SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. LAWRENCE BLISS
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
January 28, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:09 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Bliss, and Sen. McCormick Joining the meeting in progress: Sen. Sullivan and Sen. Trahan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Boland, and Rep. Lovejoy Joining the meeting in progress: Rep. Fitzpatrick and Rep. Fossel
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 Etta Begin, 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

Chair Katz recognized Director Ashcroft and she introduced OPEGA's staff.

SUMMARY OF THE SEPTEMBER 23, 2010 GOC MEETING

Motion: That the Government Oversight Committee accept the September 23, 2010 Summary as written. (Motion by Sen. McCormick, second by Chair Burns, passed, unanimous vote).

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ORIENTATION OF NEW MEMBERS

Director Ashcroft gave an overview of the GOC and OPEGA. The Committee's questions or comments were noted and included:

Review of Functions, Roles and Duties – GOC and OPEGA

GOC: Sen. Sullivan asked if there is any teeth in statute to assure that appropriate and necessary action gets taken on OPEGA's results or to assure the information OPEGA brings forward gets used.

OPEGA: Director Ashcroft said there was nothing in the statute that requires action on anything OPEGA reports. It has been a priority of past GOCs to ensure that sufficient action is taken on anything the Committee finds concerning and there is structure within the GOC, a process, to help make sure that that happens.

GOC: Sen. Bliss noted that the information provided did not indicate that the GOC has the ability to report out legislation on its own and asked the Director if she could speak to that.

OPEGA: Director Ashcroft referred the Committee members to the last sentence in the authorizing Statute § 997.2. Submission of final report to committee – "If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office."

Review of Key Processes:

• **How Topics are Selected**

No questions.

• **How Reviews are Conducted**

GOC: Sen. Sullivan referred to the flow chart – Interest by Legislative, Executive or Judiciary Branch. She wondered under what situation would the Judicial Branch be interested in having the GOC get OPEGA to review a problem because there is separation of the branches of government and the Judiciary has to declare the constitutionality of the law.

OPEGA: Director Ashcroft said OPEGA had conducted one review in the Judicial Branch – The Performance Audit of Guardians *ad litem* Report – issued in 2006. OPEGA had to take care in that review in working with the Chief Justice to make sure not to do anything that violated the separation of the branches and found a process that was comfortable for both the Chief Justice and OPEGA. OPEGA was looking at how well the service of guardian *ad litem* was being provided and was it effective in representing the interest of the children as it was supposed to.

GOC: Sen. Sullivan understands the Legislature going to the Judicial Branch, but does not understand the Judicial Branch coming to the Legislature.

OPEGA: Director Ashcroft said it has never happened, and believes in theory, it is meant to provide an opportunity. It is theoretically meant to provide an avenue to bring forward requests they would like considered.

GOC: Sen. Bliss believes that the statute was created and OPEGA was developed specifically to have the rapid response returns for legislators. If a legislator comes before the GOC and states, for example, their concern about the use of money in the guardian ad litem program, it makes more sense for that legislator to have a 15

page report from OPEGA after a month so he/she could take some action rather than a 75 page report eighteen months later when the legislator has long gone on to other things. His preference would be to always opt for the rapid responses.

GOC: Rep. Pilon asked what method is used for outreach to make it known to the public that the GOC/OPEGA is available to them.

OPEGA: Director Ashcroft said there is information on the GOC/OPEGA website of how to request a review, that includes frequently asked questions, a description of the process and a request for review form. All of OPEGA's reports reference the process for requests and where that information can be found on the back side of the report cover.

The 124th GOC revised the process for requesting reviews. Citizens can still request a review, but it has to be initiated or sponsored by a legislator. It was found that OPEGA was spending resources on a lot of topics that former GOC members thought was not a topic that OPEGA needed to be working on.

GOC: Rep. Pilon asked how many requests have been received from the public.

OPEGA: Director Ashcroft said in 2010 OPEGA worked on 11 requests, and there were 15 requests in 2009. A number of the requests over the past few years have come from the Corrections Facilities.

