TAX EXPENDITURE REVIEW

FINAL REPORT

Evaluation of the Maine Historic Rehabilitation Tax Credit (HRTC)

Report No. TE-HPRES-20

a report to the
Government Oversight Committee
from the
Office of Program Evaluation & Government Accountability
of the Maine State Legislature

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I. Introduction

As directed by the 130th Legislature's Government Oversight Committee (GOC), OPEGA has completed a review of the Maine Historic Rehabilitation Tax Credit (HRTC) in accordance with 3 MRSA §999. The Legislature's tax expenditure review process provides for systematic evaluation of tax expenditures according to a schedule approved by the GOC (3 MRSA §998).

OPEGA conducted this evaluation project based on the parameters approved by the GOC on April 23, 2021 (included in Appendix A). The project parameters set forth the goals, intended beneficiaries, and base performance measures for the HRTC for the purpose of evaluation (see Appendix B for a list of performance measures). Both the GOC and the Legislature's Joint Standing Committee on Taxation expressed interest in having this evaluation's results available for policymakers considering tax credit legislation and policies during the 2nd Regular Session of the 130th Legislature. To that end, this evaluation relied on existing, available data to address the evaluation objectives to the degree possible, providing a high-level assessment of the credit.

The Maine HRTC is administered by the Maine Historic Preservation Commission (MHPC) in consultation with Maine Revenue Services (MRS). To complete the evaluation of the HRTC, OPEGA considered program information and data from the MHPC and its federal partner—the National Park Service (NPS). We also considered research literature on historic rehabilitation tax credits nationally, perspectives from program stakeholders and information from private consultants who have conducted economic analysis of the HRTC. MRS provided guidance and information on the HRTC. OPEGA did not request, nor receive, any confidential taxpayer information from MRS to support this evaluation. The complete scope and methods for this review can be found in Appendix A.

The remainder of this report is organized in three key sections as follows:

- Section II: Program background and overview;
- Section III: Evaluation results, addressing four key areas:
  - Program structure and administration;
  - Comparison to best practices;
  - Program data available for oversight; and
  - Program alignment and performance relative to goals; and
- Section IV: Opportunities for improvement and recommendations.

II. Program Background and Overview

The Maine HRTC, authorized by 36 MRSA §5219-BB, is a tax expenditure program[1] that provides a refundable income tax credit to taxpayers who rehabilitate certain income-producing historic properties in Maine. The credit was enacted in 2008 and was made retroactively available to taxpayers with qualified rehabilitation expenditures determined to meet program standards after January 1, 2008. As of the writing of this report, the credit will sunset after December 31, 2025.[2]

The Maine HRTC is administered by the Maine Historic Preservation Commission (MHPC) in consultation with Maine Revenue Services (MRS).

A. Program Design

Maine's HRTC, like many other state historic rehabilitation tax credits, is built on the scaffolding of the federal rehabilitation tax credit and relies on the definitions and standards of that program. This report details the administrative relationship between Maine's credit and the federal credit on pages 6-9. There are two versions of the state credit, only one of which can be used in conjunction with the federal credit:

1) The **substantial rehabilitation credit** provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures (QREs) on a certified historic structure in Maine. Taxpayers claiming this Maine credit <u>must also claim</u> the corresponding federal credit under Internal Revenue Code (IRC) Section 47.

2) The **small project rehabilitation credit** provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures (QREs) of between $50,000 and $250,000 on a certified historic structure in Maine. Taxpayers claiming this Maine credit <u>must not claim</u> the corresponding federal credit under IRC Section 47.

During the review period 89% (102 of 115) of certified HRTC projects claimed the substantial rehabilitation credit. These projects receive both state and federal credits.

[1] OPEGA refers to the HRTC interchangeably throughout as a tax credit or tax expenditure program (program). The term tax expenditure program refers to the tax credit along with its administration.

[2] 36 MRSA §5219-BB(C). The credit has had a number of different sunset dates. Upon implementation in PL 2007, c. 539, the program included a 2013 sunset. PL 2011, c. 453 extended the credit end date from 2013 to 2023 and required MHPC to report to the Legislature in 2013 and every 4 years thereafter with analysis on the use of the credit. PL 2019, c. 659 extended the sunset from 2023 to projects from which MHPC or NPS issued a determination on or before December 31, 2025. There is currently a bill on the Special Appropriations Table (LD 201) that would extend the sunset from December 31, 2025 to December 31, 2030.

Layered together, the 20% federal HRTC and 25% Maine credit can reduce the cost of qualifying rehabilitation expenses (QREs) by almost half.[3] For example:

Total Project QRE	$1,000,000
less: Federal 20% Credit	-$200,000
less: State 25% Credit	-$250,000
Post-Credit QRE Cost	**$550,000**

For affordable housing projects[4] that are certified by the Maine State Housing Authority (MaineHousing), the applicable HRTC (substantial rehabilitation credit or the small project rehabilitation credit) is increased. Currently, the credit is increased to 35% of the certified qualified expenditures for a certified affordable housing project. The increased credit is subject to repayment if the structure does not remain an affordable housing project for 30 years.[5]

In all versions of the HRTC—substantial, small, and affordable housing—a taxpayer's allowable credit becomes available across four years, with 25% available in the taxable year the credit is first claimed and 25% available in each of the following three taxable years. The law governing the HRTC (36 MRSA §5219-BB) does not cap the total credits allowable on an annual basis, but does cap the credits allowable per qualifying project to $5 million (or $5 million per building for projects with multiple eligible building components).

The determination of a certified historic structure for the purposes of the credit is made by the Director of the Maine Historic Preservation Commission (MHPC) (27 MRSA §511). To be certified, a building needs to be a structure that is listed individually in the National Register of Historic Places (NR), or that is located in a registered historic district and certified by the NPS as contributing to the historic significance of that district. Certified QREs, the amount the credit is based upon, are defined in IRC Section 47.

Maine is one of thirty-five states that have tax credits for the rehabilitation of historic income-producing[6] properties. Credit percentages range from 5% to 50% of qualified rehabilitation expenses, or QREs, with roughly 49% (17/35) of states having credits of 25%, as is the case in Maine. Across the 35 states, the credit programs vary in terms of caps on annual aggregate credits issued by the state, on credits per building, or credits per taxpayer. Additionally, some states have other versions of the credits for specific types of buildings (like mills or barns), circumstances (like disasters or high poverty), or regions of the state. See Appendix C for a comparison table of state HRTCs.

[3] Assuming the taxpayer is able to derive the full value of the federal credit, which is not refundable.
[4] "Affordable housing project" is a defined term in statute that means new housing that meets a minimum square footage test (for the portion that is affordable) and is limited to households that do not exceed 60% of the median income of the area (30-A MRSA section 4722(1)(DD)(1)).
[5] For projects certified as affordable housing projects under 30-A MRSA section 4722(1)(DD) the rate of the increased credit started at 30% and, per statute, increased in one percentage point increments if certain affordable housing creation targets are unmet. Statute allows for the annual assessment of the increased credit and caps the credit at 35%, with the cap currently met.
[6] The incentive is limited to income-producing properties by a reference in Title 36 to the Internal Revenue Code §47. The Code limits the tax incentive to "depreciable structures" which are those used in a business or income-producing activity (see IRS publication 946 [2020 Publication 946 (irs.gov)](https://www.irs.gov)).

B. Program History and Origins

The current HRTC, which was enacted in 2008 (36 MRSA §5219-BB), replaced a previous version of the credit (36 MRSA §5219-R) that was much more limited than the current version.[7] Since enactment, the current HRTC has undergone relatively few substantive changes. The enacting law and changes are as follows:

- PL 2007, c. 539, Part WW enacted the current HRTC under 36 MRSA §5219-BB.
- PL 2007, c. 693 provided for the allocation of credits under the HRTC to project partners, members or owners that are exempt from taxation.
- PL 2009, c. 361 changed the basis for determining "certified affordable housing" and the basis of qualification as a "certified qualified rehabilitation expenditure" and assigned responsibility for certifying historic structures to the Director of the MHPC.
- PL 2011, c. 240 provided for the application of the credit to condominiums.
- PL 2013, c. 550 changed the $5 million cap from per certified rehabilitation project to either per certified rehabilitation project or per each building that is a component of a certified historic structure, whichever is greater. This change allowed a portion of a building or a single building in a complex to qualify for the $5 million cap. It also provided that a certified rehabilitation project placed in service over multiple taxable years is allowed up to $5 million in credit for the portion of the certified rehabilitation placed in service for each taxable year.

Since enactment, much of the current credit's overall design has remained unchanged, including key elements such as eligibility requirements, credit percentage, and credit limitations. For many of these design features, there may have been changes if the underlying federal eligibility requirements changed.

C. Program Use and State Costs

Between 2009 and early 2021, a total of 115 projects have been certified (completed and eligible for the state credit). As shown in Table 1 on the following page, the highest number of certified projects per year was 16 in 2015. Over the period, post rehabilitation building use was divided between housing (45), commercial (36) and mixed use (34).

[7] The limited, pre-2008, version of the HRTC is not included in the scope of this OPEGA evaluation. Instead, this evaluation focuses on the costs, impacts, and administration of the current state HRTC, from its enactment in 2008 through the year 2020.

Table 1: Certified HRTC Projects				
		Post Rehabilitation Use		
Year	Projects	Mixed	Housing	Commercial
2009	3	0	2	1
2010	6	0	2	4
2011	7	3	1	3
2012	9	2	5	2
2013	13	3	4	6
2014	10	4	3	3
2015	16	6	6	4
2016	12	1	8	3
2017	10	2	5	3
2018	5	1	2	2
2019	7	2	3	2
2020	14	9	2	3
2021*	3	1	2	0
Totals	**115**	**34**	**45**	**36**
Source: OPEGA analysis of MHPC data. *Partial year data limited to January-February 2021.				

After peaking at 16 projects in 2015, there was a decline in certified projects followed by an uptick from 7 projects in 2019 to 14 in 2020. While the credit structure and availability has been fairly consistent, the number of projects per year has varied. This variation can occur for a number of reasons and shifts external to the tax credit, including shifting economic conditions and project planning considerations.

Based on MRS data reported to OPEGA, the tax revenue loss from the state HRTC was roughly $84 million in total for the 9-year period of 2011-2019.[8] During this period, administrative costs to the State for this tax expenditure program have been minimal. MRS reports that their adminstration of the HRTC is largely absorbed by the resources dedicated to processing Maine income tax returns generally. MHPC estimated the resources required to administer both the federal and state HRTC for FY 2020 combined as about $43,126, of which only approximately $2,355 is not covered by federal funding sources. MHPC staff noted that they could not identify the resources distinct to administering the state, rather than the federal, credit since adminstration of the two is so intertwined.

MHPC staff also noted that while program rules allow them to charge an application fee for the state HRTC, they do not do so at this time. They explained that because most of the projects also use the federal credit, and the state credit builds on the same process used for the federal credit, there is not a lot of additional adminstrative cost beyond that already covered by federal funding.

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[8] MRS provided OPEGA with State revenue loss data. MRS stated that these figures may include claims that are data errors or improper claims, particularly individual claims below $2,000. In total, MRS estimates improper claims paid for the 2011-2019 period amount to 0.1-0.2% of total HRTC claims over this period. MRS reports this is not a unique problem to the HRTC but arises due to the complexity of the tax code and taxpayer compliance issues. OPEGA did not focus on MRS' processing the HRTC on tax returns in this review. Should the GOC have questions or concerns, this may be something to address in follow up with MRS or further work.

III. Evaluation Results

OPEGA's evaluation of the HRTC addressed 4 key areas:

- Program structure and administration;
- Comparison to best practices;
- Program data available for oversight; and
- Program alignment and performance relative to goals.

