Government Oversight Committee

Topics for Consideration for OPEGA's Work Plan
April 2013

The attached document lists those topics that the GOC decided on 4-12-13 that it would like to rank and consider further for OPEGA's work plan for 2013-2014. For each general topic area, OPEGA has provided the responsible agency, possible different areas the review could focus on (although there may also be others), and additional information gathered by OPEGA to date that may be relevant to GOC decision-making about the topic. The information associated with all topics has been updated as of 4-17-13 and, therefore, may be different than what was included in previous versions of this document. Most of the information is included in the "Additional Information" column of the Topic List but for several topics there are more extensive summaries of OPEGA's research that are attached.

The topics are arranged in categories as follows:

> **Section A** (pages 2-7) – Topics currently on the GOC's On Deck list that the GOC has decided it wants to consider further.
>
> **Section B** (pages 8-10) – New topics suggested by current GOC members or from recent legislator requests

OPEGA has developed a matrix to use in identifying the topics on this list that the current GOC is collectively most interested in considering for OPEGA's Work Plan at this time. That matrix is provided in a separate document. It identifies the primary outcomes the Legislature might expect from a review of the topic area based on the current questions or potential areas of focus listed for the topic. Typically there are also secondary benefits derived from any review, but those are not all captured in this matrix. Please note that the expected benefits may also change as the scope of a review becomes more defined in terms of the specific questions to be asked about the topic.

The last column of the matrix is for each GOC member to use in ranking the level of interest in each topic. The scale of 0-4 is described on the top of the matrix. 0 = not interested and 4 = extremely interested. Since the goal of this process is to ensure that OPEGA's resources are being spent on reviews that are of most value to the Legislature, GOC members may wish gather input from legislative colleagues in gauging the level of collective interest in particular topics.

Please rank each topic on the matrix and return the rankings to OPEGA Director Beth Ashcroft by Wednesday, April 24th so that results can be compiled for the next GOC meeting.

Government Oversight Committee

Topics Under Consideration by GOC for Ranking
(as of 4-12-13)

Note that there are two topics currently on the On Deck List that the GOC decided not to rank for further consideration at this time. These topics are Leased Office Space and Division of Financial and Personnel Services (Service Centers) and they do not appear on this ranking list. GOC will revisit whether or not to remove these two topics from the On Deck List at a future time.

	Topic	Possible Areas of Focus	Additional Information

1	Beverage Container Recycling (Bottle Bill)
	
	Responsible Dept:
	Agriculture
	MRS
		• compliance with current law by initiators of deposit
		• current recycling rates for beverage containers;
		• current handling fees and bottler requirements of redemption centers;
		• continued need for current beverage container recycling laws;
		• opportunities to meet goals of beverage recycling laws via alternative models;
		• impact of potential changes to beverage container recycling laws on beverage container redemption facilities and initiators of deposit;
			• Proposed by a former GOC member in the 124th Legislature.
			• Maine's handling fees may exceed that of most other states with bottle bills.
			• Expansion of redeemable beverages causes additional work for redemption centers despite attempts to mitigate costs via changes that allow commingling agreements.
			• There may be bottlers, particularly those from out of state, not in compliance with Maine's law.
			• Issues with the bottle bill have been raised for many years. During the 125th session the Legislature considered two bills – one to repeal the law and one aimed at reducing fraud.
			• LD 1324 was passed and enacted as PL 2011 Chapter 429. The law changed the legislative oversight for this program to the committee on environmental and natural resources. It also established, as a civil violation, $100 fine per container returned in excess of 48 containers that are found to be from out-of-state (attempt to reduce fraud).
			• There are at least four bills related to this topic that have been filed in the 126th Legislature. They are:
			  o LD 124 An Act to Amend the Bottle Redemption Laws
			  o LD 291 An Act to Transfer Responsibility for the Returnable Beverage Container Laws from the Department of Agriculture, Conservation and Forestry to the Department of Environmental Protection
			  o LD 1080 An Act to Improve Efficiency in the Collection of Beverage Containers
			  o LD 1121 An Act To Promote the Production of Maine Beverages

	Topic	Possible Areas of Focus	Additional Information
2	Long-term Care: Nursing Homes Responsible Dept: DHHS	• Reducing costs and improving quality through possible changes to: o current payment rates and structure to incentivize reducing costs; o inspection system to reduce inefficiencies; o nursing services and care delivery approaches to better match them to patients' needs and wishes; and o coordination between hospitals and nursing homes. • Quality of care in relation to cost	• Proposed by former GOC member in the 124th Legislature. • Proposed FY12 Budget for Nursing Facilities (0148) is $71,869,096 in General Fund, $271,468,065 in Federal Funds and $32,403,540 in Other Special Revenue Funds. • Medicaid expenditures are audited as part of the State Single Audit, but that work would not cover the items listed in Possible Areas of Focus. • LD 986, Resolve, To Establish the Commission to Study Long-term Care Facilities has been filed in the 126th Legislature. Public hearing has not yet been held. The duties of the Commission in the bill are to study: o Funding for long-term care facilities: o Staffing and regulatory requirements: o Collaborative agreements with critical access hospitals: o Differential reimbursement mechanisms: o Viability of privately owned nursing facilities in rural communities; and o Impact of nursing home closures on rural populations.
3	Pharmaceuticals (Prescription Drugs and Medicaid Drug Rebate) Responsible Dept: DHHS	• Effectiveness of measures taken to contain costs • Effectiveness of internal controls in place to prevent fraud and abuse related to controlled substances.	• GOC considered this topic during development of 2007-2008 work plan as other states had found savings in this area. • At that time, DHHS had been making significant efforts to reduce costs in this area including establishing a preferred drug list • In 2009, the GAO reported on fraudulent, improper or abusive actions related to the prescribing and dispensing of controlled substances. • In FY12, the pharmacy claims processing system processed Medicaid and CHIP claims totaling $243 million. • The State Single Audit performed by the State Auditor includes a compliance audit of the Medicaid program including audit steps related to prescription drugs and drug rebates. Significant findings have been noted in the past. Both of the most recently completed State Single Audits for FY11 and FY12 included a finding that controls over the pharmacy claims processing system need improvement. • In February 2012, DHHS began quality assurance audits of 50 paid pharmacy claims each month.
4	Public Health Labs Responsible Dept: DHHS/CDC	• Possible outsourcing of some lab work • User fees charged • Testing being conducted by multiple State agencies using different labs. • Awarding of contracts • Use of federal grant funds • Management practices, including hiring and communication	• GOC considered this topic during development of its 2007-2008 work plan. Other states have found savings in this area. • It appears there are State agencies other than DHHS that also do laboratory work, i.e. Agriculture. • A current GOC member has recently been made aware of potential concerns related to management of CDC's Health and Environmental Testing Laboratory. These concerns include awarding of contracts without bidding, use of federal grant funds for purposes other than intended, poor hiring and communications practices and general mismanagement.

	Topic	Possible Areas of Focus	Additional Information
5	Publicly Funded Programs for Children Birth to Five Years Responsible Dept: MDOE DHHS	• Strengths and weaknesses, including gaps, overlaps and coordination, in State's current programs for children birth to five years.	• The GOC of the 125th Legislature voted this topic On Deck in September 2012 during its consideration of OPEGA's report on Child Development Services. The intention was that OPEGA and the next GOC would review the reported results of the children's task forces that are currently meeting on this topic and consider whether further review of this topic area to identify overlaps and gaps in services is needed. • The 125th Legislature passed LD 568 which had called for creating a stakeholder group to conduct an assessment of this nature including, but not limited to, Child Development Services, public prekindergarten programs and six programs administered by DHHS Bureau of Child and Family Services. That bill was vetoed by the Governor, and consequently, the stakeholder group was not created. • In testimony before the GOC, MDOE described two groups currently doing work on Birth to 5 learning that the Department felt would cover the area of focus given for this topic. Those groups are the State Agency Interdepartmental Early Learning Team (SAEIL) and the Maine Children's Growth Council (MCGC) Sustainability Committee. • OPEGA is currently monitoring the status and focus of these efforts for the GOC and expects to obtain any reports or other results when they are ready. • The Work Plan for SAEIL is now available on the State's website at http://www.maine.gov/earlylearning/saiel/saiel-workplan-revised-timeline-31113.pdf. The Work Plan has deadlines on several tasks set at end of June 2013, end of Dec 2013 and end of June 2014. It appears that one of SAEIL's tasks is to review the results of the MCGC Sustainability Committee. The deadline associated with that task is end of June 2013.
6	Revenue Collected through the Courts Responsible Dept: JUD	• Internal controls over collection, deposit, accounting and safeguarding of revenue • Effectiveness and timeliness of collections efforts, i.e. are all funds due the State being collected timely • Factors impacting the revenue stream, particularly those related to the decline in revenues from fines, forfeitures and penalties	• OPEGA suggested this topic and it was placed on the 2007-2008 work plan because it had not been audited for some time and had a potential fiscal impact. OPEGA was not able to get to all planned reviews in that biennium and, therefore, the topic was moved to the On Deck list. • According to the Revenue Forecasting Committee's December 2012 Report, actual FY12 revenues through the Judiciary for fines, forfeitures and penalties were $25,120,959 and are forecast to be $24,452,139 in FY13; a 2.7% decrease. The FY12 revenues were also a decrease from FY10 when actual revenues were $32,787,060. Revenues from fines are primarily from judicial collections. • Previously the Forecasting Committee has noted that major factors affecting this revenue source are the number of violators being prosecuted, the ability of violators to pay fines and the collection effort implemented by the Judicial Branch.

