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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
January 8, 2016
Accepted February 12, 2016

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Cross Office Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Diamond and Sen. Gerzofsky Joining the meeting in progress: Sen. Davis,
Representatives:	Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Duchesne, and Rep. Mastraccio Absent: Rep. Campbell and Rep. Sanderson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Henderson, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Legislators:	Members from the Taxation Committee: Sen. McCormick, Rep. Goode, Rep. Bickford, Rep. Chace, Rep. Russell, Rep. Seavey, Rep. Stanley and Rep. Tepler Members from the LCRED Committee: Rep. Herbig, Rep. Fecteau and Sen. Patrick

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

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SUMMARIES OF THE NOVEMBER 12 AND DECEMBER 3, 2015 GOC MEETINGS

The November 12 and December 3, 2015 GOC Meeting Summaries were accepted as written.

NEW BUSINESS

- **Tax Expenditure Reviews**

Chair Kruger recognized the members of the Taxation and LCRED Committees who introduced themselves. The GOC had invited them to the meeting to participate in the Tax Expenditure Reviews discussion. Chair Kruger thanked them for attending the meeting to give their input on the Reviews.

- **GOC Consideration of OPEGA Recommendations for Evaluation Parameters**

Chair Kruger said at today's meeting the Committee would be talking about OPEGA's recommendations for evaluation parameters that need to be in place and agreed upon by the end of January, 2016 for the tax expenditure evaluations OPEGA is scheduled to conduct in 2016. Any comments from stakeholders should be submitted in writing to OPEGA and the GOC will consider those comments again at their meeting on January 22nd.

Director Ashcroft explained that the evaluation parameters are important because they are what OPEGA will use as a basis for bringing results back to the Committee. For example, OPEGA was looking for there to be agreement, or changes if needed, on the basic intent and goals of these programs because that will be what is focused on when OPEGA seeks to try to answer that question about whether the program is meeting its intent and goals.

Director Ashcroft noted other parameters that OPEGA is seeking Committee approval on are the proposed evaluation objectives and performance measures. The objectives are basically the questions OPEGA will try to answer in the evaluation and the performance measures are the quantifiable information OPEGA intends to use to help answer those questions. The statistics and the quantifiable measures are not going to be all that OPEGA uses, there are always interviews and qualitative-type data OPEGA gathers, but she thought it was helpful for everybody to understand what kind of statistical data OPEGA might also be trying to pull in to their review. She was looking for agreement on those as part of the evaluation parameters.

Director Ashcroft said OPEGA had created documents on each of the reviews that are up for full evaluation in 2016. She said there were originally four programs that the GOC approved for review this year. She noted that OPEGA was proposing parameters on three of the programs. However, OPEGA is recommending moving Brunswick Naval Air Station Job Increment Financing and a similar program, Loring Job Increment Financing Fund, out of the full evaluation category and the schedule for 2016. She will discuss the reasons for doing so later in the meeting. (Copies of the Proposed Parameters for OPEGA's Full Evaluation of the Tax Expenditure Reviews are attached to the Meeting Summary.)

Rep. Goode asked if Director Ashcroft could explain the roles of each of the Committees throughout the evaluation process.

Director Ashcroft said the GOC will serve in its typical role around the work that OPEGA does. This includes approving the scope of the reviews which is what would be discussed at today's GOC meeting. She said from there OPEGA will conduct the evaluations and will bring back a report that is due by the end of December 2016 on the programs they set out to evaluate. OPEGA will present that report publicly to the

GOC in the same way they deliver all of OPEGA's reports to the Legislature. The GOC will play a role as it normally does in helping to assess and ensure that OPEGA's work has been done objectively, the results are credible, and the recommendations OPEGA laid out makes sense. Once the Committee is satisfied that OPEGA has submitted a good product the GOC will transmit that report to the Taxation Committee.

The Taxation Committee will then be the body that considers OPEGA's recommendations and determines what action to take on them. She believes statute requires the Taxation Committee to actually report out to the full Legislature on what action has been taken with regard to the reports that the GOC has delivered to them. She said in addition to that, the Taxation Committee has a role in conducting what is called under statute "the expedited reviews". The Expedited Reviews are for groups of tax expenditures that seem to exist because of particular tax policies the State has been following. OPEGA's role for the Expedited Reviews is to gather particular information about each of those programs that fall in that category for 2016 and provide that information to the Taxation Committee by July, 2016. Director Ashcroft said the tax expenditures that will be part of the reviews for 2016 are those that appear related to a policy to not tax items that are critical to folks' wellbeing and livelihood. OPEGA refers to them as "Necessity of Life" items. She said OPEGA will be looking to provide that information to the Taxation Committee in mid-year and then the Taxation Committee has a role of using that to conduct the Expedited Reviews and take action as they diem appropriate.

-- Employment Tax Increment Financing

Director Ashcroft gave an overview of the Employment Tax Increment Financing Program.

Questions and comments by members of the GOC, Taxation and LCRED Committees included:

Rep. Mastraccio asked if the ETIF reimbursement is only related to the new jobs. If they had 200 employees and added five new jobs would the ETIF reimbursement be only for the new jobs, even going forward? Director Ashcroft said that was correct and she thinks they have to maintain the level of new jobs in order to keep receiving the benefit. Ms. Henderson said she knew that was true for Pine Tree and believes it was embedded in the calculation of ETIF as well.

Sen. Burns said the tax withholding was money taken out of the employee's check. He asked if that was returned back to the employee or to the business when the 30-50% reimbursement takes place. Ms. Henderson said Sen. Burns was correct and it was referred to as the payroll taxes that are paid on the employee's behalf. For the employee it is essentially invisible. It does not affect them, or their tax burden, in any way, but the calculation for what the business receives is based on what is paid on the employee's behalf. Sen. Burns said it is not money that the employee has to contribute. Ms. Henderson said that was correct.

Sen. Johnson asked whether there was any criteria for whether the new jobs are ones that wouldn't have been created without the tax incentive. Is it actually an incentive to create the jobs or is it merely paying companies that are growing for each of the new jobs they created? Director Ashcroft thought there were multiple layers to the answer to Sen. Johnson's question. She said employers are eligible for this if they create new quality jobs, but they have to apply and be approved for the ETIF by DECD. There is an application process. She said the question about "but for" is one of the objectives that OPEGA will be addressing in the evaluation. Is this serving as the incentive that it was intended to be? She said there is nothing built into statute for the ETIF Program, but for Pine Tree there has to be sort of what they call the "but for" letter and that is built in as part of the requirements of the application. Director Ashcroft said that is not true for ETIF, but it is an objective that OPEGA will be trying to give some information on as a result of these reviews.

Rep. Tepler said the word "encourage" leaves her with some questions about what do we mean by "encourage" specifically in terms of performance measures, etc. Director Ashcroft said there are not very many hard and fast quantifiable benchmarks or goals that have been set out in statute for any of the tax expenditures. She said almost all the language is in this kind of frame – to encourage this or that. She said OPEGA's goal, in the first round of evaluations anyway, is to try to provide a picture of what the activity has been like in relation to different things that OPEGA thinks are related to the purpose of the program. It is OPEGA's expectation that from there, once you can see what the activity is like, that will naturally lead to discussion on the part of the Taxation Committee, or others, about is this encouraging enough, does this look like the level of activity we would like to have, or expected to see. From that eventually perhaps there will be quantifiable goals that are set for the program if appropriate.

Rep. Tepler said in terms of reported information about beneficiaries she would like to know ultimately whether the beneficiary is a large multi-national corporation or a smaller local Maine based business. Ms. Henderson referred to the Performance Measures section of the Proposed Parameters (p. 3) and said what Rep. Tepler referred to she thinks OPEGA tried to cover in the bullet points on that page so the answer to the question is yes. OPEGA will consider slicing the data by beneficiary size.

Rep. Tepler referred to Sen. Johnson's earlier remarks and noted that there is a small reference in the ETIF statute under the criteria for approval as far as what the Commissioner of DECD is supposed to be looking at when deciding whether an ETIF application should be approved. She said there is one sentence saying that the economic development described in the application will not go forward without the Commissioner's approval. Rep. Tepler said that statement seems to be suggesting that the Commissioner is supposed to be looking for something that indicates that the approval of the ETIF application is necessary for the economic development, which she thinks is referring to the hiring that is supposed to happen. She said there is something there and she did not want to leave everyone with the belief that there was nothing at all.

Sen. Johnson thinks the reference Rep. Tepler cited is nonspecific as to what the expectations are for what would qualify to get the approval of the Commissioner. It does not say to him that "but for" this incentive the jobs would not have been created.

Sen. Johnson noted that one of the beneficiaries that should be reflected, particularly with what is described as the intent of this, should be the local economy. He thinks that would get to, in some way, the question of whether this benefit that is being provided is actually being retained by the local companies and is being applied to improving the opportunities and the strength of the economy locally or whether it is being siphoned off somewhere else.

Director Ashcroft said one of the specific performance measures that OPEGA has laid out for the evaluation and one of the objectives that OPEGA will be trying to answer is what the impact was more broadly. She can point out the specific performance measure when she gets to that part of the documents. She said OPEGA was trying to stay as specific as possible when defining the particular beneficiaries in order to be able to take a good stab at answering some of the other questions about the beneficiaries themselves. In every economic development program the local economy is hopefully one of the indirect beneficiaries. Rather than call the local economy out as a beneficiary that OPEGA was going to try to give information about specifically in every review, the indirect impacts are intended to be captured in the performance measure that is on p. 2 as performance measure "I". OPEGA would be looking to establish some sort of indicator of the economic impact in targeted businesses, industries or geographic areas depending on what the structure of the program looks like it is intended to do. Director Ashcroft said OPEGA is intending to give some sense of that. This is, however, one of the performance measures she believes will require economic modeling and for which they will need to hire a consultant with expertise and the tools to do that economic modeling. She said that was the reason OPEGA did not call it out as a specific beneficiary.

Rep. Mastraccio asked if, as part of the whole process, they were going to look at whether or not any applications to the program were ever refused. Ms. Henderson said she did not know at this point whether a lot of data exists about how many or when people may have been refused, but said it certainly is OPEGA's intent to look at the entire application process, the whole process not just application, and as part of that if there are some interesting facts that appear like how many have been denied, OPEGA certainly will be looking to make note of that.

Rep. Duchesne noted the discussion around a bit about the difference between companies that are creating new jobs and may need to be encouraged to create new jobs versus those who have maybe relocated here and are going to create those jobs anyway and are we just rewarding them. His question was is there any real substantial difference between those two from a policy point of view. At the end of the day the new jobs are created. He asked if there was a need to establish any kind of definition between those two categories so they are being measured separately. Are we happy the jobs are being created and that the program is leading to a good conclusion one way or the other. If we feel differently then we need to establish what that would be and how to measure it.

Rep. Goode said Rep. Duchesne's question is one the Taxation Committee thinks about a lot. He said they get these bills in Taxation all the time and he is the first person to say he is guilty of voting for or against tax programs based on testimony at hearings, or just anecdotal information, or people sending him half a dozen emails saying that they are going to lay people off or hire people based on how he votes on one of them. He said for some programs he feels like it is a different impact on how he views it if it is creating new jobs versus benefiting from a tax program when somebody is doing something they would have done anyway. There are some tax programs that make sense to reward existing behavior, but he thinks they are all very skeptical of certain programs, or very excited about others, and knowing whether the intent is to create new jobs, or reward already existing behavior, is worth knowing. Rep. Goode said what Taxation would do with that he is not sure, and some might still disagree once they know all that information, but that seems to be a distinction that he is most excited about.

Chair Katz said this Program exists as it is and maybe it should be changed, but that is not what this process is about. He thought they were there to look at as it exists, to measure it and to see if it is accomplishing the goals that are set out in statute - to come up with criteria for trying to get to that answer. He said the policy question about whether we twist it, or reform it, is really important, but he does not think the Committee needs to do that today. Chair Katz said for today they were saying here is the law, and here are ways we think we can try to figure out if we are meeting the purposes, even though they might not agree with the purposes.

Director Ashcroft added on to the comments by Rep. Goode and Rep. Duchesne. She said one of the things OPEGA is going to try to provide information about, so the Legislature can have that policy discussion, is the extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states because sometimes that is a component of the whole picture. She said that is something that OPEGA recognizes as an ongoing question and is going to try to find a way to provide some meaningful information around that.

In summarizing the Evaluation Objectives portion of the document, Director Ashcroft said if any of the legislators would really like to see any of the objectives listed for any program, OPEGA would appreciate knowing that because thinks they will get to a point on the reviews where they will need to be prioritizing their focus a little bit. If there are some that are really burning questions for them, OPEGA would like to know that right up front. Director Ashcroft said that opportunity for them to input on that is left open and she would like to hear back from any of them on that.

Rep. Mastraccio said she was pretty satisfied with what OPEGA was trying to do. She said the questions she has all seem to be captured in the proposed objectives.

Rep. Russell said one thing that has bothered her for years is when we set out with a tax credit system, or tax incentive system, and design it with the intention of hitting certain goals but those goals aren't met. She gave the mills as an example, where the State provides a significant amount of money to help ensure that we keep those jobs but there is no claw back provision. The mills close and people are out of work and the businesses get to walk away with all the money the State has given them. She said the information from the evaluations is going to help her look at how the State crafts policy in a way that not just outlines what the goals should be but that allows us to ensure that there are provisions to protect us if those goals are not met.

Rep. Tepler said she was interested in how this type of tax expenditure is viewed in the general literature on tax expenditures. What do think tanks and organizations that evaluate these kinds of tax expenditures nationally think about this type of tax expenditure and its tendency to be successful, or not successful, in meeting its objectives. She does not see a proposed objective for the evaluation that would cover that.

Director Ashcroft thinks Objective (b) is intended to hit to some degree on Rep. Tepler's question which is the extent to which the tax expenditure is designed to accomplish the purposes and also is consistent with best practices. She said to the degree there is any literature around what the best practices might be with regard to this particular type of program OPEGA does think they will get to that. Director Ashcroft said she did not know whether OPEGA would end up doing a literature search for more general academic perspectives on the effectiveness, or not, of them. She said many other states are starting to do these evaluations as well so that is something that OPEGA draws from in its research.

Rep. Tepler said there are organizations like the Lincoln Land Institute and other kinds of tax policy organizations that are nonpartisan and may have opinions about these kind of tax expenditures.

Sen. Johnson referred back to the question of are these proposed evaluation objectives good and what are the priorities for the objectives. He thought they were all excellent questions and they have been discovering how some of them relate to the various concerns raised. He said his inclination was to say (h) and (i) should be fully completed if you are looking for priorities because the questions are both whether this is cost effective and whether there are better ways. He gave the example of trying to retain employees at mills and having tax incentives to encourage them to hire more but then not solving the problem of what the market forces are and whether the mills are being innovative and adapting to what is in demand for wood products, etc. He said then those jobs are not going to be retained permanently by investing in another chance to hire another handful of people instead of innovating what the company is doing to be strong and being able to hire more because there is demand for it. Sen. Johnson thinks they needed to get to those kinds of questions in all of the programs if you are going to have effective incentives for Maine's economy and for people's jobs.

Director Ashcroft said in terms of managing expectations she would say yes those are the questions you ultimately want to get at, but said again, this is going to be OPEGA's first time through this process. She expects as they cycle through reviews of these programs over time, they will be able to get to broader and deeper questions. She said this time around she thinks OPEGA's goal is to provide a good sense, if they can, of what the activity level is, what that looks like across different parameters so legislators can have some of those discussions.

Sen. Gerzofsky asked if OPEGA would be looking at how some of these tax incentives might affect other businesses, especially in the same sort of industry, that are not benefitting from the tax incentive.

Director Ashcroft thought that concept was wrapped up in some of the more macro level performance measures around what is happening to the local economy in a net sort of situation. She said they were also going to try to look at a participation rate, which is what percentage of the possibly eligible population, or geographic areas, are getting the benefits by the programs.

Sen. Gerzofsky said he thought it was very important to look at whether some companies are helped at the expense of other companies, and hoped that would be higher on OPEGA's list than the bottom of the priority list.

Rep. Stanley referred to "I" under the Performance Measures and said he would like that looked at, especially on the geographic side, of who is gaining from it and who is not.. He would also like to see what the median income wages are in each county and what the average is for the State as a whole. He thought it was important for the Committee to know what was going on, especially in the rural areas, regarding all the tax programs being evaluated in 2016.

Rep. Russell said one thing that has bothered her is how the income metrics gets reported, not from OPEGA, but generally. She said we often report on median wages which is just the center point so if you have someone making minimum wage at the company and someone who was making a million dollars the median income is going to be markedly skewed. If average income could be included, if that information is available, it would better get to the heart of what people are generally making in that company. She thought if the Committee could receive both median and average income information that would be helpful.

Director Ashcroft noted that there can be differences between the particular programs in terms of the criteria that is being used to define a qualifying job. For example, is the salary above the median income or above the per capita income, etc. There are also differences between programs in what is defined as a low-income or economically distressed area. OPEGA is going to try to stay aligned with what the programs themselves have for specifics but do recognize that at some point a more general definition that can be carried across all the programs may need to be used.

Rep. Fecteau noted that many of the comments being made were relevant to all the tax expenditures up for review and not just ETIF given the proposed objectives were the same for all. He agreed with Rep. Mastraccio and Sen. Johnson in that the objectives in all of the evaluations hit upon, in some way or another, the questions that one could come up with in regard to these tax credit programs. He said he would also find it interesting to know whether or not there were other states that had a similar program and ended it with perhaps reasons as to why that occurred or why they let the program expire. He would like to have that considered, not just for ETIF, but for the other programs that will be evaluated.

Director Ashcroft summarized the Performance Measures section of the ETIF Proposed Parameters. She noted that OPEGA intends to calculate these measures to the degree possible within its resources and within the available data. OPEGA fully expects the first round of reviews will result in recommendations that say “x” data is needed in order to be able to calculate this measure and it is currently not being collected at all or in a reliable way. It is the first time such a look is being taken at these programs so that is to be expected and will not be anyone’s fault. Director Ashcroft said some of the measures will require economic modeling. OPEGA is going to put out a request for proposal for consultants that can provide the technical expertise to do that and she hopes to have someone on retainer to work with OPEGA over the course of the year.

Rep. Tepler noted that performance measures “A” and “B” seem to be components of performance measures rather than performance measures for any of the programs in themselves. She was not sure they alone would tell much about performance and she wondered, since they are at the top of the list, if there was any sort of weighting of these performance measures.

Director Ashcroft said there is no weighting, or any particular reason to the order in which the measures are listed. It is just the order in which they occurred to OPEGA as they were thinking about the program. The Director agreed that a certain number of the measures are really a component, in terms of being nominator, denominator or ratio in some of the other more meaningful of other measures OPEGA will use. Director Ashcroft said measures like “A” and “B” will be just showing the level of activity associated with the program. OPEGA expects, for example, to trend the total businesses over time so you can see how many new business are coming on each year then might breakdown number of businesses by new versus continuing beneficiaries or by geographic region. She said that is the data point that OPEGA will be focused on and there are other ways they will be using that data point to present the information.

Sen. Diamond asked that performance measure “E” be given top consideration. He said it has been seen so often over the years that great ideas like Pine Tree Development Zone, and others, come through in bills and they are so tempting that the Legislature does not consider the impact on the budget and, therefore, either the programs do not last, or they do not perform as desired. He said it was very important that they understand the impact on the budget in order for these programs to be long lasting and have some legs and that is a factor considered each and every time the Legislature decides to put these pieces together. He suggested checks and balances along the way because there have been so many times when these great ideas just tend to dissolve and go away because the budget cannot handle it.

