



**Testimony by Christopher Roney, Esq.
General Counsel**

***Working Group to Review the Process of Ongoing Review
of Tax Expenditures by the Legislature***

October 8, 2021

Senator Libby, Representative Terry, and Distinguished Members of the Working Group to Review the Process of Ongoing Review of Tax Expenditures by the Legislature:

My name is Christopher Roney. I am the General Counsel at the Finance Authority of Maine (FAME). I live in Freeport and am here to testify as requested regarding FAME's experience with the tax expenditure review process, specifically addressing:

1. What is working well?
2. What are challenges?
3. Ideas for change and improvement

FAME has had two experiences with this process: the first occurred with a review conducted by the Office of Program Evaluation and Government Accountability (OPEGA) and the Government Oversight (GOC) and Taxation Committees concerning the New Markets Capital Investment Program back in March of 2017, while the second is still pending (report published in August) and concerns the Maine Seed Capital Tax Credit Program.

As to **what is working well** about the process, we have found OPEGA staff to be very professional, thorough, and fair throughout the processes. Staff has been clear in communicating expectations and needs, as well as the various stages of review. Throughout the review, they asked good questions and took the time to understand the workings of complex programs. We were given reasonable deadlines and felt like the staff was sensitive to the demands they were placing on the agency. The process allows for our review of draft reports and gives us an opportunity to provide feedback, including suggesting edits or corrections/clarifications when necessary. We feel that the staff carefully considered our suggestions. We appreciate that. Similarly, we had positive, productive experiences with the Government Oversight and Taxation Committees during the review of the New Markets Capital Investment Program. Members asked probing questions and were open to feedback from various stakeholders. Policy changes that resulted from that particular work were, in our view, reasonable and appropriate, and helped to ensure that the program continued in an improved and effective manner. Although we are still in the middle of the Seed Capital Tax Credit Program review, we have every confidence that similar results will occur.

As far as **the challenges** associated with the process, we would note that, like any audit, it requires a significant commitment of resources to be attentive, thorough and clear in the agency responses. We recognize, however, that the reviews are valuable and result in important findings and recommendations to improve the programs. Another challenge can be identifying the resources to implement recommendations when operating on a limited budget based on the existing program design. For example, as a result of the recent report concerning the Seed Capital Tax Credit Program, we are currently developing plans to improve the reporting requirements and data collection, as well as to increase our staff resources to better meet the needs of the program and address the suggested OPEGA recommendations. This is happening with existing internal resources and without an identified external source of additional funding, however.

An additional challenge relates to being placed in an awkward position between the GOC and the policy committee of jurisdiction related to recommended changes to a program. As the program implementing agency, we clearly have views on program policy matters, but are mindful of the need not to inappropriately invade the Legislature's prerogative as policy maker. We have more experience working with the policy committees on actual program design issues, as well, such as identifying the types of businesses that should be targeted by or eligible for a particular program or balancing the desire to have an improved, accountable program with one that appeals to Maine businesses and investors and is not overly burdensome in reporting requirements.

Finally, in our limited experience with the review process, we would note that there is perhaps an unrealistic expectation that the effect of one tax incentive program can be precisely measured. Business decisions are multi-factored and often cannot be attributed to a single element/incentive like a tax credit. This may be a more substantive than process-oriented comment, but ultimately creates frustration in the process of attempting to "prove" what is likely impossible to prove, that a tax incentive is unquestionably the deciding factor in business decisions or the direct cause of certain economic outcomes. Other factors, including other incentives, are often present.

Regarding our suggestions for **changes to and improvements in the process**, we would reiterate that the process itself is well executed, albeit somewhat administratively burdensome on lean agencies like FAME. Thus, absent providing funding to offset such burden, we are unable to identify any suggested improvements. We would suggest, though, that the challenges mentioned above be carefully considered in the overall approach to program reviews. We wholeheartedly support accountability in all economic development programs, including those involving tax incentives. Nevertheless, very often several programs work in concert to help achieve desired outcomes, and seeking to establish that "but for" the single program under review, a result would not have occurred, may not be the best method to analyze how well incentives are working. In addition, you may wish to consider more involvement by the policy committees when suggesting program design or reporting requirement changes, after identifying potential weaknesses through the review process. Those committees are usually very familiar with

the program and can offer critical insight to how to balance accountability and effectiveness.

Thank you for your consideration of our comments. I will be happy to answer any questions you have.