



EN. CHRISTOPHER K. JOHNSON, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

## MAINE STATE LEGISLATURE GOVERNMENT OVERSIGHT COMMITTEE

### MEMBERS:

SEN. ROGER J. KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. TROY D. JACKSON  
SEN. EDWARD M. YOUNGBLOOD  
REP. PAUL T. DAVIS, SR.  
REP. ANDREA M. BOLAND  
REP. H. DAVID COTTA  
REP. LANCE E. HARVELL  
REP. MATTHEW J. PETERSON

## MEETING SUMMARY November 13, 2014 Approved January 23, 2015

### CALL TO ORDER

The Chair, Sen. Johnson, called the Government Oversight Committee to order at 9:08 a.m. in the Cross Office Building.

### ATTENDANCE

Senators: Sen. Johnson, Sen. Katz, Sen. Burns, Sen. Craven, and Sen. Youngblood  
Absent: Sen. Jackson

Representatives: Rep. Kruger, Rep. Davis, Rep. Cotta, and Rep. Peterson  
Joining the meeting in progress: Rep. Boland  
Absent: Rep. Harvell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Scott Farwell, Analyst OPEGA  
Matthew Kruk, Analyst OPEGA  
Lucia Nixon, Analyst OPEGA  
Etta Connors, Adm. Secretary, OPEGA

Legislators: Sen. Haskell, Rep. Goode and Rep. Marean

Executive Branch Officers and Staff Providing Information to the Committee: Dr. Joseph Fitzpatrick, Commissioner, Department of Corrections

### 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 SEPTEMBER 24, 2014 GOC MEETING

**Motion:** That the GOC approves the Summary of the September 24, 2014 meeting as written. (Motion by Chair Kruger, second by Rep. Cotta, unanimous vote 10-0.)

### NEW BUSINESS

- **Presentation of Information Brief on OPEGA's Follow-up Review of Health Care in the Corrections System**

Director Ashcroft presented the Information Brief on OPEGA's Follow-up Review of Health Care in the Corrections System. She thanked OPEGA Analysts Matthew Kruk and Scott Farwell for their work on the review.

Sen. Craven asked if there were accommodations for people who may have developmental delays and are not aware of when they should be returning their card to request a refill of the Keep on Person medications. Director Ashcroft said instead of a pill bottle the prisoner has a blister pack and the final strip is bright red so is a visual indication of when the refill should be requested.

Chair Johnson noted that there was a concern about how health care staff treated prisoners and asked if that was still a problem and whether there were appropriate controls in place. Director Ashcroft said OPEGA did inquire of the health care vendor how they monitor the professionalism and bedside manner of their staff and what route a prisoner has to complain. She said basically it is the same thing as watching the performance of any of your staff. Mr. Kruk said they have prisoner satisfaction cards and surveys and the prisoner has the option of filling one out at the end of his/her visit with medical staff. The card is anonymous and routed back to the Health Services Administer at the Facility so there is oversight of whether interactions are going poorly. He said CCS, the health care vendor, has a vested interest in making sure prisoners are treated well and sometimes CCS even has a third person present during a prisoner's medical appointment to gauge that.

Sen. Katz asked what process was in place should a prisoner be unhappy with their treatment and felt they were not treated well. What options are available, other than the survey card, to make a complaint and what process is there to deal with it. Mr. Kruk said a prisoner can go through the grievance process which is routed through the Department of Corrections (DOC) who would address it with the contractor. Director Ashcroft noted that OPEGA saw documentation showing in addition to the provider on staff at the institution, there were times when the Regional Medical Director also did an assessment, or gave a second opinion. The prisoner can continue to put in sick call slips through the normal sick call process and there is also an informal complaint process. The informal complaint process includes DOC's Health Care Coordinator Kim Robbins who receives and reviews the prisoners' complaints directly and works with the providers to address them. Should that process not satisfy the prisoner, there is the grievance process described by Mr. Kruk. Director Ashcroft said there are at least 3 avenues for a prisoner to internally get their situation resolved.

Rep. Boland asked if there is a note made in the record as to why CCS did not follow a recommendation of an outside specialist. Director Ashcroft said OPEGA did specifically see that outside providers' results and their recommendations are in the medical records, as is the discussion and notes about what the CCS provider determined would be done for treatment.

Chair Johnson asked if there was any occasion for examining whether the policies in the Correctional System should be revised when there are considerations raised by what outside experts are recommending versus what the policy allows. Director Ashcroft gave the example of a prisoner having surgery and the surgeon would prescribe an opiate pain medication for a particular course, but that is not going to happen in the prison environment. They might get the opiate for acute pain for a day or two and then they would be moved to some

other non-opiate pain medication. She said any determination made of whether the policy deserves to be revised would have to be a discussion for DOC because it is about managing costs and providing adequate care, etc.

Director Ashcroft said it was the GOC's decision whether they wanted to have a public comment period at a later meeting, but staff from DOC were at the meeting and could respond to the Committee's questions.

Sen. Craven said she would like the opportunity to ask a question of Dr. Fitzpatrick.

Chair Johnson asked if the members of the Committee were interested in hearing from DOC. They were.

Chair Johnson recognized Commissioner Fitzpatrick.

Sen. Craven asked how many people served by DOC might be eligible for nursing home care and is the Department talking actively about transferring people into nursing homes. Commissioner Fitzpatrick said it is an area that DOC is looking at, but it is a complicated question because there is a medical side and custody or security side. He believes they all recognize that they have an aging population and a very fragile medical population. The individuals housed within the prison system typically become fragile and frail at a younger age. There is a medical acuity that exists and is increasing. He said there is also the security side so to adequately answer Sen. Craven's question they would have to sit down, look at the population, look at who might qualify medically and what their security risks were, what their ability is, not just to re-enact the crime that got them sent to prison, but what risk do they pose to the community if placed in a nursing home.

Commissioner Fitzpatrick said DOC looked very strategically last year at an interim step and plans to bring it back before the upcoming legislative session. That step is to create a specialized level of care and housing for individuals who are in that situation. The DOC is currently working on updating the design of the Windham facility to include the creation of a secured housing setting that cares for the aging prison population. That plan was brought to the Legislature last year, did not make it out of Committee, but DOC is planning to bring it back to the Legislature this year and is working with SMRT out of Portland to make sure the design and figures stay current. DOC had a lot of support for the plan last year, but for various reasons it did not come out of Committee. Commissioner Fitzpatrick said DOC could also use release to the community as an option going forward once they figure out the balance between the medical acuity and the security risk.

Sen. Craven noted that when people are released into the community for medical care the State is able to draw dollars to provide care for them.

Sen. Burns asked if a nursing facility could refuse to accept a prisoner. Commissioner Fitzpatrick said yes, it is within their purview who they accept as clients.

Sen. Burns asked if a prisoner was transferred to a nursing facility would DOC provide any level of supervision. The Commissioner said there would not be any level of supervision from DOC and that is why the risk to the community becomes a critical factor.

Sen. Burns referred to OPEGA's recommendation that DOC share a prisoner's medical records with an advocacy group and asked if DOC could look at that by a case-by-case basis. Commissioner Fitzpatrick said they could and with medical releases they are able to share information. If they do not have a medical release, DOC cannot violate confidentiality so cannot give specifics. A process for release of information is already in place, but often times what DOC finds themselves in the middle of is the individuals making the complaints to the advocacy groups are unwilling to share their specific information.

Chair Johnson wanted to clarify that DOC has in place the preference for seeking authorization in the instances they think there is inaccurate information and actively seeking authorization from inmates to release their information to advocacy groups when DOC believes their claim is based on inaccurate information. The Commissioner said it would be the advocates asking for the release and getting the prisoner to sign it. Chair

Johnson said the difficulty with that, and suspects the reason for OPEGA's recommendation, is that DOC would be the one who has the medical information and therefore has the judgment that there is inaccurate representation of the circumstances. The advocacy groups are not in a position to have that view. Commissioner Fitzpatrick said DOC did not need to look at whether it is accurate or not and are more than willing to share the information with the advocacy groups, or the Committee, if they have a release of information to do that. Often times the complaints will come forward without specifics. This is the first time that he recalls that DOC actually pushed to get specific prisoners' cases and releases because of the frustration around the vague complaints. Going forward DOC is going to say let's get the specifics and will ask for the name of the case, will get a release of information signed and will investigate it. He thought the advocacy group would want to investigate it themselves and they would have to get a release for themselves.

Commissioner Fitzpatrick said DOC is proud of the work they do and he is proud of the vendor. Over the 21 years that he has been at DOC he has seen many vendors and contracts and said currently DOC is ahead of where they were eight or ten years ago and he is more than willing to review anything to improve the system. The Commissioner has no problem with OPEGA's recommendation on pursuing authorization to release information on specific cases.

Sen. Katz asked the Commissioner to expand on his statement of how much better things are now than a couple of years ago regarding new vendor versus old vendor. Secondly, he said trying to limit care to medically necessary services was to address cost issues and asked how successful that has been. Commissioner Fitzpatrick said in terms of historical versus current if you went back in time DOC had many small contracts in various areas of medical care and it was very challenging to monitor them all. There may have been a contract with a medical vendor in Kansas and they would only fly in when there was a problem. What he sees now from CCS in the last few years is a comprehensive approach to treatment so when they meet every month they discuss the dental work, medical, psychiatry, and mental health. Everything is under one umbrella and there is accountability for all of those services and a coordination and communication that had never existed. The Commissioner said they are trying to stay ahead of the problems instead of reacting to them. Another big difference with this vendor is they are in state and are onsite every day. In response to Sen. Katz's second question Commissioner Fitzpatrick said cost is always an issue within the prison system, particularly because one of the areas talked about was medical acuity and the aging population, the other area has been mental health and probably forty to fifty percent of the prison population are on psychiatric meds. There were costs that needed to be looked at and contained, but said he wanted to be clear, and the vendor knows, that DOC does not compromise care for cost.

The Committee thanked Commissioner Fitzpatrick for providing information and answering members' questions.

Director Ashcroft said typically at the presentation of an OPEGA report the GOC questions OPEGA and the agency. Hearing from others interested in speaking usually comes during the public comment period, but since this is the last meeting of this Committee they might want to hear from the public at this meeting. She suggested that if the Committee wanted to hear from the public the GOC should move out of the presentation phase of the Report and move into a public comment period.

Chair Johnson asked the Committee if they wanted to hear from people in attendance who would like to speak on OPEGA's Report. Members of the Committee said they would.

Chair Johnson said because of the microphone problems the meeting was being moved to the Education Committee Room.

## **RECESS**

Chair Johnson recessed the Government Oversight Committee at 10:28 a.m.

## RECONVENED

The Chair reconvened the meeting at 10:35 a.m.

The GOC continued the discussion on the Information Brief on OPEGA's Follow-up Review of Health Care in the Corrections System with comments from the public.

The following is a summary of those who spoke and the GOC's questions. None provided written comments of their testimony.