	Topic	Possible Areas of Focus	Additional Information
7	Substance Abuse Treatment Programs in Prison System (Correctional Recovery Academy and Intensive Outpatient Program) Responsible Dept: DOC OSA	• effectiveness and/or cost-effectiveness of programs in rehabilitating participants and reducing recidivism	• This topic was added to the On Deck list as the result of a citizen's 2009 request for a review of these programs. • The Correctional Recovery Academy (CRA) program is a 9 month residential intensive substance abuse treatment program that has the goal of reducing prisoner's dependency on drugs and alcohol. • The Intensive Outpatient Program (IOP) is a 16 week outpatient group therapy program for the treatment of drug and alcohol abuse. • In June 2006, the Muskie School of Public Service performed an evaluation of the Correctional Recovery Academy and a companion program. The evaluation resulted in some recommendations, including that DOC and OSA may want to consider conducting an evaluation to assess actual program effectiveness. • These programs have been a collaboration of the Department of Corrections (MDOC) and DHHS' Office of Substance Abuse (OSA) and in the past MDOC and OSA contracted for these services directly with Spectrum Health Systems, Inc. The contract that expired on 6/30/2011 was for $698,820. MDOC funding is a combination of federal ($121,000) and General Fund ($469,668) dollars. OSA's portion is from Other Special Revenue funds ($108,152). • As of July 2012, MDOC entered into a contract with Correctional Care Solutions to provide both medical and behavioral health services to the adult and juvenile populations. CCS assessed Spectrum Health Systems program and offered Spectrum a sub-contract to continue providing these programs. MDOC reports an advantage in contracting with one vendor who they are able to demand accountability from and who in turn is able to implement consistent evidence-based practice. The new contract includes provisions requiring the vendor to track outcome data to ensure that programs are efficient and effective with regard to our specific population. • OPEGA requested further information from MDOC on what outcome or other performance measures are being tracked with regard to the two substance abuse treatment programs included in this topic. MDOC reports that they will be tracking recidivism rates as a performance measure for these programs but that it is too soon to look at that measure as relates to the performance of programs under the current contractor. MDOC also reports that a challenge in determining recidivism rates is getting data from the jail system that would allow identification of individuals released from the State correctional system that end up back in the jail system because of crimes related to substance abuse. • According to MDOC, there are three funding sources related to these programs. A federal block grant provides some matching funds and there are some funds from the Office of Substance Abuse for the juvenile component of the program. The remaining funds are associated with the larger CCS medical contract, which may not delineate the costs of each program/service. That contract is mostly funded with General Fund.

	Topic	Possible Areas of Focus	Additional Information
8	Tax Collection (income, sales, use, fuel, cigarette) Responsible Dept: MRS	• Timely collection and deposit of taxes (including efforts to collect overdue taxes) • Effective efforts to assure credits, etc. taken to reduce taxes owed are valid	• Other states have found savings in this area. • The State has had several initiatives over the past ten years aimed at collecting overdue taxes and enhancing compliance with the Use Tax. These included a Tax Amnesty program in 2003, a Use Tax Compliance Program in 2006 and Tax Receivable Reduction initiatives in both 2009 and 2010. These initiatives brought in about $70.7 million in unpaid taxes while waiving about $44 million in interest, penalties, etc. • Maine Revenue Services was also assigned two initiatives for FY13 to collect unpaid taxes and increase compliance with Use Tax. The initiatives are budgeted to net about $6.66 million in unpaid taxes. • According to MRS, it administers over 40 state tax regimes. Statute specifies the particular filing and payment requirements for each. MRS has a Compliance Division that has the objective of collecting all delinquent tax receivables. The Division focuses primarily, however, on individual income, corporate, sales and use and service provider taxes. The Division has contracts with independent collection contractors throughout the United States to assist with that effort. • MRS reports using several approaches to protect against underreporting and uncover non-filing. MRS employs over 50 field auditors who visit places of business across the US. MRS also has desk auditors to review for returns for any corrective assessments that may be necessary. MRS' Tax Compliance Unit is solely focused on discovery of non-filers and uses a computer data warehouse system, similar to that used in at least 20 other states, to uncover unfiled returns and unpaid taxes. MRS did not specify which particular tax types the auditors and computer system are focused on. • MRS has a variety of collection tools and procedures that increase in severity as the collection process progresses. MRS has a small Criminal Investigations Unit to investigate the most egregious offenders and refer cases to the Attorney General's Office for prosecution. MRS did not specify how often the more severe collection tools are utilized. • MRS tracks Tax Receivables and is required each year to recommend receivables deemed uncollectible for charge-off. According to data provided by MRS, total tax receivables as of the end of June 2012 and in March 2012 MRS recommended receivables charge-offs totaling about $6.7 million. MRS cannot estimate amounts that may be due from non-filers or under reported taxes due. Additional detail MRS provided on taxes receivables and tax collections from various on-going compliance and audit efforts is attached. • Additional research and/or interviews with agency staff will be required for OPEGA to obtain a sufficient understanding of tax types and MRS efforts to assess risk or further scope this topic.

9	Personal Use of State Assets: recreational vehicles (ATVs, boats, snowmobiles, etc.); airplanes and helicopters; houses and camps Responsible Dept: Various	• Policies in place regarding personal use of assets • Compliance with policies and how compliance is monitored • Appropriateness of current or past personal use of significant State assets	• This topic is based on a request directed to OPEGA through a legislator by an individual who requested confidentiality. OPEGA conducted minor research in preparation for putting this topic before the GOC for consideration in 2008. Research included collecting inventories of these assets from Departments that had them as well as policies governing their use. • At that time, six departments had assets of this type with the substantial majority being in Departments of Marine Resources, Inland Fisheries & Wildlife and Conservation. Most departments reported that no personal use was allowed, but did not provide written policies that expressly communicate this. IF&W reported that assets (other than airplanes) were available for limited personal use and provided written policies to that affect. • OPEGA recently requested updated information from the six Departments that had assets of interest in 2008. All Departments responded and provided current information. Of note is that some Departments may have modified their inventory of state assets since 2008 and may no longer have pertinent assets or may have different types of assets than before. OPEGA did not request updated inventories. Furthermore, most Departments provided reference to policies pertinent to state-owned vehicles, but state-owned vehicles were not assets of interest in the original request. • Most of the Departments provided reference to multiple policies or policy statements contained in various documents. Most maintain at least one general policy, often pertaining to "equipment." Other policies or policy statements provided were specific to certain types of assets. One Department did not have any policy relevant to the assets of interest. This department also had a relatively small inventory of these assets in 2008. • Whether the policies allowed personal use of the assets of interest varied by Department and type of assets. Some policies did allow for personal use of certain assets under certain circumstances with prior approval by designated individuals. This was typically the case for policies on "equipment". Conservation also has a policy on camps and houses which allows for use of housing in the off season in exchange for "security, surveillance and maintenance." In other cases, personal use of certain specific assets was clearly prohibited like assets such as ATVs in IF&W and airplanes in Public Safety. • OPEGA observes that additional specificity and coordination between the multiple policies in most of the Departments would improve understanding of which of the assets of interest are particularly governed by which policy. • No Department provided a specific plan in regard to staff education about policies though most mentioned that policies are reviewed during the respective Department's new employee orientations. Most Departments also mentioned some sort of review mechanism when new policies are developed or when there are concerns / questions that arise.

10	DHHS Audit Functions	• Focus of audit efforts • Resources and Capabilities • Results of audit efforts • Degree to which DHHS Audit functions have sufficient resources and capabilities to be effective in identifying fraud, waste and abuse	• This topic was raised by a GOC member at the 2-22-13 GOC meeting. • OPEGA has previously identified issues with weaknesses in DHHS' Program Integrity Unit's capabilities to use data analytics and exception reporting from the MaineCare claims system to identify potential cases of fraud, waste and abuse. These issues were reported in OPEGA's 2009 report on Durable Medical Equipment and OPEGA is still tracking the related recommendation as acceptable action has not yet been completed. • Additional information can be found in the separate summary of OPEGA research conducted since the 2-22-13 GOC meeting where this topic was raised.
11	DHHS Workplace Culture and Environment	• Whether workplace culture and environment is conducive to recruiting, retaining and engaging capable, knowledgeable and motivated employees toward best results for DHHS programs and services. • Management behavior and treatment of employees in the workplace	• This topic was raised by a GOC member at the 2-22-13 GOC meeting based on concerns this member had been hearing from former and current DHHS employees. • A separate current GOC member has also recently received comments and complaints from several other former and current employees of Maine CDC regarding inappropriate behavior and mistreatment on the part of certain managers in the wake of the claims of retaliation and harassment contained in a Whistleblower case recently filed with Maine Human Rights Commission by a CDC Manager.
12	DHHS Contract Management	• Functions, structure and approach to contract management	• This topic was raised by a GOC member at the 2-22-13 GOC meeting. This member was concerned that the contract management structure DHHS had established may not have sufficient controls to mitigate risk of procurement fraud and abuse in establishing and administering contracts.
13	Healthy Maine Partnership Contracts: 2012 Adjustments to Contracts and Funding Levels	• Process used to score HMPs • Process and decisions for selecting lead HMP agencies and determining funding levels • Maintenance of documentation supporting HMP scoring and related decisions	• This topic is from a formal request for an OPEGA review submitted by several legislators, including a current GOC member. The GOC considered this request at its April 12, 2013 meeting and decided to include in on the list of topics to be ranked for further consideration. • In the summer of 2012, the legislators requesting this review sought explanations for DHHS' decisions to significantly reduce funding for their local HMP in Lewiston/Auburn while significantly increasing funding, and giving lead agency status, to a smaller HMP in Rumford. These legislators did not feel they received adequate explanation or understanding of the scoring tool used. These legislators became concerned again recently given the claims of a DHHS manager in a case filed with the Maine Human Rights Commission. One of the claims regarded the potential shredding of documents associated with the HMP scoring. • The Maine Human Rights Committee is currently reviewing the claim of retaliation and harassment on the Whistleblower Complaint and the Attorney General's Office is currently reviewing whether there is a basis for an AG investigation into the shredding of documents. The possible areas of focus for an OPEGA review of this topic are not duplicative of these other two efforts.

