



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

MEMBERS:

SEN. PAUL T. DAVIS, SR.
SEN. LISA KEIM
SEN. NATHAN LIBBY
SEN. LINDA SANBORN
SEN. JEFFREY TIMBERLAKE
REP. KATHLEEN R.J. DILLINGHAM
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARGARET O'NEIL

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY
February 8, 2019
Accepted March 8, 2019**

Call to Order

The Chair, Sen. Chenette, called the Government Oversight Committee to order at 9:05 a.m. in the Burton Cross Building.

Attendance

Senators: Sen. Chenette, Sen. Davis, Sen. Libby, Sen. Sanborn and Sen. Timberlake
Absent: Sen. Keim

Representatives: Rep. Mastraccio, Rep. Arata and Rep. Millett
Joining the meeting in progress: Rep. Dillingham and Rep. O'Neil

Legislative Officers and Staff: Danielle Fox, Director of OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Joel Lee, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Legislators: Rep. Stephen Stanley, member of the Taxation Committee

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

Summary of the January 18, 2019 GOC Meeting

The Meeting Summary of January 18, 2019 was accepted as written.

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Augusta, Maine 04333-0082
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Unfinished Business

Vote on Committee Rules of Procedure

Motion: That the Government Oversight Committee members approved the Committee's Rules of Procedure as amended. (Motion by Rep. Mastraccio, second by Sen. Libby, motion passed by unanimous vote 11-0) (Rep. Dillingham voted on the motion when she arrived at the meeting in accordance with Committee Rules and Sen. Keim voted on the motion in the allowed time frame in accordance with the GOC's rules.)

New Business

• Brief overview of tax expenditure review process

Director Fox said there are statutory provisions that prescribe the Tax Expenditure Review Process and referred the Committee to the tax expenditure flow chart in their notebooks that represent those provisions. The statute directs OPEGA's work and the roles of the GOC and the Taxation Committee with regard to the tax expenditure review process.

Director Fox summarized the flow chart. (A copy is attached to the meeting summary.)

Sen. Chenette asked if the Taxation Committee will be able to report out a bill as an after deadline request regarding the ETIF Report. Director Fox said there may be some question about whether they could submit a bill this session or next session based on the schedule, but there are other ways in which the Taxation Committee could report out legislation if it wanted to in receipt of OPEGA's ETIF report. There is always the ability to get a joint order to report out a bill. The GOC could consult with the Taxation Committee regarding reporting out legislation because the GOC has the ability to report out a bill at any time based on a report they receive.

• OPEGA Report on Employment Tax Increment Financing

Director Fox noted that there were questions by the GOC regarding the ETIF report from their last meeting when the report was presented. She referred the Committee to the memo in their notebooks regarding those questions. (A copy is attached to the Meeting Summary.)

- Public Comment Period

Sen. Chenette said the purpose of today's GOC meeting is to receive comment from the public regarding OPEGA's final report on the Employment Tax Increment Financing.

Rep. Stanley thought the ETIF report was lacking in a few areas. There are two different scenarios being used. On the unemployment side, labor market areas are used and on the wages, the county is used. Maine is a state that has economic disparity from one part to another part of the State. The ETIF program was created to help some of the areas with high unemployment, similar to the Pine Tree Development Zone (PTDZ) program. The intent of the program was to help the areas that needed the help so that jobs could be created in rural areas. The unemployment rate, labor market areas, and the county were used determining benefits. He is from Millinocket and said the labor market wages in Bangor would be different despite being in the same county. His intention has always been to help the rural areas to develop and this is a hindrance on allowing that to happen. What he is against is some business won't locate in a rural area if they have to pay the wages based on those paid in Bangor. The intent of ETIF was to provide pension, health insurance and wages, but thinks the State should have gone with labor market areas on how the wages are determined instead of going to an area that has higher wages and include the whole State for required wages. It is time to compare apples-to-apples and not apples-to-oranges because the rural areas need help with attracting and keeping businesses. Rep. Stanley said he has nothing against the southern part of the State, but the problem is businesses are going

south and having a drastic effect on what businesses are coming north. Until you address the problems we have, then the disparity is just going to keep on going. Legislators need to know what percentage a business is receiving for ETIF benefits, is it 30%, 50%, 75% or 80%? Legislators need that information so they can make rational decisions about tax incentive programs. ETIF is a good program, but the reason the program was created was to target high unemployment areas.

Rep. Stanley was not against OPEGA's ETIF report, the report was fairly good. He wanted to point out that the Legislature has to take a harder look at what businesses are receiving for tax incentive program funds. (Rep. Stanley did not provide a written copy of his testimony.)

Rep. Mastraccio noted that the ETIF report would be going to the Taxation Committee and then that Committee will be able to discuss it. She said OPEGA's report is reporting what has happened with ETIF, where it is applied, where it is used, how it is used and issues regarding should the program continue in the same way. Those are legitimate questions and she thinks those concerns will be able to be addressed at the Taxation Committee.

Geoff Baur, Vice President of Tax, IDEXX Laboratories, Inc. (A copy of Mr. Baur's written testimony is attached to the meeting summary.)