**Jim Schatz** is a former legislator, currently the President of the MPAC Board, a selectman for the town of Blue Hill for over twenty years, a Board member of the Blue Hill Memorial Hospital for ten years. He has a Masters in Correctional Administration. He said he is not an expert, but is familiar with the issues they all deal with regarding medical care in the corrections systems. Mr. Schatz said he was concerned, and slightly disappointed, in terms of the findings in OPEGA's Report because in the role that he played, both as a legislator and with MPAC, he is certain that many of the issues prisoners have had with the health system, as it is applied in the prison, are valid. He said using the medical records as the documentation to sustain, or validate, whether there are concerns probably is not the best way to go, but is practical. He said the findings deserve, and probably need to have, more scrutiny both from the public level and legislative level, as well as internally from the DOC Administration. He hopes there will be some effort put forward to assure that happens because it is a very important part of the treatment in Maine. Individuals in the prison are not going to be any better when they are released so they need to be taken care of while they are in prison and it needs to be done in the best way possible.

Mr. Schatz compared the \$35 million budget of the Blue Hill Hospital serving a population of approximately 15,000 people with the \$20 million contract a year DOC has with CCS. He said the comparison is not an apple-for-apple, but it is not an inexpensive contract. Many CCS people who deliver the services are now residents, but the firm is outside the State of Maine and said it might be time to consider looking at other health care systems that are generating within the State as a source for the health care within Maine's institutions who would be able to identify and start serving people as they enter the system and continue after they leave the system in the various communities.

Mr. Schatz believes there was more credibility in the complaints reviewed than what was revealed. He did not want to get too critical of OPEGA's findings because it was a difficult task, but he is.

Rep. Boland asked if Mr. Schatz was suggesting that hospitals in the communities would be a resource for the care in prisons. Mr. Schatz said not exactly. He thinks at some point there is going to be three health care systems operating in the State and that those systems have the ability to mobilize health care extending into the prisons. He was not suggesting that a private hospital itself be accommodating that. Mr. Schatz said he has talked with the Eastern Maine Health Care System about whether they would be interested in approaching the State at some point in time when CCS's contract is up in a couple of years. He thinks it is a system that has merit going forward.

**Joseph Jackson**, Coordinator, Maine Prison Advocacy Coalition, (MPAC). Mr. Jackson said he is not disappointed about the findings in OPEGA's Report, but does not understand some of the terminology used in the Report. He asked what medically necessary means and what is a timely response when sometimes people wait a week. What does it mean to be able to function within a prison environment and what ability do you have to have to be able to do that. The prisoner may be a paraplegic or mentally ill can he function within the prison environment. Mr. Jackson was concerned when outside specialists are used. The reason outside specialists are used is because of the prisoner's medical condition. He did not disagree with OPEGA's finding that DOC and CCS do have medical authority. What concerns him is when the prisoner goes to an outside medical specialist because of the seriousness of their condition and then CCS not following the treatment recommendations of the specialist. Mr. Jackson said it is within the policy of CCS to directly oversee and manage health care and if they could have made the medical recommendations, why send the person to a specialist.

Mr. Jackson said he has heard CCS and the DOC say there are two types of medical services. There are medical services for people inside and a medical service for the people outside. The people inside a prison have the same medical conditions as people outside of prisons and he does not understand why there would be different ways for the medical treatment of prisoners.

Mr. Jackson referred to the Commissioner's statement of not being in the business of not treating conditions, but can't treat medically unnecessary conditions. He did not know what medically unnecessary conditions are.

Sen. Katz noted a few of his personal healthcare experiences regarding a physician's referral to a specialist and the length of time it took to be seen by the specialist and then being told by the health insurance company that, although a treatment had been recommended by a doctor, it was not medically necessary and would not be covered. He said the issue for him is whether the folks in the prison are receiving medically necessary care, not better than everyone else, but something comparable to what everyone receives. Sen. Katz said the complaints raised by Mr. Jackson are complaints that the Insurance and Financial Services Committee hears all the time about insurance companies being difficult to deal with. Mr. Jackson said he thinks there would be a big distinction between medically necessary within the prison setting and medically unnecessary in the public and, when looked at, would be drastically different.

Chair Johnson asked if there were others at the meeting who wished to talk regarding OPEGA's Information Brief. Hearing no response, the Chair closed the public comment period. He noted that the 127<sup>th</sup> GOC could decide in January whether to hold a formal public comment period.

Director Ashcroft said staff from DOC and CCS were present if the Committee had questions for either. GOC members said they did have questions they wanted to ask.

Chair Johnson recognized Robert Clinton, MD, Regional Medical Director, Correct Care Solutions with the Maine Department of Corrections.

Rep. Cotta asked if there were two different standards of care as stated by Mr. Jackson and how does CCS determine medically necessary. Dr. Clinton said in correctional medicine there is a legal aspect that occurred in the 1970s when the Supreme Court reviewed the case of *Estelle v. Gamble*. The outcome of that case was that in Corrections the patients receive medically necessary care for serious medical conditions. A serious medical condition would be somebody possibly losing their life, loss of a limb, or difficulty in their functioning. If somebody wants a lump removed that is not medically serious, there is no reason to remove a lump, if someone is able to function well within the correctional facility then there is no reason to do something that someone may want to have done, but does not need to have done.

Sen. Craven asked how CCS makes the distinction between someone being cranky and complaining just to make their life miserable and actually has a lump that needs to be removed. Dr. Clinton gave an example of a patient he saw who was upset with the care provided by one of the practitioners. The practitioner examined the lump that the patient had, made the appropriate diagnosis and determined it was a benign lump. The patient was not satisfied with the result of that examination so he went to see the patient. He determined it was a benign lump and told the patient he did not have cancer and did not need to be concerned about cancer. Dr. Clinton said that was what separated the initial complaint – the patient did not know what benign meant.

In response to Rep. Cotta's question of two different standards of care, Dr. Clinton said there are many different standards of care because it depends on the community that you live in. If you are living in Boston you are going to get a different level of care than if you live in Aroostook County. In Corrections they have correctional medicine which is the right to a professional medical judgment that ensures appropriate health care staff assess and determine the necessary medical care for the prisoner. Only a provider can make the determination of what is a serious medical condition and what is medically necessary.

Rep. Boland said in the past prisoners use to receive coupons so they could purchase such things as creams or nutrition bars and asked if that was anything CCS would consider as a modification they may want to look at again. Chair Johnson did not think that Rep. Boland's question dealt with the issues in the Information Brief of Health Care in the Correctional Facilities.

Rep. Cotta said inmates probably have an expectation, whether it is real or not, that all medical issues be treated and asked if when situations are presented that are not life threatening, in order to reduce the patient's anxiety, guidance is provided explaining there are over the counter remedies available. Dr. Clinton said he came up the acronym for his providers. RESPECT - realizing energy surrounding patient expectation concerning treatment. He thinks that has gone a long way in their relationship with patients and when you realize what your patient is feeling, you have empathy and you need to have that to provide the care that the patient needs. He said the group providing care to prisoners is providing excellent care and are not indifferent to somebody's complaint.

The GOC thanked Dr. Clinton for the information provided.

Chair Johnson asked if there was any objection to taking items out of order. Hearing none the Committee moved to **Briefing on OPEGA Work to Date on Special Project: Tax Expenditure Review Proposal.**

- **Briefing on OPEGA Work to Date on Special Project: Tax Expenditure Review Proposal**

- **Goals and Beneficiaries for Tax Expenditures Categorized as Full Evaluation**

Chair Kruger asked the three members of the Taxation Committee's Subcommittee to join the GOC at the Horseshoe.

Sen. Haskell, Rep. Goode and Rep. Marean, introduced themselves.

Director Ashcroft said OPEGA, by direction of Resolve, was working toward putting together a proposal for the Legislature that will go to the Taxation Committee and the Government Oversight Committee with regard to how the Legislature might implement an ongoing review process for tax expenditures. At a previous GOC meeting OPEGA was at a stage where they had identified which of the nearly 200 tax expenditures they would categorize as being eligible for full evaluation, which would be done by OPEGA, or a similar entity with expertise in evaluation, versus those tax expenditure programs that might best fit into an expedited review to be done by the Taxation Committee, where the discussion includes, or starts with, the policy behind why they have the policy that are driving those tax expenditures. Director Ashcroft said OPEGA has offered, and is welcoming, input regarding the draft pieces as they are developed from the GOC, Taxation or any stakeholders that might see something they would like to impart to OPEGA. She said to date they have gotten very little feedback on the initial portion that was presented at a previous GOC meeting.

Director Ashcroft said OPEGA is at another stage in the process and wanted to check in with the GOC and Taxation Committee so they can adjust, if needed, and to again provide stakeholders an opportunity to see where OPEGA is going. She talked about how OPEGA was working to identify legislative intent and goals that were related to the tax expenditure programs that might warrant full evaluation. OPEGA has identified, as best they could from existing statute, legislative histories, or other research that they have done, three items that are on OPEGA's Tax Expenditures spreadsheets. (A copy of the Full Evaluation Tax Expenditures Intent, Goals and Beneficiaries spreadsheet is attached to the Meeting Summary.)

First, the intended beneficiaries of the tax expenditure program is in the column headed "Direct Recipient / Other Beneficiaries". Direct Recipient means the party that directly gets the tax credit, the tax deduction, or the reimbursement payment. Other is the next level of beneficiary where OPEGA saw there was someone else that would be clearly benefiting. They did not try to get as wide as the whole State economy, the larger community, etc. because OPEGA is driving toward parameters they would evaluate and answer questions for the Committee when they got into a full evaluation.

The second column is “Intent / Goals” and this would form the underpinning of what OPEGA would be trying to do in an evaluation. It would be to evaluate the success of a tax expenditure in achieving whatever the legislative intent was, or what could be seen, in terms of goals. It has been broken down into two levels of specificity. The broader, general intent listed, for the most part, that has been derived directly from language that is in statute, or that OPEGA could see in a legislative document in the legislative history. She noted that they do not have intent for all of them because OPEGA could not necessarily see what they would clearly recognize as legislative intent specified in any of those documents for some of the expenditures. The goal that is defined for each one is a more specific statement of what the tax expenditure might be trying to achieve. If the goal was not stated explicitly in statute that the goal of this is “X, Y, Z then OPEGA tried to reasonably infer the goal from what else was in statute. For example from the way that the expenditure was structured for the particular criteria for eligibility, or from the way the credit was going to work. Some of the goals are also derived from OPEGA’s review of legislative history.

The “Source – Intent / Goals” column indicates where OPEGA drew the intent and goals from and a number of them say “OPEGA Research”. Some of the tax expenditures are associated with federal tax expenditures, or credits, and OPEGA referred to the intent or goal of the federal program. Those that say “OPEGA Interpretation” are where OPEGA felt they could reasonably infer from the documents being reviewed what the goal might be. On a couple of the tax expenditures, OPEGA reached out to the agencies that were implementing the program to help understand a little more about what they read in statute, and what the context of that was, to be able to fill out more information about the goal.

