



SEN. ROGER J. KATZ, SENATE CHAIR
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:

SEN. NATHAN L. LIBBY
SEN. PAUL T. DAVIS, SR.
SEN. BILL DIAMOND
SEN. GEOFFREY M. GRATWICK
SEN. THOMAS B. SAVIELLO
REP. JEFFREY K. PIERCE
REP. JENNIFER L. DECHANT
REP. MATTHEW A. HARRINGTON
REP. DEANE RYKERSON
REP. PAULA G. SUTTON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
March 24, 2017
Accepted April 14, 2017

CALL TO ORDER

The Chair, Rep. Mastraccio, called the Government Oversight Committee meeting to order at 9:07 in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Davis, Sen. Gratwick and Sen. Saviello
Joining the meeting in progress: Sen. Katz and Sen. Libby
Absent: Sen. Diamond

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Harrington,
Rep. Rykerson and Rep. Sutton

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Amy Gagne, Analyst, OPEGA
Joel Lee, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE MARCH 10, 2017 GOC MEETING

The Summary of March 10, 2017 GOC meeting was accepted as written.

82 State House Station, Room 107 Cross Building
Augusta, Maine 04333-0082
TELEPHONE 207-287-1901 FAX: 207-287-1906

NEW BUSINESS

• OPEGA Report on New Markets Capital Investment Program

Director Ashcroft explained that the purpose of the public comment period is for anyone to have the opportunity to speak to the GOC about the contents of the Report. She said for this Report, under statute, the recommendations are to be considered by the Taxation Committee and/or other relevant policy committees. Whatever information the GOC might gather through today's public comments that is relevant to those further efforts, will be transmitted to the Taxation Committee.

Director Ashcroft said the GOC's role in regard to the New Markets Capital Investment Program is to do due diligence around the work that OPEGA has done on the review and whether that work can be seen as an objective and credible review of the New Markets Capital Investment Program. (The Report is posted on OPEGA's website at <http://legislature.maine.gov/opega/opega-reports/9149> or a copy can be obtained by contacting the Office.)

Rep. Mastraccio opened the Public Comment Period.

- Public Comment Period

Bill Norbert, Government Affairs and Communications Manager, FAME and Chris Roney, FAME's General Counsel, introduced themselves. Mr. Roney presented FAME's testimony regarding the New Markets Capital Investment Program Report. (A copy of FAME's testimony is attached to the Meeting Summary.)

The GOC's questions and comments included:

Rep. Mastraccio asked if statute needed to be changed to incorporate FAME's "one-day loan" rules if there was not to be any more funding approved this session for the New Markets Capital Investment Program. She understood there was still money available for businesses from what is remaining from the original authorization. Mr. Roney said the rule that FAME has in place now would be sufficient for administering the balance of approximately \$20 million of tax credits remaining for New Markets without making statutory changes. He said FAME would welcome the changes if necessary, or deemed appropriate, but thought that the remaining money would already be allocated to projects before legislation could be passed this session.

Sen. Gratwick said he was troubled by some of the larger implications for this Program and referred to the diagram on p. 45 of the Report. People see \$256 million come in and \$90 million going out and asked if Maine was getting a proper return on investment with the one-day loans. He said the possibility of one-day loans was something Maine was not aware of ahead of time when approving this program so he worries that if that got through what else is going to be found in the future.

Mr. Roney said over the course of his work on the New Markets Capital Investment Program he would share Sen. Gratwick's skepticism because it is a very complex Program and being a lawyer did not help him understand the Program. He said the transactions have gotten more complex as time has gone on and FAME has carefully looked at the Program and statute. As the initial applications came in, FAME took great care in looking at the transactions and the return on investment and things like that. Mr. Roney said it is important to point out that there are certain things that the Legislature did not perhaps realize when the Program was first passed in terms of things like one-day loans. He also wanted to point out that the one-day loan transactions were completely legal under federal law and Maine's Program was modeled to be almost identical to the federal program. He said its simplicity was that it was able to just track the federal program by way of definitions and other aspects of the transactions that was permitted under federal law because the federal program has been very successful. Mr. Roney said many of the projects with one-day loan transactions had both federal and State tax credits. He said FAME shared Sen. Gratwick's concern and FAME was out in

front trying to limit some of the things that were being accomplished with one-day loans. He noted that not all one-day loans are bad because one-day loans were used in some cases to refinance actual new investment and could also be needed because of timing issues, but one-day loans could also be subject to abuse. Last session when a bill to provide new funding was introduced FAME submitted an amendment to make the changes that they eventually put into their rules. FAME sought to help make sure that tax credits were going towards uses that would have more demonstrable public benefit. He thinks that FAME has done that and the limitations they put in rules to guard against some of the things that were potential abuses. Incorporating those into statute for additional funding rounds would be critical to maximize the State's return.

Rep. Mastraccio said when she was reading through the Great Northern Paper (GNP) Case Study it was clear that FAME had misgivings at the outset because it was a lot more risk with this particular project than with some of the others. Mr. Roney said the GNP Case Study in the Report is well done, but he would point to the part of the Case Study that he would like to focus on regarding FAME's concerns of a refinancing of expenses that had already been incurred and invested. He said FAME did believe that GNP and its owners had been participants in, or were aware of this Program. The Program was coming on line as GNP was putting those investments in and Federal law permitted refinancing of money you put in. So, if you look at the transaction, that is what happened on the day of the closing, but FAME required that there be certifications under oath and demonstrated evidence that they had put in all the money that they were essentially refinancing. Mr. Roney said he thinks that at the end of the day, it got a lot of press and the press was not very favorable, but he does not think GNP was a bad transaction for the State. FAME had GNP demonstrate and prove that \$40 million worth of investment had been made regardless of the one-day loan structure and that was proof FAME required before they would certify the application. He said even though the business failed, the tax credits allowed the business to operate for an additional one-to-two years employing over 200 people, spending between \$100 and \$250 million a year in that region of the State. The State did have to contribute \$15 million in tax credits, but there was a tremendous economic effect from that transaction. Therefore, he would not say that the GNP investment was a horrible transaction in terms of the use of the Program and its ultimate effect. Mr. Roney said everybody is sorry that GNP did not pan out for the long run, but in retrospect, he thinks the Mill had an economic impact.

Rep. Mastraccio said she was looking at the Program as to how it fits into Maine's portfolio of economic development incentives. She was wrestling with how much risk do you put the State at and is this the best way to help small businesses or are we just helping big businesses. If the plan is too complicated for Maine, and Maine's average business can't take advantage of the Program, then who is Maine trying to help.

Mr. Roney noted that OPEGA did a good job pointing out Rep. Mastraccio's concerns. The statute talks about major and new investment and correctly details the definition of those things. Given the dollars involved, how complex the Program is, and how much it costs to close these deals, you are talking about this program being for larger businesses generally. He said there is a small business in Lewiston that was helped. Certain CDEs that FAME has worked with have a different model than a one-to-one transaction with large businesses. In the case of Quoddy Shoes the CDE was able to close that deal with two other businesses in terms of their top level funding. So the model for that particular CDE allowed them to make smaller investments in small companies.

Mr. Roney said in terms of the New Markets Capital Investment Program's effect on economic development, those at FAME who are involved in lending for economic development, and other economic development efforts, think there are not a lot of tools that the State has to attract investment. He has heard that a lot from FAME Board members. There have been times when, personally, he would have loved to have seen the Program repealed for his own sanity, but FAME as an organization, kept coming back saying they thought New Markets was a valuable Program. There are not that many programs that can attract high level investment, so FAME felt it was a good Program to stay. That is why FAME wanted to change it to make sure there was more accountability. He thinks FAME has done that and would recommend that the State keep the New Markets Capital Investment Program.

