



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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

November 20, 2020

Accepted as written 1-29-21

Call to Order

The Chair, Sen. Chenette, called the Government Oversight Committee meeting to order at 10:03 a.m. in the State House.

Attendance

Senators:	Sen. Chenette and Sen. Sanborn Participating in the meeting by Zoom: Sen. Libby Absent: Sen. Hamper, Sen. Keim and Sen. Timberlake
Representatives:	Rep. Mastraccio, Rep. Dillingham, Rep. Arata, Rep. Millett and Rep. Pierce Participating in the meeting by Zoom: Rep. O'Neil
Legislative Officers and Staff:	Scott Farwell, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Participating in the meeting by Zoom:	Danielle Fox, Director of OPEGA
Executive Branch Officers and staff participating in the meeting by Zoom:	Daniel DAlessandra, Staff Attorney, Maine Revenue Services Peter Lacy, Deputy General Counsel, Maine Revenue Services Kate Foye, Director of Legislative Affairs and Communications, Department of Economic and Community Development Phoenix McLaughlin, Tax Incentive Director, Department of Economic and Community Development

Sen. Chenette summarized the meeting procedures. The GOC convened with a quorum in Room 228, State House with members social distancing, wearing face masks and abiding by all the procedures necessary for following the public health perspectives. Some GOC members will move to other locations in the building after Committee introductions and voting on several agenda items.

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Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

Summary of the November 9, 2020 GOC Meeting

The Meeting Summary of November 9, 2020 was accepted as written.

Sen. Chenette asked the members of the Committee if they objected to taking agenda items out of order. Hearing none, he moved to **Unfinished Business, OPEGA Report on Business Equipment Tax Reimbursement (BETR) and Business Equipment Tax Exemption (BETE)**.

Unfinished Business

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

- **Committee Work Session**

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

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

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

Rep. Mastraccio made the following motion:

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

- **OPEGA Report on Maine Capital Investment Credit (MCIC)**

- **Committee Work Session**

Director Fox again noted that because the GOC is meeting on the cusp of a new Legislature coming in and by law the GOC is required to move the report forward to the TAX Committee, action by the Committee is required at today's meeting.

- Committee Vote on the MCIC Report

Rep. Mastraccio made the following motion:

Motion: Pursuant to Title 3, section 999, subsection 3, which requires the GOC to assess this report's objectivity and credibility and submit it to the Taxation Committee for review and consideration, I move that we vote to endorse OPEGA's evaluation of the Maine Capital Investment Credit (MCIC) as credible and objective and submit it to the Joint Standing Committee on Taxation. (Motion by Rep. Mastraccio, second by Sen. Sanborn.)

Discussion: Rep. Arata wanted to make sure that the GOC's endorsement of the MCIC report is not saying that all the members necessarily agree with it 100%, but are willing to move it forward for further study.

Sen. Chenette said what has been done historically on the GOC is basically accept the report from OPEGA and send it to the policy committee for discussion or for making any policy judgments.

Vote: The above motion passed by unanimous vote 7-0.

New Business

• Consideration of draft legislation regarding OPEGA workpaper confidentiality

Director Fox said she is putting forward, as Director of OPEGA and as someone who is required to direct the evaluations that the GOC tells OPEGA to do, but who does not have the authority to submit legislation, a draft for legislation for the Committee's consideration. The Committee would have to consider the proposed draft legislation, which would be introduced as legislation under the GOC's authority to do so. It would then be a bill that would go through the legislative process of the 130th Legislature. The legislation would be referenced, have a public hearing and a work session in the next Legislature. The draft legislation does address a few issues with regard to the clarity in the law governing confidentiality and she wanted to explain the rationale for putting this draft forward and can talk more in detail about the proposal itself. (A copy of Director Fox's memo to the GOC is attached to the Meeting Summary.)

When the GOC directs OPEGA to conduct an evaluation they have a big responsibility of maintaining confidentiality. That is because they often look at records that are confidential by law because they have the ability and the authority when doing an investigation to look at privileged information. OPEGA also may receive information from people who are pointing out something that may be of concern with an agency they work for. OPEGA does not use the term whistle-blower, but to save the GOC a long explanation, it also protects that information so people will feel that they can talk with OPEGA and that they know we will maintain confidentiality under all circumstances.

When the GOC sends OPEGA out to do an evaluation they are responsible for protecting confidential information, but also have to access it in the course of their evaluations. The law anticipates that. However, OPEGA has found that there are some potential areas where the law could be clarified and, one in particular, is if an outside entity, a member of the public, press or someone else, were to do a records request of an agency that OPEGA was evaluating, there is not a clear provision in law that references the Freedom of Access Act (FOAA) request provision. If the records were in her hands and someone did a FOAA request, statute is very clear that those are confidential records and are not subject to a FOAA request. From her screen she showed the current statute as it applies to OPEGA working papers when they are in OPEGA's possession. Director Fox referred to subsection 3 which governs the confidentiality of OPEGA work papers when they are in the possession of the Director, or the Office, and are exempt from disclosure pursuant to the provisions of Title 1,

