance with Title 14, section 3131 or any other manner in which a judgment lien may be enforced under the law. The lien must be in the amount of the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. Upon receipt of payment of all amounts due under the lien, the Maine State Housing Authority shall execute a discharge lien for filing in the registry or offices in which the notice of lien was filed.

(4) Annually by every August 1st until and including August 1, 2025, the Maine State Housing Authority shall review the report issued pursuant to Title 27, section 511, subsection 5, paragraph A to determine the percentage of the total aggregate square feet of completed projects that constitutes new affordable housing, rehabilitated and developed using:

- (a) Either of the income tax credits under Title 36, section 5219-BB, subsection 2; and
- (b) The income tax credit increase under Title 36, section 5219-BB, subsection 3.

If the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for a credit under Title 36, section 5219-BB, the Maine State Housing Authority and Maine Historic Preservation Commission shall notify the State Tax Assessor of this fact; [PL 2019, c. 659, Pt. J, §1 (AMD).]

EE. Refinance a single-family mortgage loan held by the Maine State Housing Authority for a homeowner whose income at the time of refinancing is no greater than the income limits for qualified first-time homebuyers established under 26 United States Code, Section 143, or an existing loan on any owner-occupied single-family residence for purposes of lowering mortgage payments or making home improvements for persons of low income; [PL 2019, c. 555, §1 (AMD).]

FF. Provide grants to eligible homeowners who are served by private well water that shows evidence of high levels of arsenic contamination. For purposes of this paragraph, "homeowner" includes an individual who occupies a single-family dwelling that is located on land that is owned by a member of that individual's immediate family and "immediate family" means a spouse, parent, child, sibling, stepchild, stepparent and grandparent; and [PL 2019, c. 555, §2 (AMD).]

GG. In accordance with the credit for affordable housing established in Title 36, section 5219-WW and in accordance with rules adopted under the Maine Administrative Procedure Act:

- (1) Allocate the credit;
- (2) Administer and enforce the requirements of the credit; and
- (3) Perform other functions and duties necessary for the proper administration of the credit, including providing any necessary certifications and notices to taxpayers and to the Department of Administrative and Financial Services, Bureau of Revenue Services containing information

required by the State Tax Assessor necessary for determining eligibility and the amount of the credit for each taxable year.

Rules adopted under this paragraph are routine technical rules. [PL 2019, c. 555, §3 (NEW).] [PL 2019, c. 555, §§1-3 (AMD); PL 2019, c. 659, Pt. J, §1 (AMD).]

2. Restrictions. Notwithstanding any other provision of this chapter, the Maine State Housing Authority may not provide funds for, finance, purchase the mortgage on or otherwise assist in the construction or management of:

A. Any housing owned, sponsored or assisted by an institution of higher education in the State; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Any housing, the mortgage on which is insured by any federal or state program of mortgage insurance, the primary purpose of which is to assist student housing; or [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Any nursing home or related institution licensed or subject to license by the Department of Health and Human Services under Title 22, section 1817, except intermediate care facilities for persons with intellectual disabilities and persons with related conditions or the construction, substantial rehabilitation or improvement of homeless shelter facilities that may be related to an institution licensed or subject to license by the Department of Health and Human Services under Title 22, section 1817. [PL 2011, c. 542, Pt. A, §55 (AMD).]

[PL 2011, c. 542, Pt. A, §55 (AMD).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 48, §§2,31 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 581, §§7,8 (AMD). PL 1991, c. 9, §17 (AMD). PL 1991, c. 9, §18 (AFF). PL 1991, c. 511, §B1 (AMD). PL 1991, c. 528, §§E35,36 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §§E35,36 (AMD). PL 1991, c. 610, §2 (AMD). PL 1991, c. 622, §J20 (AMD). PL 1991, c. 622, §J25 (AFF). PL 1991, c. 780, §TT1 (AMD). PL 1993, c. 175, §5 (AMD). PL 1993, c. 359, §B2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2003, c. 704, §§4-6 (AMD). PL 2005, c. 261, §§1-3 (AMD). PL 2005, c. 380, §B3 (AMD). PL 2005, c. 644, §§1-3 (AMD). PL 2007, c. 240, Pt. RRRR, §4 (AMD). PL 2007, c. 326, §§1-3 (AMD). PL 2007, c. 466, Pt. A, §50 (AMD). PL 2007, c. 562, §5 (AMD). PL 2007, c. 645, §§1-3 (AMD). RR 2009, c. 2, §85 (COR). PL 2009, c. 361, §§2-4 (AMD). PL 2009, c. 361, §37 (AFF). PL 2011, c. 453, §2 (AMD). PL 2011, c. 542, Pt. A, §55 (AMD). PL 2011, c. 679, §29 (AMD). RR 2017, c. 1, §24 (COR). PL 2017, c. 234, §§10-18 (AMD). PL 2017, c. 288, Pt. B, §4 (AMD). PL 2019, c. 555, §§1-3 (AMD). PL 2019, c. 659, Pt. J, §1 (AMD).

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4/23/2021



Testimony Regarding Proposed Parameters for OPEGA Full Tax Expenditure Review of Maine Historic Property Rehabilitation Tax Credit

Chairman Libby, Chairman McDonald, and members of the Government Oversight Committee;

My name is Elizabeth Frazier and I am an attorney at Pierce Atwood. On behalf of our client, the Maine Real Estate & Development Association, as well as the Maine Historic Tax Credit Coalition (the Coalition) – Greater Portland Landmarks, GrowSmart Maine, Maine Alliance for Smart Growth, Maine Preservation, CEI, and the Genesis Fund – we wish to comment on the proposed parameters for a full tax expenditure evaluation of the Credit for the Rehabilitation of Historic Properties, also known as the Maine Historic Property Rehabilitation Tax Credit (MHRTC).

As noted by the Office of Program Evaluation and Government Accountability (OPEGA), Maine statute at 3 MRSA § 999 requires the Government Oversight Committee (the Committee) to approve the following general parameters:

- 1. Purpose, Intent or Goals.** The purpose, intents or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments;
- 2. Intended Beneficiaries.** The intended beneficiaries of the tax expenditure;
- 3. Evaluation Objectives.** The evaluation objectives; and
- 4. Performance Measures for Evaluation Objectives.** Performance measures appropriate for analyzing the evaluation objectives.

OPEGA has further provided you with their recommendations for these parameters specific to the MHRTC. We agree with OPEGA's conclusion that no evaluation parameters are included in the MHRTC law, as is often the case with newer tax expenditures. As such, we wish to applaud OPEGA for its work in assessing which factors will most closely provide qualitative and quantitative data for a fair evaluation of this important credit. Indeed, we concur with most of the identified parameters. However, we would like to put forth a couple of factors for your consideration, with respect to each of the statutory factors outlined above.

