



SEN. ROGER J. KATZ, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. CHRISTOPHER K. JOHNSON  
SEN. DAVID C. BURNS  
SEN. PAUL T. DAVIS, SR.  
SEN. BILL DIAMOND  
SEN. STAN GERZOFSKY  
REP. MICHAEL D. MCCLELLAN  
REP. RICHARD H. CAMPBELL  
REP. ROBERT S. DUCHESNE  
REP. ANNE-MARIE MASTRACCIO  
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

**July 17, 2015**

**Accepted August 20, 2015**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Cross Office Building.

**ATTENDANCE**

Senators: Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis and Sen. Diamond  
Joining the meeting in progress: Sen. Gerzofsky

Representatives: Rep. Kruger, Rep. McClellan, Rep. Duchesne, Rep. Mastraccio and  
Rep. Sanderson  
Joining the meeting in progress: Rep. Campbell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Etta Connors, Adm. Secretary, OPEGA

Agency Officers and Staff Providing Information to  
the Committee: Matthew Dunlap, Secretary of State

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

Chair Katz said, although it was not specifically on the agenda, he would like Director Ashcroft to summarize the status of the Good Will – Hinkley review because of the degree of public interest.

Director Ashcroft said OPEGA had been receiving a lot of inquiries as to whether they would be speaking to the GOC about the review at this meeting. She said OPEGA has started the review, so far has had good response and cooperation from those they have reached out to and she has no indication that OPEGA will have anything other than that as they move through the review. Consequently OPEGA does not require the GOC's assistance in any way at this time. She anticipates the Good Will – Hinkley report will be released to the GOC at its September meeting.

## SUMMARIES OF THE JUNE 12 AND JULY 1, 2015 GOC MEETINGS

The Meeting Summaries of June 12, and July 1, 2015 were accepted as written.

### NEW BUSINESS

None

### UNFINISHED BUSINESS

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

- **Department of Economic and Community Development Response to Outstanding Actions as of April, 2015**

Director Ashcroft noted that at a previous meeting she gave a history of what had transpired with the recommendations in OPEGA's 2006 Economic Development Programs in Maine Report. The goal of that presentation was to start a conversation with this GOC about whether they wanted to take any particular action to initiate the implementation of those recommendations. The Committee had questions for George Gervais, Commissioner, Department of Economic and Community Development (DECD) and said they would like to have his input. The GOC wanted to invite Commissioner Gervais and members of the Labor, Commerce, Research and Economic Development (LCRED) Joint Standing Committee to a GOC meeting for the discussion. Director Ashcroft said that in keeping with the Governor's stance in past interims, it seemed Commissioners were not being allowed to participate in meetings with legislative committees. The Commissioner has said he cannot attend the GOC meeting, but DECD is willing to respond to any questions the GOC has in writing. She prepared and sent to DECD a list of questions that she thought would be pertinent to the Committee's work. (A copy of Questions Submitted to DECD on behalf of GOC regarding Status of Actions on OPEGA Recommendations Not Fully Addressed from 2006 Report on Economic Development Programs is attached to the Meeting Summary).

Director Ashcroft noted that she requested that DECD respond to the questions for the Committee's August meeting and she asked if there were additional questions Committee members had that they wanted her to send to DECD. She also contacted the LCRED Committee and while they are interested in the matter, they preferred to wait until the GOC was further into its process, before potentially attending a GOC meeting.

Director Ashcroft referred the Committee to the Recommendations Not Fully Addressed as of April 2015 document in their notebooks and summarized that document for them. (A copy is attached to the Meeting Summary).

Director Ashcroft also noted that members of a previous GOC wanted to try to introduce legislation to implement OPEGA's recommendations that had yet to be worked on. She thinks that is where this Committee was looking for DECD's input and asked if there were specific questions the members of the Committee wanted her to forward to DECD.

The GOC's questions and comments included:

Rep. Sanderson asked for clarification on Finding 5: Data Collected Does Not Provide Clear Picture of Results and asked if DECD had individual entities that were contacted to provide the information and it just has not been forthcoming. Director Ashcroft said at the time OPEGA wrote the Recommendation, DECD had a process where certain businesses that were recipients of benefits under certain programs had to file an annual report. It was usually a one page report that included their revenues, number of employees and investments they had made. She said not all businesses, and in fact a fairly low percentage of businesses,

were complying with the annual reporting requirement and the information that was being provided was not helpful for trying to look at what had actually been achieved, or related to a particular economic development program. Director Ashcroft said as a result of OPEGA's review they established, in statute, the requirement that there be a biennial independent evaluation of economic development programs. DECD contracted with an independent evaluator and also the Research and Development Evaluation was already ongoing at that time. As part of the evaluation, the evaluators sent out a survey to businesses looking for different information about their use of economic development programs in the State of Maine. She said the response rate back from businesses to those evaluators was low and not sufficient to draw conclusions on any individual programs.

Sen. Johnson said there definitely needs to be some legislative response to the shortcomings, but thought DECD's responses to questions asked by the GOC/OPEGA was needed first. He also said it was important to get LCRED's input prior to introducing legislation.

Sen. Davis referred to C in Finding 4: and asked if it was correct that it appeared there has not been a report filed on Pine Tree Development Zones to the Legislature. Director Ashcroft said it appears there has not been a specific report on Pine Tree Development Zones that has been filed annually. She said in DECD's first comprehensive evaluation, the evaluator was asked to look at Pine Tree Zones and there is a piece in the 2008 Report that covers Pine Tree Zones, but she did not think the intent of the statute has been met every year. OPEGA has not specifically asked DECD to provide all of the annual reports on Pine Tree Development Zones, but said she did not see the reports on DECD's website. Sen. Davis asked the Director if she could ask DECD for those reports. She will do so.

Sen. Diamond noted that the status for some of Findings 1 through 6 that no action has been taken to date and he has concerns about that. He mentioned that business groups in one of his communities had interest in working with DECD, but did not receive a good response from them. He is concerned about what is going on in the Department and also what appears to be their lack of wanting to provide information to businesses. Director Ashcroft said over the last two years OPEGA has been closely monitoring and working with DECD trying to understand what actions have not been taken on the Findings and they have been very responsive. She thinks it is a matter of DECD trying to wrap their arms around the whole thing and it is not something they find they have a lot of time to do.

Sen. Diamond asked if DECD was taking OPEGA's recommendations seriously. Director Ashcroft said when OPEGA brings them to their attention again, they do, but it is one of those things that keep falling off the plate. Economic development programs are spread throughout different agencies and DECD is only one department that oversees them. That is why OPEGA recommended a portfolio coordinator. Sen. Diamond agreed that LCRED should be involved in the GOC's process.

Rep. Duchesne said the fastest way to get a response is to put in a bill to kill funding. He thinks the problem is also due to legislative term limits and gave LCRED as an example. A certain number of members never heard of the programs before arriving at the State House and then there are members who are 4<sup>th</sup> termers who know the programs but are about to leave and cannot follow through on any of the results. He said follow-up is something the Legislature is not particularly good at so there needs to be some mechanism to deal with this over a longer period of time.