chapter 13 which is the Freedom of Access Act so that makes it really clear. If you look at the document she is proposing the GOC consider for potential legislation, in the existing law when work papers are the same exact documents that are in the hands of the agency that is being evaluated, there is no specific cross reference in that regard. OPEGA has run into this circumstance. There is case law and interpretation of confidentiality of records when they are in one agency's hands or another. OPEGA has been able to respond to those requests and maintain confidentiality, but it would be much easier for an agency who receives a FOAA request regarding OPEGA work papers, and who OPEGA is evaluating, to say the law tells us we are not allowed to give these to you because they are working papers related to an OPEGA investigation. The entity has that ability to reject them now, but there is not a statutory reference for them to refer to in terms of when they respond to that FOAA request. That is one of the reasons that Director Fox is proposing this clarification of how OPEGA work papers would be handled when they are in the hands of another person.

The other purpose is making sure that when OPEGA does have people who come to them, that may work for an agency that is subject to an investigation, or there are concerns about those records, we would maintain that level of trust and that this is not a loop hole for information to be put in someone else's hands and a whistle-blower would not be exposed.

Director Fox said the third situation is between evaluated entities. If you think about the example again of an agency and a vendor and that agency is doing business with that vendor, OPEGA may want to be looking at the activities of that vendor, as well as, the activities of that agency. We don't necessarily want them communicating with each other as a matter of our general evaluation practice and want to make sure that if we are showing them something, they are not going back to the agency that contracted with them saying what should we say to OPEGA about this. That is another example of why this clarity would be required. Working papers would be exempt from a FOAA request, which they already are, but this would just be providing the agencies that would be responding to the request a statutory reference within the OPEGA statute and then it would clarify that even between evaluated entities like vendor or State agency or 2 State agencies, in order to preserve OPEGA's evaluation practice methods and investigative methods, they would not be able to share documents between each other. That is not a hard and fast rule. If you look at the section that is being amended, the director of the agency always has the discretion to allow for those documents to be disclosed. For example, if there is a glitch in a system, or if there is some error that it would be useful for them to understand, on most occasions these working papers can be shared between a vendor and the evaluated entity or two agencies. In most cases, that is okay and often times those working papers are submitted to both entities at the same time. There is always that discretion, but this does provide that protection in the case when we don't necessarily want a vendor and agency to be communicating with each other as part of OPEGA's investigation. We want to have their answers independently. It allows for OPEGA to have that clarity in statute to do that. That really has been OPEGA's practice and it has not been a concern in terms of entities sharing information back-and-forth. As far as we know, they often do ask OPEGA and they apparently abide by that so it has not been a concern, but it has highlighted that the statute is not necessarily clear in that regard and this change would provide that clarity. The change in statute would just be the GOC using its authority to introduce the legislation for consideration. The whole legislative process would apply and the legislation would have to go through the Legislature. There would be the opportunity for public comments and because it deals with confidentiality provisions the Judiciary Committee would do its standard review of any exception to the public records law so it would be subject to that scrutiny as well.

Sen. Chenette said as he understands the rationale, it is to protect both the integrity of OPEGA investigations and also the whistle-blower. Director Fox agreed and said it also gives agencies a statutory reference that would make it easier for them to say that these things are not subject to FOAA, which is already anticipated in law, it just provides some specific statutory reference that they can say on these grounds, I cannot give you these records because they are OPEGA's work paper.

Rep. Mastraccio made the following motion:

Motion: Pursuant to Title 3, section 1001, subsection 2 which authorized this Committee to report out legislation, I move that the following amendment governing the confidentiality of OPEGA's work papers be submitted for introduction to the First Regular Session of the 130th Legislature. (Motion by Rep. Mastraccio, second by Rep. Pierce.)

Discussion: Rep. Dillingham said at this time she was not going to support the motion because she would like more time to think about it.

Sen. Chenette asked if other members felt the same way as Rep. Dillingham? He acknowledged that Rep. Arata felt the same and asked if there is particular information that would be helpful that Director Fox could get the Committee, not necessarily just today, but to move forward, to help members decide.

Rep. Arata could not think of anything she would need from the Director, but could reach out if she needed clarification to feel better about the change in statute.

Rep. Pierce wanted to clarify what happens when legislation comes from the GOC. The GOC would vote to send it forward as legislation, but then that would hit the regular legislative process. Someone would be a sponsor and carry this legislation forward and it will go through committee and it will also go through the FOAA judiciary review. It has two other bites of the apple for public comment and consideration. Sen. Chenette said that was correct.

Rep. Mastraccio said having done that process with a few other pieces of legislation, it actually comes out of this committee so whoever the chairs are would probably present it to the appropriate committee of jurisdiction and then at that point it would be like any other bill. It would have a public hearing, it would have work sessions, etc. It is just like somebody putting a bill forward. It is just trying to move things along so it could be ready to go for the beginning of the 130th Legislature. She thinks absent the pandemic the Committee would have worked this out and had it ready to go and waiting for the 130th. It was never going to be presented to the 129th Legislature. It is just trying to get this particular housekeeping issue that they had been discussing, literally for 18 months, moving. The issue came out in work papers when OPEGA was doing a DHHS review. There was an attempt to circumvent the working papers confidentiality and wanted emails between entities and that would have then been a problem with some of those confidentiality issues of what people were saying and doing. It took a lot more work to try to keep that information confidential that should have been confidential. She said the legislation just clarifies what they think the statute says already.