Director Ashcroft referred to page 5 noting a couple of tax expenditures’ intent and goals are unknown. In those cases OPEGA could not find anything from which they could infer what the intent and goal were, or there may have been multiple and differing intent or goals to choose among so they did not feel comfortable making a distinction. She said for those tax expenditures, OPEGA will be suggesting that somebody in the legislative realm needs to determine what those are so they can then be evaluated.

Director Ashcroft said even when OPEGA could get to a goal statement, not many of them are in a form where they would be able to quantifiable measure whether a goal has been achieved. Many of the goals, for example, are to encourage something, but it does not definitely say to increase something by such-and-such a margin. OPEGA has already begun seeing that when they go to evaluate the programs, unless they can get one step further in the level of detail and identify some measurable objectives, the information OPEGA is going to be able to provide in the evaluation, at least in the first round of them, will likely be data that describes the activity that has gone on, or the trends that are seen as a result of the tax expenditure being in place, rather than to compare results to a particular target. She did not think that many of that type will be found in the first round of evaluation such that OPEGA will be able to give that kind of conclusive quantifiable result.

Director Ashcroft was looking for feedback.

Sen. Burns asked why OPEGA could not say that this particular incentive is to establish 10% more businesses in that particular district. Director Ashcroft said maybe the agencies that are implementing some of the programs have that kind of specificity to their objectives, but OPEGA did not see that spelled out in the legislative intent and it might not have a target that was necessarily being shot for at the time. He asked if OPEGA can do a look back during an evaluation. Director Ashcroft said they can do a look back to say what the trend has been, what the activity has been, “x” businesses moved in, “x” number of new jobs have been created, etc., but not knowing for sure what the Legislature expected for results at the end, they will not be able to bring that final piece into it. She said the Legislature will be looking at what the activity is and asking if it was reasonable. The question for the Legislature would then be, is it what the Legislature thought they were going to see, is that what they want to see, do they want to create a more measurable target, etc.

Sen. Katz did not see included in the tax expenditure information those programs that parrot the federal one and thought it might be helpful to know so Maine would not get out of conformity with the federal tax code. Director Ashcroft said for most of the expenditures OPEGA saw where the purpose was strict conformity to



the federal code, those tax expenditures ended up in a different category and are not included in the “A” evaluation. She did note that there are some where the State tweaked the expenditures in addition to what the federal program was going for and those are numbers 14 and 17 on the list. Those programs are federal tax expenditures and what OPEGA derived for beneficiaries and intent came from the federal level legislation or regulation as opposed to the State.

Sen. Haskell said, although not included in the information provided for this meeting regarding tax expenditures, what they intend to do is to find out what the cost is. What is the State expending on this program, and is that amount worth the impact that it has, or does not have, and the issue they ran into in the Tax Expenditures Review Committee last summer was that there was no way of knowing whether creating four businesses was worth \$8,000. Yes, no, where, and absent that information is what really drove the Committee to want to begin to dig into this type of information because it might be that it was well worth that money, but absent those two other pieces of information - what did you really get for it and what did it cost – you don’t know. She said they were simply anecdotally one-on-one deciding to keep or lose the tax expenditures and that is not the way to balance one against the other. Sen. Haskell thinks those pieces of information are ones that will come out of the report and will inform the question that Sen. Burns had asked about understanding the actual dollar or numeric translations for the programs.

Chair Kruger asked if OPEGA had the dollar amount for the tax programs, and if so, could it be added to the information. Director Ashcroft said they do, but did not include it on these spreadsheets. She said OPEGA now better understands those estimated financial impacts that are reported to the Legislature in the Red Book. Some are on the “A” list right now because the estimated impact was millions of dollars and because of its size it is on the list. What has been subsequently learned is that there has very little activity for some of them, and the estimate is based on what would be the worst case scenario for an impact that could happen in this year if somebody took advantage of the credit, not necessarily that you have actually had the activity at that level. Director Ashcroft thinks there will be some real value for the programs where they have the evaluation process going on, to even just dig into what is that estimate based on. She said the programs that are asterisked on the spreadsheet OPEGA is considering whether, in their final proposal to the Committees, they would move them out of the full evaluation category and put them probably in category “C” for no evaluation similar to the others where there was very low activity.

Director Ashcroft thinks OPEGA will be suggesting to the Taxation Committee that those in category “C” should be talked through to see if there is any question they would want answered about the program. She gave the example of where OPEGA saw no activity in terms of applying for certification for the credit where the beneficiary, the Maine Retirement System, would invest in high risk venture capital funds and should they do that and then they can be certified for a tax credit through FAME. But there has never been any activity in the program. The Retirement System has never applied for the credit so either it is not their policy to invest in high risk venture capital, or they have never been concerned that they are going to take a loss that they need a credit to cover. OPEGA does not know which it is, but the point is that in the Red Book, it has an estimated financial impact of millions of dollars because if they should take the maximum credit, that is what they would get. OPEGA may suggest moving that to category “C” of whether it would be worth evaluating if there is nothing going on, but the Legislature might have questions.

Director Ashcroft noted that wherever it says “OPEGA Interpretation” that means the intent or goal was not found explicitly stated in statute, or in their initial legislative history research, and OPEGA derived it from other elements associated with the expenditure.

Rep. Goode noted that Director Ashcroft mentioned earlier that OPEGA had not received a lot of feedback on the previous tax expenditure program information that was distributed. He did not know if there was an email, or contact, with Julie Jones, or somebody from the Taxation Committee, but if they were entering a new round where they could solicit feedback, he would want the Taxation Committee members to know about it. He said there are members of the public the Taxation Committee notifies about events that the Committee is working on and he thinks they would be interested. Director Ashcroft said OPEGA will follow

the same procedure as last time. She thinks Ms. Jones did send the last document out to the email list, which includes all of the stakeholder groups.

Rep. Goode thinks tax expenditure programs are a lot of work to figure out and he appreciates how much work has been done. He referred to the “Intent / Goals” category, and as Chair Kruger had noted, it would be helpful to have a column for the dollar amount for each program. He also asked if OPEGA has intent and goals for many of the programs, how do you determine if the intent and goals are being met. Director Ashcroft said that is why it is important for OPEGA to get feedback on the current tax expenditure list at this stage because from here they are going to take a look at the next piece of information that is supposed to be included in their proposal to the GOC and Taxation Committee. They will suggest what performance measures might be used to evaluate whether a program is meeting its intent. OPEGA will now look at the goals and again whatever can be seen from details that exist in statute, or in the administration of the program, and will start formulating whatever they think might be reasonable activity level data or performance measures that speak to whether the goals are being met. If there is not a lot of specificity to the goal, OPEGA will have to make some judgments on their own which might be based on what data is available. She is also expecting to draw from resources like PEW, or what other states have used, and a couple of other resources as needed to develop the performance measures. Director Ashcroft said that is OPEGA’s next step and why it is important to have feedback on what OPEGA has determined for the programs so far if someone has input to provide and cares to provide it.

Chair Johnson had understood from the previous briefing on tax expenditures that where there is not much available data, not a specific level of performance, but no data on which to make a determination, OPEGA will also be making recommendations on what might be put in place for reporting in order to provide information for future decision-making. Director Ashcroft said that was originally her goal, although not exactly required by the Resolve, but having now seen how time consuming it is to try to understand what is going on in some of the tax expenditures, she is not sure OPEGA will get all the way to making recommendations about where they see data is missing. Right now her goal is to say what kind of performance measures would be appropriate, what kind of data would be needed, what data sources exist and whether the data that is being captured is confidential? Director Ashcroft is not sure they would be getting all the way to saying it doesn’t exist and we should establish a certain process for collecting it. Hopefully OPEGA will identify if it is or isn’t here, or it is or isn’t confidential, should they need to access it, but she is not sure they will have recommendations for setting up data gathering specific protocols for each one of the programs.

Rep. Marean asked if, going forward, OPEGA intended to include the number of years each of the tax expenditures have been in existence. Director Ashcroft said OPEGA does have the date it was established.

Sen. Katz referred back to the data OPEGA would need to gather to be able to tell the Committees whether the programs are working or not, and asked if the Director could discuss that a little more because the members of the business community are concerned that in order for OPEGA to do that they might have to gather confidential data from them that they do not want shared with anyone. He asked if the Director could comment about needing to get as much data as they can in order to know the answer to the questions, but also the need to maintain the privacy and confidentiality of private company records. Director Ashcroft said that is why OPEGA is developing the current proposal to see how it will work. She said what data would be needed derives from what OPEGA would need to draw to come to the conclusions about what impact the program is having. She personally, could not foresee how that might get OPEGA into trade secret kinds of information about any business. But, for example one of the questions OPEGA is potentially supposed to answer for the Legislature is to what degree the intended beneficiaries are the ones who are actually receiving the benefits, and in reverse, do we have any beneficiaries that are getting this that were not intended to be receiving it. For OPEGA to be able to answer that question, they have to know who is getting the credit. If that is something that is considered proprietary and confidential, then OPEGA at least is going to have to know that information even if it cannot be included in OPEGA’s public reports. Another example is if OPEGA wanted to tell the Legislature what the trend is in capital investment to a tax expenditure, OPEGA has got to figure out where would they get the capital investment figures. Is it something the State is already

collecting that they can draw from and aggregate for the Legislature, or is it something that OPEGA is going to be looking for the businesses to provide. If so, OPEGA goes through its normal process, they hold it confidential and roll it up, but in order for OPEGA to do the analysis in the first place, they might have to look at confidential information.

Chair Kruger said he finds an historical narrative to be helpful and agreed with Rep. Marean that the date is an important column. He knows they are imposing real challenges for OPEGA by trying to get into the history, but he would like to have that information. He thinks a historical narrative is important especially on the top ones, but if it turns out to be a \$50 line item then he is not sure he would take that much time to read it. Director Ashcroft noted that OPEGA was not ready to evaluate the tax expenditures so are not ready to make any judgments. Chair Kruger asked if that was what was coming. Director Ashcroft said that is what would be included in the evaluation OPEGA did. It would be a report back that would have all the context and then they could decide what to do about it. She wanted to, especially for the folks who are concerned about where OPEGA is headed, to make it clear that nobody was going to be making decisions about what is going on with the tax expenditure programs by virtue of OPEGA's spreadsheets. She said OPEGA would be happy to add a couple of columns in the version they send out to stakeholders, but it is not for purposes of having discussions about whether any of the programs have merit or not. It is just getting agreement that this is what we are intending to try to do with the programs so when anyone begins to evaluate them, we all will be starting from the same place. Director Ashcroft said again this information will go in a proposal to the Taxation Committee, and the Taxation Committee will ultimately make a decision about whether it wants to move to the next step of implementing an ongoing legislative review process. Hopefully even if they decide not to, by virtue of having done this exercise, the Legislature will have more information than it had before about some of the programs.