Rep. Mastraccio, a member of LCRED, said when economic development programs come before the Committee one of the issues is that the preliminary report from the independent evaluation was not exactly what everyone expected and then the final report came out when the Legislature was not in session at the end of the 126<sup>th</sup> so then you have a whole new Legislature. She liked the idea of a portfolio coordinator because that will overlap all of those things. She noted that a lot of legislators come before LCRED sponsoring an economic development program and said nobody wants to look at the data because everybody wants the program to work and it is what the community wants. Rep. Mastraccio asked how many of the issues will be addressed by LD 941. She is hoping some will, because there is no way the Appropriations and Financial Affairs (AFA) Committee can do their job without more information. LCRED has requested information on

programs, but never receives it and noted they had that problem this session with the New Markets Tax Credit so it is currently in limbo. She said politics get in the way and the problem has been going on for a long time, and if something is not done, the problem will continue long into the future.

Sen. Johnson said there needs to be accountability and if the Legislature cannot get information of what is happening in the programs they cannot do their jobs. He thinks if businesses do not provide necessary and adequate information to determine whether it is a good investment and use of tax payer money, they should no longer qualify for that benefit. He said Director Ashcroft's questions to DECD is a good first step and agrees the GOC should involve LCRED.

Chair Katz noted it is difficult for the Committee to do its work without DECD's input and knows the Commissioner would be willing to attend a GOC meeting. He said the State is spending just as much money on economic development programs as on tax expenditures. He has suggested at a past GOC meeting that perhaps evaluation of the economic development programs could be brought into OPEGA's work on tax expenditures and that is a conversation he would like to have with Commissioner Gervais.

Director Ashcroft noted that DECD is not doing the evaluations for their own purposes, but are doing it to report to the Legislature as required by statute. It seems DECD is having a hard time figuring out what legislators would want for information.

Rep. Mastraccio said she didn't understand why DECD would do something and not use it to their benefit. She thought they were doing it not only to prepare a report, but wanted to find out the information to help make their program better. Director Ashcroft thinks it was their original intent to do that, but then they had a change in personnel.

Rep. Duchesne suggested putting all of the programs in a hat and pick out one to kill so it would go through a hearing and we could see what happens. You could see if information would come forward through that process and it would not require the committee to be familiar with all the programs, or even how they worked, it would just look at that one program. He said he was brainstorming on how to get the Legislature's arms around the programs in any kind of fashion where the people who start the process are still here 8 years later.

Chair Katz asked Director Ashcroft if she knew how much more of a demand it would be on OPEGA staff time than what they are already beginning to do with tax expenditure reviews. Director Ashcroft said OPEGA has not done a tax expenditure evaluation yet so she really did not know how time consuming those first ones will be and as of now, she is just basing her estimates on what other states have told her they are spending for time. She expects the first few reviews to be rough, but hopes the ones following will go more quickly. Director Ashcroft did not have a good benchmark for judging how much more time would be required to do reviews of other economic development programs as well.

Director Ashcroft said there are 59 programs covered by the two evaluations DECD was required to conduct with 20 of those being tax expenditures. So it would be adding another 39 programs. She said OPEGA's current schedule of full evaluations for tax expenditure programs has 31 spread out over 6 years. There are other tax expenditures where OPEGA is going to support the Taxation Committee by providing information for them to use in an expedited review of all the other tax expenditures. She said to answer the Chair's question, she guesses OPEGA would need at least one additional resource.

Chair Katz said he has not looked at the numbers, but knows DECD is spending a fair amount of money on its own for these evaluations so if you were to fold the economic development programs into tax expenditures you would be spending less money. Director Ashcroft said the estimate for bringing two staff on to OPEGA to do the tax reviews is about \$200,000 per year, but she could not remember what DECD had spent on their most recent report. She thought it was \$300,000 or \$400,000 to accomplish both of those reports.

Sen. Johnson said it seems what we should be doing is determining what the purpose of the tax benefit is, how well that has been achieved and how reasonable the amount of money is that is being given out was to

accomplish that goal. He would expect the department itself, even if they are hiring it out, would look at how to make programs more effective, efficient and to make sure there is not unreasonable overlap between different programs and objectives. He said it should be obvious to DECD that presenting a value proposition should be part of their job and then they should be able to show strong economic development as a result of the investments. That is something they should be able to show and demonstrate when justifying their budget, and if they can't, then something is wrong.

Director Ashcroft said the current evaluations, under statute, requires an evaluation of all programs every two years. By virtue of that to some degree when DECD develops what the work has to be to accomplish that, they are doing a macro level evaluation. The goal to some degree is to assess the total contribution of all the programs toward the State's economic development strategy and goals and they are trying to capture information about all 59 programs. That is different than what OPEGA has set out in tax expenditure program reviews which is to take one program at a time and dig deep into that program. Director Ashcroft said it is very difficult for any evaluator to capture all the individual level specifics in one evaluation when you are also doing the macro level review. She thinks the independent evaluators are working on the macro level evaluation and then trying to stuff some individual program things in along the way. In the end you don't have enough time to do any of it as well as you might have. She thinks the evaluators have had a hard time with the macro level evaluation because they can't seem to determine what the State's overall economic development strategy and goals are. The State does not have an economic development strategy and OPEGA could not find it back in 2006 either. To some degree they are set up to be ineffective in their evaluation efforts.

Rep. Sanderson said no matter what evaluation you try to come up with, unless there is a complete set of data, the evaluation is mute, you cannot depend, or rely on, any numbers when you do not have adequate and complete data. She asked if it would be appropriate to inquire from DECD what they feel they need for resources to actually have a portfolio coordinator who will work to make sure that the individuals who are receiving the benefits of the economic development programs report back in accordance with the program guidelines. In order for any Committee to be able to do its work you have to have accurate data and the percentage of reporting back is so low, there is no way you would get a handle on it until that basic core piece is worked on.

Sen. Burns compared it to going on a trip that you know is going to cost a lot of money, but you don't know where you're going, don't know when you get there and don't know if it is the right place. He said the State is spending lots of money, but they are not taking due diligence to account for it. He noted that the GOC's discussion has been kind, but the bottom line is it needs to be done and the Legislature is offering the resources. Something needs to be done because what is being done now, is not working.

Chair Katz referred back to the questions Director Ashcroft drafted to DECD and said the Committee will get written answers for their August meeting and that will generate other thoughts. He asked if there were other suggestions for questions to DECD.

Chair Katz said he would ask DECD about what they see as the advantage, or disadvantage, to folding evaluations of economic development programs into the tax expenditure process.

Sen. Diamond asked how DECD can be more effective and helpful to local businesses who are trying to get their assistance.

Chair Katz said he understands DECD is somewhat frustrated in the fact that they ask for information from businesses and businesses just choose not to give it to them. What kind of statutory changes would they recommend so they could get the kind of information they need in order to do their work.

Rep. Mastraccio said she looked at the preliminary report from 2014 and it was clear that was the big issue. Businesses, even though they are supposed to report, and even though 1,500 requests for information was sent out, they got back about 5 for this particular incentive program. She said she just checked online for when

Director Ashcroft presented LD 941 before the Taxation Committee, for any written testimony and found none on record from DECD. Rep. Mastraccio noted that when economic development programs come before LCRED often times DECD is not at those public hearings to present testimony on why programs were good, etc.

Sen. Johnson said that was a good observation and it concerns him because what it touches upon is a question of what the Department's actual goals are. The fact that they don't have that overall economic development objective well defined may be a huge part of the problem, but from all outward appearances it seems DECD feels its job is to give away money and to be a cheering squad for business rather than someone that looks at the facts and figures and what the economic expectations are and whether they are being fulfilled. If that is not being fulfilled, what should be done differently? What their objective is from an outside appearance is troubling and he hopes to get their participation in telling the GOC what it is they are going to do about setting that overall economic objective for the State of Maine and what they need for legislative assistance in order to get the information in hand to do the job right.