Director Fox agreed with Rep. Mastraccio.

Sen. Chenette said if members don't feel comfortable voting on the motion today, he would prefer to wait because for some Committee members it is the first time they are seeing it. He would be more inclined to table, get some necessary information for every member to feel comfortable with it before moving forward.

Sen. Chenette moved to table Rep. Mastraccio's motion. He then removed his tabling motion so Rep. Pierce could ask a question.

Rep. Pierce noted that a number of members would not be on the next Committee and asked if the next GOC would have to start this whole process over again.

Sen. Chenette did not think it was starting it all over, but will just be briefing the 130th GOC. We are going to have a conversation around the MCILS report and how we are drafting a letter to the next GOC. We could decide to send a letter, or just have Director Fox present this clarification in law that we are proposing, to the

130th Committee. He does not think it is necessarily going to hold up the process by waiting and making sure everyone feels comfortable.

Sen. Chenette asked that members email their concerns and/or questions to Director Fox.

Sen. Libby asked if the GOC could ask Director Fox to prepare a letter describing this agenda item for the next GOC. Sen. Chenette asked if there was any objection to a letter from Director Fox outlining the process. Hearing none, he asked Director Fox if she could draft that letter. She said she could and confirmed the draft should include a little more of the rationale that was presented to the GOC. Sen. Libby thought the draft letter should include the Committee members' discussion at this meeting about members wanting additional time to consider the matter and that we are asking the 130th GOC to take the matter up.

Sen. Chenette asked if there were any other comments or concerns on this item. Hearing none, he moved to table Rep. Mastraccio's motion. Second by Rep. Dillingham. Other members agreed. Sen. Chenette said the matter is tabled and Director Fox will be working on drafting the letter.

Recess

The Chair, Sen. Chenette, recessed the Government Oversight Committee at 10:30 a.m.

Reconvened

The Chair, Sen. Chenette, reconvened the GOC meeting at 10:35 a.m.

Unfinished Business (con't)

- **Draft Memo from the 129th GOC to the 130th GOC regarding their concerns about the Maine Commission on Indigent Legal Services as outlined in OPEGA's MCILS report**

Director Fox said following OPEGA's MCILS report presentation at the last GOC meeting on November 9, 2020 the Committee had concerns about some of the issues that were raised in that report. Several members did not want to lose sight of those concerns and wanted to impart on the 130th GOC that there are issues that should be attended to. The Director tried to capture those elements of the report concerning MCILS's oversight and financial procedures and that although it is in their existing authority to make those changes, it does not require statutory change. The GOC felt that it may be necessary to use the authority of legislation to compel MCILS to make certain improvements and maybe make them by a certain date. She listed the concerns with regard to the oversight structure of MCILS, some ways in which the Commission could improve their financial procedures, and then again recommending, that if necessary, legislation be implemented to compel MCILS to make some of these improvements. (A copy of the draft letter is attached to the Meeting Summary.)

Rep. Mastraccio wanted to confirm with Rep. Millett that he agrees, because she thinks the draft letter conveys exactly what the GOC would say at a public comment hearing.

Rep. Millett thinks the draft letter does capture the concerns he expressed at the November 9th meeting. He wants to make sure that the next Committee has that background and thinks the draft letter is well written and contains key pieces of information and is comfortable with the letter going forward to the 130th GOC.

Sen. Chenette asked if there were any concerns, questions or comments about the draft letter to the next GOC regarding MCILS.

Rep. O'Neil said, without making any kind of political statement, thought it would be helpful to make a note that issues, such as billing supervision and other problems, could be partly resolved via some kind of public

defender's office in lieu of supervising attorneys. She wondered if there was a way to work that fact into future consideration when discussing costs.

Sen. Chenette thinks Rep. O'Neil's request seems a bit more of a political policy adjustment that is not necessarily in line with the report. Others members can correct him if he is wrong, but thought it is really about outlining the details of the report and then the next GOC, and committee of jurisdiction, the Judiciary Committee, are going to have to weigh the recommendations of OPEGA's MCILS report, its details and data analysis provided in the report to assess whether to overhaul the existing system or move to potentially a new option. That policy decision is not necessarily what the GOC is outlining or what is being discussed at today's meeting. It is simply to outline the details of the report to the next GOC who will have to have those discussions.

Director Fox said Sen. Chenette's explanation was her understanding of what the Committee wanted in the draft letter. The guidance she was given was to point out what is in the report and OPEGA does not make any recommendations with regard to a public defender's office. She reminded the Committee there has yet to be a public comment period held on this report and there will be more formal recommendations by the next GOC.

Rep. O'Neil was not seeing her comment as a recommendation, but as an acknowledgement of the conversation that is on the table.

