TAX EXPENDITURE REVIEW

FINAL REPORT

Pine Tree Development Zones –Program Design Does Not Support Intended Goals; Whether Program Is Achieving Results Despite Design Is Unknown As Adequate Data Is Not Readily Available to Assess Outcomes

Report No. TE-PTDZ-16

Recommendations OPEGA offers as a result of this review:

- Program outcomes should be fully assessed and design weaknesses should be addressed if there is legislative interest in extending PTDZ. (pg. 32)
- MRS should include enhanced information about PTDZ benefits in future biennial tax expenditure reports to improve transparency. (pg. 38)
- DECD should notify all entities that administer PTDZ benefits when a business is decertified. (pg. 39)
- Additional data should be captured and/or made accessible if the Legislature desires full analysis of PTDZ costs and outcomes. (pg. 40)

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

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OPEGA is an independent staff unit overseen by the bipartisan joint legislative Government Oversight Committee (GOC). OPEGA's reviews are performed at the direction of the GOC. Independence, sufficient resources and the authorities granted to OPEGA and the GOC by the enacting statute are critical to OPEGA's ability to fully evaluate the efficiency and effectiveness of Maine government.

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Acronyms Used in This Report

CEP – Competitive Electricity Provider
DAFS – Department of Administrative and Financial Services
DECD – Department of Economic and Community Development
ETIF – Employment Tax Increment Financing
LMA – Labor Market Area
MDOL – Maine Department of Labor
MRS – Maine Revenue Services
MSTER – Maine State Tax Expenditure Report
PTDZ – Pine Tree Development Zones
PUC – Public Utility Commission
QBA – Qualified Business Activity
TIF – Tax Increment Financing

Pine Tree Development Zones Program – Program Design Does Not Support Intended Goals; Whether Program Is Achieving Results Despite Design Is Unknown As Adequate Data Is Not Readily Available to Assess Outcomes

Introduction

The PTDZ Program was established in 2003 and includes a total of 10 different benefits. The program is administered by DECD, with specific program benefits administered by MRS, the PUC and Efficiency Maine Trust.

The Maine Legislature's Office of Program Evaluation and Government Accountability (OPEGA) has completed a review of the Pine Tree Development Zone (PTDZ) Program. OPEGA performed this review as directed by the 127th Legislature's Government Oversight Committee (GOC) in compliance with 3 M.R.S. §§ 998-999.

Maine's PTDZ Program was enacted in 2003. The program as a whole is administered by the Department of Economic and Community Development (DECD). However, the various specific benefits available under the program are administered by a variety of agencies including DECD, Maine Revenue Services (MRS), the Public Utilities Commission (PUC), and Efficiency Maine Trust.

Businesses that expand or begin operations in designated Pine Tree Zones in Maine are eligible for various program benefits. To remain eligible, businesses must hire at least one qualified employee within two years of being certified for the program. PTDZ certified businesses are classified as Tier 1 or Tier 2 businesses based on their physical locations. Those in Tier 1 are eligible to receive PTDZ benefits for 10 years, and those in Tier 2 are eligible for five years.

Under 30-A M.R.S § 5250-J(5) all benefits available under the PTDZ Program will terminate as of December 31, 2028. The termination schedule allows Tier 1 businesses to be certified through December 31, 2018 but certifications for Tier 2 businesses were only accepted through December 31, 2013.

OPEGA's review focused on the evaluation objectives detailed in Appendix A. OPEGA used program data from DECD and MRS, including some confidential taxpayer data.

The GOC approved the objectives for this evaluation in February 2016, along with the performance measures OPEGA would seek to use in addressing those objectives. At that time, the GOC also agreed on statements of the program purpose and intended beneficiaries as interpreted from review of statute. These approved evaluation parameters were the basis of OPEGA's review and are detailed in Appendix B.[1]

Confidential taxpayer data was obtained for analysis in this review. In accordance with 3 M.R.S. § 1001(1)(E) OPEGA may publicly report confidential taxpayer data only "in the form of statistics classified so as to prevent the identification of specific taxpayers or the reports, returns or items of specific taxpayers." As required by 3 M.R.S. § 1001(1)(F), OPEGA provided the State Tax Assessor an opportunity to review a draft of this report and advise OPEGA on compliance with this statutory requirement.

[1] The GOC approved the evaluation parameters in accordance with 3 M.R.S. § 999(1) with input from the Maine State Legislature's Taxation Committee and in consultation with the Maine State Legislature's Labor, Commerce, Research and Economic Development Committee.

Additional work OPEGA performed included extensive review of relevant statute and rules; review of program documents such as applications and certification materials; interviews with program managers at all of the agencies involved in the program's administration; and analysis of program data obtained through these sources. Complete scope and methods for this evaluation are detailed in Appendix A.

Questions and Answers

OPEGA did not assess the PTDZ Program's outcomes due to a shortage of readily available program data. OPEGA did complete a thorough assessment of the program's design.

OPEGA determined that many of the approved evaluation questions for the PTDZ Program could not be answered without considerable effort because of the shortage of readily available program data. We believe the data necessary to answer these questions could be obtained. However gathering it, preparing it and assessing it would require a significant amount of time for OPEGA staff and potentially the staffs of DECD, MRS and business participants. Given that the PTDZ Program has already begun to sunset and new certifications will not be issued after next year, OPEGA decided not to pursue obtaining that data at this time. As a result, we are unable to answer the following evaluation questions:

- To what extent are those actually benefitting from the tax expenditures the intended beneficiaries?
- To what extent is the tax expenditure achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits?
- To what extent is it likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states?
- To what extent is the tax expenditure a cost-effective use of resources compared to other options for using the same resources or addressing the same purposes, intent or goals?

OPEGA did analyze the program's design, obtain an understanding of the program's administration, and review the limited data that was readily available. The design assessment does not allow us to ascertain what the program actually achieved for outcomes. However, it does provide a means for judging how well the program's statutory design supports achievement of its desired outcomes. OPEGA's assessment of the PTDZ Program's design and implementation form the basis for the answers to the evaluation questions listed below.

1. What is the fiscal impact of the tax expenditure, including past and estimated future impacts?

See pages 21 - 26 for more on this point

The direct cost of the PTDZ Program to the State is a combination of the administrative costs for managing the program plus the cost of all program benefits paid by the State or absorbed via foregone revenue. The administrative costs are estimated at roughly $10,000 annually for MRS' administrative efforts and roughly $85,000 for DECD's, for a total of approximately $95,000 in administrative costs annually. However, the State's cost for the benefits provided under the program is not as easily estimated.

The PTDZ Program makes a total of ten different benefits available to qualifying entities in Maine.

Table 1. The Ten PTDZ Benefits

Benefit Costs Borne by State	Benefit Costs NOT Borne by State
Expanded Employment Tax Increment Financing Reimbursements	Exclusion from Tax Increment Financing Limitations
Insurance Premium Tax Credits	Discounted Utility Rates
Income Tax Credits	Electricity Sales Benefits
Sales Tax Exemptions	Line Extension Benefits
Sales Tax Reimbursements	Conservation Program Benefits

As shown in Table 1, half of the benefits available under the PTDZ Program represent no cost to the State budget. OPEGA roughly estimated the State's foregone revenue associated with the remaining five benefits to be at least $11.3 million in FY16 and $12.1 million in FY17. Combining forgone revenue with administrative costs brings the program's total estimated direct cost to at least $11.4 million in FY16 and $12.2 million in FY17. Administrative costs make up less than 1% of the total.

OPEGA did not estimate the net State budget impact of PTDZ benefits, including increases in State revenue associated with new jobs attributable to the program, because the program data that was readily available was not adequate to support reliable economic impact modeling.

2. To what extent is the design of the tax expenditure effective in accomplishing the tax expenditure's purposes, intent or goals?

See pages 26 - 29 for more on this point

The PTDZ Program's design is set in statutory definitions and requirements and further delineated in program rules. OPEGA found that the current program design does not adequately support achievement of any of the program's desired outcomes or ensure benefits flow only to businesses that add qualifying jobs.

The program design does ensure program benefits flow to businesses in Pine Tree Zones operating in certain industries. However, with the exception of the Employment Tax Increment Financing (ETIF) expansion benefit, the PTDZ benefits are not restricted to businesses that add qualifying jobs. Statute and rules allow businesses to receive most of the many PTDZ benefits for up to two years even if they never add a single job. Additionally, aside from ETIF, the value of benefits a business can receive is not proportionate to the number of qualifying jobs they create. A business could hire just one new employee, but undertake a significant new investment and still qualify for sales tax, income tax, and utility benefits equal in value to those of a business that hired many new employees.

These design weaknesses are problematic for a jobs-focused program. In addition, statutory amendments made since the program's 2003 enactment reduced the level of quality that new jobs must meet. Taken together, these design issues led OPEGA to conclude that the PTDZ Program's design does not adequately support achievement of any of the program's desired job-related outcomes of:

- providing new employment opportunities;
- improving existing employment opportunities; and
- benefitting workers and job seekers.

Other statutory changes since the program's enactment have also weakened the program's focus on areas of the State with the most significant economic distress, essentially rendering the entire State a Pine Tree Zone. As a result, the program no longer strongly targets economically distressed communities. In fact, we note that businesses in areas with strong employment actually get more value from the PTDZ ETIF expansion benefit than businesses in higher unemployment areas.

Finally, there is nothing in the program's design that ensures the program will meet its desired outcomes of improving and broadening the tax base and improving the general economy of the State. While some may assume these outcomes will naturally flow from providing tax and utility benefits to businesses, the PTDZ Program design does not guarantee it.

The program's design weaknesses do not necessarily mean it is failing to achieve any of its intended outcomes. OPEGA acknowledges that a program can produce valuable outcomes despite design weaknesses. However, a weak design does not adequately ensure that the program benefits will reach the intended beneficiaries or will only be distributed to projects that contribute to the program's goals.

3. To what extent are there other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the Pine Tree Development Zone Program and to what degree are any similar initiatives coordinated, complementary or duplicative?

See pages 30 - 31 for more on this point

OPEGA did not find the overall PTDZ Program, with its broad variety of benefits, to be duplicative of any other State programs. However, we did not comprehensively assess whether individual PTDZ benefits are duplicative of any other State economic development programs.

The PTDZ Program does have statutory provisions that overlap with those of two other, separate programs — the ETIF Program and the Tax Increment Financing (TIF) Program. In both cases the PTDZ Program creates an add-on to the other programs, increasing the benefits under those programs in designated Pine Tree Zones.

The ETIF Program offers benefits to businesses that hire at least five qualifying employees. The value of the benefit available to these businesses may be 30%, 50% or 75% of the amount of State income taxes withheld by the business for its qualified new employees. Under the ETIF statute, the benefit rate available for each business is determined based on the unemployment rate of the labor market area (LMA) in which the employees are based. Under the PTDZ statute the rate increases to 80% for businesses in Pine Tree Zones regardless of the LMA's unemployment rate.

OPEGA noted that the overlap between the ETIF Program and the PTDZ expanded ETIF benefit is quite significant from an administrative standpoint. It is also significant from the perspective of State agencies and stakeholders in the business community who speak of the ETIF and PTDZ programs as though they are inseparable or are actually one and the same. OPEGA's analyses indicate the overlap is also substantial in terms of cost and use of the ETIF expansion benefit. In FY17, 42% of the total cost of the ETIF Program was associated with the ETIF expansion benefit and 89% of business projects qualifying for ETIF reimbursement were at the 80% PTDZ rate.

While this commingling of the two programs has been administratively efficient for both DECD and MRS, OPEGA finds it creates difficulties in identifying the cost to the State, and benefits to businesses, for each of the programs in isolation. We expect the ability to isolate costs specific to the PTDZ benefit will become increasingly important in coming years as PTDZ continues its statutory sunset. The overlap also means that any issues associated with the design or implementation of the ETIF Program are shared by the PTDZ Program. OPEGA is currently conducting an evaluation of the ETIF Program and any issues identified will be discussed in the report resulting from that review.

The PTDZ Program overlap with Maine's TIF Program is much less significant. This PTDZ benefit allows applicants for new TIF districts to exclude land designated as a Pine Tree Zone prior to 2008 from the proposed TIF's acreage cap. DECD reported that this impacted seven of the 46 new municipal TIF applications submitted in 2015.

4. To what extent is the State's administration and implementation effective and efficient?

See pages 12 - 21 for more on this point

The primary administering agencies for the PTDZ Program are DECD and MRS. Additionally, the PUC, Efficiency Maine Trust, and the State's two private utility companies have roles in administering PTDZ's utility and conservation benefits.

DECD and MRS procedures for reviewing program applicants and distributing specific benefits appear to be effective at getting PTDZ benefits to businesses that apply for them. The processes also appear to be relatively efficient based on estimated administrative costs which each agency absorbs within existing resources.

Nonetheless, OPEGA found the program as a whole can not be effectively administered for two primary reasons. The first is that the program's administration is fragmented. There are a number of agencies involved and there is no single entity with the statutory authority to oversee or coordinate the PTDZ benefits distributed by the others. In addition, there is no single agency with access to utilization data for all of the program's benefits.

The second major issue is that many PTDZ benefits are designed in a way that makes monitoring and enforcement resource-intensive to a degree that renders those efforts unreasonable. For example, 36 M.R.S. § 1760 allows PTDZ sales tax exemptions to be claimed for tangible property[2] only when it is purchased for use directly and primarily in one or more qualified business activities. At the point of

[2] Under 36 M.R.S. § 1760 payments by PTDZ businesses for transmission and distribution of electricity purchases are also exempt from sales tax.

sale a seller can only confirm that the business has a sales tax exemption certificate—the merchant has no idea, and no incentive to find out, how the business intends to use the purchased property. Follow-up monitoring of business use of exempted purchases would be necessary to ensure purchases were initially eligible, and remained that way, based on the business's use of the purchased item over time. Such monitoring would be a labor-intensive and costly proposition for both State agencies and PTDZ businesses.

OPEGA offers the following recommendations as a result of this review. See pages 32 - 41 for further discussion.