Director Ashcroft said in DECD's defense, she wanted to remind the Committee that there is only a percentage of what is currently the 59 economic development programs in the inventory that are administered by and are seen as the responsibility of DECD. The rest reside in other agencies and departments in the State. She thinks part of the problem is a jurisdictional one and she is not sure DECD has fully brought into its role, for example, to set goals and objectives and to be monitoring the programs that exist in the other Departments. That may be why they took no interest in some of the programs brought before LCRED. She said part of the issue in the past is that they only have responsibility for a certain number of the economic development programs. OPEGA ran into that when starting its review of economic development programs and found there are many different committees of jurisdiction who had something related to an economic development program.

Rep. Duchesne suggested that the GOC focus on programs just under DECD. He said the Committee needs to find out if they are on the same page as the Executive Branch because he thinks all would agree, no matter what party you are in, that good, efficient and workable programs are something that everyone wants and he thinks the Executive and Legislative Branches would agree to that. He would reissue an invitation to Commissioner Gervais to attend a GOC meeting and then if the invitation is refused at least they will know that the Legislature is on their own.

Rep. Campbell said the reporting accountability could be looked at a couple different ways. One as a burden, but also as an opportunity to make the results of a particular program expand to other programs as an example of how to get more money. He said they need to convince the Department that this is an opportunity to get more of what is working, instead of being reprimanded for something that is not working.

Sen. Gerzofsky said he was concerned and confused about all the programs outside of DECD's preview. He said many years ago before 911 they had Maine Emergency Management throughout different joint standing committees and the Legislature put them all in one place so there would be one central location for a depository to figure out all the needs. He asked if there was any possibility of reshuffling the deck and trying to get more of the outlying ones oversight under DECD. Director Ashcroft said that is essentially what OPEGA recommended in its 2006 Report. When OPEGA reviewed DECD's statute, and there were a number of members on the AFA Committee at that time that had been around for the establishment of DECD, it became clear that is what was originally envisioned for DECD to do. It almost seems the problem is more of how to fold-in everything that was originally intended to happen under DECD than it is to recreate it. She said OPEGA can take another look at the statute, but that was the original legislative goal, to some degree, of creating the Department.

Sen. Gerzofsky said looking at that would also require looking at the resources that it would take to do that. He said Maine has recently gone through a substantial recession and have cut State government and a lot of agencies are understaffed still. If the Committee is going to look at doing anything like that, they also have to look at the resources.

Sen. Diamond said he was curious about Commissioner Gervais not being at the GOC meeting and asked if the invitation was made and refused, or was it just an assumption that Commissioners are not allowed to go to any legislative committee meetings. Director Ashcroft said she invited DECD to attend the meeting and was told they would not be able to attend the meeting, but they would be happy to respond to everything they got in writing.

Chair Katz said the plan is for Director Ashcroft to send the GOC's additional questions to DECD and asked if she knew when the Committee could expect their responses. Director Ashcroft said she had indicated to DECD that she would like to have their responses for the August meeting.

Chair Katz asked if there was objection to taking an item out of order. Hearing none, the Committee moved to **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report – Monthly Report Back From Secretary of State Dunlap on Records Retention and Management Efforts.**

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report**
- **Monthly Report Back From Secretary of State Dunlap on Records Retention and Management Efforts**

Secretary Dunlap summarized his Second Interim Report on Implementation of the Report on Records Retention and Management. (A copy of Secretary Dunlap's Report is attached to the Meeting Summary). He noted that at the June, 2015 GOC meeting he gave a verbal update and did not provide a written report because the members of the Stakeholders Group were not firmed up and he did not think it was appropriate to give the Committee a written report that didn't say anything.

The GOC's comments and questions included:

Sen. Johnson asked if the Secretary has had any discussion with the Governor's Office regarding their appointment to the Advisory Board. Secretary Dunlap said it was still pending.

Chair Katz asked if the requests that were sent out for submission of the records officers' names, etc. included a request for a reply by a particular date because he did not know whether the 30 replies received was a good response or not. Secretary Dunlap believes they requested a reply by July 13<sup>th</sup> so the response was not bad considering where they started a couple of years ago on the project and found that almost no agencies had designated records officers or, if they did, the records officers didn't know what their roles were. Archives will continue to follow-up with agencies that have not yet responded. He said Tammy Marks, Archives Director, has been working hard on it over the last couple of years and has made concerted efforts in reaching out to State agencies so they would understand what their roles are in records retention. Secretary Dunlap said earlier in the week they had a contingent from Revenue Services interested in records retention and archival services and MRS came for a tour of Archives, so it appears some are taking records retention seriously. He said Archives welcomes agencies to tour their facility and invited members of the GOC to Archives for a tour.

Secretary Dunlap said the discussion earlier in the meeting regarding the work of the GOC/OPEGA shows the importance of keeping public records and having access to data and information. The work they have been doing on an ongoing basis has been amplified by the work of the GOC to ensure that they are getting the right training and information to folks who are taking that work seriously.

Chair Kruger said he wanted to salute the Secretary's staff because he thought it looked and felt like progress was being made. He suggested that the members of the Stakeholder Group be given a brief refresher of how the records retention and management issues came to be in OPEGA's review of the Healthy Maine

Partnerships so not to lose the history of it and to reinforce its importance. He thanked the Secretary's staff for their progress

Rep. Campbell said he was intrigued that the records officers over time have been confused about their roles, goals or objectives. His question was how long have they been confused and, although it seems to be going better, what is going to be the difficulty in getting them up to speed. Secretary Dunlap said the nature of information they deal with has changed dramatically in just the last 10 years. Many of the records they have in Archives are primarily paper documents, and they began to understand the crux of the problem they had about 15 or 20 years ago when it was discovered that some of the magnetic disks that Archives had containing vast amounts of information had become naturally corrupted over time. They were never meant to last forever. There were vertical columns of information had been lost and that is where Archives directed their energy. Sneaking along silently with that was the difficulty in State budgeting and the re-shifting of priorities along with the different demands on State agencies from the public. Secretary Dunlap said one of the things that happen in front of the AFA Committee when they are looking at budget cuts, the Committee would ask if he could continue his agency's current functions with a little bit less in terms of resources. He said you try to give an honest answer, but it becomes a cascade after a while that builds to a critical mass and then you get to a point where training has not been provided and agencies have not been making records retention a priority because the reality is when someone leaves a back door open in the Archives and it fills up with beetles, that is what you have to worry about at the time. It has happened over the last several decades. It used to be easy to define what were the primary documents critical to the operations of the State that are archival in nature, but now you have a series of email strings and the explosion and use of the Freedom of Access requests. It has rapidly evolved and what has made it more difficult is the absolute mathematical reality that more information had been created since 2008 than was created in all of human history before that. Archives is grappling with how to sort that, catalogue it and make it available to people who need it in order to do their business.

Rep. Sanderson asked of the 30 records officers that responded to Archives, were they from all different departments or do some departments have more than one officer. She asked what the Secretary's Office was doing to follow-up on the agencies who did not respond by July 13<sup>th</sup>. Secretary Dunlap said the number of records officers in an agency depends on how the agency is constructed. For example DHHS is a very large agency with a lot of modules to it so to have one records officer for that agency is a lot to ask. The 60 entities do include multiple officers in some entities. Secretary Dunlap answered Rep. Sanderson's question of follow-up and said Archives sent out additional emails and memoranda. He said it is difficult, especially in the height of vacation season, to get as timely a response as they wish, but they will continue to follow-up and make sure that records officers are actually in place where they should be and that their duties have not been shifted to someone else. Also to make sure any new people in the other 30 agencies not heard from yet have training available to them.