GOC: Chair Burns, who also served on the 124th GOC, said the Committee struggled with the process of requesting a review. They were continually trying to find a balance so the public at large would know exactly why OPEGA was created and what the Office does, but also trying to prevent OPEGA from getting overwhelmed with requests. He believes the GOC is getting closer to what is needed.

GOC: Sen. McCormick also noted that telephone calls received by OPEGA are not accepted as a request, but the Office does try to direct the requestor to other legislators, committees or agencies that may be able to help with their problem.

GOC: Chair Katz asked about OPEGA's procedures for receiving a request from a citizen.

OPEGA: Director Ashcroft said OPEGA works with the individual to find the appropriate person or agency to help. They usually suggest that the person contact their local Representative or Senator. In cases were they have already done that, OPEGA suggests they contact members of the GOC, policy committee of jurisdiction, or an agency that may be of help.

GOC: Chair Katz referred to the place in the process flowchart that mentioned meeting and negotiating action plans with the auditee. He asked for clarification on what that involved.

OPEGA: Director Ashcroft said negotiating action plans with auditee does not take place in each review. If OPEGA is going to be effective in helping to implement change in State Government then it needs to go a step beyond just stating what was found to be wrong and making a recommendation about it. OPEGA tries, if possible, to reach a point with the agency that they will commit to taking particular action on the issues identified. That way OPEGA can report to the GOC on the issues and recommendations in a report, and the agency can relay what their plans are for action in response to the recommendations. Sometimes the agency feels that the specific actions recommended by OPEGA are not workable for them because the implementation would be to costly, etc., so they propose an alternative action they believe would be suitable to address the issue identified. OPEGA and the agency may have further discussions on the matter and agree upon an action that would sufficiently and effectively address the issue. This is the process that "negotiating" action plans refers to.

• **How Reports are Received**

No questions.

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

GOC: Sen. Sullivan asked what a GOC member's obligation was to bring a request forward. She understands that the requestor does not have to be from the legislator's district, but does the GOC member automatically have to bring the request forward.

GOC: Chair Katz noted that while Sen. Sullivan's question was a good one, he did not think it was Director Ashcroft who should have to answer it. He believes that the GOC member will have to make the decision individually, of whether to bring a request forward. There are not any guidelines to tell a Committee member to bring forth any particular piece of legislation or any particular idea before the GOC.

GOC: Sen. Trahan noted in the past he has received requests from individuals outside of his district and area of interest, and he has talked with the legislator from the area the request came from. The legislator usually will have an interest in dealing with their constituent. If the requestor has already been to their legislator, he asks his legislative aide to check whether there has been some work done regarding the request and, if so, he passes the information on to the requestor. If that does not resolve the problem, Sen. Trahan reviews the issues for merit and if there are none, he explains to the requestor that he cannot bring the request forward, that the GOC has a series of reviews being conducted and their request does not rise to the level of highest priority for a review.

• **Voting Processes and Procedures**

No questions.

Description of GOC/OPEGA Website

No questions.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Review and Adopt Committee Rules.**

REVIEW AND ADOPT COMMITTEE RULES

Chair Katz asked if any members had comments or suggestions for changes to the Committee Rules for the 125th Maine Legislature Government Oversight Committee.

Sen. Bliss noted several changes he would make to the Rules to clarify that it is the Committee Chairs who are in charge of the Committee. His changes were:

- **Paragraph 3 – Attendance.** It is each committee member's responsibility to notify the Chairs of the Committee, not the Director of the Office of Program Evaluation and Government Accountability, whenever the member is unable to attend a public hearing or work session. He would replace Director with Committee Chairs.

- **Paragraph 7. A. – Procedures for public hearings** (order of testimony). Delete all text following the first sentence.

- **Paragraph 7. B.** – The last sentence replace the word Director with Committee.

Motion: That the Government Oversight Committee moves to make the above stated changes to the Committee Rules for the 125th Maine Legislature Government Oversight Committee. (Motion by Sen. Bliss, second by Rep. Boland)

Committee Discussion

Sen. Trahan asked if Director Ashcroft had concerns about the suggested changes to the Rules.