The evaluation objectives and performance measures as approved by the GOC for the purposes of OPEGA's evaluation of the HRTC are listed in Appendix A and a table of approved performance measures is provided in Appendix B. Discussion of relevant evaluation objectives and measures is integrated throughout the report as appropriate.

A. Assessment of Program Structure and Administration

➢ Maine's HRTC is built on the federal HRTC.

The Maine HRTC is built upon the federal tax incentive for preserving historic properties administered through the National Park Service (NPS). As a result, many of the MHPC's administrative duties for the Maine HRTC would be occurring even in the absence of the state credit as MHPC staff support the federal HRTC.[9] Application for both the state credit and the federal credit is done at the same time through the same MHPC processes. If a project is certified, the project can receive both the federal credit and the state substantial rehabilitation credit.

The federal credit, and thus Maine's HRTC, requires a three-part application and certification process (the small project credit application mirrors this process but only goes through MHPC). Applicants first submit their materials to MHPC and are encouraged to work with MHPC to prepare the applications. MHPC reviews and processes the applications and forwards applications to the NPS with a recommendation for whether or not the project should be certified. The three parts are as follows:

- <u>Part 1</u> of the application establishes a building's eligibility as a certified historic building. If a building is already individually listed on the National Register of Historic Places (NR), a Part 1 application generally does not need to be completed.
- <u>Part 2</u> requires a description of the rehabilitation work that will be completed, including elements of work that will not be credit eligible, so that MHPC and NPS can approve that the work will maintain the historic character of the building being rehabilitated. The

[9]The small project credit is only available to Maine projects that do not claim the federal credit and incur a specified amount of qualified rehabilitation expenditures. Despite this, OPEGA notes that the small project credit generally follows the guidance and limitations of the federal credit with the exception that qualifying properties do not have to meet the substantial rehabilitation test.

application requires descriptions of each piece of work that will be undertaken. MHPC encourages applicants to go through this approval process before beginning work to increase the likelihood that the final work will be credit eligible and meet standards.

- Part 3 is completed after the building is rehabilitated and requires submission of pictures showing the final work. NPS certification of Part 3 of the application makes the applicant eligible for the federal and the state substantial credits (provided that the building has been certified as a historic structure). Small project credit recipients must meet all federal standards other than the substantial rehabilitation test. In lieu of that standard, the small project credit is available to taxpayers who incur between $50,000 and $250,000 in certified qualified rehabilitation expenditures and do not claim the federal credit.

MHPC requires additional reporting beyond the federal Part 3 application (see pages 13-15 for additional discussion of program reporting). Applicants file for the credit as part of their normal income tax return. Applicants cannot receive tax credits for the state HRTC unless the application and reporting forms, signed by MHPC, are attached to the tax worksheet.

Table 2 provides a summary of the key provisions of the federal and state HRTC side-by-side with indication of where they overlap.

Table 2. Comparison of Key Provisions of Federal and State Historic Rehabilitation Tax Credits

	Federal HRTC	Maine HRTC
Administration	Credit is jointly administered by the US Dept. of the Interior and Dept. of Treasury. The National Park Service (NPS) acts on behalf of the Secretary of the Interior in partnership with the State Historic Preservation Officer (SHPO)[10] in each state. The IRS acts on behalf of the Secretary of the Treasury.	Administered by the MHPC, in consultation with MRS. MaineHousing certifies affordable housing projects, generally, and in the context of this program.
Eligibility	Rehabilitation must be of a certified historic structure—a structure that is listed individually in the National Register of Historic Places (NR), or that is located in a registered historic district and certified by the NPS as contributing to the historic significance of that district. Rehabilitation must be of an income-producing structure. Rehabilitation must meet the Secretary's Standards to preserve the historic character of the building. Rehabilitation must meet the substantial rehabilitation test[11] according IRC Section 47.	Follows the eligibility criteria for the federal credit set in the IRC, with the limiting condition that eligible projects must be located in Maine. MHPC can make site visits for up to 5 years after a building is place in service to ensure that standards were met and requirements followed.[12] *Note that small project credit applicants do not have to meet the substantial rehabilitation test.

[10] In Maine, the Director of MHPC serves as the SHPO upon appointment by the Governor.
[11] The "substantial rehabilitation test" requires that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building. See National Park Service guidance for the particulars of this standard: Eligibility Requirements—Technical Preservation Services, National Park Service (nps.gov)
[12] Chapter 813 Rules, Section 4

Table 2. Comparison of Key Provisions of Federal and State Historic Rehabilitation Tax Credits		
	Federal HRTC	**Maine HRTC**
Application Process	Three part application process: (1) Establishing property as eligible; if already listed on National Register, don't have to submit part 1; (2) Approval of planned work as meeting eligibility standards; (3) Certification of completed project as meeting standards and following approved plan. Applications are submitted to the SHPO, who coordinates application and sends to NPS with a recommendation. NPS makes the final decision regarding approvals and certification.	Maine approval process mirrors federal process. The role of the MHPC would be the same whether a project was just applying for the federal credit, or for both the federal and state credit, except that MHPC is the final decision-maker on applications for the small project credit.
Claiming Credits	Credit may only be taken after work is certified and building is "placed in service." Credit equals 20% of qualified rehabilitation expenditures; taken over 5 years.[13] May generally be carried back one year and carried forward 20 years.	Credit may only be taken after work is certified and building is "placed in service." Credit is 25% of qualified rehabilitation expenditures; taken over 4 years.[14] Fully refundable credit.
Review & Audit of Expenses	IRS is responsible for reviewing and auditing qualifying expenses.	Qualifying expenses subject to both IRS and MRS review and audit. Except for small project credit expenses, for which the IRS has no responsibility.[15]
Recapture	Credit is recaptured if the property is disposed of, or otherwise ceases to be investment credit property, during the 5-year recapture period.	Subject to the same recapture provisions as the federal credit.

- **The scaffolding of the federal HRTC provides the state HRTC with increased efficiency for administrators and applicants and increased oversight and quality control.**

Being built on the scaffolding of a federal tax credit program makes Maine's HRTC much more efficient for the administrator, and for participants to apply for, than a stand-alone state credit would otherwise be.

Because Maine's credit relies on federal definitions, and primarily uses the same federal application forms, Maine agencies do not have to do the work of continually updating program standards and processes because this responsibility is borne at the federal level. Additionally, the fact that Maine's credit is embedded in an existing federal program also means that it includes multiple levels of quality controls and oversight. The application process is staged, with each stage including review

[13] The Tax Cuts and Jobs Act of 2017 requires taxpayers to take the 20% credit ratably over five years (previously it was all taken in the year they placed the building into service).
[14] For the Maine substantial rehabilitation credit, this state credit is taken in addition to the federal credit.
[15] For both the small project and substantial credits, MRS applies the IRC Section 47 criteria to determine what expenses qualify as eligible.

and approval at both the state level –by the MHPC – and at the federal level – by the NPS. The credit's performance and cost are also overseen at both the state and federal levels, though federal oversight extends beyond Maine projects.

Building the state credit on the federal credit also provides benefits for program participants, who experience a more efficient application process, because federal forms serve as the applications for both the federal and state credit.[16] Additionally, having their federal and state applications processed simultaneously provides credit participants with predictability about whether they will be able to combine both credits on a particular project.

The efficiency that comes from being built on the scaffolding of the existing federal HRTC processes and forms also helps to minimize administrative costs.

B. Comparison to Best Practices

The HRTC largely follows two distinct sets of best practices each with a different focus and aim. First, the HRTC follows best practices for historic preservation incentives listed by the National Trust for Historic Preservation, an organization focused on maximizing historic preservation. Second, it follows best practices identified for tax expenditures, which aim to balance program efficacy with state oversight and fiscal responsibility.

- **Maine's credit largely follows the best practices laid out for HRTCs by the National Trust for Historic Preservation.**

The National Trust for Historic Preservation is a private 501(c)(3) nonprofit organization established by Congress to "further the policy enunciated in the Historic Sites Act (49 Stat. 666) and to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest and providing a national trust for historic preservation."[17] In its 2018 report, *State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact*, the NTHP defines the highest performing tax credits for historic preservation as "those that preserve the greatest number of historic buildings and drive the most reinvestment, generally follow the framework of the federal historic tax credit" and that incorporate a number of specific design elements.[18]

OPEGA compared Maine's HRTC to the best practice elements identified by the NTHP, and found that Maine's credit reflects most of the recommended elements. These recommendations included following the framework of the federal HRTC, making credits easily transferable to ensure that taxpayers can access their value, avoiding aggregate caps which can make their value less predictable to taxpayers, having a high enough rate, regular performance evaluation and effective

16 With the exception of the Maine small project credit, which has its own application.
17 National Trust for Historic Preservation Congressional Charter is found at: https://nthp-savingplaces.s3.amazonaws.com/2017/09/07/09/19/04/659/NTHP_Charter_2015_Recodification.pdf
18 "State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact."2018. National Trust for Historic Preservation.

program management. How Maine's program compares to each NTHP best practice is shown in Table 3 below.

Table 3. Comparison of Maine's HRTC to Best Practice for Historic Rehabilitation Tax Credits	
NTHP Best Practice Criteria for HRTCs	**Does Maine's HRTC Include the NTHP Best Practices?**
Follow the framework of the federal historic tax credit	Yes - Maine's HRTC is based on the federal HRTC framework, though the small project credit applies a different minimum rehabilitation cost.
Tailor credits to address state priorities such as projects: • in smaller communities or rural areas • in specific areas of physical deterioration or economic distress • that rehabilitate housing • that rehabilitate specific types of buildings such as historic mills or barns	Partially - Maine allows a credit for rehabilitation of affordable housing under §5219-BB(3), but does not otherwise target specific state priorities. Maine does have the additional small project credit but this credit is not targeted towards particular communities or project types.
Make credits easily transferrable to ensure taxpayers can access their value, via: 1) syndication of the credits to third parties 2) direct transfer 3) refundability	Yes – The NTHP notes only a few states offer all 3 options, but 21 offer more than one option. Maine offers 2 options – syndication[19] and refundability. Although the report also notes that most states (26) offer direct transfer, which Maine does not, Maine does offer refundability, which is the least common option, only offered by 9 states.
Avoid aggregate credit limits that can make credit values less predictable	Yes - Maine has no aggregate limit, and instead has a per project limit which is viewed more favorably by the NTHP.
Set the credit rate at a level high enough to constitute a meaningful incentive, typically 20% to 30% of qualified rehabilitation expenditures	Yes - Maine's normal credit is 25%, with 35% available for new affordable housing projects.[20]
Set a lower minimum rehabilitation cost than the federal standard to encourage small projects	Unclear - Maine's substantial credit applies the federal standard, but the small credit is available to projects with between $50K and $250K that don't meet the federal standard for "substantial rehabilitation." It's unclear if this is a sufficiently low threshold to encourage small projects.
Maximize the different taxes the credit may offset beyond income tax, such as insurance premium tax, particularly in states without income tax	Yes - Maine's HRTC may offset income taxes under Title 36, Part 4 or insurance premium taxes under 36 MRSA §2534.
Extend the time period over which credits can be claimed via carry forwards or carry backs	N/A – Maine credits must be taken over 4 years. However, since the credits are refundable, carry forward or back would add no value for taxpayers.
Require rehabilitation projects to start and be completed timely, and reallocate credits from projects that miss deadlines	Yes – Maine HRTCs require qualifying rehabilitation expenses to be incurred within a 24-month period (or a 60-month period for projects completed in phases). Reallocation of credits is not applicable in Maine because there is no aggregate cap on credits.