Sen. Johnson asked if OPEGA would be making recommendations on what data should be captured and how best to do that if OPEGA found that there are not data points for some of what they are trying to measure. Director Ashcroft expects that would be something OPEGA would make recommendations on.

Rep. Russell asked what OPEGA was intending with performance measure referred to "E – Net impact" to the State budget. To her that means the return on the investment as essentially the amount of money that is generated economically in the State through new jobs minus the tax expenditure investment. She wanted to make sure her view of it was the same as what OPEGA was intending.

Ms. Henderson noted measure "D total direct program cost" is intended to be the direct tax revenue lost and the administrative costs and is different than what is envisioned for "E – the net impact on State budget". OPEGA is envisioning measure "E" as a broader measure of impact, but OPEGA is not sure yet to what degree the data will be available to support all of the pieces. She said some of the pieces to potentially include would be things like the impact on the budget from any jobs that were created, additional tax revenue that resulted from those jobs and then some sort of multiplier effect for how those jobs would have been expected to affect the economy. In addition, to also include the impacts of not having that revenue in the State budget to spend on other things, like additional State FTEs, and what the ripple effect of that may have been. Ms. Henderson said there are a lot of pieces that could be included in that and OPEGA is not sure how many of those pieces will be appropriate or will be able to be included at this point, but OPEGA is envisioning something bigger like that that will require an economic model and is not just adding a couple of numbers together.

Sen. Patrick asked if OPEGA was going to be looking at whether any of these tax incentive programs created potential liability for the State. He was referring to the New Markets Program in particular.

Director Ashcroft said that is something OPEGA would expect to cover under Objective (B) when they look at the design of the tax expenditure. Not only is it achieving its intent, but are there risks associated with the way it is designed. Under New Markets, for example, it is a refundable tax credit and can go to investors that do not have a Maine State tax liability to offset it against. This is obviously a different situation then some of the other credits. Director Ashcroft said OPEGA would expect to point that out. Though there is not a particular quantitative measure lined out to quantify liability, she expects that in any particular program they would want to put as much information around that as they could in terms of a dollar amount.

-- Pine Tree Development Zones

Director Ashcroft gave an overview of the Pine Tree Development Zone Program.

Questions and comments by members of the GOC, Taxation and LCRED Committees included:

Rep. Mastraccio wanted to clarify that the Town of Sanford has always been a Tier 1 community based on their unemployment. They were never a Tier 2 community so what was done in the last Legislature was that they added, as a pilot, that there was going to be an eligible business project of a theme park resort so that was the change that occurred for Sanford. It was added as a pilot because they have numerous Pine Tree Zone areas in Sanford that were eligible. The Town of Berwick was re-added as a Pine Tree Development Zone because of a very specific project as well. Rep. Mastraccio said those probably won't be a factor in OPEGA's evaluation because those are very specific to businesses that were in interested the tax incentive benefits and will only occur down the road if the projects actually move forward. Rep. Mastraccio also noted that one of the eligibility components for PTDZ was the level of unemployment because the purpose was always to help economically distressed communities. She said there are other communities in York County that are considered eligible Pine Tree Zones because of their unemployment rate.

Rep. Mastraccio said the other specific project she did not see listed was the Washington County Call Center addition. Director Ashcroft said that was actually listed under the business sectors that qualify. Rep. Mastraccio said the Call Center was a very specific addition only in Washington County and there was also an adjustment to the level of wage that could be offered. She thinks that is one of the issues with this Program is the change that has happened politically over the years. Director Ashcroft said it does complicate things as the major portion of the Pine Tree Development Zones Program seems to be based on geographic location and then there are these kinds of one offs that are related to specific projects. OPEGA will be figuring that out.

Rep. Tepler said the program requires that the new employees be paid more than average per capita income for the county. She asked if it is known who determines what the average per capita income for a county is, how often it is determined and how the information is disseminated. Ms. Henderson said that OPEGA did not know yet, but would expect to find out as part of the review.

Rep. Tepler asked if OPEGA would be addressing the “but for” letter required for eligibility for this program. Director Ashcroft said OPEGA would be addressing that under objective (e).

-- New Markets Capital Investment Credit

Director Ashcroft gave an overview of the New Markets Capital Investment Program.

Questions and comments by members of the GOC, Taxation and LCRED Committees included:

Rep. Tepler said it was her understanding that CEI was also an entity that was qualified to administer the Program in the same way as FAME. Director Ashcroft said no. CEI is one of the approved community development entities that has an allocation under the New Markets Program. They are one of the users of the Program.

Rep. Russell said one of the questions raised by the news articles on this program was the process for being approved as a CDE and some of the CDE applicants appear to have made a habit of getting approved as CDE’s in multiple states across the country. She asked if OPEGA would be looking at what the process is, has been and could be in terms of best practices to ensure that future CDEs are in line with the spirit, not just the letter, of the law.

Director Ashcroft said OPEGA can certainly look at that. It was her understanding that there was a small handful of these organizations across the country that are qualified for the federal New Markets program and by virtue of the way Maine’s program is set up the only entities that have been approved for the federal program could qualify to be a CDE in Maine.

Rep. Russell asked if there were further limitations the Legislature could put on to ensure the future integrity of a program. If implemented properly it could work fine, but she had concerns about the fact that Maine is writing $16 million worth of checks on for a business that no longer exists.

Rep. Mastraccio referred to the difference between the stated intent and goal of the program with one saying “major” investment and the other saying “new” investment. She asked if it was major or new or either or. Director Ashcroft said that is currently unclear in statute. OPEGA will try to breakdown the performance measures both ways if they can so the Committee can get a picture of it from both angles.

She expects somebody ultimately is going to have to decide what the difference means and what is really intended.

Rep. Mastraccio noted that how had it been interpreted in the past might have facilitated an investment that might not be what was intended. Director Ashcroft agreed.

Sen. Johnson said it appears from the program description that there is no requirement in the program that a beneficiary actually achieve the intent and there is no claw back provision if not met. He sees the primary beneficiary as the credit recipient and the secondary beneficiaries are the potential opportunity for economically distressed communities, or businesses, to have advantage from the process. He thinks they are listed in the wrong order in OPEGA's Proposed Parameters document.

Director Ashcroft said OPEGA wants to focus on who the intended beneficiaries are and those beneficiaries are who OPEGA will answer the objectives about and calculate performance measures for. She said the intent of the legislation is to benefit these companies in these communities and focusing on these as the intended beneficiaries would result in different answers then if OPEGA focused on the credit recipients. OPEGA will answer Sen. Johnson's question, but not with the credit recipient as the primary intended beneficiary.

Rep. Mastraccio said she was sure when the legislation was enacted the businesses were looking for some benefit for themselves and they intended to be beneficiaries of it. She thinks they were hoping, as a State, that the intended beneficiaries were the people who would work in those businesses and the communities that would benefit from having the business there. She wanted to make sure that OPEGA looked at that particular point. The side benefit is who are the other beneficiaries and did they get something where the State got nothing.

Director Ashcroft said what OPEGA has learned from the research it has done on this particular Program so far is that it is very complicated and the benefits in this Program may not be what you see on the surface. She said OPEGA has a lot more to understand about the way the program is designed and how it works in the different financing structures that can occur under this Program. OPEGA will get to those kinds of points.

Rep. Mastraccio referred to Director Ashcroft's statement that all the money already authorized for this program has been allocated and asked if it had been allocated or already used. She noted that an article in the paper it said there was a company in Portland that had applied for money and then withdrew their application which made her think there is money there that is still left to be allocated. She was concerned how much that is and if they will be looking at the allocated versus used situation while they were evaluating the Program. She does not think all the money has actually been allocated, meaning it had not been agreed to yet, but had been applied for.

Ms. Henderson said what OPEGA understands, as of at least a couple of weeks ago, is that everything had been allocated. If there has been a more recent change, OPEGA is not aware of that. She said allocating means that all of the credits that were available had been reserved so no CDE's could continue to apply for more allocations. She said it was not that all of the credits had been received, or taken, by the investors yet, but that they were reserved by the CDE.

Rep. Russell said that gets back to the question about the qualification process for the CDE because if you have CDEs that were preapproved and then ended up doing things that maybe people categorically disagreed with she thought it was important to look at that qualification. Rep. Russell noted that one of the challenges in the program were the one day loans. She asked if FAME's Board changed its policy in that respect so that the State is not in that position going forward and whether that was a shift that should be put in statute in case the Board changes and that decision alters as well.

Ms. Henderson said FAME did update the rules regarding one day loans and those are promulgated rules so they are not easily changed. As to Rep. Russell's larger question, she said OPEGA will be looking at what is the whole application process, what are the required qualifications and do those with the spirit of intent of the Program. She said to the degree that OPEGA does not see alignment they would make recommendations. Maine may want to look at changing some things in statute to make the Program more consistent with what the intent is, despite what may be allowed under the federal program.

Rep. Fecteau said he would argue that one of the points of contention for this program is the definition of a low income community. He said under the Program cities like Portland can qualify and not just the City, but also a street in Portland can qualify and he thinks that might come from the Federal program. He would like to know other states which also have this Program, how often businesses in a gateway city like Portland receive the benefits from these tax credits. Rep. Fecteau thought it was interesting that out of the businesses that receive credit from this Program two of them were in a gateway city like Portland and that is important when talking about economic development. He said other than that he thought the parameters laid out for this Program, just like the others talked about at the meeting, are going to hit upon a lot of the questions that he has.

Rep. Tepler said she hoped as OPEGA evaluated the Programs talked about at the meeting they also address the big picture question of whether the existence of any of these Programs, individually or in aggregate, make Maine more attractive as a business location and make Maine more likely to grow economically. She thinks that question has to be in front of their minds as they look at the Programs.

Director Ashcroft said she wanted to be clear on what is expected out of the current OPEGA evaluations versus a more macro level evaluation of the State's entire portfolio of programs. The more macro level review would address how the programs work toward enhancing Maine's economy overall while OPEGA's reviews are focused on getting down to some real specifics on the performance of any individual program. She noted that the current evaluations that DECD is required to do under statute have been more focused on the macro level question. It is OPEGA's hope that its work and the work that is done on DECD's evaluation, will feed each other to better inform those macro level questions. She said when DECD does that evaluation they do not have the time to get into the details of the programs the way OPEGA is designed to do and hopes that DECD can use OPEGA's work and OPEGA is hoping to use DECD's work.

- GOC Consideration of OPEGA Recommendation to Re-Categorize

-- Brunswick Naval Air Station Job Increment Financing
-- Loring Job Increment Financing Fund

Director Ashcroft went over OPEGA's recommendation to reclassify and re-categorize the Brunswick Naval Air Station Job Increment Financing Fund review that the GOC did approve a full evaluation for on OPEGA's 2016 schedule. OPEGA also discovered when researching this Program that a similar Program for Loring Job Increment Financing Fund had also been captured in the estimated revenue loss numbers for the ETIF Program. She said OPEGA was not aware that was still an active Program because the reference to statute that was in the Maine Revenue Services' Red Book took them to a repealed statute so OPEGA did not define it as an individual program in its original proposed classification and schedule. Director Ashcroft said both Programs are similar in that what they do is use withholding taxes, the ETIF monies, as a funding stream to support the Mid Coast Regional Development Authority in terms of the Brunswick program and the Loring Development Authority in terms of the Loring program. She said there is a calculation of the ETIF amount for new employees that are in those areas. Any ETIF reimbursements being paid out to businesses under the ETIF and Pine Tree Development Zone Programs are subtracted and then fifty percent of the remaining proceeds, in the case of Brunswick Naval Air Station EITF, go into the Increment Financing Fund which is then funneled to Southern Maine Community College and the Mid Coast Regional Development Authority. She said in Loring's case there is a similar situation, but it goes entirely to the Loring Development Authority. Director Ashcroft said there are limitations in statute on what those funds can be used for.

Director Ashcroft said from OPEGA's review of these programs so far it does not appear as though they directly benefit a business or would serve as a direct business incentive. She said they seemed to be set up to be a revenue stream using ETIF for these governmental type entities that are pursuing a governmental type purpose. She said the evaluation objectives they have been talking about for the other Programs do not seem to be relevant to these two particular Programs. She said those kinds of questions would be better asked about the Development Authorities themselves and to what degree are they accomplishing their purposes and producing results.

Director Ashcroft said for these reasons OPEGA was recommending that they not continue to include Brunswick Naval and Loring in the category of business incentives-job creation. She recommends moving them to the category for tax expenditures that seem to be supporting specific public policy goals, or mandates. This would also move them to the expedited review category in 2018 when OPEGA has other tax expenditures of similar policy nature up for review by the Taxation Committee. Director Ashcroft said, in summary, OPEGA is looking to strike Brunswick Naval Air Station Job Increment Financing and Loring Job Increment Financing Fund from their full evaluation schedule for 2016 and move it to an expedited review.

Motion: That the Government Oversight Committee moves the Brunswick Naval Air Station Job Increment Financing Fund and the Loring Job Increment Financing Fund into the Expedited Review classification. (Motion by Rep. Mastraccio, second by Sen. Gerzofsky, passed unanimous vote 10-0.)

Director Ashcroft said OPEGA will gather any comments, or questions, from the GOC, Taxation and LCRED Committees over the next week and, will be prepared to summarize those for the GOC at their January 22nd meeting. Formal GOC approval will be considered at that time.

- **Stakeholder Comment Period on OPEGA's Proposed Evaluation Parameters**

Director Ashcroft said it would be helpful to receive any stakeholder comments made at this meeting in writing so they can be incorporated as appropriate for the GOC's January 22nd meeting. She said written comments should be provided by January 19th.

Stakeholders commenting on OPEGA's Proposed Evaluation Parameters:

Linda Caprara, Maine State Chamber Commerce. Ms. Caprara thanked Director Ashcroft and the Taxation Committee for their work last Session. She said the Chamber worked closely with them.

Ms. Caprara said much of the information in the Proposed Parameters documents was straightforward, but the Chamber did have some comments and she wanted to bring those to the attention of the Committees. She said she will provide written comments to OPEGA by the 19th. The main points Ms. Caprara made to the GOC are captured in her subsequent written comments attached to this meeting summary.

Questions from GOC, Taxation and LCRED members included:

Rep. Russell referred to Ms. Caprara's statement about incorporating data on what companies spend statewide into the performance measures for Net Impact on State Budget and Indicators of Economic Impact and asked if she was referring to what they already spend or what they spend as a direct result of the Program. Ms. Caprara said she was referring to what they already spend, although it could be a result of the Program. She said if you assume the companies are taking these Programs to remain a viable entity in the State then you are going to have to assume that they are continuing to spend and retaining the jobs they have. Rep. Russell asked if the information should be prorated for the jobs that were kept. Ms. Caprara thought the whole thing should be looked at. You should look at the company as a whole and say what are we spending in the State of Maine on goods and services throughout the State because you are assuming that those companies are taking the Programs to remain viable entities in the State and to continue to invest. She thought Maine was very modest in its approach to tax programs that they offer and a lot of the businesses are being approached and potentially lured away by other States. Ms. Caprara said the Chamber thinks these Programs are working and is hoping that OPEGA's reviews will show that.

Rep. Duchesne asked for clarification of the reason the "Est. Revenue Loss" should not remain on the top of the Parameter documents because he looks at it as a dashboard tool and it was good to compare that information for the different programs.

Ms. Caprara said she understood that but "Est. Revenue Loss" indicates you are looking at it as an actual cost to the State versus looking at all the benefits that come from businesses remaining viable in the State, like the income taxes it generates and the indirect revenues that the State realizes that are not in this figure. She thinks often times they do not figure in the indirect benefits and, therefore, just highlighting "Est. Revenue Loss' is misleading.

Rep. Fecteau said he assumed that Ms. Caprara was just speaking to what the indirect impacts were from the businesses after they received tax credits. He said it would not make sense to look at what they contributed to the State before they receive tax credits since that would be completely irrelevant information. Ms. Caprara said she disagreed because, if you look at what other States provide for incentives, businesses are constantly re-evaluating whether they are going to invest in this State or not. If they do so, they have to be cost effective, their markets change, and they have to sell a product at a competitive rate, so you have to look at all those. She thinks you have to look at what is this doing for the company. It is allowing us to retain the jobs and the investment here.

Rep. Fecteau said he did not disagree that the information is relevant, but what he was trying to say is if you are going to make an assumption that the tax credit contributed to these companies continuing to make investments in Maine, you would have to look at before the tax credit contributions and the after tax credit contributions and compare them. He said, for example, a company received an ETIF and there was zero difference in reality, and adjusted for inflation, to their contribution to the overall economy. You make the argument that they remained in business because of the tax program, but it is not a clear correlation that because they received the tax credit they contributed $1.6 billion dollars to the Maine economy.

Ms. Caprara said she did not think it was clear, but does think it is an important indicator when you are considering we operate in a global economy and that we are consistently under pressure to be competitive. She said that is something that ought to be looked at.

Chair Katz gave an example of Bath Iron Works and David Burns' Landscaping Services, and noted that the Program made no distinction between the two businesses, and five jobs added from each is a good thing for Maine. He thought Ms. Caprara was arguing that the Program ought to be changed somewhat and maybe Bath Iron Works ought to be getting these breaks more than Burn's Landscaping Services. He is not saying they should, or should not, but this Program does not make any distinction between those two businesses. So he asked why they should be looking at the total impact of the businesses in evaluating this Program, which is blind to the fact of whether there is eight employees. Chair Katz thought Ms. Caprara was arguing for a new program.

Ms. Caprara said she was not arguing for a new program. She said she was suggesting that often times they look at the programs as a whole and do not look at what some of the benefits are of having these companies take the ETIF, or the Pine Tree Zone Program. She said what she was suggesting was looking at what some of these benefits are above and beyond what is seen here. The goods and services that these folks provide, whether it be the Landscaping Company, or Bath Iron Works, they are all important and she was not making any distinction between a large, medium or small size company.

Rep. Mastraccio appreciated Ms. Caprara's comments, but thought what information is listed on the top of each Proposed Parameters is the right place for it. She said this is about evaluating statute and expenses and the Legislature needs to know what the tax expenditures cost because they cannot make good decisions without that information. Rep. Mastraccio said what they have before them will give them that information in terms of have businesses done what was intended in statute which was for the most part, businesses to incentivize, to create jobs, and they all hope Maine will be a better place as a result of that. She appreciates that the businesses spend a lot of money and we expect them to spend their money in the State, but this program is not about that. She said to her the bottom line of why we are evaluating these programs is to make sure that, as legislators, we are getting what was intended with the statute. Rep. Mastraccio said she understood why the Chamber did not want to see that huge cost highlighted because some people won't wait for the whole evaluation. But, in the end the review shows revenue loss is more than paid for and it is what the Legislature intended to create business, then the question won't be there every single time they are talking about those programs and every two years when there is a new Legislature.