Sen. Chenette noted that several times in Mr. Baur's testimony he said the intent of the 128th Legislature was for a business to be eligible for both the ETIF and MBHE programs. He noted that he served on the Taxation Committee when the MBHE tax program was discussed, but he did not remember any conversations that the intent of the legislation was to allow participation in both of those programs. In fact, he stated that he remembered distinctly that the goal was not to allow participation in both ETIF and MBHE programs. He asked Mr. Baur where he got that perception. Mr. Baur said they had several discussions about it with individual legislators and the OPEGA report specifically talked about participation in both programs. He did not recall all of the testimony, but he thought there might have been testimony given on it. There was discussion about it in contrast to the Shipbuilders' Credit which was being discussed at the same time.

Rep. Millett followed up on Sen. Chenette's questions and wondered if any other members who were part of the Taxation Committee, staff or OPEGA, could clarify their recollection of that intent from the 128th Legislature. Sen. Chenette said the Committee can try to get that information for the next work session.

Rep. Stanley did not remember any discussion regarding the joint qualification under both ETIF and MBHE programs at meetings of the 128th Taxation Committee.

Rep. Mastraccio said OPEGA's MBHE report came out in February, 2018 and was trying to remember if there was any action taken by the Taxation Committee. She reminded Mr. Baur that OPEGA's ETIF report would be further discussed at the Taxation Committee.

Dwight Hines from Livermore. Mr. Hines said he likes the work of the GOC and OPEGA. He thinks the Legislature should be creative in their work, but do not know how tax incentives programs are going to work and is why the reviews of them are needed. He did note that there are a couple of problems. One is that donations made to a legislator sometimes affects how the legislator votes for incentive programs. He is not sure if that is true for Maine, but there is a correlation to it. The second is that the money may have been spent in better places, such as on Education or in the Judiciary Branch who is in need of more funds. (Mr. Hines did not provide a written copy of his testimony.)

Andrea Cianchette Maker, Attorney, Pierce, Atwood. She said Pierce Atwood worked closely with IDEXX and the Taxation Committee when MBHE was enacted. She listened carefully during the Taxation Committee's public hearings and work session on MBHE and has requested the records for those meetings. She did not think that they were going to find that there was a public discussion of whether or not ETIF should also apply to a company that would be benefiting from the MBHE program. She does not think that was a public conversation, but that Mr. Baur, Jon Block, an attorney at her firm, and others may have had

conversations in the hallways about it. They were left at the end of that session knowing there would be an OPEGA review occurring and there was legislation, LD 1903, as a result of OPEGA's report of best practices. She was excited to work on the MBHE bill with the Legislature because the PEW Foundation had come forward, the GOC had started the review of the incentive programs and everyone was trying to learn what the best practices in these programs were. Rep. Tipping worked closely with Ms. Makers' partners, Ann Robison and John Block, in drafting the MBHE legislation. Under the bill you have to employ at least 80 additional employees in a year to get the credit for that year after the performance has happened. If the employment drops there is a claw back and they would have to pay the State back because they didn't hold on to the employment as required under the credit program. Those were the best practices they were looking at in the original bill and then as the result of the OPEGA study there were more changes made, but she was not as familiar with those. She said there was a thorough review process and in the absence of a conversation that ETIF would not apply, the assumption is, and the law is, that it does.

Ms. Maker said when the IDEXX Board was making the decision on whether to invest in the expansion in Maine they were running the financing of the projects with the current law, which is that they would receive the MBHE and ETIF benefits. At the time the State creates programs like ETIF and companies operate under that incentive program with the laws as written and then to have a State change the law and remove the business' ability to take access to it, she thinks would not be a best practice of the State in running its tax incentive programs and would ask the Committee to consider that.

The other thing Ms. Maker wanted to say in terms of the Shipbuilder's credit is that it was clear in the original Shipbuilder's Facility credit that ETIF would not apply. They could receive one, but not the other. The Legislature contemplated that in the original bill and subsequent to doing the ETIF program, the Legislature revised and re-enacted the Shipbuilder's tax credit under Bath Iron Works. The Shipbuilder's Facility program was designed, in part, to maintain employment, not necessarily to grow employment at BIW. That Company has different objectives than IDEXX who clearly is looking to grow and expand its business. Ms. Maker thinks because the Legislature has been thoughtful about that in other legislation, she would look at that as an example of knowing when not to allow it or to allow it. She said they assumed the law was what it was and that was the basis IDEXX made its decision on. (Ms. Maker did not provide a written copy of her testimony.)

Sen. Chenette said Ms. Maker mentioned several times that the intent, or assumption of the ETIF program applying with MBHE, was based on conversations in the hallways and said knowing which legislators were talked to about the program would be helpful. He knows she is getting the transcripts for the Taxation Committee meetings, but it would also be helpful, to understand, because his recollection is different than some folks who have testified at today's meeting. He wanted to make it clear that he knows he has never had conversation with the folks Ms. Maker mentioned earlier and said such discussions need to be held in the public light.

The Committee thanked those who testified on OPEGA's ETIF report.

The Chair, Sen. Chenette, closed the public comment period at 9:49 a.m.

- **Committee Work Session**

Director Fox noted that the GOC had questions regarding the ETIF report at their last meeting. She referred the Committee to the memo in their notebooks prepared in response to those questions. The GOC also received at today's meeting the information they requested from the Department of Economic and Community Development (DECD) at the last meeting and DECD's response to OPEGA's ETIF report recommendations. She thought the Committee may want to have the opportunity to review that information for discussion at a future meeting.