- 1. Purpose, Intent or Goals.** We agree that the purpose and goals of the program include: rehabilitation of historic properties and historic preservation, community revitalization, and economic activity and job creation. In addition, the inclusion of a higher tax credit value for affordable housing (as well as resulting construction of affordable housing units) argue for including affordable housing as another purpose. We also believe that the passage of recent legislation to extend the sunset date for the credit evidences as legislative intent that the program also result in greenhouse gas and building efficiencies.
- 2. Intended Beneficiaries.** We believe OPEGA has correctly identified the broad audience of beneficiaries for this credit under its discussion on page 5. We do not believe it is OPEGA's intent to consider only the direct recipients of the tax credit to be the beneficiaries. However, because the first page of the proposed parameters do state that "taxpayers affected" are approximately 30 individuals, we wanted to provide some clarification as to who we believe are the intended beneficiaries as evidenced by legislative intent.

As OPEGA notes, the credit broadly provides public benefits to the State of Maine. OPEGA further notes that the Committee may wish to move forward without identifying specific beneficiaries. In some ways, this makes sense – the beneficiaries are many. However, for reasons discussed below, we believe it is important to identify beneficiaries at this stage, to ensure adequate evaluation. For this reason, MEREDA suggests that the Committee consider the following as intended beneficiaries of this program:

- Maine citizens, who will have the opportunity to see and enjoy historic properties in their communities and around the State that might otherwise have been lost and are real contributors to the character and culture of our cities, towns and state;
- Municipalities, who have received increased revenue both from the higher property taxes paid on the rehabilitated property and from the indirect development and added property tax revenue that typically accompanies MHRTC projects;
- Maine taxpayers, who benefit from the direct and indirect spending attracted to Maine by these projects – often from out-of-state funding sources. This infusion of capital represents an investment in Maine that ultimately helps grow our economy and ease the tax burden across the board; and
- Historic building owners and property developers, who directly benefit from the credit to help close the funding gap to make the rehabilitation of these historic properties possible.

3. Evaluation Objectives. We agree with OPEGA's assessment that the statutory objectives under 3 MRSA § (999)(1)(a) are generally appropriate. However, we raise concern with (d), which is "the extent to which those actually benefiting from the tax expenditure program are the intended beneficiaries." Id at § 999(1)(a)(d).

We believe inclusion of this evaluation objective is only practical to the extent this Committee is able to identify the beneficiaries. If the Committee does not identify specific beneficiaries, we believe it will be difficult for OPEGA to conduct an objective review of the criteria under (d). Id.

Our view is that the building owners and developers that employ the credit are agents to accomplish the purposes outlined above in 2. The law was not passed so that they would be beneficiaries, but rather that they would be able to accomplish the other purposes outlined.

4. Performance Measures for Evaluation Objectives. As a general matter, we believe OPEGA has correctly identified the majority of possible performance measures for the evaluation of the MHRTC. However, we would encourage the committee to add a performance measure that looks at: 1) the amount of outside public and private capital investment attracted to Maine as a result of the program; and 2) the amount of indirect spending and revenue arising from the rehabilitation of historic properties.

In closing, the Coalition wishes to thank OPEGA for its efforts thus far in recommending the evaluation parameters for its review of the MHRTC. We believe that, with the minor modifications suggested above, we can ensure that the MHRTC Full Tax Expenditure review is thorough, accurate, and informative for future policy development.

We welcome an opportunity to continue to work with OPEGA and the Committee as it moves through the evaluation process.

Thank you for your consideration of these comments.

Elizabeth M. Frazier
 On behalf of MEREDA and the Maine Historic Tax Credit Coalition
efrazier@pierceatwood.com
 207-838-2257

Connors, Etta

From: Nixon, Lucia
Sent: Friday, April 23, 2021 12:42 PM
To: Connors, Etta
Cc: Hojara, Kari
Subject: FW: OPEGA Review of the Historic Rehabilitation Tax Credit

From: Greg Paxton <greg@mainepreservation.org>
Sent: Thursday, April 22, 2021 6:34 PM
To: Hojara, Kari <Kari.Hojara@legislature.maine.gov>
Cc: Nixon, Lucia <Lucia.Nixon@legislature.maine.gov>; Mohney, Kirk <kirk.mohney@maine.gov>; Johnson, Mike D <mike.d.johnson@maine.gov>
Subject: RE: OPEGA Review of the Historic Rehabilitation Tax Credit

This message originates from outside the Maine Legislature.

Dear Kari,

Thank you for your communications about OPEGA's review of the Historic Rehabilitation Tax Credit. I am writing with some technical comments on the document: *Full Evaluation of Tax Expenditures: Credit for Rehabilitation of Historic Properties Background and Evaluation Parameters Presented to the Government Oversight Committee on 4/23/21.*

P1

Para 2: [Existing text:] "The credit was enacted in 2007"

Deep background comment: In 2006 the legislature passed a State tax credit that applied only to the Augusta Armory. It has not since been rehabilitated, however.

In 2007 the legislature passed a State tax credit for Hathaway/Lockwood Mill in Waterville. Its \$30.4MM rehab was completed in 2009.

The Taxation Committee then expressed an interest in looking at a broader historic tax credit. In the 2008 session the legislature passed the present credit and it retroactively allowed expenditures back to Jan 1, 2008.

[Existing text:] "(B) The Small Project Rehabilitation Credit provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures on a certified historic structure in Maine for projects which do not qualify for the federal credit under IRC §47. This credit is available to taxpayers who incur between \$50,000 and \$250,000 in certified qualified rehabilitation expenditures. This option makes a credit available for small projects in Maine that have not qualified for the federal credit." [underline added]

Comment: Please consider this amendment:

"(B) The Small Project Rehabilitation Credit provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures on a certified historic structure in Maine ~~for projects which do not qualify for the federal credit under IRC §47. This credit is available~~ to taxpayers who ~~that~~ incur between \$50,000 and \$250,000 in certified qualified rehabilitation expenditures and do not claim the federal credit. This option makes a credit available for small projects in Maine without requiring that the taxpayer claim the federal credit.

[Note the existing text asserts that you cannot qualify for the federal credit if you receive the Small Project Rehabilitation Credit, but the project can meet all the requirements for the federal credit and the owner simply not claim it – it's the

owner's choice in such cases of whether to choose only the state credit. Note, however, that some Small Projects may not qualify for the federal credit but still receive the state credit. Also note that the figure on P2 states it correctly.]

