

①

Government Oversight Committee report to the Joint Standing Committee on Taxation regarding  
OPEGA Tax Expenditure Review on ETIF (pursuant to 3 MRSA §999(3)).

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

<p><b>OPEGA ETIF Report Recommendations</b></p>	<p><b>Testimony, Agency comment, and updates</b> Based on written testimony received on 2/22 unless otherwise indicated</p>	<p><b>GOC Discussion</b></p>
<p><b>1. ETIF's objectives should be reconsidered based on Maine's current economic development needs</b></p> <ul style="list-style-type: none"> <li>• Legislature may want to consider whether ETIF should be updated or replaced to better respond to current economic conditions</li> <li>• Objectives which may better respond to current economic conditions for businesses should be considered in the context of broader economic development strategy</li> <li>• Administering agencies and business stakeholders should be involved</li> <li>• Approach to update should limit uncertainty for businesses and recognize that ETIF is the most relied-upon economic development program (slow phase-in and replacement program in place prior to ETIF end)</li> </ul>	<p>DECD concurs with recommended legislative action and believes reconsideration of ETIF objectives should be part of a long-term economic development plan</p>	<p>The GOC committee supports this recommendation and would like updates on any changes or updates proposed to ETIF as the Legislature works with DECD and others on a long term economic development plan.</p>
<p><b>2. ETIF's requirements should be reviewed in light of current business realities and updated where necessary</b></p> <ul style="list-style-type: none"> <li>• DECD should identify and recommend requirements in need of updating such as health insurance and retirement benefit requirements, wage requirements, and employment baseline lookbacks</li> </ul>	<p>DECD concurs with recommended management action. The department asks for clarification on timing of submission of proposal to Legislature and suggests that the recommended review of ETIF requirements be done in conjunctions with PTDZ and in the context of long-term economic development plan for the state.</p>	<p>The GOC supports this recommendation that DECD should identify those ETIF requirements needing updates and make recommendations for their implementation.</p>
<p><b>3. Statute should be amended to clearly reflect all intended outcomes against which ETIF's effectiveness will be measured</b></p> <ul style="list-style-type: none"> <li>• Legislature should add section to ETIF statute to clarify the program's intended outcomes and how to measure them, including whether targeting economically distressed geographic areas is a goal of the program (as a goal of ETIF)</li> </ul>	<p>DECD concurs.  (DECD testimony makes additional comment regarding DECD comprehensive study)</p>	<p>The GOC supports this recommendation that ETIF's intended outcomes and methods of measurement should be clarified by the Legislature.</p>
<p><b>4. ETIF's statute or rule should be amended to support effective implementation of the "but for" application requirement</b></p> <ul style="list-style-type: none"> <li>• Statute or rule should be amended to better define the criteria that must be met</li> </ul>	<p>DECD concurs that "but for" should be consistent for ETIF and PTDZ. A statement of need should be applied in the same manner</p>	<p>The GOC not only supports that the "but for" be applied in the same manner for both ETIF and PTDZ but also that the "but for" be</p>

<p>for the “but for” requirement to be satisfied (Legislature to direct DECD to bring forward a proposal)</p> <ul style="list-style-type: none"> <li>• This will establish a clear basis for DECD decisions on applications for ETIF</li> <li>• Once criteria are clarified, statute or rule should be amended to establish what documentation is required to be submitted to meet “but for”</li> <li>• If “but for” changes made, similar consideration should be made for PTDZ program</li> </ul>	<p>for both ETIF and PTDZ</p>	<p>strengthened with better-defined criteria and documentation to support that it has been satisfied.</p>
<p><b>5. ETIF’s economic consideration requirements should be made more explicit or eliminated</b></p> <ul style="list-style-type: none"> <li>• Economic contribution requirement redundant (creation of jobs an economic contribution in and of itself) and should be eliminated – or – if a contribution beyond job creation is expected, statute should specify.</li> <li>• Substantial harm criteria should be clarified or eliminated (harm to another business by another business being enrolled in ETIF are not substantial or are offset)</li> </ul>	<p>DECD concurs with recommended legislative action and suggests that “substantial harm” criteria should be eliminated</p>	<p>The GOC supports this recommendation that the economic consideration requirements (contribution and no substantial harm) for ETIF be made explicit or eliminated.</p>
<p><b>6. The Legislature should clarify whether the same qualifying jobs claimed for both ETIF and the MBHE programs</b></p> <ul style="list-style-type: none"> <li>• Statute is silent as to whether the same jobs created by a business may be used to qualify for both ETIF and MBHE (qualifications for jobs under each not identical) and should be clarified by the Legislature</li> <li>• Legislature should consider interaction between ETIF and newly enacted Shipbuilding Program and treat them consistently</li> </ul>	<p>DECD concurs with recommended legislative action (Memo to GOC from DECD dated 2/28 states that DECD supports this clarification looking forward and not retroactively)</p> <p>IDEXX testimony stated that they believe the 128<sup>th</sup> Legislature intended for the allowance of eligibility in both MBHE and ETIF. They requested that if the OPEGA recommendation for clarification was considered that it grandfather currently certified projects</p>	<p>The GOC supports the recommendation directing the Legislature to clarify if the same jobs can be claimed to qualify for both ETIF and MBHE. Given that the Legislature was not specific at the time MBHE was enacted and the certification process has begun, any change should be prospective and any business certified under the current criteria should be grandfathered.</p> <p>The factors upon the benefit amount is determined under MBHE are not impacted by the amount of benefit paid to a business also certified in the ETIF program. However, Rep. Mastraccio expressed her concerns that the amount of benefits provided to a business certified under both, added together, could equate to an overall negative tax obligation for the certified business.</p>
<p><b>7. Statute should be amended to address businesses that change ownership</b></p> <ul style="list-style-type: none"> <li>• DECD should bring a proposal for statutory amendment to address change in ownership of business</li> <li>• Two circumstances – when a business with active ETIF certificate changes ownership and when a business with no ETIF certificate is transferred and new owner applies for ETIF</li> </ul>	<p>DECD believes that this can be addressed through rulemaking and does not necessitate statutory change</p>	<p>The GOC supports this recommendation.</p>