The GOC thanked Mr. Roney and Mr. Norbert for their comments.

Kris Eimicke, Pierce Atwood LLP. (A copy of Mr. Eimicke's testimony is attached to the Meeting Summary.)

Mr. Eimicke said he works a lot in economic development and said the State does a couple of things better than others in terms of economic development. He said one is to have programs that increase operational success of the business. He gave the example of the Pine Tree Zone Program that works to give ETIF benefits and income tax credits on a going forward basis. He said New Markets helps things get built, it is capital for the project on an upfront basis for large projects. For small businesses, he thinks FAME's programs do a very good job of bringing capital to small businesses at low cost through the insurance programs and the Rural Development Authority Loan Programs that work for small business, but they don't tend to move the needle at all for \$175 million projects like the St. Croix Tissue Project.

Rep. Rykerson asked if there was another metric that could be used to measure the success of the program. For example, the jobs created per year seems like a lose term because you don't know if the jobs stay, go or how long they last.

Mr. Eimicke said he wished he had an idea of how to measure something like that, but he didn't. He thinks OPEGA did as good a job as could possibly be done in this field in measuring that. It is tough because you think about comparing it to other programs. The CDEs that put the transactions together do a lot more work in the federal New Markets Program than in the State Program. He said the federal program works a little differently in terms of whether those CDEs can continue to do their business, continue to get allocation from the federal government. The way the federal government runs the program is to create a competitive process every year in which the CDEs have to say "look at the good work I have done, at the jobs that are being created, the other community benefits that have been created in the past year with our past allocation and here are the things we are looking to do going forward". The federal government picks winners and losers from those based on track record. In the federal program, Mr. Eimicke believes, there is an additional review of success of the projects that each CDE has invested in. Because that is always a look back and a look forward process, they will look at whether the jobs that were created have stayed. There is also an element of risk involved in the Program because it is designed to help finance businesses that might not otherwise have been financed, which means they are always a little risky. If they were not a little risky, they would not need help from the New Markets Program. As Rep. Mastraccio mentioned earlier, how much risk is acceptable is one of the questions. As Mr. Roney said, the GNP transaction was not a bad one, but it was a high risk transaction. It was a high risk and high reward transaction and unfortunately the price of oil and natural gas kept going up after the transaction and the price of paper and pulp kept going down. The economics no longer worked and the business failed, but if the opposite had been true, or if there had been no change, you might be talking about the great success of GNP.

Rep. Sutton referred to some issues raised at the meeting about the lack of accountability and being able to connect cause and effect definitively. She said it is a very complex situation and referred to the Rockland area. She thinks that Rockland has been hurt with the expansion of the Farnsworth Museum which is in a very prime area of Rockland. The Museum is downtown Rockland and the property tax that Farnsworth does not pay has been shifted on to other business community members. That is an unintended consequence that does not get factored into the success story that has been raised. Rep. Sutton wanted people to keep that type of occurrence in mind saying the mil rate in Rockland has gone up, the foreclosures have gone up dramatically and poverty rates in Rockland are higher. She cannot blame Farnsworth for that, but thinks it is part of the overall equation that maybe gets lost in the reporting.

Mr. Eimicke questioned what would happen to the mil rates, poverty and unemployment in Rockland if Farnsworth had to lay off more people and attracted fewer tourism visitors to the City.

Rep. Sutton said perhaps a business might have been attracted to downtown that was paying property tax and was on a more level playing field. Farnsworth has a gift shop and they compete against other gift shops along the Main Street. She said that is not a level playing field.

Rep. Mastraccio said she would like to have the Farnsworth Museum in Sanford.

Sen. Gratwick said the New Markets Program is a refundable tax credit and asked if Maine should have gone that far.

Mr. Eimicke said making the credit refundable is one of the best decisions the Legislature made and the program has been a success. The value of the tax credits to the investors affects how much money they are willing to invest and put into this business without expecting a return. He said if Maine did not have the refundable credit, we would just have the Bangor Savings and the Camden Nationals of the world looking to get these tax credits. There would be no competition to purchase these tax credits and you would see much lower investment rates in exchange for the tax credits. This is because in Maine there are not a lot of banks who have underwriting experience and have significant Maine tax liability and are willing to take these credits and value them at a high level. Even if some of the larger community banks have a large tax liability in one year, they may not next year. If the economy does poorly they may take huge losses and have no Maine tax at all in the next year and that would factor into how much they value these tax credits. Mr. Eimicke said in other states where similar credits are not refundable, the investors have valued the credits at substantially less, perhaps 30 to 40% less than Maine credits are valued. He said he knows this from his own experience in Arkansas and anecdotally from what he has heard in other states. He said refundability is one of the great things Maine has done. The more value on the tax credits, the more benefit goes to the underlying business, and the more benefit that goes to them, the more benefit comes to the State.

Mr. Eimicke said from an economics point of view whether there is a dollar less collected by the State or there is a dollar more paid out, he did not see a difference between the two as the State is in the same place either way. When New Markets was created he talked with a number of banks and asked if they would like to get involved. They all passed. He thinks Maine would have done worse than the other states that have nonrefundable tax credits. He said that was pure speculation on his part, but thinks it is speculation grounded in experience.

Sen. Gratwick asked Mr. Eimicke to give a reason for why it would not be a good idea for a state to invest in a New Markets Program.

Mr. Eimicke said that was a tough question. He would not likely tell any state that they should not do it, but rather if you do it, you need to do it the right way. He said the federal program works well because it is done on a competitive basis. Projects are competing to find allocations, so businesses are competing for allocation, and the CDEs who do those deals are then competing for allocations from the CDI Fund so it is a two layer competitive field. One of the things he would recommend another state do would be to have a similarly competitive program so they have the best groups in the state doing the program and they only do the best projects. He said there are big drawbacks for that as well because you are now picking winners and losers and that has its own problems associated with it. He would not recommend that any state not do this. As it was seen in Maine, we had one very high risk, high reward transaction that failed and regardless of that this has brought more money to the State than it has given up.

Rep. Mastraccio said if Maine were to authorize additional funding for the New Markets Program the refundability issue was important because that has been the big hot point. She asked if the Program could be narrowed to make sure the investment was where we needed it most. She said if Maine is trying to encourage investment in areas where jobs are needed and the State is going to take a risk and offer refundability, she would be more in favor if the Program was narrowed. For example, saying the Press Hotel in Portland would not have happened without the New Markets Program is hard for her to believe because there are plenty of people who want to put a business in downtown Portland.

Mr. Eimicke thinks there are ways you could include restrictions. You could think about types of projects. Currently there is a higher limit for manufacturing projects because the Legislature determined that the manufacturing projects are more important, especially manufacturing projects that create a lot of jobs. You

could have restrictions on types of business. You would have to carefully draft that because certain businesses fit into multiple buckets and you may end up with an ambiguous situation. He said the other way to do it would be to have a geographic restriction. Right now Maine piggybacks on the federal program's definition and then expanded it because the federal program's definitions are sometime anomalous, they are based on census track and census track can sometimes be very small or very large and it is also historical. Up until 2012, they were working on 2000 census data and in 2011 areas like Millinocket were considered high income despite the fact that the mill had been shut down for several years. Mr. Eimicke said what you could do is to put a higher threshold on the census track. Right now you have to qualify under the federal program which means greater than 20% poverty, or less than 80% average-medium income. You would raise that threshold to 25 and 75 or something like that so that not everything that qualified federally would qualify for the State. He was not sure that was a good or bad option.