14	Maine Charter School Commission	• Processes, practices and standards the MCSC has used in soliciting, reviewing and making approval decisions on public charter school applications • MCSC's role in providing advice and assistants to applicants • Factors that impact MCSC's ability to effectively and efficiently fulfill its statutorily assigned roles and responsibilities	• The topic is the result of a formal request for an OPEGA review from the Chairs of the Education Committee. The GOC first considered this request on 4-2-13 and decided at its 4-12-13 meeting to include it on the list of topics for further consideration. • Additional information from OPEGA research related to this topic is included in the attached summary. Also attached is the checklist for considering potential topics that the GOC requested OPEGA prepare and which was reviewed by the Committee at its 4-12-13 meeting.
15	Maine Economic Improvement Fund Responsible Dept: University of Maine System	• Degree to which legislative intent for the program is being met • Decision making process for awarding funds • List/description of funded projects • Alignment of funded projects with the targeted technologies/areas defined in statute • Geographic distribution of grant awards • Costs of administering the fund • Outcomes of funded projects	• This topic came from a formal request for an OPEGA review submitted by a current GOC member. • Maine Economic Improvement Fund (MEIF) was established in Statute in 1997 - Title 10 MRSA Ch. 107-C. The fund was budgeted for $14.7 million (General Fund) in the FY12/13 budget MEIF is administered by the University of Maine System. Funds must be used in statutorily-defined Targeted Areas - biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and agriculture, information technology and precision manufacturing technology. • Concerns have been raised in the past about the funds being used almost exclusively by the University of Maine at Orono and the University of Southern Maine. During the 125th Legislature, MEIF statute was amended by P.L. 2011, ch. 698 which established minimum percentages of annual MEIF disbursements for the Universities of Maine at Augusta, Farmington, Fort Kent, Machias and Presque Isle to support research and development. The minimum disbursements are 2.5% beginning 7/1/13 and 3% beginning 7/1/15. • The University is also required to include, in its future annual reports on the MEIF due January 1st each year, a summary of the R & D projects at the smaller universities that have been funded as a result of MEIF disbursements, as well as any external funding sources that have been leveraged as a result of these awards. • The law also established a Task Force to review the MEIF and recommend any changes necessary to enhance investment in targeted research and development and product innovation, as well as to provide basic investment necessary to obtain matching funds and competitive grants from private and federal sources. A Report from the Task Force to the Joint Standing Committee on Labor, Commerce, Research and Economic Development is expected soon. • Additional information can be found in the separate summary of OPEGA research conducted since a review of the topic was requested. Summary attached.

16	Tax Expenditure Programs	• Effectiveness and efficiency of programs • Degree to which they are meeting legislative intent/purpose • Developing a framework for on-going legislative review and evaluation of tax expenditure programs • Analysis/categorization of current tax expenditure programs to determine those that have like characteristics for purposes of subsequent evaluation	• This topic was raised by a GOC member at the 2-22-13 GOC meeting, particularly in the context of tax expenditure programs intended as incentives for business/economic development. • There are two programs associated with a budget initiative in the Governor's proposed budget for FY14/15. These are the Business Equipment Tax Reimbursement (BETR) and the Business Equipment Tax Exemption (BETE). • The GOC of the 125th Legislature had also expressed interest in the BETR and BETE programs as well the Tax Increment Financing program. OPEGA conducted initial research on the programs to determine what level of effort would be needed to answer the questions that had been posed. OPEGA determined and reported to the GOC that answering the questions would require significant time and resources due to limitations on readily available data and the GOC decided not to pursue it further. • The current GOC, at the 2-22-13 meeting, requested that OPEGA conduct some additional research on these programs and the related budget initiative. A summary of OPEGA's research on BETR and BETE is attached. • At the GOC's 4-12-13 meeting, the Committee received and considered a request from several legislators for OPEGA assistance in analyzing/categorizing current tax expenditure programs and establishing a framework for on-going legislative review and evaluation of these programs. The GOC decided to expand this topic to include the scope of that request. • LD 1255 is currently in process in the Taxation Committee and is scheduled for public hearing on April 29th. That bill seeks an independent consultant, contracted by the Bureau of Revenue Services, to perform work very similar to what has been requested of OPEGA. OPEGA understands there may also be other bills related to this topic area forthcoming this legislative session. • A representative from the PEW Center for the States has recently visited with the Taxation Committee, other legislators interested in this topic, and OPEGA to discuss research PEW has done related to evaluation of tax expenditure programs. It appears that PEW could be a valuable resource in establishing the framework for legislative review of these programs – regardless of what avenue is pursued to accomplish that.

Department of Health and Human Services Auditing Functions
OPEGA Summary for the Government Oversight Committee
Updated for April 12, 2013

Department of Health & Human Services - Division of Audit

The Division of Audit is part of the Financial Management Services within the Department of Health and Human Services. Financial Management is responsible for managing the resources entrusted to the Department in an efficient and effective manner. The Division of Audit is comprised of five units. Table 1 is a summary of each unit's activities and staffing levels.

Table 1. DHHS Audit Units – Staffing and 2012 Activity

Unit	Brief Description	Staff[1]	2012 Activity	Over/Underpayments, Recoupments, Prosecutions
MaineCare Cost Settlement	Conducts cost settlement reviews on MaineCare providers receiving reimbursement on a cost basis such as Nursing Facilities, Hospitals, Residential Care Facilities, Private Non-Medical Institutions and Intermediate Care Facilities for the Mentally Retarded (ICF/MR)	1 Manager 16 Auditors (I-III) – (1 vacancy)	355 Audits	$7.1M over / $5.6M underpayments identified
Social Services	Conducts desk reviews on A-133 audits submitted by community agencies as well as close-out reviews on all Department contracts to sub-recipients	1 Manager 5 Auditors (II-III)	240 Examinations	$1.9M recovered
Program Integrity	Monitors payments under MaineCare for non-cost settled programs, conducts post payment reviews to prevent/limit fraud abuse and waste	1 Manager 14 Staff[2] – (4 vacancies)	190 Recoupment Letters	$16.7M recovered
Fraud Investigation & Recovery	Investigate frauds, attempted fraud, commingling or misapplication of funds administered by DHHS	1 Manager 17 Fraud Investigators – (10 vacancies)[3] 2 Office Associate II – (2 vacancies) 1 Office Assistant II –	2028 cases opened 778 cases closed	31 individuals 60 crimes 57 pending prosecutions
Internal Audit	Oversees all auditing of DHHS conducted by external agencies, assures corrective action plans are implemented and meeting their objective and conducts specialized audits as needed	1 Manager 1 Auditor II		
Source: Power Point presentation prepared by DHHS for the Joint Standing Committee on Health and Human Services				

[1] Each unit is overseen by a "Program Audit Manager" who, according to the job specifications, needs to be either a Certified Public Accountant or a Certified Internal Auditor. The other positions in all of the units require varying levels of experience and education in fields such as accounting, business administration and auditing but do not required certification in these fields.

[2] Staff positions include: 2 Comprehensive Health Planner II; 4 Comprehensive Health Planner I (3 vacancies); 4 Auditor II; 1 Management Analyst II (vacancy); 1 Planning & Research Associate; 1 Medical Surv. & Utilization Supervisor; 1 Office Associate II

[3] Eight of the vacant Fraud Investigator positions and both vacant Office Associate II positions were just recently created.

DHHS Division of Audit: Program Unit Descriptions[4]

MaineCare Cost Settlement

The MaineCare audit section conducts compliance audits and issues final cost settlements on all MaineCare cost reimbursed programs. These programs include Nursing Facilities, Intermediate Care Facilities for the Mentally Retarded, Residential Care Facilities, Private Non-Medical Institutions, Day Habilitation Services and Hospitals. These audits are conducted to ensure that MaineCare funds are expended in accordance with the MaineCare Benefits Manual, the Provider Reimbursement Manual, and the Code of Federal Regulations. This Unit processes over 600 cost reports representing approximately $1 billion in MaineCare funding annually.

Social Services

The Social Service unit of the Division of Audit has oversight responsibilities for State and Federal grants that pass through the Department to community agencies. Part of these oversight duties includes advising community agencies, Independent Public Accountants (IPA) and Department grant administrators of the requirements imposed on grant dollars by existing State and/or Federal legislation, statutes and regulations.

Community agencies that receive state and/or federal pass through funds must comply with the requirements of the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP). One of those requirements is for agencies that expend $500,000 or more of state or federal pass through funds to have an audit performed by an Independent Public Accountant. Agencies expending $500,000 or more of federal funds in a fiscal year, must also meet the audit requirements of Federal Circular OMB A-133 (Single Audit) and the Social Services unit ensures agencies comply with those requirements. The Unit has the responsibility of issuing a management decision on the findings and corrective action plan that result from a single audit of a community agency as to what corrective action is necessary.

At the end of a community agency's fiscal year Social Services performs an examination/review of an agency's records to ensure compliance with applicable State and/or Federal legislation, statutes and regulations.

Internal Audit

Internal Audit (IA) is responsible for monitoring all audits completed on the Department of Health and Human Services (DHHS). This includes the A-133 financial audit conducted by the State Department of Audit as well as compliance audits conducted by the various Federal Agencies which fund DHHS programs.

Other areas of responsibility of IA include:

- Act as a liaison between DHHS program management and audit agencies ensuring audit related questions are fully responded to in a timely manner.
- Review corrective action plans and helps formulate DHHS responses to audit findings.
- Assist in the implementation of internal controls to correct deficiencies identified in audit findings.
- Monitor the effectiveness of controls and recommend changes as necessary.

[4] The information provided in this summary was obtained from DHHS' website or other public documents prepared by the Department.

- Conduct audits and reviews within the Department as directed by the DHHS Audit Committee.

Program Integrity

Program Integrity (PI) is responsible for monitoring and safeguarding the MaineCare Program against fraud, abuse and waste. It conducts analysis of MaineCare billings to detect utilization patterns or trends that may indicate fraud, abuse or waste. Based on data analysis or referrals/complaints received from other State agencies, health care providers or members, PI may perform retrospective audits/reviews of MaineCare Providers and members to validate the allegations of fraud, abuse or waste.

Fraud, Investigation and Recovery Unit (FIRU)

The Fraud, Investigation and Recovery Unit (FIRU) is authorized under 22 MRSA § 13 to investigate fraud, attempted fraud, commingling or misapplication of funds administered by the Department of Health and Human Services. Reports of potential fraud and abuse may be referred to FIRU by other State departments, political subdivisions and the public. In 2011, the unit was equipped with a Fraud Hotline with state-wide toll free access and a general fraud reporting email. Fraud may also be reported to the unit through an online form maintained by the Department. FIRU investigates more than 3,000 allegations per year.

FIRU is also responsible for the recovery of established improper payments in TANF, Food Supplement Program (Food Stamps), Medicaid and the General Assistance programs pursuant to 22 MRSA 3811 et al and promulgated in the Fraud Investigation and Recovery Manual.

OPEGA Questions & Responses Received from DHHS Division of Audit

1. Are there audit units in any of the respective DHHS Offices? If so, how do they coordinate with your Division?

   There are no other audit units in the DHHS Offices that we are aware of. We do have investigators from the FIRU located in the regional offices but they are all considered part of the Division of Audit.