Director Fox said OPEGA would be happy to provide clarification of public comment references to the MBHE report in terms of what OPEGA was tasked to do. To be clear, it was not a full review similar to

ETIF. There were specific parameters of what they were supposed to be looking at in their review of MBHE and the quote that was referred to earlier came from what OPEGA was tasked to look at, which was the overall impact of the program on the tax base that that program would have. Individually, OPEGA could not say what the MBHE impact would be because a business could potentially be taking advantage of other tax programs. OPEGA can bring back to the GOC the parameters of the MBHE if that would be helpful.

Rep. Mastraccio asked if the Director could provide the Chaptered law resulting from OPEGA's report along with the original statute stating what OPEGA will do. If the GOC could have that information for their work session on the report that would be helpful because she anticipates that the GOC will be sending the ETIF report to the Taxation Committee. Director Fox wanted to make sure that it is clear that OPEGA was not saying this is what they would qualify for. OPEGA was looking at the impact of MBHE and said impacts can be affected by the MBHE, as well as other programs a business may take advantage of. OPEGA was not saying they should intersect, or will intersect, we were trying to say when we look at what the impacts are from this program, they could also be impacted by the use of other programs that may be available to businesses.

Rep. Mastraccio said in the absence of a long range strategy plan for economic development, the Legislature looks at the programs in a silo and don't understand, as legislators, that there are so many other programs that businesses are able to take advantage of. Rep. Stanley talked about rural Maine earlier and what the original intent of the program is part of what is being done in evaluating tax programs. What is the original intent and is the program doing that. She said that it is important information for the Legislature to have. Director Fox said although ETIF does not speak specifically to the rural aspect, they do talk about what the State's objectives were and also there are elements in the ETIF law that want to target high unemployment areas, although that is not stated in the purpose and objectives. She agreed with Rep. Mastraccio and those issues will be looked at in the future.

- **Committee Vote on the Employment Tax Increment Financing Report**

Rep. Arata asked for clarification regarding an endorsement by the GOC of an OPEGA report and if it meant that the Committee accepted OPEGA's work. It does not mean that the Committee agrees with the results necessarily. Director Fox said Committee endorsement of the report is that the GOC believes OPEGA looked at all the parameters that were set out by the GOC and if they were appropriately and accurately reported and that the report seems objective and thorough.

Motion: That the Government Oversight Committee endorse OPEGA's Report on Employment Tax Increment Financing in full. (Motion by Rep. Mastraccio, second by Sen. Libby, motion passed by unanimous vote of 11-0.) (Sen. Keim voted on the motion in the allowed time frame in accordance with the GOC's rules.)

Sen. Chenette said that at the February 22, 2019 GOC meeting the Committee will have a work session on the ETIF report and how they want to frame it for the Taxation Committee. Director Fox said the GOC can decide if there are any recommendations, priorities or other matters they want to point out to the Taxation Committee when they do the report. Sen. Chenette said that would be a letter sent to the Taxation Committee from the GOC highlighting what the GOC decides is important for the Taxation Committee to evaluate and take action on. He thought it would be helpful for the work session to have Committee members think about what action to take on the legislative recommendations in the report.

Report From Director

Status of projects in process

Director Fox said OPEGA is planning to present at the February 22nd meeting their information brief on the Perspectives of Frontline Workers in the Child Protection System. If OPEGA's Annual Report is ready to present that will also be presented on the 22nd. OPEGA is wrapping up the preliminary research phase on the

ReEmployME System review and may provide the GOC with an interim memo on it before providing the project direction statement in the event the Committee needs some idea of where OPEGA is when deciding on their biennial Work Plan at a future meeting.

Director Fox referred the Committee to two memos in their notebooks for future discussion and information. One of the things required in statute, separate from the statute that governs OPEGA and the GOC, is a report on Pine Tree Development Zone Evaluation (Part II) that is required in the legislation that came after OPEGA's PTDZ report was presented. The memo talks about when that report is due and what data OPEGA will have in order to do the report. She wanted to point that out to the Committee for possible future discussion in terms of whether they think OPEGA should go forward, as planned, with that work as is directed in statute considering there will not be a lot of data to review. The Committee can talk about it at a future meeting, but she wanted them to have the information for future reference as they begin to decide OPEGA's work over the biennium.

Director Fox updated the Committee on the space needs of OPEGA. Prior to her being appointed Director of OPEGA there had been discussions about the need for more space. She said the reasons for the request for more space are outlined in her memo. Rep. Mastraccio noted that OPEGA's space needs is an ongoing problem and Sen. Katz and her, as the Chairs of the 128th GOC, communicated that need to the Legislative Council. Director Fox noted that she has had a meeting with the Bureau of Real Estate Management and they are aware of OPEGA's needs. Sen. Libby suggested that Director Fox arrange with Grant Pennoyer, Executive Director of the Legislative Council, a tour of OPEGA's Office space for the Legislative Council members so they can see firsthand the need for more space.

Rep. Millett asked if the Director has had any feedback from her meeting with the Bureau of Real Estate Management. Director Fox said the Bureau was just looking at that point what OPEGA's needs are. She did provide them with some follow-up information, but she has not heard back from them as of yet. Sen. Chenette said the GOC does plan on sending a letter to the Legislative Council regarding OPEGA's space needs.