<p><b>8. Confidentiality of ETIF data should be clarified</b></p> <ul style="list-style-type: none"> <li>Legislature, with MRS and DECD, should determine methods required to protect confidential ETIF data/records which are consistent in terms of what is subject to public inspection and which should be considered confidential taxpayer records</li> </ul>	<p>DECD concurs that confidentiality of ETIF records should be clarified. DECD notes that if they are required to take additional actions to protect confidential records, they would incur additional costs</p>	<p>The GOC supports this recommendation to clarify the measures required to protect ETIF data and records that are confidential. In addition to ensuring confidentiality where warranted, the Legislature should ensure that equal attention is paid to encourage program transparency and accountability.</p>
<p><b>9. MRS should address opportunities to improve fiscal impact forecasts - clarify revenue loss estimated for ETIF in biennial MSTER</b></p> <ul style="list-style-type: none"> <li>ETIF GF revenue loss are reported in a lump sum with Loring Job Increment Financing Fund and Brunswick Naval Air Station Job Increment Financing Fund limiting ability to estimate budgetary impacts for each individually</li> <li>MRS' Maine State Tax Expenditure Report (MSTER) is the sole source of ETIF fiscal impact forecasts for the Legislature</li> </ul> <p><b>DECD should update rules to reflect statutory program changes</b></p> <ul style="list-style-type: none"> <li>DECD rules do not reflect statutory program changes made since 2006 (PTDZ Tier 2 businesses and definition of qualified employees as they apply to call centers in Washington and Aroostook Counties).</li> </ul>	<p><b>UPDATE</b> (not from testimony): Latest MSTER report published by MRS in February of 2019 has separated revenue losses associated with ETIF, Loring and Brunswick Naval Air Station as recommended</p> <p>DECD concurs with the recommended action to update rules and as reflected in the report, DECD has prepared draft updates to the rules.</p>	<p>The GOC supports the recommendation and is pleased to see that revenue loss from ETIF has been reported separately by MRS in the MSTER report.</p> <p>The GOC supports the recommendation and is pleased to know the updated rules are being drafted.</p>
<p><b>10. MRS should strengthen controls to prevent overpayments and ensure accurate ETIF records</b></p> <ul style="list-style-type: none"> <li>MRS should improve controls to ensure appropriateness and accuracy of ETIF payments.</li> <li>MRS has been required to administer ETIF within existing resources – no appropriation to support this function</li> </ul>		<p>The GOC supports this recommendation.</p>
<p><b>11. DECD should address information technology and staffing challenges</b></p> <ul style="list-style-type: none"> <li>DECD should address technology challenges and ensure at least one staff person consistently has skills to work with BDTI</li> <li>DECD should propose a funding mechanism to cover administrative costs, including improvements (application or report submission fees for example)</li> </ul>	<p>DECD concurs and is working with OIT to address database needs. As noted in the report, an RFI was issued by DECD in January 2019 to address database needs.</p>	<p>The GOC supports this recommendation and is pleased to hear that DECD is taking steps to address their data management needs.</p>