Rep. Caprara said she was not suggesting that the Legislature didn't need to know the revenue loss information, but what she was suggesting was that what she thought, and the Chamber thought, was the purpose of this review of tax expenditures is to find out if in fact these programs are working, whether they need to be changed, whether they need to be kept and she thinks that is the overlying purpose. She said if this is a fiscal exercise she thought they needed to know that because it is not a question of whether or not these programs are working. That is what the big question is and she thought that is what the review of tax expenditures were supposed to get at. Ms. Caprara said whether or not you have an estimate revenue loss or revenue gain is part of the discussion, but she did not think that it should be the focus. She said they need to know whether or not the Legislature is looking at these programs and actually are going to look at them in terms of reviewing whether or not they are benefiting Maine businesses, or is this going to be simply okay this is costing this so maybe we should do this.

Kris Eimicke, an Attorney with Pierce Atwood, the Chair of the Tax Section of the Maine State Bar Association, and a Professor of Law at the University of Maine School of Law.

Mr. Eimicke said he does a lot of economic development work both in Maine and around the Country and work on the Federal and State New Market Tax Credit Programs. He will submit written comments to Director Ashcroft. The main points Mr. Eimicke made to the GOC are captured in his subsequent written comments attached to this meeting summary.

Questions from GOC, Taxation and LCRED members included:

Chair Katz said he hoped that Mr. Eimicke would include in his written comments any specific recommendations for how OPEGA might measure some of the programs. Mr. Eimicke said he does have those things and he has been talking to people about them so they will not be just his comments. He wanted to collect as many perspectives among his colleagues as he could to could give the best recommendations he could.

Rep. Russell said she appreciated Mr. Eimicke's comments about needing to look at the broader impacts of the Program. She also noted there are positives that have come out of the New Markets Capital Investment Credit Program that do not get the headlines. She did note that she was bothered though with what happened with the mill in East Millinocket. The State invested a lot of money into a program designed to save those jobs only to have a few people mix up the spirit and intent of the law in order to make money and to pay off their own debts, leaving everybody who had high hopes stranded.

Mr. Eimicke said he understood Rep. Russell's concerns and he also feels like the people in Millinocket were failed, but will talk about that more later. He said he does believe there are ways to strengthen the New Markets Program and he will be talking about those. They will not be included in the information he provides to OPEGA because this information only pertains to the parameters, but in the next step his colleagues and he will be providing information about how they think the Program can be strengthened and how situations like Rep. Russell talked about can be prevented in the future.

Rep. Duchesne said his interest for today was scoping out the project to something that is manageable and thinks he is hearing from Mr. Eimicke that they need to get a lot of qualitative understanding into the final report. He said to him it is a matter of framing up the house and putting the drywall on later. They had to figure out what the metrics actually are and what the actual bones of this is before they figure out how to color it in. Rep. Duchesne thought Mr. Eimicke was talking about the second step of this process and what he was asking for is something that exceeds what they are capable of doing in the near future. Mr. Eimicke thought it was a tougher process to do the qualitative analysis, but was important to a thorough look at the Program.

Rep. Fecteau said Mr. Eimicke spoke to something that no one else had contributed to the conversation which is community development and how that should also be taken into consideration in the evaluation. He gave the Farnsworth Art Museum as an example. He said the money approved for Farnsworth was $10 million and $7.4 of it was in a one day loan, so $2.5 million went to renovating and improving the grounds. He asked if Mr. Eimicke thought, within the evaluation, the $7.4 million should be taken into consideration as not being used for community development and not being used for the purpose of the program in which he described. Mr. Eimicke thought everything should be taken into account. CDE's evaluate whether to do a project based on a set of criteria and that criteria is generally the community impact that is going to be created from the project. He gave an example of the Bayside project where all $10 million is going to go into new construction, versus the Farnsworth Art Museum project where a portion of the money is going towards refinancing existing real estate. Mr. Eimicke said CDEs would look at those two projects and say which one of these is going to create the most positive impact for a community. Some may say it's the Farnsworth and some may say it is the Bayside Development, but that is a decision that is made by a group of people who are thinking thoughtfully about the question. His suggestion was that folks in this analysis also look at that thoughtfully. Mr. Eimicke said the goal of the Program is to benefit communities and if a portion of the money went to refinance a debt but there were greater community benefits as a result of that investment he does not think that is a failure at all. He thinks it is a win.

Director Ashcroft noted for the record that just because qualitative is not listed with the Performance Measures does not mean there will not be qualitative input. She said OPEGA will be absolutely including qualitative information, not just the Performance Measures, in addressing all of the Objectives.

Garrett Martin, Executive Director, Maine Center for Economic Policy. He said he served on the Tax Expenditure Commission with Sen. Katz and others and thinks they benefited from Director Ashcroft's presence at meetings. Mr. Martin said his background is in program evaluation. He noted from his experience that this will be an evolving process, that the challenge is great and he thinks the folks at OPEGA are well-suited to extract the most value out of limited resources available and to make sure the Committees get a quality product. He appreciated the work that has gone on already in that regard. Mr. Martin's primary comments to the GOC are captured in his subsequent written comments that are attached to this Meeting Summary.

Additionally, Mr. Martin noted an issue that came up earlier regarding Pine Tree Development Zones and per capita incomes. He said he would advocate that it be clarified that it is "per capita full time" as there are issues if you are comparing data for part-time positions versus full time. The other thing they know from the data is that small business owners' incomes tend to be lower than prevailing wage rates in Maine. Mr. Martin said the idea of dynamic fiscal notes or dynamic analysis of economic impacts analyses also came up earlier in the meeting and said he does not think they were ready to go there this go round. He advised to tread there carefully because of the opportunity cost reason. The most valid way to assess economic impact is the situation in which those dollars would not have existed in the State but for the program. They are complete new dollars in the State versus those that are already here and are just allocated in this particular way.

Chair Katz said Mr. Martin mentioned the "but for" a couple of times and asked how do you figure that out. He said in the Pine Tree Zones it is as simple as the Company saying if it weren't for this Pine Tree Zone Plan they would not be adding these jobs and you have to essentially take their word for it. He asked how you would figure out whether or not "but for" this particular program those jobs would not have existed. Mr. Martin said how do you do it methodologically soundly and then how do you do it given the constraints of this process are different matters. Any out of the box real "but for" analysis is going to be flawed. Mr. Martin said with that said, what you see in most social science research, where you are able to do it, is you have a control area and your intervention area. For these programs you are not going to withhold the credit from one part of State and give it to another part so you are out of luck on that one. In his estimation he thinks the best way to at least try to get a proxy for that is by doing some comparative analyses in a couple different ways. First is firm specific so look at the firm where the intervention took place and get your data before the intervention and get your data after the intervention and then monitor it over time. He said the other things you will run into is there are seasonal fluctuations in some firms, some firms will create part-time jobs, some firms are going to create those jobs and then they are going to let them go and that is why it is important to look at it over time. Mr. Martin said that is firm specific. He said the problem is you could have a firm that does not add any jobs that actually benefitted greatly from the program. Mr. Martin said you understand that by looking at a broader set of data. He would advocate, and perceives this to be within the framework, that within that industry sector you aggregate the data for firms that are like that firm that did not have the intervention and firms that did and see if there is a variation between the two. He said in reality factors about the geographic areas play into this and a host of other things, but he would say that these are the two most important aspects at this stage.

The Committee thanked all of those who spoke and their suggestions regarding OPEGA's Proposed Parameters.

The GOC also thanked the members of the Taxation and LCRED members for participating in the discussion of tax programs.

Chair Katz said the GOC was going to be finalizing all the Tax Programs criteria at their meeting on January 22nd and said they would like to have input from the Taxation Committee in some form before that.

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

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report**

  - **Monthly Report Back From Secretary of State Dunlap on Records Retention and Management Efforts**

Secretary Dunlap summarized briefly with where the Working Group has been over last several months. He provided the GOC with several documents and praised the work of Eric Stout, from the Office of Information Technology, who has been staffing the work of the Stakeholder Group and also came over to the Archive Advisory Board. Secretary Dunlap said Mr. Stout has taken detailed notes which the GOC has copies of that tells them in some detail things that have been talked about.

Secretary Dunlap said they were looking for a little guidance from the GOC about their next steps. They have broken out several main elements that they want to focus on, particularly around the structure of the Archives Advisory Board. One of the things they have deliberated about is having representatives from different areas of expertise serve on the Archives Advisory Board as it was originally created in 1965. However, it seemed as though that would be tying up a specific area of expertise that may not be needed for some time, whether it be technical, legal, financial, etc. He said a fall back was to continue the work of the devoted people on the Archives Advisory Board with the ability to create subcommittees bringing in people to represent the specialty areas as you needed them to discuss different policy areas. Secretary Dunlap said he attended the

Archive Advisory Board on October 9th as they reviewed the records retention schedules of the Department of Environment Protection. It was a very detailed meeting. He said they do not skim over anything, they go into great detail, which is both an asset and a liability because there are a number of State agencies waiting to have their records retention schedules approved and it could take years to get through that. He said one of the things talked about is giving them the ability to develop a series of frameworks that agencies could then build from in submitting their retention schedules for approval. Secretary Dunlap said that would be a much briefer process.

Secretary Dunlap said their two newest members are the former Records Manager Director Nina Osier and former archives staffer Howard Lowell, who have already benefitted the Board. He noted that Lyman Holmes, the Probate Judge of Washington County who has been a member of the Archives Advisory Board for forty years, just stepped down so without the two new members they would be lacking a quorum.

Secretary Dunlap said as they move forward they will be looking at some minor statutory changes. They would like to review those with the GOC before they submit them to the Legislature and that can be done at a future time. (A copy of Secretary Dunlap's Interim Report is attached to the Meeting Summary.)

Chair Katz said everybody is looking for guidance on what records they should be retaining or not and asked how soon that information will be available. Secretary Dunlap was hopeful they would have that information in hand before the end of the Session. He said the technology has developed so quickly in the last ten years that there is assurance they are going to find a way to preserve records. However, under the Freedom of Access Law if you have a record and somebody wants it you have to give it to them whether you are required to have retained it or not. This could be an extraordinary burden for records officers. Chair Katz said there should be at least an initial guidance to agency about what to keep and what not to keep, what to archive and what not to archive by the end of the Session. Secretary Dunlap said that was the hope.

Director Ashcroft asked Secretary Dunlap if the guidance will cover when identified as this was an issue in working documents, drafts and those kinds of records need to be kept versus not. Secretary Dunlap said in totality, that is their hope. He said that was the role of the Archives Advisory Board. The Board is to serve the public trust and be a public interface so you do not just have bureaucrats deciding what is important to keep and what is not and the public has an opportunity to weigh in on that process. Secretary Dunlap thinks that was a critical missing element over the last twenty to thirty years.

The Committee thanked Secretary Dunlap for his Interim Report and for answering their questions.

RECESS

Chair Kruger recessed the Government Oversight Committee recessed at 12:12 p.m.

RECONVENED

Chair Kruger reconvened the GOC meeting at 12:18 p.m.

UNFINISHED BUSINESS

- **OPEGA Information Brief on State Funding for Good Will-Hinckley**

Chair Kruger said the GOC originally agreed they would make the record of the November 12, 2015 meeting an audio file only, but since then there has been a request from Aaron Chadbourne of the Governor's Office that an official written transcript of that meeting be done.

Chair Katz said there are laws that guide the Committee on the process they must following during proceedings like those held on November 12th and Mr. Chadbourne's interpretation of the law is that the GOC is required to have a written transcript prepared for the November 12th meeting. He said instead of litigating Mr. Chadbourne's request the Chairs were looking to Committee members' for their opinion regarding having a written transcript done for that meeting.

Sen. Burns said if the Committee needs to provide the document then it should be done.

Motion: That the Government Oversight Committee provides a written transcript of the November 12, 2015 GOC meeting. (Motion by Sen. Burns, second by Sen. Katz, passed unanimous vote 9-0.)

- **Review and Approval of GOC Addendum to OPEGA Report**

Director Ashcroft said this is the first time the Committee has actually produced an addendum and said the Addendum will be the GOC's public report on OPEGA's Report. She said nothing in the Addendum will change OPEGA's Information Brief on State Funding for Good Will-Hinckley. Director Ashcroft said the Addendum does include a summary of all the additional information, context or detail that is relevant to what was reported in the Information Brief. She was looking to the GOC as to whether they had any changes to the Addendum, or if they were ready to approve it as the final document.

Motion: That the Government Oversight Committee accept the GOC Addendum to OPEGA's Information Brief on State Funding for Good Will-Hinckley. (Motion by Sen. Johnson, second by Rep. Duchesne, passed unanimous vote 8-0.)

Director Ashcroft said the GOC agreed it was their intention to convey the Addendum by a written communication that would appear on the Calendars of the House and the Senate so she will draft a letter from the GOC Chairs. GOC members agreed to that being done.

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report con't.**

- Response From GOC Letter to Governor's Office

Director Ashcroft noted that the GOC Chairs did receive a communication from the Governor's Chief Legal Counsel Cynthia Montgomery that is in their notebooks. It describes the Records Retention and Management efforts that have been ongoing in the Governor's Office and their intent, once they figure out what they are doing, to then provide guidance to the agencies. She said in their own records management efforts the GOC had asked the Governor's Office to help with setting the agencies to focus on their records retention responsibilities.

REPORT FROM DIRECTOR

- **Status of Current Projects in Progress**

Director Ashcroft noted that the three Tax Expenditure Reviews talked about earlier in the meeting have been added to OPEGA's Work Plan. She will also be adding a Special Project for gathering and preparing the information that OPEGA is to provide to the Taxation Committee for the Expedited Reviews.

She said OPEGA continues to work on the Riverview Psychiatric Center Review. The fieldwork is nearly complete and OPEGA will be getting into the reporting phase. It was her hope that OPEGA would have the Report out to the Committee in March.

Director Ashcroft reported that OPEGA is currently still not working on State Lottery and the GOC never finished its discussion about what action they wanted to take on that review. OPEGA had suggested putting it in suspended status. The Committee agreed to wait on a decision about that until the study that Sen.

Burns had been expecting came out. She thinks that study has now been released by the Maine Center for Public Interest Reporting. Director Ashcroft wanted to discuss with the Committee what they wanted to do with the State Lottery review.

Sen. Burns requested that the GOC give this review priority. There are two major issues here to him that could come out. One is the issue of where are the winnings from these lotteries are being spent, or how they are being spent, and by whom. He said some of that is reflected in the other reports that have come out as far as the winnings being used by welfare recipients. The other issue is whether or not there is exploitation going on, intentionally or inadvertently, by the Lottery operation. By that he means whether certain groups of people are being unfairly targeted in order to get their participation in the program. He noted that Washington County has one of the highest unemployment and poverty rates in the State. The study that just came out said that in Washington County there was a $275 per person that is for every man, woman and baby, spent on lottery tickets. He believes that figure is for 2014. That is more than $100 per year per person than Cumberland County or York County. There is a little store in the Town of Waite, an area that has the highest unemployment and poverty rate in the State of Maine. The amount for lottery tickets sold there averaged $1,300 for every man, woman and child in that community. The State has never studied this project as far as he knows. He said we have set out to do that, but it hasn’t taken place.

Sen. Burns said residents on public assistance in this State have spent hundreds of millions of dollars on lottery tickets and for him that is the other side of the coin. He said this is what is being done to the extent that over $22 million in prizes have been secured between 2010 and 2014 including eight jackpots worth over $500,000 each and that is an issue that really needs to be looked at. Are those monies going to folks who are collecting welfare benefits? According to DAFS, Maine spent $1.3 million in advertising in 2014 and $1.4 million in 2013. Since 2003, the State Lottery has more than tripled its advertising budgeting and there is more sophisticated market research. Sen. Burns thinks we have an obligation to know what that consists of and that is what he hopes a review like this would show.

Sen. Burns said the group that now contracts with the State of Maine, receives approximately $8 million a year to do the marketing. As he understands it, the Lottery Commission also does some marketing research themselves. The group that was hired to do this, Scientific Games receives $8 million a year.

Sen. Burns said he understood there was a 285 page packet of materials that has been shielded from public scrutiny and is called “confidential information”, or probably “propriety information”. He thinks, to the extent possible, the GOC needs to know what is in that. Whether or not specific demographics of the State have been improperly targeted, and whether or not that is producing a result from the Lottery that was not intended. He suspects that the argument is going to continue to be that this is propriety information, but it is being done on behalf of the State of Maine for this $50 or so million dollars that comes in every year from the lottery. Sen. Burns thinks the public deserves to know how they do their marketing.

Sen. Burns said he would like to see this review expedited. Maine is a very rural State and he would like to know how things are being done under the auspices of the State of Maine in order to produce $50 million in revenue for the State’s General Fund. He said he realizes this is a small amount of money in the State budget. However, the aspect of how the money that is being garnered out of this is being used and by whom is important to him, but is nowhere as important as the issue of whether or not certain demographics are exploited.

Rep. Mastraccio asked Sen. Burns if he was suggesting changing what focus an expedited review of State Lottery would be or whether he was suggesting adding to what has already been established as the general scope of the review.

Sen. Burns said he would like to see a full review done, but wanted to see that process expedited.

Sen. Johnson thanked Sen. Burns for raising the issue and he agreed with him. He saw that what needed to be added to the current lottery scope was a question about what the target demographics are in marketing the Lottery. He was interested in whatever measure is possible to get, at least by proxy, an indication of who the people are that are effectively being drawn into participating in the Maine State Lottery by its design.

Sen. Diamond asked if Sen. Burns wanted to focus on whether or not people are using welfare dollars to purchase tickets, or that people of low income, who should not be gambling, are buying tickets with their own money. He asked if Sen. Burns was looking at use of welfare funds or looking at the practice of who is actually buying the ticket.

Sen. Burns said he thought those were two separate subjects. He is interested in both of them and, if he had to prioritize, his priority would be whether or not particular demographics in this State are being targeted inappropriately. He said he understands why people do marketing research and he understands why they target certain segments of the society to sell their product. He understands how businesses sell soap. However, if we are doing it under the behest of the State of Maine and are targeting, for instance, low income or welfare recipient people with our marketing he thinks that is something the State of Maine should know about it and is something that should be corrected. He thinks they are both very important issues but that is his priority. He has tried to get some of this information himself and has basically been told that information is really not available. The document he spoke about has not been forthcoming because it is supposedly confidential. He understands, anecdotally, that when one of the prior administrators of the Lottery Commission left both those records disappeared. Sen. Burns said there are a lot of things that we do not know about because we have never done an in depth review of the lottery system and he thinks this is the time to do it.

Chair Kruger said it seems to him that we really do not have standing to ask how the winnings are being spent by the winners. That does not seem to be within the purview of this Committee. He said if there is misspending by the Commission that certainly does fall in the GOC's purview, but some of it belongs with the policy committee which would be Veterans and Legal Affairs. Chair Kruger said he was confused about the scope. He also thought the full Committee should probably talk about OPEGA's resources and is this the most important question before the GOC.

Sen. Burns said as far as the standing situation, Chair Kruger may be right. It probably should be something that the HHS Committee should be addressing, but the problem is they do not have the resources to address that any more than Taxation Committee has the resources. He said this is the arm they would have to use in order to do a review. Again he said, it is a separate issue and maybe we don't have standing, but somebody in this Legislature should. Like any other use, or misuse, of welfare benefits he thinks the GOC is the entity to help facilitate that information. The other part about whether or not there is exploitation going on here, he could not think of anything more important to do as a Legislature than to determine whether or not we, under the auspices of the State of Maine, are exploiting people inappropriately, he would argue that is extremely important and is as important as anything the GOC has done.