Next GOC meeting date

The next GOC meeting is scheduled for Friday, February 22, 2019 at 9:00 a.m. The agenda for the meeting will include the presentation of the information brief on Frontline Child Protective Workers, the continued work session on the ETIF report, if available OPEGA will be presenting their Annual Report, and will talk about future GOC meetings and planning meetings that includes discussion of the expedited tax reviews.

Rep. Mastraccio noted that Rep. DeChant resigned from the Legislature effective as of January 31st and she has been assured by the Speaker that her replacement on the GOC will be appointed very soon.

Adjourn

The Chair, Sen. Chenette, adjourned the meeting at 10:08 a.m. on the motion of Sen. Davis, second by Rep. Dillingham, unanimous.

Tax Expenditure Review Process In Brief — Prepared by OPEGA for GOC February 2019

Universe of tax expenditures defined and categorized
 OPEGA maintains spreadsheet – using MRS report as primary source. GOC approves categorization of new programs.

Review Category A

Full review.
 Intended as incentive for specific behaviors. Goals are identified and measurable

Review Category B

Expedited review.
 Broad policy goals not reasonable to measure (every 6 years by group)

Category C

No review.
 Under \$50,000 or otherwise does not warrant review

Updated by OPEGA annually, includes rationale or objective of expenditure and the cost (and other information)

No further action for Category C

Proposed Review Schedule

Categories A and B prioritized and sorted by rationale grouping

Approved annually by GOC after consultation with TAX Committee

Approved Schedule for Full and Expedited Reviews

Drives what OPEGA works on, and informs agencies and stakeholders of what is up for review (schedule of reviews based on priority as determined by GOC)

Full Reviews – Category A

- >OPEGA prepares review parameters
 - >GOC approves parameters after public comment and consultation with TAX
 - >OPEGA conducts full evaluation based on approved parameters and produces final report for presentation to GOC
 - >Full report presented to GOC – Public comment received
 - >GOC votes whether or not to endorse the report (whole, in part, or not)
 - >Report, record of GOC vote, public comment and any GOC recommendations reported to TAX
-
- >TAX reports its actions resulting from review to Legislature by December 1
 - >TAX authorized to submit a bill to next legislative session

Expedited Reviews – Category B

- OPEGA compiles information by July 1 which summarizes data as prescribed by Title 3 §1000(2) – how distributed, beneficiaries, legislative history, fiscal impact
-
- >TAX conducts the expedited reviews
 - >TAX submits a report to the Legislature by December 1 each year regarding the continued relevance and potential need for adjustments to the expenditures subject to expedited review
 - >TAX authorized to submit a bill to next legislative session.



DANIELLE D. FOX
DIRECTOR

MAINE STATE LEGISLATURE
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

February 6, 2019

To: Senator Justin M. Chenette and Representative Anne Marie Mastraccio, Chairs
Members, Government Oversight Committee

From: Danielle Fox, Director *DF*

RE: Information Requests, ETIF

Several questions were raised by Committee members during and following the January 25th presentation of OPEGA's final report on ETIF. Below, please find the responses we are able to provide as of today.

1. Under ETIF, must health insurance be provided and paid for by the employer in order for the employee to be qualified, or is the offer of the benefit sufficient? Is the benefit affordable?

According to Title 36, §6753 **qualified employee** means “a new, full-time employee hired in this State by a qualified business, for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Chapter 18 and group health insurance are provided,”

DECD rules also include this definition of qualified employee (Chapter 400, Section 1(B)). DECD rules further provide that in order to be certified, ETIF businesses have to attest that qualified employees are offered participation in a group health insurance program. These rules also state that, in order to be included in the calculation of the employee's minimum compensation threshold, such health benefits must be company-paid.

Taken together, it appears that DECD allows for an employee to be qualified if the employer offers enrollment in a group health insurance program – but will only count the value of the benefit in the calculation of compensation for that employee if it is received by the employee and paid for by the employer.

Affordability of the benefit is not defined, and OPEGA has no data to provide in response to this question.

2. Please provide further explanation of how a business would meet the retail qualification criteria? Are there ETIF businesses in the category?

According to Title 36, §6753(11)(B), a business engaged in retail operations may be qualified under ETIF when less than 50% of its total annual revenues from Maine-based operations are derived from sales taxable in this State. The term “retail operations” refers to sales of consumer goods for household use to consumers who personally visit the business location to purchase the goods.

Hypothetically, this could mean businesses which do a majority of their business via catalog or the internet.

Because OPEGA has agreed to treat ETIF data as confidential taxpayer information (including business names), we are unable to share whether any retail businesses participate in ETIF.

3. What is the entity in North Carolina which conducts the in-depth, up-front analysis on business projects to determine qualification for funding under the Job Development Investment Grants program?

North Carolina Law established the Economic Investment Committee which is responsible for assessing applications into the program and selecting recipients. The five-member committee is made up of the Secretary of Commerce, Secretary of Revenue, the State Budget Director and appointees of the House Speaker and Senate President (pro-tem). They are supported by staff of the NC Dept. of Commerce. Meetings of the Commission are open to the public.

