



SEN. NATHAN LIBBY, SENATE CHAIR
REP. HOLLY STOVER, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. H. SAWIN MILLETT, JR.
REP. AMY ARATA
REP. MARK BLIER
REP. JESSICA FAY
REP. MARGARET O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
March 11, 2022

Call to Order

The Chair, Sen. Libby, called the Government Oversight Committee to order at 1:00 p.m.

ATTENDANCE

Senators:	Sen. Bailey, Sen. Bennett, Sen. Libby, Sen. Deschambault Absent: Sen. Keim, Sen. Timberlake
Representatives:	Rep. Millett, Rep. Stover, Rep. O'Neil, Rep. Arata, Rep. Fay Absent: Rep. Blier
Legislative Officers and Staff:	Lucia Nixon, Director, OPEGA Jennifer Henderson, Analyst, OPEGA Sabrina Carey, Secretary, OPEGA, GOC Committee Clerk
Others:	Heather Popadak, Maine Revenue Services

Introduction of Committee Members

The members of the Committee introduced themselves. Sen. Libby reminded everyone of the electronic meeting conduct and procedures.

Summary of February 11, 2022 GOC Meeting

The Summary of February 11, 2022 Meeting was accepted as written.

New Business

- **OPEGA Report Presentation – Evaluation of the Research Expense Tax Credit (R&D Credit)**

(Report can be found here: [R&D Credit - Report](#))

Lucia introduced Jennifer Henderson, Senior Analyst, project lead for this Report.

Presentation made by Jennifer Henderson. (Presentation can be found here: [R&D Credit - Presentation](#))

Sen. Libby asked for confirmation that Ms. Henderson said about 125 tax filers claim the credit annually. Ms. Henderson answered yes, on average. Sen. Libby then asked if a tax filer made an investment 14 years ago and they still have some carry forward remaining that they use in the current year, are they considered a tax filer for the current year?

Ms. Henderson answered that she would have to double check how that is counted and will get back to the Senator. She added that they are using data that OPEGA received from MRS about the aggregate credit reports, so she will have to check with them about how they include that in when people report claims.

Sen. Bennett stated that the tide has been rising with respect to R&D across the country in the last 25 years. He was wondering if OPEGA had looked at absolute terms of how the state is doing with R&D with the credit compared to before the credit, rather than looking at Maine relative to other states.

Ms. Henderson answered that they did not compare Maine's economy predating the credit to Maine's economy now. She clarified that her comment about the fact that the credit has been in place since 1995 was intended to convey that if they expect that the credit should help improve Maine's competitive position relative to other states, it has had a lot of time since 1995 to do that. Whatever improvement they might have expected to get from the credit should be reflected in how they compare now.

Sen. Libby asked Sen. Bennett if his question was answered. Sen. Bennett responded stating that he would like to know to what extent do other states, other jurisdictions that Maine might be competing with, have similar credits? He thought that it might be beyond the scope of the study to delve into those details. He stated that the credit piggybacks off a federal one, so he figured that most other states have something similar to this credit. He clarified that it might be a question of what would happen if Maine did away with the credit, would we fall further. Is it really common that states have a credit similar to this?

Ms. Henderson answered that 35 other states have a credit like this, or had one as of last year. Most of them do piggy back on the federal credit in some way, although how exactly varies, and different states do have different rates. Maine's is the sum of the 5% and the 7.5%. Some states have larger credits than Maine.

Sen. Libby added that he was curious to see if they have any additional data from the last five-year period, where across the country there seems to have been a lot of movement towards investment in this area. It would be nice to see if our efforts in Maine moved the needle in the last 5 years or so.

Rep. Arata stated that she was unsure if this was a really fair way to evaluate the tax credit. She continued, if she understood correctly, in order to have something become a part of the gross domestic product, you have to actually have a product. A lot of research and development occurs without ever producing a product, but they gain new ideas and new technology that can be used elsewhere.

Sen. Libby clarified that his understanding of GDP is a bit different. He said he understands GDP an overall measure of economic activity, which should be inclusive of R&D spending on equipment and wages.

Rep. Fay asked which states have the tax credit and which don't.

Ms. Henderson responded that she could get the committee that information. Rep. Fay stated that a simple list would work fine.