[19] State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact. 2018. National Trust for Historic Preservation, pg. 7 explains that "The syndication process begins by identifying prospective investors like corporations, entities with pooled funds or individuals, for a state tax credit project. This transfer mechanism gives developers, who often do not owe enough to state taxes to use all the credits themselves, the ability to form a limited liability corporation (LLC) and admit outside investors as partners." OPEGA notes that in Maine, with the refundable credit, developers would not be limited by tax liability but that this mechanism could allow more parties to benefit from the credit beyond the direct property owners.
[20] As defined in 30-A MRSA (1)(DD)(1).

Table 3. Comparison of Maine's HRTC to Best Practice for Historic Rehabilitation Tax Credits	
NTHP Best Practice Criteria for HRTCs	**Does Maine's HRTC Include the NTHP Best Practices?**
Expand who can claim the credits	Partially - Maine's HRTC applies the federal HRTC definitions requiring qualifying properties to be "depreciable," in other words, income-producing. Based on this definition, commercial property owners are eligible to claim the credit. However, homeowners are not.
Evaluate performance on a regular basis	Yes - MHPC is subject to annual and biennial state reporting requirements for the HRTC and covers the measures suggested by NTHP. These reports are discussed more in recommendation C.1.
Effective program management, including: • streamlining the process by reviewing proposed rehabilitations for both state and federal credits concurrently • application fees that fully support the costs of administering the HTC	Yes - Maine's HRTC does process applications concurrently for projects that are also seeking federal credit qualification. Statute authorizes the MHPC to establish fees to cover the cost of administering the program. However, the Commission chooses not to do so.

- **Maine's credit is also aligned with many general tax expenditure best practices.**

In addition to the best practices identified by the NTHP, which center on encouraging historic preservation, best practices for tax expenditures provide another relevant lens for the HRTC. Tax expenditure best practices focus on, and balance competing priorities between, multiple policy goals including state fiscal responsibility, program oversight, and transparency. There are multiple sources of tax expenditure best practices and variation between these sources in how the various policy goals are prioritized and weighted against each other. Overall, we found that the HRTC does align with many of the best practices for tax expenditures.[21]

The HRTC follows tax expenditure best practices in the following areas of program design and administration:

- **Transparency and Accountability**—Program data for the HRTC is publicly available and regularly provided to the Legislature to support the oversight role of policymakers. The data reported to policymakers is relevant to the oversight of the program (see recommendations A.1 and A.2 for more information on how data management could be strengthened). Not only is the program accountable at the state level, but the added level of federal oversight provides a check on the program administration that it is meeting federal standards.
- **Program Ownership**—The HRTC has a clear owner in the MHPC with direct responsibility for program administration. The objectives of the HRTC align with the objectives of MHPC increasing the likelihood that the MHPC will appropriately tend to the administration and effectiveness of the program.

[21] OPEGA reviewed a number of sources of tax expenditure best practices including GAO-05-1009SP. GAO. 2005. "Understanding the Tax Reform Debate: Background, Criteria, and Questions;" GAO-13-167SP. GAO. 2012. "Tax Expenditures: Background and Evaluation Criteria and Questions;" Murray, Matthew N. and Donald J. Bruce. 2017. "Best Practices for Design and Evaluation of State Tax Incentive Programs for Economic Development." *Report prepared under contract with the Alabama Department of Revenue*.

- **Simplicity for Participants**—Being built on the scaffolding of the federal credit, which does have some complex requirements, keeps the HRTC application as simple as possible. The HRTC adheres to the same rules and requirements as the federal credit and applications are processed concurrently (with the exception of the small project credit). Additionally, MHPC offers a high degree of printed guidance and staff support to assist applicants and participants with questions about program requirements and rehabilitation standards.
- **Fiscal Certainty for the State and Participants**—Caps on the HRTC are imposed at the project level, but not at the program level, and the credit is refundable. This means availability of the credit is predictable for participants—they do not have to wonder whether their tax liability or the number or cost of other projects in a particular year might limit their access to the credit (36 MRSA §5219-BB(4)). On the other hand, not having an aggregate annual cap on the amount of credits claimed makes the cost of the credit less predictable for the State budget. Additionally, any refundable credit can be more of a hardship to the State than a non-refundable credit when the State runs into periods of revenue decline. The per project cap on the HRTC, however, does limit how much the state will invest in any particular project and protect the State against ballooning costs. Additionally, HRTC statute dictates the timing of credit claims as 25% per year over 4 years (36 MRSA §5219-BB(5)), which provides predictability for future year claims.
- **Checks on Program Performance**—The HRTC is a "pay-for-performance" program—it only provides benefits to participants after they have completed the rehabilitation of historic properties in the State. The pay for performance element of the program design ensures that the State will receive a benefit in connection with providing the tax credit.[22] The HRTC also requires regular reporting to the Legislature on program outcomes (annually) and the costs and benefits of the program (biennially), providing another opportunity to monitor performance. In addition, the HRTC law includes a sunset date, after which the program is repealed, unless Legislative action is taken. By requiring Legislative consideration to continue a program beyond a future date certain, a "sunset" is a valuable oversight tool for policymakers. We note that frequent reconsideration decreases certainty for program participants and this can create a challenging balancing act.

While Maine's HRTC generally follows best practices for HRTCs and tax expenditures in general, there are opportunities for policymakers to consider adopting additional best practices.

➢ **Maine's credit is limited to income producing properties and therefore limited in its impact to overall historic rehabilitation in the State.**

The NTHP's list of best practices included making credits available for different types of buildings to increase the potential impacts from historic rehabilitation in states.

22 However, it is not a guarantee that the State would not have otherwise received those benefits. See page 19 for a discussion of the "but for" problem and the HRTC.

Maine's HRTC is currently limited in the impact it can provide by its narrow application only to the rehabilitation of income-producing properties (see pages 17-27 for more detailed discussion on what impacts can be expected). According to MHPC, most historic buildings listed individually in the National Register or located in historic districts in Maine are not income-producing properties, with the remaining most likely being private residences.[23]

While the federal credit is also limited to income-producing historic properties, if Maine did choose to expand the state's credit, it would not be unique in this regard. Twenty-two other states have historic rehabilitation tax credits for homeowners and New York offers a credit specifically for the rehabilitation of barns (see Appendix C). OPEGA heard from stakeholders that there is interest from homeowners for such a credit, and Maine's 2021-2026 Edition Statewide Historic Preservation Plan notes that the creation of a tax incentive for historic homeowners was a common request during the preparation of the plan.[24] OPEGA provides more information about a potential opportunity for improvement regarding a tax credit for non-income producing historic rehabilitations in recommendation E.1.

C. Program Data Available for Oversight

OPEGA's scope for this evaluation involved using existing data to assess the degree to which the program is performing as intended (see Appendix A for information about the scope). OPEGA looked first at state-held MHPC data on the HRTC, and second to data analyses commissioned by program stakeholders, which are used by MHPC to meet its biennial reporting requirements to the Legislature.

Taken together the data reported to and by MHPC and the economic impact analyses, commissioned by program stakeholders, provide a wealth of program data on the HRTC. None of the existing data is perfect, but it does provide estimates of the credit's costs and impacts adequate for legislative oversight. Improvements to MHPC's data management practices would increase the reliability of reported program data in the future.

- **Maine's HRTC program requires fairly robust data reporting, and program administrators are diligent about data collection and reporting.**

The HRTC is unique among OPEGA's recently-reviewed State tax expenditures in the degree of program transparency and accountability that is required and achieved. Under 27 MRSA §511,

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[23] In 2007 MHPC conducted an analysis of buildings in Maine listed individually on the National Register of Historic Places or in a historic district (with the exceptions of districts in York and Castine) to understand their primary usage. MHPC updated the analysis for OPEGA during this review and estimates that of the 7,948 properties listed, 28% may be income-producing. The remaining buildings would be other property types, most being private residences.

[24] *Heritage for the Future: Maine's Statewide Historic Preservation Plan.* 2021-2026 Edition. Compiled by Maine Historic Preservation Commission. MHPC is responsible for developing and updating the plan but it does not serve as an internal work plan. It is a plan for Maine. OPEGA notes that the plan is currently undergoing NPS approval and has not yet been made public. When it is made public, it will be available at https://www.maine.gov/mhpc/about-us/state-preservation-plan

MHPC has annual and biennial reporting requirements for the HRTC that include program metrics, net program cost to the State, analysis of the effectiveness of the credit as an incentive for historic rehabilitation and economic development, and recommendations for changes to, repeal of, or extension of the credit. These requirements exceed those of many other State tax incentives that OPEGA has recently reviewed or is currently reviewing (see Table 4).

Table 4. Reporting Routinely Required by Statute from Administrators of Tax Expenditures			
Tax Expenditure	Program Metrics [25]	Net Cost Analysis	Recommendations to Extend, Repeal, Amend
Historic Rehabilitation Tax Credit (27 MRSA §511(5))	X	X	X
Pine Tree Development Zones (30-A MRSA §5250-P)	X	-	-
Research & Development Tax Credit (36 MRSA §5219-K)	-	-	-
Seed Capital Tax Credit (36 MRSA §5216-B(6)(B))	X	-	-

The overall data reporting structure for the HRTC is robust. OPEGA found that MHPC staff are diligent about fulfilling statutory reporting requirements for the HRTC and about collecting the data required to do so. Program rules were developed to require HRTC participants to provide project-specific data to the MHPC before and after project completion. In order to ensure HRTC participants provide the required data, program rules also require the reporting forms to be signed by MHPC staff and attached to HRTC tax worksheets to support HRTC claims. This prevents HRTC participants from claiming the credits without first providing the project data the MHPC needs to support legislative oversight of the credit.

Not only is substantial program reporting required for the HRTC, the data elements collected and reported for the HRTC are well aligned with the credit's goals (see Table 5 on the following page). This is a strength of the credit's design and administration. It ensures that the Legislature receives relevant information with which to assess how effectively the credit is meeting the chosen goals.

[25] Refers to reporting required beyond Maine State Tax Expenditure Reports produced biennially by Maine Revenue Services.

Table 5. Comparison of HRTC Goals with Data Collected and Reported		
	Data Collected Relevant to HRTC Goals	
HRTC Goals	Data Collected to Fulfill Annual Report Requirements	Additional Data Collected to Support Biennial Reporting
Historic Preservation	• Approved & certified state historic preservation certification applications • Total aggregate square footage rehabilitated and developed • Total housing units created • Total aggregate square footage of housing	• Prior use of structure • Post-rehabilitation use of structure
Community Revitalization		• Location of structure • Assessed value before rehab • Assessed value post rehab
Affordable Housing	• Total affordable housing units created • Number of affordable housing units preserved • Total aggregate square footage of affordable housing	
Economic Impacts & Jobs	• Total certified rehabilitation expenses • Total new construction expenses	• Construction jobs created • Jobs in building after completion

Later in the report, OPEGA suggests that there may be an opportunity for the Legislature to lessen some of the MHPC administrative burden while still meeting Legislative needs for data, by reconsidering the biennial reports. The basis for this suggestion is discussed on in recommendation C.1.

- **Improvements to MHPC's data management practices would increase the reliability of the reported program data, but much of the existing data is reasonable.**

OPEGA noted that MHPC is a good program steward when it comes to data—collecting relevant program data and evidencing care and caution when interpreting and presenting the data. At the same time, we noted that there are opportunities for MHPC staff to improve data management. Struggles with data management are not at all unusual for tax expenditure program administrators, particularly when staff may be asked to take on increasing data management responsibilities over time and are not provided training or support to do so. However, weaknesses in data management are worth tending to, as they can reduce confidence in data provided to evidence the program's effects and can snowball as the program ages and the quantity of data increases beyond what can be managed manually.

