



SEN. NATHAN LIBBY, SENATE CHAIR
REP. GENEVIEVE MCDONALD, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. KATHLEEN R.J. DILLINGHAM
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARGARET O'NEIL
REP. HOLLY STOVER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
May 14, 2021

Call to Order

The Chair, Rep. McDonald, called the electronically conducted Government Oversight Committee to order at 9:02 a.m.

ATTENDANCE

Senators: Sen. Keim, Sen. Bennett, Sen. Deschambault and Sen. Timberlake
Joining the meeting in progress: Sen. Bailey
Absent: Sen. Libby

Representatives: Rep. McDonald, Rep. Arata, Rep. Millett, Rep. O'Neil and Rep. Stover
Absent: Rep. Dillingham

Legislative Officers and Staff: Lucia Nixon, Director, OPEGA
Amy Gagne, Senior Analyst, OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Kari Hojara, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA/Clerk, GOC

Legislators: Sen. Moore and Rep. Bell

Introduction of Committee Members

The members of the Government Oversight Committee introduced themselves.

Summary of April 23, 2021 GOC Meeting

The Summary of the April 23, 2021 Meeting was accepted as written.

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New Business

- **Request for Review of the RFP Process Administered by the Department of Public Safety, Bureau of Highway Safety and associated DAFS Division of Procurement Services policies**

Director Nixon referred the Committee to OPEGA's Review Request Summary and an email from Rep. Bell, who made the request.

Director Nixon said this request was initiated by a constituent of Rep. Bell, whose company responded to an RFP issued by the Department of Public Safety, Bureau of Highway Safety and who was not awarded the contract. The contract was awarded to the incumbent contractor who has been under contract with the Department for a number of years. The requestor contends that the RFP was improperly structured to ensure the incumbent would retain the contract. The requestor appealed the contract award decision to DAFS's Appeal Panel and the Panel invalidated the contract award finding there was fundamental unfairness in the process. The requestor also points out that there was no remedy provided for the time and expense associated with proposal submission and the appeal.

Director Nixon said the RFP process is overseen by the Department of Administration and Financial Services (DAFS) for all Executive Branch agencies under the DAFS Division of Procurement Services. State agencies, such as the Department of Public Safety, who are seeking contracts for goods and services, develops an RFP, which is then reviewed by DAFS's Contract Review Committee prior to the agency issuing the RFP. After issuing the RFP the agency then reviews proposals and makes the award decision. The award decision is also subject to a DAFS's Contract Review Committee approval. There is an appeal process that is administered by DAFS and is available to any person who bids on a contract and is adversely affected by the award decision.

Director Nixon said the major questions are around the RFP and appeal process and the issues related to remedies for those who are adversely affected by the process.

Sen. Keim asked for clarification on several things noted by Director Nixon. She said DAFS's Review Panel validated that there was fundamental unfairness in the awarding of the contract and asked what the next step was. Did they issue a new RFP and someone else won the contract? Did they change the parameters? What were the next steps in the process from that point?

Director Nixon said to her knowledge the contract award was invalidated and the next step was to put out new RFP. She does not know if that RFP process has been completed. This was happening as the request for the review was being put in so she will need to check on the status of the subsequent RFP, but said perhaps Rep. Bell would have more up-to-date information.

Rep. Bell said the summary by Director Nixon of the review request is accurate. To Sen. Keim's question, he said that is really unanswered at this point. He does not know where the new RFP is, whether it has been issued or awarded and that is the point of the request for the review. He did not have much information to offer other than to say, he was hoping this meeting will help resolve some of the open-ended questions.

Sen. Keim asked if Rep. Bell could give a time line of when the complaint was made, when the award was made and when the complaint regarding the award was made. She was trying to figure out how the process has played out so far.

Rep. Bell said the RFP was issued at the beginning of 2020. His constituent found out about the RFP in a surreptitious way. It was not through the normal channels of the way RFPs are usually issued and that was a

concerning thing initially. He completed the RFP, the contract was awarded back in July, and that is when he looked at the fact that it did not seem like a fair process. An appeal was made and the Appeal Panel's decision came back on November 30th to invalidated the initial award finding there was fundamental unfairness resulting from the process. Rep. Bell said that is basically where it has been left. His constituent has inquired, on several occasions, to find out the status of RFP process because he would like the opportunity to respond to a new RFP, but that opportunity has not presented itself. They have not had any update since the Appeal Panel's announcement back on November 30th. Rep. Bell noted that his constituent has incurred costs involved in preparing the RFP and preparing his defense for the appeal.