Footnote: [Existing text:] "4. The timeline for determinations of eligible expenses (qualified rehabilitation expenditures) has been extended multiple times in the credit's history. Most recently, PL 2019, ch. 659 extended the date from December 31, 2023 to December 31, 2025 as the date prior to which determinations of qualified expenditures must be made by the National Park Service or Maine Historic Preservation Commission." [underline added]

Comment: The credit has been extended twice. Consider this language:

4. The timeline for ~~determinations-completion~~ of eligible expenses (qualified rehabilitation expenditures) was extended in 2011 from a sunset in 2013 to 2023 and in 2020 [not 2019] the timeline to require only approval of qualified expenditure plans by the National Park Service or Maine Historic Preservation Commission was extended to December 31, 2025. [Note this language captures both the two chronology changes and the change from requiring project completion at the sunset date to requiring only approval of rehabilitation plans by the sunset.]

Footnote: [Existing text:] "5. According to the Maine Historic Preservation Commission, for a project to qualify it must meet the 'substantial rehabilitation test.' In essence, this test requires that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building." [underline added]

Comment: substitute "value" for cost, or better yet:

It is actually the "adjusted basis," which is the value the owner places on the building (without the land) at the time of purchase, plus any capital investments since, minus any depreciation. Perhaps that detail can be left out. However, I note that you use "adjusted basis" in footnote 6, so you may wish to use it here, too.

You may also wish to add to Footnote 5 at the end: The requirement that the Substantial Rehabilitation Credit claimants must also claim the federal credit results in a federal incentive of currently 20% of qualified rehabilitation expenditures being received in all these projects, bringing these outside resources to Maine.

P2

[Existing text:] "The rate of the increased credit starts at 30% increases in one percentage point increments until a maximum 35% credit is achieved." [underline added]

Comment: Consider: The rate of the increased credit started at 30% but has increased in one-percentage-point increments to 34% currently, based on affordable housing goals. The maximum increase authorized is 35%⁷

Footnote 6: [Existing text:] "These projects have not qualified for the federal credit because the amount of qualified rehabilitation expenditures do not meet the federal adjusted basis requirement. See irs.gov...." [underline added]

Suggestion: These projects have not claimed the federal credit ~~because the~~ and are not required to ~~amount of qualified rehabilitation expenditures do not~~ meet the federal adjusted basis requirement. See irs.gov....

P3

Para 1 [Existing text:] "The Director of the Maine Historic Preservation Commission is required by statute (27 MRSA §511) to certify information for applicants to demonstrate eligibility for the Substantial Rehabilitation Credit or the Small Project Rehabilitation Credit under 36 MRSA §5219-BB. Eligibility for these credits requires certification that: (1) the rehabilitation of the certified historic structures is consistent with the United States Secretary of the Interior's Standards for Rehabilitation and (2) that the historic structure is listed in or are eligible for listing in the National Register of Historic Places or located in a certified local district."

Minor comment: Since (1) above is termed Part 2 of the certification process and (2) above is Part 1 certification, it would be better to reverse the content of (1) & (2).

[Existing text of para 2 – edited in place:] “The maximum credit allowed by law (36 MRSA §5219-BB(4)) may not exceed 5 million dollars [add] per year (for projects functionally-related complexes under one ownership with multiple eligible buildings, or 5 million dollars per year for individual buildings—components, this limit is 5 million dollars per building).”

Comment: the law was changed in 2013 to allow an annual limit of \$5 million because the \$5 million cap on complexes could limit investment to one building.

End of Para 3 - edited: “The credit is subject to recapture, meaning the credit can be required to be paid back to the state under certain conditions if any of the ownership changes within 5 years, as outlined in IRC §47.”

Comment: This is the key cause of recapture. For the record, no project is known to have been recaptured since the current credit was passed in 2008.

Sorry for the lateness and hope all this minutia is helpful.

Best wishes,

Greg

[Please note our change of address](#)

Greg Paxton
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From: Hojara, Kari <Kari.Hojara@legislature.maine.gov>

Sent: Friday, April 9, 2021 9:50 AM

To: Elizabeth Frazier <efrazier@PierceAtwood.com>; Greg Paxton <greg@mainepreservation.org>; Nancy Smith <nsmith@growsmartmaine.org>; Ali Barrionuevo <ali@mainepreservation.org>; Sarah Hansen <shansen@portlandlandmarks.org>; Amy Winston <Amy.Winston@ceimaine.org>; John W. Egan <John.Egan@ceimaine.org>; Andrea C. Maker <amaker@PierceAtwood.com>

Cc: Nixon, Lucia <Lucia.Nixon@legislature.maine.gov>

Subject: OPEGA Review of the Historic Rehabilitation Tax Credit

Good morning,

You are receiving this email because you have previously expressed interest in OPEGA’s planned review of the Credit for Rehabilitation of Historic Properties after 2007 (Historic Rehabilitation Tax Credit or HRTC). You may find it useful to sign

up for the Government Oversight Committee's interested parties list for the duration of the review period. You can do so [here](#).

The Credit for Rehabilitation of Historic Properties after 2007 (Historic Rehabilitation Tax Credit or HRTC) is one of the next tax expenditures scheduled for a full evaluation by the Office of Program Evaluation and Government Accountability (OPEGA) under 3 MRSA §999.

For OPEGA's full evaluations of tax expenditures, the GOC must approve: (1) program purpose, (2) program beneficiaries, (3) evaluation objectives, and (4) performance measures. As part of this approval process, the Committee is required to seek stakeholder comment to ensure OPEGA's review is appropriately focused.

On **April 23rd**, the GOC will receive stakeholder input on the proposed evaluation parameters for OPEGA's evaluation of the HRTC. A copy of the document that the GOC will receive from OPEGA can be found on OPEGA's website: legislature.maine.gov/documents/opega

Please note that the April 23 opportunity for stakeholder input is centered on the evaluation parameters and is not intended for general comment on whether or not there is merit to the tax expenditure.

If you wish to provide written comments on the parameters, please email them to goc@legislature.maine.gov for distribution to Committee members. If you wish to virtually attend and speak at the meeting on the 23rd, please let me know and I will provide a link for registration for the meeting when it becomes available.

You may listen live to the meeting through OPEGA's website (<https://legislature.maine.gov/opega/goc-meetings/>) or watch the meeting on the Committee's YouTube channel ([GOC Channel](#)). The meeting will begin at 9am on April 23. As there will be other items on the agenda, I am unable to predict what time the GOC will begin discussing these matters.