To test the reliability of the data reported by the MHPC, OPEGA requested the raw HRTC data and compared it to the annual report the Commission provided to the Legislature in February 2021. We also requested the original reporting forms filed by HRTC participants from 2008 to date. Through our analysis of these data sets, we observed that MHPC's HRTC data management process is highly manual, and therefore, subject to increased error. We identified a number of opportunities to improve management of the data – many of which do not necessarily need to be costly or labor intensive. These improvement opportunities are discussed in recommendations A.1 and A.2.

Though we found that there are opportunities to improve the precision, and reliability, of HRTC data, we also determined that the reports produced by MHPC to date do provide reasonable information to support policy-making. OPEGA also notes that HRTC is both designed and implemented with an aim to "prove" its worth, with extensive reporting requirements and the diligence of MHPC in meeting those requirements. This stands in contrast to some of the other tax incentives reviewed by OPEGA, where we observed less reliance on, and support for, data collection from program participants. While there are opportunities for improvement, it is worth calling out that the HRTC is much further along than many other incentives in terms of accountability, transparency and availability of data that legislators can use to assess its performance.

Appendix B includes a table of performance metrics. MHPC data relative to these metrics is presented throughout the remainder of this report as appropriate.

➢ **Economic impact reports commissioned by program stakeholders provide additional perspective on the program, but may overestimate some of the impacts of the program while underestimating others.**

In 2011, 2015, and 2020 Maine Preservation and a group of stakeholders supportive of the HRTC commissioned economic impact reports on the credit.[26] The reports include a combination of contextual information on the credit, publicly available information on the credit use and impacts, information gathered from case studies on particular projects, and estimated net costs to the State based on economic modeling. MHPC uses some of the data from these economic impact reports to fulfill its biennial reporting requirements to the Legislature.

OPEGA evaluated these commissioned economic impact reports to assess how and to what extent the Legislature could rely on them. Specifically, OPEGA reviewed the Economic Impact Reports; interviewed the consultants[27] who authored those reports and performed the modeling analysis; and examined the data used in the modeling analysis. Based on this assessment, OPEGA determined that the Legislature can reasonably rely on these economic impact reports for the following:

- Detailed explanations about how the state credits work;
- Qualitative descriptions of the types of impacts the credits are likely to have; and
- Data related to municipal tax revenues and job creation associated with the credits.

[26] Lawton, Charles and Frank O'Hara. *Maine Historic Tax Credit Economic Impacts Report 2020.* Commissioned by Maine Preservation in partnership with Coastal Enterprises, Inc., Greater Landmarks, GrowSmart Maine, and Maine Real Estate & Development Association; Planning Decisions, Inc. *Maine Historic Tax Credit: Economic Impact Report 2015*. Commissioned by Maine Preservation; Planning Decisions, Inc. *The Economic and Fiscal Impact on Maine of Historic Preservation and the State Historic Preservation Tax Credit 2011.* Commissioned by Maine Preservation.

[27] OPEGA met via Zoom with Charles Lawton and Frank O'Hara who provided OPEGA with their modeling inputs for the 2020 Report and insight in to their analysis. OPEGA determined that they used data provided by Maine Preservation that originally originated from MHPC. The consultants used the data provided to form the basis of the modeling inputs along with making estimating decisions about building usage and jobs based on information from Maine Preservation, an advocacy group. Additionally, it should be noted that information from MHPC reports and the Economic Impact Reports are not comparable because the consultants' data covers a different time period than the MHPC data used primarily in this report and includes some projects from a previous form of the credit.

However, OPEGA does not recommend the Legislature rely on the exact figures produced from the modeling analysis as a hard-and-fast assessment of whether the HRTC is paying for itself (net cost to the State) or when it began paying for itself. To be clear, this is not due to observed problems with the modeling or resulting reports; in fact, the authors appeared to have made informed decisions about which information to include in modeling based on direct knowledge of the projects and impacts. Economic modeling is simply an imperfect art. Modeling is always imprecise and this should be considered when evaluating any modeling estimates. Despite careful decision-making, the HRTC modeling likely underestimates the impacts from the rehabilitation projects in some ways (they were not able to capture the ways projects might inspire surrounding revitalization and its economic impacts) and it likely overestimates the impacts in other ways (the modeling attributes 100% of the project outcomes to the credit, assuming that no projects would have gone forward without it). Additionally, the modeling does not consider that the State could have achieved economic benefits from alternate uses of the tax revenue that was "spent" on the credit. Even so, the economic impact modeling for the HRTC is likely directionally accurate, showing the program moving in the direction of covering its own costs.

In the next sections, OPEGA uses existing data on the HRTC, as discussed above, to assess whether the HRTC is achieving its goals and how well the program is designed to achieve those goals.

D. Overall Program Alignment with Goals

Often when OPEGA evaluates a tax expenditure, we find a disconnect between how a program is designed and the purpose and goals for the program as evidenced by statute and legislative history. However, this is not the case with Maine's HRTC. Rather, HRTC's design is aligned with its purpose and goals. The program is designed to drive increased historic preservation in the State and through that increased historic preservation, affordable housing, community revitalization, and economic impacts and job creation are likely to follow.

Table 6, which follows, summarizes the alignment of Maine's HRTC with its goals, indicating that many of its goals are achieved through the mechanism of historic preservation.

Table 6. Alignment of HRTC design with goals	
Goal	**Alignment**
Historic Preservation	• Provides incentive for rehabilitation of certain historic buildings • Buildings must be National Register of Historic Places eligible or listed or in certified local districts (36 MRSA §5219-BB(2)(B) & 27 MRSA §511). • Buildings must meet preservation standards to ensure historic character is retained (under 36 MRSA §5219-BB, the IRC 47(c)(2) defines eligible expenditures. Projects must meet Secretary of the Interior's Standards for Rehabilitation (36 MRSA §5219-BB(2)(A)). • Small project credit is available for Maine projects that do not take the federal credit.
Affordable Housing	• Provides increased (amplified) credit for new affordable housing projects[28] (36 MRSA §5219-BB(3)). • Amplified credit increases annually if certain targets are not met (30-A MRSA §4722(1)(DD)(4)). • Building must remain affordable housing for 30 years or amplified credit can be recaptured. The affordability requirements are captured in a restrictive covenant between MaineHousing and the owner of the building (36 MRSA §5219-BB(3) & 30-A MRSA §4722(1)(DD). • Federal rehabilitation credit can be used in conjunction with the low-income housing tax credit.[29] • Even when HTCs are not specifically designed to increase affordable housing (like Maine's credit is), there are potential links to the development of affordable housing because of spillover effects and ties to other affordable housing programs.
Community Revitalization	• The credit is not directly designed to foster community revitalization, but advocates argue that historic preservation indirectly catalyzes further development in its vicinity and increases property values.
Jobs & Economic Impacts	• The credit is not directly designed to foster job creation or economic impacts, but the rehabilitation of buildings requires construction/artisan jobs and for-profit building use. • Projects often require work that isn't credit eligible, meaning construction is generated which does not require State financial support. • Limitation to income-producing properties may be more likely to foster jobs (for non-rental property uses). • Requirement that the property must remain in use for 5 years may be more likely to foster jobs by requiring continuing income-producing functions (for non-rental property uses).[30]

E. Program Performance: Contribution to Historic Preservation

The design of Maine's HRTC ensures that only applicants who have completed a certified historic rehabilitation of a qualified building can claim the tax credit. As previously discussed, Maine's

[28] As defined in 30-A MRSA §4722(1)(DD).

[29] See IRS Publication "Rehabilitation Tax Credit Historic Preservation FAQs," Q2 under "special circumstances": Rehabilitation Credit (Historic Preservation) FAQs | Internal Revenue Service (irs.gov)

[30] The requirement is discussed on pg. 13 on the NPS Publication "Historic Preservation Tax Incentives" found at: about-tax-incentives-2012.pdf (nps.gov)

HRTC program is a "pay-for-performance" program in that applicants cannot receive the tax credits until work is completed, certified, and the finished building is placed into service. This means that the State's desired end of historic rehabilitation is guaranteed to occur before the State pays out funds.

Historic rehabilitation supported by the HRTC has been occurring in each year since the credit was established and has been spread throughout the State. According to MHPC data,[31] 115 income-producing properties have been certified for the state credits from 2008 through early 2021.[32] The projects represent three building types: housing (39%), commercial (31%), and mixed-use, a combination of both housing and commercial use (30%).[33]

During the same time period, there have been certified projects in 14 out of Maine's 16 counties.[34] The top four counties with completed projects are Cumberland (44), York (19), Kennebec (14), and Androscoggin (13). Towns with five or more certified projects include Portland (39), Lewiston (9), Augusta (8), Biddeford (8), and Saco (6).[35] These projects represent total construction expenditures of $490,900,394, with $398,048,723[36] qualifying for state credits. Collectively the projects have preserved 3,442,606 square feet of historic buildings throughout Maine.[37]

- **The substantial size of the HRTC is likely to incentivize some degree of historic preservation.**

Whether or not a project would go forward without the tax credit, and more generally, whether a particular behavior would have occurred in the absence of a state fiscal incentive, is difficult to determine. OPEGA and other legislative program evaluation offices across the country have struggled to provide definitive answers to such questions. This difficulty is magnified with the HRTC as the projects receiving the credits are often supported by, and require, multiple different types of fiscal incentives, including the federal HRTC and sometimes affordable housing credits.

Maine's HRTC represents a fairly substantial subsidy for projects in the amount of 25% of qualified expenses and is not limited by tax liability. Given these factors, the HRTC is likely to make a difference to the profitability of a fair number of projects, and may perhaps push a fair number of

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31 OPEGA analysis of MHPC data; figures used in report are primarily the same as Maine Historic Preservation Commission Annual Report for 2020, as required by statute 27 MRSA §511(5)(A). The number of certified properties used here differs from that report as OPEGA found that MHPC had inadvertently excluded a certified project from that report.
32 Data cited from MHPC's 2020 Annual Report covers the time period January 1, 2008 to February 26, 2021. OPEGA made use of this same period of data throughout the report.
33 OPEGA analysis of MHPC data.
34 Counties which had not yet had a certified project are Aroostook and Washington.
35 OPEGA analysis of MHPC data.
36 OPEGA notes that the figure reported in the commissioned 2020 Economic Impact Report (see footnote 26) for total qualified expenditures is over $445 million. OPEGA found that the Eastland Park Hotel and York Manufacturing, Mill #4 appear to account for most of the difference between the 2020 Economic Impact Report and the MHPC Annual Report figures due to differences in how MHPC and the economic consultants counted certain expenses. Those two projects hit the $20 million cap and MHPC added the technically certifiable expenses that became not eligible for the credit because of the cap to the non-QRE calculation even though it was not reported this way. These differences compound the previously mentioned use of different time periods and projects for the different reports.
37 Data from MHPC's 2020 Annual Report.

marginal projects into profitable territory. When a project takes both the state and federal credits—25% and 20% respectively—the reduction in project cost provided via the credits increases to 45%.

A report produced by Pennsylvania's non-partisan Independent Fiscal Office in 2009 on that state's historic rehabilitation tax credit provided evidence that "the ability to incentivize projects is much less clear for states that award modest HRTCs compared to those that award larger dollar amounts."[38] At 25%, Maine's credit is likely large enough to have an impact, and the fact that the credit is uncapped allows for more impact.

F. Program Performance: Contribution to Community Revitalization

Community revitalization can be inherently difficult to measure as it can take years after the completion of a historic rehabilitation project to see the ways a project has impacted the community in which it is situated and to accurately measure its impacts. MHPC does collect some data that could potentially demonstrate community impacts from HRTC projects, but it is important to keep in mind that this data does not measure the long-term impacts that may accrue in the years following project completion.