Sen. Bailey asked about the seven states that previously offered a credit and ceased implementation and if OPEGA was able to gather any data or information on the effect in those states of repealing their credit. A lot of those states seem to still be in the upper end of R&D as a percentage of their GDP, but she is curious if they had any other data that looked at those states, or any evaluation of the effect of repealing their credit.

Ms. Henderson responded that she will look into what they have for information and see what they can provide.

Sen. Bennett asked a series of questions about the utilization of the credit. He noted that it was stated that about 135 entities used the credit in the recent year. He wondered if it was the same 135 every year? He asked if they had the information on the consistency year over year. He wondered if there were any indicators as to how people are finding the credit and if it is useful to those it was designed to appeal to?

Ms. Henderson responded that she has some information on that coming in the recommendation section of the report. She clarified that there is more information about the usage per year in the report. On page 5 there is a table that shows for each tax year from 2010 to 2019, how many taxpayers reported the credit, according to the data that they got from MRS.

Sen. Bennett then asked if it was the same cast of characters every year that essentially uses it? Could the volatility be based on the parameters of the credit which don't allow it to be used as a refundable credit.

Ms. Henderson answered that they don't know if it is the same businesses that were claiming it each year.

Sen. Libby stated that they understand that they asked for the report to be turned around in a short period of time, and the discussion may trigger some additional conversation and work to be done at the work session.

Sen. Libby asked if there are states that have figured out a way to incent or support businesses that make consistent R&D investment as opposed to incremental investment?

Ms. Henderson responded that they could find more detail to provide them with, but one thing that other states sometimes do is have a credit that is not piggybacking on the federal credit. Then they can be incremental, or not based on what the policy goals are and which businesses you are looking to direct the benefits to. Some states had essentially a lower base that you had to get over in order to access the credit for the state level credit.

Director Nixon added that table 4 on page 15 may answer some of the questions asked by Sen. Bennett and Sen. Libby. It has some additional data on the actual R&D expenditures in Maine by year from 2015 to 2019. This data was obtained from the National Science Foundation. It includes rankings, but also includes absolute amounts. To answer Sen. Libby's question about how carry forward claims are counted, she clarified that on MRS's research expense tax credit worksheet, carry forward is separated out as a line. The credit may be claimed only as a carry forward. The total claimed is a sum of several lines, and one is if it is being claimed carry forward.

Sen. Libby asked if that means that when they are looking at new set of filers, the last few years in the table may not represent the number of businesses who have made a substantial investment that year, it may include carry forward from prior year.

Director Nixon confirmed that is how she would infer from how the worksheet is structured but will confirm with MRS.

Sen. Bennett asked if OPEGA found any correlation between the data suggesting several indicators of R&D spending in Maine and the utilization of the credit? He wondered how the NSF actually gets that data

Ms. Henderson answered that the correlation was not something that they analyzed to date. She can get more details on the NSF data, but she believed most of the data that they used came from surveys of businesses that they conduct.

Sen. Bennett stated that it might be interesting to do a simple kind of correlation to see how different indicators of R&D investment or performance compares with the utilization credit.

Rep. Fay asked a question about table 4 of the Report, under state government, R&D expenditure. Is that simply the tax expenditure or does that include other potential investments that the state had made in R and D? Ms. Henderson answered that it is not indented to be this tax credit. It is data that they got from the national science foundation that is intended to represent the state governments total spending on R&D.

Sen. Libby invited Heather Popadak from MRS (Maine Revenue Services) to join the meeting to answer questions from the committee.

Sen. Libby restated the committee's questions that MRS may be able to answer. He asked when looking at the number of filers who took the credit on the table contained in the report, is that the total number of filers? Does it include folks that are claiming a carry forward?

Ms. Popadak responded that anybody who had a carry forward, they would still claim that credit on a schedule, which is the credit worksheet for the individuals or the corporations. That would include those taxpayers who may have had R&D expenses in prior years. They would just be using the carry forward because perhaps they were limited as to taxable income so they needed to carry forward that money at that time, and there might not be any current year expenditures for R&D at that time.

Sen. Libby clarified that it may look impressive that there are 217 entities claiming the credit in 2019, but that may not reflect the activity that occurred in that year. It could be activity from years and years ago, so it's a bit of an inflated number.

Ms. Popadak stated there is a 15 year carry forward.

Sen. Libby then asked if the 15 year carry forward was a long time period for a tax filer to be able to claim a credit or is it normal.