If you have any questions, please feel free to contact me.

Sincerely,

Kari Hojara

Kari Hojara, Ph.D | Analyst
Office of Program Evaluation & Government Accountability
State of Maine Legislature
Office: (207) 287.1955

**Full Evaluation of Tax Expenditures:
Research Expense Tax Credit
Background and Evaluation Parameters
Presented to the Government Oversight Committee on 4/23/21**

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss
1995	36 MRSA §5219-K	Approximately 175 taxpayers affected	FY22 \$1,650,000 FY23 \$2,180,000

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2022 – 2023.

Program Description

The Research Expense Tax Credit (R&D Credit) under 36 MRSA §5219-K provides an income tax credit to taxpayers for qualified research expenses associated with certain technological research. It is available to Maine taxpayers who also claim the federal Credit for Increasing Research Activities (federal R&D credit). The credit is non-refundable and may be carried forward for up to 15 years.¹

The Maine R&D Credit is built upon the federal Credit for Increasing Research Activities and relies upon definitions specified in the Internal Revenue Code (IRC). Like the federal R&D credit, the Maine R&D credit is incremental—providing a credit for qualified research expenses above a base amount dependent upon the taxpayer’s previous qualifying research expenses. The Maine R&D Credit applies only to expenses incurred in Maine.

The Maine R&D Credit (36 MRSA §5219-K) is the sum of two amounts:

- (1) An amount equal to 5% of the excess, if any, of the taxpayer’s qualified research expenses for the taxable year over the base amount.²
- (2) An amount equal to 7.5% of the taxpayer’s basic research payments as determined under the federal tax code (IRC §41(e)(1)(A)); and

Qualified research expenses include amounts paid for research performed by qualified organizations under contract which fall below the federal base amount. These expenses can also include wages and supplies. Basic research payments include amounts paid for research performed by qualified organizations under contract which exceed a federal base amount.

¹ The program description is derived from a combination of statute, IRC, and OPEGA’s understanding of the program.

² For the purposes of the Maine credit, the base amount for qualified research expenses is the average amount per year spent on qualified research expenses over the previous 3 taxable years by the taxpayer (§5219-K).

The maximum amount of the Maine R&D credit is limited to 100% of a corporation's first \$25,000 of tax due, as determined before the allowance of any credits, plus 75% of the corporation's tax due as determined in excess of \$25,000.

Maine Revenue Services (MRS) administers the Maine R&D Credit through the state tax system. Under current law, no other agency has administrative responsibility for or oversight of this credit.

Proposed Changes to the Credit

LD 308, currently before the 130th Legislature, proposes changes to the Maine R&D Credit. The bill would increase the allowed credit by doubling the percentage of the eligible expenditures used in the calculation of the credit and increasing the maximum amount of the credit that may be claimed. The bill also provides for ongoing funds of \$100,000 per year beginning in fiscal year 2021-22 to the Department of Economic and Community Development to advertise and market the credit.

Evaluation Parameters

Statutory Guidance

Pursuant to Maine Revised Statutes, Title 3, section 999, prior to the beginning of a full tax expenditure evaluation, the GOC is required to approve:

- (1) the purpose, intents or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments.
- (2) the intended beneficiaries of the tax expenditure
- (3) the evaluation objectives, and
- (4) performance measures appropriate for analyzing the evaluation objectives.

Purpose, intents or goals

Based on a review of the enabling statute and subsequent legislative developments, OPEGA did not identify a clear statement of legislative intent for the Maine R&D credit.

Absent a clearly stated legislative intent, OPEGA researched and identified goals that might be associated with this tax credit. Research included the following sources: statements of intent for the federal credit, upon which the state credit is based, and Maine legislation related to the credit (specifically LD 977 'An Act to Restore the Super Credit for Substantially Increased Research and

Development³ in the 129th Legislature). From this research, OPEGA presents possible goals for the GOC to consider as they decide on the program intents for the purpose of OPEGA’s evaluation. The GOC may determine that some or all of them are appropriate for evaluation or may determine different goals than OPEGA provides here.

Possible Goals to Be Evaluated	Sources
(1) To stimulate more business R&D investment than otherwise would take place by lowering the after-tax cost of engaging in qualified research	<ul style="list-style-type: none"> The Congressional Research Service characterization of the intent of the federal credit, upon which Maine’s credit piggy-backs.⁴
(2) To create high-quality jobs in the State by encouraging investments in research and development in this State and to encourage the recruitment and training of employees	<ul style="list-style-type: none"> LD 977, as amended by Committee Amendment “A.”
(3) To directly and indirectly improve the overall economy of the State by expanding the number of businesses conducting and investing in research and development in the State	<ul style="list-style-type: none"> LD 977, as amended by Committee Amendment “A.”

Goal (1) is the Congressional Research Service’s characterization of the intent of the federal R&D credit. OPEGA suggests that goals (2) and (3), stated in the Committee Amendment to LD 977, are also applicable to the R&D Credit and present the clearest statement of Maine legislative intent for the R&D Credit for the following reason:

The Super Credit, when it was in place, was built directly upon the R&D Credit indicating a shared purpose.

The Super Credit was found in §5219-L and stated that “a taxpayer qualifying for a research expense tax credit under section 5219-K is allowed an additional credit against the tax due equal to the excess, if any, of the qualified research expenses for the taxable year over the super credit base amount.”⁵

Intended Beneficiaries

There are no intended beneficiaries stated in statute or in subsequent legislative developments.

³ LD 977 was introduced in the First Regular Session of the 129th Legislature and in June 2019, the bill (as amended by Committee Amendment “A” (H-621)) was carried over on the Special Appropriations Table. LD 977 died upon conclusion of the 129th Legislature in November 2020.

⁴ “Research Tax Credit: Current Law and Policy Issues for the 114th Congress.” *Congressional Research Service*. June 2016, pg. 2. <https://crsreports.congress.gov>.

⁵ The Super Credit for Substantially Increasing Research and Development was established in 1997 (118th), implemented in 1998 and dropped in 2014 to close the supplemental budget gap.

The possible goals identified in the previous table and the structure of the credit might suggest the following beneficiaries:

1. Businesses conducting and investing in research and development in the State; and
2. Indirectly, qualified organizations performing research in the State.

Evaluation objectives

The evaluation objectives specify what OPEGA will assess in its evaluation of the Research Expense Tax Credit. The statute governing the full evaluation of tax expenditures outlines a menu of possible evaluation objectives which may include:

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A
(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 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.