Rep. Sanderson asked if the Secretary found any vacancies that they didn't know about. Secretary Dunlap said he could not speak to that because they have only heard from half of them, but the 30 they did hear from he believes were all the same as they were before. Archives will be following-up on that.

Rep. Duchesne said when Secretary Dunlap said he has not received a communication from the Governor's Office of who will represent that Office on the Working Group, does he mean he received a communication that they will name somebody, or is it just he has not heard anything at all. Secretary Dunlap said they have heard back and talked with Mr. Libby in the Governor's Office who said they would follow-up and try to get somebody.

The members of the GOC thanked Secretary Dunlap for his report and for answering their questions.



- **Response from Governor's Office to GOC's letter**

Director Ashcroft reminded the GOC of the letter it sent to Cynthia Montgomery, Chief Legal Counsel, Governor's Office, asking for the Chief Executive's participation in getting the agencies on track with what they needed to do with records retention. In that letter the Committee had asked for a response back by June 30, 2015. She said she has followed-up with Ms. Montgomery, who has been involved in other pressing matters, so has not responded yet. Director Ashcroft said she does expect a response at some point.

• **Revised 127<sup>th</sup> Maine Legislature Government Oversight Committee Rules of Procedure**

**Motion:** That the Government Oversight Committee approves the revised 127<sup>th</sup> Legislature GOC Committee Rules. (Motion by Rep. Campbell, second by Rep. Sanderson, passed unanimous vote, 12-0).

• **Tax Expenditure Review**

- **GOC Consideration of OPEGA's Recommendations for Tax Expenditure Review Classification and Schedule as Required by LD 941**

Director Ashcroft said LD 941 is now P.L. 344 and establishes the ongoing legislative review process for tax expenditures that involves both the GOC and OPEGA. One of the requirements under the new law is that the GOC, in consultation with the Taxation Committee, approve the classification of the tax expenditures to the various review categories and also approve the ongoing schedule for review. Both of those items are to be done by October 1, 2015.

At this meeting the Director wanted to review with the GOC what that means to the Committee and to start the discussion and process to be able to approve the actions that need to be taken at their September meeting.

Director Ashcroft said in its proposal to the Legislature for the tax expenditure review process, OPEGA proposed a potential classification of all of the tax expenditure programs into the review categories. Those categories are full evaluations, expedited reviews or no review, OPEGA also proposed a schedule. She referred Committee members to OPEGA's Proposal for Legislative Review of Maine State Tax Expenditures Proposal. (A copy of the Proposal can be found at <http://legislature.maine.gov/uploads/originals/final-proposal-for-legislative-review-of-tax-expenditure.pdf> or a copy can be obtained by contacting OPEGA).

Director Ashcroft proceeded to Table 1. Tax Expenditure Rationales – Developed and Assigned by OPEGA and Table 2. Number of Expenditures by Review Category and Rationale in that proposal. She described that OPEGA classified the tax expenditures into the various review categories by first trying to put them in particular rationale categories. Table 1 lists the different rationales and their descriptions. Table 2 shows how many tax expenditures fell into each of the rationales and what category of review OPEGA put them in in terms of overall numbers.

Director Ashcroft noted that OPEGA recommended putting 31 tax expenditures in the full evaluation category, 84 in the expedited review category and 81 for no review (see p. 3 of Proposal). She said that is one of the decision points the GOC, in consultation with the Taxation Committee, will need to agree on. That they like the classifications that OPEGA has assigned to the tax expenditure, or to decide what changes they want to make to the classifications.

Director Ashcroft said another decision to be made is about the schedule for evaluations. She referred the Committee to p. 13 of the proposal, Table 4. Tax Expenditure Review Schedule Summary which gives the high level overview of how OPEGA developed the six year schedule for review. Director Ashcroft said OPEGA tried to group together the reviews of tax expenditures that seemed to have similar goals or rationales. The schedule OPEGA is proposing calls for the Office to conduct full evaluation of 4 programs in 2016, all of which have "business incentive" as their primary rationale with a sub-rationale of "job creation".

In 2016, there would be 4 of those and then OPEGA would also supply the required information in support of the Taxation Committee on the 13 tax expenditure programs up for expedited review that are related to the rationale of “necessity of life”.

Director Ashcroft said she tried to set it up so that in each year the total full evaluations and the expedited reviews that OPEGA needs to do would result in a fairly even workload for OPEGA based on what it looks like the complexity of the programs are that are involved. She said what the Committee could do would be to swap one group of expenditures for another. For example, the proposed schedule calls for starting with business incentives that have job creation as their purpose, but the schedule could start instead with Business Incentives that have equipment investment and research investment as their main purpose. Those are currently scheduled for 2017. If the GOC wanted to do that, she would propose moving everything that is related to that group up a year and exchanging 2017 for 2016 in Table 4.

Rep. Mastraccio asked what year the New Market Tax Credits was in. Director Ashcroft said that it was in the proposed schedule for 2018. Rep. Mastraccio said the New Market program is a real issue and the LCRED Committee attempted to try to get that evaluated through a bill and that did not happen. She also has concerns with the Pine Tree Development Zones. The Legislature will be discussing that expenditure sooner rather than later because it is due to expire. She is concerned the Legislature will not have the data they need to evaluate it.

Chair Katz asked if the Committee decided that the top priorities were Pine Tree Zones because of their pending expiration and then New Market Tax Credits because of the recent history, would that be too much to review. Director Ashcroft said no, she would just try to mix and match it with a couple other programs that made sense to group together.

Chair Katz asked if OPEGA had reached out to the Taxation Committee with the initial Proposal, or to let them know what has to be done. Director Ashcroft said she has not yet and wanted to talk about with the GOC about how to accomplish that. She said she could provide the information as it is and ask for the Taxation Committee’s ideas, or she can take the GOC’s ideas and pass them along at the same time. She asked for the GOC’s opinion on that. Director Ashcroft said she could also try to get a subcommittee of the Taxation Committee to come to a GOC meeting.

Director Ashcroft referred members to Appendix G and said the Committee needed to decide whether they like the proposed classification of the tax expenditures and then they can discuss scheduling matters.

Chair Katz asked what criteria Director Ashcroft used in deciding that an expenditure would not have any review. Director Ashcroft said if the tax expenditure had an estimated fiscal impact of more than \$50,000 for fiscal year 2015, and it looked like its purpose was to incentivize something, almost all of those went into the full evaluation category. For an explanation of other criteria, she referred to p. 9 of the Proposal.

Rep. Mastraccio asked what the process will be down the road. Once they give OPEGA the list, it is not like the Legislature is not going to have any new laws and tax expenditure programs. She asked if they would automatically be discussed and assigned a place as they come into being. Director Ashcroft said that was also contemplated under the new law. Annually, every October 1<sup>st</sup>, the GOC will review the classification and discuss tax expenditures that had been enacted, repealed or adjusted. OPEGA will be highlighting those with their suggestions for the Committee.

Sen. Johnson asked what role will they have in making recommendations to ensure that the necessary data for the evaluations will be designed into programs in the future. He thought that should be something the Legislature would try to do during the hearing process so it is not forgotten. Director Ashcroft thinks the process is going to be an evolution so as OPEGA starts work on the first evaluations, hopefully they will get fortunate with some and there will be data available they can use. But, she fully expects OPEGA is going to be unfortunate with some in that there will not be data to support the performance metrics they would like to look at. They will be making recommendations that they need this data going forward and here is how we

think it should be captured. OPEGA is going to try to do some of that work upfront as part of agreeing with the GOC on what the evaluation objectives are for each expenditure and what particular quantitative metrics we will be trying to capture around it, but sometimes OPEGA may not recognize that until they are into the review. As OPEGA does more reviews hopefully the awareness will build among legislators and others that when we get ready to do new proposals for tax expenditures, those things will be thought about.