Sen. Keim said she missed when Rep. Bell said his constituent put in an appeal. He said in July or August, at the very latest.

Rep. McDonald asked what Committee would have jurisdiction for the RFP process. Director Nixon said for the DAFS's procurement it would be the State and Local Government Committee and the agency would be DAFS. This particular RFP process was administered by the Department of Public Safety, Bureau of Highway Safety, so from that perspective, the Department of Public Safety has several Committees of oversight, but for issues related to highway safety it is typically the Transportation Committee.

Rep. McDonald thought it might be helpful to have a member of those Committee's come before the GOC and respond to the questions that Sen. Keim, and perhaps others have, about the current status of the RFP.

Rep. Millett asked if the Department of Public Safety had been asked to respond to the RFP contract award summary? Rep. McDonald said not yet because this is the first step of a new review request.

Sen. Keim said other information she would like to receive as the GOC considers this review request is what is the past practice on the RFP process because, for this case, it seems like it has taken a long time. They made the decision on November 30th, but there still has not been any action taken on it. She wondered how usual that was. What are the time frames around other RFP processes?

Rep. McDonald also wanted to know that information and if this RFP is indicative of a wider process.

Director Nixon said this is the introduction of the review request. The GOC could decide to take no action at this time, can request additional background information from OPEGA and have that information reported back at a subsequent meeting. In some instances, for a new request, the GOC may refer it to a policy committee. The initial steps are – do nothing, refer to a policy committee, ask for additional information from OPEGA and/or the Administrative agencies.

Rep. McDonald thinks the Committee is leaning towards requesting additional information. She believes Rep. Bell offered to have his constituent speak to the Committee and thinks that would be helpful.

Sen. Deschambault said she knows that RFPs get messed up sometimes and there are a lot of appeals, but said this RFP bothers her because the contract award was given in July, the gentleman who felt wronged appealed it in a timely fashion and it took until November 30th. The email the GOC received basically said the issue is now with the Maine Board of Highway Safety and will soon be reissued. That email was written in January. She agrees with Sen. Keim about it is not only this RFP, but she is somewhat displeased if this is how long it takes to appeal any award. Maybe some background information would help to see if it is just germane to this RFP. She thinks more information is needed before a decision can be made on the review request.

Motion: That the GOC request further information regarding the request for review of the RFP Process Administered by the Department of Public Safety, Bureau of Highway Safety and associated DAFS Division of Procurement Services policies and carry the matter to a later GOC meeting, inviting the

stakeholders in this process to attend that meeting to share what information they have. (Motion by Sen. Keim, second by Sen. Timberlake)

Discussion: Sen. Keim said Rep. Bell mentioned that when the RFP was put out that it was done irregularly and she would like more information about what that means. He also suggested the RFP was tailored to the incumbent so would like to know how long that contractor has been contracted with by the State and how long this one person has had the ongoing contract.

Rep. Arata said rather than looking just at this individual occurrence, the Committee needs to take a broader view of the RFP process to see if there are standard operating procedures for RFPs. As noted by Sen. Deschambault, every town council, board of selectman, etc. has an RFP process and if they don't follow it there is trouble. There should be a standard operating procedure and perhaps the 2008 OPEGA Report would refer to something the GOC could use. She does not know if that request needs to be in the motion, but perhaps that is additional information the Committee could have for its next discussion.

Director Nixon summarized what has been talked about at the meeting. She understands there has been a request for additional information from the stakeholders. The stakeholders include DAFS, the Division of Procurement Services, and the Department of Public Safety. The GOC wants to know their roles in this RFP. The Committee would also like to hear from Rep. Bell's constituent involved with the RFP. OPEGA will gather background information on the RFP process and procedures for State contracting and nail down the specifics on the timeline around this particular procurement and answer the questions around the incumbent. The GOC will invite representatives of those agencies to be available at a subsequent meeting and OPEGA would try to gather information to provide the GOC in advance of that meeting.

Rep. Stover added that if there are data sets available about procurements including the RFPs, date of release, if DAFS tracks their own efficiency around date of release, date of award and the number of appeals they receive annually. She would like to receive that data for the last 2 or 3 years.