Director Ashcroft said she had no concerns. The GOC Rules were formulated by the original Oversight Committee when the Committee itself was just beginning and they were trying to make sure there was a common repository for records so the Office got designated to be that central point. She did point out that prior GOCs had tried to keep the Rules as similar as possible to those of the joint standing committees.

Chair Katz asked if Sen. Bliss' intent regarding his changes was to make the GOC Rules more consistent with those of the policy committees.

Sen. Bliss said yes and noted that because the GOC is a legislative committee, it is important that the Chairs of the Committee are reflected in the Rules of running the Committee. He thinks the changes he noted are consistent with other legislative committees.

Sen. Bliss noted one additional change stated below:

- **Paragraph 7. D. –** The last sentence replace the word Director with Committee.

Motion: That the Government Oversight Committee moves to accept the above noted changes to the GOC's 125th Committee Rules. (Motion by Sen. Bliss, second by Rep. Boland, Passed unanimous vote).

Chair Katz asked if there was further discussion before the Committee moved to adopt the Rules.

Motion: That the Government Oversight Committee moves to accept the 125th Committee Rules as amended. (Motion by Sen. Trahan, second by Sen. Bliss).

Further discussion:

Rep. Pilon requested a change in the Rules as follows:

- **Paragraph 6. C. (2) – Smoking and eating restrictions.** Change 6:00 p.m. to 1:00 p.m.

Motion: That the Government Oversight Committee accept the change in Paragraph 6. C (2) of the 125th Rules. (Motion by Rep. Pilon, second by Rep. Burns, passed unanimous vote).

Motion: That the Government Oversight Committee accept the 125th Rules as twice amended. (Motion by Sen. Trahan, second by Sen. Bliss, passed unanimous vote).

RECESS

The Government Oversight Committee recessed at 10:55 a.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 11:05 a.m.

PRESENTATION OF FINAL REPORT ON MAINE TURNPIKE AUTHORITY

Director Ashcroft wanted to thank those involved in the Report. She acknowledged OPEGA staff and those from the Maine Turnpike Authority (MTA) attending the meeting. They included: Gerard Conley, Chairman of the MTA Board, Lucien Gosselin, Vice-Chairman, MTA Board; from MTA - Paul Violette, Executive Director; Neil Libby, Deputy Executive Director/Chief Financial Officer; Peter Merfeld, Chief Operations Officer; Douglas Davidson, Director of Finance and Information Services; Jonathan Arey, Secretary and Staff Attorney; Conrad Welzel, Government Relations Manager; and Scott Tompkins, Public Relations Manager.

Director Ashcroft said that OPEGA has worked very closely with the MTA staff and Board members and they have all been very cooperative in answering OPEGA's request for information and data, and their patience in explaining the answers to the questions asked. She acknowledged their willingness to work with OPEGA on some issues raised.

Director Ashcroft proceeded with the presentation of the Maine Turnpike Authority Report. The GOC's discussion and questions included the following:

GOC: Sen. Sullivan referred to MTA's proposed support of $3 million annually for the next 30 years to the replacement or rehabilitation of the Interstate-95 and Sara Mildred Long Bridges in Kittery, ME that was mentioned on page 13 of the Report. She asked if that is going to happen.

OPEGA: Director Ashcroft said it is an example of a project that MTA is currently considering supporting. She does not know what the likelihood is that this will occur and that may be a question to ask MTA directly.

GOC: Sen. Sullivan asked for clarification of the procedure for this meeting in terms of asking questions of the MTA.

GOC: Chair Katz said following Director Ashcroft's presentation of the Report, the GOC will have the opportunity to ask her and other OPEGA staff more questions. He is going to ask for a representative from MTA attending the meeting to say anything he or she wishes, and then entertain questions from the GOC of that person. A public hearing on the Report will be scheduled in two weeks.

GOC: Sen. Trahan, said he did not remember reading a recommendation from OPEGA in the Report to tighten up the language regarding surplus so there would be easier opportunities in the future to measure the potential surpluses.