Sen. Haskell said one of the other questions she hoped OPEGA will be able to garner, which is very tough for all legislators, is the "but for" question. She referred to Intent column for the first tax expenditure on OPEGA's list – "To encourage growth of capital investment in the State by overcoming the disincentive created by the high cost of owning business property." She said that would have to assume that a company would not have bought that piece of equipment but for this credit, and in many cases when the company applies for it, they simply have to state that. She hopes that was one of the data points because when the legislature is reviewing it they would be able to determine whether or not the company has indeed given them that. Sen. Haskell said some do and some don't so she thinks it is important to have that in there as well for consideration.

Rep. Cotta said Sen. Haskell's comments were on target regarding the "but for". He suggested, through the GOC to the Taxation Committee, that if you get into one of those nondescript, can't identify the beneficiaries, or quantify and qualify what it is, perhaps it would be an appropriate time to publish that you are considering suspending such programs. He thinks that might bring out the beneficiaries.

Rep. Goode wanted to take note that when the Taxation Committee worked on this in the last Legislature there was lots of concern about this type of issue, but it was tricky to get everybody on the same page around understanding divisional labor between the Taxation Committee and the GOC. As they transition into a new Legislature, he would be happy, as he thinks Rep. Marean and Sen. Haskell would be, to make sure that they are clear around what everybody's roles and responsibilities are and to make sure that everybody is getting a chance to look at and understand the tax expenditure work because it is new and different. He thinks that was one of the trickier parts of working on the issue in the last Legislature.

Sen. Youngblood liked OPEGA's work on tax expenditures and thought it was very important long range work and it will take a while to get all of the issues straightened out. The first round may not be what everyone would like, but he believes the project is heading in the right direction.

Sen. Youngblood referred to the work done in 2001 by Rep. Trahan, Rep. Dunlap and himself for the creation of OPEGA and he hopes that one of the things that comes out of this work is that the Legislative Council begins to look at the value of this type of office and do some things that changes OPEGA's budget to allow

them to hire more staff in order to take the tax expenditure review on. He said OPEGA has done an outstanding job with the Government Accountability part of “OPEGA”, but have done very little with Program Evaluation part. One of the things that jumped out at them when they researched Florida’s OPPAGA Office was in the early 2000s state governments were feeling the effects of lack of income because of the money issues of the 90s. Florida had a huge file from the program evaluation part of their operation that listed \$200 billion dollars of what they thought the Legislature could look at to make cuts. Their staff for the program evaluation part of OPPAGA was as large as their staff for the government accountability part. They evaluated programs and gave the information of the cost for operation of the program. He didn’t know how much of that information was used to cover the hole in that State’s budget that year, but the dollars were there and put together from an analytical, quantifiable perspective, as opposed to a political perspective.

Sen. Burns asked if OPEGA had the authority to keep proprietary information confidential if need be. Director Ashcroft said OPEGA does keep it confidential just by virtue of their typical process and protection in OPEGA’s Statute. The question becomes does OPEGA have access to look at records that are deemed confidential by other statutes and the answer is typically yes. Occasionally they run across a federal program or provision where there are privacy laws and confidentiality pieces that call into question whether OPEGA even has access to the data and in those cases she refers to Linda Pistner, Chief Deputy Attorney General, for an interpretation. She said so far it has not been a stumbling block. Director Ashcroft said when OPEGA takes in information that is part of a review those records are shielded from public disclosure. Sen. Burns said even after OPEGA’s report is public, the documents are still confidential. Director Ashcroft said as OPEGA’s statute is currently worded, yes.

Sen. Johnson appreciated Sen. Youngblood’s comments and thinks the work on tax expenditures is very valuable and hopes that it will be moved forward and staffing will be approved to continue tax expenditure reviews. The Legislature has struggled with not being able to identify what the value of tax expenditures are, not only to the economy, but for the people of the State of Maine. It needs to have an objective assessment of the various programs so the Taxation Committee can make good decisions.

Director Ashcroft said OPEGA is not done with their proposal and is welcoming comments on any of the information provided.

The GOC thanked the members of the Taxation Subcommittee, Sen. Haskell, Rep. Goode and Rep. Marean, for attending the meeting. Sen. Haskell thanked the GOC for its willingness to engage them and allow them to sit at the table and ask questions. It has been valuable to be part of the process and she appreciated the courtesy.

- **Draft of Committee’s Action Summary on OPEGA Reports for Website**

Director Ashcroft reminded the Committee that at their last meeting they had requested she prepare a draft of a GOC action summary that would be a companion to OPEGA’s report that focused on the GOC’s activity with regard to the report. The information will be posted on the website with the report. She would like to keep the Summary as slim as possible so suggested that people could be referred specifically to the meeting summaries that exist already. If the GOC had specific information they had asked the department or OPEGA to produce, using the HMP Report as an example, that information would include the discussion of the special inquiry that the GOC held in order for the Committee to gather more information for their decision-making about the actions they wanted to take. There will be a section if the GOC has particular concerns as they are discussing the Report and a section specifically about what actions the Committee itself took beyond what OPEGA had recommended in the report. The final section would be the results of the GOC’s vote. Again, using the HMP Report as an example, she referred the Committee to the summary of Senator Burns’ objections to sections of the Report. The Committee member may be asked to write the summary if it has not been discussed by the GOC and included in a meeting summary.

Chair Johnson thought the Actions and Recommendations document was a good way of representing the GOC’s concern. He referred to the example given of the Summary of Sen. Burns’ comments and thinks the last

paragraph needed to be reworded. It said “to support the Report with that exception” and said votes occur yes or no. They may be with reservations, but you cannot vote for parts of a report, you have to vote whether to accept the report or not. You would not want to give people the wrong impression that this is not a vote to accept the report, it is with reservations and those reservations were stated. Chair Johnson wants to be careful about what they represent the votes to be that are taken.

Sen. Burns said he thinks he understood the distinction Chair Johnson made of not being able to accept all of the report except for that part. He felt it was extremely important that he, or any other member of the Committee, be able to have their concerns documented which do not negate any part of the report unless they voted the report down.

Sen. Burns referred to the Additional Information Requested and said he did not see anything that indicated that you could see the document received and asked if it was the Director’s intention to have that available. Director Ashcroft said she had not quite gotten that far. Right now if written testimony is received, it is attached to the Meeting Summary so she was debating whether it would make sense to attach it to the GOC Report, or because it is already part of the Summary, to just refer people to that. Sen. Burns thought the material ought to be accessible on line and if that was the intent, he thinks that would be beneficial. He thought it would be fine to include it with the Meeting Summary information, that was fine.

Rep. Boland asked if there was any problem with attaching it to this document. Director Ashcroft said no, she was thinking about it in terms of volume and it probably would not make sense to have it in both places.

Sen. Youngblood thought the Actions and Recommendations document should be as minimal as absolutely possible so that people will in fact read it. Some of the other members of the Committee agreed.

Chair Johnson was inclined to having references to the other documents and when they are on line they would be hyperlinked. If it is hard copy then the reference written out would give the opportunity to find the information. Director Ashcroft said if they can successfully make the links work that will solve it.

Chair Johnson asked if Committee members were happy with the progress and said he assumed the Director was going to work out an actual summary and they will have an opportunity to comment on it. He noted that Sen. Burns will work with Director Ashcroft regarding his comments of the HMP Report. Chair Johnson asked if there were any other comments regarding the format. He heard none.

## **RECESS**

Chair Johnson recessed the Government Oversight Committee at 12:03 p.m.

## **RECONVENED**

Chair Johnson reconvened the meeting at 12:43 p.m.

### **• Consideration of Court Master Report From Inspection of Riverview Psychiatric Center**

Director Ashcroft said the GOC was aware at the time the Riverview Psychiatric Center (RPC) Review was added to OPEGA’s Work Plan of other work being done regarding RPC, including Court Master Daniel Wathen’s monitoring of compliance with the Consent Decree and his intention to conduct an inspection of his own. GOC members were hopeful that OPEGA might be able to learn what the results of that inspection were for further understanding of the topic and also for OPEGA to know what ground got covered in the inspection. The inspection was conducted in the timeframe as stated. The Court Master asked an expert consultant, Elizabeth Jones, to spend time at RPC to review certain matters that had come to the Court Master’s attention, or that were of concern to him.

Director Ashcroft said OPEGA has had a conversation with the Court Master and with Ms. Jones with regard to the Report. Ms. Jones found areas that she questioned whether the facility was in compliance with the Consent Decree and called out the treatment of clients at RPC, the seclusion and restraint provisions in the Consent Decree, the adequacy of staffing levels, particularly with regard to and consideration for, the increasing acuity of patients at RPC as opposed to just the number of patients as an issue. She also noted issues in the reporting of abuse, neglect and exploitation, particularly with regard to the two incidents that have become public and found that they had not been reported as required and mandated. Ms. Jones had several areas where she made recommendations in each of the categories and the Court Master is considering how to proceed.

Sen. Craven said Justice Wathen did attend a Health and Human Services Committee meeting and spoke about RPC. She was relieved that his presentation and Ms. Jones' findings collaborated with what had been heard from RPC staff on several occasions. As she understood it, Justice Wathen is going to bring the matter back to Court for the items they had found out of compliance with the Consent Decree.

Chair Johnson said the question for the GOC was should OPEGA's review questions for RPC be changed. Director Ashcroft said OPEGA's Scope questions are:

1. To what extent are reporting avenues (staff and patients) effective in ensuring timely and appropriate responses to incidents and concerns affecting patient treatment and the working environment?
2. To what extent are reports of incidents and professional concerns addressed appropriately by responsible parties?
3. To what extent are data and performance metrics reported by RPC to oversight entities accurate and reliable?
4. Are there other areas of concern OPEGA should review that are unaddressed by or further identified as a result of work by oversight and regulatory bodies currently in progress?

OPEGA Analysts Wendy Cherubini and Lucia Nixon have been drafting the work plan to answer the first three scope questions. It will involve a fair amount of work as it already is. Director Ashcroft said Ms. Jones suggested in her Report several areas that additional independent review by somebody might be warranted. Those areas are staffing levels, the continued independent monitoring and review of the use of seclusion and restraints, and training as part of the individualized treatment plans and responses to behaviors that clients exhibit that are inappropriate and harmful. She said none of those areas are currently within the scope of OPEGA's review. Director Ashcroft was unsure to what degree the Health and Human Services Committee is going to follow and monitor some of those areas separately.

Sen. Craven said she will not be serving on the HHS Committee in the next Legislature and said the concern that she has is that in almost all of the institutions she has seen that were having problems, the problems are very systemic and it is difficult, even for Ms. Jones who Sen. Craven has the highest regard for, to be able to identify problems in two days. She said because there were so many complaints it warrants looking at why, for months, the incidents reports have been copied from each other as opposed to being original to the issues that happened with patients or the mismanagement of staff. Sen. Craven said in any work place where the staff is feeling at risk, or threatened, they cannot be good providers themselves because they have more concern for themselves than what they have for the patients. She hopes and would love for OPEGA to do the original tasks in the four questions listed above because she thinks that some of what Justice Wathen is going to be doing through the Courts will be addressed regarding the patients themselves.

