



SEN. EMILY ANN CAIN, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. ROGER KATZ
SEN. DAVID C. BURNS
SEN. MARGARET M. CRAVEN
SEN. CHRISTOPHER K. JOHNSON
SEN. EDWARD M. YOUNGBLOOD
REP. PAUL T. DAVIS, SR.
REP. ANDREA M. BOLAND
REP. H. DAVID COTTA
REP. LANCE E. HARVELL
REP. MATTHEW J. PETERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
January 18, 2013
Accepted January 25, 2013

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 10:00 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood
Representatives:	Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta, Rep. Harvell, and Rep. Peterson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Henderson, Principal Analyst, OPEGA Wendy Cherubini, Senior Analyst, OPEGA Scott Farwell, Analyst, OPEGA Matthew Kruk, Analyst, OPEGA Maura Pillsbury, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

INTRODUCTION OF THE OFFICE OF PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY STAFF

Director Ashcroft introduced OPEGA staff.

SUMMARY OF THE NOVEMBER 15, 2012 GOC MEETING

The Meeting Summary of November 15, 2012 was accepted as written. (Motion by Chair Kruger, second by Sen. Katz, passed by unanimous vote 12-0).

ORIENTATION OF NEW MEMBERS

Chair Cain noted that meeting material will be sent to members in advance of each meeting by email and hard copies. She asked that if members preferred the material one way over the other to let Etta know.

Review of Functions, Roles and Duties – GOC and OPEGA Review of Key Processes

OPEGA was created for the purpose of providing program evaluation of agencies and programs of State government. Director Ashcroft said OPEGA has a broad scope in terms the types of entities that they may be able to review for the GOC under statute. Any entity that gets State funds, funds that are administered by the State or have been created by the Legislature for some government purpose is potentially within OPEGA's authority to review. When questions arise about whether particular topics or agencies are within the jurisdiction of the Statute, GOC/OPEGA turns to Linda Pistner, Chief Deputy Attorney General, for an opinion.

OPEGA's mission statement is to support the Legislature in monitoring and improving the performance of State government by conducting independent, objective reviews of State programs and activities with a focus on effectiveness, efficiency and economical use of resources.

The GOC's mission statement was adopted in 2005 and states the mission of the Joint Legislative Committee on Program Evaluation and Government Accountability, hereafter called the "Committee", is to ensure that public funds are expended in the most effective, efficient and economical manner possible. The Committee also seeks to ensure that such funds are used to support activities and functions that produce satisfactory results and that comply with State and Federal mandates. The Committee shall accomplish this mission by directing [OPEGA] to conduct independent evaluations and investigations of State agencies and programs and, as necessary, of other entities receiving public funds or expending private monies for public purposes. Director Ashcroft has asked previous Government Oversight Committees if they want to make any revisions to the mission statement. She noted over the last couple of years the GOC has taken on an additional role and the Committee has accomplished its work through avenues other than just directing OPEGA to do reviews. There have been a number of instances where the Committee itself has conducted an inquiry where OPEGA's role was not really to conduct an independent study so much as to help coordinate agencies the GOC wanted at a meeting and help outline questions that agencies needed to respond back to the Committee on. The GOC has at times taken on an investigatory committee role that is not addressed in the mission statement.

Chair Cain asked GOC members to think about their mission statement and whether the scope of the statement limits the Committee's activities. She asked if members and Director Ashcroft could think about how they would represent that role in a revised mission statement. Sometimes the GOC's work is not necessarily to do an investigation, but to ask questions and then have OPEGA let them know if an investigation needs to be done. The GOC's mission statement will be discussed at the next meeting.

Director Ashcroft noted that even though the GOC has assigned OPEGA to review a topic it does not mean there is a suspicion of any real wrong doing. It may be that the Committee has questions about how the program is operating, wants to understand it in more detail, or its funding, etc.

Rep. Peterson asked if it was appropriate to use OPEGA to review laws on the books that have not been implemented and if there are any OPEGA reports regarding such a review. Director Ashcroft said it was appropriate to ask OPEGA to review such laws. She also gave an example of a past review, Children's Mental Health, where OPEGA identified a special committee established by the Legislature for certain purposes related to children's mental health that had disbanded. One of OPEGA's recommendations was for the Legislature to determine whether they still wanted the committee. If so, the committee needed to be reconstituted and repurposed, and if the Legislature did not want the committee any longer, it should be taken out of statute.

