OPEGA
PERFORMANCE
AUDIT

FINAL
REPORT

Economic Development Programs in Maine —
EDPs Still Lack Elements Critical for Performance Evaluation and Public Accountability

Report No. SR-ED-05

a report to the
Government Oversight Committee
from the
Office of Program Evaluation & Government Accountability
of the Maine State Legislature

December
2006

Findings and Action Plans

OPEGA discussed these findings and its recommendations for management action with the Department of Economic and Community Development. OPEGA also considered alternative solutions presented by management. Management actions described in this report were agreed upon as a result of these exchanges and OPEGA is satisfied that they are acceptable and reasonable steps toward improving the current situation. We include any additional details related to our recommendations for management action in the description of relevant findings. We also provide recommendations for possible legislative action that should be referred to the appropriate legislative bodies for consideration.

Finding 1. Existing Programs May be Ineffective or Inefficient

An assessment of agency-reported information on 46 existing programs suggests that State resources currently being invested in economic development may not be employed as effectively and efficiently as possible in achieving desired outcomes for Maine's economy. Specifically, OPEGA's risk assessment showed the following multiple indicators of concern.[1]

1. There is a lack of program controls necessary for evaluating the performance of individual programs. Twenty percent of the programs reviewed have no clearly stated public purpose, 24% lack specific and measurable goals and objectives, 26% do not have adequate performance measures and 33% do not report their performance regularly or in a manner that provides for reasonable legislative and public review. In addition, a significant percentage of programs only had minimally adequate controls in these areas. Consequently, the ability to identify whether these programs are achieving intended results is limited.

2. Any efforts to monitor or oversee these programs as an investment portfolio would be severely undermined by a lack of essential information. Ninety-four percent of the programs do not collect or maintain sufficient data to allow analysis of overlap and gaps between programs and 54% of the programs did not provide OPEGA with their administrative costs, even though we encouraged estimates. Without such data, there may be missed opportunities to streamline programs and reduce administrative costs within and among programs. It is also difficult to determine whether some businesses or business sectors are receiving more assistance than needed while others are not receiving enough.

[1] See Appendix 3 for more detailed results.

3. Some basic financial controls are often inadequate or missing entirely. Funding for 35% of the programs examined is not reviewed and reconsidered on a regular basis. The funding for an additional 35% receives only a minimally adequate review. In addition, 43% of the programs report that they are not subject to regular independent financial audits. As a result, the State's funds may not be getting used as intended or most appropriately.

4. The age of a significant number of programs puts them at increased risk of having evolved away from their original legislative intent, or of having a purpose that is no longer relevant to the State's economic development strategy. Forty-six percent of the 46 programs were established 15 or more years ago. An additional 43% are between 5 and 15 years old.

5. The organizational structure and administrative rules add complexity to some programs increasing the risk of ineffectiveness, inefficiency or funds not being used as intended. Thirteen percent of programs were rated as very complex. Another 26% were rated as moderately complex.

6. There are multiple programs of the same type and multiple programs that serve the same business sector. Twenty-four percent of programs are targeted to agriculture or aquaculture businesses, 13% to manufacturing and 33% to all or many different types of businesses. Consequently, there may be opportunities to combine or modify existing programs to reduce the number of programs, and thus administrative costs, overall.

7. As a category, tax incentives exhibit especially high risk. All but two of the 15 tax incentive programs assessed have a high risk rating for at least four risk factors, and 66% of the tax incentive programs have 7 or more risk factors rated as high risk. Over the three years covered by the surveys these tax incentive programs accounted for $478,624,531.

The level of risk existing in any particular program is not necessarily a reflection of the managing agency's performance, but can be due to factors outside of the agency's control. For example, tax incentives are generally not treated the same as other economic development programs, even though many of them are defined as such in statute. Consequently, though it appears that Maine Revenue Service does a good job of controlling the application process and monitoring the requirements for individual businesses, no one is tasked with establishing overall program goals and objectives or monitoring program performance in terms of intended outcomes. There also appear to be no provisions made for periodic review of the State funding for these programs – which, in this case, is forgone revenue.