2. Are there sub-units to any of the identified 5 units in the Division of Audit?

   Currently there are no sub-units within the 5 units of the Division of Audit. We are looking into restructuring the FIRU to set up a unit for legal/criminal investigations and general investigations. The legal/criminal group would work with the AG's office on preparing cases for prosecution. The general investigators would work with eligibility specialists to prevent unqualified applicants from receiving benefits and to identify recipients currently receiving benefits that should be removed from the system. We are also looking at reorganizing the PI unit to have a group that would focus only on data mining and a group that would conduct audits.

3. The presentation OPEGA reviewed states that DHHS is required to have three of the units. What rule(s) or agencies, State or Federal, require them?

   The MaineCare Cost Settlement Unit is required under 42 CFR §447.202 and MaineCare Benefits Manual chapter III sections 45, 50, 67 and 97. Additionally Department rule 10-144 chapter 115 requires this unit. Program Integrity is required by 42 CFR §455.14 and §456.22 and MaineCare Benefits Manual Chapter 1. MRSA Title 22 §13 authorizes the Commissioner to establish a Fraud Investigation Unit within the Department. The Social Service unit is required under OMB circular A-133 and MRSA title 5 §148-C.

4. How do you select what to audit in the MaineCare Cost Settlement Unit and Social Service Unit? Is there a target number each year?

   The MaineCare Cost Settlement Unit audits cost reports submitted by providers. All cost reports have to be audited. We try to annually do at least one year's worth of cost reports which would be approximately 430 plus 10% more to reduce any backlog. The Social Service Unit must audit every Agency receiving over $500,000 in funding. This is approximately 114 Agencies. All Agencies with less than $500,000 fall into a risk pool. The Division of Audit's goal is to examine one-third of the risk pool each year.

5. How many cases in the Fraud Investigation and Recovery Unit were initiated by:
   a. complaints – hotline/web reporting; 1782
   b. referrals from eligibility specialists; 188
   c. front end detection work; 14
   d. legal; 32 individuals, 60 crimes

6. How many cases in the Program Integrity Unit were initiated by
    a. Complaints; **36**
    b. Referrals from State or Federal agencies; **27 (includes global cases as they are referred by MFCU)**
    c. Global cases (and which ones if available)
    d. Exception Reporting using SURS
    e. Review of MaineCare policy sections; **477 (includes exception reporting as these are not broken out in our data)**

Additional Information Requested by GOC Members on 3-8-13

1. Summary of Current & Historical Staffing Levels
    - As can be seen on the attached organization chart, not all positions within the Division of Audit are auditor positions. Other job classifications include Audit Program Manager, Comprehensive Health Planners I and II and the Fraud Investigators in the Fraud Investigation Unit. Because of the diversity of job classifications within the Division as well as how changes to individual positions are tracked, OPEGA was unable to definitively determine the historical staffing levels for the DHHS Auditing functions and impetus for changes in those levels.
    - There are currently 26 Auditor positions within DHHS (Auditor I, Auditor II and Auditor III positions). Since 1995, 13 like positions have been eliminated (see attachment). Nine of these positions were eliminated between 1995 and 1996; the remaining four positions were added in October of 2007 and eliminated nine months later in June of 2006.
    - In regard to hiring status, all vacant positions on the attached organizational chart are in the active hiring process, or have been recently filled, with the exception of the two positions highlighted in yellow. One of these positions was an incentive retirement and will not be able to be filled until June 15, 2013. The other position has approval to be open for hire but there is a pending grievance and, until resolved, the position will not be posted. No new positions are being requested.

2. What is DHHS currently doing for analytics?

    Staff currently has four different tools to access claims data for analysis in the detection of fraud, waste and abuse. OPEGA notes that these analytics are reactionary or retrospective in nature and that the Unit is not performing proactive data mining. Two of the tools are for older data and two are for the more recent MIHMS data. Of the two used to analyze MIHMS data, one examines claims data. The other (JSURS) is capable of drilling down into the data and generating reports in response to specific data queries. DHHS is less satisfied with this tool. The Audit Division is in the process of working with the vendor to address several shortcomings and provide additional training to Audit Division personnel. To better utilize this data tool, the Department plans to hire a staff person dedicated to working with it.

3. GOC members have heard that the department is disappointed in the new software DHHS obtained. Can you explain why? OPEGA received the following response from DHHS:

    The JSURS tool has some strengths like the drilldown capabilities described above. However some of its shortcomings are:
    a. There are no canned queries that are based on the specific logic required to identify basic coding and billing errors (dupes, NCCI, MUEs)

b. Getting comparison analyses (peer to peer reviews), high level summary analyses, averages analyses and outlier analyses is a convoluted, multi-stepped process and seems more difficult than it needs to be.

c. Currently, getting the data to the levels described, staff spends an inordinate amount of time transferring and working the data in Excel or Access dbase.

d. The system sometimes has performance issues – speed of processing and limited number of queries that can be executed at one time.

e. Basic drilldown functionality does not allow for saving the logic. For each query, the logic in the report set up must be recreated. Not very efficient.

f. Drilldown claims return is limited to 50,000 lines. We review claims data for up to 5 years and for many providers the return is millions of claims. Staff must run numerous queries with limited timeframes so as to not exceed the 50,000 line limit.

As noted above, the Division of Audit is working with the Vendor to address these shortcomings and the Vendor has agreed to have their staff person come in and work on writing algorithms. The Vendor will provide additional training to staff working on the system. The Division of Audit is looking at ways to maximize the speed of processing queries and will be hiring a staff person dedicated to working with the tool to take advantage of its capabilities.

Connors, Etta

From: Ashcroft, Beth
Sent: Friday, April 19, 2013 8:42 AM
To: Kruger, Charles (FWD); Katz, SenRoger; Rep. Boland; Cotta, RepDavid (FWD); Rep. Lance Harvell; Mathew Peterson; Rep. Paul Davis; Katz, SenRoger (FWD); Johnson, SenChris (FWD); Sen. David Burns (SenatorBurns@myfairpoint.net); Sen. Edward Youngblood; Sen. Emily Cain; Senator Margaret Craven
Cc: Connors, Etta
Subject: Sen. Craven Notes

Importance: High

Beth Ashcroft
Director - OPEGA
State of Maine Legislature
Phone: 207-287-1901

From: Margaret Craven [mailto:mmcraven@roadrunner.com]
Sent: Thursday, April 18, 2013 7:48 AM
To: Ashcroft, Beth
Subject: Notes

Hi Beth,

Could you forwad the following to the Committee members.

Thank you,

Margaret

Dear Dir. Ashcroft, Chair Cain, Chair Kruger, and members of the GOC Committee,

Re: CDC concerns.

During the last funding phase of the Healthy Maine Partnerships, Healthy Androscoggin lost 64% of its funding. That was a concern for Legislators from the region, and so Myself, Rep. Rotundo, Rep Beaulieu, and Rep McClellan asked to speak to the Commissioner, Dr. Pinette, to discuss the discrepancy.

We first met on 6/27/12, and later on 7/9/12.

6/27/12 Mtg w/ Dr. Sheila Pinette, Director, Maine CDC re: Healthy Androscoggin (HA)

Attendees:

Senator Margaret Craven (Androscoggin)

Rep. Mike McClellan (Raymond)

Rep. Mike Beaulieu (Auburn)

Dr. Sheila Pinette, Director, Maine CDC

Christine Zukas, DHHS

Nick Adolphsen, DHHS

Steve Johndro, Director, HA

Erin Guay, HA

Scott Gagnon, HA

Shanna Rogers, HA

Phil Nadeau, Deputy City Administrator, Lewiston; HA Board; CMMC Board.

We were told at that time that River Valley won the competitive grade score. We all questioned the scoring, and was told that the instrument that was used was a well designed viable tool. Although frustrated after long discussions there was no resolution. We met again on 7/9/12 with very much the same outcome. HA had to lay off three staff, and get on with their lives. In February, Rep Rotundo asked a professor from Bates College, specializing in statistics, to a meeting with the group listed above, to get to the bottom of the scoring problem. The outcome was that a consultant from the department, whose name I cannot recall, admitted that the tool was flawed, that the Department was addressing the inequity, but they were standing by their decision to award the award to River Valley(RV). By then both Partnership was well into their budget, so there was little recourse.

We said no more about the issue until the LSJ broke the story about Sharon Leahey-Lind being asked to destroy/shred the documents that was used in the rating of the awards. Leahey-Lind spoke of mistreatment and harassment towards her including being kicked, sworn at and other mistreatment. After the story was published I receiver four phone calls to reiterate that they witnessed the mistreatment that Leahey-Lind described, and that they themselves were mistreated and harassed as well. All four people asked that their conversation be confidential because they feared retribution. However, I did get a call and an email from Brian Bernier who is willing to go public. I have asked Dir Ashcroft to attach his notes.

I perceived this behavior as very serious, and would respectfully ask the committee to put this issue on a fast track, so the Director can do a preliminary look to see if it should go forward.

Most sincerely,

Sen. Margaret Craven

.

First I want to thank you for indulging me in regards to this issue.

Senator Margaret Craven

41 Russell Street

Lewiston, Maine 04240

April 7, 2013

Dear Senator Craven,

Thanks for taking the time to speak with me regarding practices by the MeCDC senior management team, namely Ms. Christine Zukas, Deputy Director and Ms. Kristine Perkins, Division Director-Public Health Systems, in the recent past. I had been previously employed by MeCDC between February 2003 and August of 2012. I was employed by the Health and Environmental Testing Laboratory (HETL) as a Microbiologist and rose from Microbiologist II to Microbiologist supervisor during my tenure there. HETL comprises the majority component of The Division of Public Health Systems in terms of number of employees and breadth of operation. During this time I completed my Master's in Applied Immunology and Molecular Biology from the University of Southern Maine, obtained board certification as a Technologist in Molecular Biology from the American Society of Clinical Pathologists, obtained a Master of Public Health from the University of Massachusetts and obtained board certification in public health from the National Board of Public Health Examiners. During the initial term of my career I had little exposure to either Ms. Zukas or Ms. Perkins. Later in my career as a Microbiologist III, a supervisory position in which I was charged with oversight of Molecular Biology group at HETL as well as Childhood blood lead screening, and as a Microbiologist Supervisor, I had on many occasions an opportunity to interact with epidemiologists at MeCDC, some with direct reports to Ms. Zukas as well as Ms. Zukas and Ms Perkins themselves. In addition, I was also charged with gathering data and compiling reports-generally with a "last minute" notice that were demanded of the lab by Ms. Zukas and Ms. Perkins. Further, I was involved in assisting in writing the annual Bio Terrorism grant proposals. I had close colleagues that interacted and worked in the same office as Ms. Zukas and Ms. Perkins as well. I left state service in August of 2012 because I felt as though I could not advance in the organization due to cronyism and selection bias inherent in the hiring practices employed Ms. Zukas and Ms. Perkins. I also left state service because of the continual financial pressure on the laboratory that was exacerbated by the efforts of the Governor's office and Ms. Zukas and Ms. Perkins to dismantle the public health laboratory. I was recruited by The Jackson Laboratory and currently function as production manager for the transgenic genotyping service. I must say that it is a welcome relief to be employed in an environment where my efforts are supported by a transparent senior management team and where employees are rewarded on a performance basis.