Rep. Millett agreed with everything that has been talked about. He would asked to get a copy of the RFP itself and all of the minutes, or narratives of DAFS's appeal process. He would like the person at DPS who is primarily overseeing the contract to be present at the GOC's meeting, as well as, the Chair of DAFS's Contract Review Committee and the Appeals Panel. He hoped that Rep. Bell and his constituent could also be at the meeting so the Committee would have the benefit of information and the people present who participated in the drafting of the RFP, the awarding of the contract, the appeal and now the parties that are in dispute. All of that information would be helpful to have assembled, including the report back in 2008, which he thinks is good background to have for the State process and the GOC needs.

Vote on the above motion: The motion passed by unanimous vote 10-0, 2 members absent.

Unfinished Business

- **Work Session on OPEGA's Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit after 2007**

Director Nixon summarized her memo to the GOC regarding the evaluation parameters for the Credit for the Rehabilitation of Historic Properties and the Research Expense Tax Credit. (A copy of her memo is attached to the Meeting Summary.)

Director Nixon summarized OPEGA's worksheet regarding the proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit. (A copy of the worksheet for the Proposed Evaluation Parameters is attached to the Meeting Summary.)

Rep. Millett asked if the Director could give the Committee a picture of where LD 201 (An Act To Reduce Greenhouse Gas Emissions and Promote Weatherization in the Buildings Sector by Extending the Sunset Date for the Historic Property Rehabilitation Tax Credit) stands in terms of Committee review and report. He said he liked the purpose and goals of the credit itself, but is not sure if the sunset is imminent or what the bill itself seeks to do in terms of extending it. He wondered if the Director was looking for the GOC to help with defining item “d.” in the Objectives list in terms of the actual beneficiaries. It seemed like her comment was that it would be difficult to evaluate without that being defined. He thinks the numbers the Director commented on regarding the number of projects using the tax credit are affordable housing projects with whatever supporting detail there is, would be helpful information to have. Rep. Millett said generally, he was impressed with the Proposed Parameters and with answers to his few questions he thinks it is a good piece of work.

Director Nixon said LD 201 was voted out of committee ought to pass as amended, was considered when the Legislature was in Session on April 28th and it was passed to be engrossed. It was engrossed in the House and Senate on the 28th. The bill had proposed to extend the sunset by 15 years and the Committee amendment extends the sunset by 5 years. It also gives 5 years for a reporting date for Maine State Housing on the Affordable Housing portion of the credit and authorizes the Taxation Committee to report out a bill in the Second Session related to the Credit.

On the question in the evaluation objectives “d.”, the Director said OPEGA had proposed to assess to what extent are the actual beneficiaries of a tax expenditure, those that are the intended beneficiaries. Typically, OPEGA approached that by looking at the direct recipients. What systems and processes are in place to ensure that those qualified, or eligible for a credit, are those that are actually getting it. OPEGA can also speak more generally as they look at the purpose, intent and goals and evaluation of whether those are being met. OPEGA will look more broadly at who is benefitting from the credit. Director Nixon said OPEGA is clear on what they need to do for objective “d.”.

Rep. Millett said it would be more helpful to him, given the greenhouse gas emission issue that LD 201 promotes, as well as the sunset extension, to see a copy of the April 28th engrossed version. He said he was trying to capture the Director’s comments about the number of projects and a further breakdown of that with time frames and zeroing in on those qualifying for the affordable housing credit may be helpful.

Director Nixon referred the Committee to page 3 of the Work Sheet which answered a specific question about the number of projects with affordable housing that was asked at the previous meeting. She explained that OPEGA will provide, as they go through the evaluation, all those details Rep. Millett is asking for. If there is specific information, however, that the Committee wants immediately to let her know.

Rep. McDonald asked if Rep. Millett was proposing changes to the Proposed Parameters or did he have additional questions.

Rep. Millett said he had no changes to the Proposed Parameters and that he had not seen page 3 of the document. He would like to receive copies of the engrossed version of LD 201 when the GOC takes this matter up again and would make that request.

Motion: That the GOC pass the Proposed Parameters as written. (Motion by Sen. Keim, second by Rep. Stover.)

Discussion: Director Nixon noted that process-wise, the correct wording for the motion is needed statutorily and is whether the GOC approves the Proposed Evaluation Parameters as presented by OPEGA. That wording would fulfill the statutory requirement.

Rep. McDonald asked Sen. Keim if she would agree to have her motion be the proper statutory language. Sen. Keim agreed and amended her motion and Rep. Stover agreed to second the motion with the corrected language.