Ms. Popadak answered that it is generous. Because it is a non-refundable credit, you need to have a tax liability to utilize the credit. If a company has a longer window for which they need to generate taxable income, this will allow them to have that time cushion to generate income to utilize that carry forward.

Sen. Libby asked what they need to do to be able to collect data in an efficient way?

Ms. Popadak answered that MRS designs tax returns and the schedules for their business purpose, which is to review the returns and make sure the returns are accurate. The worksheets for a lot of the credits are not captured, meaning the data is not captured. For the research expense tax credit, if you look at the worksheet, for each line MRS would have to have someone go into each individual return that claimed the credit and search through the corporate return, or the individual return, to pull the data out. Currently, they don't capture that data. It could become a capturable worksheet. It would have costs associated with that, such as system costs, data capturing costs, data storage costs, and some cost to modify the database, but it is possible. MRS has other documents that do capture this type of data. As to the expense, she did not have that information. In general, they have used an approximation of \$11,000 per line if they have to do something to capture a line of data here and there She did not have a comment on the estimated price for capturing a full worksheet.

Sen. Libby asked if there are other credits that have been converted to a format where they collect data easily?

Ms. Popadak answered that she couldn't think of any at the moment, and would have to go through and look at it to see. It is less expensive for them to not capture because they would need to edit the forms to work with the imaging machines. It's not as easy as just using a non-capturable form.

- **OPEGA Information Brief on Oversight of Maine's Child Protective Services**
(Report can be found on the OPEGA website under OPEGA Reports, or here: [7924 \(maine.gov\)](https://www.opega.gov/7924))

Director Nixon started a review of the CPS Information Brief (Documents presented can be found on the OPEGA website under Document Search, or here: [8388 \(maine.gov\)](#), [8375 \(maine.gov\)](#))

Sen. Bailey stated that the additional information was very helpful. She noted some trends visible in the charts. Delaware seems to be near the top in many of the metrics. She asked if the charts become part of the Information Brief, or when the committee votes on the Information Brief, would they have to amend the report document to add these as an appendix or something?

Director Nixon answered that the documents were not part of the Information Brief report document and that she would need to look into the question of amending the report to potentially add it as an appendix, or if there is some other mechanism.

Sen. Bennett had a question about the charts that were being presented. He noted that New York State comes in at 100% for Safety Outcome 1 (children are first and foremost, protected from abuse and neglect). Yet, other charts that appear that maybe they're not 100% protected from abuse and neglect. In Maine, we are near the US average, but what does that mean? What is being measured there?

Director Nixon answered that this process is a federal child and family services review. Part of that process includes case reviews that are conducted on a sample of cases in the child welfare system. In Maine, there are 65 cases that were part of that sample at the time the review was done. The case files are pulled and reviewed in detail. There is a very structured in-depth review protocol instrument that is used with a series of questions under each of these items. Under item 1, there would be a series of questions that are used and the reviewers looking through the case file to see to what extent to answer each of the questions underneath it. Then that gets rolled up to the level of the item and they get a rating on that item. Director Nixon stated that they could provide the committee with the underlying questions. She noted that in the Report that is being presented in two weeks, OPEGA will actually be pulling some of the specific questions to some of the items and reviewing and reporting on results for case reviews on those items and questions. There may be some more information there that will help.

Sen. Bennett explained that the frustration for him is that they are trying to look at the data, which has gone through various series of iterations for making it conform with other data comparable here and there. He is wondering what they are supposed to do with the information to help make Maine safer for these kids and families.

Sen. Libby paused the work session to move to the next item on the agenda, the presentation of information from Sen. Claxton and the HHS committee.

- **CPS Legislation in Health and Human Services Committee**

Sen. Claxton (HHS Chair) Presented to the GOC information about CPS Legislation currently in the HHS Committee. (Document can be found on the OPEGA website under Document Search or here: [8376 \(maine.gov\)](#))

Sen. Bailey asked a question about LD 1960. She wanted clarification on who would be reporting the fatality or serious injury to the Ombudsman within 48 hours. Whose responsibility would that be, and what definitions for fatality and serious injury were used in that LD?

Sen. Claxton answered that the Office of Child and Family Services, upon hearing of a death of any child that has been touched in that system, actively or not, will need to notify the Ombudsman within 48 hours. That is in statute. That is the reporting mechanism from OCFS to the Ombudsman. It is not any fatality or serious injury, only those of which the child has been in the child protective system, has been involved with child protection even more liberally than that. Not necessarily having been taken out of the home, but identified as a risk and

some services provided by OCFS. They wanted to lower the bar on that so that there were more reports to look at.