OPEGA: Director Ashcroft said that would be discussed in Recommendation 1 of the Report. There is belief by some individuals that the transfers were intended to be stopped, that surplus transfers were no longer expected once MTA started paying on the bonds that it issued for Maine Department of Transportation (MaineDOT). There is no official record of that agreement or arrangement, but there are parties, both within MaineDOT, the MTA and some legislators, who understood that to be the arrangement. OPEGA cannot report what the discussion was because we could find no public record of it. The statute was not changed, so there is some question as to whether the Legislature still expects, or thinks it appropriate, for MTA to be transferring a certain amount of money from their operating surplus. OPEGA's recommendation is for the Legislature to clarify the expectation and then determine whether changes to statute are necessary to support that. For example, if transfers are no longer expected because MTA is already contributing to the State's infrastructure in ways the Legislature finds sufficient, then taking that out the statutory language, or making it clear when it applies, could be helpful.

GOC: Sen. Trahan said that would be logical if MTA did not have the power to independently increase the tolls over time. As long as the tolls continue to rise however, he thinks it is the Legislature's responsibility to address the new revenue that comes into the agency and how it is spent.

GOC: Rep. Pilon asked why none of MTA's financials were included in OPEGA's Report and gave the example of MTA's 2010 audited financials.

OPEGA: Director Ashcroft said OPEGA did not feel the need to include it in the Report because it is included in MTA's Annual Report and that Report is available on their website. If Rep. Pilon would like that information, MTA or OPEGA can get it for him. (Note: OPEGA provided copies of MTA's most recent audited financial statements to GOC members later in the meeting).

GOC: Sen. Sullivan asked if it was technically a wash between paying off the bonds and the amount that had been transferred annually.

OPEGA: Director Ashcroft said initially yes, but that the bonds have been refinanced since then and the principal and interest payments on them are now lower than they were at the original time. This is what has raised some questions. MTA has said that the Legislature's Transportation Committee was in agreement with refinancing the bonds in order to lower the principle and interest payments so that tolls did not have to be raised as high. They could keep the toll level down because they were keeping the interest and principal payments down on bonds, particularly when new bonds had to be issued for widening the Turnpike. OPEGA has not tried to confirm this explanation but it seems reasonable given what was occurring in that time period.

GOC: Sen. Sullivan asked if the refinancing also meant that they extended the length of the bonds, and the length of time that the Turnpike would be paying the bonds.

OPEGA: Director Ashcroft said yes. The bonds will come due and final payments made in 2018. Those bonds cannot be refinanced again.

GOC: Sen. Sullivan noted that technically it may be a lower amount now but it was extended for a longer period of time so it is a wash for MTA and still represents a lot of money the State is getting. She wanted people to keep in mind that people living in the southern part of Maine use the Turnpike for commuting to work and if tolls were raised it becomes very expensive.

GOC: Sen. Trahan asked whether MTA's bond rating would be affected if the Legislature reigned in on some of the way the money was spent.

OPEGA: Director Ashcroft said that if Sen. Trahan was referring to reducing certain expenses in a particular way, she does not see how it would. What would be of concern is anything that would impact MTA's ability to maintain and operate the Turnpike in accordance with the way it is expected to be maintained under the bond resolution.

GOC: Chair Katz asked if a Moody's rating went from an A+ to an A, what would that translate into in terms of how much more would have to be paid in interest because of the change.

OPEGA: Director Ashcroft said she did not know specifically, and it may be a question for MTA. In general, she thinks it would depend on the market into which you were introducing the bonds. For example, if the bonds carried an A rating and that looked better then the ratings on other investment choices available in the market you could probably still get a good interest rate. MTA may be able to give a better explanation.

GOC: Sen. Sullivan asked if MTA's current consulting engineer checks all the bridges yearly.

OPEGA: Director Ashcroft said that would be a question for MTA, but her understanding is that the annual inspection includes all the bridges, roadways and infrastructures associated with the Turnpike. MTA will be able to answer how long that has been happening.

GOC: Sen. McCormick asked if MTA's consulting firm was from out-of-state.

OPEGA: Director Ashcroft said it is a national firm and noted that there are only about 4 or 5 firms that rating agencies like to see tolling authorities using, or that trustees like to see tolling authorities using. MTA's firm is one of those.

GOC: Chair Katz asked who selects the consulting engineer and the trustee.