Motion: That the Government Oversight Committee approves the Proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit after 2007 as presented by OPEGA. (Motion by Sen. Keim, second by Rep. Stover, motion passed by unanimous vote 10-0, 2 members absent.) (Sen. Bennett voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

- **Work Session on OPEGA's Proposed Evaluation Parameters for the Research Expense Tax Credit (R&D Credit)**

Director Nixon summarized OPEGA's worksheet regarding the proposed Evaluation Parameters for the Historic Rehabilitation Tax Credit. (A copy of the worksheet for the Proposed Evaluation Parameters is attached to the Meeting Summary.)

Rep. Millett said given the fact that the Legislature adjourned so quickly back in March of 2020 it would be helpful to see the bill, LD 977, with the Committee Amendment, that was accepted in the House and was on the Table, but died because lack of attention, so the GOC could see the improvements their predecessor Legislature intended to put before them as they consider the R&D Credit going forward.

Director Nixon will forward a copy of LD 977.

Motion: That the Government Oversight Committee approves the Proposed Evaluation Parameters for the Research Expense Tax Credit as presented by OPEGA. (Motion by Rep. Millett, second by Rep. Stover, motion passed by unanimous vote 10-0, 2 members absent.) (Sen. Bennett voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

- **Report back from Agriculture, Conservation and Forestry Committee regarding request for review of Wild Blueberry Commission**

Rep. O'Neil, House Chair of the ACF Committee, reminded the GOC of the review request from the Washington County Delegation and that the GOC decided to send that request to the ACF Committee to discuss. The ACF Committee had a lot of folks from the Washington County area reach out to them. There was a lot of interest regarding the WBC.

Rep. O'Neil said she has spoken with Mr. Venturini, Executive Director of the Wild Blueberry Commission of Maine about moving forward with the request for review of WBC and he said that would be something that would be helpful to his process as a new Director. She referred to the letter received from Mr. Venturini right before this meeting that indicated that maybe they had a misunderstanding so she wanted to request that the GOC table this matter and take it back up at the next GOC meeting so she could have an opportunity to talk with him about the comments in his letter.

Sen. Timberlake said Sen. Black contacted him and that he has also received several emails regarding the WBC review request. He noted the WBC just got set up (with new Commission structure) in January of 2020 and new members never got appointed until September of 2020 so have only had about 6 months to start their work on the Commission. He agreed with Rep. O'Neil that the GOC should look at the WBC review request, but he would like to give the Commission a chance to work for at least a year, and then have a report back from them during the 130th Second Session. The report back would be to the ACF Committee and the ACF Committee would forward their recommendations to the GOC. He thinks the Commission needs to be given a year to work

the way it has now been designed to work. Give the Commission a little time to work under the new Director and Commission appointments that were just made.

Rep. McDonald said, as a lobsterman, she participates in the Maine Lobster Marketing Collaborative (MLMC) and there was something in Mr. Venturini's letter that she wanted to ask him about, but unfortunately, he is not at the meeting as the Committee did not invite him. She referred to the last sentence in his letter: "We look forward to suggestions from the GOC on how to best use the Maine wild blueberry tax to effectively and efficiently increase the prosperity of Maine's wild blueberry farms and business." While she appreciates the confidence Mr. Venturini has in the GOC, they would not be weighing in on how best to use the tax. She said the MLMC has 2 public members with experience in marketing promotion in addition to industry members and sees that the WBC has 5 harvesters and 5 producers, which is similar to the MLMC, but then also has the addition of 2 people experienced in marketing with the Commissioner of Department of Agriculture, Conservation and Forestry and the Commissioner of Economic and Community Development, or their proxies. Rep. McDonald feels that having the input of those members really help guide that collaborative. Her question cannot be answered today, but was curious if people with more experience on that Commission thought changing the composition of the Commission could be advantageous to their work.

Rep. O'Neil said she could not speak on behalf of the WBC, but said the structure, as she understands it, is that you have the growers and processors that are members of the Commission and there is a whole separate structure for marketing. She thinks the GOC could have a more substantive discussion because there is a lot to be said and explored. Her request to table this matter was because she saw something that took her by surprise in Mr. Venturini's letter. She had made an agreement with him and wanted a little more time to touch base with him regarding that.

Rep. McDonald asked if Rep. O'Neil could describe what the WBC's and her perspectives are, where was the miscommunication? Rep. O'Neil said Mr. Venturini had agreed that, for example, a lot of what Mr. Tardy was saying during the GOC's process with the Maine Commission on Indigent Legal Services, that in rebuilding the WBC, an OPEGA review could potentially be a helpful tool for him in serving the growers and the processors. She heard their concerns during the ACF Committee's discussion and thought they were really important and wanted the GOC to do its best to support them. That was her and Mr. Venturini's agreement and she needs to touch base with him regarding that. She noted that her ACF Committee Co-chair was not available to attend the meeting they had about the WBC so she doesn't know if there was a miscommunication.