Sen. Bailey stated that as a new member of the Child Welfare Advisory Panel, looking at these bills, she thought that HHS has done an incredible job of incorporating the Panels recommendations from their report this year.

Sen. Claxton stated that when they started the session, they had about 4 bills in as placeholders so as these things came up, they could slot them into those bills. That is what came of LD 1853, it would have been different if we hadn't already included some other parts and other bills. It was very intentional over time. He stated that serious injury, he assumes, means that any emergency room visit with any documented injury or a hospitalization but that he doesn't specifically know the statutory definition.

Rep. Stover stated that LD 1824 was taken from page 16 of the MCWAP Report, and confirmed that they heard the panel's recommendations.

Rep. Millett asked for a current status e of the 5 bills they have reported out of the committee. He asked whether those bills have reached floor action.

Sen. Claxton answered that they have not, and that he is looking forward to speaking to them on the floor.

Sen. Libby stated that when they were hearing from people last spring and summer about the most recent child deaths that brought the GOC to this work, one of the key disconnects in communication occurred at the ground level, when domestic violence reports were unheeded by OCFS staff; the disconnect between law enforcement and OCFS and the disconnect between the school systems and OCFS. He asked if Sen. Claxton could speak at all to what extent, in the package of bills that HHS has passed out, those issues are tackled in that package.

Sen. Claxton answered that the issue around communication is most clearly addressed, but not to the specificity that Sen. Libby just raised. The requirement of quarterly reports in the legislation gives the HHS committee the opportunity to have the department in front of them every 3 to 4 months to ask those kinds of questions and see what they are doing. The issue around family meetings was an attempt to bring some community into the conversation in terms of how to exchange the information that was important. That is where it is touched upon, but not specifically addressed in these bills.

Rep. Stover (who is also a member of HHS) added that in the discussion HHS had on LD 1834, there were members of the committee that felt strongly that even though they are the committee of jurisdiction, they haven't had such a direct oversight capacity. She added that there will be the quarterly reports required and other work that will bring a greater emphasis on CPS to the work of the HHS committee moving forward. She believed that there were some reasons why things got a little convoluted a while ago and through this work and through the discussion and lots of hours spent together they have sort of gotten things back on track for the HHS committee and she commends the two chairs for doing that.

Sen. Libby then clarified his question. He stated that they were told back in 2021 that the warning signs for some of these tragedies did not appear to be heeded by the appropriate actors. They didn't show up in the caseworker reports or the leads were not investigated thoroughly or reports weren't answered when neighbors or providers were raising warning signs. It is not about the oversight communication piece, but the on the ground communication piece between families, providers, and OCFS, that appeared to be challenged. He asked to what extent does the package of bills deal with those issues.

Sen. Claxton answered that one of the bills they worked through that morning, would monitor the number of hours that caseworkers are working, and whether they're being asked to do much more in a 70-hour, 80-hour a week than they should be asked to do. There are instances when you have to pull a kid out of a house at the end of a day, a week, when you've already worked six shifts, and you've now got to drive to New Hampshire to get the kid to their kin. A good deal of the focus has been on trying to help the people who are in the trenches be allowed to do their job, which was heard loud and clear from Casey Family Programs review. To help these staff requires fewer responsibilities and more support. There was also another bill passed recently that would look to create a position and add paralegals to each of the eight districts. That would help with doing the court filings which are distracting the caseworkers right now as the case load increases. Also, in the budget, is provision for hiring caseworkers who would do the weekend and night coverage that would offload

tremendously from the currently overworked caseworkers. It's been focused on workforce rightsizing and support. Sen. Claxton believes, and he doesn't have a way to collect this data, that if caseworkers were allowed to do their jobs the way they want to do it, the kids will be safer. So, what do they need to do to give them a change, what environment do they need to create for the workers?

The other piece Rep. Stover wanted to add is that looking at the bills in the spreadsheet Director Nixon provided, there are a lot of community-based services embedded in this, including wraparound. There is an attempt to look across the continuum in addition to state provided services which is a critical part of this. Things like wraparound services and Home Builders and some other services that they are recommending through these bills enhance some of the community-based systems of care. It really begins to readdress some of the safety net issues that they had heard about early on. She stated that when they have the opportunity to do some things in the home through creative use of wraparound funds that may address some of the safety concerns before they are elevated, before they are talking about the family at risk of dissolution and the children being removed.