OPEGA: Director Ashcroft said that she would defer to MTA on the question of who selects the trustee. The Board makes the decision regarding who the consulting engineer will be.

GOC: Rep. Fossel asked what reimbursement the MTA Board received.

OPEGA: Director Ashcroft said the Board does receive a fee and also some expenses paid. She or MTA would have to get back to him with an answer on what that arrangement is.

GOC: Rep. Pilon asked to receive, for the work session, a list of MTA's Board members. (Note - OPEGA provided GOC members with the list later in the meeting.)

GOC: Sen. Trahan requested a complete list of sponsorship and donations made by MTA and asked if their legal counsel also does lobbying for them. (Note – OPEGA provided GOC members with a list of sponsorships and donations later in the meeting.)

OPEGA: Director Ashcroft said OPEGA saw documentation that MTA's legal counsel was providing both typical legal services and lobbying or legislative services.

GOC: Sen. Trahan noted that the travel and meal expenses started going down in 2005 and asked if that decrease corresponded with more money going to organizations, for sponsorships, donation or other payments.

OPEGA: Director Ashcroft said she would have to get back to the GOC on that.

GOC: Sen. Sullivan asked for a comparison of MTA to other large businesses regarding sponsorships and donations.

OPEGA: Director Ashcroft said she will be talking specifically about the nature of the different sponsorships and donations when she gets to the Recommendations section of the Report. Some are definitely to charitable organizations and every business gets requests for those, but some of the larger donations have gone to professional organizations. Director Ashcroft said that will be outlined further when the GOC gets to the Report Recommendations.

GOC: Rep. Pilon asked if the GOC could receive a breakdown of salaries by position. He asked about MTA's health insurance policy for their employees.

OPEGA: Director Ashcroft said MTA participates in the State's benefit plans with the same vendor. She does not know if MTA's benefit plans are exactly the same as the State's benefit plan.

RECESS

The Government Oversight Committee recessed at 12:59 p.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 1:30 p.m.

Director Ashcroft moved to the Recommendations in OPEGA's Maine Turnpike Authority Report. The GOC's questions and comments included the following:

Recommendation 1: Expectations for Cash Transfers to MaineDOT Should be Clarified

GOC: Sen. Sullivan asked if the purchase of the bridge for $3 million was considered a cash transfer.

OPEGA: Director Ashcroft said she would put it in the category of MTA's other contributions to Maine's transportation infrastructure. If MTA is using their revenue stream to directly support particular pieces of the infrastructure then that is the bucket she would put it in. However, she does not know a lot about the way that arrangement is currently structured.

Recommendation 2: MTA's Relationship With its Contracted Engineering Firm Needs to be Redefined

GOC: Sen. Sullivan asked if HNTB was one of the four national firms that were preferred for doing the engineering work.

OPEGA: Director Ashcroft said that was true for the consulting engineer role. That is not so true for the out sourcing of the typical project engineering and project management. There are local firms that can do that. In fact, HNTB is often the primary engineering contractor, but then they sub-contract out some of the engineering work on each project though competition bidding. For the consulting engineer role, bond rating agencies and trustees are likely to get uneasy about whom MTA is going to choose to fill that role, but in the other role, there are other options that are more locally available, or a larger selection of candidates, that could be drawn from.

GOC: Sen. Sullivan asked if HNTB usually hired Maine businesses when subcontracting for work.

OPEGA: Director Ashcroft wanted to clarify that when talking about HNTB, she is talking about contracting for engineering services. The answer on the construction services is that MTA itself is competitively bidding those services and managing those things in house. MTA sometimes uses HNTB to do construction inspections or provide general project management of the projects. On the engineering services side, HNTB is the primary vendor MTA goes to for project design and engineering. They act like the general contractor for engineering services and will sometimes bid out the design for projects to other engineering firms that are local in the State of Maine.

Recommendation 3: MTA Should Improve Contract Management for Services

GOC: Sen. Trahan asked if the expenses the vendors had billed for were typical expenses of other entities like MTA?