- Program outcomes should be fully assessed and design weaknesses should be addressed if there is legislative interest in extending PTDZ.
- MRS should include enhanced information about PTDZ benefits in future biennial tax expenditure reports to improve transparency.
- DECD should notify all entities that administer PTDZ benefits when a business is decertified.
- Additional data should be captured and/or made more accessible if the Legislature desires full analysis of PTDZ costs and outcomes.

Performance Measures Calculated by OPEGA

Table 2 includes the performance measures OPEGA calculated for the PTDZ Program that were approved by the GOC as part of the evaluation parameters for use in this evaluation.

Table 2. Pine Tree Development Zones Performance Measures Calculated by OPEGA	
Total # of businesses receiving benefits under the PTDZ Program	202 active certifications in 2015, at least 146 received benefits
Total $ value of PTDZ tax benefits received by businesses	Roughly estimate at least $11.4 million in tax & non-tax benefits in FY16
Total direct program cost	Roughly estimate at least $11.5 million in FY16
Source: OPEGA analysis of data received from administering agencies.	

OPEGA determined that pursuing data needed to generate many of the performance measures would be a resource intensive effort. We decided to forgo that effort at this time given that DECD has already stopped issuing new Tier 2 certifications, and will stop issuing new Tier 1 certifications at the end of 2018.

OPEGA found there was little readily available data on the value of many of the individual PTDZ benefits businesses received, and data that did exist was difficult to link by business across benefit types. Additionally, while PTDZ certified businesses are required to report annually on the total number of jobs created and the total amount invested, this data is unverified and at an insufficient level of detail to support analysis of program outcomes. Considerable further information would also be needed to validate the data and ascertain how much of the reported activity is directly attributable to the PTDZ Program. Without additional information, the available program data risks significantly overstating or understating the program's impacts. See Recommendation 4 for further discussion.

OPEGA determined that further pursuing data necessary for generating estimates of fiscal and economic impact to the State, and calculating many of the other performance measures, would be a resource intensive effort for OPEGA staff and potentially for the staffs of DECD, MRS, and businesses that received benefits under the program. Given that DECD has already stopped issuing new Tier 2 certifications, and will stop issuing new Tier 1 certifications at the end of 2018, OPEGA decided not to expend the resources that would be required to obtain the necessary data at this time.

As a result, we also decided not to spend the resources required to produce some of the more basic metrics that could be calculated with available data as it did not seem they would add significantly to the discussion of the PTDZ Program given the unknown outcomes and the many design flaws we identified. The complete list of performance measures initially approved by the GOC for this evaluation is included in the evaluation parameters on page 46.

About the Pine Tree Development Zones Program

The PTDZ Program offers participants reduction of a number of taxes in addition to a number of non-tax benefits.

Program Description

Maine's PTDZ Program was enacted in 2003. The program offers reduction of a number of taxes, in addition to a number of non-tax benefits, for up to 10 years for certain businesses that expand or begin operations in designated areas of Maine (Pine Tree Zones). To be eligible for this program, a business must be engaged in a qualified business activity (QBA) and must intend to hire at least one qualified new employee to work in this activity. OPEGA made several observations about design elements and statutory changes that have impacted the eligibility requirements for the program. See Recommendation 1 for details.

Program Intent: to encourage development in economically distressed communities in Maine in order to provide new employment opportunities; improve existing employment opportunities; improve and broaden the tax base; and improve the general economy of the State.

Program Goal: to provide new qualifying employment opportunities in certain industries in economically distressed communities.

Primary Intended Beneficiaries: businesses in Pine Tree Development Zones that add new qualifying jobs in certain industries.

Secondary Intended Beneficiaries: workers and job seekers, and economically distressed communities.

Designated Pine Tree Zones

Eligible geographic areas of the State are designated as Pine Tree Zones in statute and divided into two tiers. Businesses in Tier 1 locations can receive benefits for 10 years while those in Tier 2 locations are limited to five years of benefits. Most of the State is classified as Tier 1.

Eligible geographic areas of the State are designated as Pine Tree Zones in statute. The eligible areas have changed since the program's enactment, but are currently divided into two tiers. Businesses in Tier 1 locations can receive PTDZ benefits for up to 10 years while those in Tier 2 locations may only receive benefits for five years.

As of the writing of this report, Tier 1 locations are defined under 30-A M.R.S. § 5250-J(3-A) as including all of the following:

- Property within a military redevelopment zone;
- Units of local government that had been designated by DECD as participating in the PTDZ Program as of December 31, 2008;
- For calendar year 2009, all units of local government, regardless of county;
- Beginning January 1, 2010, units of local government in counties other than Cumberland or York County;
- Beginning January 1, 2010, units of local government within Cumberland or York County with a municipal unemployment rate 15% higher than its labor market unemployment rate, based on Maine Department of Labor (MDOL) data from the last completed calendar year; and
- Beginning January 1, 2016, the Town of Berwick in York County as well as pilot projects in the Downeast Region, Washington County, and the City of Sanford.

Under statute, businesses in Tier 2 locations could no longer apply for PTDZ certification after December 2013, and businesses in Tier 1 locations will be unable to apply after December 2018. After December 2028 the program's statutory sunset will be complete and no further PTDZ benefits will be available.

Tier 2 locations are defined under 30-A M.R.S. § 5250-J(3-B). As of the writing of this report, Tier 2 includes all units of local government in Cumberland or York County that are not Tier 1 locations.

The PTDZ Program is statutorily set to stop accepting applications from businesses in Tier 1 locations on December 31, 2018 and to end all benefits to existing certified businesses on December 31, 2028. Businesses in Tier 2 locations could no longer be certified after December 31, 2013, and can only receive benefits through December 31, 2018.

Qualified Business Activities

Qualified business activities include operations in targeted business sectors occurring within designated Pine Tree Zones. Business sectors that currently qualify for the PTDZ Program include:

- financial services;
- manufacturing;
- biotechnology;
- information technology;
- aquaculture and marine technology;
- precision manufacturing technology;
- composite materials technology;
- environmental technology;
- advanced technologies for forestry and agriculture; and
- call centers in Aroostook or Washington Counties (as of October 2015).

To be PTDZ certified, a business must be engaged in an eligible sector in a designated Pine Tree Zone and must intend to hire at least one qualified new employee within two years of certification. The business must also demonstrate that the planned establishment or expansion of operations would not occur in Maine absent PTDZ benefits. This is referred to as the "but for" requirement.

Qualified Businesses and Employees

According to DECD, 202 businesses had active PTDZ certifications in 2015. A qualified business is generally defined in statute as any for-profit business in Maine that:

1. is engaged in (or will engage in) financial services; manufacturing; or a targeted technology business;
2. has added, or will add, at least one qualified employee above its base level of employment in Maine;
3. demonstrates that the establishment or expansion of operations within the PTDZ would not occur within Maine absent the availability of the PTDZ benefits; and
4. has been certified by the DECD Commissioner in accordance with statute.

Qualified employees are new, full-time employees who are hired in Maine by a qualified business for work directly in a qualified business activity. Statute specifies that qualified employees do not include those that are shifted to a qualifying business activity from a non-qualifying business activity of the business or an affiliated business. To be considered qualified, employees must also:

- be provided a retirement plan and group health insurance; and
- have annualized income derived from employment greater than the most recent annual per capita personal income in the county in which they are employed[3].

To be considered "qualified", new hires must be provided access to a retirement plan and group health insurance. They must also have annualized income greater than the most recent annual per capita income in the county in which they are employed.

To continue receiving PTDZ benefits, businesses must hire and maintain at least one qualifying employee above their base level of employment in Maine within two years of certification. The base level of employment is the average number of existing employees in the State as established at the time of certification in accordance with calculations specified in statute. Statute provides exceptions to those calculations for catastrophic occurrences or significant employment expansions.

Overview of Program Benefits

The PTDZ Program offers ten different benefits to eligible participants, including:

- corporate income tax credits;
- income tax withholding reimbursements (expanded ETIF benefits);
- sales tax exemptions;
- sales tax reimbursements;
- insurance premium tax credits;
- discounted utility rates;
- electricity sales benefits;
- access to more favorable utility line extension terms and conditions;
- exclusion from TIF limitations; and
- access to conservation programs "of enhanced value" offered by Efficiency Maine Trust.

A description of each benefit is included in Table 3 on the following page along with information about each benefit's recent utilization and administering agency. Each individual benefit is also discussed in more detail beginning on page 16.

Most PTDZ benefits are disbursed directly to PTDZ certified businesses, but a few are not.

Most PTDZ benefits are disbursed directly to PTDZ certified businesses. However, a few are provided directly to entities that are not PTDZ businesses and may only benefit PTDZ businesses indirectly, if at all. These benefits include the exclusion from TIF limitations and electricity sales benefits for which the direct recipients are municipalities and competitive electricity providers respectively. PTDZ certified businesses may still benefit if the direct recipients pass on the financial benefits they received. This is discussed in more detail in the individual sections about each of these benefits beginning on page 20.

[3] Under 30-A M.R.S. § 5250-I(18) call centers in Aroostook or Washington counties have lower minimum pay requirements for qualified new employees compared to other PTDZ eligible businesses.

Table 3. Summary of PTDZ Benefits

Benefit	Description of Benefits	Administrator	Utilization Data
Exclusion from TIF Limitations 30-A M.R.S. § 5250-I(14)(A)	For municipalities applying for new TIF districts that include grandfathered (as of 2008) Pine Tree Zones, the PTDZ acreage within the proposed TIF district does not count toward the municipality's acreage cap for TIF districts.	DECD	DECD reports that 7 of the 46 applications for municipal TIFs in 2015 leveraged this PTDZ benefit.
Expanded ETIF Reimbursements 30-A M.R.S. § 5250-I(14)(B)	For PTDZ businesses that hire 5 or more qualified employees to work directly in a QBA, the available ETIF reimbursement increases to 80% of the Maine income taxes withheld and paid on behalf of the qualified employees. *OPEGA calculated the difference between the amount businesses received at the PTDZ 80% ETIF rate and what they would have received under the standard ETIF Program. See Appendix A for details.*	Jointly administered by DECD and MRS	OPEGA estimates expanded ETIF reimbursements to PTDZ businesses as roughly: FY16 $5,700,000 – 130 businesses FY17 $6,200,000 – 131 businesses
Sales Tax Exemptions 36 M.R.S. § 1760(87)	Sales to PTDZ qualified businesses of tangible personal property or the transmission and distribution of electricity are exempt from tax as long as the purchases are used directly and primarily in one or more QBAs.	MRS	FY16 $1,000,000–$2,999,999* FY17 $1,000,000–$2,999,999* 237 exemption certificates issued
Sales Tax Reimbursements 36 M.R.S. § 2016	Reimbursement to PTDZ qualified businesses, or their contractors, of sales tax paid for tangible property that is physically incorporated in, and becomes a permanent part of, real property that is owned by, or sold to, a qualified PTDZ business and used directly and primarily in a QBA.	MRS	FY16 $250,000–$999,999* FY17 $250,000–$999,999*
Insurance Premium Tax Credits 36 M.R.S. § 2529	100% credit on insurance premium taxes (due under Title 36, Ch.357) for up to five years for premiums attributable to a QBA. Tier 1 businesses may receive a 50% credit on insurance premium taxes for an additional 5 years.	MRS	Since fewer than five businesses have claimed this credit MRS holds aggregate utilization data confidential.
Income Tax Credits 36 M.R.S. § 5219-W	A qualified PTDZ business may claim a credit of 100% of income taxes attributable to the QBA for the first 5 tax years beginning with the tax year in which the qualified business activity commences. Tier 1 businesses may receive a credit of 50% of income taxes for the following 5 tax years.	MRS	FY16 $3,000,000 FY17 $3,230,000 Claimed by approximately 10 corporate and 90 individual taxpayers
Discounted Utility Rates 35-A M.R.S. § 3210-E(1)	Maine's two utilities each set the discount rates and conditions for their own customers. <u>CMP</u>: offers .5 cents-1.5 cents/kWh for manufacturers; 2.5%-5% for others. Discount on entire load for new businesses. Existing customers must increase usage by at least 10% and discount applies to incremental usage only. <u>Emera</u>: offers 25-50% discount for new businesses or existing businesses that increase usage by at least 250 kWh.	CMP & Emera administer the benefit. The PUC approves rates.	<u>CMP</u> 2015 – 17 customers, $16,699 2016 – 9 customers, $12,429 <u>Emera</u> 2015 – 13 customers, $27,068 2016 – 11 customers, $29,321
Electricity Sales Benefits 35-A M.R.S. § 3210-E(5)	Competitive Electricity Providers (CEPs) who have PTDZ customers are the direct beneficiaries of this provision. Under this provision, CEPs do not have to meet the statutorily required portfolio standard (RPS) for renewable energy for electricity supplied to PTDZ businesses. PTDZ businesses only receive a direct benefit if CEPs pass the cost savings on via reduced rates. *"Average benefit" at right is the estimated difference in CEP costs with the PTDZ benefit compared to costs if they had met RPS requirements, averaged for all participating CEPs.*	The PUC	<u>2014 – 3 CEPs</u> Class I (Average benefit): $79,257 Class II (Average benefit): $20,634 <u>2015 – 3 CEPs</u> Class I (Average benefit): $110,577 Class II (Average benefit): $8,823 2016 data not yet available as of report release.
Line Extensions 35-A M.R.S. § 3210-E(2)	PTDZ businesses may receive special consideration in PUC decisions about the terms and conditions of electric line extensions.	Utilities and the PUC	This benefit has never been accessed according to the PUC.
Conservation Programs 35-A M.R.S. § 3210-E(4)	PTDZ businesses may be offered the opportunity to participate in energy conservation programs that are "special programs of enhanced value."	Efficiency Maine Trust	This benefit has never been offered by Efficiency Maine Trust.

*These revenue loss figures are estimated by MRS as a range of possible values because little or no data is available.

Sources: Sales tax exemption, sales tax reimbursement and income tax data from 2018-2019 Maine State Tax Expenditure Report. Discounted utility rates and electricity sales benefits based on data provided to OPEGA by the PUC.