- **Community revitalization is likely to flow from historic preservation and has broad value for the State.**

Community revitalization may be reasonably expected to flow from the rehabilitation of historic buildings. Research on historic rehabilitation tax credits points to the potential of property renovation to serve as a catalyst for further development and redevelopment in a neighborhood.[39] Both non-partisan researchers and historic tax credit advocates[40] also describe "spillover effects" from historic property renovations including: increased property valuations of surrounding properties; affordable housing for local workers; reuse of existing municipal infrastructure; and community and social benefits like walkability and the reinvigoration of communities. These impacts can occur over extended time horizons and be difficult to fully assess over the short-term.

[38] Independent Fiscal Office. "Pennsylvania Historic Preservation Tax Credit: An Evaluation of Program Performance." January 2019: 22.

[39] Listokin, David, Barbara Listokin & Michael Lahr. 1998. "The Contributions of Historic Preservation to Housing and Economic Development." Housing Policy Debate. 9(3): 443-444. In the work the authors are describing the work of Donovan Rypkema from 1994 and state that "Property renovation is a catalytic activity; one renovation supports another. This pattern of reinvestment has a multiplier effect…As more properties are rehabilitated, lenders are more interested in making loans. As more lenders compete for these loans, their rates and terms become more attractive. As financing becomes more readily available, appraisers adjust property values upward. As property appraisals increase, lenders are willing to extend further credit. The renovation of properties begins as a cycle that improves the economic attractiveness of the neighborhood."

[40] See Rypkema, Donovan D. 2005. *The Economics of Historic Preservation: A Community Leader's Guide*. 2nd Edition. National Trust for Historic Preservation.

The 2019 Legislative report on the Pennsylvania Historic Tax Credit describes spillover effects in this way:

> *The positive externalities or spillover effects from rehabilitation projects that are triggered by a tax credit can be substantial. Unlike other incentives, the main goals of the HTC do not include short-term economic development, but rather community building, the revitalization of distressed areas and the preservation of state heritage. These projects may also incentivize other construction and upgrades in the vicinity, reduce blight, raise surrounding property values and establish synergies within the local community.* [41]

Maine has demonstrated an interest in maintaining its unique historic identity both as a public value and as a strategy for attracting and retaining tourists and new residents. The Maine Economic Development Strategy 2020-2029 (Strategic Plan) has a goal of attracting new talent to Maine through a strategy of "quality of place" investments. The Strategic Plan describes such investments as follows:

> *The quality of our recreational opportunities, historic places, and arts and culture are a draw for tourists and residents alike. Each area of Maine has special attributes. We will work directly with local communities to explore asset development that attracts and retains people.*[42]

While Maine's HRTC is not mentioned specifically as a "quality of place" investment, it clearly supports this goal.

- **Community revitalization is hard to measure, and available program data does not capture the breadth of possible community impacts.**

Community revitalization is a multi-faceted concept and defies easy measurement. For example, community revitalization includes things like the subsequent development of surrounding buildings, community pride of place, and walkability of downtowns. Maine's HRTC program collects some data on the financial impacts on host communities —increased property valuations and municipal revenues—and the extent of buildings which were previously vacant before their rehabilitations, which may provide some indication of community revitalization.

The MHPC 2021 Biennial Report provides the total pre-rehabilitation ($44,923,524) and post-rehabilitation ($93,105,174) assessed tax values for 43 projects that were certified from 2016 to 2020 and for which MHPC had complete data. For those 43 projects, the total change in assessed tax value after rehabilitation reported by MHPC is approximately $49 million. There were five certified projects in that same time period without complete data on tax valuation.[43]

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41 Pennsylvania Independent Fiscal Office. "Pennsylvania Historic Preservation Tax Credit: An Evaluation of Program Performance." January 2019: 17.

42 Maine Department of Economic and Community Development. "Maine Economic Development Strategy 2020-2029. A Focus on Talent and Innovation." See https://www.maine.gov/decd/strategic-plan ; pg. 27 (accessed 8/24/21).

43 The incomplete data on tax valuation for the period 2016 to 2020 is also seen more broadly in the MHPC data. Out of the 115 HRTC projects considered in this evaluation, 37% lacked complete tax valuation data. Unlike data on QREs, total project costs, and housing information, which MHPC ensures is collected before signing the MRS-required application forms, data on post-rehabilitation tax valuation information is not required to be recorded before signing the MRS-required

The pre- and post-rehabilitation assessed tax values do not directly demonstrate what the increased valuations mean for municipal tax revenues. Maine Preservation's commissioned 2020 Economic Impact Report provides information on how these projects have provided additional municipal revenue over time.[44] The report states that:

> *Cumulatively, the tax bases of all HTC communities have increased by $166 million. As a result of these investments, the annual property tax collections of these communities have increased from $200,000 in 2010 to more than $3 million in 2020—and a cumulative increase in property tax revenues to these communities of nearly $17 million.*[45]

Additionally, 58 of the certified projects were either formerly vacant or partially vacant before rehabilitation[46]—demonstrating the credits impact in returning buildings to service and vibrancy to host communities.

Now that the HRTC has been in place for more than ten years, it should be possible to assess the impacts of completed projects on further development in the community. Stakeholders OPEGA spoke with noted that such a study of the increase in property values of surrounding buildings would be useful but that they have been unable to fund or complete a study due to other priorities. Qualitative assessments of local impacts could also provide legislators with information on the ways the projects have impacted their communities but these types of efforts are resource-intensive.

G. Program Performance: Contribution to Affordable Housing

Affordable housing may not be the primary goal of the HRTC, but the program has design elements that support the creation of affordable housing and can lend support to Maine's policy efforts to increase affordable housing.

- **Maine has recently prioritized increasing affordable housing in the State.**

Recently, in the Maine Economic Development Strategy 2020-2029 (Strategic Plan), the State set a goal of increasing Maine's workforce and named affordable housing as one of the strategies for meeting this goal.

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application forms. In many cases, this is because post-valuations have not yet been completed by the time applicants are seeking MHPC approval. However, if this information is important to policymakers, changes could be made to ensure that the data is reported to MHPC.

44 OPEGA evaluated the 2020 Economic Impact Report and found the methods used to achieve the figures reasonable. However, the figures are not comparable to MHPC's reporting as the Impact Report covers a different timeframe than MHPC's reporting (2007-2019) and includes a large project that did not use the current statutory version of the credit and does not appear in MHPC's data. The authors of the report sought out assessment information missing from the original MHPC data and used historic mill rates to calculate the impact to municipal taxes. They also excluded some properties they determined to be non-profits.

45 Lawton, Charles and Frank O'Hara. "Maine Historic Tax Credit Economic Impacts Report 2020." Commissioned by Maine Preservation in partnership with Coastal Enterprises, Inc., Greater Landmarks, GrowSmart Maine, and Maine Real Estate & Development Association: 11.

46 MHPC 2021 Biennial Report as required by 27 MRSA §511(5)(B)

The Strategic Plan discusses the need for affordable housing as follows:

> *Increases in the cost of housing, particularly in southern and coastal Maine, are out-pacing wages. More production of affordable apartments and starter homes is needed to keep pace with demand. The mainstay program of MaineHousing is the low-income housing tax credit provided by the federal government; but that program only produced 21 apartment units for families in Maine in 2018 (with another 381 financed and underway). This is totally inadequate to the scale of the problem. Maine needs to develop its own tools for workforce housing.*[47]

Additionally, MaineHousing's 2020 Annual Report indicates that the State still needs 25,000 more affordable housing units.[48]

The State also recently enacted the Maine Affordable Housing Tax Credit,[49] a refundable income tax credit authorized beginning in 2021, demonstrating legislative interest in addressing Maine's affordable housing shortage.

- **Maine's HRTC has design elements aligned with supporting the creation and preservation of affordable housing and works together with other tax credits in support of these ends.**

Maine's HRTC includes a provision that increases the credit if the building being rehabilitated is a new affordable housing project certified by the Maine State Housing Authority.[50] Currently, the increased credit is 35% of certified qualified expenditures for a certified affordable housing project (as compared to 25% for other projects). The rate of the increased credit was started at 30% in 2008 with allowance to increase in one percentage point increments until a maximum 35% credit is achieved.[51] The increased credit is subject to repayment if the structure does not remain an affordable housing project for 30 years.[52]

In general, HRTCs, even when not specifically designed to increase affordable housing, are thought to support housing development as further development is encouraged in areas benefiting from historic preservation. Additionally, HRTCs have traditionally been used together with other

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47 See Maine Department of Economic and Community Development. "Maine Economic Development Strategy 2020-2029. A Focus on Talent and Innovation.": 34.

48 MaineHousing. Annual Report 2020: 8. (https://mainehousing.org) Additionally, recent news coverage of affordable housing in Maine includes information on how the Covid-19 pandemic has exacerbated the housing shortage in the state. See Abbate, Lauren. "The Pandemic Made Maine's Affordable Housing Problem Worse." 7/26/2021. Bangor Daily News. https://bangordailynews.com/2021/07/26/news/the-pandemic-made-maines-affordable-housing-problem-worse/

49 36 MRSA §5219-WW

50 See 30-A MRSA §4722(1)(DD) for Maine State Housing Authority's authorization for the certification of affordable housing projects and the definition of an affordable housing project.

51 MHPC and the Maine State Housing Authority are required annually to notify the State Tax Assessor if the total aggregate square feet of new affordable housing do not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for the credit. Upon notification of this fact, the State Tax Assessor increases the rate of the credit increase by one percentage point. See 36 MRSA §5219-BB(3) and 30-A MRSA §4722(1)(DD)

52 Under 30-A MRSA §4722(1)(DD) the amount subject to repayment is the credit increase amount plus interest on that amount at the rate of 7% per annum from the date that the property is placed in service.

affordable housing supports to reduce project costs.[53] In Maine, the HRTC has specific design elements to induce affordable housing creation and is often used in conjunction with other affordable housing tax credits.

Both MaineHousing and MHPC reported to OPEGA that affordable housing projects may qualify for the low-income housing tax credit (LIHTC) along with the increased HRTC for affordable housing and often also access the federal historic rehabilitation tax credit. MaineHousing indicated that affordable housing projects in historic buildings often require these multiple tax credits in order to be worthwhile for developers.

Looking forward, affordable housing projects may also be eligible for the newly enacted Maine Affordable Housing Tax Credit, a refundable income tax credit authorized beginning in 2021 (36 MRSA §5219-WW). According to MaineHousing's annual report, the first round of these credits was issued in early 2021 and supported the addition of 186 housing units (of which 163 were affordable) to Maine housing stock.[54] This new credit can also be layered with the increased HRTC for affordable housing.

➢ **Program data demonstrates the role of the HRTC in affordable housing development.**

Affordable housing accounts for more than half of housing created with the HRTC. Since 2008, there have been 924 affordable housing units created out of a total of 1,444 total housing units created in HRTC projects (64%).[55] There have also been 362 affordable housing units preserved in addition to those newly created. On a square foot basis, 60% of the housing space developed with support of the HRTC has been affordable housing.

Table 7. HRTC Affordable Housing Performance Metrics (Jan 2008 – Feb 2021)

Metric	Number
Affordable Housing Units Created	924
Total Housing Units Created	1,444
Affordable Housing Units Preserved	362
Total Aggregate Square Footage of Housing Developed	1,758,117
Total Aggregate Square Footage of Affordable Housing	1,057,088

Source: MHPC 2020 Annual Report

With regard to affordable housing in Maine generally, recent reports by MaineHousing and MHPC suggest that HRTCs (state and federal combined) were connected with roughly one-fifth (19.5%) of all affordable housing units created in 2020 in Maine. This percentage is based on the MaineHousing's 2020 Annual Report showing 328 affordable housing units completed in 2020,[56]

53 See Listokin, Listokin, & Lahr. 1998. "The Contributions of Historic Preservation to Housing and Economic Development." Housing Policy Debate. 9(3): 431-478.
54 MaineHousing, 2020 Annual Report: 9.
55 2020 MHPC Annual Report provided by MHPC. OPEGA notes that it could not exactly replicate figures from the 2020 Annual Report from source data or MHPC's own spreadsheet. OPEGA's investigation of the primary reporting forms lead it to believe that OPEGA could not produce more accurate figures than MHPC has provided and that MHPC's figures are reasonable if not perfectly precise. See Appendix B for further information.
56 MaineHousing, 2020 Annual Report: 11.

and MHPC's 2020 Annual Report showing the creation of 64 affordable housing units in HRTC projects between February 2020 and February 2021.[57] These data suggest that HRTCs have a role in Maine's efforts to create more affordable housing.