Sen. Keim wanted to clarify that Rep. O'Neil thought the WBC was open to working with OPEGA on a review, but Mr. Venturini's letter asked that some time be given and then they will report back to the Committee of oversight and asked if that is what surprised her?

Rep. O'Neil said yes, that was new information so her.

Rep. McDonald asked if the WBC was reporting back to the ACF Committee in January of 2022. Rep. O'Neil said that was something they agreed on because thought it would be helpful to have the Commission report back in a year's time. Rep. McDonald said what she heard from today's discussion is the possibility of having the WBC return to another GOC meeting in the not too distant future and Sen. Timberlake's suggestion that the GOC hold off until January of 2022, or until after the ACF Committee has had their opportunity to hear back from the WBC.

Rep. O'Neil said that is a reasonable summary of Sen. Timberlake's request. What she is requesting is that before the GOC decides either way of what to do, that she has the chance to convene with stakeholders, like Sen. Moore and Mr. Venturini, to see if they can come to an agreement about what works best for everybody.

Rep. McDonald apologized for skipping Rep. O'Neil's request that the WBC request for review be tabled.

Rep. McDonald asked Sen. Moore if she had any comments she would like to make regarding the WBC review request.

Sen. Moore said she like Rep. McDonald's idea of having 2 people experienced in marketing, but said she is reminded that the makeup of the Commission itself is set by statute. When the Legislature changed it to add the 2 growers it had to be done by introducing a bill and changing the WBC's statute. She knows there have been some conversation about at least giving Mr. Venturini an opportunity to have worked for a year in that position with the new Commissioners and thinks the Washington County Delegation is okay with reporting back in January of 2022 to the ACF Committee as to how the year went so they have a look at 2021 regarding what has been done and what the numbers are, but they do leave that decision up to the GOC and Rep. O'Neil.

Sen. Deschambault referred to the 3rd paragraph of the ACF Committee's memo to the GOC regarding the governing statutes so, at some point, would like Director Nixon to provide the GOC with those statutes. She would then be able to look at what other people testified to at that hearing and what was said. She supports Sen. Timberlake's suggestion of waiting for January of 2022 for a report back from the WBC. She thinks that seems reasonable in light of the fact that it took so long, as stated by Sen. Moore, to appoint people to the Commission.

Rep. McDonald asked Director Nixon to state the questions that were in the initial request for review of the WBC. Director Nixon said the original request for review came to the GOC in February 2020 and asked:

1. Where is the blueberry tax money going? Is the WBC using Wild Blueberry Association of North America (WBANA) to steer it back to themselves and not for marketing?
2. Is the relationship between the industry, WBC and WBANA transparent? If not, what specific actions must be taken to ensure that business is conducted in the public realm?
3. Who provides oversight of both WBC and WBANA, and is oversight adequate?

Rep. McDonald asked if the ACF Committee received answers to any of those questions.

Rep. O'Neil said part of what the ACF Committee passed over to OPEGA was a lot of the files that Mr. Venturini provided to the Committee. She said the information was too large to send by email, but that material will be available to us to go through. She noted the ACF Committee meeting was well attended with a lot of people speaking at that meeting. She has also received a lot of phone calls and interest from folks in the area regarding the WBC so that is why she is interested in making sure that everybody is on the same page when a decision is made as to whether we wait for a year, or not, because some folks are very appreciative of this process and looking forward to having some support via OPEGA. She wanted to make sure, in partnership with Sen. Moore and the Washington County Delegation, that folks feel that their needs are getting met here.

Rep. McDonald was amendable to either action by the GOC.

Rep. Millett said reflecting on Rep. O'Neil's comments and Rep. McDonald's comments about the MLMC, Sen. Timberlake's feedback from one member of the Commission and Sen. Moore's comment, it feels to him like this issue, while important, is moving towards the GOC holding on to WBC request for review until clarifying Mr. Venturini's comments to the Chairs and Leads of ACF Committee. He asked if an appropriate motion would be to move to table any further consideration pending further feedback from the ACF Committee or does the GOC need to take specific action.

Director Nixon said the GOC could table the request for review of the WBC. The typical menu of options is taking no action at this time, asking for additional information, or actually placing the request on the Work Plan. If the Committee would like to hold on to the request and set it aside, but not let it go, that is also a possibility.