PTDZ Certification: The Gateway to the PTDZ Program

Initial PTDZ certification is like a gateway businesses must pass through before they can apply for any of the specific benefits available under the program. DECD is solely responsible for certifying PTDZ eligible businesses. In this role, the Department provides business assistance, manages the PTDZ application process, and monitors certification compliance.

Connecting Businesses With the PTDZ Program

Businesses must be PTDZ certified by DECD before they can begin to receive program benefits.

Businesses may first learn about the PTDZ Program from a number of sources including DECD's website, other economic development entities, or conversations with a DECD Government Account Executive (GAX). GAXs are outreach professionals whose job is to assist businesses in the State with finding programs to help them meet their business goals. DECD reports that its four regionally assigned GAXs are in contact with approximately 1,700 businesses around the State and have about 6,000 contacts with these businesses each year.

According to DECD, it is extremely rare that a business submits an application for PTDZ certification without having prior contact with the Department. Most businesses learn about the PTDZ Program from their regional GAX or contact DECD after learning about the program elsewhere.

The Department feels that connecting potential applicants with a GAX is a critical piece of their customer service model. Since applying for PTDZ certification is a somewhat intensive effort, GAXs work to ensure that businesses have assessed their ability to meet the PTDZ Program requirements before they apply. The GAXs are intimately familiar with DECD programs and can help businesses figure out in advance whether they could receive enough financial benefit to justify the effort required to apply. In addition, GAXs provide businesses with information about:

- the varied benefits available via PTDZ;
- the program's initial certification requirements and annual reporting requirements;
- the program's anti-shifting provisions[4];
- the criteria for a new employee to count as qualified under PTDZ; and
- the tiered nature of PTDZ benefits, including which tier the business may qualify for.

Another key point GAXs discuss with potential applicants is the timing associated with the calendar year basis PTDZ operates on. Businesses must hire one qualifying employee within two calendar years in order to maintain their PTDZ certification. Under statute, the calendar year during which the business submits an application counts as the first of these two calendar years. As a result, a business that submits an application on December 1, 2013 will technically have only 13 months in calendar years 2013 and 2014 to meet the hiring requirement.

[4] Anti-shifting provisions are intended to ensure that new employees and investment claimed by businesses have not merely been shifted from a non-eligible location to an eligible one or from a non-eligible business activity to an eligible one.

The PTDZ Certification Process

The application process is detailed in DECD's State agency rules and is structured around the statutory requirements for certification in the program. The process requires businesses to submit a "but for letter" and a completed application form to DECD.

To apply for PTDZ certification businesses must submit a "but for" letter and a completed application. The "but for" letter is the business's attestation that the development project the PTDZ application is based on would not go forward "but for" the program's benefits.

Submitting a "But for Letter"

DECD encourages businesses to submit their "but for letters" before other application materials.[5] In the "but for letter" a representative of the business attests that the development project the PTDZ application is based on would not go forward "but for" the program's benefits. The letter typically includes:

> Under 30-A M.R.S. § 5250-I(17)(A) a business may only be certified for the PTDZ Program if it "demonstrates that the establishment or expansion of operations within the Pine Tree Development Zone would not occur within the State absent the availability of the Pine Tree Development Zone benefits."

- the number of projected new hires;
- the average wage of projected hires;
- the projected investment amount;
- acknowledgement of wage and benefit requirements for PTDZ qualified employees; and
- the statement that the project would not go forward "but for" the program.

DECD requires that the "but for letter" contain very specific language in order to ensure the applicant meets requirements for certification under 30-A M.R.S. § 5250-I(17)(A). The Department provides businesses with a "but for letter" template that includes the required language and allows businesses to just fill in a few blanks. According to DECD, the Department strongly encourages businesses to use the template, and carefully scrutinizes any deviation from the template language to make sure the statutory requirement is still met.

On occasion a business will submit a letter that fails to satisfy this statutory requirement. When this occurs, DECD assists the business in modifying the language in the letter until the Department feels it does meet the requirement. Since the requirements of the program are explained by the Department's GAX staff ahead of time, businesses that do not have a qualifying project typically do not apply.

DECD replies to all approved "but for letters" describing the next steps in the certification process and directing the interested business to complete an application form.

[5] Although DECD encourages PTDZ applicants to submit their "but for letters" prior to their completed applications, in practice businesses may submit these materials in whatever order they prefer.

Submitting a PTDZ Certification Application

One of the PTDZ benefits is an expansion of the benefits available under the ETIF Program. DECD uses a joint application for the PTDZ and ETIF programs. Almost all businesses that apply for one program apply for both.

DECD uses a joint application for the PTDZ and ETIF programs[6]. Businesses may apply for one or both. According to DECD, businesses typically apply for both at once which is convenient since the expanded ETIF benefit associated with PTDZ is the most heavily used of all benefits and requires certification under both programs.

Some of the information businesses are required to provide on the joint PTDZ/ETIF application includes:

- business name and location(s);
- sectors in which the business operates or plans to operate;
- a description of the planned QBA;
- ownership information for pass-through entities;
- current employment statistics; and
- goals for future employment and investment in the project.

Businesses may submit their applications at any time during the year, but only applications received prior to December 1st of a given calendar year will be certified for that calendar year. For example, only businesses with applications submitted by December 1, 2013 can be certified for 2013.

Statute requires DECD to make several determinations before approving a PTDZ application.

In order for a business's PTDZ application to be approved, the application must be signed and include all of the required information. In addition, DECD must determine the following, based on the application materials:

1) that the establishment or expansion of operations within the PTDZ would not occur within the State absent the availability of the PTDZ benefits;
2) that the applicant is a for-profit business in a Pine Tree eligible location engaged in, or planning to engage in, an eligible business sector;
3) that the applicant will add at least one qualified employee above its base level of employment; and
4) that the business activity will not result in a substantial detriment to existing businesses in the State.

DECD's Tax Incentives Group is responsible for reviewing the applications to ensure they are complete and that they meet the requirements in items #1 through #3 above. By statute, the Commissioner is responsible for determining whether a business's plans will result in a substantial detriment to existing businesses in the State. Title 30-A § 5250-O requires the State Economist to provide an advisory opinion to assist the Commissioner in making that determination.

[6] Employment Tax Increment Financing (ETIF) is a State program established in 36 M.R.S. Chapter 917 that reimburses qualified businesses 30-75% of the State income tax withheld and paid on behalf of qualified employees. To receive ETIF benefits a business must hire 5 or more new, full-time employees over a two year period; and offer each new employee health and retirement benefits and an annual income higher than the most recent annual per capita personal income in the county where the employee works. The portion of withholding taxes a business is eligible to be reimbursed is based on the level of local unemployment.

One of the determinations DECD must make is that the proposed project will not result in substantial detriment to existing businesses in the State. OPEGA found this statutory mechanism ineffective.

OPEGA interviewed the State Economist and the Commissioner and staff of DECD to understand how this statutory requirement is implemented. We found that the statutory requirement in § 5250-O is not an effective mechanism for ensuring PTDZ business projects will not result in substantial detriment to existing businesses. See Recommendation 1E for further discussion.

DECD's Tax Incentive Group sends the approved applicant a letter of certification, a PTDZ certificate, a copy of MRS Bulletin 52 (the sales tax instructional booklet), and an MRS application for the PTDZ sales tax exemption. The Department also sends scanned copies of the certification letter and PTDZ certificate to MRS where they will be needed to verify the certification of businesses that apply for sales or income tax benefits.

DECD's Monitoring of Certifications

DECD requires PTDZ certified businesses to file reports annually with information about total employees and payroll, total new employees and payroll, and amounts invested in PTDZ certified projects. DECD uses these reports to monitor whether businesses meet the hiring requirement.

In its monitoring role, DECD keeps track of when certificates expire and also whether businesses meet their obligation under the program to hire, and maintain, at least one qualifying employee above their base level of employment. Businesses with active certifications must file an annual report with DECD each spring. The annual report is filed electronically via DECD's website and requires businesses to provide the following information:

- business name and physical location;
- description of the qualified business activity;
- total payroll and total number of employees;
- payroll for qualified new employees and number of qualified new employees;
- whether qualified retirement plans and health insurance are offered;
- amounts invested in real estate, personal property and employee training.

DECD notifies MRS when PTDZ businesses are decertified but does not notify other agencies that administer specific PTDZ benefits. Without notification those agencies may continue to provide program benefits to businesses that are no longer certified.

DECD reviews the reports and identifies businesses that were certified in the most recent year and have yet to hire the required new employee. The Department sends warning letters to these companies reminding them that they are required to hire at least one qualifying employee in order to continue receiving PTDZ benefits. At the same time, DECD also sends letters of decertification to companies that were warned the prior year and still have not met the hiring requirement. DECD notifies MRS of the businesses that have been decertified so that MRS knows which businesses are no longer eligible for the PTDZ benefits it administers. However, as discussed in Recommendation 3, the Department does not have any process for notifying other PTDZ benefit administrators, such as the utility companies, when businesses are decertified.

Administration of Specific PTDZ Benefits

Employment Tax Increment Financing (ETIF) Expansion Benefits

OPEGA estimates that 131 PTDZ businesses received ETIF reimbursements totaling approximately $6.2 million dollars in FY17.

The ETIF expansion is a PTDZ benefit available only to companies that are jointly ETIF and PTDZ certified; the vast majority of participants. It increases the amount businesses can receive under the ETIF Program when they hire at least five qualified employees. OPEGA estimates that in FY17, ETIF reimbursements totaling approximately $6.2 million dollars were received by 131 PTDZ businesses.

To be considered qualified employees under ETIF, new hires must be truly new to the qualified business, not shifted to a qualified business from an affiliated business. Qualified employees must also be full time and must be offered a retirement plan and group health insurance. Finally, the employee's annualized income derived from employment must be greater than the most recent annual per capita personal income in the county in which the employee is employed. Qualified employees under the PTDZ must meet these same requirements in addition to being employed directly in a QBA

With PTDZ's expanded ETIF benefits, businesses can receive 80% of the State income tax withholdings paid by the businesses' qualified new employees rather than the 30%, 50%, or 75% available to businesses certified for ETIF but not PTDZ.

Under the standard ETIF Program businesses receive payments from the State for 30%, 50%, or 75% of the State income tax withholdings paid each year by the businesses' qualified new employees. The benefit level is determined based on the unemployment rate of the Labor Market Area (LMA) in which the business is physically located. However, PTDZ certified businesses receive an expanded benefit equal to 80% of the withholdings regardless of the unemployment rate in their LMA. This represents a significant increase in the amount many businesses could receive under the standard ETIF program and stakeholders cite this PTDZ benefit as the one most valuable and desirable for businesses. OPEGA noted that this benefit is actually more valuable for PTDZ businesses located in areas with stronger employment than for those in high unemployment areas. See Recommendation 1 for further discussion.

ETIF Benefit Rates

30% for businesses in LMAs where unemployment ≤ State unemployment rate

50% for businesses in LMAs where unemployment rate > State unemployment rate and ≤ 150% of the State unemployment rate

75% for businesses in LMAs where unemployment rate > 150% of State unemployment rate

80% for PTDZ certified businesses

The ETIF expansion benefit is administered jointly by MRS and DECD. PTDZ certified businesses must hire at least five new employees, rather than the usual one, to receive this benefit.

The ETIF expansion is the only individual PTDZ benefit administered jointly by DECD and MRS. It is also the only PTDZ benefit that businesses cannot receive prior to hiring qualifying employees. In fact, in order to receive the ETIF expansion benefit businesses must hire a minimum of five qualified employees as dictated by the ETIF Program rather than just one as is required to maintain PTDZ certification.

To receive payment for this benefit, certified businesses must file an ETIF annual report with DECD each spring. This report is separate from the PTDZ annual report businesses must file with DECD and requires much more extensive and detailed information. The ETIF annual reporting process is labor-intensive for both DECD and business recipients. OPEGA's evaluation of the ETIF Program currently in progress will include a more detailed review of the ETIF annual reporting process.

ETIF annual reports require general information, such as the business's physical location and total employment, in addition to specific data for every in-state employee including:

- position name;
- whether the position is full time or part time;
- employee name or ID number;
- employee hire date and separation date;
- employee gross earnings amount with and without benefits;
- whether the employee has access to health or retirement benefits that meet ETIF minimum requirements;
- whether the employee is being claimed as a qualified employee;
- employee withholdings; and
- amount of ETIF payment the business is requesting based on the individual employee's withholdings.

This employee-level detail must be provided for all in-state employees, regardless of whether they are being claimed as qualified under PTDZ or ETIF. Requiring data on non-qualified employees, in addition to qualified employees, gives DECD some data upon which to base their determination that employees are truly new rather than shifted from one business location to another.

DECD is responsible for verifying the accuracy and appropriateness of each ETIF annual report which is also referred to as a "reimbursement request". After verification, the Department sends each annual report, along with a summary, to MRS which is responsible for making the payments. MRS verifies that the business has been remitting withholdings and performs a few additional checks before issuing the ETIF payments[7].

Income and insurance premium tax credits are available to PTDZ businesses immediately after certification for up to two years without hiring any new employees if they have made eligible investments in property.

Income Tax and Insurance Premium Tax Credits

PTDZ income tax credit and insurance premium tax credit[8] benefits are available to certified companies that have either:

- hired the minimum one qualified employee; or
- within the first two years of certification have purchased real and tangible personal property directly associated with the QBA even if no qualifying hires have been made yet.

[7] MRS also identifies any outstanding debts businesses may owe to the State and reduces ETIF payments to cover any debts owed. However, most ETIF certified businesses have no outstanding debt to the State and receive their ETIF payments in full. MRS additionally has audit authority to determine whether there has been any ETIF overpayment.

[8] Insurance premium tax credits are credits on the taxes insurers owe under Title 36, Chapter 357 on premiums they collect from policyholders.

PTDZ income and insurance premium tax credits are non-refundable and cannot be carried forward. They may be claimed by corporations or by individuals who are sole proprietors or members of pass-through entities.