H. Program Performance: Contributions to Job Creation and Economic Growth

While the HRTC is not directly designed to foster job creation or economic impacts, the rehabilitation of historic buildings is commonly known to have positive economic benefits for host communities. Supporters of HRTCs argue that the credits produce a variety of economic benefits, including:

- Construction jobs, including artisans or workers with specialties needed in historic rehabilitations;
- New jobs created at the businesses that move into rehabilitated buildings;
- Additional, non-tax credit eligible construction required to complete projects;
- Increased tax revenues to municipalities due to increased property valuations of completed projects;
- Supply chain impacts due to construction activity; and
- Development that is catalyzed by the rehabilitation leading to increased property values in the surrounding area and increased business activity in the area.

➢ **Though positive economic impacts may be associated with historical rehabilitation projects, economic impacts are limited in measuring the overall success of the HRTC.**

Even if the HRTC is associated with positive economic benefits, it is important to look beyond jobs and other short-term economic indicators to evaluate success of the HRTC. Given that the HRTC, and tax credits for historic preservation generally, have key goals around preserving local history and revitalizing communities over the longer-term, impacts in these areas are also important to evaluate in measuring success.[58]

The challenge is that impacts on community revitalization, public value, and "quality of place" are harder to measure than economic outcomes, such as jobs. As a result, it can be tempting to evaluate tax credits like the HRTC based on more readily measurable economic outcomes. OPEGA suggests that while economic outcome measures are useful to consider, and important inputs to quantitative analysis of costs and benefits, they are limited in assessing overall success of the HRTC.

[57] MHPC, 2020 Annual Report: 3.
[58] See discussion in Mason, Randall. 2005. "Economics and Historic Preservation: A Guide and Review of the Literature." A Discussion Paper Prepared for The Brookings Institution Metropolitan Policy Program.

- **Positive economic impacts of the HRTC are evident in the program data and the commissioned economic impact reports, but existing data on job creation is either unreliable or requires careful interpretation.**

Positive economic impacts are evident in data on federal tax credits leveraged, new construction generated and expenditures on rehabilitation.

Table 8. HRTC Economic Impacts Performance Metrics (Jan 2008 to Feb 2021)	
Federal tax credits leveraged[59]	$85,614,845[60]
New construction generated (not eligible for the state credit)	$92,851,671[61]
Rehabilitation expenses qualifying for the state credits	$398,048,723[62]

As shown in Table 8 above, OPEGA estimates that historical rehabilitation projects in Maine accessing the State's substantial rehabilitation credit have been eligible to draw down $85.6 million in federal rehabilitation credits from January 2008 to February 2021, cumulatively.[63] MHPC reports $398 million in rehabilitation expenses qualifying for the credit over the same time period. OPEGA also identified reliable data from MHPC that points to nearly $93 million in new construction expenses generated in connection with HRTC projects but not qualifying for the credit.

In terms of job creation associated with the HRTC, the available data is less clear. One source of jobs data is that MHPC collects and reports in its biennial reports to the Legislature, but OPEGA found these data to be problematic and ultimately not reliable (see recommendation B.1). The 2020 Economic Impact Report commissioned by Maine Preservation is another source of HRTC jobs information, but OPEGA notes that this data is subject to the caveats outlined regarding model estimation on pages 16-17. The figures in the Maine Preservation report were calculated using economic modeling based on the construction cost inputs.[64] OPEGA finds the job figures calculated by the model based on construction cost inputs to be more reasonable than the job

59 The figure provided indicates that amount of eligible federal credits for projects in Maine, which were also receiving state tax credits, during this time period. The term "leveraged" is often taken to indicate that these federal credits would not have come to Maine absent the state credit. We are not able to say that is this case here, as some degree of federal credits may have come to Maine even in the absence of the state credit.

60 OPEGA's estimate of the total potential federal credits available for 102 completed substantial Maine projects used in this report (small project credits are not eligible for the federal credit). This figure is based on the total eligible expenses (qualified rehabilitation expenditures) multiplied by the federal credit percentage. This figure does not represent the value of credits that were actually claimed, as OPEGA was unable to access this information.

61 MHPC, 2020 Annual Report. As previously noted, OPEGA could not exactly replicate figures from the 2020 Annual Report from source data or MHPC's own spreadsheet. Based on an investigation of the primary reporting forms, OPEGA believes it could not produce more accurate figures than what MHPC has provided and that MHPC's figures are reasonable, if not perfectly precise. See recommendations A.1 and A.2 for more information.

62 OPEGA notes that this figure of $398,048,723 from the 2020 MHPC Annual Report does not match the figure in the 2020 Economic Impact Report of over $445 million in certified rehabilitation spending (Lawton & O'Hara. "Maine Historic Tax Credit Economic Impacts Report 2020.") OPEGA found that this difference is largely due to different decisions about how to count expenses and the different time periods covered. OPEGA could also not match MHPC's figure exactly based on reporting forms, but saw evidence of MHPC making reasonable decisions about which expenses to include in this figure that accounted for most of the differences between OPEGA's figure and MHPC's figure. OPEGA has chosen to use MHPC reporting here and notes areas for improvement in recommendations A.1 and A.2.

63 This figure is not credits taken, but credits for which Maine projects would have been eligible; it is an OPEGA calculation.

64 The analysis used the IMPLAN model. IMPLAN is an input-output economic modeling software that estimates economic impacts based on existing regional data and the economic activity inputs of interest. See IMPLAN website for more information on the model IMPLAN Basics – IMPLAN Group.

figures MHPC has reported in the biennial reports. The 2020 Economic Impact Report presents the following jobs impacts from the HRTC:

- Cumulative jobs in rehabilitated buildings: The report states that "nearly 700 new full-time, year-round jobs have been generated by businesses occupying commercial spaces and in building maintenance, generating $13 million per year in ongoing income to families living in these communities." These are jobs in completed businesses, such as shopkeepers or employees of businesses that have located in the spaces.
- Annual construction jobs: The report estimated 200-700 full-time-equivalent (FTE) jobs per year were generated by the rehabilitation projects used in the analysis.[65] These estimates represent the number of workers that the model calculated as needed by the construction spending inputs in a year.

OPEGA notes that the language regarding jobs in the Economic Impact Report states that the jobs are "generated" by the projects. OPEGA might use the language "supported" in this context—for instance, had other uses of State funds been made, such as supporting new construction, the jobs could have still come about in a different way.

[65] Lawton & O'Hara. 2020: 1-2. These data cover a different timeframe (2007-2019) than the MHPC reporting data reporting used throughout this report and include some projects from a previous version of the tax credit.

IV. Opportunities for Improvement & Recommendations—

In this section we present opportunities for improvement and recommendations for the HRTC. The recommendations are summarized in Table 9. They are organized into five areas: data management, data on jobs outcomes, legislative reporting requirements, small project credit, and property types eligible for the credit.

Table 9. Report Recommendations		
A. Data Management	Recommendation A.1	OPEGA recommends that MHPC improve data management, including internal guidance on data processing and documentation to ensure traceable reporting.
	Recommendation A.2	OPEGA recommends that MHPC improve guidance to reporting entities and consider streamlining the reporting process.
	Recommendation A.3	OPEGA recommends that State policymakers consider centralizing data management for tax expenditure programs as a possible avenue to address a growing interest in using data for oversight of tax expenditures.
B. Data on Jobs Outcomes	Recommendation B.1	OPEGA recommends that policymakers decide the degree to which jobs information is important to their oversight of the HRTC and whether it is worth pursuing new methods for what is collected and reported given the lack of centrality to the program and potential cost.
C. Legislative Reporting Requirements	Recommendation C.1	OPEGA recommends that policymakers consider whether biennial reporting for the HRTC is meeting the Legislature's needs and is efficient.
	Recommendation C.2	OPEGA suggests the Legislature clearly specify one or more legislative committees to which reports must be submitted and consider whether this should include the policy committees with jurisdiction over relevant areas.
D. Small Project Credit	Recommendation D.1	OPEGA recommends that policymakers work with MHPC and stakeholders to clarify the small project credit's purpose so that its effectiveness can be measured in the future.
E. Property Types Eligible for the Credit	Recommendation E.1	OPEGA suggests that policymakers consider whether expanding eligibility for the HRTC aligns with State policy priorities while weighing the costs and benefits of expanding eligibility.

A. Data Management

OPEGA noted three areas of data management where improvements may be necessary and appropriate to ensure effective legislative oversight.

1. A lack of clarity in external guidance for reporting has created a situation where MHPC has to make judgments about the meaning of reported figures and what should be counted.

2. MHPC management of program data is highly manual. To date, we found that program data has been fairly reliable. However, reporting cannot be easily replicated and any manual process has inherent risks.

3. A lack of internal MHPC guidance on data management means that there is no guarantee that MHPC will treat incoming data consistently.

The recommendations below are forward-looking and take into consideration that as the program grows there will be more data to manage and, consequently, more risk of inaccuracies without data management improvements.

➢ **Recommendation A.1: OPEGA recommends that MHPC improve data management, including internal guidance on data processing and documentation to ensure traceable reporting.**

We observed that many HRTC participants submit required forms to MHPC that contain data errors, and Commission staff do not have internal guidance to ensure that erroneous data is handled consistently. This leaves erroneous data open to varied interpretation by staff, and staff interpretations of data are not typically documented. The result is that outside entities, such as OPEGA, cannot readily trace MHPC annual report data to the participant forms.

MHPC manages the program data in an Excel spreadsheet. OPEGA observed that data entered into the spreadsheet is not always documented as to the source or documented consistently. OPEGA found that not all data was coming from the state's reporting forms, but also from the federal credit reporting forms and possible phone conversations that were not well-documented.

We also observed a lack of internal policy guidance for decisions about which data to include or how to categorize data. For instance, MHPC staff at times has to decide what to count as jobs or what to make of negative reported housing (when housing is lost during rehabilitation), or what to do when QREs and total construction reported seem incorrect. While OPEGA does not think that these issues have resulted in MHPC presenting data to date that is outside the range of reasonable, there is a concern that these issues could result in misleading program data being reported in the future.

Manual management of the data coming in and being entered into the spreadsheet has resulted in:

- Projects being inadvertently excluded from past annual reports—meaning that program outcomes have been underreported at times; and
- Text being included in data fields so that computations cannot be run within the spreadsheets resulting in off-spreadsheet computations that cannot be traced.

To ensure accountability, transparency and effective oversight, decisions about data should be clearly and consistently documented and sources of the data identified. Establishing internal rules for MHPC's processing of the data also seem important to ensure that what "counts" is consistent over time even if there is staff turnover.

➢ **Recommendation A.2: OPEGA recommends that MHPC improve guidance to reporting entities and consider streamlining the reporting process.**

While MHPC provides guidance on many aspects of the program to participants, MHPC does not provide instructions to participants for required reporting of data to MHPC. OPEGA also observed that what is reported to MHPC appears to be inconsistent at times. Developing clear guidance for reporting entities could improve the quality and consistency of incoming data and minimize the need for MHPC to make judgements and interpretations of data received.