Sen. Chenette thinks, as Rep. O'Neil suggested, there might be some folks that come forward that point out that there might be some benefits, or downsides, to multiple different systems. Those suggestions might come out during the public comment period on OPEGA's MCILS report.

Rep. Mastraccio thought the draft letter is for the 129th GOC's comments to be presented for the public comment period held by the 130th GOC. It is a statement that will be in the record for the 130th GOC to use and pass on. If you look at that purpose for the letter, she thought it probably is not appropriate to add Rep. O'Neil's comments. If Rep. O'Neil is part of the next GOC, or still in the Legislature, she would be able to attend the public comment period on the report and make those comments as her public comments.

Rep. O'Neil agreed to step back on her request to add language to the letter going to the 130th GOC from the 129th GOC regarding OPEGA's MCILS report.

Sen. Chenette asked if there were any other questions, comments or concerns about the draft letter. Hearing none, he said the letter to the 130th GOC will be put in final form for the Chairs' signatures and will be presented to the 130th GOC at the public comment period on OPEGA's MCILS report.

New Business

- **Presentation of OPEGA on Pine Tree Development Zones (limited scope review)**

Director Fox presented the Pine Tree Development Zones report. (A copy of her presentation slides, are attached to the Meeting Summary. The report can be found at <http://legislature.maine.gov/opega/opega-reports/9149>.)

Director Fox thanked OPEGA Analysts Jennifer Henderson and Kari Hojara, for their work on the PTDZ report.

Sen. Chenette reminded everyone that there will be a public comment and work session on the PTDZ report in the 130th GOC, but this GOC felt it was important to make sure the report got released publicly so that not only the public and interested parties can review it, but also so the legislators of the 130th have an opportunity before clouture to be looking and using the information in the report.

Sen. Chenette recognized that there were representatives from the Department of Economic and Community Development (DECD) and the Maine Revenue Services (MRS) at the meeting via Zoom. He asked if the members of the Committee had questions for either MRS or DECD regarding the report.

Rep. Millett thought it interesting that the GOC really stressed the need for a plan that could be called economic development and strategic back in 2006. In broader terms it was delivered by DECD last year and now we have, post-pandemic, a report on economic recovery coming and this oversight review of the PTDZ is a small part of fitting in with both of those other two activities. He thinks DECD is probably going to play a bigger role in sharpening up the strategic plan with timelines, focusing on what comes out of the Economic Recovery Committee (ERC) and maybe addressing the two pieces that he thinks are the weaker ones in the summary part of OPEGA's PTDZ report. That is namely the lack of a strong "but for" provision and the need for proactive program management and strengthened oversight of PTDZ. He was looking at the next Legislature and hopefully the GOC will not lose interest in the issue, which has been a part of its focus for 14 years. He asked if DECD could comment about how they see the December report of the ERC, which is going to demand a lot of the Legislature's attention in the 130th Legislature as they try to revive the weakened sectors, particularly at the small business level. Also, what they will be doing to try to sharpen what they can do and what they should do with respect to fleshing out the 10 year plan in the upcoming months. Rep. Millett was looking for comments from DECD and maybe to a lesser extent from MRS, in how they can address the conclusions, particularly the weaker portions that he referred to.

Ms. Foye said, at this point, short of offering any policy recommendations, what she would say is the strategic plan was designed to ebb and flow with changes in the economy. Although they did not anticipate a year ago that this is the position they would be in, certainly as they take a look at the recommendations that come out of the ERC and align them with the work DECD wants to do in the strategic plan, they will be looking at all of the programs and all of the recommendations. She was not sure she answered Rep. Millett's question, but said yes DECD will be looking at how the strategic plan lines up with the ERC recommendations and the adjustments they need to make to move towards a recovery.

Rep. Millett said Ms. Foye did respond to his basic underlying concern in that DECD does see the importance of the 130th addressing the issues that are evolving as we look, hopefully, to the end of the pandemic and recovery in the context of making the plan more specific, short and long term, and that offers an opportunity for all of us to look at PTDZ as to how it fits better and how it can be made better. He was hoping for a broad acknowledgement that this will be an important agenda issue for the 130th Legislature.

Ms. Foye thinks the 130th Legislature, as well as the Administration, has an important role moving forward as they look through the recovery.

Ms. Foye introduced Phoenix McLaughlin from DECD. He is the Tax Incentive Director, the position formerly held by Andrea Smith.

Rep. Pierce referred to the 10 year plan and said it was an interesting note that DECD designed the plan as an overlay to what we had as existing programs. When she thinks about designing something for 10 years she would have thought you would have designed the plan that you think is best and then we might be looking at all of the things that we have going on and whether or not they respond to that. This program responds to it generally, but not specifically, and asked if Ms. Foye could speak a little to that decision and to the PTDZ program in particular.