OPEGA: Director Ashcroft said the expenses HNTB was billing for are typical kinds of expenses. Whether the amounts or rates the MTA is paying for them are typical, she did not know. Some entities will cap their standard mileage rate at whatever the federal government rate is, others make it lower. OPEGA saw things like mileage and meals being billed for reimbursement. The problem was that you could not tell specifically on the invoice that it was a meal or why they were charging the meal. Therefore, it would be difficult for someone reviewing the invoice to tell whether the charge was warranted or reasonable. HNTB also bills for costs to make prints, etc.

GOC: Sen. Sullivan asked if MTA has hired the auditor because of OPEGA's review or was that already planned. If they have software coming they must have already planned to do the centralization of some contracts and be able to update them.

OPEGA: Director Ashcroft said MTA had not already planned the centralization of contracts. They recognized as soon as OPEGA pointed out to them there was a need for that. Rather than go to a manual centralization of contracts, they decided it worthwhile to invest in the development of software that would also allow them to track when the contract term has expired and needs to be updated. Director Ashcroft believes MTA has taken it a step beyond what OPEGA had suggested. As far as the auditor goes, it became apparent in talking about some of the issues that a lot of them would have been picked up by an internal audit function. They have 500

employees and she is not sure it makes sense for MTA to have a full internal audit function, but they are in the process of hiring a consultant who will help them design an internal audit program. MTA is not certain at this time whether that means an internal audit position or whether it will be structured in some other way.

Recommendation 4: Controls Over Sole Sourcing Should be Strengthened

No questions or comments by the GOC.

Recommendation 5: MTA Should Provide Detail on All Operating Expenses as Part of Legislature's Statutory Review and Approval of Budget

GOC: Rep. Burns wanted to clarify that MTA was reporting, and the Transportation Committee was approving, their operating budget, but the other Reserve Maintenance budget was just FYI.

OPEGA: Director Ashcroft said that was correct. Expenditures being paid from the Reserve Maintenance Fund are not part of what is presented to the Legislature for approval in MTA's operating budget. Because there are operating expenses being paid for by the Reserve Maintenance Fund, the Legislature, technically, is not approving all of MTA's operating expenses.

GOC: Rep. Burns said so MTA is not soliciting approval.

OPEGA: Director Ashcroft said that is correct. It is not broken down in a way that allows someone to see what is being paid for in total for categories of expenses. For example, the Legislature does not see what the total telephone expense for MTA is because some of it is included in the operating budget broken down as telephone expense but some of it is in the Reserve Maintenance budget and is included in the total cost of a differently described line.

GOC: Sen. Trahan thought legislators who believed they were getting information of what was being spent in an operating account, but really were not, would be upset. He asked what portion of that money might fall under that category.

OPEGA: Director Ashcroft said about 40.6%

Director Ashcroft also wanted to share the explanation that OPEGA has received from MTA regarding expenses paid for from Reserve Maintenance Fund. First of all, MTA takes every opportunity to make the point that they are the only independent tolling authority that has to have their budget approved by the Legislature. They would also say that bond rating agencies tend to get nervous or concerned about a Legislature, or a body like a Legislature, having to much say about the level of expenses. The concern is that the Legislature could potentially cut expenses below the level needed to maintain the Turnpike and operate in the manner that the bond resolution requires and bondholders would expect. Director Ashcroft said she can understand that argument, but OPEGA's point to them was that there appears to be a lot of other things being paid for with Reserve Maintenance that she would not put into that category. The action plan that the GOC is going to see from the MTA does include assessing what they are paying out of that Fund, making sure that anything that is not critical gets into the budget that the Legislature approves, and that anything still remaining for operating expense being paid for out of the Reserve Maintenance Fund would, at the very least, come to the Legislature in the same level of detail as the current operating budget. This would allow the Legislature to see the total operating expenses even if they are not all being approved.

Recommendation 6: MTA Should Formalize Criteria and Processes for Sponsorships and Donations

GOC: Sen. Trahan asked if it would be safe to say that, it was not MTA that gave money, but the toll rate payers. OPEGA's findings in this section of the Report frustrate him because the fact that it was going on astonishes him. Many of the organizations MTA has donated to have registered lobbyists at the State House. The fact that

these groups are interconnected and work together at the State House should trouble the entire GOC. He does not believe MTA should be giving any money to organizations such as those listed in the Report.