Additionally, we note that the MHPC reporting forms for HRTC request some of the same information collected on the federal tax credit application, but MHPC asks for this information in a slightly different format. This difference appears to cause confusion for some filers. This confusion could be addressed through the clear guidance for reporting entities as recommended above. MHPC may also consider reducing duplication between the forms to streamline the process.

- **Recommendation A.3: OPEGA recommends that State policymakers consider centralizing data management for tax expenditure programs as a possible avenue to address a growing interest in using data for oversight of tax expenditures.**

The data management issues identified in this program are not unique among the tax expenditures that OPEGA has reviewed. OPEGA has also noted that much of the data being collected across tax expenditure programs in the State is of a similar nature. Additionally, the core work and expertise of staff administering the tax expenditure programs, such as HRTC, is often not data management and analytics.

Policymakers may want to consider the costs and benefits of the current model of decentralized data collection and management for tax incentives performed by individual program staff across administering agencies and consider alternatives. For example, the State might consider whether there is cause to centralize a data management function for tax expenditures in the State or whether to create an entity that could provide guidance and assistance to those tasked with data management in the absence of such a centralized entity.

B. Data on Jobs Outcomes

Reporting on jobs seems to be an area of particular confusion with HRTC applicants reporting a wide array of figures that are not meaningful. For instance, in MHPC's data a contractor that reports to a job site for one day for short-term work may be counted the same as a construction worker who is onsite for the entirety of a project. As another example, a cleaning person at a residential building may be included as a job on some reports, but not on reports from other residential buildings. As noted above, there are not instructions on data reporting generally and in the case of jobs this leaves a lot of open questions and what should count and be included in reports.

- **Recommendation B.1: OPEGA recommends that policymakers decide the degree to which jobs information is important to their oversight of the HRTC and whether it is worth pursuing new methods for what is collected and reported given the lack of centrality to the program and potential costs.**

At present applicants are interpreting the reporting requirements in a wide variety of ways resulting in jobs data that is inconsistent and not meaningful to support legislative oversight. However, it is not clear that directing MHPC to provide guidance on jobs reporting and do the potentially intensive work to clarify how many jobs are involved in each HRTC-supported project is worth the effort. OPEGA has noted in this review that jobs do not seem like a core measure of program success for this program. While MHPC could be directed to create clear guidance for reporting this information or to create estimates based on economic modeling—both of those avenues could create significant administrative burden.

C. Legislative Reporting Requirements

MHPC is required to issue annual and biennial reports. The annual reporting requirement focuses on program metrics as enumerated in 27 MRSA §511(5)(A). These annual reports taken together provide cumulative program data and information that is available to the Legislature to inform policy making.

The biennial reporting requirements (27 MRSA §511(5)(B)) require MHPC to:

- Analyze and report on: the use of tax credits as an incentive for rehabilitation of historic structures and economic development; and the tax and other revenues generated by the rehabilitation to determine if the revenues exceed the costs (net costs); and
- Make recommendations as to whether the credits under Title 35, section 5219-BB should be extended, repealed or amended, including recommendations for funding the credit.

➢ **Recommendation C.1: OPEGA recommends that policymakers consider whether biennial reporting for the HRTC is meeting the Legislature's needs and is efficient.**

The ability of MHPC to report on net costs has only been possible for the agency to date because stakeholders have commissioned analyses of net costs. OPEGA notes that, from the perspective of the stakeholders who have commissioned these reports, a time-frame of five years, rather than two years, seems well-suited for capturing change in net costs.

Policymakers should bear in mind that these net costs analyses are complex, requiring expensive modeling programs and contracted agencies, and subject to the possible shortcomings that OPEGA notes in this report. If the Legislature sees the value in having regular assessments of the HRTC of this sort, policymakers should plan for the cost involved.

OPEGA notes also that the requirement in the biennial report for MHPC to recommend every two years whether the program should be extended, amended or repealed represents an additional sort of sunset to the sunset that already exists within statute. This may cause program instability with the suggestion that the program could be subject to repeal every two years. Further, we note MHPC is required to include recommendations for funding of the credit which is not something that OPEGA has seen in the review of other tax expenditures.

➢ **Recommendation C.2: OPEGA suggests the Legislature clearly specify one or more legislative committees to which reports must be submitted and consider whether this should include the policy committees with jurisdiction over relevant areas.**

Under current law, the required annual report is not directed to a particular legislative committee (27 MRSA §511(5)(A)), or even the Legislature as a whole. The biennial report is directed to the joint standing committee of the Legislature having jurisdiction over taxation matters (27 MRSA §511(5)(B). OPEGA notes that MHPC indicates its practice is to provide the both reports to the Taxation Committee.

The goals of the HRTC around historic preservation and housing fall under the jurisdiction of legislative committees beyond the Taxation Committee. OPEGA suggests that policymakers consider whether reports should be submitted to Committees with jurisdiction over related areas, including not only the Taxation Committee, but also the Education and Cultural Affairs Committee, which has jurisdiction for Maine Historic Preservation Commission, and the Labor and Housing Committee, which has jurisdiction over affordable housing matters.

D. Small Project Credit

The HRTC small project credit represents 13 projects (11%) of the 115 completed over the review period (January 2008 to early 2020). A number of factors may contribute to the relatively low percentage of all projects that use the small credit as compared to the substantial credit. The small project credit applies to a narrower range of projects. Specifically, it applies to taxpayers who incur not less than $50,000 and up to $250,000 in certified QREs and also do not claim the federal rehabilitation tax credit (36 MRSA §5219-BB(2)(B)). A project cannot claim only a smaller portion of its total certified QREs for the small project credit; it must only have total certified QREs between $50,000 to $250,000. If a project has more than $250,000 in total certified QREs and is not claiming the federal rehabilitation tax credit, it is not eligible for the substantial credit (not taking the federal credit) or the small project credit (QREs above range) from the State. Further, the value of the credits, as a percentage of qualified expenses, is substantially lower for those that only claim the small project credit (25%) compared with those that claim the substantial credit (25% for the state credit plus 20% for the federal credit.

➢ **Recommendation D.1: OPEGA recommends that policymakers work with MHPC and stakeholders to clarify the small project credit's purpose so that its effectiveness can be measured in the future.**

During the evaluation process, OPEGA observed different views and suggestions about the goals and structure of the small project credit as follows:

- Best practices for HRTCs suggest that a credit with a lower minimum rehabilitation standard than the federal standard can encourage small projects. However, it is unclear if

Maine's small project credit has a sufficiently low investment threshold to encourage small projects;

- MHPC suggests the small project credit is often used for limited rehabilitations, such as a roof replacement, but that the complexity of the HRTC and the small size of the project means that those seeking the credit are often those who do not have financial advisors and find the requirements difficult to navigate; and

- Stakeholders suggest that the small project credit could be useful to those interested in historic preservation projects who do not have a sufficient tax liability to claim the federal credit (the federal credit is not refundable) but could still benefit from the state credit. Stakeholders suggested that a limiting factor to use of the small project credit might be a lack of knowledge that it is available.

Clarity regarding the intended purpose and desired goals of the small project credit would allow for effective evaluation and measurement of its outcomes and performance.

E. Property Types Eligible for the Credit

The current design of Maine's HRTC (both substantial and small project credits) requires qualifying properties to be "depreciable," or income-producing. While this requirement limits the cost of the credit to the State (by limiting eligibility), it also limits the amount and types of historic preservation that can be supported by the credit.

- **<u>Recommendation E.1:</u> OPEGA suggests that policymakers consider whether expanding eligibility for the HTRC aligns with State policy priorities while weighing the costs and benefits of expanding eligibility.**

A legislative policy question OPEGA has identified is whether the goal for the HRTC is to drive all types of historic preservation in the State or the goal is narrower, targeting specific types of historic properties. If the State's goal for the HRTC is fostering historic preservation broadly, the Legislature could consider extending the credit to rehabilitation projects on non-income producing structures, such as residential buildings. MHPC and historic preservation stakeholders expressed to OPEGA that there is interest among homeowners in the State for such a credit and the absence of such a credit represents a gap in State support for historic preservation.

Best practices for historic preservation tax credits include expanding the parties that can make use of such credits, including homeowners. We found that 22 other states provide historic rehabilitation tax credits to homeowners and New York also offers a credit for rehabilitation of barns. According to data from MHPC, roughly 70% of historic buildings in Maine (on the National Register of Historic places directly, or within a historic district) may be ineligible for the current HRTC due to the limitation to income-producing properties.

OPEGA notes that allowing historic homes, barns and other non-income producing buildings to access tax credits for historic rehabilitation could support Maine's expressed goals around developing "quality of place" and community revitalization.[66] Making a credit available for Maine's stock of historic houses could also support the State's goal to increase affordable housing and decrease pressure on Maine's housing market. Balancing those benefits, we note that rehabilitation of non-income-producing properties does not offer the same potential for ongoing jobs may occur with income-producing properties. We also note that expanding eligibility for the HRTC would not be without cost to the State, in terms of both additional credit claims (tax revenue loss) and increased program administration costs.

[66] See Maine Department of Economic and Community Development. "Maine Economic Development Strategy 2020-2029. A Focus on Talent and Innovation."

Acknowledgements

OPEGA would like to thank the Maine Historic Preservation Commission for their cooperation throughout this review. OPEGA would also like to thank the Maine Revenue Service, MaineHousing, Charles Lawton, Frank O'Hara, along with representatives from Maine Real Estate and Development Association and the Maine Tax Credit Coalition (including CEI, Genesis Fund, Greater Portland Landmarks, GrowSmart Maine, and Maine Preservation) for their cooperation and assistance.

Agency Response

In accordance with 3 MRSA §997(1), OPEGA provided the Maine Historic Preservation Commission, Maine Revenue Service, and MaineHousing an opportunity to submit additional comments after reviewing the report draft. Maine Revenue Service and MaineHousing declined to provide comment. Maine Historic Preservation Commission's agency response letter can be found at the end of this report.

Appendix A. Evaluation Scope and Methods

Evaluation Scope

On April 23, 2021, the GOC voted to approve the following evaluation parameters, pursuant to 3 MRSA §999(1)(A), which set forth the scope of the evaluation.

Purposes, Intent or Goals of the Credit

- To encourage rehabilitation of historic properties;
- To promote historic preservation;
- To promote community revitalization;
- To increase economic activity and jobs; and
- To expand affordable housing

Intended Beneficiaries of the Credit

- Direct recipients of the tax credit; and
- Indirect beneficiaries: historic property owners and developers; communities with historic rehabilitation projects; affordable housing residents; and citizens and taxpayers of Maine.

Evaluation Objectives *

- The fiscal impact of the tax expenditure, including past and estimated future impacts;
- The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;
- The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;
- The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;
- The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;
- The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;
- The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;
- The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and
- Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goal.

Performance Measures

- Tax credits claimed ($);
- State budget impact (revenue loss and net impacts) ($);
- Federal tax credits leveraged ($);
- New construction generated ($);
- Pre/post tax assessments of rehabilitated buildings ($);
- Jobs created;
- Affordable housing units preserved/generated; and
- Number, location and types of projects supported by credits.

Note: *Each objective will be addressed 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.

Evaluation Methods

To complete the evaluation, OPEGA obtained program information and data from MHPC, MRS, and MaineHousing. OPEGA obtained economic model input data used in the 2020 Economic Impact Report from Charles Lawton and Frank O'Hara. We also made use of information in the public domain. No confidential taxpayer data was obtained for this review.