Rep. Mastraccio asked what is most important, the ability to do a project wherever you want or the refundability and if it would still be a valuable tool if there were those kinds of restrictions. Mr. Eimicke said without refundability he thinks it would still be a valuable tool, but a much less valuable tool.

Rep. Mastraccio asked Mr. Eimicke his priority of importance given one-day loans are not going to be available, would he say refundability is more important than the geographical or more stringent restrictions than the feds. Mr. Eimicke said refundability is more important. He has a hard time agreeing with refundability should be controversial. A dollar not taken in versus a dollar paid out, what is the difference. He understands the optics can sometimes be difficult, but from an economics point of view, he does not see any difference.

Rep. Rykerson asked why other states have not adopted the refundability. Mr. Eimicke said he could not speak to that. He was not really sure, but knew that in some of the other states there are larger banks involved. If there are one or two large banks in your state there is some competition. By having a refundable credit there is competition for these tax credits nationally so it is a much more competitive field. Maine would be a tiny cup and Ohio has a big pool but now with refundable credits Maine is operating under the biggest pool possible.

The Committee thanked Mr. Eimicke for answering their questions and for the information he provided.

Rep. Mastraccio closed the public comment period at 9:56 a.m.

- Committee Work Session

Director Ashcroft said in Work Session the Committee typically considers whether or not they want to vote to endorse OPEGA's Report. The GOC also discusses whether there is any particular action they want to take with regard to the Report, the recommendations or what they heard in public comment. She said in this particular case, this Committee would not be acting on the Report recommendations, but thinks it was envisioned that the GOC communicate to the Taxation Committee and/or LCRED Committee, if it is appropriate, any ideas, thoughts or concerns that they heard and want those Committees to be particularly aware of.

Rep. Pierce said he liked the refundability piece of the Program as it does help a small populated state like Maine with a large geographical area to attract national businesses. He referred to the discussion about potentially targeting certain types of projects or geographical ones and said he has a hard time picking winners and loser. He gave the example of the carbon-fiber industry in Maine that is taking off. There are a lot of great small entrepreneurs trying to build things in rural Maine, but they might be in counties like Cumberland County, though noting there are some areas in Cumberland County that are not as wealthy as others. If the program was restricted to poorer counties like Washington County or those areas, he would be hesitant to work with that. He thinks manufacturing and STEM jobs all are important, but when he saw that the Farnsworth Museum took a one-day loan for almost 90% of what they asked for, he thinks that piece should go away. The one-day loans should be limited to no more than 3%. Rep. Pierce thought the Program

should be left refundable and should not limit the types of projects. He thought OPEGA did a good job on the Report and gave the Legislature some specific pieces for legislation initiatives. There might be some tweaks that could happen with increased competition, but he has not seen a lot of problems with the Program and it has brought money into Maine. He gave the example of St. Croix Tissue in Washington County and with the refundability piece they were actually able to get a nationwide company to come in.

Sen. Saviello agreed with Rep. Pierce. He asked if the GOC Committee would make recommendations to the Taxation Committee about what are the things they should look into as they move forward such that they would keep the points that Rep. Pierce suggested in their discussion. Rep. Mastraccio said it was her understanding that the GOC was going to accept the Report and can write a letter to the Taxation Committee. Taxation will either act on the report or send it to the LCRED Committee. Sen. Saviello said Rep. Pierce's suggestion should be captured in the letter sent to the Taxation Committee. He also said he was in total agreement with prohibiting the one-day loans which he thinks FAME addressed. That is the one thing he came out with when the report was presented two weeks ago that needs to go.

Sen. Saviello referred to the income levels and poverty zones. He asked if it was a federal requirement and Maine just mirrored the federal law. He also wondered if Maine changes or broadens it, does that have an impact on the fact that the two programs are not compatible any longer. Director Ashcroft said OPEGA does address that issue somewhat in the Report. There are a couple of things that factor into that. The State did broaden the definition of what would be considered an economically distressed area by adding in businesses located in municipalities whose unemployment rate is a certain percentage higher than the State unemployment rate. To the degree that any of these projects are using both federal and State allocations, that expanded definition in some ways is a moot point because they are going to have to meet the federal requirements and the federal requirements are, as Mr. Eimicke said, built on the census track data for medium income and poverty rate. Unless there is a project that is only going to be using State allocation, anything that you do with regard to trying to expand the eligibility is likely going to get offset on some of these projects by the fact that they still need to meet the federal requirement.

Rep. Sutton said the Committee talked a lot about refundability. If a company lacks a tax liability in the State then we made a direct cash payment. She asked if there was any mechanism in which that could be changed to incentivize businesses to do additional infrastructure, or investing, in Maine so the State would not have to cut the check straight back to them, or some other mechanism that could be used to get to that point.

Rep. Mastraccio said that would be a nonrefundable tax credit but that is what the Committee heard was the one piece that they think Maine should keep. It is what draws people to Maine?

Rep. Pierce asked if Maine could limit taking the credit in any one year and spread it out over a number of years. He believes Rep. Sutton is looking for the effect on the General Fund.

Director Ashcroft said under the Program the schedule on how you can claim the credits is already laid out over a seven year period so there is some factoring in already of not taking the hit on the credit all in one year. In fact, in the first two years, investors are not allowed to claim any credits and then it steps out over the next five years. She said OPEGA's observation about the refundability piece is, to some degree, if it is correct that whether we pay a dollar out or offset a dollar that would have otherwise come in is not any different in the overall picture. Where OPEGA saw it might have an impact is in the timing of when the State gets that impact from that tax credit. If it is refundable, we think people will take it when it is available, whereas if they were off-setting it against their tax liability, if they did not have that much tax liability in any one year, it might cause it to get lengthened out further than the seven years because they would be carrying it over. OPEGA did hear, but did not confirm, that as Mr. Eimicke expressed, the refundability and transferability makes Maine's credits much more valuable to investors.

Rep. Pierce referred members to Appendix B and the information included in the box of "Schedule of Maine NMTTC Credits Expected to be Paid FY2014 – FY2021" for each Project. The box lays out the tax credit expected to be paid out in those years so you can see how it would collectively affect the General Fund.

Rep. Mastraccio asked if some of those credits will be credits against tax owed because some of those companies will have taxes or are all of those credits going to be paid out the way it is listed.

Director Ashcroft explained that OPEGA did not try to get the confidential data from MRS regarding credits that had actually been refunded vs off set. There had only been one year in which credits would have been able to be claimed and OPEGA could not report that to the GOC because it is confidential data and there is only the ten companies. It is OPEGA's expectation that the credits are being paid out when they come eligible because the equity investors who are eligible for the credit at this point have been large national firms. OPEGA does not believe these firms have significant, if any, tax liability in the State of Maine. She said at this point OPEGA thinks the credits will continue to be paid out unless one of the entities sells or transfers credits to somebody that does have a Maine tax liability and they begin using them as an offset.

Rep. Rykerson referred members to Recommendation 4 in the Report and said it should be emphasized that data collection and monitoring of the programs would be very valuable. He said he has been convinced that the refundability is a good thing. He also thought the census track was definitely limiting, but it does not appear that Maine can do anything about that if it has to mirror the federal program.

Director Ashcroft said there was one of the projects that qualified for the federal program under different federal criteria than being located within an eligible census track. In that case the business committed to hiring a certain percentage of their workforce from a low income population.