Ms. Foye said she was not necessarily sure DECD designed the plan as an overlay to the programs that we have already, but they did not need to reinvent the wheel on some of the tax incentive programs and included them in the plan as they already exist. The plan was looking towards recommendations for new things that they could do moving forward over the next 10 years. One of the things that DECD had planned to do, everything is pre-

covid and/or post-covid, was to do a major look at all of the tax incentive programs with somebody in Audit, somebody outside of DECD, to see what works, what is not working, what can be improved, and if we need to design something new. Unfortunately, the funding for that has been put on hold in a post-covid world, with the intention to still do that. Moving forward they are trying to figure out, from a budgetary standpoint, how to appropriately make that work in the most responsible way possible. Ms. Foye said to answer the question, DECD understands they have these tax incentive programs that are important incentives to attract new investment in the State, but before they make any policy recommendations about any, she thinks it is important to look at them and then to look at some of the other recommendations that are coming out now that we are post-covid. To see where we were before versus where we are now and looking for recommendations from the ERC as well and how they can align with the strategic plan and some of these other tax incentive programs that they also plan to take a look at.

Rep. Mastraccio thinks Rep. Pierce is echoing the way that she felt, which is that everything was supposed to be on the table, so was a little surprised to hear that it was just layered on top of what we already have. She envisioned it differently and thinks she understands why we are where we are, but hopes going forward, that we do look at everything like it is the first time we are looking at it because it is a new world and something that has worked for 10 or 15 years doesn't necessarily mean it works now. The old way of doing things is not always going to work in the midst of a pandemic, so let's take what we have learned and move on. There are now new businesses that have come out of the pandemic. She thinks that everything deserves to be on the table and understands the need for independent reviews by DECD, but the GOC did this statute of tax incentive evaluations for a reason and they need to be utilized. We know that the 130th Legislature will be addressing PTDZ because the program is expiring. It is going to be a discussion and she thinks that DECD needs to be prepared to be very specific in how they think this plan fits into an economic development strategy and recovery going forward.

Sen. Chenette asked if there were any other comments, questions or concerns for DECD or MRS. Hearing none, he thanked those from DECD and MRS for participating in the meeting.

Sen. Chenette noted that the 130th GOC will be responsible for handling the public comment period and a work session on OPEGA's PTDZ report so there will be an opportunity for interested parties to come forward and provide feedback.

Report from Director

• Letter from PEW Charitable Trusts' State Fiscal Health project

Director Fox referred to the letter the GOC received from the PEW Charitable Trusts' State Fiscal Health division that talks about the value of tax expenditure reports generally and how they have appreciated our approach to some of these evaluations and the usefulness of them. OPEGA has been asked at past virtual meetings of the PEW Charitable Trust to talk about some of OPEGA's evaluation, with the last one being the BETR/BETE evaluation. She noted the tax expenditure reviews are a fairly new type of review for OPEGA and credited their success to the analysts in OPEGA. More states are adding tax expenditure reviews to their evaluations or creating offices just for that purpose. PEW has noted OPEGA as a resource and an example for tax expenditure evaluations.

Sen. Chenette said this is a good affirmation of the work that OPEGA is doing and is good to have that recognition reflected in a third-party atmosphere.

• Status of projects in process and preview of what is to come in the 130th

Director Fox offered to skip this item because thinks the Chair has laid out what the new GOC in the 130th will be looking at. The Committee agreed.

Director Fox reported that this will be her last GOC meeting as the Director of OPEGA because she has been selected to serve as the Director of OPLA, replacing Marion Hylan Barr, who is leaving legislative service.

The GOC members congratulated her on her appointment, noting OPEGA staff and the GOC will miss her leadership.

Sen. Chenette said this will be his last time chairing the Committee and last time serving in the Legislature. He knows that is also true for Rep. Mastraccio. He wanted to say to the Committee members and to OPEGA staff that it has been an honor to serve alongside each and every one of them. He thinks they have done a good job over the last 2 years of carrying the torch of holding department heads and agencies accountable, making sure that taxpayer dollars are spent appropriately, all while promoting good governance in a bipartisan way. Hopefully, that will continue in the 130th and knows it will because it is an important tradition of this Committee.

Rep. Mastraccio said it has been a pleasure for her to serve on the GOC, noting it is her 6th year on the Committee and 4th as House Chair. The work that this Committee does is very important and feels that the 129th is leaving it in a good place and wanted to thank Director Fox and the staff in OPEGA for doing all the work they had to do to get the Committee to this point. OPEGA's work never stopped and she appreciates that. She is hoping some of the members coming back for the 130th will be on the next Committee because continuity is important.

Adjourn

The Chair, Sen. Chenette, adjourned the Government Oversight Committee meeting at 12:36 p.m.



DANIELLE D. FOX
DIRECTOR

MAINE STATE LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

Date: November 20, 2020

To: Senator Justin Chenette, Senate Chair
Representative Ann-Marie Mastraccio, House Chair
And Members, Government Oversight Committee

From: Danielle Fox, Director *Sani*

RE: Proposed amendment to statute governing confidentiality of OPEGA working papers

Below is draft legislation intended to provide clarification, in two ways, on the treatment of OPEGA working papers when in the possession of an evaluated state agency or other entity subject to an OPEGA review. Working papers are defined as: "all documentary and other information acquired, prepared or maintained by the office during the conduct of a program evaluation, including all intra-agency and interagency communications relating to a program evaluation and includes electronic messages and draft reports or any portion of a draft report."