Rep. McClellan said on the Work Plan State Lottery is listed in progress but basically had not been worked on very much. Director Ashcroft said the review is at the point where OPEGA was getting ready to enter the fieldwork phase but the Office has not done any work on it for about the last year. They intended to pick away at it when there were lulls in other projects, but those lulls have not emerged so it has been sitting.

Rep. McClellan said perhaps there was a way to get to some of the questions that Sen. Burns has asked without proceeding with the full review. Could OPEGA ask what the Lottery's goals and objectives for marketing? If they don't want to answer those questions that would be concerning.

Director Ashcroft said OPEGA does have a review of State Lottery that is in progress and referred members to the Maine State Lottery Scope questions that the GOC was focused on. She said the last question in the currently approved scope is "What does the Maine State Lottery consider when making decisions about games to be offered and how they will be marketed? Who has responsibility for making and overseeing those decisions?" This is part of the scope because there were some concerns and discussion around this when they did the scope for this review. The question was meant to at least take a look at how the Lottery was making decisions about marketing, who was responsible for that, what role different entities had in that. She said what they were talking about right now, she saw as sort of an even more focused question than this, which is what is the marketing strategy that is being employed, what are the dollars that have been ear marked for advertising and marketing being used for and does that look like it is targeting any particular demographic here in the State of Maine that should be concerning. Are they not targeting, particular demographics? She said if we want to look at only that question she thinks OPEGA could do that fairly quickly. OPEGA could try to get the information on the document Sen. Burns referred to and the marketing strategy, as well as the contract that goes along with the advertising budget and talk to who they have to talk to in the various offices. There is the State Lottery, the Lottery Commission that oversees them, and then they also are under DAFS. She thinks OPEGA could focus on that and try to get it done fairly quickly without necessarily completing the whole rest of the review if that is what the GOC's priority focus is right now. Director Ashcroft said she would keep it within the same review, but this is an opportunity for the GOC to modify the Scope.

Sen. Katz said one thing that Sen. Burns mentioned, which may not be within the Scope of this, is to confirm, or not confirm, the accuracy of some of the things that is in the investigatory report in terms of who is buying these tickets and what communities are buying these tickets because it was pretty stark and pretty disturbing. He is not questioning the validity of the reporting but, on the other hand, that organization is not OPEGA and he would like to have, as he thinks everyone would like to have, some confirmation about where these things are getting sold because it may, or may not, change the way they look at this.

Director Ashcroft said what OPEGA would probably do first anyway is to look at the information that has been reported, how reliable is that and can they rely on that going forward in their review. There have been times in the past when there has been information that has ended up not telling the story in the end that OPEGA thought it did. She would hate to be going forward on some premise that was not good. Director Ashcroft said for example, the store in Waite, there may be out-of-town traffic driving that road and folks stopping in and buying lottery tickets. She said she does not know if they have captured some of those other factors in their study and she has no way of knowing because it wasn't reported. Director Ashcroft thought that would be an interesting thing to look at and OPEGA would normally do that just to determine whether it is information OPEGA can use and rely on as part of their foundation as well.

Sen. Johnson said he was unclear as to what changes to the current Scope everyone is reaching agreement on. For him it is they have to get to the answer of whether the State of Maine is targeting the poorest to finance some other programs in Maine that benefit from lottery revenues because he considered that inappropriate. He does think they need the answer to (a) are they being targeted and thus should that be changed and (b) what is the distribution demographically of those who are participating in the Lottery Program because of how the Program is designed.

Sen. Diamond wanted to clarify his interpretation that OPEGA was not going to research and spend time finding out how winners spent their money, but that it was money that was being spent by the State that was potentially in Scope.

Sen. Burns said he thinks that is extremely important. Again it is a separate subject from what he is mostly interested in, but is something the policy committee should be concerned about, just as they should be concerned about if you are going out-of-state and using your State EBT Card to gamble or something of that nature. He thinks that is a concern that the State has of how those monies are being used. Sen. Burns said he did not think that is what the Maine Public Interest study really implied. The question was whether or not those monies, like $500,00 jackpots would disqualify you from being a welfare recipient. He said he didn't care whether someone bought a new care or a horse.

Director Ashcroft summarized her understanding of what the GOC was considering. She noted the concern about whether we are intentionally targeting particular demographics. One way to have a view of that is to look at the actual marking strategy and all of that. The other way is to use statistics, similar to what has been reported, and say what percentage of these tickets and at what dollar amounts, are being brought in low income communities. The flip side to that is can we tell anything about the demographics of the people who are winning and are they people who are receiving public assistance benefits or what income bracket they fall into, or whatever might be appropriate.

Sen. Davis said he did simple math and googled Waite. The population is 101 and if they spent $1,300 that is over $131,000 that tiny town spent. He said as Sen. Burns noted, it has the highest unemployment rate in the State, and he was curious what the amounts would be in other towns of like size that have half the unemployment rate. Are high unemployment areas being targeted? If they are, they should not be. Sen. Davis said he would also be curious about how much of a return on that investment those folks received. They spent $131,000, how much came back to the Town of Waite in winnings.

Director Ashcroft said her suggestion would be, if this is the primary area of interest, then the GOC could change the Scope by adding a question that is very specific to the questions already in the last bullet for the current Scope. It should get captured somewhat in the last bullet, but can add a question that is very specific to what they laid out as the question. She said she would then be interested in whether the GOC is okay with striking the rest of what they have for current objective questions for this review though. OPEGA could provide them with whatever information they know at this point on those. She wanted to know if it is the Committee's intent to do a high priority review that covers all of these objectives, or whether it would suffice to scope this down to just these areas of concern being talked about today.

After further clarifying discussion, Chair Kruger asked Director Ashcroft if she had a sense of where the GOC was going. She said she did.

Sen. Diamond thought it would be clearer if the Committee made a motion to expedite this project or fast track it or whatever the correct terminology is.

Motion: That the GOC direct OPEGA to expedite the State Lottery review. (Motion by Sen. Diamond, second by Sen. Davis)

Discussion:

Sen. Burns asked at what point would the GOC be able to review what is in the current Scope because some of the things in the present criteria he thinks are academic and the Committee does not need to spend a lot of time on. He asked the Director at what point she would want the GOC to do that.

Director Ashcroft said if the GOC wanted OPEGA to get started on the review right away she would like to have that discussion today, or at the January 22nd GOC meeting. She would like to know what they can strike. She can also prepare for the Committee, whether it is for today or the 22nd, the additional question, or questions, as they may frame out related to the discussion the GOC had today.

Sen. Burns said right now he is not concerned about bullet one, two and four in the current scope.

Director Ashcroft said the GOC can take the vote to fast track this and that could be combined with a vote to modify the Scope of this review.

Chair Kruger asked if both Sen. Diamond and Sen. Davis was agreeable to the motion. They were in agreement.

Director Ashcroft said she can bring the Committee back the revised Scope for them to formally approve at the next meeting.

Chair Kruger said the GOC can take a vote and they can talk about it again on the 22nd. He asked if that was okay with Committee members. They agreed.

Vote: The above motion passed by unanimous vote of 8-0.

- **Staffing**

Director Ashcroft reported that OPEGA has hired the second Analyst for the Tax Expenditure Review Team and he will be starting on January 25th. She said OPEGA still has one Analyst vacancy and will be posting for that position in the near future.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for **January 22, 2016 at 9:00 a.m.**

ADJOURN

The Government Oversight Committee was adjourned by Chair Kruger at 1:10 p.m.

Proposed Parameters for OPEGA's Full Evaluation of the Employment Tax Increment Financing (ETIF) Program

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
1995	36 MRSA Chapter 917	Income Reimbursement	Business Incentive, Job Creation	FY16 $13,289,000 * FY17 $13,949,000 *

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2016 – 2017, adjusted by OPEGA to remove $722,000 per year estimated attributable to the Brunswick Naval Air Station and Loring Job Increment Financing Fund programs.

Program Description

Employment Tax Increment Financing (ETIF) is a program that reimburses approved, for-profit businesses 30-50% of the Maine state withholding taxes paid on behalf of qualified employees. The reimbursement rate goes up to 80% for Pine Tree Development Zone certified businesses. To qualify for ETIF a business must:

- have plans to hire 5 or more new, full-time employees over a two year period; and
- offer each new employee health and retirement benefits and an annual income higher than the most recent annual per capita personal income in the county where the employee works.

The portion of withholding taxes a business is eligible to be reimbursed for is based on the level of local unemployment. The withholding taxes refunded may only include the standard amount required to be withheld, not any excess withholding.

Only for-profit businesses may receive ETIF reimbursements, and retail businesses are eligible only under very limited circumstances. Businesses in Pine Tree Development Zones (PTDZ) are automatically approved for the ETIF program as part of their PTDZ application, with a minimum of at least 5 new hires. Once approved, businesses may continue to claim the reimbursement for up to ten years.

The Department of Economic and Community Development (DECD) assists businesses with the ETIF application process and is authorized to approve qualified applicants. Under statute the State Economist is charged with reviewing ETIF applications and providing an advisory opinion to assist in DECD's approval decision. The State Tax Assessor is responsible for calculating the actual reimbursement due to approved businesses and authorizing payment. In addition, under 36 MRSA §6761 the Assessor may audit business recipients of ETIF. This program may not exceed $20,000,000 annually (adjusted by the % change in CPI from 1996 to the date of calculation).

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals

Intent — To encourage the creation of net new quality jobs in this State, improve and broaden the tax base, and improve the general economy of the State.

Goal — To encourage the creation of net new quality jobs.

(2) Beneficiaries

Primary Intended Beneficiaries — For-profit businesses that create new quality jobs

Secondary Intended Beneficiaries — Job seekers

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data.

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A		Applicable Measures
(a)	The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E
(b)	The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c)	The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, F, I, J, L
(d)	The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, L, J
(e)	The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, G, M
(f)	The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g)	The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h)	The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	C, D, E, F, H, K, M
(i)	Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

(4) Performance Measures

Performance measures are coded to indicate which of the above objectives they could potentially help address. Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving ETIF reimbursement
B	Participation rate (% of Maine businesses certified for the program)
C	Total $ value of reimbursements paid to businesses
D	Total direct program cost (direct tax revenue lost plus administrative costs)
E	Net impact on State budget
F	Total $ value of payroll and benefits associated with new quality jobs created by businesses receiving ETIF reimbursement
G	Average tax reimbursement per business, including min & max
H	Leveraging Ratio, for example [$ of payroll & benefits associated with new jobs]/[Total direct program cost]
I	Indicators of economic impact in targeted business/industry or geographic area (i.e. jobs created, GDP)
J	# New quality jobs created by recipients of ETIF reimbursement
K	Cost per new quality job created, for example [Total direct program cost]/[# new quality jobs created

	by recipients of ETIF reimbursement]
L	Comparison of actual wages and benefits for qualifying jobs to minimum requirements
M	Return on Investment, for example [$ amount reimbursed to businesses]/[$ value of payroll and benefits associated with new quality jobs created by businesses receiving ETIF reimbursement]

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts that would be considered, as appropriate, include:

- per beneficiary,
- by new vs. continuing beneficiary,
- by county,
- by firm size, or
- by industry.

Proposed Parameters for OPEGA's Full Evaluation of the
Pine Tree Development Zone (PTDZ) Program

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2003	30-A MRSA Ch206 Subchapter 4 and related statutes: 35-A MRSA §3210-E 36 MRSA §5219-W 36 MRSA §2016 36 MRSA §2529 36 MRSA §1760.87 36 MRSA §6754.1.D	Sales & Use Exemptions and Reimbursements, Income Credits, Withholding Reimbursements and Other	Business Incentive, Job Creation	FY16 $2,609,000 - $4,108,998 FY17 $2,723,000 - $4,222,998

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2016 – 2017. A range of numbers is included because Maine Revenue Services has little data on which to base an estimate of the sales & use tax exemption or reimbursement portions of the program.

Program Description

The Pine Tree Development Zone (PTDZ) program offers reduction of a number of taxes for up to 10 years for certain businesses that expand or begin operations in eligible areas of Maine (PTD zones). Depending on the location and level of a business's qualified activity, potential PTDZ benefits include:

- Corporate Income Tax Credits – 100% credit for 5 years, 50% for an additional 5 years for businesses in tier 1 locations;
- Withholding Tax Reimbursements – 80% of Maine income taxes withheld on behalf of employees filling new jobs may be reimbursed to the business for up to 10 years;
- Sales and Use Tax Exemptions – exemption from tax on purchases of tangible personal property and electricity used for qualified business activity for up to 10 years for tier 1 locations or 5 years for tier 2 locations;
- Sales and Use Tax Reimbursements – reimbursement to contractors or subcontractors of tax paid on tangible property purchases that are to be physically incorporated in, and become a permanent part of, real property of a qualified business and used in its qualified business activity (for example, reimbursement of sales taxes paid on materials used in constructing a new facility);
- Insurance Premiums Tax Credits – 100% credit for 5 years, 50% for an additional 5 years for businesses in tier 1 locations (only applies to Financial Services sector);
- Access to reduced electricity rates and more favorable line extension terms and conditions as approved by the Public Utilities Commission; and
- Access to conservation programs offered by Efficiency Maine Trust.

To be eligible for this program a business must be engaged in qualified business activity and must intend to hire at least one qualified new employee to work in these activities. Qualified business activities include operations in targeted business sectors and within eligible PTD zones.

Business sectors that currently qualify for the PTDZ program include:

- Financial Services,
- Manufacturing,
- Biotechnology,
- Information Technology,
- Aquaculture and Marine Technology,
- Precision Manufacturing Technology,
- Composite Materials Technology,
- Environmental Technology,
- Advanced Technologies for Forestry and Agriculture, and
- Call centers in Aroostook or Washington Counties (as of the 127th Legislature).

Eligible PTD zones of the State are divided into two tiers:

- Tier 1 locations – defined under 30-A MRSA §5250-J.3-A as:
    - Property within a military redevelopment zone;
    - Units of local government that had been designated by the Department of Economic and Community Development (DECD) as participating in the PTDZ program as of December 31, 2008;
    - For calendar year 2009, all units of local government, regardless of county;
    - Beginning January 1, 2010, units of local government in counties other than Cumberland or York County;
    - Beginning January 1, 2010, units of local government within Cumberland or York County with a municipal unemployment rate 15% higher than its labor market unemployment rate, based on Department of Labor (DOL) data from the last completed calendar year;
    - As of the 127th Legislature, The Town of Sanford; or
    - Beginning January 1, 2016, the Town of Berwick in York County.
- Tier 2 locations – defined under 30-A MRSA §5250-J.3-B as:
    - Beginning January 1, 2010, all units of local government in Cumberland or York County that are not tier 1 locations.

Although no new businesses may be certified in tier 2 locations as of December 31, 2013, those already certified prior to that date may continue to receive the benefits for which they were determined to be eligible through December 31, 2018. New businesses in tier 1 locations may continue to apply for certification until December 31, 2018 with all PTDZ benefits ending on December 31, 2028.

To receive PTDZ benefits a business must first be certified by DECD. This process requires an interested business to submit a letter to DECD notifying the commissioner of its intent to apply for program benefits and describing why the proposed business project could not go forward without the aid of PTDZ benefits (this letter is referred to as the "but for" letter). The business must also submit a completed application including the following information:

- a description of the proposed project that requires PTDZ support;
- employment and payroll information for the three calendar years preceding the application (to establish the business's base employment levels); and
- certification that any new employees that will be claimed as "qualified employees" for the purposes of obtaining benefits under this program will be offered retirement and health benefits and will be paid more than the average per capita income for the county in which they are employed.

After being certified as eligible for PTDZ benefits, a business must certify that it will hire at least one qualified employee above its base level of employment within two years in order to begin receiving most benefits (five new employees are required for the reimbursement of withholding taxes). The business must continue to have qualified employees above its base level in order to continue to receive benefits. Statute and rules promulgated by DECD both specify that PTDZ benefits may not be received based on the transfer of employees or property from a nonqualified business activity to a qualified one.

The PTDZ program is administered by DECD. By April 1st of each odd-numbered year DECD's commissioner is required to report to the joint standing committee of the Legislature with jurisdiction over economic development matters on the status of the program. In addition, 5 MRSA § 13056-A requires DECD to submit to the Legislature a biennial comprehensive evaluation of state investments in economic development. The PTDZ program is required to be included in this evaluation and businesses certified under the program are required to submit any information requested by DECD as part of the evaluation effort. The most recent comprehensive evaluation was released in 2014 and did include analysis of the Pine Tree Development Zone program.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals

Intent — To encourage development in economically distressed communities in Maine in order to provide new employment opportunities; improve existing employment opportunities; improve and broaden the tax base; and improve the general economy of the State.

Goal — To provide new qualifying employment opportunities in certain industries in economically distressed communities.

(2) Beneficiaries

Primary Intended Beneficiaries — Businesses in Pine Tree Development Zones that add new qualifying jobs in certain industries

Secondary Intended Beneficiaries — Workers and job seekers; economically distressed communities

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data.

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A		Applicable Measures
(a)	The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E
(b)	The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c)	The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, F, I, J, K
(d)	The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, I
(e)	The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, G, M
(f)	The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g)	The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h)	The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	C, D, E, F, H, L, M
(i)	Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

(4) Performance Measures

Performance measures are coded to indicate which of the above objectives they could potentially help address. Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving any benefits under the PTDZ program (also by benefit type)
B	Participation rate (% of Maine businesses certified for the program; also % of Maine communities with PTDZ certified businesses)
C	Total $ value of PTDZ tax benefits received by businesses (also by benefit type)
D	Total direct program cost (direct tax revenue lost plus administrative costs)
E	Net impact on State budget
F	Total $ value of payroll and benefits associated with new quality jobs created by certified PTDZ businesses
G	Average tax benefit per business, including min & max (also by benefit type)
H	Leveraging Ratio, for example [$ of payroll & benefits associated with new jobs]/[Total direct program cost]
I	Change in unemployment rate for each community where a business received PTDZ benefits, compared to change in unemployment rate for the State
J	Indicators of economic impact in targeted business/industry or geographic area (i.e. jobs created, GDP)
K	# New quality jobs created by PTDZ certified businesses
L	Cost per new quality job created (i.e. [Total direct program cost]/[# new quality jobs created by PTDZ certified business])
M	Return on Investment, for example [$ amount reimbursed to businesses]/[$ value of payroll and benefits associated with new quality jobs created by certified PTDZ businesses]

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts that would be considered, as appropriate, include:

- per capita,
- by business sector,
- by new vs. continuing beneficiary,
- by county or municipality,
- by firm size.

Proposed Parameters for OPEGA's Full Evaluation of the New Markets Capital Investment Program

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2011	36 MRSA §5219-HH 10 MRSA §1100-Z	Income Credit	Business Incentive, Financial Investment	FY16 $9,205,000 FY17 $13,509,000

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2016 – 2017

Program Description

Maine's New Markets Capital Investment Program is a state program modeled after the federal New Markets Tax Credit program. It provides a 39% credit for investors with qualified equity investments in low-income community businesses made via a qualified community development entity (CDE). To be considered qualified, a CDE must meet a number of requirements including:

- being certified by the US Treasury, and
- having an existing allocation agreement under the federal New Markets program.

The credit may be taken over seven years, with 0% allowed in the first two years, 7% in year three and 8% in each of the remaining years. The credit is fully refundable or may be carried forward for up to 20 years. This means credits may be paid out in full if the investor owes no taxes in the state. Credits may also be subject to recapture by the State Tax Assessor pursuant to 36 MRSA §5219-HH.7. Total authorized credits under this program may not exceed $20,000,000 per year. As of the writing of this document, all funds available under this program had been allocated.