Businesses are eligible for a non-refundable 100% credit on the tax liability associated with their QBA for the first five years of certification. Tier 1 businesses are also eligible for a 50% credit for the remaining five years of certification. MRS' 2018-2019 Maine State Tax Expenditure report estimated that in FY17 the total value of the income tax credits claimed was $3,230,000. The report further estimated that approximately 10 corporate and 90 individual taxpayers claim the credit annually. We are unable to report aggregate utilization data on the insurance premium tax credit because MRS holds it confidential, even at the aggregate level, since fewer than five businesses have claimed the credit.

PTDZ tax credits are non-refundable since they cannot exceed a business's total tax liability for a given year. They are also not eligible to be carried forward. However, using PTDZ credits may allow a business to carry forward other credits it may otherwise have used if the PTDZ credit had not eliminated, or significantly reduced, its tax liability. Individual taxpayers are eligible to claim the credit when they are sole proprietors or members of a pass-through entity that is eligible for the credit.

MRS' 2018-2019 Maine State Tax Expenditure Report estimated approximately $3.2 million dollars in PTDZ income tax credits were claimed in FY17.

MRS is solely responsible for administering the PTDZ income tax and insurance premium tax credit benefits. To claim these credits, a certified business must submit a PTDZ tax credit worksheet with a copy of the active PTDZ certificate. This worksheet uses an apportionment formula to calculate the amount of tax liability subject to the credit. The apportionment formula calculates the percentage of the business's real property value and employee compensation that is related to the QBA. Because the apportionment calculation treats investment and new employee compensation associated with the QBA as equal, it is possible for a certified business to claim the credits for the first two years after certification even if no qualifying employees have been hired. See Recommendation 1 for further discussion.

PTDZ tax credits may be claimed on individual tax returns or corporate tax returns. Regardless of the type of filing, MRS reviews PTDZ worksheets in the process of reviewing the returns and checks the attached PTDZ certificate. If the taxpayer is an individual, a second worksheet which calculates the individual's apportionment factor associated with the pass-through entity is required and is checked by MRS as well. Pass-through entities are businesses that pay no taxes themselves but pass the tax liability to the business owners. For such entities, each owner's tax liability and any credits associated with the pass-through entity are apportioned based on their percentage of ownership. The credits claimed by PTDZ participants are subject to standard MRS audit procedures.

Sales Tax Exemptions – Property Purchased for Use in a QBA

PTDZ sales tax exemption and reimbursement benefits are also available to businesses immediately after certification and for up to two years without hiring any qualified employees.

PTDZ certified businesses are exempt from sales tax on purchases of property used directly and primarily[9] in a QBA. The exemption is available to Tier 1 businesses for 10 years or to Tier 2 businesses for five years. Like the income and insurance premium tax credits, it is available to businesses immediately after certification regardless of whether they have made any qualifying new hires. MRS' 2018-2019 Maine State Tax Expenditure Report noted 237 exemption certificates on file for PTDZ businesses and estimated that in FY17 PTDZ businesses received sales tax exemptions totaling between $1,000,000 and $2,999,999.

MRS is solely responsible for administering the sales tax exemption benefit. To access the benefit, businesses must submit an application to MRS for a sales tax exemption certificate. MRS reviews the applications and ensures the applicants are certified according to the certification information supplied by DECD. As long as businesses are certified, MRS issues them sales tax exemption certificates.

MRS' 2018-2019 Maine State Tax Expenditure Report noted 237 exemption certificates on file for PTDZ businesses and estimated that PTDZ businesses received sales tax exemptions totaling between $1,000,000 and $2,999,999 in FY17.

Businesses may claim the exemption from a vendor at the point of sale by presenting these certificates when making qualifying purchases. Alternatively, businesses may submit a request for reimbursement to MRS after the purchase has been made.

Ongoing monitoring of this benefit is limited. Statute requires that purchases exempted from tax are used directly and primarily in QBAs; however, businesses are not required to regularly provide any evidence that their purchases have been used in compliance with this requirement. Likewise, vendors who exempt purchases from sales tax under the PTDZ Program are not required to report any data to MRS about qualifying PTDZ purchases or the amount of sales tax foregone. However, businesses may be required to provide documentation if they are subjected to an MRS audit. See Recommendation 1J for further discussion.

Sales Tax Reimbursements – Tangible Property Purchased and Incorporated in Real Property

In the same report, MRS estimated sales tax reimbursements claimed in FY17 at between $250,000 and $999,999.

PTDZ sales tax reimbursements are available for sales tax paid on tangible property physically incorporated into real property owned by, or sold to, a qualified PTDZ business and used directly and primarily in a QBA. Qualifying tangible property sales must have occurred within five years (for Tier 2 businesses) or 10 years (for Tier 1 businesses) from a business's certification date. MRS' 2018-2019 Maine State Tax Expenditure Report estimated that in FY17 the reimbursements claimed under this benefit totaled between $250,000 and $999,999.

Like PTDZ sales tax exemptions, sales tax reimbursement benefits are available immediately after certification regardless of whether qualifying hires have been

[9] Under statute, in order to qualify for PTDZ sales tax exemption, the purchased property must be used in QBAs more than half of the time from when the property is first placed in service until two years have passed, or until the property is sold or otherwise removed from service if that occurs before two years have passed. This requirement also applies to property for which sales tax reimbursement is requested.

made. Unlike PTDZ sales tax exemptions, however, reimbursements are typically claimed by contractors involved in real property improvements associated with a certified business's QBA.

Most PTDZ businesses involved in development or expansion of a physical location use contractors to make or manage those real property improvements. The contractors cannot use the businesses' sales tax exemption certificates at the point of sale even if the purchases made by the contractor would otherwise qualify to be exempted. The PTDZ sales tax reimbursement benefit allows contractors, with authorization from the PTDZ businesses they worked for, to request reimbursement after the fact for the sales taxes paid on these purchases. It may be assumed that contractors pass the sales tax savings along to the PTDZ businesses; however, this is not required.

MRS administers PTDZ sales tax reimbursements. The agency's staff receives reimbursement requests from contractors throughout the year and checks them to verify the purchases were made during the certified time period, that the certification was active, and that the purchases qualify. MRS issues checks to the applicants for the sales taxes paid on qualifying purchases. As with PTDZ sales tax exemptions, there is no routine monitoring to ensure the reimbursements were for property used in a QBA other than MRS audits that may be conducted of a certified business.

Conservation, Utility and TIF Limitation Exclusion Benefits

The ETIF, income and sales tax benefits described in the preceding sections are the most used benefits in the PTDZ Program. However, there are five additional benefits available. Some are not distributed directly to PTDZ certified businesses, some are little used, and some have never been used. Of the five, DECD is only involved in administering the TIF Limitation Exclusion benefit. The Department does not know whether, or to what degree, certified businesses are accessing the rest.

Conservation Programs and Line Extensions

The PTDZ Program's conservation and line extension benefits have never been used to date.

Neither the conservation program benefit authorized by 35-A M.R.S. § 3210-E(4) nor the line extension benefit authorized by § 3210-E(2) has been used to date. OPEGA found that both benefits have vague statutory definitions that may make them less likely to be offered or accessed. See Recommendation 1 for more discussion.

Discounted Utility Rates

PTDZ's discounted utility rates benefit are not used frequently. The value of this benefit totaled approximately $43,000 for 2015.

The PTDZ discounted utility rate benefit allows the utility companies, Central Maine Power and Emera, to offer a discount to PTDZ certified businesses. Maine's two utilities each set the discount rates and conditions for their own customers, and the PUC has responsibility for approving the rates. Based on data provided by the PUC, OPEGA estimates the value of this benefit to PTDZ businesses totaled approximately $43,000 in 2015.

DECD has no formal role in the administration of this benefit and does not keep track of which certified businesses take advantage of it. However, DECD's GAXs do help connect certified businesses interested in the benefit with the appropriate administrators at the utility companies.

Electricity Sales Benefits

The electricity sales benefit does not benefit PTDZ certified businesses directly. Instead it benefits CEPs that sell to PTDZ businesses. The value of this benefit was estimated at $119,000 for 2015.

This benefit is provided to Competitive Electricity Providers that sell to PTDZ certified businesses. These electricity suppliers may, or may not, be affiliated with PTDZ businesses. The benefit they receive is an exemption from the Renewable Portfolio Standard (RPS) for the kilowatt hours of electricity they sell to PTDZ businesses. This allows the electricity supplier to potentially use less renewable energy sources in their total energy pool than required by Maine law, resulting in a lower total cost. The supplier may pass their savings on to their PTDZ certified customers if desired, but there is no requirement to do so. Based on data provided by the PUC, OPEGA estimated the value of this benefit to be approximately $119,000 in 2015.

Exclusion from Tax Increment Financing Limitations

The TIF limitation exclusion allows municipalities applying for TIF districts to exclude certain PTDZ acreage from their total proposed acreage, essentially increasing the maximum acreage allowed in the district. The value of this benefit is not readily quantifiable.

The exclusion from TIF limitations is another PTDZ benefit that is not provided directly to PTDZ certified businesses. Instead, it is TIF district applicants, typically municipalities, which are immediately impacted by the benefit. When they file their applications, eligible PTDZ acreage within their proposed TIF districts may be excluded from their total proposed acreage, essentially increasing the maximum acreage allowed in the proposed TIF districts[10]. PTDZ acreage eligible to be excluded in this way is only for those PTDZ locations approved by DECD as of 2008. DECD reports that 7 of the 46 applications for municipal TIFs in 2015 leveraged this PTDZ benefit.

Assessing State Fiscal Impact

Challenges in Estimating the Fiscal Impact of PTDZ Benefits

OPEGA found it difficult to accurately estimate General Fund loss associated with many PTDZ benefits due to a variety of factors.

OPEGA found it difficult to accurately estimate the General Fund loss associated with many PTDZ benefits due to a variety of factors including nuances in how some benefits are calculated and the lack of data regarding actual usage of other benefits. The specific challenges encountered in estimating fiscal impact for individual PTDZ benefits are detailed in Table 4.

[10] Under 30-A M.R.S. §§ 5222 – 5227 the TIF Program allows municipalities to fund development projects in approved tax increment financing districts using real and personal property tax revenue generated by the increased assessed value resulting from development in the district. Municipalities designate areas as TIF districts and those designations must be approved by the DECD Commissioner. Provisions in statute limit how much total area in a municipality may be designated as development districts by acreage and additionally limit TIF districts based on original assessed value of taxable property.

Table 4. Challenges in Estimating Past & Future Fiscal Impact of Some PTDZ Benefits	
Income Tax Credits	1. The amount of the credit claimed on the PTDZ line of an income tax form may not represent the actual value of the credit if the taxpayer's tax liability is less than the credit. For example, a taxpayer may be eligible to claim $4000 in PTDZ income tax credits but may only have a tax liability of $1000. In this case a judgment would need to be made as to whether the PTDZ credit should be valued at $4000 or $1000. 2. The value of the PTDZ credit may be unclear if the taxpayer also claims other credits. A PTDZ credit can be used prior to any other credit. As a result, it may allow taxpayers to carryforward other credits they may have otherwise used. Under these conditions it is challenging to value the PTDZ credit in isolation. 3. The amount of PTDZ credit claimed on income tax forms may include credits associated with multiple PTDZ certificates and there is no way to know how much of the claim is associated with each certificate. Determining if multiple certificates are involved in a claim would require manually reviewing the supporting PTDZ tax forms. With MRS' system for storage of tax data, this would require OPEGA to view unrelated taxpayer data in order to locate the data of interest or would require MRS staff to spend significant time manually extracting the data OPEGA requires,
Sales Tax Exemption	There is no readily available data on the amount of sales tax businesses have not paid due to the PTDZ exemption. Businesses that receive PTDZ sales tax exemption certificates are not required to provide any information about their use of the certificates to MRS or DECD.
Sales Tax Reimbursement	Businesses or contractors submit requests for PTDZ sales tax reimbursement to MRS which makes payment to those that qualify. Totaling the amount of the approved reimbursements should allow MRS to determine the State's cost for this benefit. However, current sales tax reimbursement data storage methods do not allow the system to identify all reimbursements associated with the PTDZ Program. Gathering program-wide aggregate data would require manually identifying individual reimbursement claims and then totaling them. This manual aggregation would be a resource intensive process.
Exclusion from TIF Limitation	There is no reasonable basis for assigning value to the benefit a municipality receives by being able to exclude PTDZ land from the total acreage in their TIF application.

Past Estimates of Fiscal Impact Published by MRS

Despite the challenges described in Table 4, MRS does report estimated General Fund revenue loss associated with PTDZ income tax credits and sales tax exemptions and reimbursements in the biennial Maine State Tax Expenditure Report (MSTER). General Fund revenue loss from these benefits represents foregone revenue — revenue the State would have otherwise received but did not collect, or did not retain, because of PTDZ benefits.

MRS' biennial Maine State Tax Expenditure Report includes estimates of future foregone revenue associated with PTDZ income tax credits as well as sales tax exemptions and reimbursements.

MRS estimates a range for the sales tax exemptions and reimbursements based on their sense of the benefits' utilization. The PTDZ income tax credit, on the other hand, is based on prior returns and other information about broad economic trends. The MSTER released in the spring of 2017 estimated the fiscal impact of PTDZ sales tax reimbursements to be between $250,000 and $999,999 for FY16 and FY17. In the same report, sales tax exemptions were estimated at between $1,000,000 and $2,999,999 annually over the same period. The fiscal impact of income tax credits was estimated at $3,000,000 in FY16 and $3,230,000 in FY17. The remaining PTDZ benefits do not have revenue loss estimates included in the MSTER.

TIF, conservation and utility benefits are excluded from the tax expenditure report because they are not direct tax benefits and MRS has no role in their administration. In addition, they do not represent direct revenue foregone for the State.

However, MRS' report does not include estimates for two other PTDZ benefits that affect the State budget directly: the expanded ETIF benefits and the insurance premium tax credits.