Sen. Gratwick said one of the fundamental issues is risk. He has been grappling with the concept of government taking risks in a certain situations and now he acknowledges that they do. He said because he is taking the people's money he would want to make sure he has as many guarantees as possible to be a good steward of the money. Something talked about was that we, the government, should be sure we get 100% of our principal back before somebody else gets the profits. He asked how to do that the best way possible and how does he know what the risk analysis has been as people have gone through the ten projects mentioned in OPEGA's Report.

Director Ashcroft said if the question is how do you build this thing so that we know even if we are taking risks we are more ensured of some sort of return for it then she thinks the things OPEGA captured in Recommendation 1 are exactly those kinds of ideas. If we want to continue with the Program and acknowledge that we are accepting some risks, are there additional things that can be put in the Program that would drive toward more economic impact because the results OPEGA has given in the Report are based on just the ten projects. If you take a different set of ten projects, it could look entirely different and could be more positive or more negative. She said the idea would be about how to make sure that we are going to be on the positive end of those things. OPEGA learned how the economic impact flows out from some of these investments and she thinks that there are a couple of key drivers to long-term economic impact for the State. She said one of those is the creation or retention of direct permanent jobs. There is nothing specifically built into the Program regarding jobs, other than to allow a larger investment for a manufacturing facility that is going to have 200 or more jobs. There is nothing built into the Program that necessarily requires job creation. Director Ashcroft thinks there are pros and cons to that. Not every decent capital investment for a business to make it more profitable or viable is going to be about creating jobs. But jobs is a driver of economic impact and it is the longer term driver then just the spinoff of the spending of the capital investment itself. She said the other thing is the expected profitability of the business over the long term because that is the other thing that is going to generate business activity and downstream benefits. Is there a way to structure how the investment gets spent in order to make sure that we are spending it, as much as possible, on those key things that we know are going to drive the economy forward? She said at this point, she did not think that kind of thinking is factored in when deciding whether to invest in this project.

Sen. Gratwick said how do you assess how many jobs will be created and the accuracy of a proposal received. Director Ashcroft said that is the crucial question and OPEGA struggled with that in doing the analysis. How many of the jobs they are saying will be created could be directly attributed to this investment. You have to ask critical questions and perhaps start measuring the before and after.

Sen. Gratwick said do you ask that Maine gets its capital back first before someone else takes profits. Director Ashcroft said somebody who works with the Program and knows it in more detail may be better to respond to that question, but said that could be administratively difficult to accomplish. She is also not sure it would be the same kind of incentive that Maine is offering now that is having these results.

Rep. Pierce said if the GOC endorses OPEGA's Report it will go to the Taxation Committee and he thinks a lot of the questions Sen. Gratwick just asked will be asked by that Committee when they review the recommendations.

Rep. Harrington asked how many of the Programs would not have been possible without the one-day loan. Director Ashcroft believed there were 4 projects that involved one-day loans, but was not sure she would be able to say they definitely would not have been possible. For a couple of the projects, that was the only way it was going to work because they were using the one-day loans to pay for expenses that they incurred knowing that the Program was coming, or it unlocked the value of assets that nobody else would have taken as collateral. She said two projects probably would not have been possible without the one-day loan, or under FAME's new rule, and two others had major portions of their projects that would not have been eligible. She said the federal program has new guidance similar to FAME's rule but is allowing a 24 month look back period so if there is a business that wants to get started with their project before their NMTC closes they can use the investment for expenses incurred. These deals take a long time to close and putting something like that in place along with what FAME already has might be a good solution to that dilemma where somebody is ready to get started right now and wants to be able to use the investment to cover some of those startup costs.

Rep. Sutton referred to page 5 in the Report and said she would like to see some possible changes in the statute that stipulates that there is a need to qualify in terms of whether the funded projects would have gone forward without investments from the Program. There is no stipulation in statute that requires businesses to have a certain level of need to qualify and she would like to have that looked at and perhaps addressed.

Rep. Sutton wanted to go on record that the above is a concern of hers.

Sen. Saviello thought Rep. Sutton's request was addressed in the "but for" section of the Report and referred to page 51. The question of "but for" means you would not do this project but for the fact that you have this money.

Rep. Mastraccio said it was interesting how some of the CDEs used it and others didn't. She thinks that most of the Committee members' comments made are encompassed in OPEGA's Report Recommendations and if the GOC accepted the Report, the Report would go with all of those Recommendations to the Taxation Committee.

-Committee Vote

Motion: That the Government Oversight Committee accept OPEGA's Maine New Markets Capital Investment Program Report and send it to the Taxation Committee. (Motion by Sen. Saviello, second by Rep. Harrington.)

Discussion: Director Ashcroft said the Committee was trying to stay with the language in statute so it would be to endorse the report.

Sen. Saviello amended his Motion to change the word "accept" to "endorse". Rep. Harrington agreed with the amendment.

Vote: Motion passed by unanimous vote, 12-0. (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Director Ashcroft asked if the GOC wanted her to draft a communication to the Taxation Committee transmitting the Report and all the information gathered at today's meeting. The Committee members were all in agreement with Director Ashcroft doing that.

RECESS

The Chair, Rep. Mastraccio, recessed the Government Oversight Committee at 10:28 a.m.

RECONVENED

Rep. Mastraccio, reconvened the meeting at 10:40 a.m.

• Presentation of OPEGA's Children's Licensing & Investigation Services Report

Director Ashcroft thanked OPEGA staff, Ms. Gagne, who has been the lead Analyst for the later part of the review, Mr. Kruk and Mr. Farwell. She also thanked Janet Whitten, Manager of the Children's Licensing and Investigation Services' Agency and other staff that OPEGA spoke to. They were all very cooperative and made themselves available to OPEGA.

Director Ashcroft presented OPEGA's Children's Licensing and Investigation Services Report. (The Report is posted on OPEGA's website at <http://legislature.maine.gov/opega/opega-reports/9149> or a copy can be obtained by contacting the Office.)

The GOC members' questions and comments included:

Sen. Saviello referred to the flow diagram on page 14 of the Report. He noted that it showed an arrow going towards licensing violations even when the outcome of the investigation was unsubstantiated for the child abuse/neglect complaint. He asked if the Director was going to address that issue.

Director Ashcroft said there may be other licensing violations that are identified, but not necessarily related to child abuse and neglect. They may find some kind of environmental issue, or something like that, that would be a licensing violation.

Sen. Gratwick asked how many kids under 5 were being served in the different types of child care settings. Director Ashcroft did not have those statistics. Sen. Gratwick referred to the 526 reports received by Child Care Licensing in the period OPEGA reviewed. He asked how many kids or child cares were associated with those reports. Director Ashcroft said OPEGA would get the GOC some basic statistics on numbers of children or numbers of daycares.

Rep. Mastraccio asked if the 526 reports were received from the outside and not generated because of an inspection. Director Ashcroft said they were received from outside. Regular inspections are another avenue through which licensing violations might be identified.

Sen. Saviello asked if the same child care provider had multiple reports. Director Ashcroft said they are all individual reports of complaints and some may be associated with the same provider. He thought if there are four really bad providers then you skewed the report data towards them. He referred to Sen. Gratwick's question of what is the global number of agencies. If you are looking at 10,000 agencies, this number is insignificant, but if you are looking at 425, it is a problem.