The Government Oversight Committee selects the topics that OPEGA conducts reviews on and approves the scope statements for the review. OPEGA uses the scope statements to make sure they are in alignment with what the Legislature feels OPEGA's resources should be used for, and that they are appropriately focused on issues that are of interest and value to the Legislature.

The GOC does have subpoena powers should OPEGA need their assistance in getting information for a review. The Committee also has authorization to introduce legislation to implement OPEGA's recommendations.

Rep. Harvell asked if the GOC's introduction of legislation went through the same cloture process. Director Ashcroft said the GOC's legislation was not subject to cloture rules and did not need to be approved by the Legislative Council as after deadline bills. Chair Cain said it was her understanding that when the GOC makes the decision, as part of a recommendation, the legislation is pursuant to statute and would go directly on the legislative Calendar. She gave the example of the CDS legislation going before the Education and Cultural Affairs Committee.

Director Ashcroft pointed out that under statute she is responsible for developing and presenting to the GOC OPEGA's biennial budget. In the past the GOC has sometimes taken action in terms of making a recommendation to the Legislative Council.

Director Ashcroft wanted to make the Committee aware that she typically has been responding to inquiries from the media, legislators and public that deal specifically with OPEGA's work and she refers any other inquiries, particularly from the media, to the Chairs and Leads of the GOC to address. If the Committee would like inquiries handled differently, the Director asked that they let her know.

Chair Kruger noted that one of the Committee's roles and responsibilities is to protect OPEGA from partisan politics and the GOC should not be a place for partisan activity. The GOC is a place to work together to try to make government better for all constituents. Other members of the Committee agreed.

• **How Topics are Selected**

Director Ashcroft said how topics are selected and placed on OPEGA's Work Plan has varied over the last few years. In the last two bienniums the GOC has selected some topics to initially add to OPEGA's Work Plan and then placed more topics on as OPEGA has been ready for new work. She thinks the Committee wanted to maintain some flexibility in being able to add projects that came up. Sources for topics come from policy committees, individual legislators, GOC members, citizens and OPEGA. The GOC has developed over the years a policy and strict process for how it wanted to take in requests from citizens because OPEGA can spend a lot of time determining whether the request is something that should be coming to the Committee for consideration.

The GOC has an “On Deck” list of the topics that have been voted on to the list by prior Committees. When the Committee first sits, members review the “On Deck” list and decide which, if any, topics should be considered for OPEGA’s Work Plan in the current biennium. Some of the topics “On Deck” are voted on to OPEGA’s Work Plan. Unless it is a rapid response review, the Director takes responsibility to scheduling the projects on OPEGA’s Work Plan as resources are available.

• **How Requests for Reviews Are Processed/Considered**

Director Ashcroft referred the Committee to the information in their notebooks regarding the process for considering requests for reviews. Chair Cain noted that all requests have to come through a legislator and outside requestors are directed to find a legislative sponsor to make the formal request for a review.

Sen. Katz noted that the 125th GOC struggled a few times when a topic was presented. The Committee did not feel they had enough information so asked for more information and went through almost a couple of public hearings deciding whether to take on a topic. They wanted to make sure they had enough information to decide whether to have OPEGA review it.

Director Ashcroft believes that will always be a challenge. Chair Cain said the GOC can learn from what was done last and as those situations arise can use the experience on the Committee to decide what adjustments to make in their stated process.

Sen. Craven said members should make decisions for reviews on the facts that are presented to the GOC and not from lobbyists. Rep. Boland refers those lobbying her regarding an OPEGA review to OPEGA. Chair Cain said that was a good concept and it gave a clearinghouse so all members saw the same information when they utilize OPEGA as the conduit for information. She urged members to contact the Chairs and/or Leads of the Committee if they were uncomfortable with lobbying being done regarding a review request.

Director Ashcroft said previous GOCs have had Chief Deputy Pistner talk with them about the confidentiality of communications they have with persons who have a complaint or request for an OPEGA review. GOC members should be aware that any information they receive from a citizen on a complaint or request, any notes they take when talking with them, and any emails, are public documents. If the person wants to remain confidential or anonymous a legislator cannot guarantee that. Director Ashcroft recommended advising that person that whatever information is shared with a legislator could be public record, and should refer that person to OPEGA because that would give the information some confidential status. All of OPEGA’s working papers are confidential under statute.