Statute is clear that these working papers are confidential in the possession of OPEGA, and are exempt from disclosure under the Freedom of Access Act (FOAA) in Title 1, chapter 13. The proposed language below would ensure that those same working papers are not disclosed when in the possession of a state agency or evaluated entity and also reference the same exemption from disclosure under FOAA.

If the Committee supports this change, a bill could be submitted pursuant to your authority under Title 3, §1001, sub-§2.

Sec. 1. 3 MRSA §997, sub-§5 is amended to read:

5. (Disclosure to agency or entity subject to program evaluation.) Confidentiality of working papers. Except as provided in this subsection, working papers in the possession of a state agency or entity subject to a program evaluation are confidential and should not be disclosed to any person pursuant to subsection 3. Working papers in the possession of a state agency or entity subject to a program evaluation are also exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program

evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.

SUMMARY

This bill clarifies existing law governing the confidentiality of working papers related to an evaluation of a state agency or other entity by the Office of Program Evaluation and Government Accountability. It provides that working papers are confidential in the possession of the state agency or entity subject to the evaluation and adds a reference for the purpose of requests made under the Freedom of Access Act under Title 1, chapter 13.



SEN. JUSTIN CHENETTE, SENATE CHAIR
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MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Date: November 20, 2020
To: Government Oversight Committee 130th Maine Legislature
From: Senator Justin Chenette, Representative Anne Marie Mastraccio and
Members, Government Oversight Committee
RE: **OPEGA Evaluation of the Maine Commission on Indigent Legal Services
(Part I)**

As members of the Government Oversight Committee of the 129th Legislature, we received presentation of a report evaluating the Maine Commission on Indigent Legal Services (MCILS) on November 9, 2020. This report is the first of 2 to be completed by the Office of Program Evaluation and Government Accountability (OPEGA). We send this communication to establish a trail of expectations in response to OPEGA's report and to express our belief that the issues presented in this report are of great concern and that the 130th Legislature's attention to these concerns is not only warranted, but critical. We anticipate that you will be the committee to hold a public comment period on this report and we submit this communication to you as a form of testimony. Although addressing the findings cited in the report can be accomplished by the Commission within their existing statutory authority, it may be prudent for the next Legislature to compel action through legislation.

OPEGA's report highlights a weak oversight structure within the organization that has multiple negative impacts. This weak oversight structure is a systemic issue resulting in the failure of the organization to meet parts of its statutory purpose, as well as other requirements in law meant to ensure MCILS provides high quality legal representation to indigent or partially indigent defendants in Maine. For example, the report finds that there is no mechanism for assessing the quality of representation – a central element to MCILS's purpose. Further, the report cites that the Commission has neglected to comply with requirements in law related to, or in support of, MCILS's

purpose. Some of those neglected provisions require the development of standards for addressing conflicts of interest among rostered attorneys and standards for appropriate counsel caseloads. OPEGA's evaluation outlines the elements of a strategic plan as a way to address this systemic problem. This plan provides a holistic approach that would focus on the organization's statutory purpose and additional requirements in law and result in a strengthened oversight structure.

OPEGA's evaluation also describes several concerning issues with the systems and procedures used by MCILS to process payments and expenditures associated with providing attorneys to low income defendants. The evaluation finds these systems and procedures are inadequate to meet the organization's financial responsibilities and describes ways in which they could be improved, which are summarized below.

- Establish clear policies and procedures to govern/guide attorney billing practices.
- Address the quality and reliability of the data in the Defender Data system by way of better communication to attorneys on how to enter time-events, employing technology within the system to establish internal controls, and to correct mistakes in the data (not just the invoice total) when they are discovered.
- Establish a more efficient and effective process of voucher review - which places a focus on addressing high daily and high annual work hours, utilizes technology to identify and correct outlying billing entries and employs risk-based auditing techniques.
- Develop a broader audit/review procedure for non-counsel invoices that would better identify and correct instances of non-compliance.
- Institute formal audit procedures to serve as a more effective control than current methods and would ensure consistency in enforcement of non-compliance.

We encourage you to look to OPEGA's report and we recommend ongoing oversight of MCILS's efforts to correct the inadequacies and, if necessary, introduction of legislation to compel them to make improvements by a date certain.

Government Oversight Committee
129th Maine Legislature

Office of Program Evaluation and Government
Accountability

Limited Scope Review of
Pine Tree Development Zone Program
November 2020

PTDZ Limited Review Project Scope

Support legislative oversight of the PTDZ program by providing information about:

1. Changes to the PTDZ program since OPEGA's 2017 report;
2. How effectively PTDZ's current design targets the program's newly stated objectives; and
3. The alignment of the PTDZ program with Maine's new Statewide Strategic Economic Development Plan.

Appendix F, on page 30, shows the review scope as set by the Government Oversight Committee.

Pine Tree Development Zones (PTDZ) – A Limited Scope Review

This presentation will cover:

- Brief overview of the PTDZ program,
- Scope of this review,
- Report conclusions.