Rep. Mastraccio referred to the requirement to notify parents of alleged child abuse/neglect victims and asked if it was notification only for the child identified in the report or for any potential victim that might be in the daycare. Director Ashcroft said it would certainly be for the alleged victims that are in the report that comes in. She would expect, and OPEGA can confirm with the Agency, that should they identify other children who are specifically the focus at that daycare, that they would also be notifying their parents as well, but it does not necessarily extend to all parents whose children are at the daycare. Children's Licensing does have the ability and the authority to notify all parents and they do that on a case-by-case basis depending on whether they think the allegations and findings of child abuse and neglect look like a systemic problem. Rep. Mastraccio said this whole issue stemmed from parents not finding out that there had even been an investigation until a year and a half after the fact. She said she was trying to find out if that particular issue has been addressed. Director Ashcroft said OPEGA has a Recommendation about that in the Report, but in response to Rep. Mastraccio's questions, she said no because statute authorizes, but does not require, any notification. Although Children's Licensing has a policy that says it is going to notify parents of alleged victims and it may also notify parents of other children on a case-by-case basis. Director Ashcroft said there could be situations where no notifications are made and still be in compliance with statute. They would not be in compliance with their own policy, but were they to change policy there is still a situation where those notifications might not be made. Director Ashcroft noted that the piece of statute addressing notifications was debated quite a bit and was only enacted in June 2015. Currently Children's Licensing's policy has gone one step beyond the statute. OPEGA looked at the legislative history around the bill that created the language in statute. There was a lot of discussion in the Committee about whether to use "may" or "shall". It is OPEGA's understanding that there was a desire to leave some flexibility for Children's Licensing because notifying parents may not be a good idea in every situation. She said it has been vetted recently, but the possibility that there could be no notification still exists.

Rep. Harrington said it has been his experience in law enforcement that people make poor complaints on businesses intending to do harm in retaliation for something. He agreed with the current language in statute.

Rep. Mastraccio appreciated Rep. Harrington's comments but as a parent and grandparent she would want to know about any allegation in a daycare that her child was when the allegation occurred. She said that is the issue the Report is about.

Rep. Mastraccio asked at what point were the police notified. Director Ashcroft said they are required to make contact with other special parties early in the process. OPEGA noted DHHS staff talked about there being other special parties to coordinate with, but there really is no definition of who that is or who is the appropriate other party to contact in particular situations. One of OPEGA's Recommendations is for Children's Licensing procedures to be more specific about that if possible.

Sen. Gratwick said he could not find information on DDHS' website on which daycares had violations. He asked how he, as a parent, or grandparent, could access the information. Ms. Gagne said it is the Child Care Choices.ME website and explained how to search on that site to find a daycare and then there is a link for licensing sanctions. That will produce any licensing sanctions that provider has received since 2011. Sen. Gratwick said he could not find that information and he is sure the information is available, but it is difficult to find and not user friendly. Director Ashcroft said that is something that OPEGA can pass on to the Department.

Rep. Rykerson noted that his question was beyond the scope of the review, but wondered if the Agency notified parents if it found a building code violation that may become a criminal charge. If so, wouldn't that be charging somebody as being guilty without them being before a court on a criminal violation? Director Ashcroft said it is OPEGA's understanding that at the end of a child abuse/neglect investigation if there is a finding substantiated or indicated then there is a process that goes on through the Office of Child and Family Services that OPEGA believes it related to any potential criminal charges, etc. The piece that OPEGA was following coming out of the investigation was what happens in terms of licensing sanctions related to any licensing violations of the licensing rules that protects a child against the right to safety. She said this avenue would be about a licensing violation as opposed to a conviction of having been the purveyor of any child abuse or neglect. That takes a different avenue.

Rep. Mastraccio noted that she got on the website Sen. Gratwick was having trouble with earlier and when she clicked on a licensing action for a daycare in her area, it just said it was a notice of statement of deficiency but does not say what the deficiencies were. Director Ashcroft said they will talk with the Department about the website.

Sen. Saviello referred to DHHS' response letter saying they are going to implement OPEGA's recommendations. He asked how to make sure the steps DHHS says are going to be done in fact do get done. He believes they will, and that DHHS has been very positive in their response, but how does the GOC make sure they have taken the actions they say they will take. Director Ashcroft said that is part of OPEGA's typical follow-up process. The GOC has often asked an agency to come back at a particular juncture and report back to the Committee directly. Whether the Committee does that or not, OPEGA will be following what actions are taken on these recommendations and at some point will be reporting back to the GOC on whether they have all been addressed sufficiently or not.

Sen. Gratwick reported that he finally got through to DHHS' website regarding daycares. He asked if supervisors at DHHS use a different system, or does MACWIS show them the daycares that are being followed on a regular basis or do they have that on a paper spreadsheet. Does the system allow DHHS to accurately monitor daycares? Ms. Gagne said all of the information regarding any licensing sanctions is contained within MACWIS and each Licensing Specialist has a caseload. So, the Specialists are monitoring their caseloads and their supervisor is supervising to ensure that they are doing that monitoring. She said they are not using the Child Care Choices' website for that, that is intended for the public to use. All of DHHS' monitoring is being done internally through MACWIS and external spreadsheets for the areas that MACWIS does not support.

Sen. Gratwick asked if Ms. Gagne had been on MACWIS, and if so, is it user friendly. Ms. Gagne said MACWIS is not user friendly. She said OPEGA was on MACWIS for many hours while doing the file review, more than they should have been in a more efficient system. MACWIS was very slow to load, it was not user friendly and that is part of where one of the Recommendations came from. She said part of the criteria for issuing a statement of deficiency is if the provider has had recurring violations. When OPEGA went into MACWIS to review those files, we expected to click on a screen and see the provider had, for example, five deficiencies in the past ten years. We also expected to be able to easily see those violations. She said the information in MACWIS was not organized in a way that that information was accessible to OPEGA. The information is in there, but is not at all easy to find so for a supervisor to take a quick glance at their Licensing Specialists it would be very difficult.

Sen. Gratwick said he didn't want to hear just that DHHS was having difficulties with the system, but also in OPEGA making suggestions of a direction they could go and how much they were going to save over five years. Director Ashcroft thinks that is an effort that is going on statewide as far as information technology. MACWIS is a legacy system and none of those legacy systems are providing what people want for functionality. For example, to be able to do things like monitor, manage, do quality assurance review, and measure themselves against quantifiable bench marks. She said it is a process of updating all of these kinds of systems to that new type of functionality.

Rep. Mastraccio noted that the systems were not just in Augusta but all over the State and is a big job. Director Ashcroft said DHHS is currently looking at what functionality is needed for all of the different things they are trying to do with MACWIS. Then there is the assessment of whether they are going to be able to get to that functionality with this system or are they going to replace it with something else.

Rep. Pierce said it does not say who posts the statement of deficiency and thinks it should be a recommendation. He thinks if the State finds a facility to be deficient, the State workers would post the deficiency and are the only one who can remove it. He thinks that would help parents. If DHHS sends the provider a notice of deficiency and the provider put it on a sticky note that is not sufficient.

Rep. Pierce said DHHS should be able to keep accurate times in MACWIS and he did not understand why they could not. Director Ashcroft said OPEGA was not suggesting that the dates and times DHHS was entering into MACWIS were not accurate or could not be captured. They had been captured. It is more that the information is buried in the narrative so if you are looking for that you have to read through the narrative to pull that information out as opposed to there being a discreet field for them to enter the date. Ms. Gagne said there are some timestamps within MACWIS, the assignment and approval dates are automatically generated and OPEGA was able to easily collect that data. She said, however, within the investigation process when investigators are making contacts or phone calls those are the sorts of things that are done via a narrative entry where they are typing in the date.