Data collection and analysis methods included:

- Review of relevant State statute and rules, including the history of changes made since the program was enacted, along with testimony;
- Consideration of all program materials and forms for both the state and federal HRTC;
- Review of MHPC Annual Reports required under 27 MRSA §511(5)(A), Biennial Reports required under 27 MRSA §511(5)(B);
- Consideration of published research about the impacts of historic preservation and about historic preservation tax credits nationally and in other states;
- Interviews with the staff of MHPC and MaineHousing;
- Review of MaineHousing annual reports and program information related to affordable housing;
- Review of other contextual materials such as the State Preservation Plan, Statewide Economic Development Plan 2020-2029, and 2021 Maine Development Foundation Measures of Growth report;
- Review of program administrative costs, and other administrative information, provided by MRS;
- Interviews with, and analysis of materials provided by, Charles Lawton and Frank O'Hara, the economists who prepared the 2020 Economic Impact Report under contract with Maine Preservation and Coalition partners;
- Focus group conducted with a representative of Maine Preservation and other Maine HRTC stakeholders;
- Analysis of MHPC program data, for 2008 through early 2021, including comparison of program data to reported figures; and
- Review and analysis of participant reporting forms, provided by MHPC, and originally completed and filed by businesses in support of their completed HRTC projects.

In light of the targeted scope of this evaluation focusing on existing data and with an aim to provide results to the 130th Legislature ahead of the 2nd Regular Session, OPEGA did not include audit testing of program controls in this review. For example, OPEGA did not test that MRS is receiving specific forms from MHPC before providing tax credits, but instead identified program controls embedded in the structure and administration of the program and assessed their reasonableness.

Citations in this Report

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Appendix B. Performance Metrics

Table 10. Performance Metrics		
Metric	**Figure/Source**	**Source**
(1) Tax credits claimed ($)	$84 million in revenue loss from 2011 to 2019.	MRS
(2) State budget impact ($)	$84 million in revenue loss from 2011 to 2019. MRS stated that administrative costs are absorbed into the general work of tax returns. For MHPC, in 2020 the program costs the agency $2.3k in costs that were not otherwise covered by federal funding.	MRS and MHPC
State tax credits authorized ($)*	$114,122,187 cumulative 2008 to February 2021	OPEGA calculation based on project completed year, known QREs, and credit amount authorized at the time (N=115)
(3) Federal tax credits leveraged ($)	$85,614,845 cumulative 2008 to February 2021	This figure is not tax credits taken; but federal tax credits that the Maine projects would have been eligible for. OPEGA was unable to find a source for actual tax credits claimed. OPEGA calculated this figure based on the QREs from Maine projects that took the substantial credit (N=102)
(4) New construction generated ($)—do not qualify for the tax credit	$92,851,671[67] total new construction or ineligible expenses (not eligible for the credit) cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
QRESs—expenses that qualify for the tax credit (not a performance metric)	$398,048,723[68] cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
(5) Pre/post tax assessments of rehabilitated buildings ($)	<u>Property Valuation Increases</u> The total pre-rehabilitation assessed tax values for the projects certified from 2016 to 2020 for which MHPC had information was $44,923,524; the post-rehabilitation value of the same properties was $93,105,174[69]	MHPC Biennial Report**

[67] OPEGA notes that the figure reported in the Maine Preservation contracted 2020 Economic Impact Report (Lawton & O'Hara) is $79 million (5). OPEGA found that the Eastland Park Hotel and York Manufacturing, Mill #4 appear to account for most of the difference between the Economic Impact Report and the Annual Report figures due to differences in how MHPC and the economic consultants counted certain expenses. Those two projects hit the $20 million cap and MHPC added the technically certifiable expenses that became not eligible for the credit because of the cap to the non-QRE calculation even though it was not reported this way. Additionally, the Economic Impact Report includes a significant project not in the MHPC data (not using this statutory version of the tax credit) and covers a different time frame (2007-2019).

[68] OPEGA notes that the figure reported in the Maine Preservation contracted 2020 Economic Impact Report is over $445 million. The primary reasons OPEGA identified for the difference are the same as those discussed in footnotes 27 and 67.

[69] MHPC data on valuations is missing projects that did not report pre or post values. While the information provided does show an increase for those included, but it also points to a place where MHPC's reporting system is not ensuring that this data is fully collected. When applicants are completing the forms, many buildings have not yet been reevaluated and often the data is never being collected. Here OPEGA cannot assess whether MHPC's figures are in the realm of accurate or not, because so many are missing. It is possible this figure it underestimated. If this information is important to legislators, there could be changes made to ensure the data is coming in.

Table 10. Performance Metrics		
Metric	Figure/Source	Source
	Municipal Tax Revenues Increases Found a cumulative increase in property tax revenues to the host communities of nearly $17 million[70]	2020 Economic Impact Report commissioned by Maine Preservation
(6) Jobs created	Construction Jobs 200-700 full-time-equivalent (FTE) jobs annually through construction spending were found to be generated by 106 projects[71] Jobs in Completed Buildings Reported nearly 700 new full-time, year-round jobs have been generated by businesses occupying commercial spaces and in building maintenance	2020 Economic Impact Report commissioned by Maine Preservation
(7) Affordable housing units preserved/generated	924 affordable housing units created, cumulative from 2008 to February 2021 362 affordable housing units preserved, cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
Housing Units Created (not a performance metric)	1,444 housing units created, cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
Total aggregate square footage rehabilitation	3,442,606 cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
Total aggregate square footage developed (new construction)	152,148 cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
Total aggregate square footage of housing developed	1,758,117 cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
Total aggregate square footage of affordable housing	1,057,088 cumulative from 2008 to February 2021	MHPC 2020 Annual Report**
(8) Number, location and types of projects supported by credits	115 certified projects from 2008 to February 2021 There have been projects in 14 out of Maine's 16 counties (excluding Aroostook and Washington). The top 4 counties with completed projects are Cumberland (44), York (19), Kennebec (14), and Androscoggin (13). Towns with 5 or more certified projects include Portland (39), Lewiston (9), Augusta (8), Biddeford (8), and Saco (6) Projects represent housing (39%), commercial (32%), and mixed-used (29%)	OPEGA analysis of MHPC provided data
Notes: *These figures should not be expected to match because revenue loss is only reported back to 2011. **MHPC data provided above comes with a caveat:		

[70] As previously noted, the Economic Impact Report information covers a different time period than MHPC's data and includes the Hathaway Mill Project. This means the figures between MHPC's valuations and the Economic Impact Report could not be cross-walked. OPEGA included the figures despite these limitations because the authors of the report sought out assessment information that was missing and used historic mill rates to calculate the impact to municipal taxes. They also excluded some properties they knew to be non-profits, and thus not responsible for municipal taxes. OPEGA assessed the figures to be provide legislators with information on how projects provided additional municipal revenue over time.

[71] OPEGA notes that the jobs figures in the 2020 Economic Impact Report (Lawton & O'Hara) were calculated by the IMPLAN model based on construction spend inputs. OPEGA found these figures to be more reasonable than MHPC's figures in the biennial reports (27 MRSA §511(5)(B)) (see recommendation B.1) but notes they do also include the large Hathaway Mill project, not included in the MHPC data, and they cover a different set of years than the MHPC data (2007 to 2019). Additionally, the language in the Economic Impact Report around jobs is stronger than OPEGA would agree with and suggests that these jobs were "supported" rather than necessarily "generated" by the credits.

Table 10. Performance Metrics		
Metric	Figure/Source	Source
OPEGA cannot verify MHPC's figures but assessment has led us to believe that they are reasonable if not perfectly precise (with the exception of the jobs data which is problematic). See recommendations A.1 and A.2 for more on data management issues. Consideration of MHPC data against primary source reporting forms has led OPEGA to believe that figures OPEGA could produce would not necessarily be more accurate than what MHPC has reported with additional time-intensive work. MHPC could make changes and provide precise data for the 2022 Annual Report.		

Appendix C. Comparison to Other State HRTCs

Table 11. Credit features for the 35 States offering State HRTCs

State	Credit % for Income-Producing Properties	Annual Aggregate Cap	Annual Per-Project Cap	Refundable	Homeowner Credit	Other Credit Versions
AL	25%	$20M	$5M	Yes	25%	
AR	25%	$4M	$400K		25%	
CO	25% for $2M QRE; 20% for $2M+ QRE	$10M	$1M		20%	Disasters; rural communities
CT	25%	$31.7M	$4M		30%	Affordable housing
DE	20%	$5M	None		30%	Affordable housing; nonprofits
GA	25%	No cap under $300K credits/$25M	$5M; $10M if meets job creation tests		25%	Residence in HUD areas
IL	25%	$15M	$3M			
IN		$250,000	None		20%	
IA	25%	$45M	None	Yes	25%	
KS	25%	None	None		25%	Nonprofits
KY	Up to 20%	$5M	$400,000	Yes	30%	
LA	20%	None	$5M per taxpayer, per year			
ME	25%	None	$5M per building, per year	Yes		Affordable Housing
MD	20%	$9M	$3M	Yes	20%	LEED gold; affordable housing
MA	Up to 20%	$55M	None			Affordable housing
MN	20%	None	None	Yes		
MS	25%	$12M	None	75% can be refunded	25%	
MO	25%	$90M; additional $30M in areas of high poverty; small projects uncapped	None		25%	
MT	5%	None	None			
NE	20%	$15M	$1M			
NM	50%	None	$25K; $50K inside Arts & Cultural Dis.		50%	
NY	20%	None	$5M	Yes	20%	Barns
NC	15% for up to $10M QRE; 10% for $10M-$20M QRE	None	$4.5M		15%	Increased credit for target areas or sites
ND	25% for project in certain zones	None	$250,000		25%	
OH	25%	$60M	$5M	Yes	25%	
OK	20%	None	None			
PA	25%	$3M	$500,000			
RI	20%	Awaiting reauthorization	$5M	Yes, for tax exempt entities		Increased credit if ¼ of site is for business

Table 11. Credit features for the 35 States offering State HRTCs						
State	**Credit % for Income-Producing Properties**	**Annual Aggregate Cap**	**Annual Per-Project Cap**	**Refundable**	**Homeowner Credit**	**Other Credit Versions**
SC	10%; 25% if no federal HTC	None	None		25%	Mills
TX	25%	None	None			
UT	None	None	None			Rental residential
VT	10% downtown; 25% façade and 50% code improvements	$2.4M	None			
VA	25%	None	None (from 2020)		25%	
WV	25%	$30M	$10M		20%	
WI	20%	None	$3.5M		25%	

Source: "State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact." November 2018. National Trust for Historic Preservation.
https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=ee094e94-4dc7-db43-ae3b-9eaae3e7f179&forceDialog=0

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October 28, 2021

Dr. Lucia A. Nixon, Ph.D., Director
Office of Program Evaluation & Government Accountability
Maine State Legislature
SHS 82
Augusta, ME 04333-0082

RE: Confidential Final Draft for Agency Review/Historic Rehabilitation Tax Credit Report (HRTC)

Dear Dr. Nixon:

Thank you for the opportunity to review and comment on the Historic Rehabilitation Tax Credit Report.

The Maine HRTC is an important incentive that helps to foster the rehabilitation of income producing historic buildings in the state. Furthermore, I believe that OPEGA's Report supports a conclusion that the HRTC program achieves the policy goals that the Legislature established for it in 2008.

The Report's recommendations as they relate to the Maine Historic Preservation Commission's administration of the program are most helpful. We will take steps to develop both internal and external guidance to address them. In addition, the Report highlights two areas that stakeholders have a particular interest in: 1) improving the effectiveness of the small project credit; and 2) expanding the eligibility of the HRTC. The Commission is hopeful that their inclusion in the Report offers an opportunity to engage in a dialogue with policymakers about the value of more broadly supporting historic preservation in Maine through this program.

In closing, I wish to acknowledge the professional manner in which the members of your staff conducted their information gathering and conversations with us. It was a pleasure to work with them.

Sincerely,

Kirk F. Mohney

Kirk F. Mohney
Director
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