There is a two step application process for the New Markets program. First the Finance Authority of Maine (FAME) reviews each CDE's application for an allocation. If approved, an allocation reserves tax credits to be claimed against future qualified investments and is valid for to up to two years.

The second step occurs once the CDE has a pool of funding (from private investors or issuance of long term debt) ready to invest in a qualified low-income community business. At that point the CDE must file a certification application with FAME providing details of the proposed investment such as:

- a description of the qualified low-income community business proposed to receive the investment proceeds; and
- how the qualified business intends to use the investment proceeds.

FAME reviews the proposed investment to determine whether it can be approved as a qualified equity investment under program rules. Upon approval, FAME notifies Maine Revenue Service of the investors (individuals or businesses) deemed eligible for the credit and how much each is entitled to. The investors later claim their credit by filing with Maine Revenue Services.

The New Markets program requires all CDEs that have been approved for allocations and all those that have received certifications to file annual reports with FAME. Statute also required FAME to report to the Taxation Committee and Appropriations Committee on the New Markets program, including the amount of private investment received and number of jobs created or retained, by January 31, 2015. No further reports from FAME are required under statute.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals

Intent – To promote economic development by encouraging major investments in qualified businesses and developments located in economically distressed areas of the State; to preserve jobs and make the State more competitive in the attraction of investment capital.

Goal – To encourage new investments in qualified businesses and developments located in economically distressed areas of the State.

(2) Beneficiaries

Primary Intended Beneficiaries – Qualified businesses in economically distressed areas of the State

Secondary Intended Beneficiaries – Economically distressed communities

Credit Recipient – Investors (or others to whom the credits are transferred)

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data.

	Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A	**Possibly Applicable Measures**
(a)	The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E, F
(b)	The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c)	The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, B, C, D, G, H, J, L
(d)	The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, C, G, H, I, M
(e)	The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, D, I, J
(f)	The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g)	The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h)	The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	E, F, G, H, I, J, K
(i)	Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

(4) Performance Measures

Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving qualified investments under the program
B	# Economically distressed communities where businesses received qualified investment under the program
C	$ Value of tax credits to investors ($ value paid in past years and expected in coming years)
D	$ Value of credits available compared to credits taken
E	Total direct program cost (credits plus administrative costs)
F	Net impact on State budget
G	Total qualified investment received by businesses
H	$ Value of average qualified investment received per business (also min and max)
I	Average value of tax credits per investor (also min and max)
J	$ Value of tax credits received by investors per $ of qualified investment
K	Leveraging Ratio, for example [$ of qualified investment]\[Net impact on State budget]
L	Indicators of economic growth in economically distressed areas with businesses that received qualified investments under the program (such as change in # qualifying businesses, # jobs, per capita income, or unemployment rate)
M	Participation Rate (% of economically distressed communities in the State that have benefitted from the program)

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts would be considered as appropriate. For example:

- per beneficiary,
- per geographic region,
- by new vs. continuing beneficiary,
- by taxpayers' state of residence,
- by reduction of tax liability vs refunded credit,
- by taxpayer type.

Proposal for Re-categorization and Re-classification of the Brunswick Naval Air Station Job Increment Financing Fund & Loring Job Increment Financing Fund

Program Descriptions

BRUNSWICK NAVAL AIR STATION JOB INCREMENT FINANCING FUND

Enacted	Statute(s)	Type	Category	Revenue Loss
2009	5 MRSA §13083-S-1	Income Reimbursement	Business Incentive, Job Creation	FY14 $75,840 FY15 $106,045

Source for Revenue Loss: Maine Revenue Services provided the actual amount distributed under the program for the most recent fiscal years.

The Brunswick Naval Air Station Job Increment Financing Fund (the Fund) is a program that distributes a portion of the State income tax withheld on behalf of new employees at businesses in the Brunswick Naval Air Station area to the Midcoast Regional Redevelopment Authority and Southern Maine Community College. New employees are considered to be those above the base number of employees businesses had prior to beginning operations at the Air Station area (statute specifies how the increase in employees may be calculated).

The Authority must provide a report identifying all businesses located in the Air Station area to the Commissioner of the Department of Economic and Community Development (DECD) annually. DECD must in turn provide Maine Revenue Services (MRS) with any data necessary to calculate the amount of withholding taxes attributable to new employees in the Air Station area (this is called the job tax increment). Some of the job tax increment is reimbursed to businesses who added qualified employees under the Employment Tax Increment Financing (ETIF) program or the Pine Tree Development Zone (PTDZ) program. 50% of the amount remaining after these payments is deposited into the Brunswick Naval Air Station Job Increment Financing Fund.

The majority of revenue received by the Fund was statutorily required to be distributed to SMCC from 2011 through 2013, but for 2014 and years after statute distributes the revenue evenly between the College and the Redevelopment Authority. Distributions to the Authority may be used for only for the cost of municipal services such as water, sewer, police and buildings maintenance. Similarly distributions to the College are limited to use for higher education services including faculty salaries, operations, equipment and financing costs.

The Commissioner of the Department of Administrative and Financial Services (DAFS) is statutorily charged with administering the Fund. If at least 5,000 net new jobs are created in the base area before 2031 then the Legislature's Labor, Commerce, Research and Economic Development Committee must perform a review to determine whether the Fund should continue. Unless the Legislature decides to discontinue it at an earlier date, the Fund is set to stop receiving revenues on or after January 2031.

LORING JOB INCREMENT FINANCING FUND

Enacted	Statute(s)	Type	Category	Revenue Loss
1995	5 MRSA Ch.383 Art. 1-C			FY14 $777,444 FY15 $615,840

Source for Revenue Loss: Maine Revenue Services provided the actual amount distributed under the program for the most recent fiscal years.

The Loring Job Increment Financing Fund (the Fund) is a program that distributes a portion of the State income tax withheld on behalf of new employees at businesses in the Loring Air Force Base area to the Loring Development Authority of Maine. New employees are considered to be those above the number of employees businesses had in the Air Force Base area as of July 1, 1996.

Every year the Authority must provide the data the State Tax Assessor needs to calculate the amount of withholding taxes attributable to new employees in the Air Station area. This data includes information about the businesses located in the Air Force Base area, changes in employee counts within the Base area and applicable payroll data. The State Tax Assessor then calculates the employment tax increment, making a number of statutory adjustments, and approves 50% of that amount for deposit into the Fund.

By statute, revenue received by the Fund can be used only for the cost of municipal services such as water, sewer, fire protection, police, sanitation services and buildings maintenance. Statute charges the State Tax Assessor with administering the Fund and specifies the Fund will stop receiving revenues on July 1, 2026.

Proposed Re-categorization and Re-classification

Maine Revenue Services has historically captured the revenue loss estimates for these two tax expenditures in the figures reported for the Employment Tax Increment Financing (ETIF) program in MRS' biennial Maine State Tax Expenditure Report. OPEGA was previously aware that this was the case with the Brunswick Naval Air Station Job Increment Financing Fund and, therefore, had proposed breaking it out as a separate review. OPEGA had also assumed the purpose of this program was similar to that of ETIF and, therefore, assigned it to Rationale category Business Incentive, Job Creation and recommended it for the Full Evaluation classification in 2016. The Loring Job Increment Financing Fund currently is not listed as a separate program in the GOC-approved Classification and Schedule for tax expenditures as OPEGA only recently learned that this is still an active program.

After having learned more about these two programs, it is OPEGA's observation that:

- the purpose of both programs seems to be to provide a funding stream for supporting a statutorily established entity rather than providing any direct business incentives or benefits; and
- most of the objectives established in statute for Full Evaluations do not seem relevant for these programs.

Consequently, OPEGA recommends that both programs be assigned to the Rationale category of Specific Public Policy Goal/Mandate rather than Business Incentive, and that they be moved to the Expedited Review classification. We further recommend that they be scheduled for Expedited Review by the Taxation Committee in 2018 as that is when the other tax expenditures assigned to this Rationale category are scheduled to be reviewed.

From: Linda Caprara [mailto:lindac@mainechamber.org]
Sent: Tuesday, January 19, 2016 11:10 AM
To: Ashcroft, Beth
Subject: MSCC Comments on OPEGA Draft Tax Expenditure proposal

DT: January 19, 2016

To: Beth Ashcroft, Director, OPEGA,
Legislature's Government Oversight Committee (GOC)

RE: The Maine State Chamber of Commerce (MSCC): Comments on OPEGA's Draft Tax Expenditure Review Proposal

The Maine State Chamber of Commerce appreciates the opportunity to comment on the draft proposal for the Office of Program Evaluation and Government Accountability (OPEGA)'s first tax expenditure review on three tax expenditure programs: Employment Tax Increment Financing (ETIF), the Pine Tree Zone Development Program (PTZ) and the New Markets Capital Investment Program. The Maine State Chamber appeared before the Legislature's Government Oversight Committee (GOC) on Friday, January 8th and provided the following comments to the GOC at that meeting.

The Chamber provided comments focused on three areas. First, the draft proposal contains reference on the front page to a proposed "revenue loss" associated with the tax expenditure and identifies that proposed loss on the front page of the proposal. MSCC argued that these programs should be looked at as revenue gains because the state realizes revenue as a result of the investments made by these companies, who responsible for making the expenditure. Potential revenue, such as income and sales taxes companies pay and economic growth due to any investments the companies make, are not considered when the State calculates revenue losses. The Chamber also argued that dynamic fiscal modeling should be considered to achieve an accurate revenue picture.

Second, MSCC mentioned that the "beneficiaries" of the programs should include "job seekers".

Third, under the "evaluation objectives" section, MSCC argued that in order for OPEGA to properly gage the extent to which the desired behavior (investment or hiring new employees) might have occurred without the tax expenditure, interviews with companies actually taking the programs would need to be made. MSCC argued that just looking at pure financial data related to the amount the companies received, the average tax benefit, and return on investment, would not provide the sufficient insight to make the desired determination. This was one of the key points the MSCC argued for last session when the Taxation Committee considered L.D. 941.

Please consider these comments in your deliberations with the GOC of this proposal. Please feel free to call me if you have any questions or comments, please call Linda Caprara at 623-4568 x106 or lcaprara@mainechamber.org.

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January 19, 2016

To: Joint Standing Committee on Government Oversight

cc: Office of Program Evaluation and Government Accountability
Joint Standing Committee on Taxation
Joint Standing Committee on Labor, Commerce, Research, and Economic Development

Re: Comments Regarding Evaluation Parameters for OPEGA Tax Expenditure Review

Dear Chairman Katz and Chairman Kruger:

My name is Kris Eimicke. I am an attorney with Pierce Atwood LLP in Portland. I am also the chair of the Tax Committee of the Maine State Bar Association and an adjunct professor at the University of Maine School of Law, although my comments are my own and not of the Tax Committee or the University.

A large portion of my practice is devoted to economic development, both in Maine and throughout the country. I regularly work with the federal new markets tax credit program, Maine's new markets capital investment credit program, and similar programs developed by other states. I would be happy to give whatever support I can to the Committee and to OPEGA during this review.

Attached to this letter are specific comments to the document prepared by OPEGA. These comments largely speak for themselves, and I won't delve deeply into them here. Instead, I would like to make the following "high level" points, specifically about the new markets capital investment credit program.

Community Development, not just Economic Development. The new markets program differs from other economic development programs in that it is not just an economic development program. It is a community development program. The program can be used to finance non-profits as well as for-profit companies. For example, the federal new markets program has been used to finance a head-start facility in Waterville. The federal and state new markets programs were used for the Farnsworth Art Museum. Each of these projects aided in economic development, but that was not the primary reason why the projects were selected. These projects were about community development and therefore the typical measures and criteria (*e.g.*, changes in unemployment rates) are insufficient to measure success or failure. Furthermore, evaluating these types of projects solely on economic development measures would discourage the use of new markets for important non-profit projects like these in the future.

Beneficiaries. Each economic development program (or community development program in the case of new markets) should be designed to benefit the community and its members. The businesses that benefit from the programs are simply the tool through which the community benefits.

Viewing the Program on a Portfolio Basis. The new markets program differs significantly from the other programs being reviewed in that it is designed to bring capital to businesses and nonprofits. Most other programs offering tax credits or similar benefits subsidize the operations of the business, for example by providing that the business will not have to pay income taxes for a period of time. The nature of the new markets program, therefore, carries the possibility of failure because the act of providing capital to the business or nonprofit is the tax-credit generating activity (as opposed to the carrying on of the business).

Furthermore, the program is designed to finance programs in low-income communities where failures occur at a greater rate than in safer high-income communities. Therefore, during this review it is important to view the projects financed on a portfolio basis as one would view a loan guarantee program from the Finance Authority of Maine or the Small Business Administration. Failures are expected. The question is whether the benefits *of the program* exceed the costs.

In the future there may be a vitally important, but risky, project (for example because of difficult industry trends) that needs to use the new markets program (or another state program) to survive. If only the "safest" projects are able to use these programs (because investors and regulators fear punitive action due to failure), the programs will fail to meet their stated purpose.

Dynamic Modeling. Each of the tax expenditures up for review has a stated "cost": the amount of forgone direct revenue as a result of the credit or expenditure. That figure is half the story (or less). Each of these programs creates additional revenue for the state through collection of income taxes and sales and use taxes as a result of the business/nonprofit directly, the employees at the business, the businesses in the supply chain and their employees, and all of the businesses and their employees benefitting indirectly (so-called induced jobs). Without determining what those figures are, this Committee will miss the forest for a single tree.

Maine's New Markets Program is New. Many of the projects using this program have only closed the financing recently, and some have not closed at all. To date, approximately

$50,000,000 of the overall $250,000,000 of Maine new markets allocation has not been invested in Maine non-profits and businesses (and thus not certified as eligible for tax credits). Evaluating this program based on measurable effects in the community will be very difficult because of the lack of time in which those effects can be measured. For example, the St. Croix Tissue mill is currently under construction with hundreds of construction workers there currently. St. Croix Tissue has just recently hired approximately 80 new employees and is in the process of training them. These impressive employment numbers will not be reflected in changes to the local unemployment rate. Accordingly, it is appropriate to use information from the businesses and nonprofits receiving financing and from economic impact studies that project the economic impacts of the projects.

Incentives Offered by Other States. As part of GE's very recent decision to move to Massachusetts from Connecticut, Massachusetts gave incentives to GE estimated to be $145 million. That was for just 800 jobs in Boston. Economic development is an extremely competitive environment, both from state-to-state and from country-to-country. I frequently hear from clients that they want to move to, or expand in, Maine, but because other states offer more in the way of incentives or because of Maine's demographic challenges, they have a very hard time choosing Maine. The importance of what other states offer to real world decision making cannot be underestimated.

Thank you for the opportunity to testify before the Committees and to deliver these comments.

Sincerely,

/S/ Kris J. Eimicke

Proposed Parameters for OPEGA's Full Evaluation of the New Markets Capital Investment Program

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2011	36 MRSA §5219-HH 10 MRSA §1100-Z	Income Credit	Business Incentive, Financial Investment	FY16 $9,205,000 FY17 $13,509,000

Source for Estimate Revenue Loss: Maine State Tax Expenditure Report 2016 - 2017

Program Description

Maine's New Markets Capital Investment Program is a state program modeled after the federal New Markets Tax Credit program. It provides a 39% credit for investors ~~with~~ who make qualified equity investments in ~~low-income community businesses made via~~ a qualified community development entity (CDE)~~.~~ which in turn make investments in qualified active low-income community businesses.

To be considered qualified, a CDE must meet a number of requirements including:

- being certified by the US Treasury, and
- having an existing allocation agreement under the federal New Markets program.

To be considered qualified, a qualified active low-income community business must meet a number of requirements including:

- being located in a qualifying census tract, a municipality with a high unemployment rate, or by employing or serving low-income persons;
- it must be in a qualifying industry, which excludes certain types of businesses including most financial services businesses, liquor stores, and gambling businesses

The credit may be taken over seven years, with 0% allowed in the first two years, 7% in year three and 8% in each of the remaining years. The credit is fully refundable or may be carried forward for up to 20 years. This means credits may be paid out in full if the investor owes no taxes in the state. Credits may also be subject to recapture by the State Tax Assessor pursuant to 36 MRSA §5219-HH.7. Total authorized credits under this program may not exceed $20,000,000 per year. As of the writing of this document, all ~~funds~~ credits available under this program ~~had been allocated~~have been allocated to CDEs, however approximately $50,000,000 of allocation has not been used to make investments in qualified active low income community businesses and thus has not been certified as being eligible for tax credits.

There is a two step application process for the New Markets program. First the Finance Authority of Maine (FAME) reviews each CDE's application for an allocation. If approved, an allocation reserves tax credits to be claimed against future qualified investments and is valid for ~~to~~ up to two years.

The second step occurs once the CDE ~~has a pool of funding~~ receives an investment (from private investors either in equity or issuance of long term debt) ready to invest in a qualified active low-income community business. At that point the CDE must file a certification application with FAME providing details of the proposed investment such as:

- a description of the qualified active low-income community business proposed to receive the investment proceeds; and

- how the qualified business intends to use the investment proceeds.

FAME reviews the proposed investment to determine whether it can be approved as a qualified equity investment under program rules. Upon approval, FAME notifies Maine Revenue Service of the investors (individuals or businesses) deemed eligible for the credit and how much each is entitled to. The investors later claim their credit by filing a credit worksheet along with their State of Maine income tax return with Maine Revenue Services.

The New Markets program requires all CDEs that have been approved for allocations and all those that have received certifications to file annual reports with FAME. Statute also required FAME to report to the Taxation Committee and Appropriations Committee on the New Markets program, including the amount of private investment received and number of jobs created or retained, by January 31, 2015. No further reports from FAME are required under statute.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals
Intent – To promote economic development and community development by encouraging major private capital investments in qualified businesses and ~~developments~~ non-profits located in economically distressed areas of the State; to preserve and create jobs~~,~~, to develop thriving communities, and make the State more competitive in the attraction of investment capital.
Goal – To encourage new investments in qualified businesses and ~~developments~~ non-profits located in economically distressed areas of the State.

(2) Beneficiaries
Primary Intended Beneficiaries – Residents of economically distressed communities
~~Primary~~ Secondary Intended Beneficiaries – Qualified businesses and non-profits in economically distressed areas ~~–~~of the State
~~Secondary Intended Beneficiaries – Economically distressed communities~~
Credit Recipient – Investors (or others to whom the credits are transferred)

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data.