PTDZ Program at a Glance – Eligibility

To be eligible for PTDZ, a business must:

- Be a for-profit business operating in a PTDZ targeted sector.
- Hire at least one new, full-time employee to work directly in its qualified business activity in Maine.
- Provide a signed statement certifying that it would not go forward with the expansion or location project in Maine absent the program's benefits. (Commonly referred to as the "but for" requirement.)

PTDZ Targeted Sectors

- financial services
- manufacturing
- biotechnology
- information technology
- aquaculture and marine technology
- precision manufacturing technology
- composite materials technology
- environmental technology
- advanced technologies for forestry and agriculture
- call centers in Aroostook or Washington Counties

Sources: 30-A MRSA §5250-I(16) & (18); 5 MRSA §15301(2)

See page 2 of the report for a list of PTDZ targeted sectors and more about eligibility.

PTDZ Program at a Glance – Benefits

Benefits that reduce business taxes	Benefit that reduce other business costs
Income Tax Credits	Enhanced Employment Tax Increment Financing (ETIF) Payments
Insurance Premium Tax Credits	Discounted Utility Rates
Sales Tax Exemptions	Line Extension Benefits
Sales Tax Reimbursements	Electricity Sales Benefits*
	Exclusion from Municipal Tax Increment Financing (TIF) Limitations*
	Conservation Program Benefits**
<p>*These benefits are not provided directly to PTDZ participating businesses, but may benefit them indirectly. See Appendix A for more information on each benefit.</p> <p>**Conservation benefits have never been defined or accessed. As such, they have never directly impacted a PTDZ business's taxes or costs; however, it is possible that they could.</p>	

PTDZ Program at a Glance – Administration

DECD is responsible for certifying businesses as PTDZ eligible.

Individual benefits are administered by:

- MRS,
- DECD,
- Utility companies,
- The PUC, and
- Efficiency Maine Trust.

Appendix A, on page 21, shows the administering agency for each PTDZ benefit.

Changes to PTDZ since 2017

The 128th made a number of changes to PTDZ:

- Clarified the goals of the program for the purposes of evaluation;
- Established new certification requirements to ensure no sales tax benefits can be received until after at least one net new, qualifying job has been created;
- Required new data to be gathered from PTDZ participants annually;
- Amended PTDZ's "but for" requirement; and
- Required increased PTDZ reporting to the Legislature.

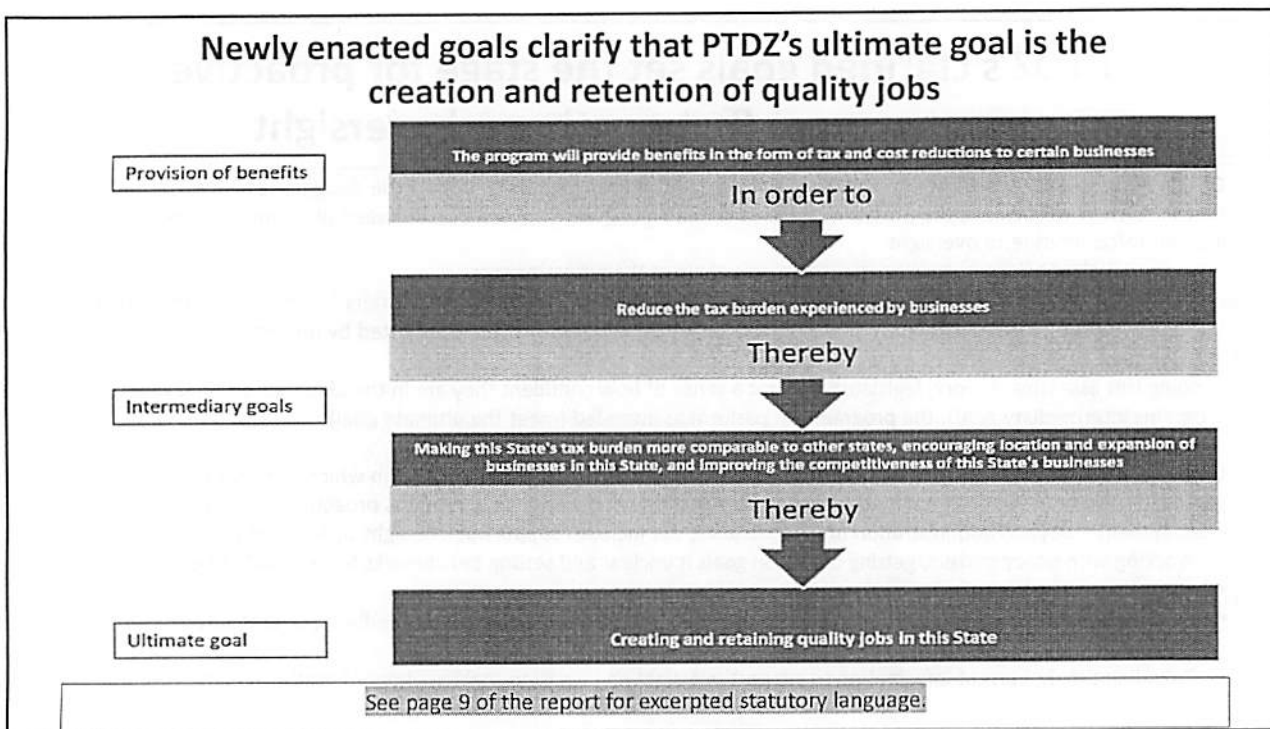
Appendix B, on pages 22-23, shows all known actions related to issues identified in the 2017 PTDZ report.