4. Do any states have a single database for all of their economic development programs?

Iowa is best known for its comprehensive database. It's possible that there are other states which have them as well. A 2018 PEW report – *How States Can Gather Better Data for Evaluating Tax Incentives* – may provide helpful information. Copies of this brief are available for distribution today and may also be accessed online:

https://www.pewtrusts.org/-/media/assets/2018/06/how-states-gather-data-tax-incentives_brief.pdf

5. Why are nonprofits excluded as a qualifying ETIF business (as they hire new employees)?

OPEGA does not have information on why the decision was made to include only for-profit businesses as qualifying under ETIF. The purpose statement in statute does not refer to non-profits but does say ETIF was established “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.” There may have been some consideration of the exemptions afforded to non-profits and whether or not those exemptions would be consistent with this purpose.

6. With regard to ETIF's impact on the state and local tax base, 44% of which is due to expected increases in local property taxes, how might municipal TIFs affect this impact? See page 29 of report.

OPEGA does not have data about the percent of ETIF-associated local property tax revenue that may be connected to a municipal TIF.

Although they may not be deposited as revenue into a municipal general fund, municipalities do collect property taxes (within the TIF district) under a TIF. Municipalities define the TIF district and determine how much of the new property taxes collected will fund the designated public or private purpose (returning taxes to business for modernization project, funding local improvements as examples). Thus, they are not foregoing the revenue but have established a dedicated purpose for which it will be expended.

7. Can the attribution factor be applied to say that ETIF accounts for 13.1% of a business's decision-making factors?

OPEGA believes it's important to state again that the 13.1% attribution rate is a reasonable maximum – not the only reasonable attribution point. Mathematically, the attribution factor could be accurately described to apply to decision-making factors.

8. **Has DECD submitted the report as required by PL 2019, c. 440 (LD 1654) which directed the department to study whether income requirements for PTDZ employees should be amended to better describe “high-quality jobs” and whether geographical limitations under PTDZ should be amended.**

Yes. Copies are available for distribution at this meeting.

Questions specific to the content of the report pending response:

- **What percentage of the 1295 unique jobs created between 2011 and 2016 were “retained jobs” rather than “net, new jobs?” (See page 34 of report).**

A response to this question requires a finer level of detail than we have reported to date. We are conferring with MRS with regard to providing a response that complies with their standard for protecting confidential taxpayer information (Title 36 §191).

- **Are members of the public able to access (or request) aggregate information contained within the Advantage vendor payment system, via “open checkbook?”**

Pending response from MRS/DECD.



How States Can Gather Better Data for Evaluating Tax Incentives

Solutions for compiling and analyzing information on key economic development programs

Overview

Over the past five years, many state governments have begun to study their economic development tax incentives—programs that are central to creating jobs, attracting businesses, and strengthening the economy. Today, 28 states have processes in place to regularly evaluate tax incentives, such as credits, exemptions, and deductions, as do Philadelphia, New York City, and the District of Columbia. And many states are reforming incentives based on the findings of those assessments, leading to better results for their budgets and economies.

But states have also faced obstacles to implementing evaluation processes. The personnel tasked with studying incentives—such as auditors, economists, and tax policy experts—report that many of their foremost challenges relate to the availability and usability of data that are spread across multiple agencies, sensitive or confidential, or incomplete. In some cases, these difficulties have prevented analysts from determining the effectiveness of tax incentives, leaving lawmakers without the information they need to make informed decisions.

These barriers are not insurmountable, however. To identify solutions, The Pew Charitable Trusts reviewed tax incentive studies and other documents and interviewed staff from evaluation offices across the country. This research shows that lawmakers, agency leaders, and analysts each have a role to play to ensure that evaluations draw valuable conclusions about the design and effectiveness of incentives. States can overcome their data challenges by:

- **Ensuring access to existing data.** Several states have enacted policies allowing analysts to access sensitive data while protecting confidentiality and are working to ensure that evaluation offices receive data in a format that facilitates high-quality studies.
- **Collecting new information.** Companies are often obliged to report on their activities as a condition of receiving incentives, but these data have not always proved useful for evaluation. Recently, states have begun crafting business reporting requirements to facilitate analyses.
- **Conducting high-quality analysis.** By using analytic approaches that require limited amounts of data, such as reviewing evaluations of similar incentives in other jurisdictions and considering best practices for designing incentives, analysts are proving that they can draw well-supported conclusions even without perfect information. When robust data are available, these qualitative approaches provide a useful complement to quantitative analyses.

As states expand their use of these strategies, evaluation offices are receiving more data to examine tax incentives and making better use of the information they have. And by doing so, they are demonstrating that even formidable data challenges do not need to stand in the way of high-quality analysis of tax incentives.

Ensure access to existing data

States already possess much of the data they need to evaluate incentives effectively, but it is often spread across multiple agencies and subject to confidentiality restrictions. To overcome these challenges and facilitate high-quality evaluation, states are using three approaches:

- Authorizing evaluation offices to access relevant data.
- Creating targeted exemptions from confidentiality rules.
- Directing agencies to improve the usability of data.

Authorize evaluation offices to access relevant data

Much of the data that are most useful for evaluating tax incentives also are either sensitive or confidential. For example, tax returns include information about companies' activities and incentive use, and unemployment insurance records are valuable for analyzing job creation. But the state agencies that house these data sources are typically reluctant to share them because both are generally protected under state and federal law.¹

To help address this challenge, the statutes that create evaluation processes generally include provisions to allow analysts to access needed data from other state agencies. In some states, these stipulations have been sufficient. For instance, Indiana's evaluation office, the Legislative Services Agency, has benefited from a statute mandating that other agencies cooperate with its work and from strong relationships with the state departments of Revenue and Workforce Development and the Indiana Economic Development Corp.²

State agencies often sign memorandums of understanding that establish the terms by which data will be shared. Such interagency agreements generally require analysts to adhere to the same confidentiality standards as the agency that houses the records. In most cases, evaluation offices only need access to these data to analyze an incentive program's performance and would not have cause to publish sensitive company-specific information.