• **How Reviews are Conducted**

Once assigned a topic, OPEGA typically does preliminary research with the goal of getting an understanding of the topic, and legislators’ concerns or questions. The goal is to understand the program and areas of legislative interest to return to the GOC with a recommendation about what should be done with the project. OPEGA will recommend a project direction to the Committee of whether the project should go further or not. Sometimes OPEGA does not see value in continuing because the question the GOC asked had been answered through work already completed or there is not a sufficient level of risk associated with the topic. If the recommendation is to move forward, OPEGA usually has a list of questions they feel would be of value to pursue based on the preliminary

research work. The GOC then either adds or deletes questions, or may want to change the wording of the question. OPEGA will work with the GOC to do that. Once the GOC gives its final approval to the scope of the review, the Committee is done with input to the project. OPEGA designs the work that will answer those questions and will bring a report back to the GOC with any recommendations.

It was noted that OPEGA reports are confidential until presented at a GOC meeting. Sen. Katz said the prior Committee had a problem with an agency being reviewed leaking information from a report to the media prior to its release, even though they had been aware of the confidential nature of the report. Additional safeguards have been instituted in OPEGA's process to help guard against this in the future.

• **How Reports are Received**

Reports are presented at a meeting. Depending on the type of report, the GOC may then schedule a public comment period at a future meeting followed by a Committee work session on what action the GOC wants to take beyond what management has committed to doing.

• **Voting Processes and Procedures**

Director Ashcroft said with the exception of votes that impact the use of OPEGA's resources, or recommendations that are being made by the Committee, the voting rules are that a quorum must be present, motion made and seconded and the motion passes by a majority of those present. OPEGA does not try to contact members who are not present at the meeting for those kinds of votes. The results of those votes are included in the meeting summary. For votes that put a topic on OPEGA's Work Plan or authorize OPEGA to begin or schedule a review, or any votes related to OPEGA reports, OPEGA does establish a voting record and the Committee Clerk attempts to contact members not present at the meeting at the time of the vote to give them an opportunity to vote within the Committee Rules.

Description of GOC/OPEGA Website

Director Ashcroft gave an overview of the GOC/OPEGA website.

REVIEW AND ADOPT COMMITTEE RULES

Motion: That the Government Oversight Committee accept the Committee Rules for the 126th Maine Legislature as currently written. (Motion by Chair Kruger, second by Sen. Katz, vote passed unanimously 10-0.)

NEW BUSINESS

Review of Enacted Legislation on Quasi-independent State Entities and Possible Communications to Legislative Policy Committees on Opportunity for Action on Quasi-independents Under Their Jurisdiction

Not discussed. It will be carried over to the next GOC meeting.

REPORT FROM DIRECTOR

- Status of Projects In Progress

OPEGA revises and updates the status of its projects in progress as they go along and those revisions are noted on a progress report prepared for GOC meetings. Director Ashcroft summarized the current status of projects in progress.

The Committee will discuss Sen. Youngblood's question of how many reviews OPEGA can complete in a year at its next meeting when discussing OPEGA's Work Plan.

- Status of GOC Legislation Regarding CDS

LD 34 – An Act To Implement the Recommendations of the Government Oversight Committee and the Office of Program Evaluation and Government Accountability Regarding Child Development Services. Chair Cain asked if typically when a piece of legislation is the result of a GOC report and goes to a legislative policy committee is there a role for the GOC members to play. Director Ashcroft said sometimes when the legislation comes out of the Clerk's Office and goes on the Calendar it is sponsored by the House Chair of the GOC. She did not get an opportunity to weigh in on that on LD 34. Typically the GOC will discuss how they want to be involved and often the Chairs and/or several members of the Committee will prepare testimony. Director Ashcroft has also drafted testimony for members of the GOC to give before the policy committee, but always there has been someone from the GOC who speaks before the joint standing committee as to why the legislation is important.

Chair Cain suggested that the Leads and Chairs contact the Education and Cultural Affairs Committee to discuss LD 34.

- Status of OPEGA Action Items From Past GOC

Director Ashcroft summarized OPEGA Open Action Items From the 125th Legislature. A copy of the Open Action Items is attached to the Meeting Summary.

- Status of Follow-Up on Past OPEGA Reports

Director Ashcroft gave a brief summary of the Listing of Available OPEGA Reports noting that OPEGA and the GOC are still actively tracking the status of actions taken on recommendations in a number of past reports. Follow-up will be discussed in more detail at a future meeting.