GOC: Rep. Fitzpatrick referred to the list of organizations receiving payments from MTA that OPEGA had provided the GOC during the break. She noted that the line item for Greater Portland COG showed a variance between 2008 and 2009 and asked if that was due to a fiscal year overlap of payments.

OPEGA: Director Ashcroft said OPEGA did not explore that and so was not sure. She did not know how much of the total payments were for the bus services. Primarily that is what it is, but there may be other payments as well.

GOC: Sen. Sullivan commented on the $11,000 for the Governor's Conference on Tourism. She said OPEGA had said that was a non-charitable organization with no direct link to MTA's mission but seeing that the MTA is the link that brings people into Maine and tourism is the number one driver of the economic engine right now, that would make sense and she thinks MTA should be able to do that. She wanted more information regarding the donations to the Maine Preservation Foundation and whether they were part of land swaps and donations they do back and forth.

OPEGA: Director Ashcroft said that she did not disagree with Sen. Sullivan's view point, but OPEGA's point was that some of these organizations do not have a direct tie to MTA's mission. Any place where OPEGA thought there was something that indicated possible expansion that was beyond what was included in statute, they were bringing to the attention of the GOC. The sponsorships to the Governor's Conference on Tourism is an example of that.

GOC: Rep. Boland asked if the GOC was looking at, for example, Central Maine Power (CMP) Company's records, would they see similar things, or is there something unusual about OPEGA's findings on MTA's donations.

OPEGA: Director Ashcroft said there were two things noted that were atypical, even for an organization like CMP. The $157,000 in gift certificates not supported by any records is atypical and she would have called attention to it in an entity. In addition, the level and nature of travel and meal expenses would also be further reviewed in her prior experience as an internal auditor at CMP. Some might have seen some of the same kind of expenditures in the past at CMP. Over the years, however, because their rates are set by the PUC and because the PUC has expounded on what kind of things are going to be allowable, CMP had over time, reduced certain kinds of expenditures because they were not being allowed in their rates. Because of the process electric utilities have to go through and the way they are governed, they would have voluntarily limited some of the items, such as the meals. For example, employees were not allowed to charge the Company for working lunches with other staff people.

Recommendation 7: MTA Should Clarify and Ensure Adherence to Approval and Documentation Requirements for Expenses, in Particular Travel and Meal Expenses

The GOC did not have questions or comments.

Director Ashcroft moved on to the Agency Response section of the Report. The GOC's questions and comments included:

GOC: Sen. McCormick asked, as a quasi state agency, whether MTA was eligible for legal representation by the Attorney General's Office.

OPEGA: Director Ashcroft believes the statute allows them to access the AG's Office, but she does not believe they do so currently.

GOC: Chair Katz notes that the statute talks in terms of the Legislature reviewing and approving the operating expenses and assumes that it is that statute that the bondholders or potential investors look to. Do the investors know that there is a certain category of information going to the Legislature for approval and a category of

information not going to the Legislature for approval? It appears that intuitively they are looking at just the statute and assuming that all the operating expenses are being reviewed and approved by the Legislature.

Chair Katz asked about the level of legislative scrutiny of the MTA's operating budget in the past and whether the Legislature has made changes in the budget. Is whatever the Authority has submitted been approved or has there been, historically, significant changes?

OPEGA: Director Ashcroft said Chair Katz's first question may be best put to MTA, but her sense is yes, the bond rating agencies, and others involved in overseeing MTA are probably well aware that there is a set of expenses that they are paying for from the Reserve Maintenance Fund. She would also guess that MTA has explained that to those parties that this means those expenses are, therefore, outside of what the Legislature might be able to cut through a budget process.

In answer to the second question, historically there are not changes made to the operating budget through the legislative bill process. Several years ago, however, the Transportation Committee instituted a revised process where they get to look at MTA's budget earlier in the year before the bill for the operating budget is submitted. Unfortunately it occurs over the interim, when the Legislature is out of session, so finding a good way to make sure the Transportation Committee can meet under the appropriate Legislative protocols to do this is important. They have opened up an opportunity for the Transportation Committee to have time for a more detailed review, to have input to the budget before it becomes a bill so the staff can take that back to the MTA Board for consideration. If the Transportation Committee sees areas at that time that they have questions or concerns about, those adjustments to the budget might be able to be made before the bill is presented.