In addition to granting evaluators access to data in general terms, lawmakers should monitor whether further legislative action is necessary to expand on those permissions. After Nebraska passed a law in 2015 requiring the Legislative Audit Office to regularly evaluate tax incentives, the auditors struggled to persuade the Department of Revenue that they were legally entitled to directly access the department's tax database.³ To resolve this disagreement, the Legislature in 2016 clarified that the auditors are permitted to access the database.⁴

By allowing evaluation offices to access existing records, states can avoid asking businesses to report the same information multiple times. Under Washington H.B. 1296, which was approved in 2017, companies are exempt from other reporting requirements if they authorize staff members from the Joint Legislative Audit and Review Committee, the state's evaluation office, to access unemployment insurance records. State lawmakers intended H.B. 1296 to provide more reliable information for counting jobs, while eliminating the need for businesses to file multiple reports on the jobs they created and wages they paid.⁵

In addition to granting evaluators access to data in general terms, lawmakers should monitor whether further legislative action is necessary to expand on those permissions.

Create targeted exemptions from confidentiality rules

When states allow evaluation offices to access sensitive data, they usually require analysts to maintain the confidentiality of the information. However, they also have the option of exempting specific data related to an incentive from confidentiality restrictions to allow public transparency.

When Maine created a new tax incentive to encourage businesses to locate their headquarters in the state, it made the cost of the credits used by each participating company a matter of public record.⁶ Lawmakers viewed this disclosure as a reasonable trade-off for the substantial benefits that businesses would realize from the program—up to \$16 million per project.⁷

Some states have worked to find a middle ground between protecting sensitive business information and allowing public disclosure. After a 2015 North Dakota law required regular evaluations for incentive programs, the early reviews faced data challenges. One problem was that the Office of State Tax Commissioner interpreted state law as forbidding disclosure of the cost of any tax incentive with fewer than five recipients, and several credits up for review in 2016 met this criterion. This policy even prevented legislators—who are responsible for weighing the merits of credits and balancing the state budget—from knowing how much the programs cost.⁸ In response, the Legislature approved a bill in 2017 that allows the commissioner to disclose the “amount of any tax deduction or credit.” In making the change, however, lawmakers explicitly preserved other confidentiality rules, including the prohibition against disclosing the names of companies in connection to the amount of incentives used.⁹

Direct agencies to improve the usability of data

Various agencies—including tax, commerce, and workforce departments—often collect data on incentive programs and their beneficiaries as a part of their day-to-day administrative responsibilities. Evaluation offices sometimes struggle to produce high-quality evaluations with this information, however, because it is not in a format that is conducive for analysis. Overcoming these challenges often involves a mix of technological solutions and interagency coordination.¹⁰

When analysts in the District of Columbia’s Office of the Chief Financial Officer requested tax data as part of their ongoing evaluation work, they found that some relevant information was only available on paper forms. The city had chosen not to capture the data electronically to avoid paying a third-party vendor. But even when the analysts examined the forms, they found that companies had not always filled them out completely.¹¹

In part to address this problem, in 2017 the city began requiring that the forms be submitted online. This change will ensure that, going forward, all the data are available electronically and will allow the city to automatically reject forms with missing information. The district’s evaluators are also working with tax officials to add additional fields to capture more data.¹²

In Iowa, the Department of Revenue, which conducts incentive program evaluations, has overseen the creation of a database of awards and claims that includes information from four state agencies and authorities. The system allows the department to track which companies receive credits and when they apply the credits to their taxes. This information is helpful not only for evaluating credits, but also for other revenue department responsibilities, such as forecasting the cost of the programs.¹³

Collect new information

Policymakers and evaluation offices can collect new data specifically for use in evaluating incentives. Key strategies for doing so include:

- Designing business reporting requirements with evaluation in mind.
- Surveying companies.
- Focusing on a subset of beneficiaries.

Design business reporting requirements with evaluation in mind

To increase transparency, many states routinely require businesses that receive incentives to report job-creation and capital investment figures as well as other performance data. However, many of those requirements were enacted before evaluation processes were in place and, as a result, are not tailored to analysts’ needs. Lawmakers should work with evaluation offices to design requirements that provide useful information for analysts and avoid unnecessarily burdening businesses.

In Washington, lawmakers bolstered the reporting requirements for the state’s film incentive program after a 2010 Joint Legislative Audit and Review Committee (JLARC) study pointed out weaknesses in the available information.¹⁴ Using the resulting detailed data on films’ budgets and spending, JLARC produced a high-quality evaluation of the program in 2015.¹⁵ In addition, H.B. 1296 of 2017 gave the committee the authority to help design reporting requirements, so committee staff members are working with the departments of Revenue and Employment Security to improve the information that businesses report.¹⁶

In addition to upgrading reporting for existing tax incentives, states can ensure that new programs launch with appropriate requirements. When the Maine Legislature created an incentive in 2017 to encourage businesses to locate their headquarters in the state, they worked with the staff of the Legislature's Office of Program Evaluation and Government Accountability (OPEGA) to ensure the program had well-designed reporting requirements.¹⁷ Legislators also tasked OPEGA with conducting a preliminary study to provide guidance on the program's design and assess whether requiring businesses to submit additional data would be helpful for measuring its effectiveness. OPEGA's report included a list of potential performance measures for the program and a description of the data that would be needed to use those measures.¹⁸ Based on this study, the Legislature in April 2018 approved a bill enhancing reporting requirements for the program before the first credits were issued.¹⁹

Lawmakers should work with evaluation offices to design requirements that provide useful information for analysts and avoid unnecessarily burdening businesses.