Director Ashcroft proposed that before the next GOC meeting the members of the Committee look at the classification proposed in Appendix G and decide whether they agree with them. She will send the members the same Table that is in Appendix J but will add a column for the dollar amount so the Committee can have that information when reviewing the proposed schedule. Director Ashcroft said if any members have their comments ready before the August meeting, it would be great if they emailed them to her. Director Ashcroft will also reach out to the Taxation Committee and walk them through the same process and ask them to do the same.

Chair Kruger said he knew that there had been a lot of conversation and concern about the confidential tax payer data issue and asked if Director Ashcroft was in a better place in terms of her comfort level on how that dynamic is going to work. Director Ashcroft said they worked hard on the legislation with Maine Revenue Services and with the Maine Chamber of Commerce to try to address all that they could of the confidentiality issue. She thinks they all got to a place where they felt comfortable and anything people still felt they lack clarity on, would play itself out as OPEGA started doing evaluations. If there are additional issues that arise, OPEGA will deal with them in the context of the evaluation.

#### • Update on Bills of Interest

- LD 6 - Resolve to Implement Recommendations of the Government Oversight Committee To Strengthen the Ethics Practices and Procedures for Executive Branch Employees
- LD 237 - An Act To Address Recommendations From the Report by the Office of Program Evaluation and Government Accountability Regarding the Public Utilities Commission
- LD 297 - An Act To Increase Allowed Investments Under the Maine New Markets Capital Investment Program
- LD 941 - An Act To Improve Tax Expenditure Transparency and Accountability
- LD 1347 - An Act to Implement Recommendations of the Government Oversight Committee To Clarify That Competitive Bid Provisions Apply to Grant Awards
- LD 1349 - An Act to Establish the Office of the Inspector General in the Department of Health and Human Services
- LD 1395 - An Act To Implement the Recommendations of the Government Oversight Committee To Ensure Legislative Review of Reports Submitted by Quasi-independent State Agencies

Director Ashcroft gave the final status for the above LDs. (A copy of the Status of Bills is attached to the Meeting Summary).

#### • Review of OPEGA's Current Work Plan

Director Ashcroft spoke about where OPEGA was with the projects on their Work Plan and what they were planning to do going forward. They have initiated the Good Will-Hinckley review and are in the process of wrapping up the Office of Information Technology and will be reporting that out at the GOC's August meeting. The Riverview Psychiatric Center is in progress and, for reasons that have to do with the reporting out schedule, OPEGA is looking at probably November, 2015 for a report out on that. OPEGA still has not been doing any work on State Lottery because all their resources have been tied up with the other reviews and she feels bad that it is sitting on the Work Plan as in progress, but not being worked on. She asked the Committee if they wanted to vote to put it in suspended status for now.

Sen. Burns asked what suspended status meant. Director Ashcroft said it means that technically OPEGA still has it open and intends to get back to it at some point, but are not actively doing work on it at this time. He said so there would be no expectations as to when OPEGA might get back to it. Director Ashcroft said that was right because the Committee still had to discuss what the priority is going to be when OPEGA has resources available to do the next review as to what was going to get priority. He suggested putting the State Lottery topic on the next agenda for discussion because a report has been done by an independent source that will be coming out and he thinks that will add some interesting aspects about the need for a review. He would like to have that discussion at the next GOC meeting. Chair Kruger said if the report Sen. Burns referred to was available, copies for the Committee would be appreciated for the discussion.

Director Ashcroft said the DHHS Licensing and Regulation of Child Care Providers is in suspended status on OPEGA's Work Plan. The review was put into suspended status a year ago with the intention being to give DLRS time to implement its action plan to resolve some of the issues that led to it being on OPEGA's Work Plan. OPEGA was going to re-engage with the review mid-year this year primarily to look at how well they had implemented that plan and if the actions taken were sufficient to resolve the issues that were known at the time. Director Ashcroft said OPEGA is prepped to re-engage on that review when the time comes that resources are available. DLRS has been reporting to the GOC every six months about the progress they are making, and she recommended inviting DLRS to the Committee's August meeting for an update on their progress. At that time OPEGA could discuss with the GOC whether they wanted to go forward and re-engage on the review or not. The Committee members agreed.

Rep. Campbell referred to the Northern New England Passenger Rail Authority (NNEPRA) review under the Planned section of the Work Plan. He said as the State looked at potentially expanding rail, and possibly expanding an authority on rail in the future, it was important that the Legislature had some information as to whether it would be an advantage to move forward. Director Ashcroft said it was agreed that when OPEGA got ready to start another project that the Committee would talk about what the priorities would be. She said OPEGA may be at a point of considering whether to hire a consultant to do one, or more of the projects. OPEGA tries to avoid spending the consulting money, but the GOC/OPEGA is getting backed up with work and as long as the GOC agrees they are priority enough and worth spending the money on, than she will give serious consideration to that option as well.

Sen. Gerzofsky said he has concerns about NNEPRA regarding the on time services, the track problems and the safety issues. For the amount of money the State is putting into the Rail, it seems to be floundering and he asked when OPEGA might be starting that review. Director Ashcroft said OPEGA's workload is full through October but as one of the reviews in progress winds down she will have resources available to get started on another. The GOC will be having a discussion at a meeting between now and September about what that next review should be.

Sen. Burns asked if a consultant was needed for any of the reviews. Director Ashcroft said OPEGA does not need a consultant to do it, but it is becoming a matter of whether OPEGA can get to a review in a timely enough manner for the Legislature with its own resources. If they can't, then hiring consultants is an option and one of the reasons OPEGA has consultant dollars in the Budget. Usually she only uses them when OPEGA needs technical expertise they do not have, but she can use them if there is a need to get more projects done.

Sen. Burns asked how much resource time it took from OPEGA to hire a consultant. Director Ashcroft said that is the other reason she normally hesitates to do it because it does take resources to put together an RFP and to monitor a consultant to make sure the results and work is what the Legislature wants. OPEGA has the knowledge about what the GOC is interested in and what is going to be useful information so they do try to manage what is going on with the consultant. She has to dedicate at least one staff to serve as the contract administrator when hiring a consultant and there is a lot of engaging with the consultant and agencies to facilitate the work. Sen. Burns said the State needs to look at the transportation issues and the NNEPRA is an important topic for review.

## **REPORT FROM DIRECTOR**

Director Ashcroft said OPEGA applied to the National Legislative Program Evaluation Society for the Certificate of Impact Award for the Healthy Maine Partnership Funding Review which has had a lot of legislative activity, media interest, and a lot of things that changed in State Government because of OPEGA's Review and the GOC's subsequent work on it. OPEGA was awarded that Certificate of Impact Award. The GOC congratulated OPEGA staff.

## **REMARKS**

Chair Katz requested the Committee's consideration regarding the New Markets Tax Credits issue that surfaced earlier this year. It happened during the legislative session when everybody was in the middle of many other things, including the LCRED Committee. He knew there was a piece of legislation which was considered and did not pass and he wanted to suggest that the GOC consider inviting people who were involved in the process to a Committee meeting during the interim. He said it would not be for the purpose of an OPEGA review, but to try to figure out what happened and what should be changed, or not changed, in the program. He does not think there has been a public airing of what happened and said it would add some value to the Legislature's future discussions of the New Markets Tax Credits.