Director Ashcroft asked if Sen. Craven envisioned the HHS Committee following or requiring the Department to report back to them regarding staffing. Sen. Craven said sometimes HHS Committee members feel a bit impotent because they can ask questions and if they do not know exactly the right question to ask, they do not get the right answer. Even though the Committee has jurisdiction to ask the questions, they do not have the authority to go out and actually investigate, or take an authentic look at what goes on. She said members of the HHS Committee have expressed their concern.

Director Ashcroft said OPEGA is focused on reporting and so data would pick up the concerns that are in the Court Master's Report about the incidents that did not get reported and why is it that things are not getting

reported. She said by virtue of doing the work they may get a view into why, or what, the culture is as Ms. Jones suggested that is allowing the non-reporting and maybe even the culture that is leading to the seclusion and restraint incidents being higher than one might think that they should be, but it is not a question OPEGA is undertaking head on. OPEGA's RPC review as lined out is already very large and to add Ms. Jones' other three concerns would make it massive. Director Ashcroft was uncertain about how to proceed. Should OPEGA proceed with the original questions, get something done and see where they come out with the pieces they already have and know that there are other pieces that might deserve being looked at at some point, or whether they should look at all the issues in one review.

Chair Johnson asked if it was the Director's sense that some specific aspects of what they might want to look into will be dealt with by the Court, or is just an expectation that the staffing and management will address that internally and the Court will go back and take a look at it again. Director Ashcroft said she did not know what the Court would do, but she would imagine staffing would be an issue that the Court would address. Chair Johnson asked if she expected them to look at and venture an opinion as to what the appropriate staffing level would be or is that something that deserves some examination. Director Ashcroft said she did not know how they would approach that.

Sen. Craven said that was something Justice Wathen talked at length about at the HHS Committee meeting and on paper it looks like they have enough staffing, but in reality they do not. The second part is they suggested that Lower Saco be reintroduced back as being one whole hospital because there are a lot of problems with the staff, or "floaters" as they are called, who are not adequately trained going back and forth. She said even though the Appropriations and Financial Affairs (AFA) Committee asked Jay Harper over and over if he had enough money for training and staffing, he said yes, but Justice Wathen found that they do not. That is something he will continue to monitor and bring to the Court so should not be duplicated by OPEGA.

Director Ashcroft said a possible way to approach the review would be between now and January for OPEGA to monitor what actions are being taken that are included in the Court Master's Report and then discuss it again in January.

Rep. Cotta said there are key points in Ms. Jones' Recommendations as Justice Wathen moves forward and, as mentioned by Director Ashcroft, that OPEGA wait to see what Justice Wathen does regarding the Consent Decree and some of the same areas are touched in the Recommendations, but probably not at a depth the GOC would like to go. He suggested that the Court Master's Report be forwarded to the 127<sup>th</sup> AFA and HHS Committees.

Sen. Katz said somebody has to figure out what is not going well there and try to fix it. The GOC is involved, as they should be, Criminal Justice and Public Safety Committee is involved to the extent it involves forensic patients and GL issues, mental illness in the jails, HHS and the AFA Committees. There are so many questions about whether it is even the right size for a hospital, should it be bigger, should the forensics be somewhere else, etc. He noted that there are so many parts involved.

Chair Johnson said it begs the question, which he does not know if the GOC should be exploring at this time, as to whether given what they have been told about more mental health needs in the prison system, whether there would be further implications if you would try to appropriately treat people in a mental health institution that might have more of the security concerns in forensic. Perhaps as OPEGA is looking at the reporting, and there is a Forensic Unit involved, OPEGA may come across issues in terms of the design of the system. Has it become problematic and needs rethinking if there were significantly higher number of patients and level of activity. Whether there is adequate staff is a big part of answering the question of whether the reporting system can work because if you are under staffed then having the time and the timeliness become an issue. If you are not under staffed one would think that it would scale well.

Director Ashcroft said as part of question 4 in OPEGA's Scope they will be monitoring the concerns that have come out of the Court Master's Report and will look to be able to say something about what has been done and whether in the end they still think they deserve further work, they are unaddressed to some degree, or whether it

looks like through the activities of the Court Master, that the Department itself and whomever else, that those issues have been well tackled.

Chair Johnson said unless there was Committee objection the “**Personnel Matters**” will be moved to the end of the Agenda. Hearing none the Committee moved to “**Unfinished Business**”.

## **UNFINISHED BUSINESS**

- **OPEGA’s Report on Healthy Maine Partnerships’ FY13 Contracts and Funding**

- Draft Legislation Regarding Procurement and Ethics**

Director Ashcroft said the GOC had asked OPEGA to draft legislation dealing with the procurement statute and rules that makes sure there is guidance for handling grant type situations where there is a competitive process with no actual competitive bid proposals involved. To date, she has been focused on getting the ethics legislation in process, but will plan to bring to the GOC in January the legislation regarding competitive bid proposals. At this point the Director said it is going to be minor tweaks in terms of wording to existing statutes, rules and purchasing department policies and guidance to make it clear that it is not just contracts that those apply to. They apply to grants, and certain things also apply to situations when you are amending a grant, as well as going out for a new one.

At the last GOC meeting the Committee asked Director Ashcroft to draft legislation that would direct the Commissioner of the Department of Administration and Financial Services (DAFS) to implement the recommendations that had been in the Commission on Governmental Ethics and Election Practices 2009 Report for ethic laws for Executive Branch employees. The Resolve was drafted using the recommendations in that Report, as well as adding some additional concerns noted by the GOC in OPEGA’s PUC or Healthy Maine Partnership Reports.

The Resolve has four sections. The first directs DAFS to develop a consolidated code of ethics and conduct for State employees and propose, draft legislation that would implement that code, with the idea that it would exist in one section of statute. State employee is defined as any regular classified or unclassified officer or employee of the Executive Branch and DAFS should develop that consolidated code as appropriate, which include taking a look at the recommendations that exist in the 2009 Report from the Ethics Commission, pulling together all existing standards of ethics and conduct that are currently in statute, Executive Order, and various other policies. Also to give consideration to adding ethical standards for situations that are not currently addressed, or not seen currently addressed, in the existing standards including, but not limited to, gifts given to employees, personal and business relationships that effect impartiality, post-state employment, use of government property and conflicting outside employment and activities. Director Ashcroft said they include standards she saw existing at the federal level, or in some of the other states, that has not been seen in any of the standards for Maine and/or they are areas that the GOC had concerns about.

The Resolve also directs DAFS to consider relevant standards and guidance regarding employee ethics that do exist for the federal government and other states, as well as input from the Commission on Governmental Ethics and Election Practices and other relevant organizations.

Section 2 of the Resolve directs DAFS to establish and implement clear avenues and procedures for State employees to seek guidance regarding standards of ethics and conduct and to report potential violations of those standards, specifying that they need to include provisions for confidential reporting.

Section 3 of the Resolve requires DAFS to develop and implement training and communication initiatives to increase the awareness and accountability of State employees regarding standards of ethics and conduct. The plan must provide for clear and regular communications, accessible guidance documents including plain language explanations and ongoing training opportunities for employees. It also asks the Department to



consider incorporating a mechanism for periodically validating that employees know the standards and are aware of them.

Section 4 is in regard to the report backs to the Government Oversight Committee. It is set up so that the Department will submit an interim report no later than September 1, 2015 describing the status of the work undertaken to that date as required by the Resolve. That report would include a time line for when the actions would be completed and the Department would submit a final report document, along with the legislation that would be needed to implement the consolidated code of ethics to the GOC, as well as the State and Local Government Committee by December 1, 2015 and that the GOC is authorized to submit legislation related to that report to the Second Regular Session of the 127<sup>th</sup> Legislature.

Sen. Youngblood asked if the proposed legislation was going to include anything about Healthy Maine Partnerships having to go back and redo the process regarding the money distribution issue to the leads. Director Ashcroft said no, it was not specific to that particular process.

Sen. Katz asked why the proposal was to have DAFS write the code rather than OPEGA and why aren't Legislative employees included? Director Ashcroft thinks the GOC had a previous discussion regarding only focusing on the Executive Branch, or to include the Legislature. She said the quickest and smoothest path forward would be to do something with the Executive Branch that stemmed from the Report that had already been given to the Legislature. It was getting complicated very quickly trying to incorporate the other branches, particularly since Leadership and the Executive Director's position were turning over. Director Ashcroft said it is not that legislative employees cannot be encompassed, but was trying to see how to move something forward quickly. In regard to Sen. Katz's question of why DAFS should be the one to do this, it is because it seemed that it was not OPEGA's place necessarily to decide what should be the standards. Those should be informed by what the agencies are actually experiencing for situations and that it was the responsibility of an HR department to be setting those standards. Some of the recommendations, especially the ones with regard to training and communication that were in the 2009 Ethics Commission's Report do speak to the Bureau of Human Resources taking the actions and the Bureau of Human Resources is under DAFS. DAFS also has the OIT function and the Accounting Manual Standards.

Sen. Katz referred back to the legislative part and said maybe there is a difference between partisan and nonpartisan staff, but he did not know why they would not include legislative staff. The standards should not be any different for legislative employees than for Executive Department employees. Chair Johnson recalled previous Committee discussion regarding including the Legislature and said the Legislature does have ethics and training on ethics as part of the requirement for the Legislature and legislative employees. Director Ashcroft said legislators received training on ethics, but OPEGA has not explored what exists in the Legislative Branch for standards on ethics the same way they have done for the GOC on the Executive Branch. By virtue of being a nonpartisan employee she said she has not received any specific ethics training from the Legislature. The Personnel Policy Manual that is established by the Legislative Council has some information on ethics, but does not necessarily include all the different kinds of ethical situations that one might find themselves in. Director Ashcroft said she does not think it is because the Legislature has great ethical standards already existing. Chair Johnson said there will be the opportunity to build off what DAFS develops for legislative employees.

Sen. Burns said he has felt all along that the legislative partisan and nonpartisan employees need to be included. Other agencies under the Executive Branch have their own standard of ethics and what is being talked about now is trying to bring conformity. He has a difficult time differentiating between bringing conformity to the Executive Branch and not to the Legislature. From the Director's statement regarding her experience there is certainly a void in the Legislature that needs to be addressed. He said everyone should be working off the same standards no matter which branch of government they are in.

Sen. Katz said he understands the difficulty, or questionable appropriateness, of asking DAFS to draft standards for the Legislative Branch, but maybe it would be something as simple as adding to the draft Resolve that when the GOC receives the information from DAFS the Committee propose legislation that

language be added that indicates that they may consider the recommendations as they appropriately apply to legislative employees as well. Other Committee members agreed.