Rep. Mastraccio said she had a licensing question and was not sure it was in the Scope because it came up after the fact. Is it correct that a child care provider has a background check as part of their license, but they are not fingerprinted? Director Ashcroft thought that was a question for the Department and can be asked at the meeting the public comment period is held. She thinks there was legislation last session, but she was not sure what happened.

Sen. Gratwick suggested having ten people, outside OPEGA, access the website about violations. He would be interested in having a sample of ten people access this data because it is a very important part of the Department's outreach, is part of the purview of OPEGA's review. He thinks others besides him would have difficulty figuring out the website. Director Ashcroft did not think OPEGA would evaluate that issue and suggested Sen. Gratwick could ask the Department about it at the public comment meeting. Rep. Mastraccio said she thinks it is interesting to see as a consumer how fast you can access information like that, but she did not expect OPEGA to do that work. Sen. Gratwick disagreed because the issue is geared toward the safety of little kids and this is an important matter.

Rep. Mastraccio said the GOC will hold the public comment period on OPEGA's Children's Licensing and Investigation Services Report at their April 14, 2017 meeting.

RECESS

The Chair, Rep. Mastraccio, recessed the Government Oversight Committee at 12:12 p.m.

RECONVENED

Rep. Mastraccio reconvened the meeting at 1:02 p.m.

Rep. Mastraccio asked if there was objection to taking agenda items out of order. Hearing none the Chair moved to **Unfinished Business, Review of Language for GOC-Initiated Bill Related to Evaluation of Economic Develop Programs.**

UNFINISHED BUSINESS

• Review of Language for GOC-Initiated Bill Related to Evaluation of Economic Development Programs

Director Ashcroft referred Committee members to the LR in their notebooks that was received from the Revisor's Office for the GOC initiated bill related to the Department of Economic and Community Development's (DECD) evaluations of economic development incentives and research and development activities. She has reviewed the LR and it looks like the Committee's suggestions from the last meeting are included. She is looking for the Committee's approval to get the bill into the legislative process.

Rep. Mastraccio said the LCRED Committee, which she is a member of, is waiting for this bill so they can have a public hearing on the same day as the other bill that has already been referenced to LCRED.

Motion: That the Government Oversight Committee submit LR2258(01) An Act To Implement the Recommendations of the Government Oversight Committee To Improve the Efficiency and Effectiveness of Evaluations of the State's Investments in Economic Development to the Revisor's Office. (Motion by Sen. Saviello, second by Rep. Harrington, passed unanimous vote 10-0.)

• **Continuation of Review and Approval of OPEGA's Proposed Budget for FY 18/19**

Director Ashcroft said she has not received any information yet on when the Legislative Council's Budget Subcommittee will begin meeting, but it is possible they will meet before the next GOC meeting. She was looking for the GOC to decide whether they were in agreement with what is currently in OPEGA's biennial budget and to convey to the Legislative Council's Budget Subcommittee any thoughts they had about the budget or that they agree with it.

Motion: That the Government Oversight Committee approves OPEGA's Proposed Budget for FY 18/19. (Motion by Sen. Saviello, second by Rep. Harrington, passed unanimous vote, 12 – 0.) (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Director Ashcroft will draft a letter from the GOC Chairs to the Legislative Council's Budget Subcommittee regarding the Committee's approval of OPEGA's budget.

REPORT FROM DIRECTOR

• **Status of Projects In Progress**

Director Ashcroft reported that **Northern New England Passenger Rail Authority (NNEPRA)** continued to be on hold because OPEGA is working on the State Lottery review. OPEGA is finishing up their documentation on the **State Lottery** review and beginning to draft the report. OPEGA is expecting to report it out on April 28th. The **Tax Expenditure Evaluation for Employment Tax Increment Financing** was talked about at the last meeting regarding OPEGA's proposal to continue that on through the 2017 period. She thinks there was tentative agreement to do that and it will be talked about further on April 14th. The **Pine Tree Development Zones** is also in its reporting phase and she also expects to report that out to the GOC on April 28th or the first meeting in May. The **Maine Capital Investment Credit** is one of the reviews for 2017 and OPEGA has begun work on that as well as **Reimbursement for Business Equipment Tax Exemption to Municipalities (BETE)** and **Reimbursement for Taxes Paid on Certain Business Property (BETR)**. For those three reviews, OPEGA is currently putting together for the GOC the Evaluation Parameters document with the goal of having those before the Committee on April 14th so they can make some decisions about the tax expenditure reviews scheduled for 2017. The **Special Project: Tax Expenditures Expedited Reviews – Tax Fairness** is to be provided to the Taxation Committee by July and OPEGA is well underway with that.

Sen. Saviello asked how much time has OPEGA already spent on the NNEPRA project. Director said OPEGA completed the preliminary research phase of that project and have already reported out on that work in the Northern New England Passenger Rail Authority Information Brief. Everything OPEGA has done to date in final form is contained in the Information Brief. No additional work has been done beyond that yet.

UNFINISHED BUSINESS con't

- **Continued Discussion of OPEGA's Work Plan for 2017-2018**

- **Review GOC Ranking of Topics Under Consideration**

Director Ashcroft said for topics the GOC is voting to put on, or take off, OPEGA's Work Plan any member of the Committee who is absent at the time of the vote will be given the opportunity to vote on the motion. For anything the Committee is deciding to move to the On Deck List, the vote will be only those members voting at the meeting.

Rep. Pierce referred to the Ranking of Topics scoring sheet and said he would take the topics with the top three scores in the "Topics On Deck" section, the two highest ranked in the "Topics on Current Work Plan" section and the highest ranked from "New Topics From Requested Reviews" which totaled six topics to be added to OPEGA's Work Plan.

Rep. Mastraccio thanked Rep. Pierce for his suggestions, but she likes to hear what other members of the Committee think about each topic. After the discussion of each topic there may be ones on the current Work Plan that they decide to take off. She said the rankings are for discussion purposes in some ways.

Sen. Saviello said he understood what Rep. Mastraccio would like to do, but the way you have done the Ranking sheet highlights what are the most important topics so unless someone made an extraordinary case over the other topics, he would support Rep. Pierce's concept. He said what he looks at is how many people at least gave a topic a point on the ranking sheet and he then listed the topics that received a point from each member.

Sen. Katz said Sen. Saviello recommended five – TANF; State Law Enforcement Agencies Undercover Ops; Fund for a Healthy Maine; Bottle Bill; and DHHS Audit Functions and said he would suggest removing the Fund for a Healthy Maine. He said the reason to do so is because of what might happen with the Governor's budget that would mean the whole landscape of the Fund might change. Sen. Katz said you do not know what will happen as the bill goes through the legislative process, but he suggested holding that topic off to the side and revisiting it this summer. He did not want OPEGA spending a lot of resources on a topic that might go away.

Sen. Gratwick said he was interested in knowing OPEGA's time frame for each topic and the amount of work that would be involved.. He agreed with Rep. Mastraccio and said it was not a bad idea to go through the topics one-by-one because they were very important issues.

Director Ashcroft gave the following context for how the amount of OPEGA effort each topic might take: Beverage Container Recycling - large review; Temporary Assistance for Needy Families – medium review, but would depend on what questions the GOC wanted answered; DHHS Audit Functions – large review; Fund for Healthy Maine – unsure because it has changed over time. The first time OPEGA reviewed that topic there were a lot of different programs being funded from the Fund and she thinks that scope has narrowed now so she would consider it a medium review; State Law Enforcement Agencies Undercover Ops – large review; Commission on Indigent Legal Services - medium review; and Maine Power Option – small to medium review depending on the questions the GOC wanted answered.