- Status of OPEGA's Budget

Director Ashcroft gave an overview of OPEGA's Budget for year ending FY12 and year-to-date for FY13 as of December 31, 2012.

Chair Kruger cautioned about considering cuts to OPEGA's budget when the GOC takes up OPEGA's Proposed Budget for the next biennium. He fears that the GOC/OPEGA could be in a situation where the GOC or Legislative Leaders think it is okay to cut in certain areas and then an investigation or review comes before them that was unanticipated and the resources are not available. Director Ashcroft said OPEGA's budget has been reduced over previous years either by suggestions

that she has made and/or with the GOC or Legislative Council taking further action. When the GOC suggested cuts it was their intention that they be a one-time cut, but those ended up being in OPEGA's baseline Budget and became permanent reductions. Past GOC's have tried to maintain sufficient funding in the current budget to cover reasonable eventualities knowing if it is not used there is always a possibility of it lapsing back the next year.

Rep. Harvell asked if there is money left over, is this the time they sweep accounts. Chair Cain said the legislative budget is separate from the rest of State government budgets so any actions take approval of the Legislative Council. Director Ashcroft said in the statute it says the resources appropriated to OPEGA are to spent at the discretion of the GOC and the Office so Director Ashcroft has tried to involve the GOC in budget decisions and recommendations to the Legislative Council.

Chair Cain suggested that past budget information be provided when the GOC discusses OPEGA's proposed budget for FY 14 and 15.

Sen. Burns found the Report from the National Conference of State Legislatures of Ensuring the Public Trust 12 to be very helpful in the past and asked that a copy be distributed to the members of the GOC of the 126th.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for Friday, January 25, 2013 at 10:00 a.m. Chair Cain asked members of the Committee to talk with colleagues and members of their caucuses to let them know the GOC is going to be discussing priorities for OPEGA's Work Plan for this session so if they are contemplating submitting a request for a review that they do that as soon as possible. If anyone needs assistance they should contact Director Ashcroft.

Chair Cain reminded members that the GOC is scheduled to meet every 2nd and 4th Fridays of the month during the session.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 12:05 p.m.

**OPEGA Open Action Items from the 125th Legislature
As of 1-18-13**

Action Item: Draft legislation for GOC to implement recommendations for legislative action in OPEGA's 2011 report on Maine Green Energy Alliance.

Status: OPEGA currently working on this as time and resources permit. Attempting to determine what is needed in proposed new statutory language and where it best fits within existing statute. Actual drafting of bill has not yet begun.

Action Item: Draft legislation for GOC to implement recommendations in OPEGA's 2006 report on Economic Development Programs that have not already been acted on.

Status: OPEGA has not yet begun drafting this bill. Research needs to be performed first to assess the continued relevance of the reported recommendations and determine for certain which recommendations have not had sufficient action. OPEGA has been tracking most related activity in the Legislature and early actions by the Executive Branch, but is not currently familiar with any additional actions that may have occurred in the Executive Branch. This research is necessary to determine what needs to go into a bill and it is expected that the research and bill crafting/drafting will require a considerable level of effort similar to that involved in preparing the legislation on quasi-independent State entities.

Action Item: Forward the Communications Regarding a Computer System Weakness Resulting in MaineCare Claims Payments for Ineligible Individuals Report to the HHS and AFA Committees. Some Members suggested that the Report be given to the Chairs and Leads of all Committees or that a 15 minutes presentation on the Report be done for Committees or groups of legislators.

Status: OPEGA Director committed to finding a way to have an opportunity to speak, at a minimum to the Chairs and leads of each Committee. Director referred to this report in the Chairs and Leads Orientation session held January 7th and mentioned that the GOC of the 125th wanted incoming legislators to be aware of the conclusions in that report. Would the present GOC like additional efforts made to disseminate the report or make current legislators aware of it?

Action Item: Share a summary of information OPEGA gathered during brief research done for the GOC on BETR and BETE programs with the Taxation and LCRED Committees of the 126th.

Status: OPEGA in process of preparing summary of information which will be forwarded with letter to those joint standing committees.

Action Item: Schedule report backs to the GOC by CDS and DHHS regarding actions taken on recommendations in OPEGA's 2012 report on Child Development Services.

Status: Report backs from CDS are expected in February and August 2013. CDS has been told to tentatively plan on reporting back at the GOC meeting on February 8. CDS's second report back and the first report back from DHHS will be scheduled for August.