The insurance premium credit was also excluded from the MSTER despite the fact that it does represent foregone revenue for the State and it is a tax benefit administered by MRS. MRS explained that this credit was not included in the MSTER because the report has historically focused on sales and income taxes, not on smaller tax lines such as this one. In addition the insurance premium credit is claimed by fewer than five taxpayers. Under MRS' standards for protecting the confidentiality of taxpayer data, the small number of claimants limits what MRS can report about the number and value of annual claims. Despite this limitation, OPEGA suggests there is some value to including the PTDZ insurance premium tax credit in the MSTER and we discuss this further in Recommendation 2.

The other PTDZ benefit administered by MRS but not reported in MSTER as fiscal impact for the PTDZ Program is the ETIF expansion benefit. The MSTER does include a revenue loss estimate for the ETIF Program as a whole which includes the revenue loss for the ETIF expansion benefit. However, the figures reported do not segregate how much of that fiscal impact is associated with the PTDZ expansion and, therefore, will go away when PTDZ Program sunsets. This issue is discussed further in Recommendation 2.

Administrative Costs

The ongoing administrative costs of the PTDZ Program borne by MRS and DECD are estimated to be $95,000 per year. A breakdown of these costs is shown in Table 5. These costs do not include MRS' processing of expanded ETIF payments because businesses would qualify for ETIF regardless of PTDZ status.

Table 5. Estimated PTDZ Annual Administrative Costs

Organization	Category of Cost	Amount as of 2016
MRS	Processing & Review Costs (Sales Tax Benefits)	$6,644
	Processing Costs (Income Tax Benefits)	$738
	Management Costs	$1,517
	Computer Costs	$500
	MRS Annual Total	$9,399
DECD	Back Office Costs	$59,550
	Government Account Executives Costs	$26,312
	DECD Annual Total	$85,861
	TOTAL ANNUAL COSTS	$95,260

Source: Estimates provided by MRS and DECD. DECD provided combined costs for the ETIF and PTDZ Programs and OPEGA divided those costs in half to estimate the cost of each program.

Note: Costs do not include MRS' processing of expanded ETIF payments because businesses would qualify for ETIF regardless of PTDZ status.

Combined annual administrative costs for DECD and MRS are less than 1% of the cost of PTDZ benefits.

OPEGA did not verify the administrative costs estimated by MRS and DECD though we do note that the estimates seem reasonable in comparison to each agency's administrative efforts. Total administrative costs are less than 1% of the cost of PTDZ benefits and do not add significantly to the total direct cost of the program. In addition, neither MRS nor DECD receive separate appropriations to administer the PTDZ Program. As a result, administrative costs are covered within each agency's existing resources.

OPEGA's Estimate of the PTDZ Program's Total Direct Cost to the State

As described below, OPEGA estimated the fiscal impact for each of the benefits paid by the State, or absorbed as foregone revenue, using a variety of data sources.

OPEGA estimated the fiscal impact for each PTDZ benefit using a variety of data sources.

Income and sales tax benefits. OPEGA's estimates were based on the revenue loss estimates reported by MRS in the Maine State Tax Expenditure Report. OPEGA used the income tax estimates directly from the report and used the midpoints of the ranges reported for the sales tax exemption and reimbursement benefits. We used this data as our estimate because it was the only readily available data related to these benefits and obtaining additional data would have been a labor intensive and challenging process as discussed in Table 4.

Insurance premium tax credits. OPEGA requested data about the value of credits claimed in recent years and MRS provided the requested data. The number of claimants annually has been five or fewer. Because of the small number of claimants, MRS confidentiality standards for taxpayer data forbid the disclosure of any aggregate data about the claims, such as the exact number or value of claims.[11]

Expanded ETIF payments. OPEGA obtained detailed data from DECD for the ETIF Program as a whole. We reviewed that data to identify the businesses that received ETIF payments at the 80% PTDZ rate. Based on each business's location, and labor market area unemployment rate data from MDOL, we then calculated the ETIF payment each of those businesses would have received if the PTDZ Program was not available. By subtracting these calculated payments from the amounts the businesses actually received at the 80% PTDZ rate, we were able to estimate the cost the PTDZ expansion added to the ETIF Program. See the methodology in Appendix A for more information.

From these data sources and analyses, OPEGA roughly estimated the total combined State cost of all PTDZ benefits as at least $11.3 million in FY16 and $12.1 million in FY17. The estimated costs of the individual benefits, and the program total, for FY13 – FY17 are shown in Table 6.

Table 6. Estimated State Cost of PTDZ Benefits Annually, FY13 - FY17

Benefit	2013	2014	2015	2016	2017
Income Tax Credits	$3,330,000	$1,920,000	$2,014,000	$3,000,000	$3,230,000
Insurance Premium Credits	≤5 claimants	≤5 claimants	≤5 claimants	≤5 claimants	≤5 claimants
Expanded ETIF Reimbursement	$3,900,000	$4,800,000	$5,100,000	$5,700,000	$6,200,000
Sales Tax Exemption	$625,000	$625,000	$625,000	$2,000,000	$2,000,000
Sales Tax Reimbursement	$625,000	$625,000	$625,000	$625,000	$625,000
Total Estimated Cost	**$8,480,000**	**$7,970,000**	**$8,364,000**	**$11,325,000**	**$12,055,000**

Sources are detailed for each benefit type in the section preceding this table.

[11] MRS does not disclose aggregate tax data when the number of taxpayers in the population being aggregated is five or fewer. This is intended to protect taxpayer confidentiality by ensuring that summary statistics are only disclosed when they include enough data points to prevent individual taxpayer information from being deducible.

Combining total estimated benefit costs with the administrative costs brings the program's total estimated direct cost to at least $11.4 million in FY16 and $12.2 million in FY17. OPEGA considers these estimates to be minimums because of the insurance premium tax credits that we know were used but for which we can provide no estimated cost.

OPEGA estimated the total direct cost of the PTDZ Program was at least $11.4 million in FY16 and $12.2 million in FY17.

PTDZ ETIF expansion payments make up more than half the cost of all PTDZ benefits in each of the fiscal years analyzed. This supports stakeholder claims that the ETIF expansion is the most valuable and most used PTDZ benefit. It also means that the revenue loss estimate MRS reports in the MSTER for the PTDZ Program, which does not include the ETIF expansion cost, substantially underrepresents the cost of the program – making it appear the program benefits in FY17 cost only roughly $6 million per year instead of roughly $12 million. Since the ETIF expansion amount is included in the reported total for the ETIF Program instead, the estimated revenue loss for that program should drop off considerably after the PTDZ Program finishes sunsetting in 2028.

Estimating the direct cost of the PTDZ Program, however, only tells one half of the story of this program's overall fiscal and economic impact to the State. To assess the full impact of the program two other metrics are necessary:

OPEGA could not reasonably estimate the broader fiscal and economic impacts of the PTDZ Program with the data readily available. Without this economic impact data it is unknown whether the program is cost effective.

1. net impact on State budget, including the direct costs and the increases in State revenue resulting from new jobs and investment attributable to the program; and
2. change in Gross State Product, or other measure of economic impact, resulting from new jobs and investment attributable to the program.

OPEGA was unable to reasonably estimate these measures of broader fiscal and economic impacts of PTDZ benefits with the data readily available. As a result, OPEGA is unable to provide a quantitative assessment of whether the program's roughly $12 million annual cost is a good value for Maine.

OPEGA's Estimate of Other Benefit Values

OPEGA also sought data to estimate the value of PTDZ benefits that are neither paid directly by the State nor absorbed as foregone revenue. The data sources for each are described below and the estimated costs for calendar years 2013 through 2015 are detailed in Table 7.

PTDZ's utility, conservation and TIF limitation exclusion benefits represent no direct cost or foregone revenue for the State. They also have a small total dollar value compared to the other PTDZ benefits.

Utility benefits. Utilization data for the discounted utility rate benefit and electricity sales benefit was provided to OPEGA by staff at the PUC who gathered the data from the utility companies and Competitive Electricity Providers. No additional analysis was necessary.

Conservation & line extension benefits. – OPEGA learned from staff at the Efficiency Maine Trust and the PUC, respectively, that these benefits have never been used and as a result have had no fiscal impact to date.

Exclusion from TIF limitations. OPEGA discussed how to assign a cost to TIF exclusions with DECD staff. All agreed that assigning a cost to these benefits would be complex. OPEGA decided not to spend additional resources to estimate a cost for this benefit.

These benefits have a small total dollar value in comparison to the other PTDZ benefits. Only the discounted utility rate benefit represents an actual, known cost to date. OPEGA understands that the cost of the discounted utility rates are absorbed by the utility companies that administer the benefits and likely distributed among the utilities' other customers.

Table 7. Estimated Annual Value of PTDZ Benefits Not Paid Directly by the State, 2013-2015

Benefit	2013	2014	2015
Exclusion from TIF Limitations	N/A	N/A	N/A
Discounted Utility Rates	$130,432	$109,442	$43,767
Electricity Sales Benefits	$82,076	$99,891	$119,400
Line Extensions Benefits	$0	$0	$0
Conservation Program Benefits	$0	$0	$0
Total Estimated Cost	**$212,508**	**$209,333**	**$163,167**

Sources are detailed for each benefit type in the section preceding this table.

Assessing Program Design

The intent of the PTDZ Program is to encourage development in economically distressed communities in Maine in order to:

- provide new employment opportunities;
- improve existing employment opportunities;
- improve and broaden the tax base; and
- improve the general economy of the State.

The program's more specific goal is to provide new qualifying employment opportunities in certain industries in economically distressed communities. The primary intended beneficiaries are businesses located in Pine Tree Zones that add qualifying jobs in those industries. Secondary intended beneficiaries are workers and job seekers, and economically distressed communities.

OPEGA found that the PTDZ Program's current design does not adequately support achievement of any of the program's desired outcomes.

OPEGA assessed how well the current design of the PTDZ Program, as set out in statute and rules, supported each of the intended outcomes and targeted benefits to intended beneficiaries. We found that the current design does not adequately support achievement of any of the program's desired outcomes. It also does not ensure financial benefits flow only to businesses that add qualifying jobs or directly address the expected benefits for secondary beneficiaries. This is due to a number of design weaknesses existing since the enactment of the program as well as statutory changes over time that weakened the program's focus on quality jobs and economically distressed communities. Noted design issues are briefly described below and discussed further in Recommendation 1.

Providing New Qualifying Employment Opportunities; Improving Existing Employment Opportunities; and Benefitting Workers and Job Seekers

The PTDZ Program has design elements that appear well aligned with the intent of providing new, qualifying employment opportunities. Unfortunately, these design elements have associated weaknesses.

The PTDZ Program has design elements aligned with intent of providing new qualifying jobs. Unfortunately, those elements have serious associated weaknesses.

Requirement to add one new, qualifying job within two years of certification. Statute requires that a business has added, or will add, at least one qualifying job above its base level of employment in order to receive PTDZ certification. PTDZ rules specify that a business must hire at least one qualified employee within two years of certification in order remain certified for PTDZ benefits. Rules also require the business to report jobs annually to DECD which the Department uses to monitor whether the one qualifying job requirement has been met. However, only one PTDZ benefit – the ETIF expansion – requires qualifying employees to be hired before a business can claim the benefit. The rest of the PTDZ benefits are available immediately upon certification, for up to two years, regardless of whether a business has yet made a qualifying hire. A business could, therefore, receive benefits for two years and then fail to hire any new qualified employees. Since there are no clawback provisions in statute, the State would not recapture any of the benefits.

Specified method for calculating the base level of employment. Statute specifies the formula to be used in calculating the base level of employment for each certified business. DECD uses the base level to measure the amount of new employment created. Over time, however, statutory exceptions have been created to allow businesses to significantly lower their base level of employment in certain situations, which essentially permits existing employees to be counted as new under the PTDZ Program.

Anti-shifting provisions. 30-A M.R.S. § 5250-I(18) specifies that employees shifted to a QBA from a nonqualified activity of the PTDZ business, or an affiliated business, may not be counted as qualified PTDZ employees. However, statute does not specify how shifting should be identified or prevented other than noting that the "commissioner shall determine whether a shifting of employees has occurred." OPEGA's notes that statutory anti-shifting provisions seem positive in theory but, in reality, implementing them thoroughly would likely be a labor intensive effort. We also note that shifting may not be effectively prevented or detected with the current implementation practices.

Set criteria for qualifying employees. Statute includes a definition for a qualifying PTDZ employee that requires the employee be provided compensation above the regional average and a minimum level of health and retirement benefits. A statutory exception was added to allow lower than average compensation levels for certain types of jobs. Additionally, the statutory definition uses the term "income derived from employment" and it is unclear what is to be counted as "income derived from employment".

Furthermore, there are no design elements that directly support improving existing employment opportunities, or that ensure substantial benefits to workers and job seekers. Workers and job seekers do stand to benefit under PTDZ from the creation of qualifying jobs with better pay and benefits throughout the State. However, the threshold for businesses to maintain certification is only one new qualifying job, and this is too low to ensure significant job creation. Many businesses may use the program benefits they receive to help fund additional jobs, but there is nothing in the program design that requires, or encourages, this to happen. In addition, for a number of PTDZ benefits, the value of the benefit does not change in proportion to the number of jobs created. This design element could result in a substantial cost to the State for comparatively little benefit in terms of new jobs.

Promoting Development in and Otherwise Benefitting Economically Distressed Communities

The PTDZ Program design also does not ensure benefits to the most economically distressed communities. Most of the State is designated as a Pine Tree Zone and there are no design elements to ensure communities where PTDZ businesses are located receive benefits.

Under statute PTDZ certification is only available to for-profit businesses; located in a designated Pine Tree Zone with a proposed project in one of several industries. The areas of the State designated as Pine Tree Zones and the eligible industries are specifically set out in statute. At first glance, the statutory design of the PTDZ Program appears to adequately target economically distressed communities in Maine because only businesses in communities designated as Pine Tree Zones can receive benefits. However, this design is significantly weakened by two factors.

The first factor is the designation of most of the State as either a Tier 1 or Tier 2 Pine Tree Zone. The statutory “definition” of economically distressed communities has broadened over time with statutory amendments increasing the number of communities where businesses would be eligible for PTDZ benefits. Currently, all locations in the State are eligible for some level of benefits, and all but a portion of York and Cumberland counties are eligible for the more generous Tier 1 benefits.