For the R&D Credit, OPEGA recommends that the evaluation address each of objectives listed above ((a)-(i)) to the extent warranted based on assessment of the relevance of the objective to this tax credit, the availability of necessary data and the level of resources required.

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA's assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

Performance measures for analyzing evaluation objectives

In accordance with statute, the performance measures used to address the evaluation objectives must be clear and relevant to the specific tax expenditure and the approved objectives. Measures will be addressed in the report to the degree possible based on the level of resources required and the availability of necessary data.

Possible performance measures for GOC consideration
(a) \$ Amount of tax credits claimed (in past and future estimates)
(b) \$ Impact on State budget (revenue loss and net impact)
(c) The number, geographic distribution and income of full-time employees added or retained during the period being reviewed who would not have been added or retained in the absence of the credit*
(d) The number and amount of investments in research and development made by credit recipients during the review period*
(e) Direct and indirect improvement in the economy of the State attributable to activities entitled to a credit under this section*

*Performance measures in LD 977, as amended

§5219-K. Research expense tax credit

1. Credit allowed. A taxpayer is allowed a credit against the tax due under this Part equal to the sum of 5% of the excess, if any, of the qualified research expenses for the taxable year over the base amount and 7.5% of the basic research payments determined under the Code, Section 41(e)(1)(A). The term "base amount" means the average amount per year spent on qualified research expenses over the previous 3 taxable years by the taxpayer. As used in this section, unless the context otherwise indicates, the terms "qualified research expenses," "qualified organization base period amount," "basic research" and any other terms affecting the calculation of the credit have the same meanings as under the Code, Section 41, but apply only to expenditures for research conducted in this State. In determining the amount of the credit allowable under this section, the State Tax Assessor may aggregate the activities of all corporations that are members of a controlled group of corporations, as defined by the Code, Section 41(f)(1)(A) and in addition may aggregate the activities of all entities, whether or not incorporated, that are under common control, as defined by the Code, Section 41(f)(1)(B). [PL 2007, c. 627, §91 (AMD).]

2. Reduction not less than zero. The credit allowed under this section for any taxable year may not reduce the tax due to less than zero. [PL 1995, c. 368, Pt. GGG, §7 (NEW).]

3. Limitation on credit allowed. The credit allowed under this section is limited to 100% of a corporation's first \$25,000 of tax due, as determined before the allowance of any credits, plus 75% of the corporation's tax due, as determined in excess of \$25,000. The assessor shall adopt rules similar to those authorized under the Code, Section 38(c)(5)(B) for purposes of apportioning the \$25,000 among members of a controlled group. [PL 2007, c. 627, §92 (AMD).]

4. Corporations filing combined return. In the case of corporations filing a combined return, a credit generated by an individual member corporation under the provisions of this section must first be applied against the tax due attributable to that company under this Part. A member corporation with an excess research and development credit may apply its excess credit against the tax due of another group member to the extent that that other member corporation can use additional credits under the limitations of subsection 3. Unused, unexpired credits generated by a member corporation may be carried over from year to year by the individual corporation that generated the credit, subject to the limitation in subsection 5. [PL 1997, c. 504, §18 (AMD).]

5. Carryover to succeeding years. A taxpayer entitled to a credit under this section for any taxable year may carry over and apply to the tax due for any one or more of the next succeeding 15 taxable years the portion, as reduced from year to year, of the credit that exceeds the tax due for the taxable year. A taxpayer may carry over and apply to the tax due for any subsequent taxable year the portion of those credits, as reduced from year to year, not allowed by subsection 3. [PL 1995, c. 368, Pt. GGG, §7 (NEW).]

6. Additional rules. The State Tax Assessor shall adopt such rules as are necessary to implement this section. [PL 1995, c. 368, Pt. GGG, §7 (NEW).]

7. Application. This section applies to any tax year beginning on or after January 1, 1996. [PL 1995, c. 368, Pt. GGG, §7 (NEW).]

SECTION HISTORY

PL 1995, c. 368, §GGG7 (NEW). PL 1997, c. 504, §18 (AMD). PL 1999, c. 127, §B9 (AMD). PL 2007, c. 627, §§91, 92 (AMD).

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TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 732, L.D. 977, Bill, "An Act To Restore the Super Credit for Substantially Increased Research and Development"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA §13070-J, sub-§2-A, ¶B, as enacted by PL 2017, c. 264, §10, is amended to read:

B. To assist the department in preparing the comprehensive evaluation of state investments in economic development pursuant to section 13070-P, subsection 1 and to facilitate the evaluation of tax expenditures under Title 3, chapter 37, a recipient of state funding for research and development activities or economic development incentives, including General Fund appropriations, dedicated revenue, tax expenditures as defined in section 1666 and general obligation bond proceeds for economic development, shall, in addition to any other reporting requirements required by law, collect, maintain and provide data as requested by the department, including, but not limited to:

(1) The amount received by the recipient in the preceding year from each economic development incentive;

(2) The total amount received by the recipient from all economic development incentives and economic development programs;

(3) The number, type and wage levels of jobs created or retained in each county by the recipient as a result of each economic development incentive;

(4) Current employment levels for the recipient for all operations within the State;

(5) Any changes in the recipient's employment levels in the State that have occurred over the preceding year;

(6) Investments made in the State by the recipient over the preceding year; and

COMMITTEE AMENDMENT

1 (7) Intellectual property that has been secured by the recipient, including, but not
2 limited to, patents, trade secrets, copyrights, trademarks or other intellectual
3 property as defined by the department by rule.

4 The department shall provide information obtained under this paragraph by January
5 15th annually to the Office of Program Evaluation and Government Accountability
6 for the purposes of evaluation of tax expenditures under Title 3, chapter 37 and, to the
7 extent permitted under confidentiality requirements, to the joint standing committee
8 of the Legislature having jurisdiction over taxation matters.

9 **Sec. 2. 36 MRSA §5219-L, sub-§1**, as amended by PL 2013, c. 502, Pt. J, §1 and
10 affected by §3, is further amended to read:

11 **1. Super credit allowed for substantial expansions of research and development.**

12 For tax years beginning before January 1, 2014, a taxpayer that qualifies for the research
13 expense tax credit allowed under section 5219-K is allowed an additional credit against
14 the tax due under this Part equal to the excess, if any, of qualified research expenses for
15 the taxable year over the super credit base amount. For purposes of this ~~section~~
16 subsection, "super credit base amount" means the average amount spent on qualified
17 research expenses by the taxpayer in the 3 taxable years immediately preceding ~~the~~
18 ~~effective date of this section June 12, 1997~~, increased by 50%. For purposes of this
19 section, "qualified research expenses" has the same meaning as under the Code, Section
20 41 but applies only to expenditures for research conducted in this State.

