



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

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

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

MEETING SUMMARY

February 22, 2013

Approved March 8, 2013

With One Correction

CALL TO ORDER

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

Chair Cain announced that Maine Public Broadcasting, Capitol Connection was recording the GOC's meeting.

ATTENDANCE

Senators: Sen. Cain, Sen. Burns, Sen. Craven, Sen. Johnson and Sen. Youngblood
Joining the meeting in progress: Sen. Katz

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland and Rep. Cotta
Joining the meeting in progress: Rep. Peterson
Absent: Rep. Harvell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Jennifer Henderson, Principal Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

David Boulter, Executive Director, Office of the Legislative Council

Executive Branch Officers and Staff Providing Information to the Committee: Richard Rosen, Director, Office of Policy and Management

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE JANUARY 25, 2013 GOC MEETING

The Meeting Summary of January 25, 2013 was accepted as written. (Motion by Chair Kruger, second by Sen. Johnson, passed by unanimous vote 9-0.)

NEW BUSINESS

- **Briefing on the Office of Policy and Management**

Chair Cain recognized Director Rosen and said the GOC invited the Director to the meeting to get an understanding of his Office's duties and how it may, or may not, overlap with what the GOC/OPEGA is doing.

Director Rosen said the Governor's Office of Policy and Management (OPM), was established by the Legislature in 2012 to help implement policies in the Executive Branch. OPM's authorizing statute is 5 MRSA, Chapter 310. OPM reports directly to the Governor and is tasked with both the immediate goal of identifying and implementing best practices within state agencies in an effort to improve the efficiency and effectiveness of state services, while also facilitating the achievement of long-term state economic goals and objectives. OPM's efforts on long-term economic goals and objectives assigned to the Office are supported by the State Economist. Both the public and private sectors rely on the work of OPM, through the State Economist, for census data analysis and a wide range of economic reports and data analyses.

Director Rosen described the mission of OPM as to improve the performance of state government. OPM will help the Governor achieve long-term state economic goals by:

- preparing long-range economic projections;
- offering improvements in the efficiency and effectiveness of government by analyzing the structure and functions of state government;
- delivering policy recommendations to improve financial management;
- assisting in developing economic goals by conducting studies and continuing economic analyses of the state economy;
- advising the Governor, at his request, on the risks, costs, benefits, and effects on job creation and job retention of proposed legislation; and
- supporting efforts to receive federal funds by facilitating intra-governmental and intergovernmental coordination.

He said OPM currently has six employees - William Schneider, Assistant Director; Amanda Rector, State Economist; three Analyst positions and himself.

Sen. Craven asked if OPM operated within the Department of Administrative and Financial Affairs (DAFS). Director Rosen said OPM is in the Governor's Office. DAFS is a Cabinet level department that includes a broad range of departments and agencies. To achieve the kinds of goals and objectives that will be directed by the Governor, Director Rosen will have his Office working in concert with all elements of the Executive Branch, including DAFS.

Rep. Boland asked if OPM was going to interface with OPEGA. Director Rosen said OPEGA's work product will provide OPM with a valuable basis for its work. OPEGA is established in the Legislative Branch to take directive from and provide work to the Legislature and OPM is established in the Executive Branch and, although the Offices may have similar objectives, OPM serves the Governor and the Executive Branch. OPM is reviewing all of OPEGA's reports, and he said the report recommendations will be valuable to OPM's work.

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Chair Kruger asked for OPM's approved position count and how the Office was funded. Director Rosen said 7 positions have been authorized and the funding for the Office is in line with other departments and agencies in the Executive Branch that depend upon General Fund dollars. OPM is funded entirely from the General Fund.

Chair Kruger asked if the Land for Maine's Future (LMF) was going to come under OPM or was it going to remain with the Department of Conservation. Director Rosen noted that Chair Kruger was referring to the elements that made up the former State Planning Office and said LMF is now with the Department of Conservation. Reps. Boland and Cotta provided the GOC with a copy of the document "Where is the State Planning Office Now" which had been provided to them as members of the State and Local Government Committee.