This broadening of eligible locations may reflect an underlying belief that nearly the whole State is economically distressed and there are no criteria set in statute for what constitutes “economically distressed”. Although it may be reasonable to promote economic growth throughout the State, doing so means no longer targeting the most significantly distressed communities. OPEGA noted, in particular, that the PTDZ benefit that expands ETIF benefits to an 80% rate actually is of greatest value to businesses in locations with more favorable unemployment rates that would otherwise only qualify for the 30% ETIF rate.

The second factor weakening the program’s focus on economically distressed communities is that there are no design elements to ensure communities where PTDZ businesses are located receive any benefits. Rather, there appears to be an underlying assumption that communities will naturally benefit when PTDZ projects occur in them. Communities do likely draw some benefit from having new business projects occur within their boundaries. This may be particularly true when PTDZ projects involve businesses locating in communities where they would otherwise not have or projects that leave businesses in a more sustainable position for the future. However, if new hires, construction staff, and supply chains are not local, many benefits associated with PTDZ projects may not be captured locally either.

Improving and Broadening the Tax Base; Improving the General Economy of the State

Similarly, there are no design elements to ensure businesses use Maine-based suppliers for goods and services.

OPEGA's research into effective tax expenditure programs indicates that the business projects most likely to positively impact the state economy are those in which:

- the projects resulted in new or retained direct employment;
- the businesses undertaking the projects have supply chains within the State;
- the businesses undertaking the projects export their products;
- the projects required construction or other temporary staff that was sourced from within the State; and
- the projects required new equipment or other assets that were sourced from within the State.

The design of the PTDZ Program does focus to some degree on new employment and, in addition, the industries targeted by the program exclude retail and include other sectors that may be more likely to export their products. However, the program has no design elements that require, or encourage, eligible businesses to have Maine-based supply chains, to staff any construction or other temporary projects with Maine-based employees, or to purchase any new equipment or other assets for the project from Maine-based vendors where possible. As a result, although these economic drivers may be present in some PTDZ projects, they may be absent in others.

In addition, increased tax revenues that should be generated by the program may not be realized by the State in the short term as those taxes may be offset by PTDZ tax preferences and other benefits.

In addition, while the design should effectively improve and broaden the tax base by supporting new and higher paying jobs and for-profit business expansion, these changes in the tax base may not translate to increased revenue for the State in the short term. This is because expected increases in personal income taxes or sales taxes may be offset by reductions in revenue from PTDZ tax preferences and other benefits. For example, PTDZ certified businesses may realize greater revenue and profits due to their qualifying project and may have a greater income tax liability as a result. However, in the short term the business qualifies for a 100% income tax credit on income associated with the QBA, potentially negating the increased liability and eliminating the expected revenue increase for the State. Similarly, most PTDZ businesses receive a reimbursement of the State income taxes the new, higher paid employees pay. In the long term, an increase in business tax revenue and personal income tax from employees may occur if the business is able to sustain growth beyond the 10 years of PTDZ benefit eligibility.

Assessing Program Similarities and Coordination

OPEGA did not perform a comprehensive assessment to identify other specific Maine programs with purposes and goals similar to the PTDZ Program. We observe that State programs we are aware of, that are focused on improving the economy, tend to have some of the same broadly stated intents and purposes as PTDZ, i.e. to create jobs and encourage economic development, particularly in economically distressed areas of the State. Consequently, there are likely quite a few State programs that would be considered to have similar intents.

OPEGA did not find the PTDZ Program as a whole to be duplicative of any other State economic development programs. We did not assess whether the individual program benefits were duplicative of other programs.

OPEGA did not find the PTDZ Program, with its broad variety of benefits, to be duplicative of any other State economic development programs. However, we did not comprehensively assess whether individual PTDZ benefits are duplicative of, or complementary to, any other State economic development programs.

As discussed previously in this report, the PTDZ Program does have significant overlap with the ETIF Program established in 36 M.R.S. Chapter 917. The ETIF Program offers benefits to businesses that hire at least five qualifying employees over a two year period. Qualifying employees are new, full-time employees that are provided health and retirement benefits and receive an annual income higher than the most recent annual per capita personal income in the county where the employee works. The value of the benefit available to these businesses may be 30%, 50% or 75% of the amount of State income taxes withheld and paid by the business on behalf of its qualified employees. Under the ETIF statute, the benefit rate available for each business is determined based on the unemployment rate of the labor market area (LMA) in which the employees are based. Under the PTDZ Program the rate increases to 80% for businesses in Pine Tree Zones regardless of the LMA's unemployment rate.

The PTDZ Program has significant overlap with the ETIF Program and also has some overlap with the TIF Program.

Both DECD staff and stakeholders OPEGA interviewed report that the expanded ETIF benefit is the most valuable and most used PTDZ benefit. In fact, the Department reports that nearly all of the businesses certified under the PTDZ Program use the ETIF benefit, and nearly all of the businesses that receive ETIF benefits are PTDZ certified. OPEGA's analysis shows that between 89% and 95% of business projects qualifying for ETIF payments in the fiscal years 2015-2017 received benefits at the 80% rate that is only available to PTDZ certified businesses. We also found that in FY17 the expanded ETIF benefit for PTDZ certified businesses accounted for 42% of the total ETIF Program payments.[12]

The overlap between the ETIF Program and the PTDZ expanded ETIF benefit is so significant that many people we interviewed, including DECD staff and stakeholders in the business community, speak of them as though they are inseparable or are actually one and the same. This is apparent in DECD's single application that applies to both programs and in MRS' Tax Expenditure Report which estimates foregone revenue for the ETIF Program inclusive of the increased

[12] OPEGA calculated the amount of forgone revenue for the PTDZ ETIF expanded benefit using ETIF reimbursement data provided by DECD. The amount provided by DECD differs from the forgone revenue estimate MRS reports for the ETIF Program in the MSTER as the MSTER estimate includes foregone revenue associated with two other tax expenditure programs that are not part of ETIF: the Brunswick Naval Air Station Job Increment Financing Fund and the Loring Job Increment Financing Fund.

benefits only available to PTDZ certified businesses. This also means that any issues OPEGA has identified with the design or implementation of the ETIF Program are shared by the PTDZ Program. OPEGA is currently conducting an evaluation of the ETIF Program and any issues identified will be discussed in the report resulting from that review.

While this commingling of the two programs has been administratively efficient for both DECD and MRS, OPEGA finds it creates difficulties in identifying the cost to the State, and benefits to businesses, for each program in isolation. The ability to isolate the PTDZ Program's costs will become increasingly important in coming years as it continues its statutory sunset. Policymakers will need to know the impact on foregone revenue as businesses are no longer able to receive the PTDZ expanded ETIF benefit and instead can benefit only at the rates allowed under the ETIF Program alone. See Recommendation 2 for further discussion.

The PTDZ Program also has some overlap with the TIF Program provided for in 30-A M.R.S. §§ 5222–5227. The TIF Program allows municipalities to fund development projects in approved tax increment financing districts using real and personal property tax revenue generated by the increased assessed value resulting from development in the district. Municipalities designate areas as tax increment financing districts through a statutorily defined process. The process includes the DECD Commissioner's review and approval of the designation and the proposed development project costs to be financed with the tax increment.

Provisions in statute limit the total area of all designated development districts in a municipality to not more than 5% of the total acreage in the municipality, and additionally specify that the original assessed value of all tax increment financing districts within the municipality may not exceed 5% of the total value of taxable property within the municipality. The PTDZ benefit allows applicants for new TIF districts to exclude land designated as a Pine Tree Zone prior to 2008 from the proposed TIF's acreage cap. DECD reported that this impacted seven of the 46 new municipal TIF applications submitted in 2015.

Finally, OPEGA did observe instances of businesses participating in the PTDZ Program also benefitting from some other State programs. We were unable, however, to more broadly assess the degree to which PTDZ businesses are receiving benefits from other programs. We are also unable to say whether the combination of benefits from multiple programs constitutes a package necessary to make the business projects viable, or instead results in a level of support that exceeds what is necessary to incent the desired behavior. This issue is not unique to the PTDZ Program as the State's current data collection and management practices for business incentive programs, as a whole, are not designed to allow such an assessment.

Recommendations

1 If There Is Legislative Interest in Extending PTDZ, Program Outcomes Should be Fully Assessed and Design Weaknesses Should be Addressed

OPEGA noted a number of weaknesses in the design of the PTDZ Program that should be addressed to improve accountability and help ensure intended outcomes are achieved to the greatest extent possible. However, the sunset of the PTDZ Program, which has already begun, makes it impractical to make statutory changes to the program at this time unless there is a willingness to impact existing participants. Any legislation introduced as a result of this evaluation could not be enacted until the summer of 2018 at the earliest and the program will be closed to new applicants after December 31, 2018. Many of the issues identified are not simple fixes and would require a level of effort that does not seem very cost-effective if the changes would only apply to the few final program entrants.

For these reasons, OPEGA proposes that the Legislature address these weaknesses only in the event the PTDZ Program is extended beyond its current sunset timeline. We also suggest they be considered in designing any new programs to replace PTDZ. A number of the issues overlap with the ETIF Program because of the close coordination of PTDZ and ETIF. OPEGA is currently evaluating the ETIF Program and we expect to recommend changes to address these shared issues when we report the results of that evaluation.

A. Many Disparate Benefits Administered by Various Agencies

The PTDZ Program is made up of many benefits that do not all target the same direct beneficiaries, and in some cases have very little in common. For example, the PTDZ benefit related to municipal TIFs benefits the municipalities applying for TIFs rather than PTDZ certified businesses. Having benefits of such differing types, with sometimes different intended beneficiaries, does not make for a cohesive program strategy.

In addition, not all program benefits are administered by the same entity and no single agency is in a position to administer or manage the program as a comprehensive whole. DECD certifies all PTDZ businesses, but DECD does not know whether approved businesses access some PTDZ benefits such as the sales tax exemption, sales tax reimbursement, income tax exemption, utility-related benefits, or conservation benefits. Those benefits are administered post-certification by other entities and, in the case of the tax-related ones, MRS either has no data on the amount of benefit use or is unable to share the data it has due to the confidential status of that data.

B. "But For" Statutory Requirement Is Ineffective

PTDZ statute requires a business to demonstrate that its establishment or expansion of operations within the Pine Tree Zone would not occur within the State absent the availability of the PTDZ benefits. PTDZ rules require the applicant to submit a statement describing the basis under which it has been determined that the project would not go forward but for the benefits provided within a Pine Tree Zone. The DECD Commissioner must determine the project would not go forward but for the PTDZ benefits in order to approve a certification.

These provisions appear intended to ensure that PTDZ benefits are only available to businesses that would otherwise not expand or create jobs in Maine. However, it would seem the business can meet these requirements and truthfully attest that its project would not go forward but for the benefits provided within a Pine Tree Zone for any number of reasons. For example, a business could set a high financial hurdle rate for the project that would not be met without the financial incentives[13] or a business could be only casually considering other potential locations.

Consequently, a business's "but for" claim may have little meaning and may be no guarantee that the expansion would actually not have occurred in some other form, or under modified timing, without the support of the PTDZ Program. OPEGA has confirmed with stakeholders that much of the business community also sees the "but for" requirement, and the letter DECD uses as a way to implement this requirement, as having little practical meaning.

C. Some PTDZ Benefits Are Not Defined Adequately in Statute

The Conservation Program benefit is defined vaguely in statute. Title 35-A § 3210-E(4) states "…the Efficiency Maine Trust may make available to qualified Pine Tree Development Zone businesses established under 30-A M.R.S. special programs of enhanced value to aid state efforts to promote economic development within Pine Tree Development Zones." Efficiency Maine Trust told OPEGA that it interprets the statute as providing the option for it to pursue enhanced program offerings for PTDZ businesses, but that there is no requirement that it do so. The Trust reported it has never offered special programs to PTDZ businesses for a variety of reasons but feels its programs have consistently offered "very attractive financial incentives to all businesses in Maine, regardless of sector or location."

The PTDZ Line Extension benefit also has an unclear statutory definition. It is authorized by 35-A M.R.S. § 3210-E(2) which states that "[w]hen approving or authorizing line extension terms and conditions for qualified Pine Tree Development Zone businesses established under Title 30-A, the [PUC] may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones established pursuant to Title 30-A." According to the PUC, this benefit has never been accessed.

D. Businesses May Receive PTDZ Benefits Without Ever Hiring Any Qualifying Employees and Most PTDZ Benefits Are Not Proportionate to Jobs Created

Businesses have two calendar years after certification to hire the one employee required to be eligible for PTDZ benefits. However, with the exception of the expanded ETIF benefit, businesses are able start receiving benefits as soon as

[13] A business's hurdle rate is self-determined and can be set based on a number of project-dependent factors.

they are certified. These benefits include discounted utility rates and sales tax exemptions and reimbursements for purchases associated with a qualified business activity. Income tax credits are also available to PTDZ certified businesses for two years, even if they do not hire any new employees, as long as the businesses have invested in qualified PTDZ property as based on an apportionment calculation. If a certified business ultimately fails to hire one qualified employee within two calendar years, the certification is revoked and the business is no longer eligible for benefits. However, since the program has no clawback provisions, the benefits received in the initial two years are not recaptured.

In addition, with the exception of the ETIF expansion, the value of PTDZ benefits available to businesses that have hired at least one qualifying employee are not directly proportionate to the number of jobs created. For example, a business could create relatively few jobs and still receive substantial sales tax benefits through the sales tax exemption and sales tax reimbursement. This presents a risk that the State could experience cost for the program in the form of forgone tax revenue that is not fully offset by the positive economic impacts typically derived from new jobs.

E. Statutory Attempt to Ensure PTDZ Certified Projects Will Not Adversely Impact Other Businesses Is Ineffective

Title 30-A § 5250-O requires the DECD Commissioner to assess, prior to issuing a PTDZ certificate, whether the QBA proposed by the applicant will result in any substantial detriment to existing businesses in the State. The State Economist is required to provide the Commissioner an advisory opinion in making this determination.