Some of the things can be built in further down the stream before they get to some of the upper level concerns. Sen. Claxton stated that they get monthly reports from DHHS on the caseworker workload and there should be a trend down in terms of number of cases per caseworker, as a measure. That doesn't say what has been done about policy and procedure, so he will look for an opportunity to maybe slot that into a bill that is still in the committee's possession.

Rep. Millett asked Sen. Claxton if there was a possibility for him to provide a crosswalk of how they have addressed the various issues previously touched upon, not just budgetarily, but showing the other language issues such as the wraparound services that might be provided through different bills. Sen. Millett is looking for a bigger picture summary of what is coming out of the HHS committee in the area of child safety and protection.

Sen. Claxton answered that he would try and come up with a sort of spreadsheet with this information.

Sen. Bailey asked if the spreadsheet could also include to the extent that they know if there is a cost involved, a fiscal note for the bills so they can have all of that information together.

Sen. Deschambault stated that she did not understand how caseworkers get assigned cases at DHHS. Having been a caseworker in a prison, she knows it may have something to do with intensity of the case. Having 20 cases on their caseload can be just as difficult as having 10. She was wondering if DHHS has a system on how they determined caseload sized and hoped that they are not just evenly dividing the cases between caseworkers.

Sen. Claxton answered that DHHS and DAFS may be helpful too as they might be responsible for that. He will start with DHHS and see if the legislative liaison can answer that for him.

- **OPEGA Information Brief on Oversight of Maine's Child Protective Services (continued)**

Sen. Libby brought the conversation back to the Work Session on the CPS Information Brief Report.

Sen. Bailey asked if they could vote to endorse the Report as amended with the inclusion of the additional documents Director Nixon shared at the beginning of the Work Session.

Director Nixon answered that this is not something that has been done, looking back at the history of reports from OPEGA. She stated that there will be a clear record of the committee comments about the data tables and the tables will be available on the OPEGA website and can be linked as related to the Report and linked to the meeting summary. She will need to do some more research on the process of potentially amending the report to add tables that were provided as a follow-up request. However, the tables will be made readily available.

Sen. Bailey clarified that the Director was saying that they could link the tables to the report?

Director Nixon answered that they can associate them with the report on the website, but they wouldn't be inserted into the final report document. Director Nixon noted that they are still trying to figure out how they

would do this, but the thought is to link the additional documents next to the Report on the reports page of the OPEGA website, next to the Executive Summary of the report.

Sen. Bailey responded that as long as they are somehow connected that is sufficient enough for her.

The committee then voted on the report.

Committee Vote -

Motion: To endorse the OPEGA Report, Evaluation of the Research Expense Tax Credit (R&D Credit).

(Motion by Sen. Bennett, Second by Sen. Bailey, passed unanimous vote 11-0, 1 absent.) (Sen. Keim, Sen. Timberlake and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

Report from Director

• Status of projects in process

Director Nixon shared the 2021-2022 Work Plan with the committee and reviewed the status of current projects, recently completed projects and requests for OPEGA reviews. (Document can be found here: [2021-2022 Work Plan \(Master file\) updated 3-4-22.xlsx \(maine.gov\)](#)).

Director Nixon noted that the committee has recently received a number of memos from policy committees related to their reviews of quasi-independent state entities. A number of years ago, statute was enacted, coming out of work done by the GOC, that requires certain quasi-independent state agencies or entities to submit reports annually, which are then reviewed by policy committees of jurisdiction every two years. The reports relate to procurement procedures and certain other elements of the agency's finances. The policy committees are doing these reviews now in the Second Regular session as prescribed by statute and are required to submit memos on their reports to the GOC. There is no action required by the GOC. Five of the seven committees have submitted these memos; there have been no issues raised in any received to date.

Planning for upcoming meetings

The second CPS Report from OPEGA will be presented to the GOC and the HHS Committee next meeting. There will also be a public comment period on the Research Expense Tax Credit (R & D Credit).

Next GOC meeting date

Sen. Libby noted that the next GOC meeting is scheduled for Friday, March 25, 2022 at 10:00 a.m. and will be held electronically.

Unfinished Business

- None

Adjourn

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 3:35 p.m. on a motion by Sen. Bennett, seconded by Rep. Fay.