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A	**Possibly Applicable Measures**
(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E, F
(b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, B, C, D, G, H, ~~J~~I, ~~I~~J, N, O, P, Q Qualitative
(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, C, G, H, I, M, N, O, P, Q Qualitative
(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, D, I, J, Q, R Qualitative
(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h) The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	E, F, G, H, I, J, K Qualitative
(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

(4) Performance Measures

Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving qualified investments under the program
B	# Economically distressed communities where businesses received qualified investment under the program and the amount of such investment (on a county-by-county basis)
C	$ ~~Value~~ Amount of tax credits to investors ($ ~~value~~ amount paid in past years and expected in coming years) (taking into account only investments certified by FAME as eligible for tax credits)

D	$ ~~Value~~ Amount of credits available compared to credits taken
E	Total direct program cost (credits plus administrative costs)
F	Net impact on State budget (taking into account tax revenues created as a result of the investments)
G	Total qualified investment received by businesses
H	$ ~~Value~~ Amount of average qualified investment received per business (also min and max)
I	Average ~~value~~ amount of tax credits per investor (also min and max)
J	$ ~~Value~~ Amount of tax credits received by investors per $ of qualified investment
K	Leveraging Ratio, for example [$ of qualified investment]\[Net impact on State budget]
L	Indicators of economic growth in economically distressed areas with businesses that received qualified investments under the program (such as change in # qualifying businesses, # jobs, per capita income, or unemployment rate)
M	Participation Rate (% of economically distressed communities in the State that have benefitted from the program on a county-by-county basis)
N	Jobs created as a results of investments made (direct, indirect and induced)
O	Quality of jobs created or retained as a result of investments made
P	Additional capital attracted to State as a result of investments made
Q	Level of economic distress in communities receiving investment (on a municipality and county basis)
R	Economic development programs and other incentives offered by competing states

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts would be considered as appropriate. For example:

- per beneficiary,
- per geographic region,
- by new vs. continuing beneficiary,
- by taxpayers' state of residence,
- by reduction of tax liability vs. refunded credit,
- by taxpayer type~~.~~,
- by type of qualifying business.

Maine Center for Economic Policy

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Comments Regarding Proposed Evaluation Parameters of Tax Expenditure Programs

Good morning Senator Katz, Representative Kruger, and members of the Government Oversight Committee. I'm Garrett Martin, executive director of the Maine Center for Economic Policy, and I am here today to offer comments regarding proposed evaluation of tax expenditure programs.

As background, I served on the Tax Expenditure Review Task Force in 2013 and have worked previously as an evaluator of economic development programs both domestically and abroad. It is these experiences that inform my comments to you today.

I commend the Office of Program Evaluation and Government Accountability for their efforts to date. Their task is a daunting one made even more so by the ***limited data available on tax expenditures in Maine***. This is a flaw in program design and accountability that has been noted before by OPEGA staff, members of the Tax Expenditure Review Task Force, and, more recently, Investment Consulting Associates (ICA) who completed an evaluation of state investment in economic development for the Department of Economic and Community Development in 2014.

Of the evaluation objectives recommended in PL 2015 Chapter 344, An Act To Improve Tax Expenditure Transparency and Accountability, the most difficult one to assess is objective (e) ***"the extent to which…the desired behavior might have occurred without the tax expenditure."*** To answer this question, one must first ascertain whether the desired behavior actually occurred. This is represented by evaluation objective (c) ***"the extent to which the tax expenditure is achieving its purposes…taking into consideration the economic context…"***

Taken together these are the most important and challenging objectives to pursue. They represent the gold standard of any evaluation. For each of the programs identified, I encourage you to take more time to consider additional indicators and performance measures relevant to these evaluation objectives. ***Of particular importance is clarifying the need to collect certain indicators consistently over time, determining the most reliable source of data, and identifying company and industry specific indicators that will aid in analyzing evaluation results and putting them in context***.

For programs that are based on ***job creation***, evaluators must assess whether or not the jobs were created and, if so, were they permanent or temporary in nature. This corresponds with evaluation objective (c) for the ETIF and Pine Tree Development Zone programs and ***should be considered as part of the criteria for the New Markets Capital Investment Program***. The performance measures most closely associated with this criteria are total payroll and employment figures. In most instances these can be derived from information provided to Maine Revenue Services and/or the Maine Department of Labor and ***they should be compared to payroll and employment figures prior to receipt of the loan, credit, or reimbursement and at annual intervals thereafter***.

Ideally these same figures should be benchmarked against broader trends in the same industry or geographic region as suggested by performance measure (i) to assess relative performance. This is an important evaluation activity since sometimes it is the absence of a negative event, such as a drop in employment when that is the trend, that can validate program activities.

Concerning evaluation objective (e), ***additional business indicators may be helpful in answering the question of whether or not the program influenced business outcomes and behavior***. In addition to firm size, collecting information on the number of years of operation in Maine; profitability, asset holdings, and valuation; executive compensation and residency; and whether or not owners are aware that they are taking advantage of the program in question may be instructive. These do not need to be made public and can be reported in aggregate, but like demographic data in any survey may lend additional insight.

Of the remaining evaluation objectives, ***there are clear standards in place for effective tax expenditure programs that should be considered as performance measures for evaluation objective (f)*** "the extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective." For evaluation objective (d) "the extent to which those actually benefiting from the tax expenditure are the intended beneficiaries" ***it is important to consider who is eligible but not benefiting***. This can be done ***by broadening performance measure (b) participation rate to consider*** not only the percentage of Maine businesses certified for the program but also ***the percentage of Maine businesses with employment increases above the program threshold that are not certified for the program***. Relative to this evaluation objective, I believe it is reasonable to ask in what ways are businesses benefiting? Are the incentive effects of the program being realized or is it simply an entitlement that helps the bottomline?

Concerning the ***purposes, intent or goals***, the justification for many of these programs is that they not only aid in the creation or retention of jobs in Maine but also in the ***creation or retention of businesses*** here. While I suspect it may be beyond the scope of the evaluation, I encourage you to consider whether or not it makes sense to broaden the purposes section to include the intent of business creation and retention. I also believe that a fundamental challenge of this process is that OPEGA has had to rely on the legislative record to develop its evaluation parameters. I believe these may not capture some of the underlying assumptions associated with these programs as it relates to their purpose, outcomes, and connection to specific interventions. In short, there is no explicit theory of change upon which to base the evaluation. This is a gap that I fear cannot be addressed without giving OPEGA greater latitude.

Finally, I recommend including ***taxpayers as an intended beneficiary***. In many respects that is implicit to the evaluation process, but it may make sense to make it explicit. Doing so also raises questions about whether or not it is reasonable to consider performance measures that account for potential hidden costs to taxpayers of these programs in the calculation of costs and benefits. For example, does it make sense to evaluate whether the employees at businesses receiving subsidies are relying on public assistance, whether a corporate "means test" based on business tenure, ownership, profitability, or asset holdings should be evaluated, and whether other public investments in education for example are being compromised as a result of these tax expenditures?

This is a very important task and I commend your efforts. Promoting the transparency, accountability, and effectiveness of tax expenditures in Maine is an important objective for all of us.

STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

MATTHEW DUNLAP
SECRETARY OF STATE

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

OFFICE OF THE SECRETARY OF STATE

January 8th, 2016

Thank you for your continued interest and support of the work of the Maine State Archives and the Archives Advisory Board. and the attendant Stakeholder Group that has met a number of times since April. In the past year, we have made significant progress in understanding the needs of the community, and how the Archives and the Archives Advisory Board can best serve them.

Attached you will find annotated minutes from both the Records Management Stakeholder Group meeting that convened on October 28th and the Archives Advisory Board meeting that convened earlier on October 9th. The Secretary of State was in attendance of the latter and convened the former. You will find the details of our discussions in those documents.

Our work, to date, has focused on the importance of the interface that the Archives Advisory Board provides to the public.

We are continuing to revise our findings that would require statutory action; specifically, the size and makeup of the Archives Advisory Board, and the frequency of its meetings. In our discussions, we have considered the Board consisting of a broad array of professional perspectives, and we have also considered the value of more public members, with the ability of the Board to convene subcommittees to advise on technical, legal, financial and other areas of policy that may emerge on an *ad hoc* basis, rather than have individuals with those specific skill sets as standing members of the Board.

Other items we have focused on include the charge of the Board, and its reach; including lending services to the several cities, towns and plantations of the state as well as the three branches of government and the attendant Executive Departments. We are contemplating, with the Archives staff and the Board, the possibility of involving the Board in rulemaking determinations that would help maintain consistency in rules that affect state archival records and records management.

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We also believe that it would be of value for the Archives Advisory Board to develop a series of frameworks under which departments could develop retention schedules, which would provide expert guidance to the agency that hosts the records. This would avoid burdening the Board with a wide agenda of approvals to consider at meetings or delaying the implementation of schedules. To this end, the Board would be reviewing retention schedules rather than inventing them.

It is our hope to complete our work this session, and to identify any statutory amendments needed and the appropriate vehicles for Legislative review.

We are grateful to the Executive for the timely appointments of former State Records Management Director Nina Osier and former National Archives staffer Howard Lowell to the Board, as in the interim we have suffered a resignation of some tenure, and the lack of those appointments would leave us with no quorum. Also, the sterling services of Eric Stout from the Office of Information Technology have made it possible to keep our many ideas in proper order.

We appreciate the support of the Government Oversight Committee, and remain committed to doing our utmost to guard the public trust through thorough recordkeeping.

Records Management Stakeholder Group
Minutes and Actions
Thursday, October 28, 2015, 10:00 – noon
Legislative Conference Room

NOTE: Web links were added after the meeting to enhance the value of the topics discussed.

STAKEHOLDER GROUP MEMBERS:

- **Secretary of State/ Maine State Archives:**
  - Matt Dunlap, Secretary of State (chair of the group)
  - David Cheever, Maine State Archivist
  - Tammy Marks, Archives Director
  - Donna Grant, Deputy Secretary of State, Information Systems
  - Kristen Muszynski, Communications Director for Secretary of State
- **Attorney General's Office:**
  - Brenda Kielty, Public Access Ombudsman
- **Legislature:**
  - Grant Pennoyer, Executive Director
  - John Barden, Director, Law and Legislative Reference Library
  - Kevin Dieterich, Director, Legislative Information Technology [absent today]
- **Judicial Branch/ Courts:**
  - David Packard, Chief Information Officer for Judicial/ Courts
- **Executive Branch:**
  - Greg McNeal, Chief Technology Officer, Office of Information Technology
  - Eric Stout, IT Project Manager and OIT Records Officer (staff support to group)
- **Citizen Member:**
  - Howard Lowell (formerly with National Archives and Records Administration, as well as Maine State Archives, Delaware Archives, and Oklahoma Archives)
- **Public Observer (not a Group member):**
  - Dwight Hines, PhD (retired)

Archives Advisory Board Members:

- Howard Lowell (also a member of the Stakeholder Group, listed above)
- Elaine Stanley

Office of Policy and Legislative Analysis (OPLA) Staff:

- Henry Fouts, Legislative Analyst
- Craig Nale, Legislative Analyst
- Peggy Reinsch, Senior Analyst

Introductions (Matt Dunlap):

- **ACTION:** We are working on putting into writing what we're working on. We have talked about action items to put our discussions into motion. What is our charge as state agencies and helping them achieve accountability? What structural changes should be made?

- **ACTION:** Review the original statute defining the role and make-up of the Archives Advisory Board (AAB).
- **ACTION:** Review Matt's document on high-level draft action items for legislation (see handout).
- **ACTION:** Review the "Archives and Records Management Law," Title 5, chapter 6 original version (http://legislature.maine.gov/statutes/5/title5ch6sec0.html), and "suggested" revisions for the purpose of discussion (see handouts).
- See color-coded spreadsheet on progress of recommendations from the "Records Retention and Management Report" to the Government Oversight Committee (GOC) in April 2015: http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf. The color-coded spreadsheet rates the progress of each of the 21 recommendations (see handout).

Summary minutes of last meeting (see handout)

- The minutes captured the discussion and action items, structured according to the 10 topics identified at the first meeting, and summarized on page 3 of the minutes and as a separate 1-page document (see attachments).

Title 5, Chapter 6 (Archives and Records Management Law – suggested changes to consider (see handout and http://legislature.maine.gov/statutes/5/title5ch6sec0.html, sections 91-98)

- Met with Archives Advisory Board (AAB) Oct. 9. AAB reviewed Department of Environmental Protection (DEP) proposed changes to records retention schedule – very exhaustive process. (See attached minutes from AAB meeting).
- **ACTION:** AAB can advise us about these issues.
- **ACTION (OPTION):** Reasonable to consider/ contemplate AAB doing some due diligence as a cascade of frameworks for records retention schedules that the AAB could oversee.
- Sheer volume of printed material, and changing nature of what is deemed archival.
- **ACTION (OPTION):** Rulemaking – AAB could serve as a public body and vote on proposed rules.
- **ACTION:** Need vector for local government as well. 85% of vital records are held in small towns.
- Original make-up of the AAB had representatives from:
    - Attorney General
    - Commissioner of Finance and Administration
    - State Librarian
    - State Historian
    - Registrar of Vital Statistics
    - Six other persons especially interested in Maine history

"The Archives Advisory Board was created in 1965, at the same time as the office of the State Archivist. It was originally composed of representatives of the Attorney General, the Commissioner of Finance and Administration, the State Librarian, the State Historian and the Registrar of Vital Statistics as well as six other persons especially interested in Maine history. The composition of the Archives Advisory Board changed four years later to replace the State government members with three more citizen members. The Archives Advisory Board, whose members are appointed by the Governor, currently has four vacancies, and the terms of the remaining five members have expired though they continue to serve." (from page 11-12 of the Records Retention and Management Report).

NOTE: As of October 2015, there are currently two vacancies, with seven members serving (five on expired terms).

- **Make-up of Board and mission of Board:**
  - **ACTION:** Need advice on the "4-part value criteria: administrative use, legal, fiscal, and historical value of records.
  - NOTE: From a slide in "Records Management Basic Principles for State Employees": http://www.maine.gov/sos/arc/records/state/trainingstandardjuly2015.pdf

    The Four Part Criteria for Determining Retention

    - **Administrative use:** What is the value of the records in carrying out the functions of your department? How long will you need to be able to retrieve them immediately?
    - **Legal requirements:** Are there any State Statutes or Federal regulations involved?
    - **Fiscal requirements:** How much time must you allow for the completion of fiscal activities such as audit or budget?
    - **Historical/Archival:** Do these records document important events, or the history and development of your department?"

  - Should retain co-equal authority of AAB with State Archivist to approve retention schedules – check and balance. Broad framework that could expand to consider other parts of the disposition function.
  - Other role of the Board is to advise. AAB probably hasn't done much of that, but could. Make-up of Board would drive how that would work.
  - **ACTION:** Need to have key input from people whose job it is to audit (program and financial audits), and those whose job is to keep us legal – I like that approach of receiving input/ review prior to approval of the records schedules.
  - **ACTION:** I would advise the AAB to look at process and procedures, because the last meeting was pretty chaotic. In Oklahoma the Constitutional Officers would sign the schedules at the end of the review.
  - **ISSUE:** Our process doesn't have enough reviews except from historical perspective.
  - Point/ Counterpoint:
    - Point: If AAB is to review every schedule, they would have to meet couple times a month, because it would cripple our work.
    - Counterpoint: If AAB meets quarterly, there should be no more than 90 day lag.
  - **ACTION:** Process would be expedited if there were guidelines on what a schedule should look like.
  - **ACTION:** General schedules should be applied as broadly as possible.

- See state government records schedules at (general and agency-specific):
  - http://www.maine.gov/sos/arc/records/state/generalschedules.html
  - http://www.maine.gov/sos/arc/records/state/agencyschedules.html
- See local government records schedules at: http://www.maine.gov/sos/arc/records/local/localschedules.html
- In Delaware, the general schedules applied to both state and local government records.

- For the past/ current process, the Records Management staff and Archivist bring to the Board what was a gray area or didn't fit into certain guidelines – so Board would look at that. At the last meeting, the Board hadn't met for a long time and we were catching up. Not familiar with each other.
- **ISSUE:** Concerned about suggested make-up of the Board (see page 12 of handout with red mark-ups). Heavily weighted to the agencies. It's important to know what the legal and fiscal requirements are. Seems to say that the most important thing about the archival records is to protect our legal and fiscal backs.
- **ISSUE:** Interpretation of what should be kept has changed over the years.
- **ISSUE:** What about email – retention of that?
- **ISSUE:** Concerned about a 9 member board with 1 member of the public. What about needs of citizens, researchers, historians? Will they really need it in 100 years, what about 40?
- **ISSUE:** We've assumed that legal, fiscal/ audit requirements have been considered – do the agencies preparing proposed changes to records schedules know who to talk to if that specialized expertise is not available in the Archives?
- Protecting the records preservation interests of both the citizens to the state, and the state to the citizen.
- As an AAB member I would have sent the DEP schedule back – had a lot of issues with it.
- **ACTION (OPTION):** I agree there need to be more public members. Chair would be a public member. Public plays crucial role. Add State Historian to bring that perspective as well. Would also have the Chief Information Officer (CIO) of the State. However, there are four separate "CIOs" – Executive Branch, Judicial Branch, Legislative Branch, and Secretary of State.
- **ISSUE:** From Freedom of Access Act (FOAA) point of view, we are dependent on preservation of records. Access is meaningless if records are not preserved. Records schedules are a basic way to ensure preservation. How does the public interest get considered, and not be dominated by the agency interest? How in the process does that happen?
- **ISSUE:** Very important that this Board is highly functional and somewhat lean. Approving a schedule has to happen. When a Board is getting bigger and bigger (12, 15), can those be scheduled? Do all those people belong on the Board, or is there a process to ensure the meetings are public, and a public comment period? Have a procedure for controversial or cutting-edge issues that go out for further review, to a community of interest. That could be done to not slow down the Board process. Board can't have a person with every area of interest.
- **ISSUE:** Good to get public comment, but concerned of the public review slowing down the process.

- **ISSUE:** How are we going to deal with text messages, etc.?
- Proposed schedule coming out of the agency – what resources are they using to get the best proposal?
  - They prepare/ review it internally with their various programs/ divisions.
  - Then review by Archives.
  - Then Board stage.
- **ACTION (OPTION):** Don't want public member to be looking at the schedule at the last stage – should be reviewed at the initial or intermediate stage. Need some mechanism for that – a community of interest, prior to going to the Board, so it's just a final review. Prior to the Board, most of the work should be done – filtered through these other places/ reviews.
- **ISSUE:** Importance of public members on the Board is to get the right public constituencies aware of the issues, and get their input. Like genealogists – they want to keep everything about "Uncle George."
- To keep this a highly functional Board, you can't have everyone on the Board.
- **ACTION:** Make sure every time you're having a meeting, make sure it's announced, that we're discussing a certain type of records at this meeting.
- **ACTION:** Could work on refining the process of review. Make sure your procedures include that – other reviews.
- **Confidentiality:**
  - Issues of confidentiality are often answered in statute – that's not a public call.
  - If the agency believes a record should be confidential, and the possibility of harm being done, and the Legislature hasn't defined that, then you get into rulemaking.
- Public interest is important, because "this is the public's place."
- Board currently is a group of experts – legal background, county clerk, librarian, etc.
- Having large boards is hard to get anything done.
- **ISSUE:** The point of having the CIO is a good one. However, there is not one CIO for the State. There is a "CIO" in Executive Branch, but also the other Branches.
- Records in the various agencies are different, and schedules need to be reflective of that.

- **What is the AAB's role and scope? – summary thoughts**
  - **DECISION:** Comfortable with AAB meeting quarterly, and 9-12 members.
  - **DECISION:** Co-equal authority with State Archivist – are we comfortable/ agree with that?
  - **ACTION:** Review some of the mechanics of the process – that's driving this.
  - **ISSUE:** Records we had were all hard copy, when the AAB came into existence in 1965. What constituted archival status of the paper records? We're at that juncture of an evolutionary phase. Now not just talking about paper – going into a digital realm. How best to handle the digital? Decisions of Board were influenced by paper records – how long to keep in agency, then at Records Center, then some over to the Archives. Now, the records may never leave the

agency – stay in their digital storage. If move to "archival" storage, that changes custody to State Archives.