The risk assessment also showed some areas of strength in the 46 economic development programs. All of the economic development programs reviewed appear to maintain sound systems for assuring fair and equitable application processes. In addition, nearly all have some established process for monitoring beneficiaries' requirements and responsibilities.

Recommendations for Legislative Action

Management actions, and other recommendations for legislative action, related to improving this situation are addressed in Findings 2-6. However, OPEGA suggests the following additional legislative actions in relation to the 46 programs we reviewed.

A. The Legislature should consider subjecting the following programs to more in-depth evaluations of effectiveness, efficiency and economical use of resources. While all of the programs we assessed may benefit from more in-depth reviews, OPEGA recommends that these programs be considered a higher priority, based on their overall risk profiles and the dollar amounts involved:

   -- All 15 tax incentive programs either individually or as a group, see Appendix 2 for a listing;

   -- Revenue Obligations Securities Program (SMART and SMART-E);

   -- Economic Recovery Loan 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; and

   -- Farms for the Future Program.

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

C. Lastly, the Legislature should consider establishing a process for assuring that future economic development proposals are compared to existing programs to determine if the purpose of new proposals can be effectively met by modifying existing programs or whether new proposals should replace existing programs. The Legislature could make this a task of the entity assigned responsibility for portfolio-level coordination (see Finding

3) that occurs in conjunction with review of proposals for other criteria listed in 5 MRSA §13070-O (see Finding 4).

Finding 2. Insufficient Definition of Economic Development

The State of Maine does not have a sufficient definition of what constitutes an economic development program. 5 MRSA §13070-J.1.D currently defines "economic development incentive" (EDI) narrowly as a list of 10 specific state-funded programs. There is also no consistently applied definition of economic development programs among the primary economic development agencies in Maine or within the Legislature. In fact, the program most recently added to the list of "economic development incentives" in 2005, Tax Credit for Pollution-Reducing Boilers, does not state improvement of the State's economy as a primary purpose.

Without a more comprehensive definition of economic development programs, it is impossible to know exactly which state programs are part of the overall economic development strategy and just how much they cost collectively. OPEGA's survey identified at least 36 other state-funded programs that appear to be intended to develop the economy and there are many more.

In addition, the current narrow statutory definition of "economic development incentives" is not consistent with other statutory requirements. 5 MRSA §13070-J requires that businesses receiving more than $10,000 in one year from any of 8 specified EDIs annually provide information on the total amount they have received "from all economic assistance programs." It is unclear whether this means they must provide the amount they have received from any program that they individually consider economic development or just from the 10 EDIs defined in Section J.

5 MRSA §13070-J.1.E already defines "economic development proposal" as "intended to encourage significant business expansion or retention in the State." This definition of proposals may be a good starting place in developing a more comprehensive definition of economic development programs. Establishing a more comprehensive and commonly understood definition would pave the way for the other requirements currently in, or that may be added to, 5 MRSA §13070-J to be applied to all economic development programs (see Finding 4).[2] It would also provide a foundation for more productive discussions on economic development and better coordination of economic development programs (see Finding 3).

---

[2] The Legislature would still be able to exempt particular programs from certain requirements if appropriate.

Management Action

The Department of Economic and Community Development will draft an operational definition of economic development programs for use in establishing which programs are to be considered part of the State's economic development investment portfolio. The Commissioner of DECD will present this proposed definition to the JSC on Business, Research and Economic Development by June 15, 2007.