Rep. McDonald thought Rep. Millett made a good point of the GOC maybe not needing to bring the WBC review request back before the GOC if the ACF Committee addressed everyone's concerns.

Sen. Timberlake would have no problem putting the request for review on the table and holding it there until after January 2022 when the WBC reports back to the ACF Committee and that Committee decides that maybe it is something the GOC needs to look at in the future. The GOC will already have the request before them and will not have to start all over.

Motion: That the GOC table the request for a review of the Wild Blueberry Commission until further review. (Motion by Sen. Timberlake, second by Sen. Deschambault, passed by unanimous vote 9-0, 3 members absent.) (Sen. Bennett voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Rep. McDonald thanked Sen. Moore for being at the meeting to answer the Committee's questions.

Report from Director

• Status of projects in process

Director Nixon said OPEGA is working on the **Maine Citizen's Initiative Process** project and getting the report ready to present to the GOC at the end of June. They are also working on finalizing the **Seed Capital Investment Tax Credit** and getting that report to the Committee over the summer. OPEGA is working actively on the additional piece of work related to the **Maine Commission on Indigent Legal Services** and has completed a survey of judges and interviews with the screeners. OPEGA is looking at issues related to orders for payment and collection of payment from those clients determined to be partially indigent. Now that the GOC has approved the parameters for the **Credit of the Rehabilitation of Historic Properties** and the **Research Expense Tax Credit**, OPEGA will be diving into those more fully and they will get added to the current active work. As soon as staff resources are available, OPEGA will start scoping out work related to the **Frontline Workers Survey for the Department of Health and Human Services' Office of Child and Family Services**. Following up on recent reviews, for the **MCILS** report, it was this Committee's decisions to have quarterly report backs from MCILS and they are preparing to make a presentation at the May 28th meeting. The Committee has tabled the **Wild Blueberry Commission** and the **Workday Maine** requests. There will be further discussion by the GOC on the new request heard at today's meeting on the **RFP Process Administered by the Department of Public Safety**.

Planning for upcoming meetings

- Quarterly report back from the Maine Commission on Indigent Legal Services
- Continued discussion on OPEGA's tax expenditure review process

Next GOC meeting date

The next GOC meeting is scheduled for Friday, May 28, 2021 at 9:00 a.m.

Adjourn

The Chair, Rep. McDonald, adjourned the meeting at 10:16 a.m.



LUCIA NIXON
DIRECTOR

MAINE STATE LEGISLATURE

OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

TO: Members, Government Oversight Committee
FROM: Lucia Nixon, Director
DATE: May 12, 2021
RE: Evaluation Parameters for the Credit for the Rehabilitation of Historic Properties and the Research Expense Tax Credit

This memo provides information for the GOC work sessions on May 14, 2021, to review and vote on evaluation parameters for the Credit for the Rehabilitation of Historic Properties (HRTC) and the Research Expense Tax Credit (R&D Credit). OPEGA presented the proposed parameters to the GOC at the April 23, 2021 meeting and public comment was received on the HRTC parameters (none was offered on the R&D Credit).

Setting the evaluation parameters is a key part of the process as they provide the framework within which OPEGA conducts and reports on the evaluation. The tax expenditure evaluation statute (3 MRSA section 999) outlines four categories of parameters: (1) the purposes, intent or goals of the tax expenditure; (2) the intended beneficiaries of the tax expenditure; (3) evaluation objectives; and (4) performance measures for analyzing the objectives.

Worksheets and Voting

Enclosed with this memo, please find two worksheets for your use at the work session. For each tax expenditure, the worksheet lists the proposed evaluation parameters, comments from stakeholders (if any) and notes from OPEGA on the proposed parameters and stakeholder suggestions. If the GOC wishes to approve the proposed evaluation parameters without change, this can be done with a motion/vote to approve the parameters as presented. If the Committee wishes to make amendments, the motion should clearly outline the specific parameter(s) to be amended and the nature of the amendment (add, revise, remove).

Notes on Evaluation Approach

Members of both the GOC and the Taxation Committee have expressed interest in having the results of the HRTC and R&D Credit evaluations available to policymakers to inform legislative action in the Second Regular Session. To respond to these interests and priorities, OPEGA proposes to access and evaluate secondary data sources (data that has been collected) and existing research and analysis to address the evaluation objectives to the extent possible and to identify options for targeted follow-up work, as needed, to address certain objectives more fully.