Rep. Boland asked if it was possible to create a group from the Legislature charged with doing this. Director Ashcroft said that was the other model being discussed. To create a cross-branch team to put it together, but it started getting complicated. Chair Johnson said that when the GOC has the report back from DAFS then the Legislature would have an excellent framework as to how they addressed those issues in the Executive Branch.

Director Ashcroft thought the State and Local Government Committee would be the appropriate policy committee to get the Resolve's report back to and asked if the Committee had any other thoughts. Rep. Cotta said the SLG Committee is the appropriate Committee to hear the bill.

Chair Johnson asked the Committee if they were comfortable adding language to the Resolve that DAFS' recommendations might be appropriate to apply to legislative employees as well. Committee members said they were. Director Ashcroft will submit the Resolve to the Revisor's Office as the legislation coming from the GOC and it will enter the normal bill process.

Chair Johnson noted that in the Resolve it was stated that "Input from the Commission on Governmental Ethics and Election Practices and other relevant organizations" and said that "other relevant organizations" should be "other relevant organizations, for example, the Institute for Global Ethics." Director Ashcroft said originally she had that in the Resolve, but in drafting legislation they shy away from naming specific organizations. The Chair thought they should find some way to describe the nature of the organization to at least give people an idea of their meaning. Director Ashcroft said she will talk with the Revisor's Office.

**Motion:** That the Government Oversight Committee will introduce legislation as discussed, to strengthen the Ethics Framework for Executive Branch Employees with the noted amendment of adding the language of legislative employees as discussed. (Motion by Chair Kruger, second by Sen. Craven, passed unanimous vote 10-0.)

- **Report on Maine Economic Improvement Fund**

- **Committee Work Session**

Chair Johnson said this item was on the agenda for the purpose of giving Committee members the opportunity to do anything they feel they need to do regarding the Report.

Rep. Cotta said included in the last Committee discussion was the question of is there a legislative remedy and is the current operation of the MEIF, as outlined in statute, working. He still feels MEIF is not being followed as outlined in statute and would like to see the Committee put that forward to the 127<sup>th</sup> Legislature. There needs to be a separate entity in State government to administer the MEIF, it has to be on need basis and he does not think the fox guarding the chicken coop is a good idea. He would like that pushed forward to the 127<sup>th</sup> and was open to any suggestions.

Sen. Burns liked what Rep. Cotta suggested, although he had more specific ideas, but thinks Rep. Cotta's ideas have a chance of getting collaboration to pursue the matter. He thinks the GOC would be wise to suggest legislation that would consider a separate, or neutral, entity to do the review process and through that discussion there may be some other changes that come forward. He would support the GOC drafting that type of bill.

Sen. Johnson agreed that people had concerns about how MEIF was now working, but said the purpose of the GOC's investigation and findings do not support that there is a problem that has to be solved legislatively. His inclination was if people want to suggest ways of improving MEIF, which may be different approaches,

that there is no way to improve it that is suggested by what the GOC's investigation found. If people have ideas of how to improve it, they should introduce legislation and get the matter before some Committees.

Rep. Cotta brought up that it was in OPEGA's own finding and talked about the goals and objectives and how you quantify and qualify it consistently. That seemed to be a glaring inconsistency in the operation of the fund. At the previous meeting the Chancellor attended, Rep. Cotta said he asked who made the determination that the University of Maine in Orono, part of the University of Maine System, would hold, shelter and confine 80% of the MEIF, and at the same time, make a blatant statement that 20% would go to USM. Nowhere is there statutory authority for that statement to be made, but it is being accepted as practiced. If you are going to look at the MEIF you cannot say that the GOC did not see anything that may require legislation and stated in OPEGA's Report is the lack of consistency, goals and standards of the award and also the 80/20 split because it is not based on statute. It was a policy that was arbitrarily drawn up by the University of Maine in Orono and it was published in November, 2006. He asked what the statutory foundation was to make that determination and the answer was there is none.

Chair Johnson noted that part of the answer was there was no requirement in statute for what the percentage should be. There is now a certain amount for various satellites. Director Ashcroft said what the statute does is gives responsibility to the University of Maine System's Board of Trustees to administer the funds. Those decisions are being made as part of their responsibility. You may not like the decisions they have made, but that is where it stems from and is why you do not see it spelled out specifically in statute. Rep. Cotta said the Board of Trustees further designates the administration of the MEIF and when he asked who made that decision it was not the Board of Trustees. The statute says the Board of Trustees shall, but remembering what the Chancellor and the President said, they do not make that decision. He did not want the GOC to think the Trustees themselves oversee the administration of MEIF. They delegate it. Director Ashcroft agreed and said the Chancellor spoke about the Trustees looking to change some of what they do, which may, or may not, be relevant.

Director Ashcroft said OPEGA does have a recommendation in their MEIF Report with regard to the fact that there are not measurable goals and objectives established and did observe in the Report, although not linked to a recommendation, that the processes by which the various campuses distribute their funds and the criteria that is used to determine what they are going to varies by campus. OPEGA found them all to be consistent with statute to the degree that the statute is at all specific. It would be that observation that would be driving the suggestion of wanting more consistency across the campuses by getting an external entity involved in reviewing all of the proposals. Chair Johnson did not think there were any suggestions based on findings for a way to solve that and if people want to change the status quo, they need to put forward propositions. He did not think there was a solution to a well-defined problem that comes out of OPEGA's investigation and it would mean the GOC would have to get into a policy realm in order to structure a solution. There are things that some members want the way the system works to be different, but different from what is actually required in statute and it is not something that is currently wrong in programs under the law. Decisions are being made by business entities that some disagree with how they are conducting their business, and making their decisions entirely within the law. He thinks it is a little broad for the GOC to be suggesting a solution, but rather individuals should put forward potential competing ideas of how best to solve that and have them heard before the committees of jurisdiction.

Sen. Burns perceived things differently than the Chair did, and perhaps from the majority of the GOC, but throughout the process the GOC has gone through, it is clear to him that things were not being done necessarily with equality in mind. He would go back to the original intent that it was UMO that was to take responsibility for disbursing MEIF, but it was to be shared. Throughout this process he has heard that did not happen to the extent it should have. The GOC is about governmental accountability and it may be that the letter of the statute has not been violated, but statutes can be changed and one way is to put in place a fairer system as to how the process takes place in the future. What he was suggesting is that the independent entity would take care of that process. Sen. Burns did not see why that was the purview of an individual legislator any more than the GOC, but if the Committee was not going to have a consensus of how to proceed, then it may have to be done by individual legislators.

Rep. Cotta said he maintained all along that the MEIF is a good idea. The \$14.8 million Fund is State money, taxpayer money. It is an economic stimulus funded by the Legislature in seven targeted areas to try and increase economic production, increase the economy to help Maine's economy. If the University of Maine Orono has built out, as they have in certain areas, that is going to give them an advantage. He agrees with the Chair that it may be individual pieces of legislation. Rep. Cotta sees MEIF as underperforming and miss administered because it has become almost exclusive. He said the Small Campus Initiative is structured outside of the MEIF and it was understood by those administering MEIF that the amounts were a maximum and having been present when the legislation was introduced, Rep. Cotta said that was to be a minimum. He suggested that the Small Campus Initiative be looked at in the 127<sup>th</sup> Legislature. He is not talking about a percentage, but because the 80/20 split is blatantly discriminatory, it is hard for him to accept why someone would even say it. Rep. Cotta thinks Chair Johnson had a good idea of what individual legislators can do. He would like to see something done because thinks the MEIF is underperforming and while the University has done a lot in air dynamics, air foils and windmills, some are getting into the business of making products and selling them. It is the Maine Economic Improvement Fund, it is not the University of Maine Manufacturing Corporation. There is great potential and he hopes the 127<sup>th</sup> Legislature will address the matter.

Chair Johnson said if it was the will of the GOC to introduced legislation then they can begin the process of what that should include.

Sen. Katz said the University System made a number of commitments to the GOC that they were going to do certain things. Some they have done and some they have not yet done because they have not had the time, but he hopes the GOC keeps MEIF on their schedule so they will touch base of where things stand because that will make an impact for him of whether any, or what kind of, legislation might be necessary at that point in time.

Chair Johnson said the GOC will want to receive an update from the University on the status of actions they have taken as told to the Committee by the Chancellor. Director Ashcroft said she will schedule the University's report back to the Committee for the end of March, 2015.

Sen. Burns said he could agree to that and noted that it would be a shame after all that has been read, heard and watched during GOC meetings for this to get lost. There is no substitute for being present to hear the discussions and a policy committee will not get the same feedback, or the same results, as the GOC has been privy to.

Director Ashcroft will make sure the University gets on the GOC's agenda for a report back on their progress at the end of March, 2015 for not only of the action items but on, as the Chancellor spoke to the Committee about, differences in the way they were going to manage the whole MEIF and the way the Trustees were going to be involved.

## REPORT FROM OPEGA DIRECTOR

- **Project Status**

**Office of Information Technology Follow-Up Review** – OPEGA has a draft RFP. They are getting ready to finalize and will be looking for a consultant to independently assess the implementation of the actions OIT has undertaken.

**Riverview Psychiatric Center and the Special Project on Tax Expenditure Programs** were discussed earlier in the meeting.

**State Lottery** is still in progress and is being used as a filler review at this point. It will be worked on as staff is available from other projects.

- **The Biennium in Review: GOC and OPEGA Activities and Accomplishments**

Director Ashcroft said the Committee started with four projects on OPEGA's Work Plan that were carried over from the 125<sup>th</sup> GOC. She said OPEGA's Work Plan ended up with twelve topics with two OPEGA has partially completed, but currently are in suspended status and two are still in the planned mode. One of the first discussions with the 127<sup>th</sup> GOC is what work that is in the suspended and planned area fits in terms of their priorities and ideas. She said in addition to the topics on OPEGA's Work Plan, there were five or six other requests for reviews that the GOC considered, OPEGA did research work on for the Committee and the Committee held several meetings to discuss what action should be taken. The fact that OPEGA has officially only issued two work products this year is not a reflection of what has gone on in the Committee. The inquiry the GOC took on for the HMP Report took substantial time to conduct and she is considering it a project in and of itself.

Director Ashcroft said the GOC has been doing a lot of work and considering a lot of issues and she hopes the members feel good about what they have accomplished.

- **Staffing**

Director Ashcroft reported that OPEGA still had an Analyst vacancy and have been going through a recruitment process. A candidate was selected but that did not pan out so she is going back to review the pool of candidates from the last recruitment. If that does not work out she will be reposting the position.

Sen. Katz thanked Rep. Kruger, Sen. Cain and Sen. Johnson for their excellent leadership of the Committee over the last two years and appreciates the way they conducted the work of the Committee. He also noted that it was an honor to work not only with members of the GOC, but with Director Ashcroft and the OPEGA staff. Others members agreed.