Recommendations for Legislative Action

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

B. The Legislature should clarify what is meant by "all economic assistance programs" in 5 MRSA §13070-J.3.B.

Finding 3. Lack of Statewide Coordination and Oversight

There are currently no meaningful, statewide coordination efforts that facilitate understanding or effective management of the State's entire portfolio of economic development programs. No governmental agency is currently assigned the responsibility and authority to oversee and coordinate **all** of Maine's economic development programs as a portfolio. No inventory of all state-funded economic development programs exists, and data is not comprehensively captured, analyzed, or reported for all EDPs as a group. In addition, there is currently no single legislative body that has complete oversight responsibility for the State's entire portfolio of economic development programs.

Maine's decentralized economic development delivery system is viable, but without effective portfolio-level coordination and oversight policy-makers do not have adequate information to:

- assess the success of the State's overall economic development efforts;
- determine how state economic development funds are best invested; and
- identify gaps, overlaps, or synergies among state-funded programs.

At a minimum, the State should maintain an inventory of state-funded economic development programs available in Maine, based on a definition the Legislature establishes (see Finding 2). The inventory should include basic information on each program (i.e. type of program, administering agency, target population, enacting statute, year established, public purpose(s), goals and objectives, geographic segment(s) served) with the goal of adding performance type data (number of beneficiaries, total dollars distributed or revenue forgone, total administrative costs and specific performance measures) that could be analyzed for trends over time.

Such an inventory could be established as a database and initially be populated with key information on relevant programs that OPEGA gathered for this review. If well-designed, the resources required to establish and maintain this inventory could be more than offset by reduced costs in other areas. For example:

-- new administrations and legislatures could quickly become familiar with the State's array of economic development programs instead of spending time trying to gather information about them all;

-- administrators and legislators proposing new economic development programs would be able to easily determine whether similar programs already exist that could be modified or replaced, thus potentially avoiding additional administrative costs; and

-- regular analysis of the State's entire portfolio of programs could be more easily performed to determine: a) where administrative efficiencies might be gained; and b) whether available resources could be redirected among programs rather than adding more resources or allowing programs to remain funded at less than optimal levels.

In addition, portfolio-level coordination could also provide:

-- a clearinghouse for information on economic development programs by collecting program performance and cost information from administering agencies, on individual programs exceeding certain established thresholds of State investment, and reporting it on a periodic basis to the Legislature,[3]

-- objective assessment of the program portfolio for: possible overlaps, redundancies or gaps among programs; alignment of the portfolio with the State's economic development strategy; and programs that consistently fail to meet performance targets;

-- periodic reports to the Legislature on the current composition of the program portfolio with recommendations on programs that should be discontinued, consolidated, expanded or have adjustments to their funding level; and

---

[3] Program performance information should include: purpose, goals & objectives, performance measures and targets; data on achievement of performance targets; administrative costs; and administering agencies' assessment of program performance and challenges.

-- monitoring of whether all programs in the portfolio have adequate program controls in place to allow evaluation of performance and provide accountability.[4]

Management Action

The 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 defined by the Legislature (see Finding 2). The proposal will include an assessment of the benefits to be derived from coordination of the portfolio and recommendations regarding the organizational structure, resources, and authority required for the Department to effectively and efficiently carry out the responsibilities of this role as described by OPEGA. The Commissioner will submit this written proposal to the JSC on Business, Research and Development by December 31, 2007.

Recommendations for Legislative Action

The JSC on Business, Research and Economic Development (BRED) should consider seeking similar proposals from the Maine Development Foundation and other existing non-State organizations that have the skills, knowledge and objective perspective 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.

Finding 4. Inadequate Mechanisms to Assure Program Controls

Mandates and processes for assuring that adequate program controls are established for all EDPs are not effective.[5] This is due in part to factors described in Findings 2 and 3. It is also why statements of purpose, goals and objectives, performance measures and/or reporting requirements are lacking in such a significant percentage of the existing economic development programs identified by OPEGA (see Finding 1).