Survey companies

Analysts occasionally survey companies to collect specific information for their evaluations, but this approach has potential drawbacks. Unlike routine reporting, this technique does not generally offer longitudinal data and can suffer from low response rates, though some evaluation offices have done it successfully to inform conclusions about the results of incentives.

Business surveys can be particularly useful for determining whether state agencies are administering incentive programs effectively and identifying ways to reduce barriers to company participation. For example, a 2017 evaluation of Minnesota's Research Tax Credit suggested that the state's Department of Revenue enhance the information it provides about the credit to make it easier for companies to determine the value of the credits they are eligible for and to substantiate their claims if they are audited. These findings were based partially on a survey of nearly 500 program participants and on interviews with individual companies.²⁰

Because businesses benefiting from incentives have a vested interest in the continuation of the programs, analysts should use care when designing surveys and interpreting the findings. Simply asking businesses whether incentives made a difference in their decisions to locate or expand may not yield reliable results. However, states have found creative ways to use surveys to assess whether programs are influencing business behavior. For instance, Florida's Office of Program Policy Analysis and Government Accountability has surveyed incentive recipients for each of its annual evaluations dating back to 2014, and when asked directly, respondents have generally said that incentives are important to their decisions. But other questions offer a more nuanced picture of the effects on business behavior: The surveys showed that incentives primarily benefit companies that were in Florida before the awards and that having an established presence was a key factor in a firm's decision to expand within the state.²¹

Focus on a subset of beneficiaries

Most evaluations attempt to analyze data on all companies benefiting from an incentive. However, some states have been able to reduce the need for comprehensive data collection by examining a subset of businesses or projects in-depth instead of all beneficiaries.

For example, the Missouri State Auditor's Office used this approach in 2014 evaluations of the Brownfield Remediation Tax Credit Program and the Historic Preservation Tax Credit. The brownfield evaluation closely examined 10 development projects and found that only one had created the promised number of jobs. The study recommended that state officials add provisions to incentive agreements to reclaim credits if recipients fail to meet their obligations.²² The historic preservation evaluation identified "lavish and expensive" owner-occupied residential projects that had minimal economic impact and were unlikely to be caused by the credit, and it recommended that lawmakers consider tightening the eligibility criteria.²³

Conduct high-quality analysis

High-quality evaluations use a range of methodologies, from detailed economic modeling to more qualitative strategies. Several qualitative approaches do not require rich data and have proved useful when evaluation offices face data challenges, but they are also valuable supplements to rigorous quantitative analysis when good information is available. These strategies include:

- Analyzing whether incentive programs reflect best practices.
- Examining whether programs are designed to achieve their goals.
- Reviewing evaluations of similar programs in other jurisdictions.

Analyze whether incentive programs reflect best practices

Leading scholars have reached a degree of consensus on the characteristics that generally increase the effectiveness of incentive programs. Even without complete data, analysts can study whether incentives reflect these best practices.

In 2016, analysts at Mississippi's University Research Center lacked sufficient data to formally study the costs and benefits of the state's Tourism Rebate Program, but the evaluation still went on to raise concerns about the program based on economic development theory, pointing out, "In general, economic development only occurs when dollars that were previously not here flow into the State."²⁴ Several shopping malls received incentives under the program, and the study noted that many of the customers at retailers that benefited were Mississippi residents and would have spent those dollars at other in-state retailers had the malls not been built. The report concluded that focusing on projects that would draw a greater share of customers from out of state would have a larger impact.²⁵

Examine whether programs are designed to achieve their goals

High-quality evaluations often start by identifying the goals of the programs. They then assess the extent to which those objectives have been achieved. In some cases, the design of the program—such as the terms by which individuals or companies qualify—raises doubts about whether the incentive is serving its purpose.

For example, an evaluation of Iowa’s Beginning Farmer Tax Credit Program pointed out that the program defined “beginning farmers” based on their net worth rather than years of experience like the U.S. Department of Agriculture. As a result, many eligible individuals were not new to agriculture; 74 percent had at least 10 years of experience.²⁶

In some cases, the design of the program—such as the terms by which individuals or companies qualify—raises doubts about whether the incentive is serving its purpose.

Likewise, a 2017 Office of Program Evaluation and Government Accountability evaluation of Maine’s Pine Tree Development Zones found design weaknesses that could prevent the incentive from effectively serving its goal of creating jobs. The study noted that companies can receive incentives for up to two years without creating any jobs and are not required to return the benefits if they fail to boost employment during that period. OPEGA identified this and other design problems without sufficient data to conduct a full economic analysis.²⁷

Review evaluations of similar programs in other jurisdictions

With more states launching evaluation processes in recent years, common types of incentive programs—such as job creation, film, and research and development tax credits and enterprise zones—have been rigorously examined at least a handful of times. Thanks to this growing body of research, analysts can glean insights from high-quality evaluations conducted in other states as a starting point for studies of their own programs.