- Secretary of State in law is designated to be responsible for the preservation of State records. Maine State Constitution: http://www.maine.gov/legis/const/, Article V, Part Second, Secretary:
  - **"Section 4. Records of executive and legislative departments.** The Secretary of State shall carefully keep and preserve the records of all the official acts and proceedings of the Governor, Senate and House of Representatives, and, when required, lay the same before either branch of the Legislature, and perform such other duties as are enjoined by this Constitution, or shall be required by law."
- **ISSUE:** For the generating agencies, how do we put digital records into a system where for the portion of records that are archival the State Archives staff and public know how to find it. Agencies need to define this or that type of record, and should it be kept digitally 10 years, 25 years, longer? It won't be coming to State Archives in a box, but will be kept in the agencies' digital storage. If the practice is not there, how do we make sure the digital archive is there, because it has archival importance?
- Generating agency is required to have schedules that define all their records.
- **ISSUE:** Judicial Branch is going to a case management system. How do we send our structured data to the Archives? Even when it moves to "archival," each agency should be responsible to retain its own records as archival records.
- **ISSUE:** In this new digital world, is that what we should be thinking about? When digital record is archival, how does that get preserved – in the agency or at Archives, and be accessible?
- **ISSUE:** Need to have authentication (proof of validity) of a record from the agency or at the Archives.
- A lot of work will happen in the agencies – but it will revolve around the work of the AAB.
- **ISSUE:** Some agencies aren't dealing with this as efficiently, but the public should be ensured that their interests are being considered.
- **ACTION (OPTION):** Maybe give the Board a range of # of members – who is available and needed to be on the Board. Is 9 fine, or if there is a certain expertise or voice that needs to be heard, and kick it up to 12? I like the idea that the Chair should be a public member. All of this is for the public trust. Suggestion of the backgrounds is good – need various backgrounds. Don't want everyone the same. Rather than saying, "we really like Maine history."
- **ACTION:** Need to look at policies and procedures that support Records Management and the work of the Board. Better to put broad framework in law, and put details in the regulations, to be more flexible.
  - See Archives and Records Management Law at: (http://legislature.maine.gov/statutes/5/title5ch6sec0.html (sec. 91-98)
  - See Maine State Archives Rule 29-255 chapter 1, State Agency Records Programs: http://www.maine.gov/sos/cec/rules/29/255/255c001.doc

        - See Chapter 10: Rules for Disposition of Local Government Records: http://www.maine.gov/sos/arc/records/local/chapter102014.doc or http://www.maine.gov/sos/arc/records/local/chapter102014.pdf
    - **ISSUE:** It's not clear now what the process is. From the time the agency decides to do a records schedule, how does that work?
        - Agencies fill out a form with proposed changes to their schedules.
        - If a statute involved, reference to that is included.
        - Sample of records.
        - Submitted to Felicia Kennedy, the Records Management Analyst, and she sits with agency Records Officer to review. Also look at other agency similar schedules, or if covered by the General Schedules. Several meetings, and decide if fitting, then it goes to the State Archivist for approval. Same for amending an existing schedule. If increasing retention time, they give the reason why.
        - **ISSUE:** Is someone looking at legal, fiscal requirements? Is someone looking at Federal statutes?
            - If any question about legal, we recommend agency consult with their Assistant Attorney General that counsels that agency.
            - Would be nice to fall back on a Board for guidance if any question.
        - When an agency comes to us, they know their business. We don't really question why they want to keep a record 2 years.
        - **ISSUE:** Does the staff ever ask the AAB for advice?
            - Felicia said she tried to reach out a few times and didn't get a response by email.
            - Board prefers to discuss as a Board, versus one by one.
            - I don't want to tell an agency they have to wait 4 months to review a schedule.

- How are these meetings of the Stakeholder Group going to be run? Are we going to make motions and vote?
    - Want to achieve as much consensus as possible, but for the Board, should have a vote.
- **ACTION:** Board is only 1 piece of the structure. Don't want to hold off on the Board piece because some other part of the structure is not perfect. All the pieces should be in place to work well, but advocate going forward on the Board question.

- **Staffing at Stake Archives:**
    - **ISSUE:** Challenging to have only 2 staff – Felicia Kennedy (full-time) and Tammy Marks (half-time role as Records Management Director as well as Archive Services Director).
    - **ACTION:** State Archives is under-staffed – that's a Legislative question [decision on staffing/ funding levels].
- **ACTION (OPTION):** What is the role of the Records Management staff at Archives, and the role of the Records Officers at the Agencies? Do we have more Records Management staff at the State Archives to do what is "agency" work?

- **ACTION (OPTION):** If we were to propose a change in statute, when would that be done? We missed the deadline for this session.
    - Options are to have a Committee action, etc.
    - Secretary of State himself can submit proposed legislation at any time.
- **ACTION (OPTION):** There are other parts of the law to look at, not just this.
- **ACTION (OPTION):** Focus work on the Board make-up:
    - Assuming current members want to stay on, should we prescribe what fields members should come from? Currently the Board has 7 members:
        - County clerk
        - Municipal clerk
        - Librarian
        - Archivist
        - Probate judge
        - Historian
        - Former State Records Director (retired and now part-time librarian at University of Maine - Augusta)
- Librarians are important – either someone from state library or university. Would a former librarian be considered a member of the public?
- In original statute, the 5 State officials were "ex officio."

    NOTE FROM WIKIPEDIA:

    "An **ex officio member** is a member of a body (a board, committee, council, etc.) who is part of it by virtue of holding another office. The term is Latin, meaning literally "from the office", and the sense intended is "by right of office"; its use dates back to the Roman Republic. A common misconception is that the participatory rights of ex officio members are limited by their status. This is incorrect, although their rights may be indeed limited by the by-laws of a particular body. *Robert's Rules of Order*, Newly Revised (10th ed.), clarifies that the term denotes only how one becomes a member of a group, not what one's rights are. It is a method of sitting on a committee, not a class of membership. Ex officio members will frequently abstain from voting, however unless by-laws constrain their rights they are afforded the same rights as other members, e.g., debating, making formal motions and voting."
- Someone from the legal field – to speak to the legal ramifications. Does it have to be someone in that position (like Brenda Kielty/ Attorney General's Office), or someone with that expertise?
- Sub-committees – to help and advise the Board. Could have 9 people, with ability to bring in others when needed.
- General listing of areas of expertise:
    - Municipal or county
    - Library – reference?
    - State or town historian
    - Judicial Branch?
        - Chief Justice can deem what is archival. State Archives' Records Center is the repository for Judicial's longer-term storage of paper records. Also decides on "de-accessioning" of records now stored long-term in the State Records Center.

        - **ISSUE:** Judicial Branch has a depth of material (paper and digital), and how is it accessible?
- Legal:
    - **ISSUE:** What are expectations of the public for records management in legal proceedings? Question of legal value of records – like at DEP. What is statute of limitations for these sorts of records? What is the need of other people (beyond the agency's needs) for those records?
    - **ACTION:** Need someone with experience and knowledge of those areas.
- IT expertise in depth:
    - **ISSUE/ ACTION:** For digital records, what can we expect agencies to do, and what's coming? Is Archives providing policy guidance so IT people know what to do about their digital records?
    - **ISSUE:** For the Judicial case management system and electronic document management system, what guidance are you getting from Archives about those records?
    - **ISSUE:** Judicial Branch just prepared a new records schedule, and Archives wasn't consulted. Now, all Judicial records are paper, but changing to digital. Value of record doesn't change when going from paper to digital, but how to access it does change.
    - **ISSUE/ ACTION:** If agencies are using different systems, how do we coordinate that? Easier if an enterprise system. Systems aren't cheap. All agencies are in the "same boat" now with the need for some kind of Enterprise Content Management System (ECM). Systems need to talk with each other.
    - **ISSUE:** Archives deals with all of State Government – each Branch has different ways of doing it, and need to be able to manage the records that are archival.
    - **ISSUE:** Shared systems for electronic records (like a potential enterprise-wide Electronic Records Management (ERM) system) need to be segregated by agency, so that one agency is not able to see the records of another agency.
    - Judicial Branch's case management system is integrated with the application system – and between the case management system and the document management system.
    - **ISSUE:** Does Judicial Branch's new system have ability to apply records retention rules? Yes. That kind of guidance should be coming from the Archives. When the records come to the Archives, they don't have to buy the system too. Reached out to 45 different stakeholders within the Judicial Branch to find out what they would need.
- Fiscal/ financial expertise:
    - **ISSUE/ ACTION:** Cost of records retention needs to be analyzed.
    - "Fiscal" criteria refers to need for auditing of financial records.
- Attorney General's office/ legal expertise.
- All others could be public members.
- Determining retention is based on a 4-part criteria value analysis.
    - Administrative use by the agency

    - Legal requirements
    - Fiscal/ audit requirements
    - Historical/ research value
  - NOTE: A slide from "Records Management Basic Principles for State Employees": http://www.maine.gov/sos/arc/records/state/trainingstandardjuly2015.pdf

The Four Part Criteria for Determining Retention

    - **Administrative use:** What is the value of the records in carrying out the functions of your department? How long will you need to be able to retrieve them immediately?
    - **Legal requirements:** Are there any State Statutes or Federal regulations involved?
    - **Fiscal requirements:** How much time must you allow for the completion of fiscal activities such as audit or budget?
    - **Historical/Archival:** Do these records document important events, or the history and development of your department?"
  - At the core is expertise on the 4-part criteria. Then you go to a cluster of other issues – to bring in further expertise as needed. Some may be called on in a sub-committee or stakeholder context. Could have a small AAB, then call in the other folks.
  - The original AAB the State members were "ex officio," but they had a role to play when their expertise was needed. That's probably where IT belongs. IT is a service, unless the CIO is also creating policy. Don't think IT should be on the Board. Here we have 4 "CIO"s.
  - **ISSUE:** Who would make the policy that all document management systems need to have records management retention rules baked in? Who would make a policy that all ERM systems are "open systems," not proprietary? In Federal government, it must be a certain way – for all agencies. Policies and decisions on such things require a combination of IT and the agency program/ business people.
  - **ISSUE:** Who makes Records and Information Policy, or is it diffuse? What is the role of the AAB?
    - Records Policy would come from Archives, and agencies are responsible to carry it out.
  - **ISSUE:** Where is the policy that if you are purchasing an ERM system, that Records Management retention rules are built in?
    - Each of the Branches of Government would go to their own IT group?
    - Concerned that there is no policy, and each agency is making its own policy.
    - Executive Branch could make its own policy about retention of electronic records.
- **ACTION (OPTION):** National Archives and Records Administration (NARA) has extensive guidance on Records Management and ERM – standards and bulletins published for ERM systems, digital formats, etc. Could clone that.
  - See NARA guidance on electronic records management:
    - http://www.archives.gov/records-mgmt/initiatives/erm-overview.html

    - http://www.archives.gov/records-mgmt/toolkit/
    - http://www.archives.gov/records-mgmt/era/
    - http://www.archives.gov/records-mgmt/initiatives/erm-guidance.html
    - http://www.archives.gov/records-mgmt/email-mgmt.html
  - NARA has defined digital formats for permanent electronic records. See:
    - NARA Bulletin 2014-03, Revised Format Guidance for the Transfer of Permanent Electronic Records: http://www.archives.gov/records-mgmt/bulletins/2014/2014-04.html and Appendix A, Tables of File Formats: http://www.archives.gov/records-mgmt/policy/transfer-guidance-tables.html
  - NOTE: The item below was mentioned at the Archives Advisory Board meeting on Oct. 9, and is included in the minutes here as background:
    - Dr. James Henderson (former Maine State Archivist, 1987-2007) was ahead of his time with thinking about digital records, but didn't have the resources to sustain it.
      - See his testimony to a Congressional committee in 2008 about electronic records related to historical publications and records: http://nsarchive.gwu.edu/news/20080514/henderson_testimony.pdf
      - See also this 1998 foundational paper from the National Archives on the Electronic Records Work Group (Jim Henderson was one of the members): http://www.archives.gov/publications/record/1998/01/from-the-archivist.html
- **ISSUE:** Does Archives get more staff to do the work for the agencies? Or give agencies guidance? Guidance, with auditing?
- **ISSUE/ ACTION:** Frameworks and guidance from AAB and Archives:
  - Authority is already there in statute and rule. Archives has the authority, but not the enforcement piece? Or does it have enforcement authority as well? [there was some disagreement about this at the meeting]
  - See Archives and Records Management Law at: http://legislature.maine.gov/statutes/5/title5ch6sec0.html (sec. 91-98)
  - See Maine State Archives Rule 29-255 chapter 1, State Agency Records Programs: http://www.maine.gov/sos/cec/rules/29/255/255c001.doc
- Archives provided a brief checklist to agencies for self-assessment, as part of training.
- Records and Information Management (RIM) Federal maturity model (see handout):
  - NARA has a Records and Information Management (RIM) maturity model user guide: https://www.archives.gov/records-mgmt/prmd/maturity-model-user-guide.pdf. The related tool as an Excel file is attached. This tool is for the purpose of evaluating the effectiveness of agency records management programs, which for the Federal Government is required under OMB Memo 12-18: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf
  - On a scale of 0-4, the checklist would allow us to assess the maturity of agency records management programs in 3 "domains," with 4 or 5 criteria for each domain (14 criteria total). Overall, most agencies are probably at level 0 or 1 on most of the criteria (ideal rating is 4).

        - Domain 1: Management Support and Organizational Structure (4 criteria)
        - Domain 2: Policy, Standards, and Governance (5 criteria)
        - Domain 3: RIM Program Operations (5 criteria)
- **ISSUE:** Like computer security, it belongs to the agency to own – IT can support. We don't have enough people to properly do some of the key functions. IT can develop systems to meet agency needs. Technology will do what you ask it, but is costly if you keep changing your mind. If we have "one mind" then we can have a good solution that will meet the needs today and into the future.
- **Summary of thoughts on AAB members:**
    - AAB should have a public make-up with various expertise, a public chair, core functions represented on the Board, and a framework of retention schedules for agencies to review those.
- **Role/ mission of the AAB:**
    - Schedules
    - **ISSUE:** "Advising the Archivist": Is the mission confined to schedules? There are so many emerging, dynamic issues that need to be addressed – emerging technology (text messaging, Twitter). AAB is interested in open vs. closed systems, but interested in larger Records Management issues. These things fall under "advising the Archivist."
    - **ISSUE:** Technology policies
        - Electronic records – big picture questions
        - Particular kind of records – Facebook, social media
            - As Secretary of State, 95% of my communications is answering public messages. My instinct is that it is a public record, but I don't know what to do with it. Once you post it, Facebook.com owns it. This was discussed at the Council of State Archivists conference: At what point can you capture that as a record?
            - State statute can be informed by how Facebook disposes of that record.
        - Would this group be called upon and then advise Archives on those things?
    - If AAB is <u>not</u> doing this, who is going to look at these questions from a larger scale? AAB has to be way more than just the schedules – because the records are in all these formats – electronic, social media, etc. Process should require calling groups for input – a check and balance on the AAB. Archivist can promulgate rules with advice from AAB. Process should be that they <u>have</u> to get input.
    - If Board is set up to call sub-committees upon the need, and created great network of interested parties, you could utilize that for schedules and these other questions.
    - Records Management guidance to local governments.
    - **DECISION:** Should meet not less than quarterly.

- **Appointment authority for Board members:**
    - **ISSUE:** Over the years, Governors weren't appointing and so the Board went without a full set of members.
    - **ACTION (OPTION):** Could have Secretary of State make appointments, with inquiries and requests coming from the various areas. Secretary of State has

vested interest because of statutory role in ensuring preservation of government records, and also overseeing the State Archives as part of the Department of the Secretary of State.

  - **DECISION:** 4-part criteria: Background/ expertise needed for those 4 areas.
  - **ACTION:** Also ask for input from the sitting AAB (7 current members). They may know of people who are interested in serving.
  - **ISSUE:** AAB is advisory, except for the requirement that it must sign off on records retention/ disposition schedules. Maybe "Advisory" is the wrong term. Maybe call it "State Records Board."
  - **ACTION (OPTION):** Invite all the current AAB meetings to these meetings. Many have been on the Board for 20 years.

- **Summary/ Wrap-up:**
  - **ACTION:** Matt will draft up proposed statutory changes (with help from Eric).
  - **ACTION:** Will invite all AAB members to future meetings, if they want to come. We will also send them the minutes and background materials from the Records Management Stakeholder Group. [We sent them the minutes and materials from the past 3 meetings just this week, but they will receive same for future meetings.]
  - **ACTION:** Consider a bigger room:
    - Committee room or Nash School conference room (Secretary of State's headquarters at the corner of Sewall and Capitol Street)

Archives Advisory Board
Meeting Minutes
October 9, 2015, 10:00 – noon
(started at 10:00, adjourned at 12:38)
State Archives Conference Room

Outline:

Next meeting (Friday, January 8, 2016, 10:00 - noon)

NOTE: Web links were added after the meeting to enhance the value of the topics discussed.

Archives Advisory Board Members:

- Sam (Sumner) Webber, Chair
- Susan Bulay (not attending today)
- Lyman Holmes
- Twila Lycette
- Elaine Stanley
- Howard Lowell (new member)
- Nina Osier (new member)

Others Participating:

- Matt Dunlap, Secretary of State
- David Cheever, State Archivist
- Tammy Marks, Director of State Archives
- Felicia Kennedy, Records Management Analyst
- Andrea Lani, Department of Environment Protection (for review of DEP records schedule)

Recorder:

- Eric Stout, Office of Information Technology, Executive Branch

DISCUSSION OF ROLE OF THE ARCHIVES ADVISORY BOARD AND RECORDS MANAGEMENT ISSUES:

- Secretary of State is working on ways to better support the work of the Archives Advisory Board (AAB) and State Archives.
- Secretary of State and State Archives are working with Government Oversight Committee (GOC) on the role of the AAB in preparing and advising on records schedules and archival material. See "Records Retention and Management Report" sent to the GOC in April 2015 at: http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf. See pages 10-13 for the "Records Retention Schedules" chapter that focuses on the role of the AAB. See pages 23-24 for summary of all 21 recommendations.
- Grappling with government records – changing nature and sheer volume and being accountable to the public.
- What is the role of AAB as a public committee, advising the Archivist, and what records management training should be to advise agencies on managing their records?
- Vacancies on the Board – want to fill, but also have the right skill sets for the digital age.
- Charge of the AAB is to review schedules from agencies – new schedules and revisions to current ones.
- Look for how many years records stay in agency, at records center, and whether archival (convey ownership to State Archives), or destroy after the stated period of time.
- In past meetings, the Board looked at archival records if they have references later on that they should not be destroyed.
- Another function of the Board – the local government records stores (repositories) for local records. See: http://www.maine.gov/sos/arc/records/local/storage.html and http://www.maine.gov/sos/arc/records/local/repositories.html.
- Board can hold public hearings if people want to change schedules for local records. Come up with changes to the schedules; then publish them.
    - See local government records schedules at: http://www.maine.gov/sos/arc/records/local/localschedules.html
    - See state government records schedules at (general and agency-specific):
        - http://www.maine.gov/sos/arc/records/state/generalschedules.html
        - http://www.maine.gov/sos/arc/records/state/agencyschedules.html
- Rules used to be printed, but now all on-line. Chapter 10 (Word document). On the Archives website as well. See:
    - Chapter 10: Rules for Disposition of Local Government Records: http://www.maine.gov/sos/arc/records/local/chapter102014.doc or http://www.maine.gov/sos/arc/records/local/chapter102014.pdf
    - 2014 Rule-making Adoption:
      http://www.maine.gov/sos/arc/records/local/2014adoption.pdf
      (showing enacted changes to the Chapter 10 Rules)
      Notice of Agency Rule-making Proposal:
      http://www.maine.gov/sos/arc/records/local/ruleproposal2014.pdf
      (proposed Chapter 10 changes being submitted for legislation)
- Are there other things the AAB can help State Archives with?
    - Felicia and Tammy get a lot of questions about Chapter 10. Many of the descriptions are vague. For example, Surry town office was asking about valuation books. Nothing in Chapter 10 states how long valuation books are to be kept. See: http://www.maine.gov/sos/arc/records/local/schedulei2014.doc. Under "I.0.8, tax

exemption records" it says these are to be kept as part of the valuation book. But no series for valuation books. Difficult for Maine State Archives to know how to advise the towns on these sorts of questions.