Director Ashcroft said OPEGA staff has enjoyed working with the members of the GOC and feels fortunate to have a Committee that is as engaged, involved and interested in what they do and have to say.

- **Personnel Matters**

**Motion:** Pursuant to 1 MRSA section 405, subsection 6A the Government Oversight Committee go into executive session for the purpose of discussing the performance evaluation of the Director of OPEGA. (Motion by Chair Kruger, second by Sen. Burns, passed unanimous vote, 10-0.)

The Government Oversight Committee recessed at 2:07 p.m. to go into an executive session.

The Government Oversight Committee adjourned its executive session at 2:41 p.m. (Motion by Chair Kruger, second by Sen. Katz, passed unanimous vote, 10-0).

**Motion:** That the Government Oversight Committee send a letter to the Legislative Council and Executive Director recommending that Director Ashcroft be reappointed as the Director of OPEGA. (Motion by Rep. Davis, second by Sen. Craven, passed unanimous vote, 10-0.)

## **ADJOURNMENT**

The Government Oversight Committee was adjourned on the motion of Chair Kruger at 2:45 p.m.

## Full Evaluation Tax Expenditures Intent, Goals, and Beneficiaries

Prepared by the Office of Program Evaluation and Government Accountability

Count	Red Book #	Tax Type	Expenditure Type	Expenditure Program Name	Direct Recipient / Other Beneficiaries	Intent / Goals	Source - Intent / Goals <sup>^</sup>	Brief Description	Statutory Cite: Title 36
1	1.001	Property	Reimbursement	Reimbursement For Business Equipment Tax Exemption to Municipalities (BETE)	<b>Direct</b> - Municipalities providing business property tax exemptions <b>Other</b> - Businesses	<b>Intent</b> - To encourage growth of capital investment in the State by overcoming the disincentive created by the high cost of owning business property. <b>Goal</b> - To encourage capital investment in business property.	Statute	Reimbursement to municipalities of revenue losses, with limitations, due to the property tax exemption for qualified business equipment.	Chapter 105, subc. 4-C
2	1.002	Property	Reimbursement	Reimbursement for Taxes Paid on Certain Business Property (BETR)	<b>Direct</b> - Businesses	<b>Intent</b> - To encourage growth of capital investment in the State by overcoming the disincentive created by the high cost of owning business property. <b>Goal</b> - To encourage capital investment in business property.	Statute	Reimbursement of property tax paid on qualified business property, with limitations. FY15 tax loss shows a decrease from prior years resulting from recently enacted legislation.	Chapter 915
3	1.004	Income	Deduction	Deduction for Affordable Housing*	<b>Direct</b> - Developers/owners of multifamily affordable housing <b>Other</b> - Individuals eligible for affordable housing	<b>Goal</b> - To retain existing affordable housing when real estate transactions occur.	OPEGA Research	Deduction for income resulting from sale of certified multifamily affordable housing properties. According to the Maine State Housing Authority, they have only received two applications for this credit since it was enacted.	§5122.2.Z
4	1.005	Income	Deduction	Deduction for Social Security Benefits Taxable at Federal Level	<b>Direct</b> - Individuals (Residents) collecting Social Security and Railroad Benefits	<b>Goal</b> - To provide tax relief for certain retirees receiving public retirement benefits.	OPEGA Interpretation	Deduction for social security benefits and railroad retirement benefits.	§5122.2.C
5	1.007	Income	Deduction	Deduction for Premiums Paid for Long-Term Health Care Insurance	<b>Direct</b> - Individuals (Residents)	<b>Goal</b> - To encourage individuals to purchase long-term care health insurance.	OPEGA Interpretation	Deduction for premiums spent for qualified long-term care insurance contracts.	§5122.2.L §5122.2.T
6	1.008	Income	Deduction	Deduction for Pension Income & IRA Distributions	<b>Direct</b> - Individuals (Residents) receiving certain pension benefits and IRA distributions	<b>Goal</b> - To provide tax relief to certain retirees receiving private retirement benefits.	OPEGA Interpretation	Deduction for pension benefits received under employee retirement plans and taxable distributions from individual retirement accounts, up to \$10,000.	§5122.2.M
7	1.009	Income	Deduction	Deduction for Interest and Dividends on Maine State and Local Securities - Individual Income Tax	<b>Direct</b> - Individuals (Residents) investing in State & Local securities <b>Other</b> - State and Local governments	<b>Goal</b> - To encourage individual investment in State and Local securities.	OPEGA Interpretation	Individual income tax deduction for interest or dividends on securities issued by the State and its political subdivisions.	§5122.2.N
8	1.011	Income	Deduction	Deduction For Contributions To IRC 529 Qualified Tuition Plans	<b>Direct</b> - Individuals (Residents) investing in qualified tuition programs <b>Other</b> - Students	<b>Goal</b> - To encourage saving for higher education through investment in qualified tuition programs.	OPEGA Interpretation	Deduction for contributions to qualified tuition programs under Section 529 of the Internal Revenue Code (529 plans) up to \$250 per beneficiary, with income limitations.	§5122.2.Y
9	1.019	Income	Deduction	Deduction for Interest and Dividends on U.S., Maine State and Local Securities	<b>Direct</b> - Corporations investing in US, State and Local securities <b>Other</b> - Federal, State and Local governments	<b>Goal</b> - To encourage corporate investment in US, State and Local securities.	OPEGA Interpretation	Corporate income tax deduction for interest or dividends on securities issued by the State and its political subdivisions.	§5200-A.2.A §5200-A.2.K

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10	1.021	Income	Credit	Jobs and Investment Tax Credit	<b>Direct</b> - Businesses making an investment of at least \$5 million that creates at least 100 new jobs <b>Other</b> - Employees of participating businesses	<b>Intent</b> - To encourage growth in major industry in the State and the creation of quality jobs. <b>Goal</b> - To encourage capital investments in business property of at least \$5 million that create at least 100 new jobs.	Statute	Tax credit for qualified investment of at least \$5,000,000 in property within the State and creation of at least 100 new jobs (with a designated level of wages, health and retirement benefits), with limitations.	§5215
11	1.022	Income	Credit	Seed Capital Investment Tax Credit	<b>Direct</b> - Qualified investors in certain types of businesses <b>Other</b> - Certain types of businesses	<b>Intent</b> - To increase the availability of risk equity capital to enterprises that have the potential for rapid growth and to bring capital into the State; to encourage growth of new and existing small businesses to increase job opportunities for Maine residents, spending in the State, and municipal tax bases; and to help to develop export markets for Maine products. <b>Goal</b> - To increase availability of investment and risk equity capital for eligible businesses.	Statute	Tax credit of up to 50% for capital investment in eligible businesses (including manufacturing, value-added natural resource enterprises, export businesses, advanced technology, and visual media production), with limitations.	§5216-B
12	1.027	Income	Credit	Credit for Educational Opportunity	<b>Direct</b> - Qualifying graduates of Maine colleges and universities employed in Maine and making student loan payments and businesses making loan payments on behalf of qualifying employees	<b>Intent</b> - To promote economic opportunity by ensuring access to training and higher education; to bring more and higher-paying jobs to the State by increasing the skill level of the State's workforce; to offer educational opportunity and retraining to individuals impacted by job loss, workplace injury, disability or other hardship; and to keep young people in the State through incentives for educational opportunity and creation of more high-paying jobs. <b>Goals</b> - To retain graduates of Maine colleges and universities in the Maine workforce.	Statute	Tax credit for certain educational loan payments made by participants in the Job Creation Through Educational Opportunity Program and their employers; participants must be residents who remain in Maine after obtaining a degree here.	§5217-D
13	1.028	Income	Credit	Income Tax Credit for Child and Dependent Care Expense	<b>Direct</b> - Individuals incurring child and dependent care expenses	<b>Goal</b> - To provide tax relief to working parents and others paying for child and dependent care.	OPEGA Interpretation	Tax credit for child and dependent care expenses in the amount of 25% of the federal tax credit; the credit doubles for expenses incurred for quality child care services. Maximum of \$500.	§5218
14	1.031	Income	Credit	Research Expense Tax Credit	<b>Direct</b> - Businesses investing in research and development	<b>Intent</b> - To encourage business investment in research and development, in order to foster innovation and promote long-term economic growth.	OPEGA Research	Tax credit for qualified research expenses associated with certain technological and experimental research, with limitations.	§5219-K

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*<sup>^</sup>OPEGA Interpretation was formulated when intent was not found explicitly in statute or initial research.*

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15	1.033	Income	Credit	High-Technology Investment Tax Credit	<b>Direct</b> - Individuals or businesses purchasing or leasing eligible equipment for use in high-technology activity; lessors of such equipment <b>Other</b> - Individuals using Internet access services and advanced telecommunications services	<b>Intent</b> - To encourage development in the high-technology industry, including computer software and equipment design and production, and provision of Internet access and advanced telecommunications services.	Statute; Legislative History (Bill Summary)	Tax credit for costs of eligible equipment used in certain high technology activities, including the design and production of computer software and equipment, and the provision of Internet and telecommunications services, with limitations.	§5219-M
16	1.036	Income	Credit	Credit for Rehabilitation of Historic Properties	<b>Direct</b> - Taxpayers who invest in the rehabilitation of Historic Properties <b>Other</b> - Municipalities where projects are located (new jobs, increased property tax valuation); construction industry	<b>Intent</b> - To support redevelopment of historic properties and increased economic activity. <b>Goals</b> - To promote historic preservation; to create jobs (construction industry and permanent jobs in restored property); to redevelop "downtown" properties for business and affordable housing; to increase economic activity in local communities.	Legislative History (Public Testimony, Legislative Record)	Income tax credit for expenditures in rehabilitation of certified historic properties, with limitations. Fiscal impact is expected to increase \$1.4 million in FY17 and perhaps more in future years as a result of recently enacted legislation.	§5219-BB
17	1.037	Income	Credit	Earned Income Credit	<b>Direct</b> - Taxpayers with low to moderate incomes	<b>Intent</b> - To assist in encouraging people to obtain employment, reducing the unemployment rate and reducing the welfare rolls (federal EITC).	OPEGA Research	Tax credit equal to 4% of the federal earned income tax credit (EITC) received that year; EITC is a credit for individuals who have earned income under a certain limit.	§5219-S
19	1.040	Income	Credit	Tax Benefits for Media Production Companies	<b>Direct</b> - Visual media production companies <b>Other</b> - Maine film industry and its employees; communities where productions are located	<b>Intent</b> - To grow the visual media production industry by attracting productions to Maine. <b>Goal</b> - To encourage media production companies to locate film productions in Maine.	Legislative History (Bill Summary)	Tax credit (5% of nonwage production expenses, if >\$75,000) and reimbursement (12% of production wages) for certified productions of visual media production companies.	§5219-Y §6902
20	1.041	Income	Credit	Dental Care Access Credit	<b>Direct</b> - Dentists practicing in underserved areas of the state <b>Other</b> - Individuals in need of dental care in underserved areas of the State	<b>Intent</b> - To preserve public health and safety. <b>Goal</b> - To encourage dentists to locate in areas of the State with a shortage of dental practitioners.	Legislative History (Public Law)	Tax credit (not to exceed \$15,000) for a limited number of licensed dentists who agree to practice in underserved areas of the state for at least 5 years and are certified eligible by the State's oral health program; ends in 2020.	§5219-DD
21	1.042	Income	Credit	New Markets Capital Investment Credit	<b>Direct</b> - Qualified investors in eligible businesses in low-income communities <b>Other</b> - Eligible businesses in low-income communities; qualified community development entities	<b>Intent</b> - 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. <b>Goal</b> - To encourage major new investments in qualified businesses in low-income communities in the State.	Statute	Tax credits of up to 39% of a project's total cost for qualified equity investments in low-income community businesses made via a community development entity, with limitations.	§5219-HH
22	1.043	Income	Credit	Credit for Wellness Programs	<b>Direct</b> - Small Businesses (< 20 employees) <b>Other</b> - Employees of small businesses	<b>Goal</b> - To encourage small businesses to provide employee wellness programs.	OPEGA Interpretation	Tax credit to employers with 20 or fewer employees for expenditures on wellness programs up to \$2,000.	§5219-FF