Rep. Mastraccio thought it would be a great idea because she is concerned that LCRED did not do anything to even fix the program and everyone knows there is something wrong with it. Even though there was no more money put into it, come January who knows what is going to happen. She said there was some powerful lobbying going on and she does not have a problem if it can be shown that it is a good program and what the results are. Rep. Mastraccio said they were so concerned about being able to recoup some of the money that they knew was going to be going out, LCRED had crafted an amendment to a bill.

Chair Katz asked if Director Ashcroft could put together for the next meeting a plan about how the Committee might approach that. Director Ashcroft asked if it would be more akin to what the Committee did on State Real Estate Sales where the parties were cordially asked to come to a meeting to inform the Committee of what happened. A starting point would be to put together a list of who to invite. Chair Katz asked if the GOC was comfortable discussing New Markets at the next meeting. Members said they were.

## **NEXT GOC MEETING DATE**

Following a Committee discussion the members scheduled the next 3 GOC meetings for: August 20, 2015, September 9, 2015 and October 15, 2015. All meetings will begin at 9:00 a.m. (Note that the September meeting has subsequently been changed to September 8th.)

## **ADJOURNMENT**

Chair Kruger adjourned the Government Oversight Committee meeting at 11:33 a.m.

## Questions Submitted to DECD on behalf of GOC regarding Status of Actions on OPEGA Recommendations Not Fully Addressed from 2006 Report on Economic Development Programs

Please provide written response from DECD on each of the Findings/Recommendations listed in the attached document.

1. Do you have any comments or updates on OPEGA's summarization of the status of actions on the recommendation?
2. If it appears that some action was intended to be taken but was not, is there anything in particular the GOC should be aware of as to why the intended action was not taken? (As we discussed, it's not necessary to try to delve into history too much but if there is anything specific that was ultimately decided about whether to take action or not – or an unexpected barrier arose – that would be good to know.)
3. For recommendations that have not been addressed or only partially addressed, what is DECD's position on whether action should be taken to implement them?
  - a. Are the recommendations workable and reasonable for addressing the Finding (issue) identified?
  - b. Are there alternate solutions (actions) that would be preferable to address the Finding (issue) identified?
  - c. What actions, if any, would DECD be willing to commit to taking to implement the recommendations or alternative solutions?
  - d. What challenges would DECD anticipate in implementing the recommendation or an alternative solution?
  - e. Would legislation be desirable or necessary to implement the recommendation or an alternative solution?
4. With regard to Finding 1, what suggestions does DECD have for addressing the issues that have arisen with the independent evaluation of economic development programs and research and development programs? Also any comments or suggestions on the potential overlap between the independent evaluations required of DECD and the legislative Tax Expenditure Review process anticipated in LD 941 as amended?

Have requested that response be provided for GOC's August meeting.

**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

**Finding 1: Existing Programs May Be Ineffective or Inefficient**

- A. Legislature should consider subjecting the following programs included in this review to more in-depth evaluations of effectiveness, efficiency and economic use of resources:
- All 15 tax incentive programs
  - Revenue Obligations and Securities Program
  - Economic Loan Recovery Program
  - Governor’s Training Initiative
  - Commercial Loan Insurance Program
  - Milk Commission
  - Regional Economic Development Revolving Program
  - Maine Manufacturing Extension Partnership
  - Agricultural Marketing Loan Fund
  - Agricultural Water Management and Source Development Program
  - Maine Apprenticeship
  - Potato Marketing Improvement Fund Program
  - Farms for the Future Program

**Current Status of Actions on This Recommendation**

Comprehensive Economic Development Evaluations

Statute (5 MRSA §13056-A) currently requires DECD to contract for an independent biennial evaluation of “state investments in economic development”. The evaluation report must establish outcome measures, including measures that assess the overall economic performance of identified programs, and include recommendations to the Legislature on existing and proposed state-supported economic development programs. Programs that are identified for evaluation include, but are not limited to: Maine Employment Tax Increment Financing Program; Loring Development Authority; visual media production certification program; promotion and marketing of state products; the Maine International Trade Center; municipal tax increment financing; and the pine tree development zone.

Statute (5 MRSA §13056-C) also establishes payments to a fund to support this evaluation. Payments are made by programs that receive \$250,000 or more in economic development appropriations in any fiscal year or those entities that receive funds from a general obligation bond issue of \$250,000 and are paid at an amount not to exceed .8% of General Fund appropriations received by or general obligations bonds issues to said entity.

There have been two Comprehensive Economic Development Evaluations conducted pursuant to this statutory requirement. The first was conducted in 2008 with report issued in March 2009. The second was conducted in 2013 and 2014 with two reports issued in January and June 2014.

There are currently several issues impeding the effectiveness and efficiency of these evaluations that present challenges, and raise questions about the cost-benefit, in proceeding with the next scheduled biennial evaluation. These issues are:

- Statute currently requires an biennial evaluation of Research and Development Programs (R&D Evaluation) that is separate from the biennial Comprehensive Economic Development Evaluation (CEDE). The R&D evaluation pre-dates the CEDE. The purpose of the R&D programs, however, is to support economic development. DECD and the most recent independent evaluator for both evaluations agree that combining all programs into one evaluation, perhaps

## **OPEGA Report on Economic Development Programs Recommendations Not Fully Addressed as of April 2015**

including a sub-analysis of R&D programs, would provide for a more effective and efficient evaluation.

- The funding mechanism for the CEDE is not producing enough funds to cover the cost of the evaluation. The R&D evaluation has a similar funding mechanism that appears to be producing sufficient funds because there are more programs against which a funding assessment can actually be made. According to DECD, there is currently only \$12,400 of funding from that mechanism available for the next CEDE that is due to be completed and reported on in 2016. At this time, DECD is forgoing the planning for that evaluation due to lack of funding.
- Currently, there does not appear to be any effort underway in the Executive or Legislative Branch to consider the recommendations in the most recent CEDE report and to take action as deemed appropriate. There is also no statutory requirement or structure established for doing so. The independent evaluator made 20 recommendations that can be grouped as follows: Most Critical Recommended Changes (3 recommendations), Recommended Changes to Specific Programs (11 recommendations) and Additional Suggested Changes (6 recommendations). The 3 recommendations categorized as Most Critical relate to issues that remain unaddressed from OPEGA's 2006 report, and are repeats of recommendations in the 2009 CEDE report. These recommendations address issues which hamper the State's ability to adequately coordinate, oversee and evaluate these programs. DECD indicated that the Department is not necessarily supportive of all the consultant's recommendations and/or that there may be additional relevant information the consultant was not aware of when preparing the recommendations.
- The access to, and availability of, data needed to perform an effective evaluation has been a barrier to the effectiveness of the two CEDE's completed to date. This issue is the subject of recommendations in OPEGA's (see Findings 5 and 6) and in both the 2009 and 2014 CEDE reports. The State has not yet addressed these issues.

### Legislative Review of Tax Expenditure Programs

An OPEGA-developed proposal for implementing an on-going legislative review process for tax expenditures is currently being considered by the Taxation Committee in conjunction with LD 941, An Act to Improve Tax Expenditure Transparency and Accountability. In the proposal, OPEGA notes that a number of the tax expenditures are programs currently subject to the statutorily required evaluations of research and development programs and economic development programs that DECD contracts for. By OPEGA's count, there are 20 tax expenditures captured in the 59 programs that part of the most recent R&D and CEDE evaluations. Should the Legislature implement the proposed tax expenditure review process, consideration should be given to whether there should then be changes to DECD's evaluation requirements.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. Legislature should consider reviewing existing portfolio of programs to identify opportunities for reducing the number of programs and/or administrative costs associated with them.