- **"I.08. Tax Exemption Records**
  This series is defined as any record that states the name of a person or business granted an exemption; the amount of that exemption, and the reason for granting it. Tax exemptions must be recorded in the Valuation Book in order for records described in this item to be destroyed."

  - Would be nice to communicate more often with the Maine Town and City Clerks' Association (http://www.mtcca.org/) and the Maine County Municipal Clerks' Association (http://www.mtcca.org/about/counties/) to update Chapter 10, maybe annually.
  - Trying to get information out to the Maine Municipal Association (https://www.memun.org/) on Chapter 10 and the Freedom of Access Act (FOAA): http://www.maine.gov/foaa/. We're making them think about this before they toss things. They have less space to keep all this information.
  - Maine State Archives has to file rule-making with Legislature – quite a process involved. There can be a statutory change, but still has to go through rule-making process.
  - Would be good to have Chapter 10 definitions be more specific. Terminology is different today than when first written.
  - **ACTION:** Could put on AAB agenda to review Chapter 10 annually.
- AAB also reviews local government repositories. See: http://www.maine.gov/sos/arc/records/local/repositories.html. Portland Public Library and Maine Historical Society purchased a building with temperature and humidity controls. It's important to ensure there is public access timely.

- **Question:** What is the process to approve schedules – from the agency saying we need to do something with our schedule, to review by the State Archives? Are there other reviews?
  - Response: Reviewed by Felicia Kennedy (Records Management Analyst) and questions sent to the agency. In today's review of proposed schedule changes from the Department of Environmental Protection (DEP), questions went back to Andrea Lani and Pete Carney, and then they re-submit to Felicia. If other questions, Felicia will sit with Tammy Marks and Dave Cheever. If anything is scheduled as archival (permanent), then that will be brought to AAB. If Board has questions, Felicia will take back to agency. Then approve or make changes.

REVIEW OF DEP PROPOSED RECORDS SCHEDULE CHANGES (see handouts for details):

- Do we want to go over every single item – 40 schedules? In the past, Felicia would highlight any that are questionable.
- Many of DEP changes are statute driven. All questions sent to Andrea Lani have all been answered. Didn't see anything that Felicia has an issue with.
- Some records are archival – what's the logic?
    - Response: Those are related to waste treatment, oil storage, bio-medical waste.
- Because of our varied backgrounds, some items may set off a bell on an item that the others would not pick up.
- **ACTION:** Is that something that could be spelled out in the charge of the AAB, so state agencies know what the process is?
- **ACTION:** Proposed records schedule changes could be sent out earlier, so Board could make comments in advance of the meeting.
- Items 79 and 80: 60 days then destroy
    - Regardless of media – whether handwritten notes or electronic?
        - Response: Yes.
    - Are these minimum retentions or required retentions? Could keep longer? See various Board member responses below:
        - Response: Yes, could keep as long as they want.
        - Response: Yet, we're trying to clear out things no longer needed to clear space at the Records Center. If agency wants to keep it longer, they can. But it is then a risk of keeping it longer.
        - Response: It's also a risk to keep records longer than schedule calls for.
        - Response: Are you going to make me destroy it? No. Destroy it if legally allowed. If you choose not to, it's your risk.
        - Response: This is a national discussion, in Freedom of Information Act laws. If you have the information you are legally obligated to provide it.
- Department Rulemaking – 3 series:
    - Item 81A – 60 days
    - Item 81B – 10 years – substantive records
    - Item 81C – 1 year at agency, then 19 at Records Center.
    - Board member suggests the rulemaking might be an archival record.
        - Response: Official copy is at Secretary of State's office, so these are duplicate records. Agency is keeping records about the rationale behind those rules for 20 years.
- Licensing drafts:
    - Item 86 – 6 months in agency (drafts)
    - If a person receives a waste water treatment plant license, is that a permanent record that they've received a license?
        - Response: These are just drafts. Item 1897 is 2 years.
    - Isn't there interest in knowing that someone was licensed, longer than 2 years? Perhaps public interest in keeping longer.
        - Response: Several types of licenses. Retention is generally for the period of the license itself. DEP only needs it 2 years for our purposes. The department will have no record beyond the life of the license itself (2 years).

- Is there a statute of limitations to sue? I assume 6 years. It's a concern there is no record after a short period of time.
  - Response: The person would have to retain their own record.
- Legally, there may be a longer requirement? Town may need to show that they hired a licensed waste-water person. What does the Board want to do on that?
- Good to know after any license has expired, is there a need to retain the record longer than the period of the license itself?
  - I wonder if there is a Federal statute?
  - Did you cross-reference Federal requirements?
    - Response: There are requirements, like Clean Water Act.
- Item 88 – 60 days – related to 1902
  - Seems like a short time.
    - Response: These are the transporters (drivers). Providers and inspectors have longer retention. These are the recommendations of the staff that work in each program. In hazardous waste, they lean toward keeping things forever. Drafts are kept only short time, after finals are produced.
- For all drafts of licensing, we would have the same questions.
- Item 1905 – archival record
- Item 1907 – archival
- Item 1897 – 2 years in agencies, then next one goes 10 years.
  - Is 2 years too short? Why is the other 10 years?
    - Response: Different programs, federal requirements, and different personalities of people in those programs led to what is here.
- Is there an inconsistency of retention for licensing?
  - **ACTION:** Maybe a subject for a general schedule on "licensing" records.
  - Response: Tried to set some consistency across DEP licensing programs. A lot of factors go into permits. Some have longer shelf-life than others. Some are for the individual operator, and others are for the plant. These were times for what DEP needs to do our job. If someone else needs it, it's not our (DEP's) problem.
- Is there another need for the records by others?
- **ACTION:** Develop a common schedule?
- **ACTION:** Role for AAB to come up with criteria for what should be kept, without every agency going through this level of work. Doesn't serve purpose of protection to the public as just mentioned.
  - Example: Years ago, the Legislature developed 3 criteria for regulating water skis, which was easier than specific rules.
- **ACTION:** AAB could write a handbook, with broad criteria for what should be kept that agencies can go by. Conceptually, many agencies do professional licensing. Look at common needs, rather than agency-by-agency. Have broad categories. It may be that some are kept longer than needed, but not an egregious amount of time. Would provide guidance to local government for how long to keep.
- Item 1910:
  - Where are the records when a license is revoked? If a person acts fraudulently and license is revoked, it seems there is no record of that.
    - Response: DEP has a separate process for enforcement.

        - Seems that we keep the nursing records for a long time, and State personnel records we keep 60 years.
    - **ACTION:** As a comparison to DEP, look at retention of licensing records at the Department of Professional and Financial Regulation (PFR). See: PFR's published records schedules at: http://www.maine.gov/sos/arc/records/state/pfrapr15.pdf.
        - PFR issues most professional licenses.
        - Often in statute, there are requirements to keep certain records for a specific time. Why were taxidermists required to keep records for 75 years? Inland Fisheries and Wildlife (IF&W) agreed to go down to 50 years (in statute).
        - Have to be careful not to go too far in the other direction and keep things too long. Need good justification why we're doing this, how long to keep.
    - **ACTION:** Good idea to check other professional licenses. Would want to talk to Attorney General's (AG) Office, and compare with other departments. Can do more research – look at PFR, talk with AG.
        - Response: DEP keeps 2 years for the period of license. If any enforcement, there would be records. For example, the actions they did for asbestos are in the database.
    - Concern: Inconsistency in "triggering" event – sometimes when the license expires.
        - Response (DEP): Trigger event is when facility shuts down. In case of contamination, records are kept forever. For drafts, don't need long-term. Depends on what programs need for their needs.
    - Getting AG's office to weigh in? I assume AG weighed in?
        - Response (DEP): We didn't consult with AG, but Pete Carney (as DEP's Policy Director) was our own internal counsel.
    - **ACTION:** AAB could have a checklist that says there should be a legal review of schedules before coming to the Board.
    - **Drafts versus Final Records:** In review of the DEP schedule, we are distinguishing between drafts and final on licensing:
        - We're OK with drafts.
        - Those that are archival we're happy with. Discussion of those that are 2 years to 50 years, not archival.
        - For archival, does Board need to vote on that? Yes.
        - Suggest that any of those that we disagree with, we pass those back to the agency for discussion, to not hold up the rest of the schedule.
    - Items 95, 97, 106: 1929, 1907, 19
- **VOTE (unanimous): Approval of all those marked as archival (unanimous).**
    - Is the process that we approve item-by-item?
        - Response: We can approve the entire schedule, with some exceptions that need to go back to the agency with questions/ changes.
    - No issue with the drafts, and with archival.
- **VOTE (unanimous): Series 79, 81A, 81B, 81C, 86, 99, 88, 90, 91, 94, 96**
    - Item 91 – all others are 60 days, this one is 5 years
    - Response: Drafts and licensing were both 5 years. This was the comfort level of DEP staff, to refer to drafts. We are requiring them to store drafts 5 years.
    - We can go back to change any schedule.

- **Licensing Records:**

- Plant operator only 2 years?
- Questions on 87 and 98
- **ACTION:** Want consultation with Attorney General's Office
    - Response (DEP): Could call back to DEP staff to get more information.
- Item 1899:
    - How long is permitting length?
        - Response (DEP): Time starts when permit is issued.
        - Board comment: Less comfortable when the trigger is when the license is issued/ created, versus a terminating event.
    - Towns have process for storm water
        - Response (DEP): Facilities have to get a permit to handle storm water.
    - So we don't know how long the permit is for, whether the 10 years covers the licensing time period?
- On 87 and 98, don't know if 6 years is too long or too short – if there is a public interest in retaining whether the person is licensed or revoked.
    - Example: I know one person who had their license pulled, but still markets self as licensed. I think there is an interest to be able to come to the State to see if the person is still licensed or not – for a period of time. I want to be able to go to the State to see if the person is still licensed, or revoked.
    - Example: Driver's license information is all governed by statute. Public can access what's on-line back 10 years. Operating under the influence (OUI) over 10 years ago wouldn't come up in that public record, but would for law enforcement. Professional licenses are handled differently in law. Challenge depending on the profession. It's up to the governing entity to govern the issuance of licenses. Liability is on the individual, not the State.
- Have we looked at questions like the statute of limitations for certain types of records, like asbestos removal? What is the volume of records for this instance, like licensing of asbestos removal? I think the public would expect us to be able to answer those questions.
- Is this a Legislative question?
    - Response: Want to define this in the retention schedules. Legislature tends to be more reactive.
- **ACTION:** How can we find out what other agencies do for retention of records on licensing? For a particular type of licensing, there may be a compelling reason to keep longer. Looking at a "prescriptive" retention.

- **Responses to earlier questions (Andrea, after consulting with others at DEP):**
    - Waste water treatment plant licenses are 2 years licenses, inactive. So records would be kept 4 years (2 years after license expires).
    - Item 87: 10 years = 5+5
    - Item 98 (1910): Renewed annually – lead and asbestos (5 years).
    - Any other questions on schedule? Appropriate to approve remaining schedule?
    - Item 21B:
        - If evidence of violation, why only 5 years?
            - Response: 5 years is what they need for enforcement proceeding. Then enforcement records are scheduled separately.
        - If it's air pollution and corrected, it's corrected. Soil is longer.

- **VOTE (unanimous): Approve remainder of schedule with 87 and 98 pending AG review.**
    - **ACTION: If the AG has issues, then bring back to the Board for review and approval.**
- Licensing:
    - I have concerns about 2 years, but would like to see what AG would say about statute of limitations.
    - Contemplating a general framework for licensing records.

Obsolete schedules submitted by DEP:

- This list of obsolete schedules is because of being replaced by the revised schedule.
    - Item 13:
        - Withdrawn – eliminate from consideration
        - We have 25 boxes at State Archives (scheduled as archival)
- **VOTE (unanimous):** Accept everything in the "obsolete schedules" list except 13:
    - Item 13: If it remains archival, we're happy.

End of review of DEP records schedules

DIGITAL RECORDS DISCUSSION:

- What should the schedules be around digital records, emails, PowerPoint attachments, etc.?
  - Technical issues are daunting, especially for archiving digital records. Has to be realistic discussion with the public that "permanent" is not "eternal." Our ability to retain electronic records is informed by the technology that supports it.
- We used to have computer tapes.
- Vulnerability of digital records:
  - Hackers hacked into Hallowell. There are drawbacks to having everything digital, because of hackers.
  - In a recent "ransom attack," hackers said you had to pay or they would delete all your files.
  - Many towns have a backup system for their digital files.
- For some records, there could be a paper copy of what was on the websites. What are other states doing for capturing web records?
- Do we just purchase more storage space?
- How do we manage what electronic records are stored, and findable?
- You are liable if it exists. It's discoverable.
- For municipal government, we started trying to make a paper copy of electronic records, but it became too much.
- One option we're doing at State Archives is to take permanent electronic records and make them into microfilm, as well as print – a multi-media capacity. This is just a small slice, to concentrate on the most valuable.
- To be useful, you have to be able to manipulate the information digitally.
- Discussion at Council of State Archivists (CoSA), http://www.statearchivists.org/ conference recently:
  - Academic/ universities can afford digital archives. They encourage public sector to get going, start doing it.
  - Everybody is in same boat – private and public.
- Can't use it as an excuse that there's not a perfect solution.
- Dr. James Henderson (former Maine State Archivist, 1987-2007) was ahead of his time with thinking about digital records, but didn't have the resources to sustain it.
  - See his testimony to a Congressional committee in 2008 about electronic records related to historical publications and records: http://nsarchive.gwu.edu/news/20080514/henderson_testimony.pdf.
  - See also this 1998 foundational paper from the National Archives on the Electronic Records Work Group (Jim Henderson was one of the members): http://www.archives.gov/publications/record/1998/01/from-the-archivist.html
- Records Officers in agencies have other full-time jobs. We're expecting these people to take care of this tremendous responsibility.
  - **ACTION:** Need a professional position for Records Managers as a full-time job.

NEXT MEETING (January 8, 10:00 - noon):

- **How often to meet?**
  - AAB used to meet twice a year. Before Sam it was quarterly. Sam came on Board in 1989 – met as needed, for an accumulation of schedules and special meetings.
  - **ACTION:** Encourage a regular schedule. Plenty for us to do. Tammy and Felicia would like help. Propose quarterly meeting (January 8).
- **Next topic (January 8): Confidential records:**
  - Felicia noted a lot of confidential or health records in archival storage – no one in the public has access to them. Certain agency people can get access.
  - Questioning why we have so many archival confidential records.
  - Is there a statute?
    - Response: Our statute is after 50 years, record is supposed to be made public. Have boxes of medical records, institutional files, corrections. Would like to have it reviewed, what we're keeping on shelves, and for what purpose.
  - Are they accessible?
  - AG's advice at the time is that if the Archives rule came before the confidentiality statute was passed, then the latter rules.
    - **ACTION:** I would go back and ask AG to revisit that.
  - **ACTION:** Felicia will bring up samples for the Board to review on Jan. 8.
  - What benefit is there to the public?
  - Census is not available for 90 years, then open.
  - Researchers can have access at National Archives and Records Administration (NARA) to personally identifiable information (PII) records if researching for statistical information.
  - Are some people still alive whose records are confidential? Or their descendants?
  - For hospital records, the statute of limitations is typically 7 years. But these records are archival? Why are we keeping those records longer?
  - What is the value? What is the value and risk?
  - Year ago, a history professor came in and wanted to keep them forever.
  - Maybe for statistical purposes.
  - Include adoption records?
    - Response: Adoption records are to be kept 100 years. We don't have those here. They're at the probate court.
    - They are public after 1953 – not confidential
    - How does that relate to a birth record in the local government office?
    - That's totally different. Birth records are totally different thing. I think there's a statute that out-of-wedlock birth certificates are not public.

NEW BUSINESS:

- **ACTION:** David Cheever will offer to prepare agenda for January.
- **ACTION:** We will have the Records Management Stakeholder Group meetings before then, and can share with you.
- **ACTION:** If you know people who want to join AAB, apply through Governor's Office. Procedures are listed here: http://www.maine.gov/governor/lepage/administration/appointments/process.shtml ("Personal Boards")
- **ACTION:** Government Oversight Committee (GOC) is meeting monthly, and a regular topic is follow-up of the recommendations in this report: "Records Retention and Management Report" sent to the GOC in April 2015 at: http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf. See pages 23-24 for summary of all 21 recommendations. See pages 10-13 for the "Records Retention Schedules" chapter that focuses on the role of the AAB.
- **ACTION:** Share Matt Dunlap's interim reports to the GOC, especially for what they are saying about the AAB and records management generally.
- **ACTION:** Board members should read the report (link above).
- It came out that most agencies don't have anyone for records management. More emphasis on agencies having records officers.
- Reporter called one of the Board members, and knew that many of the Board members' terms have long since expired. We want to support public information and access.
- **ACTION:** Will our minutes be posted on the website? See site at: http://www.maine.gov/sos/arc/about/advisory.html.
- Does the Board also have a role of "advocacy" for the Archives? Can we advise the Legislature?
  - **ACTION:** That's another agenda item for January.
  - **ACTION:** Members of Legislature are looking at this – what an opportunity! Take advantage of it.
- **ACTION:** Should we look at the State Employees Union contract, to carve out professional records officers? Rather than work with union, work with Human Resources.
- Maybe invest in a different way.
- Vacancy on Cultural Affairs Council. Former member didn't want to do it anymore. It covers Historic preservation, Archives, Museum. Was there a pool of money they advised on? Council will work on the bicentennial planning. Looking for a bond issue, maybe look at new housing where the 3 agencies (Archives, Library, Museum) could be housed. Advisory Board could go advocate.
  - **VOTE (unanimous):** Twila Lycette voted to be on the Cultural Affairs Council.
  - Hasn't met in a while, and hard to get a quorum. Thinking of alternate ways of meeting. Public meetings? Yes. Next meeting is Monday, Nov. 2, 2:00 – 3:00.
- Important role of the AAB – make-up is important. Statute says should be people interested in history. But we've had a variety of backgrounds. That is why it is a worthwhile and strong board. Government Oversight Committee should be aware.
  - **ACTION:** One of the charges of the Records Management Stakeholder Committee is to look at the makeup and role of the AAB.
- **ACTION:** Fill out travel reimbursement forms.

Meeting adjourned at 12:38 pm (over 2½ hours)