I believe that both Ms. Zukas and Ms. Perkins have demonstrated incompetency in both their understanding of the functionality of the state public health laboratory, its role as an integral part of the public health system and the basic tenants of laboratory based sciences. Ms. Zukas and Ms. Perkins have regularly allowed the practice of supplanting of federal funds approved for use of the laboratory to be used in other programs , have awarded contracts to former supervisors/employees on at least one occasion without utilizing an official and authorized process for awarding said contracts, have shown selection bias in their hiring practices and, on the part of Ms. Zukas anyway, have displayed inappropriate behavior. Ms. Zukas and Ms. Perkins have also neglected the laboratory and its needs both from an operational standpoint as well as a communications standpoint. I have drawn on two sources of information for the assertions contained within this document: firsthand knowledge of such behaviors/ practices and second hand information gleaned from colleagues within the organization or formerly employed by the organization.

1. **Awarding of federal contracts to former or possibly even current managers without due process**: in 2008 Ms. Perkin's former boss was awarded a $30,000 annual contract for financial oversight of the laboratory. The contractor was "Air Dog Consulting" It is not believed that any RFP was issued. There is some speculation that the contract was awarded while Mr.Donald Ward was still an employee. Mr. Wards efforts for the $30,000 awarded him consisted of modification of spreadsheet compiled by other employees of HETL. Mr Ward is now deceased.
2. **Supplanting of monies granted by CDC Atlanta**: both Ms. Perkins and Ms. Zukas by proxy frequently submitted grants to the operations main source of federal funding, i.e. The Centers for Disease Control (CDC) and Prevention in Atlanta Georgia. Budget items were approved on a line by line basis and then in turn those monies used for things other than what they were approved for. I believe this practice is known as "supplanting". For example, HETL was approved for a number of budget cycles under the bioterrorism grant/ chemical terrorism (BT/CT Grant) to purchase a new generator that would power the entire lab in the event that a situation arose that required it. CDC sent personnel to the laboratory and MeCDC to perform audits. On at least two occasions that I recall, Ms. Perkins agreed during these audits that the monies were to be used to purchase a generator after CDC granted said monies. Each year those monies were used elsewhere to support other programs. I have second hand knowledge of this same practice with regards to other laboratory items. The public health infrastructure grant, with oversight by Ms. Zukas, also fell victim to supplanting by senior management.
3. **Using the laboratory as a foil to divert attention away from improper expansion of favored programs at MeCDC while starving the laboratory of funds due to their own personal preference**. MeCDC has expanded its number of employees dramatically over the past 5 years. Monies have been diverted from bioterrorism/ preparedness funds that were earmarked for things like standalone emergency power generators for the laboratory and other equipment and instead utilized for non-approved items. So called "no bid contracts" may have been part and parcel of this behavior of supplanting funds with both the so called "Public Health Infrastructure Grant" and the BT/CT grant. When the current administration took the executive office, there

were threats of closing the lab down immediately etc. Meanwhile MeCDC programs other than the public health laboratory have swelled their ranks extensively during this period; occupying 7 floors of the most expensive real estate in Augusta, the "Key Bank Building" on Water Street in Augusta and have not suffered from any such fiscal scrutiny/ threats of closing by the current administration. Many epidemiology positions are redundant and unnecessary given the small population in the state and its low incidence of infectious disease etc. These redundancies have been built over the last 5 years in the midst of an economic downturn. Senior management have instead focused the administrations attention on the lab.

4. **Neglect of the laboratory**: from 2009 senior management has demonstrated a pattern of neglect of the laboratory. This was primarily embodied by senior management, namely Ms. Perkins and Ms. Zukas failing to respond to communication from the laboratory. Emails, phone calls and voice mails were frequently not answered in a reasonable, timely manner or simply not answered entirely. Deadlines for reports were not communicated with the laboratory or were communicated at the last minute. Undue burdens such as issuing edicts for financial/operational reports within hours or 1 day of deadlines were common practice. Senior management was well aware of deadlines associated with these reports weeks or months ahead of time yet these were not communicated with the laboratory until the last minute. Some of these edicts were simply issued on the senior management's whims.
    a. Employees of the laboratory who worked steadfastly during the pandemic on weekends, holidays and for extended hours, frequently without pay, were never recognized by MeCDC officially whilst MECDC employees outside the laboratory were invited for an awards celebration. Laboratory employees were presented with a box full of plaques weeks after the official venue occurred.
    b. Ms. Perkins has repeatedly ignored and neglected deadlines associated with submission of necessary paperwork involving the establishment of memorandums of understanding (MOU's) between the department of public safety and the laboratory. These monies are used in conjunction with laboratory positions that oversee calibration of devices used by law enforcement for "intoxilyzers" devices associated with drunk driving arrests as well court testimony by laboratory personnel etc. This is reminiscent of the same neglect and lack of oversight that recently plagued the state of Massachusetts's public health laboratory.
5. **Cronyism**: Ms. Zukas and other members of the senior management team failed to exercise due diligence during the hiring process for many MeCDC positions. Instead of looking at candidate's qualifications,the senior management team commonly picked one candidate early on in the process and simply ran through the motions on hiring other candidates, neglecting to look at various incumbents qualifications and instead hiring on the basis of personal preference alone. Candidates with any history of disagreement or scrutiny of senior management practices, were summarily disregarded.
    a. **Unrelated to this** was Ms. Zukas arranging for her nephew to perform a paid internship at the laboratory in the summer of 2008 or 2009 even while the laboratory was under a hiring freeze and did not have sufficient revenue to pay even its basic vendors regularly such as Federal Express, VWR Scientific etc.

6. **Incompetence**: During the influenza pandemic of 2009 a program overseen by Ms. Perkin's – the strategic national stockpile program, failed entirely. The senior management at the time was forced to place control of this program under the division of infectious disease due to incompetence on the part of the division of public health systems and its directorship. An additional example was failure to deploy an information system called IPHIS that was overseen by Ms. Perkins and Ms. Zukas. This program wasted 4.5 million dollars of tax payer money. IPHIS was never launched. Federal dollars were utilized to purchase at least 30 servers that were never utilized and eventually taken off line.
7. **Inappropriate behavior**: I have heard a number of reports from individuals in the organization now or former members of the organization that witnessed Ms. Zukas acting inappropriately for a person in this position. This includes calls to management level personnel that involved threatening with discipline, through no fault of the recipients of these calls, repeated phone calls in which Ms. Zukas was characterized as yelling and screaming and eventually "slamming the phone down" , becoming irate with staff members and "yelling" etc. This behavior is entirely consistent with recent statements by Ms. Lindy.

Feel free to contact me at home by telephone or email if you require any additional information. I appreciate the opportunity to communicate my observations/ concerns with you. Thank you for looking into these issues.

Sincerely,

Brian Bernier MS, MPH, MB(ASCP)^{CM} CPH(NBPHE)

94 Grant Street

Ellsworth, Maine 04650

Email: bbern207@roadrunner.com

Phone: 207-664-0945

CC: Beth Ashcroft

Maine Charter School Commission and Baxter Academy
OPEGA Summary for the Government Oversight Committee
Updated for April 12, 2013

Statute and Rules

Legislation passed in 2011 allowed public charter schools in Maine. They are authorized and governed under Title 20-A Chapter 112 Public Charter Schools. Public charter schools are defined in statute as schools parents choose to send their children to that are independent of a school administrative unit, and are established and operated under the terms of a contract between the school's governing board and its authorizer. Public charter schools must provide a program of education for one or more of the following: preschool, prekindergarten and any grade(s) K-12. The program may focus on certain types of students such as special education or at-risk and may include various academic approaches or themes such as natural resources and the environment or science, mathematics and technology.

Pursuant to statute, the Department of Education has established major substantive Rule 05-071 Chapter 140 to govern the authorizing, oversight and operation of public charter schools in Maine. The rule requires public notice of activities of authorizers and charter schools, sets forth student enrollment procedures, establishes standards for the performance of authorizers, clarifies the funding of public charter schools, clarifies the process for petitioning for conversion of a non-charter public school, and provides criteria for determining when a charter school governing board is sufficiently independent of an education service provider with which the board may contract.

Statute sets out what shall be included in requests for proposals for charter schools, applications, and charter contracts. In addition, the Maine Charter School Commission, also pursuant to statute, has adopted Rule 90-668 Chapter 2 – Procedures for Commission Authorization of Public Charter Schools. The rule establishes the:

- process the Commission will use to solicit, accept and review public charter school applications;
- performance indicators that will be used as the performance framework for any approved application; and
- minimum requirements for a charter contract.

Rules adopted by the commission before June 30, 2014 are routine technical rules and after that they are major substantive rules.

The Maine Charter School Commission is established as one of the entities that can authorize public charter schools. Commission members are appointed for 3-year terms by the State Board of Education with input from the Joint Standing Committee on Education and Cultural Affairs. A local school board can also authorize public charter schools within the boundaries of the SAU it governs. Local school boards can form a collaborative to set up a regional public charter school.

Public charter schools are subject to federal, state and local laws such as those relating to special education and required to have independent audits. Statute charges authorizers with responsibility for oversight and evaluation of public charter schools they authorized. Statute also establishes roles and responsibilities for the Department of Education.

The Maine Charter School Commission is comprised of seven members appointed to three-year terms by the State Board of Education with input from the Legislature's Joint Standing Committee on Education and Cultural Affairs. Three Commission members must be members of the State Board of Education and they nominate the four other members who must be approved by a majority vote of the State Board. Members appointed to the Commission must have diverse

professional experience in education, social services, youth training, business startup and administration, accounting and finance, strategic planning and nonprofit governance.
The Commission has two staff persons – an Executive Director and an Administrative Assistant. The Executive Director started in October 2012 but volunteered for the Commission prior to being hired. Legal assistance for the Commission is currently provided by the Assistant Attorney General who assists the Department of Education.