OPEGA observes that these requirements may be ineffective in meeting their presumed intent. Statute lacks specificity as to what factors the Commissioner and State Economist should consider in making this determination, leaving it primarily to the Commissioner's discretion. In addition, in interviews with the State Economist and Commissioner and staff of DECD, no one could remember a time when a project had been denied certification on the basis that it would cause a substantial detriment to existing businesses in the State. There was a shared sentiment that an application would likely never be denied on this basis because those involved now, and in the past, have generally believed the benefits of any business expansion in the State almost always outweigh any potential detriment.

Excerpted from 30-A M.R.S. § 5250-O

Prior to issuing a certificate of qualification, the commissioner must find that the business activity will not result in a substantial detriment to existing businesses in the State. In order to make this determination, the commissioner shall consider those factors the commissioner determines necessary to measure and evaluate the effect of the proposed business activity on existing businesses, including whether any adverse economic effect of the proposed business activity on existing businesses is outweighed by the contribution to the economic well-being of the State. The State Economist must review applications under this section and provide an advisory opinion to assist the commissioner in making findings under this section.

F. Statutory Anti-Shifting Provisions Are Weak

Statute includes several provisions intended to ensure PTDZ benefits are not provided in situations where a business merely shifts existing property, employees or positions from a non-qualifying business activity to a qualifying business activity.

30-A M.R.S. § 5250-J(3)

C. Pine Tree Development Zone benefits may not be used to encourage or facilitate the transfer of existing positions or property of a qualified business or affiliated businesses to a qualified business activity from a nonqualified activity elsewhere in the State;

D. Pine Tree Development Zone benefits may not be provided based upon any property, employees or positions transferred by the business or affiliated businesses to a qualified business activity from a nonqualified activity; and

Excerpted from 30-A M.R.S. § 5250-I(18)

"Qualified Pine Tree Development Zone employees" does not include employees shifted to a qualified business activity from a nonqualified activity of the qualified Pine Tree Development Zone business or an affiliated business. The commissioner shall determine whether a shifting of employees has occurred.

In particular, DECD is responsible for ensuring employees reported as new hires have not been shifted from non-qualified to qualified activities. Statute provides no guidance, however, about how this should be assessed. DECD currently has no formal mechanism for identifying attempts to shift employees and the PTDZ annual reports businesses submit to DECD do not contain the data DECD would need to do so. ETIF annual reports do contain enough detail to support checking for employee shifting, but this would only be effective for PTDZ businesses that hired at least 5 employees and filed an ETIF report.

In addition MRS currently has no data available that would allow the agency to detect property shifting.

G. Amendments to Statute Affected the Number and Quality of Jobs a Business Can Count as PTDZ Eligible

In 2009, the Legislature passed amendments to the PTDZ statute to allow adjustments to base employment level calculations for businesses that experience catastrophic occurrences or significant employment expansions. These adjustments made it possible for a business to claim employees as new that it otherwise may not have been able to, thus increasing the amount of PTDZ ETIF expansion payments it could receive and potentially increasing the PTDZ income tax credit the business could claim.

Catastrophic Occurrence. A business that primarily supports the State's working waterfront industry and has suffered a catastrophic occurrence resulting in a loss of at least 5% of employed workers is eligible to have its base level of employment adjusted to 25% of the business's average # of employees over the 3 months immediately preceding the catastrophic event. Catastrophic occurrence is defined by 36 M.R.S. § 5250-I(5-A) as accidental fire, flood, hurricane, windstorm, earthquake or other similar event.

Significant Employment Expansion. A qualified business that has at least one location in the State and creates at least 250 jobs at one of these locations is eligible to have only that location factored into the calculation of its base level of employment. To qualify the business must also maintain its total employment in Maine above 50% of its growth at the location of the employment expansion.

A number of years later, in 2015, the Legislature amended statute to allow call centers in Aroostook or Washington Counties to qualify for PTDZ benefits with lower minimum pay requirements for qualified new employees compared to other PTDZ eligible businesses. This amendment allowed call centers to qualify for PTDZ benefits the first time and also allowed them to count employees as eligible that other PTDZ businesses would not be able to claim.

H. Program Does Not Focus on the Most Economically Distressed Communities

When the PTDZ Program was established in 2003, it included a process through which local governments had to apply to DECD to have areas designated as Pine Tree Zones. Statute required DECD's Commissioner to review applications and select zones based on a number of criteria including "[s]everity of economic distress within the region affected by the Pine Tree Development Zone."

This zone application process was eliminated beginning in 2009. In its place, the Legislature established the two tier structure that still exists today and designated in statute which portions of the State would be eligible under each tier. All zones established under the prior process became Tier 1 zones, as did all of the State for the calendar year 2009. For years 2010 and beyond, statute established that most of the State would be eligible for Tier 1 benefits with the exception of units of local government within Cumberland or York Counties with municipal unemployment rates less than 115% of their labor markets' unemployment rates. Cumberland and York County municipalities that do not meet Tier 1 requirements are designated as Tier 2.

Under the tier structure every community in the State is currently a Pine Tree Zone, and the program's resources are not focused on the most significantly economically distressed areas of the State. In fact, OPEGA found that in 2015, 67% of the businesses that received PTDZ ETIF expansion benefits were located in lower unemployment areas of the State that would only qualify for a 30% ETIF reimbursement without the PTDZ expansion.

I. "Income Derived from Employment" Is Not Defined in Statute

"Income derived from employment" is one of the criteria for determining "qualified" employees for the PTDZ Program. Businesses do not have to report "income derived from employment" for the PTDZ annual report. However, it is the figure businesses must compare to the average per capita income when they are assessing whether an employee qualifies under PTDZ. OPEGA observes, however, that it is unclear what should be considered "income derived from employment" in applying this condition.

Statute does not define "income derived from employment." The closest thing is a definition of "payroll" in 36 M.R.S. § 5219-W(5) which defines payroll for the purposes of claiming the PTDZ Income Tax Credit as compensation including wages, pre-tax employee contributions to a benefits package and employer contributions to an employee benefit package.

PTDZ Program rules, on the other hand, define "income derived from employment" as wages in addition to company paid education benefits, retirement benefits, health and welfare benefits, and dependent care benefits. For development projects where a PTDZ business creates 250 or more jobs within a two year period, "income derived from employment" may also include other company-paid benefits as well as company-offered benefits.

In addition, although "income derived from employment" is compared to per capita personal income in order to determine whether positions qualify under the PTDZ Program, the two statistics do not include the same types of income. As a result, they may not represent a meaningful comparison. Per capita personal income is published by the US Department of Commerce's Bureau of Economic Analysis (BEA). The BEA definition includes employer contributions to government social insurance, which is not included under the PTDZ Program, but does not include some of the company-paid or company-offered benefits that are included under PTDZ rules.

J. Statutory Sales Tax Exemption Requirements Are Challenging to Enforce

The PTDZ sales tax exemption is allowed only on tangible personal property purchased for use directly and primarily in one or more QBAs. Title 36 § 1760 defines "primarily" as being used in a QBA for more than 50% of the time period beginning on the date the property is first placed in service by the purchaser and ending on the first to occur of:

- two years from the date the property is placed in service, or
- whenever the property is sold, destroyed, or otherwise permanently removed from service by the purchaser.

At the point of sale, a seller has no idea how a business intends to use the property purchased and can only confirm that the business has a PTDZ sales tax exemption certificate. As a result, follow-up monitoring of how the business used exempted purchases by an entity such as MRS or DECD would be necessary to ensure purchases were initially, and remained, eligible. No follow-up monitoring of this type currently occurs, and it would be labor-intensive and costly to carry out effectively.

Recommended Legislative Action:

If there is legislative interest in extending the PTDZ Program beyond its current sunset timeline, we recommend that the Legislature direct OPEGA to spend the time and resources necessary to conduct a full analysis of the outcomes of the program to date. Although this analysis would be a very intensive effort, we believe it would provide the data necessary to support legislators in deciding whether the program's achievements warrant the effort and resources that would be required to fix its design flaws or whether it would be more prudent to direct those resources to other economic development efforts.

We also recommend the Legislature consider the issues identified above in designing any new programs to replace PTDZ.

2 MRS Should Include Enhanced Information About PTDZ Benefits in Future Biennial Tax Expenditure Reports to Improve Transparency

OPEGA observed a few ways in which MRS could improve transparency with regard to the tax revenue foregone from PTDZ Program benefits reported in the biennial MSTER. Following is a brief description of these opportunities and the level of resources required to implement them.

Include the PTDZ Insurance Premiums Tax Credit Benefit in the MSTER

The MSTERs issued in 2013, 2015 and 2017 have not included information on the PTDZ insurance premiums tax credit benefit. MRS explained that, historically, the MSTER has focused on sales and income taxes and not the smaller tax lines such as the insurance premiums tax. MRS also said there have only been a small number of credit claims in the history of this benefit. OPEGA understands that having a small number of claimants limits the detailed information that MRS can include in its report without violating taxpayer confidentiality. However, including a description of the benefit and giving a range of estimated tax revenue foregone and/or indicating that the number of claimants per year has been too low to allow MRS to report utilization details would still be useful information for policy makers.

According to MRS, adding this information to the MSTER would require little to no additional resources.

Base PTDZ Sales Tax Reimbursement Estimates on Actual Payments Made

The MSTERs for 2013, 2015 and 2017 have reported a range of estimated foregone revenue associated with PTDZ sales tax reimbursements based on MRS' knowledge of the reimbursements requested. MRS has actual data on the individual sales tax reimbursement requests paid by the State that could be used to develop firmer estimates of foregone revenue or program utilization. However, this data is on sales tax reimbursement request forms that are not stored electronically in a manner that can be easily queried.

According to MRS, using actual data to generate the MSTER estimates for PTDZ sales tax reimbursements would require a small amount of additional MRS staff resources once every two years in addition to a small one-time resource requirement to put new processes in place to better capture the necessary data.

Describe the Method for Estimating Revenue Foregone From the PTDZ Sales Tax Exemption

MRS explained that the sales tax exemption estimates in the MSTERs are developed by the agency based on available information at the time, the state of the economy, and the businesses certified. OPEGA acknowledges that the nature of the PTDZ sales tax exemption benefit provides MRS with little to no readily available data about actual utilization of the benefit as is typical of all point of sale sales tax exemptions. However, MRS could include in the MSTER a clear description of the factors considered in developing the estimates of foregone revenue associated with this benefit to give policymakers important context when considering those estimates.

OPEGA understands including this description would require little to no additional resources.

<u>Estimate and Report Forgone Revenue for PTDZ ETIF Separately From the Standard ETIF Program</u>

The estimated foregone revenue reported in the MSTERs for the ETIF Program includes the foregone revenue associated with the PTDZ ETIF expansion with no breakout or description of the amount that is related to PTDZ. OPEGA estimates that the dollars paid for PTDZ ETIF expansion accounted for approximately 42% of the total amount paid to ETIF recipients in FY17. This forgone revenue is expected to decline as the PTDZ program sunsets with the final payments being made in 2028. Reporting the estimated foregone revenue for the PTDZ expansion of ETIF separately from the standard ETIF Program would bring transparency to the cost associated with the PTDZ expansion. It would also clarify the cost of the ETIF Program on its own.

OPEGA understands that reporting the estimated forgone revenue for the PTDZ ETIF expansion separately would require a small amount of additional MRS staff resources once every two years.

Recommended Legislative Action:

MRS has indicated the resources required to make the improvements described above is minimal. If the Legislature agrees it would be worthwhile to have enhanced information for PTDZ forgone revenue estimates, then OPEGA suggests the Legislature direct MRS to make these improvements in the five MSTERs that will be published before PTDZ has fully sunset.

3 DECD Should Notify All Entities That Administer PTDZ Benefits When a Business is Decertified

Although DECD does notify MRS when a PTDZ business is decertified, the Department does not notify any of the other entities that administer PTDZ benefits. This creates a risk that those entities could unknowingly continue to authorize benefits for businesses that are no longer eligible to receive them.

Recommended Management Action:

DECD should create a process for notifying all entities administering PTDZ benefits whenever a business is decertified.

4 Additional Data Should Be Captured and/or Made Accessible If the Legislature Desires Full Analysis of PTDZ Costs and Outcomes

The data necessary for effective and efficient evaluation of the PTDZ Program is not readily available from State agencies. OPEGA noted that limited data availability and accessibility have been issues in prior independent evaluations of the program conducted as part of DECD's statutorily required comprehensive evaluation of economic development programs. We also determined that pursuing the data we needed for this evaluation would be a time and resource intensive effort that we decided to forgo given that the program has begun sunsetting and will not be open to new applicants after December 2018.

Data limitations OPEGA noted include:

Insufficient level of detail in reported data. Data businesses provide to DECD in the PTDZ annual reports includes annual totals which are insufficient for generating meaningful estimates of the program's outcomes. Additional detail would be needed about what invested dollars were used for and how much was spent with Maine-based suppliers. Similarly, additional detail would be needed about individual jobs counted as PTDZ qualified. This detail on jobs is available for PTDZ-certified businesses that hire at least five qualified employees and file ETIF annual reports to get ETIF benefits. However, there is no detail for PTDZ businesses that do not file ETIF reports.

Inability to query some electronically stored records. Some program records held by MRS and DECD are stored electronically but not in a format that allows for efficient isolation and extraction of specific PTDZ data elements needed for program evaluation. Pulling out the data needed would be a manual and time-consuming effort. For example:

- The forms taxpayers file with MRS for reimbursement of sales tax are stored as electronic images that cannot be queried to extract specific data fields. Additionally, taxpayers may file for multiple sales tax reimbursements on the same form, not all of which are related to the PTDZ Program. MRS does not electronically tag the image files, so there is no way to easily identify only those files containing PTDZ reimbursements.

- PTDZ certification applications are submitted to DECD electronically as spreadsheets. However, the individual data elements from the application are not captured in a database that can be queried. Specific data elements needed for each business project would need to be manually captured from the hard copies or the individual electronic spreadsheets.