**Current Status of Actions on This Recommendation**

In 2008, DECD contracted the Maine Development Foundation to develop a portfolio, or inventory, of economic development programs. DECD also contracted with MDF to update that inventory in to have available for the independent evaluator for the 2013 CEDE. The updated inventory prepared by MDF was submitted June 2013 and is the State's most current inventory. While the inventory has been used to establish the scope of the evaluations as far as what programs are to be included, OPEGA does not know at this time whether this inventory was every utilized or reviewed in regard to the intent of this recommendation.

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- C. Legislature should consider establishing a process for assuring that future economic development proposals are compared to existing programs to determine if the purpose of the new proposal can be effectively met by modifying or replacing an existing program.

**Current Status of Actions on This Recommendation**

Sec. 11 of PL 2007 Chapter 434 (LD 1163) provided that the joint standing committee [BRED, at the time] "shall also consider the establishment of a new legislative process for review of all proposed legislation that involves economic development programs that would provide the joint standing committee and the department [DECD] with a clearly defined review process for these proposals." This process does not appear to have been developed or implemented.

**Finding 2: Insufficient Definition of Economic Development**

- A. Legislature should consider replacing the current definition of "economic development incentive" in 5 MRSA §13070-J.1.D with the criteria proposed by DECD and amended as necessary. The Legislature should also consider incorporating this definition into 5 MRSA §§13051-13060 to further define the roles and responsibilities of DECD.

**Current Status of Actions on This Recommendation**

Legislation was passed that revised the definition of "economic development incentive" as proposed by DECD. That definition is in 5 MRSA §13070-J. It does not appear that second portion of this recommendation has been met.

**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

**Finding 3: Lack of Statewide Coordination and Oversight**

- A. Commissioner of DECD will prepare a proposal for expanding the role of the Department to include coordination of the State's portfolio of economic development programs as determined by criteria set by the Legislature (see Finding 2). Proposal will include an assessment of the benefits and resources necessary to fulfill this role. The Commissioner will submit this written proposal to the BRED Committee by December 31, 2007.
- B. The BRED Committee should consider seeking similar proposals from the Maine Development Foundation and other existing non-State organizations with the capabilities necessary to carry out the responsibilities of a portfolio coordinator. BRED could then assess these proposals in conjunction with the one from DECD and make recommendations to the entire Legislature on whether and how to proceed with designating a specific entity as portfolio coordinator.

**Current Status of Actions on These Recommendations**

The Commissioner of DECD submitted a proposal to BRED and BRED also solicited and received a proposal from Maine Development Foundation. BRED determined that the potential duties described in OPEGA's report for the portfolio-coordinator role were already within the statutory authority of DECD and that such responsibility should fall to the Department. BRED intended to monitor how DECD was filling these roles. However, than updating the inventory of programs in 2013, DECD has not assumed the expected duties nor has the enabling statutory language for the Department been modified to explicitly state these expectations as part of DECD's responsibilities. According to DECD, current resources in the Department would be insufficient to perform these roles.

**Finding 4: Inadequate Mechanisms to Assure Program Controls**

- A. Effective with the first regular session of the 123rd Legislature, DECD will begin reviewing all new economic development proposals, put forth by DECD, as required by 5 MRSA §13070-0 and will submit written reports of its assessments to the appropriate joint standing committees.
- B. Legislature should create a process to ensure that DECD is made aware of all new economic development programs proposed in legislation. Once this is established DECD will also begin reviewing new proposals from other sources as required by 5 MRSA §13070-0 and will submit written reports of its assessments to the appropriate joint standing committees.

**Current Status of Actions on These Recommendations**

Sec. 11 of PL 2007 Chapter 434 (LD 1163) provided that the joint standing committee [BRED, at the time] shall consider establishment of a new legislative process for review of all proposed legislation that involves economic development programs. However, a process was never enacted and consequently, to OPEGA's knowledge, DECD has not been reviewing proposals for new economic development proposals that come from sources other than the Department itself. OPEGA is uncertain whether DECD has been reviewing and reporting on its own proposals, or whether it has even put forth new proposals since 2007.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- C. Pursuant to other statutory requirements, DECD will be providing an annual report on Pine Tree Development Zones to the Legislature by January 1, 2008. DECD will include in this report an assessment of this program against the criteria specified in 5 MRSA §13070-O.

**Current Status of Actions on This Recommendation**

PTDZ Reports are supposed to be submitted biennially. OPEGA has not yet reviewed any of these reports to determine whether DECD has reported on assessment of this program against the criteria in 5 MRSA §13070-O.

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- D. Legislature should consider amending existing statutes in several areas to strengthen and clarify mandates for adequate program controls in economic development programs. See Full Report for details.

**Current Status of Actions on This Recommendation**

PL 2007 Chapter 434 (LD 1163) added some provisions into 5 MRSA §13070-O, such as needing to have a clearly defined purpose and incentives or penalties related to meeting program objectives, but OPEGA needs to review further to determine whether these changes are to the extent necessary to establish foundation for sufficient program controls.

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- E. Legislature should consider directing all administering agencies with programs meeting expanded definition of economic development to report to the joint standing committee of jurisdiction on whether each program adequately incorporates the criteria required in 5 MRSA §13070-O.

**Current Status of Actions on This Recommendation**

There does not appear to have been any action taken on this recommendation.

**Finding 5: Data Collected Does Not Provide Clear Picture of Results**

- A. In its response to Finding 3, DECD will also make recommendations regarding what additional data collection responsibilities it would need to take on to properly fulfill the role, and meet the related responsibilities, of portfolio coordinator.

**Current Status of Actions on This Recommendation**

It is OPEGA's understanding that both DECD and MDF submitted proposals for the "portfolio coordinator" but we have not obtained the written proposals and individuals involved with DECD's proposals are no longer with the State. It is uncertain at this time what was in those proposals with regard to data collection but neither has been implemented and DECD is not currently fulfilling any role the collector of program and performance data for the portfolio of economic development programs. Confidentiality issues related to data held by Maine Revenue Services and other agencies present a current barrier to DECD collecting, maintaining and reporting on all data that may be desirable.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. The Legislature should consider giving data collectors the authority needed to compel businesses to provide data required for measuring performance of economic development programs. Meaningful incentives and/or penalties should be established and should be included in enacting statutes or related rules.

**Current Status of Actions on This Recommendation**

In regard to authority, 5 MRSA §13056-B requires that recipients of state economic development funding shall collect, maintain and provide data as requested by DECD to assist in the CEDE. Further, 5 MRSA §13070-O, sub-§1.I notes that proposals for new economic development programs shall include provisions (to be included in enabling legislation) that require the program to “in addition to standard data, report performance data specific to its goals and objectives annually to the entity that is assigned to coordinate the State’s portfolio of economic development programs.” However, statute does not seem to provide any incentives or penalties associated with complying with the data requirements. For both Comprehensive Economic Development Evaluations that have been conducted, evaluators surveyed businesses receiving program benefits to try to collect the data necessary for effective evaluation. In both instances, survey response rates were low. Many businesses did not provide the data requested as required by statute.