In some cases, this research can uncover challenges and design concerns. For example, a 2017 evaluation of Alabama’s Certified Capital Companies tax credit identified weaknesses of similar incentives in other states—such as design flaws that caused benefits to be offered to established firms instead of startups as intended—and concluded that the state’s program probably suffered from similar problems.²⁸

But reviewing evaluations from other jurisdictions can also help identify aspects of incentive design that promote success. For instance, a 2017 evaluation from the Maryland Department of Legislative Services found that most research and development tax credits obligate participating companies to increase research spending year over year. However, the study noted that one of Maryland’s two R&D credits provides incentives based on a company’s entire research budget rather than incremental spending increases, and it concluded that, compared with other states’ R&D credits, this aspect of the program probably resulted in more awards for investments firms would have made anyway.²⁹

Conclusion

Across the country, states are proving that data challenges do not have to stand in the way of rigorous tax incentive evaluations. But policymakers and analysts both must play a role in overcoming data barriers. Lawmakers and agency leaders can devise policies that improve evaluation offices’ access to high-quality information. And when data are not perfect, analysts can use a variety of methodological approaches to draw meaningful conclusions about the design and effectiveness of incentives. Through these efforts, states can ensure that they have robust analyses of some of their most important economic development programs.

Endnotes

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For further information, please visit:

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STATE OF MAINE
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JANET T. MILLS
GOVERNOR

HEATHER JOHNSON
ACTING COMMISSIONER

January 15, 2019

Honorable Erin Herbig, Senate Chair
Honorable Matthea Larsen-Daughtry, House Chair
Committee on Innovation, Development, Economic Advancement and Business
100 State House Station
Augusta, Maine 04333

RE: Public Law Chapter 440 (L.D. 1654) "An Act To Protect Economic Competitiveness in Maine by Extending the End Date for Pine Tree Development Zone Benefits and Making Other Changes to the Program.

Dear Senator Herbig, Representative Larsen-Daughtry and members of the Committee:

Public Law Chapter 440, which extended the Pine Tree Development Zone Program until December 31, 2021, charged the Department of Economic and Community Development (DECD) to study and report, by January 15, 2019, the following two items relative to the passage of the above-referenced legislation:

- Whether the income requirements with respect to qualified Pine Tree Development Zone Employees pursuant to the Maine Revised Statutes, title 30-A section 5250-I, subsection 18 should be amended in order to more effectually describe high-quality jobs; and
- Whether geographical limitations under the Pine Tree Development Zone program should be amended in light of the public policy objectives of the program, given the current geographical distribution of qualified Pine Tree Development Zone businesses.

As a result of its findings, DECD was to recommended legislation to the joint standing committee of jurisdiction so the committee may report out a bill in response to the study to the First Regular Session of the 129th Legislature.

Since the passage of LD 1654 in July of 2018, DECD's Tax Incentive Program Division has focused its efforts on putting the appropriate parameters in place to meet all the required changes to the program, effective January 1, 2019. The significant program changes focused primarily on the changes to the qualification and certification process, and the annual reporting process and evaluations for both program participants and DECD.



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These efforts have included monthly meetings with the Office of Information Technology to update the program's database as well as the preparation of a Request for Information that will be issued in January of 2019 with the intent to secure a new departmental database to address various issues outlined in OPEGA's report on the Pine Tree Development Zone Program (PTDZ) and by our legislative oversight committee during the 2018 legislative session.

DECD's Tax Incentives Program Division has also been in communications and met with OPEGA staff relative to their draft report on the evaluation of the Employment Tax Increment Financing (ETIF) Program, which is set to be heard by the Government Oversight Committee on January 24, 2019. DECD has reviewed drafts, including the final draft, and offered feedback and comments relative to this evaluation. We mention this as the significant ETIF benefit available to PTDZ certified companies makes the two programs heavily aligned.

In preparation of the submission of this letter, DECD has also consulted with and obtained information relative to this study from the Department of Labor and Maine Revenue Services, regarding both geographical data and income requirements. As the evaluation and recommendations of the OPEGA ETIF report have not yet been finalized, DECD felt it best to wait for the ETIF evaluation to be finalized before undertaking any significant review of these two areas specific to PTDZ.

Since the passage of LD 1654, DECD has also undertaken draft rulemaking for both the PTDZ and ETIF programs, and expects to finalize those processes during the current legislative session. Rulemaking is necessary to align the PTDZ rules with the enactment of LD 1654, as well as other prior statutory changes, and to address recommendations resulting from OPEGA's PTDZ report and pending ETIF evaluation.

As a result of our PTDZ efforts to date, since the passage of LD1654, DECD is not recommending any legislative changes to the PTDZ program at the present time. We feel that to do so would be cumbersome, and likely confusing to program participants, until the evaluation of the ETIF program is complete and the recommendations resulting from that report are finalized. Once the recommendations of that evaluation are finalized, DECD believes some statutory changes could be needed and could be done for both programs at the same time.

Please contact DECD Tax Incentive Program Director, Andrea Smith, with any questions or concerns you may have regarding this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Denise Garland'.

Denise Garland
Deputy Commissioner