21 **Sec. 3. 36 MRSA §5219-L, sub-§1-A** is enacted to read:

22 **1-A. Super credit allowed for tax years beginning on or after January 1, 2019.**

23 For tax years beginning on or after January 1, 2019, a taxpayer that qualifies for the
24 research expense tax credit allowed under section 5219-K is allowed an additional credit
25 against the tax due under this Part equal to the excess, if any, of qualified research
26 expenses for the taxable year over the super credit base amount. For purposes of this
27 subsection, "super credit base amount" means the greater of:

28 A. The average annual amount spent on qualified research expenses by the taxpayer
29 in the 3 taxable years immediately preceding the tax year for which the credit is
30 generated; and

31 B. The average annual amount spent on qualified research expenses by the taxpayer
32 in the 3 taxable years immediately preceding October 1, 2019.

33 For purposes of this subsection, "qualified research expenses" has the same meaning as
34 under the Code, Section 41 but applies only to expenditures for research conducted in this
35 State.

36 **Sec. 4. 36 MRSA §5219-L, sub-§2**, as enacted by PL 1997, c. 557, Pt. B, §10
37 and affected by §14 and Pt. G, §1, is amended to read:

38 **2. Amount of super credit allowed.** The credit allowed under this section is limited
39 to 50% of the taxpayer's tax due after the allowance of any other credits taken pursuant to
40 this chapter except that, for tax years beginning on or after January 1, 2019, the credit
41 allowed under this section is limited to 25% of the taxpayer's tax due after the allowance
42 of any other credits taken pursuant to this chapter.

WORKDAY

Annotated Table of Contents for Materials provided to the GOC by DAFS Prepared by OPEGA for the Government Oversight Committee

Section	Description	Links
(A) OVERVIEW		
Appendix A 01	Testimony provided by Commissioner Figueroa to GOC on 4/9/21	Testimony
Appendix A 02	DAFS Orientation presented to SLG Committee Feb 2021; overview of DAFS generally (<i>not specifically related to Workday</i>)	DAFS Orientation
(B) HUMAN RESOURCES		
Appendix B 01	List of names and contact info for each State agency's Human Resources professionals (<i>not specifically related to Workday</i>) [2 pg]	List
Appendix B 02	Results of DAFS May 2020 survey concerning State employee transitions to remote work due to COVID (<i>not specifically related to Workday</i>)	May 2020 Survey
Appendix B 03	Results of DAFS fall 2020 survey concerning State employee wellbeing (<i>not specifically related to Workday</i>)	Fall 2020 Survey
(C) CONTRACTS		
Appendix C 01	Master Agreement between Utah and Workday (Maine signed on to this) (5/18/2017) [176 pg]	Workday Contract
	State of Maine contract with Workday (8 files) (10/2018) Table of contents [1 pg] Participating addendum authorization form [2 pg] Professional services agreement [8 pg] Participating addendum NASPO [5 pg] Order form 161951 for \$7,481,250 [6 pg] Order form 161972 for \$192,634 [4 pg] Order form 00162179 for \$451,055 [8 pg] Statement of work [60 pg] Amendment: June 2019(1) [8 pg] Amendment: June 2019(2) [3 pg] Amendment: Sept 2019 [4 pg] Amendment: Jan 2020 [5 pg]	Contents Auth Form Prof Services NASPO Addendum Order Form 1 Order Form 2 Order Form 3 Statement of Work June 2019 Amend(1) June 2019 Amend(2) Sept 2019 Amend Jan 2020 Amend
Appendix C 02	Contracts with other vendors related to Workday efforts	
	Contract with Kainos for Test Automation (Dec 2018) [75 pg] Amendment: Aug 2020; travel expenses [5 pg] Amendment: June 2020; more testing [8 pg] Amendment: June 2020; more testing [10 pg]	Kainos Contract Kainos Amend(1) Kainos Amend(2) Kainos Amend(3)
	Contract with Panorama for IV&V Services (Dec 2018) [20 pg] Amendment: Jan 2020; change end date [3 pg]	Panorama Contract Panorama Amend
	Contract with Premier for Data Migration (Nov 2018) Part 1 [3 pg] Contract with Premier for Data Migration (Nov 2018) Part 2 [25 pg] Amendment: Feb 3, 2020 Part 1 [2 pg] Amendment: Feb 3, 2020 Part 2 [2 pg] Amendment: Feb 25, 2020 Part 1 [2 pg] Amendment: Feb 25, 2020 Part 2 [2 pg] Amendment: April 2020 Part 1 [2 pg] Amendment: April 2020 Part 2 [2 pg] Amendment: June 2020 Part 1 [2 pg] Amendment: June 2020 Part 2 [2 pg] Amendment: Aug 2020 Part 1 [2 pg] Amendment: Aug 2020 Part 2 [2 pg] Amendment: Dec 2020 Part 1 [2 pg] (includes summary) Amendment: Dec 2020 Part 2 [2 pg]	Premier Contract(1) Premier Contract(2) Premier Amend(1.1) Premier Amend(1.2) Premier Amend(2.1) Premier Amend(2.2) Premier Amend(3.1) Premier Amend(3.2) Premier Amend(4.1) Premier Amend(4.2) Premier Amend(5.1) Premier Amend(5.2) Premier Amend(6.1) Premier Amend(6.2)

WORKDAY

Annotated Table of Contents for Materials provided to the GOC by DAFS Prepared by OPEGA for the Government Oversight Committee

Section	Description	Links
(D) CORRESPONDENCE		
Appendix D	Correspondence between the State and Workday professional services on topics including delays and changes	
	DAFS letter to Workday Re: concerns (May 2020) [2 pg]	May 2020 Letter
	DAFS email to Workday Re: concerns (<i>addressed to George Sui</i>) (Sept 2020) [1 pg]	Sept 2020 Email
	DAFS and Workday email exchange Re: concerns (Feb 2021) [4 pg]	Feb 2021 Emails
	DAFS termination letter to Workday (Feb 2021) [4 pg]	Feb 2021 Letter
	Workday letter to DAFS Re: termination (Mar 2021) [3 pg]	Mar 2021 Letter(1)
	DAFS termination confirmation letter to Workday (Mar 2021) [1 pg]	Mar 2021 Letter(2)
(E) FINANCES		
Appendix E	Project investment to date , including forthcoming budget requests; first page provides a summary of remaining content [17 pg] (Note: pg numbers listed on page 1 are off by one pg)	Finances
(F) ASSESSMENT		
Appendix F 01	IJA Strategies' assessment of the Workday Maine project , PowerPoint summary of findings [10 slides]	IJA PowerPoint
Appendix F 02	Panorama Consulting's Independent Validation and Verification (IV&V) of Workday Maine implementation ; assessed in 5 stages: Plan Phase (1/2019) [11 pg] Architecture & Design Phase (4/2019) [17 pg] Configuration & Prototype (8/2019) [20 pg] Testing Phase (11/2019) [16 pg] Readiness Assessment (3/2020) [23 pg]	IV&V Plan Phase IV&V Architecture IV&V Configuration IV&V Testing IV&V Readiness