Motion: That the Government Oversight Committee moves the Beverage Container Recycling (Bottle Bill) on to OPEGA's Work Plan. (Motion by Sen. Katz, second by Sen. Saviello, motion passed 10 – 2.) (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee moves the Temporary Assistance for Needy Families (TANF) topic on to OPEGA's Work Plan. (Motion by Rep. Rykerson, second by Sen. Gratwick, motion passed by unanimous vote, 12-0.) (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee moves the Commission on Indigent Legal Services on to OPEGA's Work Plan. (Motion by Rep. Pierce, second by Rep. Sutton.)

Discussion: Sen. Katz said he would be voting against the motion. He said the Appropriation and Financial Affairs (AFA) and Judiciary Committees has been dealing with this subject for years through the budget process. The biggest problems with the Indigent Legal Services seems to be the method by which people are being screened to become eligible, or not, and there seems to be a disconnect between the three players who have a role in the process – the Indigent Legal Services itself, the District Attorneys and the Judges. He thinks the biggest problem was that they were not talking to one another. They recently reported back to the AFA Committee that the Judiciary, the DAs and the lawyers have been meeting to try to see how they can better cooperate so that those people who truly need counsel receive it, but those who don't, don't get it. Sen. Katz said since that is taking place this topic would not be a good use of the GOC/OPEGA's limited resources.

Rep. Pierce disagreed with Sen. Katz. He said the subject has been brought up for many years and that is probably why the GOC should be looking at it. He said it is not whether people need or get the services, it is the billing practices that are problematic and which take away from the people who truly need the money. He said for those looking the program over, knowing that the GOC is reviewing it, might help them find a solution. Rep. Pierce thinks the GOC should be reviewing the topic if there are billing practices that are problematic and services are being misused.

Rep. DeChant asked if anyone knew if the Judiciary Committee, who oversees the Program, has any bills before them regarding tightening up the kind of administrative issues described by Rep. Pierce.

Rep. Mastraccio said it is her understanding that they are discussing it, but she did not know specifically what bills there are. She said if the GOC did not vote it on to OPEGA's Work Plan, they can vote to keep it On Deck at a later meeting.

Rep. Sutton agreed with Rep. Pierce regarding hearing the topic brought up by constituents. She thinks a review is warranted and is important due to the vulnerability of the population it serves.

Sen. Katz said he has not heard any suggestions that the population which the program serves, people charged with crimes, are not being well served by the program. He said if that is not true, he would stand corrected.

Rep. Pierce said it was his understanding that it was not the people being served that have the problem it is the billing practices of some of the attorneys and some of the practices that have been going on for missing the funds. He said if there is over billing, double billing and other abuses that definitely needs to be looked at.

Vote: Motion failed, 5 – 7. (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee moves the State Law Enforcement Agencies Undercover Ops on to OPEGA's Work Plan (Motion by Sen. Saviello, second by Sen. Katz)

Discussion: Sen. Saviello said there is a lot of activity going on around this topic and he thinks it is something that needs to be looked at. He said the right things are happening, but thinks there needs to be a third eye on it.

Rep. Harrington asked what specifically is happening that is of concern.

Sen. Saviello thinks the allegations made against the Department of Inland Fisheries and Wildlife (IF&W) is an example. He believes the allegations are false, but the topic needs to be looked at by a third party to compare that the same general approach to undercover operations are being used with State Police, IF&W and perhaps County law enforcement.

Rep. DeChant asked if the intent was to go back and fix a bad accusation or is to prevent things from not happening in the future. Sen. Saviello said it is the latter. It is also to understand the procedures and are they consistent between law enforcement agencies.

Rep. Harrington said he would be voting against the motion because he thinks a specific case got a lot of media coverage. It went all the way to the Maine Supreme Court and was found that everything was on the up-and-up.

Sen. Katz reminded members that the major proponent of the review request is a retired State Police Officer whose opinion on the matter should also be considered.

Vote: Motion failed, 6-6. (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee leave the DHHS Audit Functions on OPEGA's Work Plan (Motion by Sen. Saviello, second by Rep. Rykerson, passed 12-0.) (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee leave the Fund for a Healthy Maine on OPEGA's Work Plan. (Motion by Rep. Pierce, second by Rep. DeChant.)

Discussion: Sen. Katz said if the Fund for a Healthy Maine (Fund) remains as it is, he will vote for this, but if the Legislature passes a budget that adopts the Administration's suggestions in regard to the Fund then it is a much different thing and he thinks the Committee will vote not to do it because it is essentially being stripped of a great deal of its work under the current budget proposal. He thinks the Committee should keep it On Deck and see what happens.

Rep. Mastraccio said the current motion is to leave the Fund on OPEGA's Work Plan.

Rep. Rykerson thinks there are some serious issues about where some of the Fund's money is so would like to keep it on the Work Plan.

Rep. Pierce thinks there has already been some work done on the topic and the Committee can let it languish on the Work Plan until June or July.

Sen. Gratwick said this topic is important to him and thinks the Fund has done very good things in the past and what Sen. Katz said worries him. He thinks the topic can go to the On Deck List and depending on what happens with the budget, the GOC could move it back to the Work Plan.

Director Ashcroft clarified that once the Committee members put topics on OPEGA's Work Plan it is then in her purview to decide what is getting done and when, unless the GOC gives her specific directive about preferences the members have. She explained that, when deciding what topics to work on, she considers whether there is current activity around the topic in the Legislative or Executive arena and whether OPEGA should hold off getting started on a review until it is seen what the results of the activity is. The Director said should the Fund review stay on the Work Plan that is a decision she would make about it. She might also make the same decision about the Commission on Indigent Legal Services because we know that there are

initiatives around it and the budget might change what OPEGA would end up reviewing. Director Ashcroft said the GOC/OPEGA will know shortly what happens in the budget process and if OPEGA thought there was not anything more worth reviewing, she would be discussing it with the Committee.

Vote: Motion failed, 4-8. (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Sen. Gratwick asked if the GOC needed another motion to put the Fund for Healthy Maine on the On Deck List.

Rep. Mastraccio said the Committee had to wait until the absent members of the Committee had the opportunity to vote on the motion.

Director Ashcroft noted that the members not at the meeting will be given the opportunity to vote and if the motion passes it will stay on the Work Plan. If the motion fails, it is still on the Work Plan and the GOC will need to vote it off the Work Plan and on to the On Deck List at a future meeting.

Sen. Katz asked for clarification because the Fund is currently on OPEGA's Work Plan so if the motion failed, the topic is off the Work Plan. Director Ashcroft agreed that he was right and the Committee would have to have a later vote to put the Fund topic on the On Deck List.

Motion: That the Government Oversight Committee remove the Northern New England Passenger Rail Authority topic from OPEGA's Work Plan. (Motion by Rep. Rykerson, second by Rep. Pierce, passed, vote 8-4.) (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Government Oversight Committee removes the Independent Living Services from OPEGA's Work Plan and puts it on the On Deck List. (Motion by Rep. Pierce, second by Sen. Saviello, motion passed 10-0.)

Motion: That the Government Oversight Committee moves the Maine Power Options topic to OPEGA's Work Plan. (Motion by Sen. Gratwick, second by Rep. Rykerson.)

Discussion: Sen. Gratwick said there had been a report in 2013 from the Governor's Office that said the Group did not follow through. He thinks transparency is an issue and potential savings to members has not been well documented. He thinks for a relatively small amount of time answers can be had and it can be a better functioning program.

Vote: Motion failed 4-8. (Sen. Libby voted on the motion when he arrived at the meeting and Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: That the Public Utilities Commission topic be removed from OPEGA's Work Plan and added to the On Deck List. (Motion by Rep. Pierce, second by Sen. Saviello.)