Some data is not captured at all. As with all State sales tax exemptions claimed at the point of sale, MRS captures no data on the actual use of the PTDZ sales tax exemption benefit. Useful data would include the number of businesses that used the exemption and the amount of sales tax the State did not receive due to the exemption. However, businesses that receive PTDZ sales tax exemption certificates are not required to report any information about their use of the certificates to MRS or DECD.

Recommended Legislative Action:

OPEGA recognizes that implementing procedures and developing tools for efficient capture and retrieval of the additional PTDZ data needed would likely require considerable resources. In OPEGA's opinion, expending those resources would only be worthwhile if the Legislature would find sufficient value in OPEGA or another entity conducting a full analysis of PTDZ costs and outcomes before the program fully sunsets in December 2028. Should the Legislature determine that such an analysis is important for policy-making purposes, it should direct DECD, MRS and OPEGA to confer on the best approach for obtaining the data needed.

Acknowledgements

OPEGA would like to thank the management and staffs of DECD, MRS, the PUC, and Efficiency Maine for their cooperation throughout this review.

We would also like to thank the Attorney General's Office for their research and guidance regarding access to confidential taxpayer information.

Agency Response

In accordance with 3 M.R.S. § 996, OPEGA provided DECD and MRS an opportunity to submit comments after reviewing the report draft. A response letter from DECD can be found at the end of this report.

Appendix A. Scope and Methods

The nine GOC-approved objectives for the evaluation of the Pine Tree Development Zones Program are detailed in Appendix B. The scope of the review was from 2013 through 2016 and was limited by the quality of data from earlier years and the amount of resources that would have been necessary to access it.

Information was gathered through:

- review of relevant statute and rules, including the history of changes made since the program's enactment;
- review of program documents from the Maine Department of Economic and Community Development and Maine Revenue Services, such as application and certification materials, tax bulletins, benefit claim forms, and internal procedural manuals;
- review of the PTDZ portions of the evaluation report prepared by an independent contractor for DECD in 2016;
- interviews with program administrators at Maine Revenue Services and the Department of Economic and Community Development;
- contacts with staff at The Efficiency Maine Trust and The Public Utility Commission; and
- interviews with stakeholders.

Data analysis in this evaluation included calculation of the estimated cost associated with expanded ETIF payments to PTDZ businesses. To estimate this amount for fiscal years 2015 through 2017 OPEGA obtained business-level data from DECD for all ETIF payments made in those years. We then identified the businesses that received ETIF payments at the 80% PTDZ rate. For that subset of businesses, we used labor market area unemployment rate data from MDOL to calculate the ETIF payment each would have received if the PTDZ Program was not available. By subtracting these calculated payments from the amounts the businesses actually received at the 80% PTDZ rate, we were able to estimate the cost of the PTDZ ETIF expansion.

OPEGA's analysis of FY15-FY17 showed that the proportion of total ETIF payments that were attributable to the 80% PTDZ expansion rate stayed quite consistent, varying from 39.6% to 42.0%. As a result, we determined that an average proportion could reasonably be used to estimate the PTDZ ETIF expansion cost in prior fiscal years for which OPEGA could not readily analyze business level data. We calculated the average proportion across all three years to be 41.2%, and we multiplied this by the total ETIF payments MRS made in fiscal years 2013 and 2014 to estimate the ETIF payments associated with the PTDZ expansion for those years.

Appendix B. GOC Approved Evaluation Parameters

Parameters for OPEGA's Full Evaluation of the
Pine Tree Development Zone (PTDZ) Program
as approved by the Government Oversight Committee 1-22-16

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2003	30-A M.R.S. ch. 206 Subchapter 4 and related statutes: 35-A M.R.S. § 3210-E 36 M.R.S. § 5219-W 36 M.R.S. § 2016 36 M.R.S. § 2529 36 M.R.S. § 1760(87) 36 M.R.S. § 6754(1)(D)	Sales & Use Exemptions and Reimbursements, Income Credits, Withholding Reimbursements and Other	Business Incentive, Job Creation	FY16 $2,609,000 - $4,108,998 FY17 $2,723,000 - $4,222,998

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2016 – 2017. A range of numbers is included because Maine Revenue Services has little data on which to base an estimate of the sales & use tax exemption or reimbursement portions of the program.

Program Description

The Pine Tree Development Zone (PTDZ) Program offers reduction of a number of taxes for up to 10 years for certain businesses that expand or begin operations in eligible areas of Maine (PTD zones). Depending on the location and level of a business's qualified activity, potential PTDZ benefits include:

- Corporate Income Tax Credits – 100% credit for 5 years, 50% for an additional 5 years for businesses in Tier 1 locations;
- Withholding Tax Reimbursements – 80% of Maine income taxes withheld on behalf of employees filling new jobs may be reimbursed to the business for up to 10 years;
- Sales and Use Tax Exemptions – exemption from tax on purchases of tangible personal property and electricity used for qualified business activity for up to 10 years for Tier 1 locations or 5 years for Tier 2 locations;
- Sales and Use Tax Reimbursements – reimbursement to contractors or subcontractors of tax paid on tangible property purchases that are to be physically incorporated in, and become a permanent part of, real property of a qualified business and used in its qualified business activity (for example, reimbursement of sales taxes paid on materials used in constructing a new facility);
- Insurance Premiums Tax Credits – 100% credit for 5 years, 50% for an additional 5 years for businesses in Tier 1 locations (only applies to Financial Services sector);
- Access to reduced electricity rates and more favorable line extension terms and conditions as approved by the Public Utilities Commission; and
- Access to conservation programs offered by Efficiency Maine Trust.

To be eligible for this program a business must be engaged in qualified business activity and must intend to hire at least one qualified new employee to work in these activities. Qualified business activities include operations in targeted business sectors and within eligible PTD zones.

Business sectors that currently qualify for the PTDZ program include:

- Financial Services,
- Manufacturing,
- Biotechnology,
- Information Technology,
- Aquaculture and Marine Technology,
- Precision Manufacturing Technology,
- Composite Materials Technology,
- Environmental Technology,
- Advanced Technologies for Forestry and Agriculture, and
- Call centers in Aroostook or Washington Counties (as of the 127th Legislature).

Eligible PTD zones of the State are divided into two tiers:

- Tier 1 locations – defined under 30-A M.R.S. § 5250-J(3-A) as:
    - Property within a military redevelopment zone;
    - Units of local government that had been designated by the Department of Economic and Community Development (DECD) as participating in the PTDZ Program as of December 31, 2008;
    - For calendar year 2009, all units of local government, regardless of county;
    - Beginning January 1, 2010, units of local government in counties other than Cumberland or York County;
    - Beginning January 1, 2010, units of local government within Cumberland or York County with a municipal unemployment rate 15% higher than its labor market unemployment rate, based on Maine Department of Labor data from the last completed calendar year;
    - As of the 127th Legislature, The Town of Sanford; or
    - Beginning January 1, 2016, the Town of Berwick in York County.
- Tier 2 locations – defined under 30-A M.R.S. § 5250-J(3-B) as:
    - Beginning January 1, 2010, all units of local government in Cumberland or York County that are not Tier 1 locations.

Although no new businesses may be certified in Tier 2 locations as of December 31, 2013, those already certified prior to that date may continue to receive the benefits for which they were determined to be eligible through December 31, 2018. New businesses in Tier 1 locations may continue to apply for certification until December 31, 2018 with all PTDZ benefits ending on December 31, 2028.

To receive PTDZ benefits a business must first be certified by DECD. This process requires an interested business to submit a letter to DECD notifying the commissioner of its intent to apply for program benefits and describing why the proposed business project could not go forward without the aid of PTDZ benefits (this letter is referred to as the "but for" letter). The business must also submit a completed application including the following information:

- a description of the proposed project that requires PTDZ support;
- employment and payroll information for the three calendar years preceding the application (to establish the business's base employment levels); and
- certification that any new employees that will be claimed as "qualified employees" for the purposes of obtaining benefits under this program will be offered retirement and health benefits and will be paid more than the average per capita income for the county in which they are employed.

After being certified as eligible for PTDZ benefits, a business must certify that it will hire at least one qualified employee above its base level of employment within two years in order to begin receiving most benefits (five new employees are required for the reimbursement of withholding taxes). The business must continue to have qualified employees above its base level in order to continue to receive benefits. Statute and rules promulgated by DECD both specify that PTDZ benefits may not be received based on the transfer of employees or property from a nonqualified business activity to a qualified one.

The PTDZ Program is administered by DECD. By April 1st of each odd-numbered year DECD's commissioner is required to report to the joint standing committee of the Legislature with jurisdiction over economic development matters on the status of the program. In addition, 5 M.R.S. § 13056-A requires DECD to submit to the Legislature a biennial comprehensive evaluation of state investments in economic development. The PTDZ Program is required to be included in this evaluation and businesses certified under the program are required to submit any information requested by DECD as part of the evaluation effort. The most recent comprehensive evaluation was released in 2014 and did include analysis of the Pine Tree Development Zone Program.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 M.R.S. § 999(1)(A).

(1) Purposes, Intent or Goals

Intent — To encourage development in economically distressed communities in Maine in order to provide new employment opportunities; improve existing employment opportunities; improve and broaden the tax base; and improve the general economy of the State.

Goal — To provide new qualifying employment opportunities in certain industries in economically distressed communities.

(2) Beneficiaries

Primary Intended Beneficiaries — Businesses in Pine Tree Development Zones that add new qualifying jobs in certain industries

Secondary Intended Beneficiaries — Workers and job seekers; economically distressed communities

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data. Any substantial statutory changes since the program's enactment will be considered in addressing objectives impacted by those changes.

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A	Applicable Measures
(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E Qualitative
(b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, F, I, J, K Qualitative
(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, I Qualitative
(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, G, M Qualitative
(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h) The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	C, D, E, F, H, L, M Qualitative
(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA's assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

(4) Performance Measures

Performance measures are coded to indicate which of the above objectives they could potentially help address. Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	Total # of businesses receiving any benefits under the PTDZ Program (also by benefit type)
B	Participation rate (% of Maine businesses certified for the program; also % of Maine communities with PTDZ certified businesses)
C	Total $ value of PTDZ tax benefits received by businesses (also by benefit type)
D	Total direct program cost (direct tax revenue lost plus administrative costs)
E	Net impact on State budget (using economic modeling, as possible and appropriate, to include capture of indirect benefits and costs)
F	Total $ value of payroll and benefits associated with new quality jobs created by certified PTDZ businesses
G	Average tax benefit per business, including min & max (also by benefit type)
H	Leveraging Ratio, for example [$ of payroll & benefits associated with new jobs]/[Total direct program cost]
I	Change in unemployment rate for each community where a business received PTDZ benefits, compared to change in unemployment rate for the State
J	Indicators of economic impact in targeted business/industry or geographic area (i.e. jobs created, GDP – using economic modeling, as possible and appropriate, to include capture of indirect benefits and costs)
K	Total # of new quality jobs created by PTDZ certified businesses
L	Cost per new quality job created (i.e. [Total direct program cost]/[# new quality jobs created by PTDZ certified business])
M	Return on Investment, for example [$ amount reimbursed to businesses]/[$ value of payroll and benefits associated with new quality jobs created by certified PTDZ businesses]

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts that would be considered, as appropriate, include:

- per capita,
- comparison to industry or geographic trends,
- comparison to time period preceding program implementation or receipt of program benefits,
- by business sector,
- by new vs. continuing beneficiary,
- by county or municipality,
- by job type (FT, PT, temporary, permanent), or
- by firm size.

STATE OF MAINE
DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT

Paul R. LePage
GOVERNOR

DECD

George C. Gervais
COMMISSIONER

Dear Sen. Katz, Rep. Mastraccio, and Distinguished Members of the Government Oversight Committee,

On behalf of the Department of Economic and Community Development (DECD), I would like to thank you for this opportunity to respond to OPEGA's recent review of the Pine Tree Development Zone (PTDZ) program, administered by DECD.

The title of this report, could be misleading and steer one to believe a false conclusion.

Under the leadership of Governor LePage, two comprehensive tax reform packages aimed at improving Maine's competitiveness have been submitted and ultimately opposed by the Legislature. The Pine Tree Development Zone program is the state's go-to program for helping incentivize new private investment and the creation of new quality jobs here in Maine. In the absence of meaningful tax and energy reform, this program, at the very least, simulates a more competitive business retention, expansion, and attraction structure.

Private investment goes where it is welcome and stays where it is appreciated. The PTDZ program is unique because it not only helps incentivize new businesses to relocate to Maine, it also helps the growth and expansion of existing Maine businesses.

DECD's administration of the PTDZ program continues to evolve from when it first began back in 2003. Employment Tax Increment Financing (ETIF) is widely considered to be the most impactful incentive within the PTDZ program. ETIF is jointly administered by Maine Revenue Services (MRS) and DECD.

This report touched on the issue of better communication between state agencies to administer *various* aspects of PTDZ more efficiently. DECD appreciates that feedback and steps to improve communication and administration between various agencies is taking place.

There are currently more than 200 certified PTDZ businesses across Maine. While this report focuses primarily on program design and data in regards to administration and evaluation of the program, it *does not look specifically* at the impact this program has had on individual businesses in terms of

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incentivizing and facilitating new private investment and the creation of new quality jobs for Maine people.

From our perspective, that is the true measure of whether this program is successful. If any legislator would like a list of PTDZ businesses in their districts, we would gladly supply that information. I would encourage you to look past the process, and bureaucratic minutia, and ask these businesses how a more competitive tax structure has helped them invest and grow here in Maine.

On a biennial basis, per statute, DECD submits a PTDZ report to the Labor, Commerce, Research & Economic Development (LCRED) Committee. The Program is also included in the statutorily mandated comprehensive evaluation of economic development programs presented to the Legislature every two years.

The PTDZ program is considered Maine's major business attraction tool. As a performance-based program, benefits aren't realized unless the business invests new private capital and creates new jobs.

This program is one step in the economic development continuum and one step along the path of making Maine more competitive.

I look forward to working with the Legislature as they consider further action to improve Maine's competitiveness and ensure that our state remains open for business.

Sincerely,

George C. Gervais
Commissioner