Even when these elements do exist, they vary in their adequacy and are not consistently documented. They are often scattered between 5 MRSA §13070-J, specific program statutes and program rules. Such a patchwork does not provide transparency or accountability. It is difficult to piece

[4] This includes evaluating whether purpose, goals & objectives, performances measures and performance data being collected are appropriate and relevant for the type of program. See Appendix 6.

[5] See Appendix 6 for best practices in evaluating economic development programs.

together all the requirements for any particular program and assess whether the elements are sufficiently related to promote, and allow monitoring of, program effectiveness.

5 MRSA §13070-O attempts to at least partially address this situation. It states that all new economic development proposals must include 7 criteria (program controls) and requires DECD to report on the extent to which the criteria are met. However, it is currently ineffective for several reasons:

1. 5 MRSA §13070-O only addresses proposals. Even if a proposal includes all of the elements required under that statute, the program may not include any of them by the time it has moved through the Legislature and been enacted in statute.

2. Although Title 5 requires DECD to report on the extent to which each proposal meets the criteria spelled out in §13070-O, it does not specify what action is required if DECD reports that the proposal does not sufficiently meet the criteria.

3. There are no requirements that the specified criteria be documented in program statutes and rules.

4. There appears to be no formalized process to assure that all proposals are funneled to DECD, or get reviewed and reported on as required. The significance of this weakness is heightened by the fact that bills proposing new economic development programs can originate in many forms, from many sources, and get referred to a variety of different Joint Standing Committees.

5. DECD has not been reviewing and reporting on all new economic development proposals. The Department interprets the statute to mean that it is required only to review and report on its own proposals.

6. There is no requirement that DECD's reports be in a written form that becomes a permanent, public record of its proposal assessments. DECD indicates that it often gives its reports orally. Consequently, information provided to the committee of jurisdiction is not readily available to other interested legislators or citizens. An example is the proposal for the Pine Tree Development Zones, a program proposed by DECD. DECD's assessment of its proposal against the criteria was apparently provided in testimony before the BRED Committee and no full record could be easily located. While oral reports may be a common and accepted way for agencies to provide information to JSCs, they do not promote accountability.

Management Actions

1. Effective with the first regular session of the 123rd Legislature, DECD will begin reviewing **all** new economic development proposals as

required by §13070-O, regardless of their source, and submit written reports of its assessments to the appropriate Joint Standing Committees.

2. Pursuant to other statutory requirements, DECD will be providing an annual report on Pine Tree Development Zones to the Legislature by June 15, 2007. DECD will include an assessment of this program against the criteria specified in 5 MRSA §13070-O in this report.

Recommendations for Legislative Action

A. The Legislature should consider amending existing statute as follows:

-- Add the following criteria to those already included in §13070-O:

- Each program should have a clearly defined public purpose.
- Each program should report performance data specific to its goals and objectives, in addition to standard data (total dollars, number of recipients, total administrative costs) annually to the entity that is assigned to coordinate the State's portfolio of economic development programs (see Finding 3).

-- Require that standard program controls, listed in §13070-O as criteria, be included in enacting statute or agency rules for every new economic development program.

-- Move any program specific requirements currently in §13070-J, such as those in subsection 2, into the enacting statutes for those programs as appropriate, or amend the program specific statutes and rules to reference the additional program requirements contained in §13070-J.

B. Once a decision has been made on establishing a broader definition of economic development programs (see Finding 2), the Legislature should consider directing all agencies administering programs that meet the new definition to report to the JSC of jurisdiction (in writing) on whether each program adequately incorporates the criteria required in §13070-O. Each JSC committee would then determine whether program objectives and performance measures are relevant to the program, require changes as necessary, and assure that criteria are incorporated into the program's statute and rules.

C. The Legislature should create a process, with mandates established as necessary, to ensure that DECD is made aware of all new economic development programs proposed in legislation. There is currently a process that provides for the Judiciary Committee to review all bills proposing to designate information as "confidential" under Title 1, Chapter 13. This process may be a model the Legislature could consider in establishing a process for economic development programs.