Government Oversight Committee - Work Session on Proposed Evaluation Parameters
Historic Rehabilitation Tax Credit (5/14/21)

Proposed Parameters	Public Comment	OPEGA Notes
Purposes, Intent or Goals of the Credit		
<ul style="list-style-type: none"> • To encourage rehabilitation of historic properties • To promote historic preservation • To promote community revitalization • To increase economic activity & jobs • To expand affordable housing 	<ul style="list-style-type: none"> • “..the passage of recent legislation to extend the sunset date for the credit evidences as legislative intent that the program also result in greenhouse gas [reduction] and building efficiencies.” (*Frazier) 	<ul style="list-style-type: none"> • There is not a clear statement of intent or goals in statute for this credit. However, the statute on reporting requirements speaks to “an incentive for rehabilitation of historic structures and economic development.” The enhanced credit for projects with affordable housing suggests an intent to encourage affordable housing. • <u>Notes on public comment:</u> The bill title for LD 201 (An Act to Reduce Greenhouse Gas Emissions and Promote Weatherization in the Buildings Sector by Extending the Sunset Date for the Historic Property Rehabilitation Tax Credit) mentions these goals in the title; we had not seen these goals in other legislative sources. We note that these issues are referenced by advocates and in research literature.
Intended Beneficiaries of the Credit		
<p><u>Parameters document</u></p> <ul style="list-style-type: none"> • Not specified <p><u>Updated for Consideration at Work Session:</u></p> <ul style="list-style-type: none"> • <i>Direct recipients of the tax credit</i> • <i>Indirect beneficiaries:</i> <ul style="list-style-type: none"> ○ <i>Historic property owners and developers</i> ○ <i>Communities with historic rehabilitation projects</i> ○ <i>Affordable housing residents</i> ○ <i>Broad public benefit to citizens and taxpayers</i> 	<ul style="list-style-type: none"> • Citizens (enjoyment of historic properties) • Municipalities (increased tax revenue) • Taxpayers (reduced tax burden from economic growth) • Historic building owners and property developers (Frazier) 	<ul style="list-style-type: none"> • There is not a clear statement of intended beneficiaries of the credit in statute, beyond those taxpayers who take the credit (direct recipients). • The “Purpose, Intent, Goals of the Credit” identified above speak to broader groups that benefit (indirect beneficiaries). We have noted these in an updated list in the left column. • <u>Notes on public comment:</u> The beneficiaries mentioned in public comment align with the program purposes proposed by OPEGA. By virtue of evaluating the credit’s effectiveness in achieving those purposes, OPEGA would also be speaking to the possible benefits to the beneficiaries detailed in public comment. We have updated the list in the first column to address this.

Government Oversight Committee - Work Session on Proposed Evaluation Parameters
Historic Rehabilitation Tax Credit (5/14/21)

Proposed Parameters	Public Comment	OPEGA Notes
Evaluation Objectives: What the Evaluation Will Assess		
<ul style="list-style-type: none"> a. Fiscal impact b. Effectiveness of design (relative to goals and best practices) c. Achievement of purpose, intent or goals d. Actual beneficiaries relative to intended e. Whether behavior would occur “but for” the credit f. Efficiency and effectiveness of administration g. Similar state or federal tax expenditures h. Cost-effectiveness i. Opportunities for improvement 	<ul style="list-style-type: none"> • Unless the GOC sets beneficiaries, objective “d.” will be difficult for OPEGA to evaluate. (Frazier) 	<ul style="list-style-type: none"> • OPEGA proposes to consider each of the 9 objectives (a)-(i) for evaluation and report on each to the extent that is warranted and practical based on our assessment of: the availability of the necessary data; the level of resources required/available; and the relevance of the particular objective to the tax credit. • <u>Notes on public comment:</u> See section above on “Intended beneficiaries.”
Performance Measures		
<ul style="list-style-type: none"> • Tax credits claimed (\$) • State budget revenue loss and net impacts (\$) • Federal tax credits leveraged (\$) • New construction generated (\$) • Pre/post tax assessments of rehabilitated buildings (\$) • Jobs created • Affordable housing units preserved / generated • Number, location, and types of projects supported by credits 	<ul style="list-style-type: none"> • Amount of outside public and private capital investment attracted to the state. (Frazier) • Amount of indirect spending and revenue arising from historic rehabilitation. (Frazier) 	<ul style="list-style-type: none"> • Our preliminary work indicates that there is likely to be readily available existing data, as well as existing data analysis, for many of these measures given the data and reporting requirements in statute for MHPC. • OPEGA proposes to answer the evaluation questions to the degree possible by first considering available existing data and analyses and providing an independent assessment of those data/analyses. • <u>Notes on public comment:</u> Outside investment attracted to the State and indirect spending and revenue generated would be considered in OPEGA’s assessment of the overall impact of the credit. The following performance measures listed also speak to these issues: federal tax credits leveraged, new construction generated and pre/post tax assessments.