How does PTDZ's design align with the program's newly established goals?

Title 30-A Section 5250-P

".....the specific public policy objective of the Pine Tree Development Zone program established by this subchapter is to create and retain quality jobs in this State by reducing the tax burden experienced by businesses and thereby making this State's business tax burden more comparable to other states, encouraging location and expansion of businesses in this State and improving the competitiveness of this State's businesses..."

- Legislative changes clarified that the ultimate goal of the program is to create and retain quality jobs.
- Design changes ensured benefits are provided primarily to businesses that create and retain jobs.
 - However, the changes are not enough to guarantee the new jobs are the result of the program



Design changes ensured benefits are provided primarily to businesses that create and retain jobs.

- Changes made by PL 2017 c. 440 requires program participants create at least one new job before they can access benefits
 - OPEGA's 2017 report had identified that PTDZ participants received tax exemptions and reimbursements without ever creating a job
- Other design elements that ensure creation and retention of high quality jobs were in place at time of 2017 report
 - Clearly defined quality standards that qualifying jobs must meet
 - Measures to ensure qualifying jobs are actually net, new (not shifted)
 - Some benefits (ETIF) based on the increase in qualifying employment (unlike sales tax benefits that are provided when one-job-hurdle is cleared)

PTDZ’s clarified goals set the stage for proactive management & strengthened oversight

Design Assessment - Assessing the degree to which the program’s elements support the design and how plausible it is that the design will achieve the program’s goals could be an ongoing conversation between program managers and legislature/committee of oversight

- Involves asking questions about the logic chain at the programs core-
- Are the identified or presumed barriers (to business expansion) the right barriers for the program to target?
- Are the cause and effect relationships in the logic chain reasonable? Supported by research?

In doing this assessment work, legislators can get a sense of how confident they are in the idea that by achieving the programs intermediary goals, the program will perform as intended (meet the ultimate goal)

Ongoing real-time monitoring – It’s critical to have ready access to program information which provides necessary perspective on how the program is actually functioning in the real world. This requires proactive program management – beyond administration and compliance, but includes support of oversight by focusing on outcomes

- Working with policy makers, getting clarity on goals if unclear and setting benchmarks for measuring performance
- Initiating or advocating for collection of the right data
- Proposing changes when economic conditions shift, or in response to participant feedback, or with advances in research
- Providing timely, current information to support oversight and decision-making about allocation of state resources

Overview of Maine’s Statewide Strategic Plan

Strategic Plan 10-Year Goals

- (1) Grow the average wage by 10% to the benefit of workers at all income levels
- (2) Increase the value of what Maine sells per worker by 10%
- (3) Attract 75,000 people to Maine’s workforce from within and outside the State

Strategic Plan Strategy Areas

- | | |
|--|--|
| Strategy A: Grow Local Talent | Strategy E: Supporting Infrastructure |
| Strategy B: Attract New Talent | Strategy F: Maintain Stable Business Environment |
| Strategy C: Promote Innovation in Areas of
Maine Strength | Strategy G: Promote Hubs of Excellence |
| Strategy D: Connectivity | |

See OPEGA’s complete summary of the Statewide Strategic Plan in Appendix C starting on page 24.

PTDZ's Alignment with the Statewide Strategic Plan

- While PTDZ is generally in line with the overarching goals of Maine's Statewide Strategic Plan, it does not speak to the specific actions outlined in the Plan.
- DECD describes the Statewide Strategic Plan as intended to add to Maine's toolbox, rather than replacing existing tools like PTDZ.
- Statewide Strategic Plan was focused on growth, but economic challenges presented by the COVID-19 pandemic have shifted Maine's focus to economic recovery.
- Maine's Economic Recovery Committee is expected to produce its 2nd report on December 1, 2020. This report is intended to bridge the State's COVID-19 response to the Statewide Strategic Plan.

See full discussion of PTDZ alignment with the Statewide Strategic Plan beginning on page 16.

In Summary

- Since 2017, the Legislature has made significant changes in the PTDZ program including clarification of the program's goals.
- PTDZ's clarified goals focus on creation and retention of quality jobs as the program's ultimate goal.
- The amended design of PTDZ ensures that benefits will mostly be provided only to businesses that create and retain at least one quality job and requires notarization of "but for" statements filed by applicants. However, these amendments do not guarantee that PTDZ is actually resulting in more quality job creation and retention than would have happened without the program.
- Proactive program management could support strengthened oversight and help ensure PTDZ is effective.
- While generally in line with the overarching goals of Maine's Statewide Strategic Plan, PTDZ does not speak to the specific actions outlined in the Plan.
- The report expected from Maine's Economic Recovery Committee in December 2020 may shed more light on PTDZ's role in the economic recovery following the COVID-19 pandemic.