Finding 5. Data Collected Does Not Provide a Clear Picture of Results

Performance data currently being collected on the economic development programs reviewed by OPEGA does not provide a clear or complete picture of program results. OPEGA observed the following:

- Adequate and relevant data is collected to measure achievement of goals on only 41% of the 46 programs (see Finding 1).

- The questionnaire used by DECD to collect data as required by §13070-J.3 only requires businesses to report the number of jobs created or retained and amount of capital invested. In terms of performance measurement, this data is only relevant for those programs with goals of job creation and retention, or increased capital investment. The questionnaire does not solicit data that is relevant to the performance of programs guided by other types of goals and objectives.

- Each EDP beneficiary providing data under §13070-J(3) only has to complete one questionnaire regardless of how many different economic development programs they benefited from. While the form does require the business to list each of the EDPs and dollars received from each, it does not require them to break out their performance data specific to each one. DECD passes the data gathered on to DOL, Maine Community College System, and MRS, who each report to the Legislature on the programs they are responsible for. This means that several different programs may be reporting the same jobs and capital investment as public benefits derived from the program. Effectively, this would skew perception of the performance of each program and could result in double counting of public benefits if results reported by the separate agencies (as required by 5 MRSA §13070-J.4.A-D) are being added together to determine total public benefits from all economic development programs.

- Not all businesses that receive benefits from the EDI's specified in 5 MRSA §13070-J.1.D are providing performance data to DECD as required by that statute. In 2005, 148 of the 468 businesses (31.6%) did not submit their data by the August 1st deadline. It appears that some businesses may not provide data because DECD does not have a mechanism for compelling them to do so. 5 MRSA §13070-J.4.E only provides for MRS to deny future benefits from the Business Equipment Tax Reimbursement program (BETR) to businesses who do not report their data as required. Consequently, this penalty is only a motivator for those businesses seeking to benefit from BETR in the first place. Recent changes to taxation on business property that will take effect in April 2007 will also eventually render this penalty ineffective. In addition, some businesses have indicated that reporting on DECD's paper forms is too time-consuming and cumbersome.

OPEGA recognizes that it may be difficult for businesses receiving assistance from multiple programs to determine how many of the jobs created/retained, or how much of the capital invested, is related to any particular program. At the very least, however, legislators and the public should be aware that the public benefit figures being reported for any one program may also be reported for other programs if a business was receiving benefits from more than one. This could be accomplished with a simple explanatory statement in reports where these figures are used. The lack of transparency associated with potential double counting of public benefits among individual programs would also be minimized by sufficient portfolio-level reporting of public benefits derived from all programs (see Finding 3).

In addition, OPEGA believes there would be value in automating and customizing DECD's data collection process to capture all relevant data on public benefits in a way that is as efficient as possible for both DECD and the businesses which must provide data. With a properly designed web-based application, the collection process could be fed from the inventory database (see Finding 3) and bring performance data back into the database with minimal manual intervention. It would also allow the data captured on each program to be customized without requiring multiple paper forms.

Management Actions

1. DECD is already having discussions with the JSC on Business, Research and Economic Development and legislative leadership on ways to streamline the process of collecting the data required by §13070-J(3) from businesses. The Department seeks to make the process less cumbersome and increase the use of technology applications. As part of this process, DECD will also make recommendations on additional data that should be captured on public benefits, especially for those programs whose goals and objectives are not related to job creation, job retention or capital investment. DECD will work with the Office of Information Technology, as appropriate, to assure technology applications are designed to be as efficient and user-friendly as possible for all parties. DECD expects to have an improved process in place by December 31, 2007.

2. DECD will review the reporting of public benefits from economic development programs it collects data on, and determine the extent to which the same jobs and capital investment are being claimed by multiple programs. If such double counting is occurring, DECD will work with reporting agencies to either eliminate double counting or bring transparency to the figures being reported in the current reports required under §13070-J(4), beginning with those due October 1, 2007.