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23	1.044	Income	Credit	Maine Fishery Infrastructure Investment Tax Credit	<b>Direct</b> - Investors in public fishery infrastructure projects	<b>Goal</b> - To encourage investment in and contributions to infrastructure improvements and facilities that enhance the State's publicly accessible fisheries.	Statute	Tax credit for up to 50% of investment in eligible fishery infrastructure projects to benefit the public; requires tax credit certificate from the Department of Inland Fisheries and Wildlife.	§5216-D
24	1.045	Income	Credit	Innovation Finance Credit*	<b>Direct</b> - Maine Public Employees Retirement System <b>Other</b> - Selected venture capital funds; innovative businesses	<b>Intent</b> - To increase available venture capital for innovative businesses. <b>Goal</b> - To encourage MainePERS to invest in high quality venture capital funds that evidence a commitment to seeking investments in the State in the targeted technology sectors and the ability to produce favorable returns.	Statute	Refundable tax credits may be issued by the Finance Authority of Maine to MainePERS for capital losses associated with venture capital fund investments made by MainePERS. Sunsets in 2029. According to FAME, this credit has never been used.	§5219-EE
25	1.046	Income	Reimbursement	Employment Tax Increment Financing, including certain Job Increment Financing Programs	<b>Direct</b> - Businesses locating or expanding in economically distressed areas of the State that create new quality jobs <b>Other</b> - Job seekers	<b>Intent</b> - 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. <b>Goal</b> - To encourage location of new businesses or expansion of existing businesses, and to encourage the creation of new quality jobs, particularly in economically distressed areas of the State.	Statute	Reimbursement to certain businesses of income tax attributed to qualified employees (those receiving a designated level of wages, health and retirement benefits), subject to limitations including unemployment rates in the area; ends in 2028.	Chapter 917
26	1.047	Income	Credit	Shipbuilding Facility Credit*	<b>Direct</b> - Shipbuilding businesses investing over \$200 million <b>Other</b> - Employees of participating businesses	<b>Intent</b> - To encourage major investments in shipbuilding facilities in the State in order to ensure the long-term survival of the shipbuilding industry in the State; to preserve jobs provided by the industry; to make the state more competitive in the shipbuilding industry and improve the State economy. <b>Goal</b> - To encourage major investment in shipbuilding facilities in the State; to retain jobs in ship-building facilities in the State.	Statute	Tax credit against withholding taxes for owners of shipbuilding facilities with at least 6,500 employees, who invest at least \$200 million related to construction, improvement, modernization or expansion of a 10 acre facility, with limitations. According to the Maine Department of Economic and Community Development, only one business has received this tax credit since it was enacted.	Chapter 919
27	2.042	Sales & Use	Exemption	New Machinery for Experimental Research	<b>Direct</b> - Businesses engaging in certain research and development activities	<b>Intent</b> - To encourage development of the high technology industry. <b>Goal</b> - To encourage investment in certain research and development activities; to encourage investment in biotechnology applications.	Legislative History (Bill Summary)	Sales of machinery and equipment for biotechnology research.	§1760.32

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**Full Evaluation Tax Expenditures  
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Count	Red Book #	Tax Type	Expenditure Type	Expenditure Program Name	Direct Recipient / Other Beneficiaries	Intent / Goals	Source - Intent / Goals^	Brief Description	Statutory Cite: Title 36
28	2.044	Sales & Use	Exemption	Sales Through Coin Operated Vending Machines	<b>Direct</b> - Businesses with >50% of gross receipts from the retail sale of tangible personal property derived from sales through vending machines. <b>Other</b> - Persons buying certain products in vending machines	<b>Goal</b> - To lower administrative burden on vending machine companies.	Maine Revenue Services, Maine State Tax Expenditure Report (Red Book)	Sales of certain products through vending machines by retailers who make the majority of their sales via vending machines.	§1760.34
29	2.059	Sales & Use	Exemption	Railroad Track Materials	<b>Direct</b> - Businesses that purchase and install railroad track materials	<b>Goal</b> - To encourage investment in railroad infrastructure.	Legislative History (Legislative Record)	Sales of railroad track materials for installation on railroad lines within the State.	§1760.52
30	2.067	Sales & Use	Exemption	Construction Contracts with Exempt Organizations: Sales of Tangible Personal Property*	<b>Direct</b> - Contractors working for exempt organizations <b>Other</b> - Sales tax exempt organizations or government agencies	<b>Goal</b> - Public policy goal not to tax non-profit organizations or government agencies.	OPEGA Interpretation	Sales of tangible personal property to contractors for incorporation in real property for sale to any sales tax exempt organization or government agency.	§1760.61
31	2.107	Sales & Use	Refund	Refund of Sales Tax on Purchases of Parts and Supplies for Windjammers	<b>Direct</b> - Windjammer cruise businesses <b>Other</b> - Tourists and tourism industry	<b>Intent</b> - To support a specific type of business (windjammers offering overnight passenger cruises) with historical significance and an important role in the State's economy, and to attract visitors.	Legislative History (Legislator Testimony)	Refund of sales tax paid on purchases of parts and supplies for use for operation, repair or maintenance of a windjammer providing commercial cruises.	§2020
32	2.126	Service Provider	Exemption	Basic Cable & Satellite Television Service	<b>Direct</b> - Providers of basic cable and satellite television service <b>Other</b> - Consumers of basic cable and satellite television service	<b>Intent / Goal</b> - Unknown	None Identified	Sale of the minimum service that can be purchased from a cable or satellite television supplier.	§2551.2
33	2.127	Service Provider	Exemption	Certain Telecommunications Services	<b>Direct</b> - Providers of interstate and international telecommunications services <b>Other</b> - Consumers of interstate and international telecommunications services	<b>Intent / Goal</b> - Unknown	None Identified	Sales of interstate and international telecommunications services.	§2557.33 §2557.34
34	2.136	Other	Exemption	Partial Cigarette Stamp Tax Exemption for Licensed Distributors	<b>Direct</b> - Cigarette distributors <b>Other</b> - State (receives assistance in administering the tax)	<b>Intent</b> - To facilitate enforcement and implementation of the cigarette tax. <b>Goal</b> - To offset the cost to cigarette distributors of affixing stamps to cigarette packages.	Legislative History (Legislative Record)	Allows licensed cigarette distributors to purchase cigarette stamps with a face value of \$2 at a discount of 1.15%. (General Fund)	§4366-A.2
35	2.039 2.040	Sales & Use	Exemption	Air & Water Pollution Control Facilities**	<b>Direct</b> - Purchasers of air and water pollution control facilities and related materials and equipment	<b>Goal</b> - To encourage investment in air and water pollution control facilities; to facilitate compliance with environmental regulations.	OPEGA Interpretation	Sales of certified air and water pollution control facilities and parts or accessories, construction materials, and chemicals or supplies of these facilities.	§1760.29 §1760.30
36	NA	Service Provider	Exemption	Construction Contracts with Exempt Organizations: Sales of Fabrication Service*	<b>Direct</b> - Contractors working for exempt organizations <b>Other</b> - Sales tax exempt organizations or government agencies	<b>Goal</b> - Public policy goal not to tax non-profit organizations or government agencies.	OPEGA Interpretation	Sales of fabrication services to contractors for incorporation in real property for sale to any sales tax exempt organization or government agency.	§2557.31

\*Propose removing from (A) Full Evaluation. \*\*Combines previously separate items.

^OPEGA Interpretation was formulated when intent was not found explicitly in statute or initial research.

## Full Evaluation Tax Expenditures Intent, Goals, and Beneficiaries

Prepared by the Office of Program Evaluation and Government Accountability

Count	Red Book #	Tax Type	Expenditure Type	Expenditure Program Name	Direct Recipient / Other Beneficiaries	Intent / Goals	Source - Intent / Goals^	Brief Description	Statutory Cite: Title 36
37	NA (new)	Property	Credit	Property Tax Fairness Credit	<b>Direct</b> - Seniors and low-income Maine residents	<b>Intent</b> - To provide property tax relief to seniors and low-income Maine residents.	Legislative History (Bill Summary)	Property tax credit for Maine residents based on a formula, not to exceed \$600 for those under 65 years of age, or \$900 for those over 65, with income limitations.	\$5219-KK
38	1.038 2.090 2.091	Sales & Use Income	Credit, Exemption, Reimbursement	Pine Tree Development Zones - Income Tax Credit, Sales Tax Exemption (Electricity & Tangible Personal Property), and Sales & Use Tax Reimbursement (Certain Tangible Personal Property)**	<b>Direct</b> - Businesses in Pine Tree Development Zones that add new qualifying jobs in certain industries <b>Other</b> - Workers and job seekers	<b>Intent</b> - To encourage development in economically distressed areas of the State 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. <b>Goal</b> - To provide new qualifying employment opportunities in certain industries in economically distressed areas.	Statute	Reimbursement of certain sales & use taxes; exemption from certain sales taxes; and credits for business income tax, with limitations.	\$2016 \$1760.87 \$5219-W
39	2.095	Sales & Use	Exemption	Sales of Certain Qualified Snowmobile Trail Grooming Equipment*	<b>Direct</b> - Nonprofit Snowmobile clubs	<b>Goal</b> - To encourage maintenance of Maine's snowmobile trails, and to support and encourage nonprofit organizations to do so.	OPEGA Interpretation	Sales of snowmobile trail grooming equipment to incorporated nonprofit snowmobile clubs.	\$1760.9

\*Propose removing from (A) Full Evaluation. \*\*Combines previously separate items.

^OPEGA Interpretation was formulated when intent was not found explicitly in statute or initial research.