GOC: Sen. Sullivan complimented Director Ashcroft in presenting the MTA Report and she likes the fairness reflected in the content of the Report.

GOC: Sen. Trahan noted that MTA's responses of what actions they will be taking in regard to OPEGA's Recommendations are very responsible.

GOC: Rep. Lovejoy requested information he would like to have for the next meeting. He would like to have a breakdown of end of year balances in the various MTA funds for the last three years. He also would like to see what has been submitted to the Transportation Committee so that he can compare that information to the actual financials.

OPEGA: Director Ashcroft will work with MTA to get the requested information on the balances as of the end of the year. She said there could be a fairly involved discussion about what that means because the cascading to the various funds happens over the year. At any point in time, even at the end of the year, the amount of balances in the funds may really be committed to different things.

GOC: Chair Katz, on behalf of the Committee, thanked the Director and OPEGA staff for their work on the Report. He said the Report was easy to understand and the format of it made it easy to read.

Chair Katz recognized Gerard Conley, Chairman, and Lucien Gosselin, Vice-Chairman, MTA Board.

Mr. Conley presented a Statement on behalf of the Maine Turnpike Authority regarding OPEGA's Report. A copy of his Statement is attached to this Meeting Summary.

The GOC had no questions and Chair Katz thanked Mr. Conley on behalf of the Committee for his presentation.

SUBMISSION OF OPEGA'S ANNUAL REPORT

Director Ashcroft directed the GOC's attention to OPEGA's 2010 Annual Report on Activities and Performance which is required under statute to be submitted to the Committee and the Legislature. She wanted to publicly acknowledge the Department of Administration and Financial Services' Central Printing Office that print OPEGA's reports. They turned around both the Annual Report and the MTA Report in 2 days and always do a fabulous job. OPEGA appreciates their work.

Director Ashcroft said if the GOC has no objection she will be sending the Report to the Legislative Council and will also be letting the Legislature know that it is available. She would like to go over the Annual Report with the Committee at its next meeting.

NEXT GOC MEETING DATE

The next GOC meeting was scheduled for Noon on Friday, February 4, 2011.

EXECUTIVE SESSION

- **Personnel Matters (Executive Session)**

  Motion: Pursuant to 1 MRSA section 405, subsection 6A, the Government Oversight Committee moves into executive session for the purpose of discussing the performance evaluation of the Director of OPEGA and her request for reappointment. (Motion by Rep. Burns, second by Sen. Trahan, passed unanimous).

  The Government Oversight Committee recessed at 3:23 p.m. to go into an executive session.

  The Government Oversight Committee adjourned its executive session at approximately 3:45 p.m.

  Motion: That the Government Oversight Committee send a letter to the Legislative Council endorsing reappointment of Beth Ashcroft as Director of the Office Program Evaluation and Government Evaluation. (Motion by Sen. Sullivan, second by Sen. Trahan, passed unanimous).

  Sen. Sullivan also requested that the letter show that the vote was unanimous.

- **OPEGA's Budget**

  Director Ashcroft briefly reviewed the status with OPEGA's current budget and the proposed budget for the coming biennium. If the GOC had any recommended changes to OPEGA's Budget, those changes could still be incorporated and then sent to the Legislative Council.

  The GOC members agreed that Director Ashcroft should move forward with filling the vacant Analyst position in OPEGA.

  Chair Katz asked if the Legislative Council had already submitted a budget to the Governor for the biennial budget. He asked if the vacant Analyst position was included in OPEGA's budget.

  Director Ashcroft explained that the Executive Director's Office does the budget for the Personnel piece and she does the budget for the All Other line. She assumes that the money for the Analyst position has been included in the budget submitted just as it has been in prior years. She will follow-up to make sure.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 3:56 p.m. (Motion by Sen. Sullivan, second by Rep. Fitzpatrick, unanimous).