Discussion Rep. DeChant referred to the General Scope – Assessment of extent to which the PUC independently assesses risks and costs associated with ensuring safe, reasonable and adequate electrical services. She asked what that included.

Director Ashcroft said the current Scope is about the process of making decisions about particular things where the PUC is using information that is provided by the Utilities. At times there are citizens or advocacy groups that are trying to give information to the PUC and there had been a question around to what degree is the PUC really putting more stock in what the Utilities have to say and the analyses the Utilities provide them versus what comes in from other sources. This topic was supposed to be scoped to be a look at what is the

PUC using for information, who are the sources, are they doing their own independent studies or are they relying heavily on the Utilities to do those studies.

Rep. DeChant said she has also spent time in the Energy, Utilities and Technology Committee and she believes transparency is a challenge so she will be voting against the Motion.

Rep. Rykerson asked if the Scope includes the independent, subcontracted studies the PUC does. Director Ashcroft said that is one thing that the PUC is supposed to have available to them to do. So yes, one of the questions might be is to ask to what degree do they do that. Does the PUC fund their own independent studies and use them? Rep. Rykerson said he would like to keep it on the Work Plan.

Vote: Motion passed 7-5. (Sen. Davis and Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Motion: To withdraw the Guardians ad Litem request for review. (Motion by Rep. Sutton, second by Rep. DeChant, passed, vote 10-0.)

Director Ashcroft said because the Guardians ad Litem was a new request and came in through the new requests process, the GOC has considered it and decided not to put it on OPEGA's Work Plan. The request is going to be recorded as the GOC deciding to take no further action on the request for review. Committee members agreed.

Motion: That the Government Oversight Committee remove the Maine Charter School Commission from the On Deck List. (Motion by Rep. Pierce, second by Sen. Katz, passed, vote 8-2.)

ANNOUNCEMENTS AND REMARKS

Director Ashcroft let the GOC know that she attended the last Legislative Council meeting and spoke on the GOC's communication to the Council regarding establishing a more specific oversight body in the Legislature to oversee the Office of Information Technology and Information Technology matters. She said the Council is very interested in the idea, but does not think the timing is good right now, given everything else that is going on with various committees, to make any moves in establishing a special committee. The Council asked that the GOC bring its ideas back after Session so they might have more flexibility in terms of possibilities for doing something with it.

NEXT GOC MEETING DATE

The next GOC meeting is scheduled for Friday, April 14, 2017 at 9:00 a.m.

ADJOURNMENT

Rep. Mastraccio adjourned the Government Oversight Committee meeting at 2:08 p.m. on the motion of Sen. Saviello, second by Rep. Pierce, unanimous vote.



Testimony by Christopher Roney, Esq.

General Counsel

In Support of Acceptance of the

March 2017 OPEGA Report on New Markets Capital Investment Program

Government Oversight Committee

March 24, 2017

Senator Katz, Representative Mastraccio, and Distinguished Members of the Government Oversight Committee:

My name is Chris Roney. I am the General Counsel at the Finance Authority of Maine (FAME). I live in Freeport and am here to testify in support of acceptance of the report authored by the Office of Program Evaluation and Government Accountability (OPEGA) regarding the New Markets Capital Investment Program.

As you may recall, FAME was tasked by the Legislature in 2011 with helping to administer this program in partnership with Maine Revenue Services. It has been a learning experience, and we have done our best to administer the program and recommend improvements along the way. We have taken our role as co-administrator of the program very seriously, and have sought to administer our portion of the program with fairness, transparency, and accountability. We have consistently sought and obtained improvements to this complex program along the way, and, while it remains an imperfect program worthy of further refinements, we continue to believe that it is overall a successful and worthwhile program whose benefits to the state's economy outweigh its shortcomings.

FAME has enjoyed working closely with OPEGA staff over the past sixteen months and has appreciated their professionalism and thoroughness in approaching this complex topic. We are pleased to have fully cooperated with all requests in a prompt and thorough manner.

We largely agree with the findings and recommendations contained in the report, including that the Legislature should, if further funding is eventually approved, incorporate in statute the FAME rule limiting "one-day loans." If FAME is to be required to assume further responsibilities regarding capturing data needed for efficient and effective program evaluation

and ensuring further reporting by program recipients, we will require significant additional resources.

I would be happy to answer any questions you may have.

Thank you.



KRIS J. EIMICKE

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1248
F 207.791.1350
keimicke@pierceatwood.com
pierceatwood.com

March 24, 2017

Admitted in: CT, MA, ME

**Testimony Regarding OPEGA Report
on Maine's New Markets Capital Investment Credit**

Senator Katz, Representative Mastraccio, Members of the Joint Standing Committee on Taxation, good morning, my name is Kris Eimicke, and I am an attorney in Portland, Maine. My practice focuses on tax and economic development issues. I am also the chair of the tax committee of the Maine State Bar Association, and last year I was an adjunct professor at the University of Maine School of Law where I taught corporate income tax.

It's vital that the State conduct objective non-partisan analyses of the State's economic development programs. We need to determine what works, what doesn't work, and what improvements we can make. OPEGA's report on Maine's new market tax credit program helps us do just that.

I regularly work with the new markets tax credit program. Anecdotally, I can tell you that the program works well; it has allowed businesses and non-profits to grow, put people to work, and make numerous improvements to our communities, particularly those with high poverty and low incomes.

Because of OPEGA's report, this Legislature no longer has to rely on anecdotes from me or anyone else in making decisions on how to structure our economic development programs. You can rely on OPEGA's objective analysis, which found several key facts:

1. Maine's new markets program will bring \$15.8 million more revenue into the State's coffers than it takes away. In other words, a \$76 million investment created a \$91.8 million return to the State budget over a 9-year period. Many of these businesses and jobs will last well beyond those 9 years bringing even more money into the State budget.
2. Maine's Gross State Product (GSP) increased an additional \$1.64 billion between 2013 and 2021 because of Maine's new markets program. Said another way, \$21.67 of GSP was generated for every \$1.00 of tax credit.

3. 73% of the investments under the program were north of Bangor, including 21% percent in Washington County, and 16% in Somerset County.

Simply put, the program attracts major investments that bring major benefits to the State. But it doesn't just create jobs, it also helps to build communities and help Mainers in ways that aren't susceptible to numerical measurement. For example, Rockland has become one of the most well known arts communities in New England, revitalizing the downtown and substantially increasing tourism visits in large part because of the impact of the Farnsworth Art Museum. Furthermore, the Farnsworth has expanded its arts educational programming to numerous schools in the area, which would not have happened without the new markets program. As another example, the St. Croix Tissue project involved funding a job training program that would not have existed but for the new markets program. Downtown revitalization, education, job training—these are substantial benefits that can't be measured by OPEGA's analysis, but are nevertheless, substantial successes.

The new markets program has proved to be a valuable economic development tool, attracting business and investment to Maine that would not have been here without the program. About \$55 million of the State's new markets allocation is still unused. Two projects are currently working towards a closing using the program, including a very substantial investment in Oxford County that will utilize \$37 million of the remaining \$55 million of allocation. The rest of the allocation should be used this year, at which point, if action is not taken to renew the program, the State will be without a tool to attract major investments like St. Croix Tissue. These are investments that this State desperately needs.

The program works. OPEGA's recommendations will make it work better. I urge the Legislature to re-authorize the program with new allocation so that it can continue to help the state's economy grow.

Sincerely,



Kris J. Eimicke