*(Frazier) refers to Elizabeth Frazier providing comment, on behalf of MEREDA, the Maine Historic Tax Credit Coalition, Greater Portland Landmarks, GrowSmart Maine, Maine Alliance for Smart Growth, Maine Preservation, CEI, and the Genesis Fund.

Government Oversight Committee - Work Session on Proposed Evaluation Parameters
Historic Rehabilitation Tax Credit (5/14/21)

Committee Member Questions from 4/23/21	
What number of projects using the tax credit are affordable housing projects? (Rep. Dillingham)	<p>Data from Maine Historic Preservation Commission:</p> <ul style="list-style-type: none">• There are 164 total projects that have been certified or are underway.*• Of these 164, there are 29 affordable housing projects qualifying for the increased credit.• MHPC notes that in addition to the 29 projects qualifying for the increased credit for affordable housing, there are buildings that include affordable housing (but don't qualify for the larger credit because they aren't creating <u>new</u> affordable housing.) <p>*MHPC notes that several projects included in the 164 are not far along enough in the process for MHPC to know which of them may end up to be affordable housing projects.</p>

Government Oversight Committee - Work Session on Proposed Evaluation Parameters
Research Expense Tax Credit (5/14/21)

Proposed Parameters	Public Comment	OPEGA Notes
Purposes, Intent or Goals of the Credit		
<ul style="list-style-type: none"> • To stimulate R&D investment • To create high-quality jobs by encouraging investments in R&D and to encourage the recruitment and training of employees • To improve the overall economy of the State by expanding the number of businesses conducting and investing in R&D 	none	<ul style="list-style-type: none"> • There is not a clear statement of legislative intent or goals in statute. • OPEGA identified possible goals for the purpose of evaluation from: statements of intent for the federal credit, upon which the state credit is based, and language in proposed legislation related to the credit (specifically LD 977 ‘An Act to Restore the Super Credit for Substantially Increased Research and Development’¹ in the 129th Legislature).
Intended Beneficiaries of the Credit		
<ul style="list-style-type: none"> • Businesses conducting/investing in R&D • Indirectly, qualified organizations performing contracted R&D 	none	<ul style="list-style-type: none"> • There is not a clear statement of <i>intended beneficiaries</i> of the credit in statute beyond those taxpayers who take the credit (direct beneficiaries). • The “Purpose, Intent, Goals of the Credit” speak to broader groups that benefit (indirect beneficiaries).
Evaluation Objectives: What the Evaluation Will Assess		
<ul style="list-style-type: none"> a. Fiscal impact b. Effectiveness of design (relative to goals and best practices) c. Achievement of purpose, intent or goals d. Actual beneficiaries relative to intended e. Whether behavior would occur “but for” the credit f. Efficiency and effectiveness of administration g. Similar state or federal tax expenditures h. Cost-effectiveness i. Opportunities for improvement 	none	<ul style="list-style-type: none"> • OPEGA proposes to consider each of the 9 objectives (a)-(i) for evaluation and report on each to the extent that is warranted and practical based on our assessment of: the availability of the necessary data; the level of resources required/available; and the relevance of the particular objective to the tax credit.

¹ LD 977 was introduced in the First Regular Session of the 129th Legislature and in June 2019, the bill (as amended by Committee Amendment “A” (H-621)) was carried over on the Special Appropriations Table. LD 977 died upon conclusion of the 129th Legislature in November 2020.

Government Oversight Committee - Work Session on Proposed Evaluation Parameters
Research Expense Tax Credit (5/14/21)

Proposed Parameters	Public Comment	OPEGA Notes
Performance Measures		
<ul style="list-style-type: none"> • Tax credits claimed (\$) • State budget impact (revenue loss and net impacts) (\$) • Number, location and income of employees added or retained • Number and amount of R&D investments made by credit recipients • Measures of direct and indirect improvement in the state economy 	none	<ul style="list-style-type: none"> • OPEGA proposes to answer the evaluation questions to the degree possible by first considering available existing data and analyses and providing an independent assessment of those data/analyses.