The law allows the Charter School Commission to authorize a maximum of 10 charter schools during an initial 10-year transition period. Charter schools authorized by local school boards do not count toward the 10-school limit of the Charter School Commission.

Maine Charter School Commission Process for Authorization of Public Charter Schools

The basic process established in Commission Rule for soliciting and considering public charter school applicants includes:

- Issuance of a Request for Proposals (RFP) with notice to general public and interested parties.
- Public informational meetings to answer questions about the RFP (with notice of meetings posted on Commission website and distributed to interested parties) and/or written responses to questions on the RFP posted to the Commission website.
- Letter of Intent filed with the Commission by an entity intending to submit an application.
- Submission of Application and review for completeness by Commission or Commission staff.
- Evaluation of Application by an assigned Review Team consisting of not more than 3 Commissioners and other technical experts as needed.
- Review Team presentation of recommendations on Application to full Commission.
- Commission determination of whether the Application appears to demonstrate the applicant's competence in each element of the Commission's published approval criteria and appears to demonstrate that the applicant is likely to open and operate a successful public charter school as required in Title 20-A, section 2407(4)(C)(1).
- Denial of Application if Commission determines criteria not met. Otherwise,
    - Commission holds in-person interview with Applicant to clarify information provided in the application, to seek additional information, to determine whether members of the Board and school leaders understand their obligations for academic and operational accountability, and to gauge the applicant's capacity to effectively launch and oversee the proposed charter school.
    - Commission holds public hearing to elicit public comment on the expected impact of the proposed charter school on students, parents, the community to be served by the school, and public education in the State.
    - Commission votes to approve, conditionally approve or deny Application. A decision to conditionally approve the application must set forth the specific changes that must occur in order for the application to be fully approved, and the deadline by which the changes must occur. A decision to deny the application must state the reason for denial.
    - Commission negotiation and finalization of contract with approved Applicant.

The Rules prohibit Commission members, and any others participating in the application review process, from discussing any potential or actual application with a proposed or actual applicant during the period between the issuance of the RFP and the final Commission vote on all applications submitted in response to that RFP, except during the in-person interviews provided for in the Rules.

Publicly Accessible Information about Public Charter Schools and the Commission

Information about public charter schools can be found on the Department of Education Charter School website - http://www.maine.gov/doe/charterschools/index.html. DOE's website includes the governing statute, questions and answers about charter schools, and information on: how charter schools are authorized, how to create a charter school, charter school founders and operators, and how to enroll in a charter school. The enrollment information includes links to two Commission-approved charter schools - Cornville Regional Charter School and The Maine Academy of Natural Sciences. DOE's website also includes a link to the website for the Maine Charter School Commission.

The Maine Charter School Commission website at http://www.maine.gov/csc/index.html has information on the Commission and its activities including:

- Commission members
- Meetings and materials – minutes, agendas
- Request for Proposals issued by the Commission
- Applications received in response to the two RFPs issued to date
- Additional information requested of applicants by the Commission
- Authorized schools
- Laws and rules

Baxter Academy

Baxter Academy of Science and Technology is located on York Street in Portland, Maine and expects to open in September 2013. According to the Baxter Academy website at http://baxter-academy.org, the school has received the required number of applications and letters of intent for its charter, has a new 5-year lease on its building, and is reviewing over 200 teacher applications.

Baxter submitted its initial application to the Commission on May 29, 2012 and, after its review, the Commission granted Baxter conditional approval. The Commission specified its conditions in letters to Baxter and required a revised application by September 30, 2012 with revisions addressing those conditions incorporated. Baxter submitted its revised application on September 28, 2012 and the Commission granted approval and began negotiations for the charter contract with the further requirement that Baxter provide proof of a minimum of 150 letters of intent by March 15, 2013.

As discussed in the Commission's March 30, 2013 letter to the Government Oversight Committee, the Commission halted contract negotiations with Baxter when it learned the Baxter's Executive Director had been fired. The Commission requested 12 documents, and responses to Commission questions, from Baxter which were heard and reviewed at a public meeting held Monday, March 25th. The list of requested documents and Commission questions (as taken from the Commission's website) are attached. The Commission requested further information to be provided subsequent to the March 25th meeting.

The Commission held a meeting on April 8, 2013 to further consider whether to proceed with a contract for Baxter Academy. OPEGA observed the Commission reviewed the additional information provided by Baxter, further questioned Baxter Academy representatives present at the meeting and revisited criteria that had previously caused concerns for various Commission members. Citing recent significant improvements in Baxter's academic plans, financial situation, potential enrollment figures and Board and parent involvement, the Commission voted unanimously to go forward with a contract - noting that a finalized contract would still be contingent on the Board making changes to its by-laws and completing the hiring of an Executive Director.

Public Concerns Raised

On March 22, 2013, the Mayor of the City of Portland formally requested that the Attorney General conduct a review of several matters since recent changes to the Board and management of Baxter Academy had raised serious questions about its viability, as well as concerns about the application process and subsequent approval granted by the Maine Charter School Commission. The Attorney General responded that she understood the Charter Commission was currently reviewing these and other concerns and that she was confident and hopeful the Commission would take the allegations seriously and thoughtfully consider them as it re-examined its approval of the Baxter Academy application.

The Mayor's request to the AG and his concerns were recently covered in the media preceeded by recent media coverage related to the Baxter Academy Board's dismissal of its Executive Director in March 2013. Other questions and concerns discussed in the media since Baxter Academy submitted its application to the Charter Commission regard the financial assumptions in Baxter's budget including specific questions about lines of credit, enrollment projections and the availability of federal grants.

A summary of selected media coverage of the Baxter School's application and the Charter Commission's consideration of that application is attached.

Maine Charter School Commission Document and Information Request to Baxter Academy for the Commission's March 25, 2013 Meeting

(as taken from the Commission's website at http://www.maine.gov/csc/index.html)

Documents to be delivered to the Commission by the Board of Directors for Baxter Academy by March 18 in advance of the interview scheduled for March 21, 2013:

1. The names of all current members of the Board of Directors for Baxter Academy, along with their resumes, the date of appointment to the board for each member, and their primary role as a board member (either office and/or special area of expertise).
2. The number of current proposed enrollments, based on received letters of intent, along with the grade levels. Include the numbers from each SAU, to the extent that this number is known.
3. A statement on the financial status for the pre-opening period, with documentation on the status of funds either received or committed from donors, other fund-raising, or from commercial lines of credit.
4. A current three-year budget plan.
5. An updated organizational chart showing the key administrative positions and their relationship to the Board.
6. The name and resume for the new Executive Director, if presently known.
7. If known, the names and resumes for the chief financial officer, director of technology, and the director of special education/special services.
8. The status of the building lease agreement, together with a copy of the lease, if signed.
9. A description of the present status of contracts for transportation, food service, custodial services.
10. The names and roles of the current membership of the Advisory Board.
11. A description of the present status of a hiring plan for instructional staff.
12. Information on pending litigation against Baxter Academy of Technology and Science or its Board.

Potential MCSC questions to the Baxter Academy Board of Directors for the March 25, 2013 Interview

1. The Commission has a number of questions concerning Baxter Academy's financial capacity to open its school and to fulfill the requirements of the charter contract that we must enter into before the school may open and receive public tuition subsidy from the per pupil allocation as provided by law.

    a. What is your current forecasted enrollment, based on a verified list of "intents to enroll" received from parents? Has this list been checked to ensure that none of the caps on enrollment from one or more SAUs has not been exceeded?

    b. Do you have a revised three year budget plan based on: a) a new estimated enrollment plan; b) a revised staffing plan (including revisions to the administrative structure); and c) updated information on transportation, food service, and other contracted services?

c. What is the status of the potential new line of credit? Has FAME agreed to serve as a guarantor? Is it able to be drawn upon at present?

d. Does this plan have contingencies within it should enrollment drop below either the 150 student forecast as approved in the Commission's vote to grant a charter (date of vote), or in your current best estimate for enrollment numbers?

e. What present revenue or other access to funds does the school have on hand to enable it to enter into either facilities lease or other contractual arrangements necessary before school opens? Please specify the amounts available from donations, grants, other fundraising, and from an approved line of bank credit.

2. With regard to the academic program offering: In light of personnel and budgetary changes, what revisions, if any, does the school propose to make to its stated academic program and schedule based on its present enrollment projections?

3. There has been high turnover on the Baxter Academies board of Directors since the first submission of its application and even since the vote to issue a charter. The Commission needs further assurances that the present Board has the capacity necessary to enter a contract and open a school in September 2013. Specifically, we need information and plans from the Board in the following areas:

    a. Based on updated list of Board members, their resumes and specific areas of expertise that will support Baxter Academy, what areas of needed expertise will you now seek to add? A timeline for this?

    b. Please give us an indication as to the frequency and number of board meetings you have held since the vote to approve the charter and minutes of formal votes taken at those meetings.

    c. Can you give us an indication as to your projected number and frequency of planned board meeting going forward throughout this next year?

    d. How have you posted public notice of Board meetings to date? What is your plan for the future for notifying parents, staff and public about the dates and times for board meetings, and your plans, if any, to involve them in your decision making?

    e. Please list for us the action steps, with names of the specific Board member assigned, for specific operational tasks and oversight activities that the Board and school intend to make in order that school may open in September and operate throughout the first full year of operation.

4. What is the potential impact of any pending litigation on the ability to go forward as a school? How are the litigation costs to be paid? If the intellectual property is deemed not to belong to the school, how would this effect the ability to go forward as a school? If the litigation was to go for a long period of time, how would that affect the school?

Summary of Select Media Coverage of Baxter Academy Application to Maine Charter School Commission (MCSC) July 2012 – April 1, 2013

In June and July 2012, the MCSC was considering multiple charter school applications including Baxter Academy in Portland. Baxter Academy is planned as a Science, Technology, Engineering and Math (STEM) school. Opponents, such as the Mayor of Portland and Maine Education Association, raised questions about the financial assumptions in the Baxter Academy budget. Baxter stated it had secured a $500,000 line of credit from an anonymous benefactor to fund start-up costs and was projecting $360,000 in the first year from federal U.S. Department of Education grants. The grant amounts were questioned, as were enrollment projections of 160. Baxter presented a new budget for 100 students with a smaller federal grant projection.