MAINE STATE LEGISLATURE

OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

WORKDAY

Overview of DAFS Materials - Prepared by OPEGA for the Government Oversight Committee

(April 14, 2021)

Contents:

- Timeline of Events (pages 2-3)
- Budget Summary (page 4)
- Contracts Overview (pages 5-6)

Note: OPEGA has prepared this Overview of DAFS Materials based on information contained in the documents provided to the GOC by DAFS for the 4/9/21 GOC meeting. OPEGA has not conducted any validation or verification of the information provided by DAFS.

WORKDAY
Overview of DAFS Materials - Prepared by OPEGA
for the Government Oversight Committee

TIMELINE OF EVENTS	
2012-2016	<p>The State created a Steering Committee to determine a strategy for a Human Resources Management System (HRMS), and contracted with a professional services vendor, and a subsequent vendor for additional planning. A Request for Proposal (RFP) was issued to pursue a vendor for an HRMS, but RFP process closed without an award. A subsequent RFP was issued requesting both an HRMS and implementation services. The RFP was conditionally awarded to a vendor named Infor Public Sector (Infor).</p> <p>The contract with Infor was signed, and work commenced on what was officially known as the “SOMER Project” A go-live date of December 2017 was announced, subsequently delayed to December 2018.</p>
2018	
March - June	A number of deficiencies were identified by the State, resulting in a remediation period and subsequent contract dispute. Ultimately, the State canceled for cause the SOMER Project contract with Infor Public Sector.
October	In conjunction with the NASPO ValuePoint procurement process, the State negotiated contracts with Workday for the HRMS software-as-a-service (SaaS) and the professional services.
November	The new project, “Workday Maine,” commenced with the signing of the \$15M Workday contract for professional services implementation and SaaS fees. Planning stage of implementation commenced. A go-live date of January 1, 2020 announced.
2019	
January	Workday Maine project underway with the new Administration, with Workday Professional Services (WPS) moving the State team into the next phase of the project, to define business processes and gain understanding of configuration requirements.
February	WPS confirmed that it could not support the Labor Cost Distribution required by the State, a baseline requirement for Maine’s business model, which WPS had previously indicated they could support.
November	A Change Order in the amount of 1.25M signed, due to expanded scope. The go-live date was moved to April 1, 2020.
2020	
Early 2020	Testing of payroll functionality revealed a greater than 50 percent error rate.
Early March	Due to the testing results and other concerns, the State decided to again delay the go-live date against the recommendations of WPS, and requested that Workday provide more experienced staff to assist in overcoming the challenges the project was facing.
April	DAFS began working on a Change Order to completely redefine the Statement of Work with WPS.
April and May	The DAFS MaineIT Project Management Office undertook review of Workday Maine project governance.
May	WPS removed their staff from the project, but they returned a few days later.
May 15	DAFS Commissioner sent a letter to WPS regarding project failure and methodology. May 2020 Letter

WORKDAY
Overview of DAFS Materials - Prepared by OPEGA
for the Government Oversight Committee

TIMELINE OF EVENTS	
2020 (continued)	
June	WPS changed their project leadership at DAFS' request.
June 29	WPS submitted an initial draft \$350,000 Change Order for services through August 2020. DAFS did not accept the change order. Ultimately more than 40 versions of a draft Change Order were exchanged.
June/July	DAFS began a procurement process for an independent assessor of the project and established the “Department Process Advisory Committee” or “DPAC.”
September 3	DAFS e-mailed Workday regarding concerns with the stalled project. Sept 2020 Email
September 9	DAFS hosted a project re-start “kick-off” meeting with WPS and State of Maine project teams.
September	The State interviewed three potential contractors to perform an independent assessment of the Workday Maine implementation effort, and also initiated conversations with the Office of the Attorney General around WPS contract terms.
September	Project Management Office and Executive Sponsor met with WPS, and indicated that the terms of deliverables-based fixed fee contract required no additional payments for WPS to complete the implementation. Workday disagrees.
November	DAFS selected IJA Strategies to independently assess the Workday Maine implementation effort. WPS had another leadership change on the project.
2021	
February 12	WPS removed its staff from the project again. Correspondence regarding this issue: Feb 2021 Emails
February 25	A letter was sent to Workday Professional Services to alert them of potential termination and a \$22 million reimbursement request. Feb 2021 Letter
March 9	WPS responded, disagreeing with the assertions in DAFS 2/25/21 letter. Mar 2021 Letter(1)
March 31	DAFS sent a letter to Workday Professional Services indicating the State was going to move forward with termination of the Professional Services Agreement and demanded repayment of \$22,164,755. Mar 2021 Letter(2)

Note: Timeline of Events developed from Commissioner Figueroa’s Testimony before the GOC ([Testimony](#)) and correspondence documents submitted to GOC by DAFS (see links in timeline).

WORKDAY
Overview of DAFS Materials - Prepared by OPEGA
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BUDGET OVERVIEW

Budget Summary by Project

	HRMS Pre-work - Needs Assessment RFP Development	SOMER Project	Workday Maine Project			Total
			Workday Maine Project	Workday Continuing Operations	Workday Debt Service	
Initial Budgets		\$ 24,000,000	\$ 15,300,000			\$ 39,300,000
FY12 - FY15	804,922					804,922
FY16 - FY20		13,512,211	17,541,461			31,053,672
FY21			2,412,923			2,412,923
FY21 Supplemental COP financing			8,000,000			8,000,000
FY21 Supplemental budget appropriation			4,695,000			4,695,000
Forthcoming FY22 Supplemental budget request			2,065,848	3,352,830	630,099	6,048,777
Forthcoming FY23 Supplemental budget request				1,105,445	1,311,838	2,417,283
New estimated total	\$ 804,922	\$ 13,512,211	\$ 34,715,232	\$ 4,458,275	\$ 1,941,937	\$ 55,432,577