3. As part of its proposal in response to Finding 3, DECD will make further recommendations regarding the role of the portfolio coordination function in assuring that adequate and relevant data for measuring performance is collected for all economic development programs as defined by the Legislature in response to Finding 2.

Recommendation for Legislative Action

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

Finding 6. Inadequate Reporting for Accountability

Current reporting on economic development programs is inadequate for providing transparency and accountability; for comparing the performance and costs of individual programs; and, for understanding the State's portfolio of EDP's as a whole. OPEGA noted the following concerns:

- The Economic Development Incentive Reports (EDIRs) prepared by DOL, MRS, DECD, and MCCS, as required by 5 MRSA §13070-J.4.A-D, technically meet the statutory requirements but do not appear to provide legislators with standard, objective information in a consistent and accessible format. It is difficult to compare the content of the reports because they are each uniquely formatted with varied data. Also, some reports contain significantly more narrative arguing the value of the EDIs while others present more straightforward data analysis. The inconsistencies in format and data provided make it difficult for policy and decision-makers to use the reports in assessing whether programs are meeting their legislative intent and are an appropriate use of public resources.
- EDIRs are not widely available and readily accessible to both legislators and citizens. Currently the reports are all distributed to legislative leadership, are available from the authoring agencies upon request, and are on file in the Law and Legislative Reference Library. However, interested parties are not necessarily aware that they exist, or how they can be obtained.
- Not all programs are required to report to the Legislature or other State entities on their performance (see Finding 1). Reports that are required by individual program statutes are submitted to a variety of State agencies and/or JSCs.
- There is inadequate reporting to the Legislature on the State's entire portfolio of economic development programs. This is in large part due to

root causes discussed in Findings 2-4. 5 MRSA §13058-5 does require reporting from the Commissioner of DECD but it appears to limit that reporting to the programs and functions of the Department. In addition, no formal written reports related to this statutory requirement have been produced and made available to legislators or citizens in at least the last four years. The current Commissioner presents this report orally to the Joint Standing Committee on Business Research and Economic Development. Thus, there is limited public record available to other legislators and the public.

- The full amount of the State's investment in economic development programs cannot be readily determined. Several root causes for this situation are discussed in Findings 2-4. In addition, OPEGA noted that administering agencies were unable to provide actual or estimated administrative costs for 58% of the economic development programs surveyed (see Finding 1). It seems that some agencies do not distinguish administrative costs from other program costs or do not assign administrative costs to individual programs when they are managing more than one. Although some EDPs may not be required to report administrative costs, without this financial data decision-makers at all levels are severely limited in their ability to judge how efficiently individual programs are operating, or to determine what costs might be saved through program coordination efforts.

Management Actions

1. DECD will design a standard reporting template for all agencies reporting on economic development programs. By October 1, 2007, DECD will distribute the template to all agencies currently required to report under 5 MRSA §13070-J.4, or that are otherwise required to report to DECD. DECD will assure that the template is also provided to any other agencies that acquire reporting requirements as a result of legislative action on Findings 2-4. The template will include sections that require clear description of the program's purpose, eligible recipients, goals and objectives, and performance measurements, as well as an objective analysis of progress toward the goals and objectives. The template will also include fields for required data on the program. Required data will, at a minimum, include:

    -- number of program recipients (with list of recipients and dollar amounts related to each, unless prohibited by statutory confidentiality provisions);

    -- amount of State money risked or distributed (including forgone revenue) through the program; and

    -- cost of administering the program.

2. Effective immediately, 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.

3. 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 on portfolio coordination (see 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.

Recommendation for Legislative Action

Many of the recommendations for legislative action resulting from this Finding are already incorporated in the recommendations for legislative actions in Findings 2-4. In addition, the Legislature should consider modifying 5 MRSA §13058-5 to specify that the Commissioner's reports be written.