The MCSC subcommittee recommended approval, but the full Commission continued to have questions about Baxter's finances. One member suggested a budget based on 80 students might be good. Supporters noted the need for a STEM school and some MCSC members characterized issues raised in opposition as political.

At the same time the Commission was being criticized for the time it was taking to approve charter schools and the small number being approved. Commission members stated they were making decisions based on specific merits, not whether charter schools are good or bad generally.

In November Baxter Academy was approved as Maine's third charter school with a projected opening in September 2013.

In March 2013, the Baxter Academy Board dismissed John Jaques, the Director stating that it saw a pattern of mismanagement and had been considering dismissing Jaques after it learned the school did not have the line of credit it needs for its contract with the State. The Board discovered the line of credit was not in place when it went to sign the building lease.

Jaques denied mismanagement and stated board acted unethically and dismissed him in order to obtain a donation of $250,000 contingent upon his removal. Jaques said that donation was from the father of a member of the school's advisory board. The Board said a family member was paying Jaques' salary, and that the donation did come from someone who had previously worked with Jaques then pulled his support. The individual who said his organization, the Jebediah Foundation, would not provide any more funding to the academy as long as Jaques was in charge confirmed this.

Jaques cut board off from school email, records, website and facebook page which included applications for positions and enrollment. There was back and forth in the press between current Baxter board members who supported the dismissal and former advisory board members who supported Jaques. A lawsuit was filed by the Board to get materials from Jaques because they were necessary in order to proceed with plans to open school in September.

Board has now signed lease and gained access to teacher applications.

On March 22 it was reported that the Portland Mayor asked Attorney General to investigate allegations of mismanagement, determine whether MCSC conducted an appropriate review of the school's financial picture and whether Commission offered inappropriate advice or assistance during application process.

The MCSC meeting on 3-25-13 to discuss Baxter Academy was covered. Jaques supporters criticized new leadership at school and said that most members of advisory board had resigned and school is corrupt. Baxter supporters claimed problems are a distraction and that the school is moving forward with a new plan, parents are still supportive, they have 156 student applications and are only about $100,000 short of $350,000 fundraising goal.

March 29 reports on GOC to be asked to authorize an inquiry, review school's finances, standards used by MCSC to consider application. The Governor criticized Portland Mayor for requesting an Attorney General investigation. The Mayor reiterated his discomfort with sending hundreds of thousands of school funds to a school whose own directors have raised questions about financial management. The MCSC Chair stated that criticism is from those who don't want charter schools, and the Commission is doing the oversight and vetting as deeply as it can. Baxter board members raised a concern that a long inquiry could jeopardize a September opening.

Maine Economic Improvement Fund
OPEGA Summary for the Government Oversight Committee
March 8, 2013

Legislative History

The Legislature created the Maine Economic Improvement Fund in 1997 (LD 1854 - An Act to Establish the Maine Economic Investment Fund enacted as PL 1997 Chapter 556) to provide funding for applied research and development by the University of Maine System (UMS), its member institutions and employees and students in five target areas:

- Aquaculture and Marine Science & Technology
- Biotechnology
- Composite Materials Technology
- Environmental Sciences & Technology
- Information Sciences & Technology

The MEIF's purpose is to act with private businesses, the federal government and public and private research institutions to invest in applied research and development in the target areas within UMS and support the development of private enterprise based on that research and development. The bill anticipates UMS receiving matching funds from public and private sources to augment MEIF.

UMS' Board of Trustees is responsible for administering the MEIF and is required to submit an annual report to the Governor and Legislature by January 1. Initially the statute required that the report address:

- operations and accomplishments of the fund during the fiscal year; and
- provide a statement of fund assets and liabilities at the end of the most recent fiscal year.

UMS was expected (as per OFPR Fiscal Note) to use existing resources to absorb additional costs associated with administering the MEIF, as would the Maine Science & Technology Foundation and State Departments staffing or serving on the MEIF Task Force which was created at the same time.

The Maine Economic Improvement Task Force was charged with reviewing and summarizing current policies and programs in Maine that support research and development, summarizing what other states do and developing a plan with a report due January 1, 1998. Initially the Task Force had 8 members; 2 from UMS, 1 from Maine Technical College System, 1 from Maine Science & Technology Foundation, 2 from the Department of Economic and Community Development, Department of Marine Resources or State Planning Office appointed by the Governor, 1 appointed by the President of the Senate and 1 by the Speaker of the House. The bill as amended added a ninth member from Maine Maritime Academy.

1997 Public Comment and Legislative Debate

Proponents of the MEIF bill in 1997 cited the following in support of the fund:

- Maine being 50^{th} in R&D investments;
- the loss of young people from state or "brain drain";
- the fund would stimulate science and technology driven jobs and economic growth;
- this investment of public dollars would leverage many more private dollars coming into the state,
- a national study stating that publically financed research plays a big role in breakthrough industrial innovations and advancements;
- the fund would increase Maine's appeal to business and industry; and
- research in the five target areas can benefit many Maine industries.

Opponents were concerned about reductions to the State's Rainy Day and Retirement Allowance Fund and wanted to see the private sector fund research and development possibly through some type of tax credit instead. There was also concern expressed about the limited time spent in committee working the bill. The bill was submitted after deadline, coming before the BRED Committee in May.

Materials in the Committee's written record from Law and Legislative Research Library include a report titled *University of Maine System Research Creates Jobs*. This report describes initiatives already on-going at University of Maine Orono (UMO) and University of Southern Maine (USM) in the five target areas. The report does not mention initiatives by other UMS member institutions or Maine Maritime Academy. Specific initiatives described included:

- Wood Composite Engineering - University of Maine efforts coordinated with Eastern Maine Technical College
- Marine Science & Aquaculture – University of Maine's new School of Marine Science
- Environmental Technologies – University of Maine research
- Biotechnology – University of Maine basic research in poultry science since mid-80's and USM strengthening its molecular biology teaching and research capacity through joint effort with biomedical and biotechnology communities in the Portland area
- Information Technology – University of Maine National Center for Geographic Information & Analysis

<u>1999 Amendments to MEIF</u>

In 1999 MEIF's target areas were modified (PL 1999 Chapter 401) when the Legislature created the Maine Technology Institute (5 MRSA chapter 407) as part of the budget bill. MEIF's target areas were deleted in the statute and replaced with the following "targeted technologies" as identified in 5 MRSA chapter 407:

- biotechnology
- aquaculture and marine technology
- composite materials technology
- environmental technology
- advanced technologies for forestry and agriculture
- information technology; and
- precision manufacturing technology

The Legislature also amended MEIF's statute regarding what must be included in the annual report submitted to the Governor and Legislature by the University of Maine System's Board of Trustees eliminating "accomplishments" and adding a section on goals and objectives. The revised report was required to include:

- the operations of the fund during the fiscal year;
- the assets and liabilities of the fund at the end of its most recent fiscal year; and
- the annual measurable goals and objectives of the fund, as established by the board, and an assessment of the achievement of those goals and objectives. The goals and objectives must include, but may not be limited to, education, research and development.

2012 Amendments

In 2012, the Legislature amended the MEIF Statute setting minimum percentages (2.5% beginning July 1, 2013, 3% beginning July 1, 2015) for annual disbursements from the fund to the smaller universities within the University of Maine System – Augusta, Farmington, Fort Kent, Machias and Presque Isle. (LD 1885 - An Act to Amend the Laws Pertaining to the Maine Economic Investment Fund enacted as PL 2011 Chapter 698.) MEIF annual report requirements were also amended to include a summary of the research and development projects funded with the minimum percentage distributions made to the smaller universities and any external funding sources leveraged with those awards.

In addition, the bill established a new six member Task Force charged with reviewing the MEIF. The review will include an assessment of the extent to which past distributions have leveraged external funds and enhanced Maine's economic or commercial capacity, an assessment of the competitive criteria used and recommend any changes necessary to enhance investment in targeted areas and provide basic investment necessary to obtain matching funds and competitive grants. It was due by January 8, 2013, but The Legislative Council did not appoint Task Force members until December. UMS staff estimates completing the report in March 2013.

2012 Public Comment and Legislative Debate

Debate on LD 1885 focused on how much of the MEIF to reserve and whether or not to phase in over time the set aside for the smaller universities.

At the public hearing before the LCRED Committee no one spoke against the bill. Proponents noted:

- MEIF represents an annual investment by the Legislature in applied research through the University of Maine System of $14.7 million
- The fund must be spent in 7 targeted areas and the University uses it to leverage federal and private funds that play an important economic development role in Maine.
- Between1997 and 2008 the University of Maine System granted all MEIF funds to UMO and USM, yet there are 7 campuses in the U Maine System.
- In FY2009 the University created the Small Campus Initiative making $100,000 available to the smaller campuses on a competitive basis.
- An additional $100,000 was made available in 2009 for projects at U Maine Machias and U Maine Fort Kent.
- The Legislature rather than the leadership of the University of Maine System should be responsible for dictating whether or not MEIF funds are available to small campuses.
- MEIF funds can help the smaller campuses become more attractive to students and faculty.
- Locating applied research near businesses and entrepreneurs in rural areas make it more likely technology transfer, and job creation, will occur.
- More dollars at the smaller campuses will encourage collaboration among U Maine System campuses.
- This will help support marine science and aquaculture research and help Maine's coastal economy.
- MEIF funds used to leverage other grants have an average return of 4:1.

U Maine System supported the bill with a phased in approach. UMS representatives also stated that the program works best when given maximum flexibility and that UMS would prefer to be allowed to make award decisions based on its own competitive processes.

Legislative debate included the issues noted above. Proponents believed the original intent was for MEIF to go to U Maine System's seven campuses, not just two, and cited fairness as an issue. Proponents also mentioned instances of research important to Maine's economy being conducted at the small campuses.

Some legislators were not in favor of setting money aside immediately because of the impact of reducing funding on projects needing time to wrap up or transition. A desire not to micromanage the universities was expressed as was a preference for concentrating efforts where there is capacity, ongoing research work and infrastructure in place. Another point made was that the 3% set aside more than doubles what the smaller campuses are currently getting.

MEIF Annual Reports for 2004-2009 and 2011

OPEGA reviewed the annual MEIF reports available for 2004 – 2009 and the report for 2011. Those reports consistently include the amount of money from private and federal grants and contracts leveraged by MEIF at UMaine and USM; the number of full-time equivalent positions supported through MEIF and leveraged funds; and an accounting of the sources and uses of funds, including a summary of total dollars spent in each targeted area by university. Some annual reports also described the patents applied for and awarded.