Budget Summary Timeline

Description	Total
FY12-FY15 - Available appropriations and allocations within Information Services	804,922
FY16 - PL13, c.368, Part KKKK - financing authority up to \$7.5 million for information services (\$4,480,889 used for HRMS)	4,480,889
FY16 - FO 003753 F6, May 23, 2016 - Transferred funding from Statewide Radio, MGFA Debt Service, Bd of Tax Appeals, Human Resources, and BABLO GF accounts to Information Services GF account (\$672,831 was unspent in FY16 - part of FY2017 balance allotted in FO 003987 F7)	-
FY17 - FO 003987 F7, September 21, 2016 - Allotted unencumbered balance from Information Services GF account	2,836,195
FY18 - FO 05069 F18, May 30, 2018 - Transferred funding from BGS Capital Construction and MGFA Debt Service to Central Administrative Applications GF account	1,237,221
FY18 - FO 05070 F18, May 30, 2018 - Transferred funding from Homestead Property Tax Exemption GF account to Central Administrative Applications GF account	3,200,928
FY18 - PL 17, c.284 - one-time funding for the support and decommissioning of the State's current human resources system	704,000
FY19 - FO 05383 F19, November 15, 2018 - Transferred funding from Maine Revenue Services to Central Applications GF account	1,450,000
FY19 - FO 05384 F19, November 15, 2018 - Transferred funding from Homestead Property Tax Exemption GF account to Central Administrative Applications GF account	4,250,000
FY20 - FO 000731 F0, January 16, 2020 - Transferred funding from Information Services and Statewide Radio and Network Systems GF accounts to Central Administrative Applications GF account.	4,372,671
FY20 - PL 19, c.616 - Provides funding for the human resources management system. (FY20 only)	1,900,000
FY20 - FO 000970 F0, May 21, 2020 - Transferred funding from Veterans Tax Reimbursement, Veterans Organizations Tax Reimbursement and Homestead Exemption GF accounts to Central Administrative Applications GF account.	464,619
FY21 - PL 21, c.1 - Provides funding to support the implementation and ongoing maintenance costs associated with the new human resources management system. (FY21 only)	4,695,000
FY21 - PL 21, c.1, Part J - financing authority up to \$8 million for a human resources and payroll system	8,000,000
FY22 - LD 221 budget request for Workday Human Resources Management System	6,048,776
FY23 - LD 221 budget request for Workday Human Resources Management System	2,417,283
Credit from Information Services (038)	1,306,693
FY16-23 funding available from Central Administrative Applications (Z234) baseline	7,263,380
	55,432,577

Note: Budget Overview material excerpted from document submitted to GOC by DAFS: [Finances](#)

WORKDAY
Overview of DAFS Materials - Prepared by OPEGA
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CONTRACTS OVERVIEW		
Workday, Inc.		
Contract term: 10/22/18- 6/1/23		
Date	Description of Contracted Services or Change	Amount
10/2018	<p>Contracted services: Cloud application for Payroll, including:</p> <ul style="list-style-type: none"> a) Human Resources; b) Compensation Management; c) Absence Management; d) Benefits Administration; e) Payroll Administration; f) Time Tracking; g) Financial Cross Function; h) and Mobile Enablement. <p>Scope of work to include: Product/functionality; integrations; authentication configuration, data conversion; worker population, languages, localization; reports; and configurable domain security within Workday.</p>	\$15,309,695
6/2019	Change order: 4 new integrations introduced to the scope of work	\$58,604
9/2019	Change order: Addition of a new deployment tenant to maintain the Supervisory Organization.	\$72,000
1/2020	Change order: Additional project management resources; additional post-production support services; additional test cycle for payroll parallel simulation; and Scope addition of data conversion.	\$1,250,000
TOTAL		\$16,690,299
Kainos Worksmart, Inc. (Software testing consultancy)		
Contract Term: 7/1/2019- 6/30/2022		
Date	Description of Contracted Services or Change	Amount
6/2019	<p>Contracted Services: Software testing services for Workday project implementation and production, including:</p> <ul style="list-style-type: none"> a) End to end testing prior to implementation; b) Testing production upgrades and weekly patching; and c) Testing of business process work flows. 	\$677,404
7/2019	Change Order: Amendment for additional end-to-end testing services	\$101,460
7/2019	Change Order: Amendment for testing services through go-live date.	\$107,685
8/2020	Change Order: Adjustment for travel expenses.	\$5,204
TOTAL		\$891,753

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CONTRACTS OVERVIEW		
Panorama Government Solutions (Independent verification & validation provider)		
Contract Term: 12/17/18-1/15/20		
Date	Description of Contracted Services or Change	Amount
12/2018	Contracted Services: Independent verification and validation (IV&V) services, including review of: <ul style="list-style-type: none"> a) Program and product management; b) Financial management; c) Schedule management; d) Risk/issue management; e) Communication management; f) Roles and responsibilities; g) Governance oversight; h) Metrics and status reporting; and i) Vendor management. 	\$147,500
1/2020	Change Order: Revised Workday go-live date led to changes to the IV&V timeline.	\$0
	TOTAL	\$147,500
Premier International Enterprises, Inc. (Data migration service provider)		
Contract Term: 11/5/18-1/15/20		
Date	Description of Contracted Services or Change	Amount
11/5/18	Contracted Services: Data migration services to move data from MFASIS (legacy system) to Workday.	\$440,000
2/3/20	Change Order: New tasks and consulting activities due to modified implementation date for Workday and additional data conversion test cycle.	\$85,000
2/26/20	Change Order: New tasks due to modified implementation date, to include the Gold Tenant Build and payroll history data loads.	\$79,800
4/5/20	Change Order: To ensure support can continue to be provided past the current contract end date of 4/5/20, due to delay in production cutover date.	\$100,800
6/30/20	Change Order: To ensure support can continue to be provided past the current contract end date of 6/30/20, due to delay in production cutover date.	\$84,000
8/31/20	Change Order: To ensure support can continue to be provided past the current contract end date of 8/31/20, includes: Payroll parallel build to support Department for period of time not included in previous change order and additional financial conversions.	\$289,800
12/31/20	Change Order: To ensure support can continue to be provided past the current contract end date of 12/31/20, due to delay in production cutover date, includes: a) Continued data quality enhancements for legacy system; b) prepping for payroll parallel build; c) generating payroll history; d) time entry and pay input files; e) working with agencies and the data team to clean legacy data; f) building files for payroll parallel.	\$321,300
	TOTAL	\$1,400,700

Note: Contracts Overview prepared based on Contract documents submitted to GOC by DAFS.