**Finding 6: Inadequate Reporting for Accountability**

*Management Actions*

- A. If possible, the CEDE will be designed to provide adequate reporting on individual economic development programs in addition to reporting on the results of the State’s economic development strategy. If it is not possible to include sufficient reporting to allow legislators to understand and make decisions on individual programs, then DECD will make suggestions to the BRED Committee on how to achieve standardized reporting on all economic development programs that will provide adequate transparency and accountability.

**Current Status of Actions on This Recommendation**

The second CEDE conducted did attempt to evaluate individual programs and the reports issued did include recommendations for modification to specific programs. However, the ability to evaluate the individual programs was quite limited by the inability to access existing State data associated with the programs (due to confidentiality issues) and the lack of self-reporting by businesses through the evaluation survey. OPEGA’s observation is that the CEDE is not still not providing the performance information on individual programs that will allow legislators to understand and make decisions on specific programs. DECD has also not initiated any efforts, including making suggestions to LCRED, toward achieving standardized reporting to provide transparency and accountability.

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**OPEGA Report on Economic Development Programs  
Recommendations Not Fully Addressed as of April 2015**

- B. Legislature should consider modifying 5 MRSA §13058-5 to specify that the Commissioner reports be in writing.
- C. Effective 2007, the Commissioner of DECD will begin satisfying the reporting requirement in 5 MRSA §13058-5 by preparing and submitting a formal written report to the Governor and the full Legislature. DECD expects that this reporting requirement will be met in conjunction with the comprehensive economic development evaluation.

**Current Status of Actions on These Recommendations**

5 MRSA §13058-5 still does not specify in what form the Commissioner's report is to be made. Also, although the CEDE reports prepared by the independent evaluator have been submitted and presented to the Legislature, OPEGA has been unable to obtain any written report from the Commissioner to the Governor and Legislature that address all the points required by statute. The CEDE reports also do not appear to cover all the points that the Commissioner is required to report on under 5 MRSA §13058-5.

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- D. By July 1, 2007, DECD will establish a means to make legislators and the public aware of the reports submitted in accordance with 5 MRSA §13070-J.4 and 5 MRSA §13058-5, or that are otherwise submitted to DECD, and to facilitate access to them. In addition, as part of its proposal in response to Finding 3, DECD will make recommendations on how performance and cost information on all economic development programs can be made readily accessible to interested parties.

**Current Status of Actions on This Recommendation**

There does not appear to have been any action taken on this recommendation.



STATE OF MAINE

OFFICE  
OF THE  
SECRETARY OF STATE

MATTHEW DUNLAP  
SECRETARY OF STATE

**SECOND INTERIM REPORT  
TO THE GOVERNMENT OVERSIGHT COMMITTEE  
ON IMPLEMENTATION OF THE REPORT ON RECORDS RETENTION  
AND MANAGEMENT**

**OFFICE OF THE SECRETARY OF STATE**

**JULY 17, 2015**

Senator Katz, Representative Kruger and distinguished members of the Committee, I am pleased to provide you with an update of the efforts undertaken thus far to implement the recommendations in the Records Retention and Management report.

**Records Officers**

The Records Management Analyst at Archives has contacted every Records Officer (RO) currently listed as "active" with the Maine State Archives. They were asked to verify that they continue to serve as the RO for their agency; and, if no longer the RO, to please submit their RO name(s) and any needed cardholder changes. They were also asked to add any additional ROs or Assistants to our list.

Of the 60 Records Officers contacted, the Archives received 30 replies, as of July 13<sup>th</sup>. The following Departments replied with current RO/Assistant information:

|  |                                     |
|--|-------------------------------------|
| Administrative & Financial Services    | Marine Resources                    |
| Agriculture, Conservation and Forestry | Health & Human Services             |
| Corrections                            | Professional & Financial Regulation |
| Economic & Community Development       | Transportation                      |
| Executive                              |                                     |

While updating RO/Assistant information, the Records Management Analyst discussed with the listed agencies their training needs and any required changes to their retention schedules.

**Training**

Records Management staff developed a revised curriculum for training that will be provided each October. The training calendar will be posted on the Archives website at the end of August and ROs will be notified when it's available. The department has discussed retaining the services of a training professional to review and make recommendations to the curriculum.

## **Stakeholders Group**

On June 23, 2015, departments and agencies identified as stakeholders were contacted requesting that they identify a senior staff member responsible for and interested in, the proper preservation of hard copy and digital records and archival materials to serve on this group. The group will be asked to provide input on the membership and role of the Archives Advisory Board with the goal of structuring the board to meet current day challenges.

As of July 14, 2015, the following individuals have been identified to serve on the group. We have not received a communication from the Governor's Office on who will represent that office.

Records Management and Retention Stakeholder Committee Members (in no particular order):

Dave Cheever, State Archivist, Secretary of State  
Tammy Marks, Archives Director, Secretary of State  
Kristen Muszynski, Communications Director, Secretary of State  
Donna Grant, Deputy Secretary for Information Services, Secretary of State  
Grant Pennoyer, Executive Director, Maine Legislature  
Kevin Dieterich, Director, Legislative Information Technology  
John Barden, Director, Law and Legislative Reference Library  
Brenda Kielty, Ombudsman, Attorney General's Office  
Greg McNeal, Chief Technology Officer, Dept. of Administrative and Financial Services  
David Packard, Chief Information Officer, Administrative Office of the Courts  
Howard Lowell, Maine resident, South Thomaston, ME

We will work to convene the stakeholder group this summer to begin its work.

## **Archives Advisory Board**

Of the five current board members, four have expressed an interest in continuing to serve on the board. We await word from the fifth member.

There is one request to serve on the board pending action by the Governor.

127<sup>th</sup> Legislature  
 Status of Bills of Interest to GOC and OPEGA  
 As of July 13, 2015

| LD #    | Title   | Status  |
|---------|---|---|
| LD 6    | Resolve to Implement Recommendations of the Government Oversight Committee To Strengthen the Ethics Practices and Procedures for Executive Branch Employees         | On June 30, 2015, the Senate carried it over to any special or regular session of the 127 <sup>th</sup> Legislature.  |
| LD 237  | An Act To Address Recommendations from the Report by the Office of Program Evaluation and Government Accountability Regarding the Public Utilities Commission       | On May 12, 2015, Governor's veto was sustained.   |
| LD 297  | An Act to Increase Allowed Investments Under the Maine New Markets Capital Program  | As of June 23, 2015, bill has been placed in Legislative Files (dead) following non-concurrence in which Senate insisted bill and accompanying papers be referred to Taxation Committee and House insisted on passing bill to be engrossed as amended by Committee Amendment A. Committee Amendment A included provision for a GOC review of the program. |
| LD 941  | An Act To Improve Tax Expenditure Transparency and Accountability   | On June 30, 2015, Passed to Be Enacted by both House and Senate.  |
| LD 1347 | An Act To Implement Recommendations of the Government Oversight Committee To Clarify That Competitive Bid Provisions Apply to Grant Awards                          | On June 15, 2015, Governor's veto overridden. Bill has been enacted as P.L. Chapter 179.  |
| LD 1349 | An Act To Establish the Office of the Inspector General in the Department of Health and Human Services  | As of June 8, 2015, bill has been placed in Legislative Files (dead) with the House and Senate accepting the majority report of Ought Not to Pass.  |
| LD 1395 | An Act to Implement the Recommendations of the Government Oversight Committee To Ensure Legislative Review of Reports Submitted by Quasi-independent State Agencies | On June 23, 2015, Governor's veto overridden. Bill has been enacted as P.L. Chapter 253.  |