Annual reports for 2004 – 2009 include narratives highlighting activities at UMaine and USM by targeted area. Those narratives include descriptions of projects, faculty and students involved, any partnerships and/or other private or federal funding sources of support, and actual or anticipated results. Since 2009, reports have also included awards made under the Small Campus Initiative that makes $100,000 available on a competitive basis to the five other UMS universities.

According to UMS, they found people did not read the glossy magazine style report any more than the type of "bare bones" reports produced from 1998-2004. It was also was time intensive and costly to produce. In 2011, as part of cost savings initiatives, they went back to producing a much shorter annual report that met the statutory requirements. The report included a very brief summary of leveraged funds, positions supported, and updated appropriation and utilization of funds data. Narratives describing the activities and projects being funded were not included. (2011 Annual Report is attached.)

OPEGA observed that none of the annual reports included a discussion of the annual measurable goals and objectives of the fund, as established by the board, and an assessment of the achievement of those goals and objectives. Statute (10 MRSA §948.1.F(3)) has called for inclusion of that information in the annual report since PL 1999 Chapter 401 became effective.

BETR & BETE Tax Incentive Programs
OPEGA Summary for the Government Oversight Committee
Updated for April 12, 2013

Program Background

- Business Equipment Tax Reimbursement (BETR)
  - Subject to 36 MRSA Chapter 915 and administered by Maine Revenue Service (MRS).
  - Companies submit applications to MRS seeking reimbursement of property taxes paid to municipalities on eligible qualified business property as defined in the statute. MRS determines eligibility and reimbursement amount based, in part, on information in the application supplied by the municipal assessor. MRS sends reimbursement directly to the companies.
  - Qualified business property is generally eligible for BETR if it was first placed in service in Maine between April 1, 1995 and April 1, 2007. Property placed in service after that is generally covered by the BETE program instead. Certain retail equipment, however, qualifies for BETR even if placed in service after April 1, 2007.
  - Certain businesses are ineligible for the BETR program, including public utilities, cable television companies and providers of radio paging, mobile communications, satellite TV or TV distribution services. Similarly certain items of property are ineligible including furniture, lighting, buildings, land, and certain gambling equipment. Property associated with retail sales facilities larger than 100,000 square feet ("big box stores) is also ineligible unless a particular revenue test specified in statute is met.
  - Reimbursements under BETR are a specified percentage of the property taxes assessed and paid with respect to each item of eligible property. The reimbursement rate is 100% for each of the first twelve years for which a reimbursement is made. The rate falls to 75% for the 13^{th} year in which a reimbursement is made and decreases by 5% for each subsequent year of reimbursement until reaching the 18^{th} year when it is 50% for that year and every year thereafter.
  - MRS estimates that approximately 2,000 taxpayers are receiving reimbursements under BETR and estimates close to $47.6 million in reimbursements will be paid in FY13.

- Business Equipment Tax Exemption (BETE)
  - Subject to 36 MRSA §691 and administered by MRS and municipalities.
  - The program reimburses municipalities for loss of municipal revenue arising from the exemption of qualified business equipment, as defined in the statute, from property tax. Companies submit applications for exemption directly to the municipality which determines eligibility and grants the exemptions. Municipalities provide MRS with the number and dollar amount of the total exemptions granted for each property tax year.

On the basis of this information, MRS reimburses municipalities a certain percentage of property tax revenue lost as a result of the exemption.

- Qualified business equipment is generally eligible for BETE if it was first placed in service in Maine after April 1, 2007.
- Businesses and equipment items that are ineligible for BETE are the same as those that are ineligible for BETR. In addition, equipment associated with retail sales facilities is generally ineligible under BETE unless particular conditions specified in statute are met.
- BETE reimbursements to the municipalities are a specified percentage of the total property tax revenue lost by reason of the exemptions granted. The reimbursement rate was 100% for exemptions granted in the property tax year beginning April 1, 2008 and declined 10% for each of the subsequent property tax years until reaching the property tax year beginning April 1, 2013. The reimbursement rate for that property tax year and for all subsequent tax years is 50%.
- MRS estimates that approximately 3,000 taxpayers are receiving property tax exemptions and 246 municipalities reported BETE exemptions to MRS in 2010. MRS estimates that close to $21.4 million in reimbursements will be paid to municipalities in FY13.

Reporting and Evaluation

- Both programs are included in two tax expenditure reports provided to the Legislature on a biennial basis. The first report, as per 5 MRSA §1666, is released as part of the documentation for the biennial budget recommendations. It provides the estimated revenue loss from each tax expenditure program during the most recently completed fiscal year and the year in progress, as well as projected losses for each fiscal year in the coming biennium. The second report, as per 36 MRSA §199-B, is provided to the Joint Standing Committee on Taxation. It provides a bit more detail as it includes a summary on each provision, information regarding beneficiaries, estimates of the costs and any issues or recommendations MRS might have regarding a particular provision.
- OPEGA observes that the costs of tax expenditure programs are generally discussed as "forgone revenue", i.e. revenue the State would have received if not for the tax exemption, credit or incentive. This is consistent with the definition of tax expenditure programs existing in 5 MRSA §1666. The costs associated with BETR and BETE, however, are technically not forgone State revenue as the exemptions and reimbursements provided are for property taxes which is a municipal, rather than State, revenue stream. Consequently, the costs associated with these programs are actually represent State expenditures through payments MRS makes to businesses and municipalities.
- BETR was one of 46 programs reviewed in OPEGA's 2006 report on Economic Development Programs in Maine. BETE was not an established program at the time of that review. OPEGA assessed the risk of each program related to potential inefficiency and ineffectiveness using 13 different factors. Information used in the risk assessment was provided by the agencies

responsible for administering the programs. BETR was one of the higher risk programs, rating as "high risk" for 8 of the 13 different factors: goals and objectives; performance measures; reports; overlap; administrative costs; funding review; external audit; and amount of funding.

- It is unclear to what degree both BETR and BETE were encompassed in the independent evaluation that produced the 2008 Maine Comprehensive Economic Development report contracted for by the Department of Economic and Community Development. It appears that the surveys sent to organizations receiving assistance from State economic development programs went to BETR recipients but not BETE recipients. Some percentage of the BETR recipients surveyed were probably also BETE recipients. The report itself contains little data related specifically to BETR or BETE, but survey data related to these programs may be available from the evaluators who conducted the independent review. OPEGA had previously obtained a listing of free form comments survey respondents had provided. There were a number of comments specific to BETR that related to the following areas: importance of the program to the company, administrative burden for organizations applying, and the timeliness of reimbursement payments from MRS.
- Both BETR and BETE were included in the 2010 report required under Resolve Chapter 199 (To Increase Transparency and Accountability and Assess the Impact of the Tax Expenditure Programs). The working group that produced this report provided information on the purposes and functioning of the respective programs but stopped short of providing an assessment of the programs' risk or success as this was not the intent of the report. The report did, however, provide recommendations in regard to an approach for measuring the economic impact of tax expenditure programs in the future. It does not appear that these recommendations have been enacted.
- Detailed data on the items of property each company seeks BETR reimbursement for, and the municipalities the items are located in, is available at the State level on the reimbursement applications submitted to, and maintained by, MRS. However, the amount of detailed data readily available in electronic format for reporting and analysis is limited. Detailed data on companies and items of property receiving exemptions under BETE is not available at the State level. The detail on which companies are seeking property tax exemptions, and which items of property are included, should reside at the municipalities granting the exemption. OPEGA does not know what BETE records municipalities maintain, what level of detailed data those records include or what form (electronic or hard copy) the records may be in. These data limitations mean that any analysis requiring detailed data, or a comparison of those companies who receive assistance under both programs, would likely involve significant time and resources to request, process and analyze individual company applications – from MRS in the case of BETR, and from each municipality MRS has reimbursed in the case of BETE.

Proposals in the Governor's Proposed FY14/15 Budget

- The Governor's proposed budget for the FY14/15 biennium contains the following, which results in approximately $11.7 million of revenue recognition over the biennium from the repeal of the BETR program and the expansion of the BETE program:
  - Part K
    - Eliminates eligibility under the Business Equipment Tax Exemption (BETE) program for property located at certain large retail sales facilities (those that exceed 100,000 square feet and whose Maine based operations derive less than 30% of their total annual revenue from sales made at a retail facility located in the state).
    - Sunsets the Business Equipment Tax Reimbursement (BETR) program with respect to property taxes paid after 2012. Property that would have otherwise qualified for the BETR program, except the property located at retail sales facilities, is to be treated as eligible business equipment for purposes of the BETE program for property tax years beginning on or after April 1, 2014.
    - Increases the municipal reimbursement rate under the BETE program from 50% to 60% for the property tax year beginning April 1, 2014, and 55% for the property tax year beginning April 1, 2015. The rate for subsequent property tax years would return to 50%.
  - Part O
    - Provides that the additional reimbursement under the Business Equipment Tax Exemption of certain qualified property is conditioned on the municipality including an approved professional appraisal with its claim for reimbursement.

- If enacted, the proposed budget initiative would make BETE the primary tax incentive program for property taxes on business equipment. It also appears to effectively make all property associated with any retail sales facilities ineligible for the program. Other equipment that was eligible under BETR would be made eligible under BETE. The proposal also modifies the eligibility criteria as well as the reimbursement rate for BETE.

- The Taxation and Appropriations and Financial Affairs Committees heard public testimony on the BETR/BETE budget initiative on March 13, 2013. Points raised in testimony given included:
  - migrating BETR to BETE is a good idea / supported
  - businesses object to the 15 month lapse in reimbursement as BETR transitions to BETE (no reimbursement from January 1, 2013 to April 1, 2014)
  - timing of this is difficult as businesses have already budgeted for this year; and

    - other states do not have a Personal Property Tax on Business Equipment so the 15-month lapse in reimbursement will be seen as a tax increase and reduce Maine's competitiveness

- In regard to this testimony, OPEGA sought to confirm whether or not other states have this type of tax. Based on information provided by the National Conference of State Legislatures, OPEGA determined that 11 other states do NOT have a tax. All remaining states do have some form of like tax and vary in what exemptions to the tax are allowed. The summary provided by NCSL is attached.