Sen. Burns asked if OPM would be reviewing an agency to determine the short and long term ramifications of any changes made to that agency. Director Rosen said in terms of reacting to specific pieces of legislation, the Governor's Office currently has staff in his office that are assigned to different policy areas and different policy committees in the Legislature. That process would continue. OPM's directive comes from the Governor and in terms of reviewing legislative work he thinks the current structure would remain in place.

Sen. Youngblood asked if OPM had been given goals of finding savings that would equal half of the OPM's budget. Director Rosen said OPM has received specific assignments from the Governor, and because some are tied to the biennial budget, is waiting for the Legislature to make a final determination. Contained in the Biennial Budget, Part F, is an initiative directing OPM to analyze the structures and functions of government to identify \$10 million in savings in FY 13-14 and \$20 million in FY 15. There is also an initiative for OPM to conduct a review of various methods to provide legal services to indigent persons and to submit a report of its findings to the Governor and the Judiciary and AFA Committees. OPM has also been tasked to review the inventory of real property owned by the State and offer recommendations of parcels that could be sold or transferred and to also look at the zero based budgeting exercises and results that agencies went through in the last couple of years.

Sen. Katz asked to what extent OPM's reviews are made public or is the Office's role more of a confidential policy advisory to the Governor. Director Rosen said the structure of the Office is established as an advisory role to the Chief Executive and operating as a confidential advisor will serve any governor appropriately. The assignments the Office has received so far were made in a public way, but the Director thinks OPM's responsibility is to serve the Chief Executive and effective implementation of his/her policies.

Sen. Johnson has concerns regarding the amount of time agencies will have to expend if they happen to be the subject of both an OPEGA and OPM review. He thinks on the Legislature's side, the challenge is whether OPEGA's report recommendations are being implemented and on the Executive side OPM is in a position to implement and execute those recommendations.

Rep. Boland asked Director Rosen if there was legislative oversight of OPM. He said legislative oversight would only apply to some of the work the State Economist provides. OPM is in the Governor's Office and is similar to the Governor's counsel or policy specialists. It would not be subject to a policy committee level of oversight because they are not managing a program or delivering a direct service. Director Rosen said in the enabling statute, OPM has been given specific assignments by the Legislature and OPM will be reporting back to the AFA Committee on those.

In response to Chair Cain's question of OPM's total budget, Director Rosen said currently OPM's budget is approximately \$500,000 for FY 13 and for FY 14 – 15 it is \$850,000 and \$950,000.

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Sen. Johnson asked about lean management and what approaches OPM is looking at in how to achieve efficiencies. Director Rosen noted the efforts of the last year and a half in the Executive Branch for every agency and department to conduct a zero-based budgeting initiative and he expects that will be the basis of OPM's work

at this time. They will examine the enabling statutes for agencies, review whether the programs they are involved with, or services being provided, are there because of federal funding, a statutory responsibility, or otherwise, and provide feedback to the Governor and the Commissioner of DAFS.

The Committee thanked Director Rosen for briefing them on OPM and for answering their questions.

Director Ashcroft noted that OPEGA reaches out to various departments and agencies, such as the State Auditor's Office, and Office of the Controller, etc. when it starts a review to make sure they are not duplicating efforts of anything else going on. She expects to now be doing that with OPM as well.

SUBMISSION OF OPEGA'S ANNUAL REPORT

Director Ashcroft said OPEGA's statute requires the Office to report annually to the Legislature on OPEGA's activities and performance. She summarized OPEGA's 2012 Annual Report on Activities and Performance, highlighting the Office's accomplishments, challenges and initiatives related to four primary goals:

- Provide timely, relevant and useful information and recommendations.
- Conduct all work with objectivity and accuracy.
- Communicate regularly on activities, results and impacts.
- Utilize OPEGA's resources effectively, efficiently and economically.

(The Report is available on OPEGA's website or at its office.)

UNFINISHED BUSINESS

- **Continued Review of Potential Topics for Addition to OPEGA's Work Plan**

Chair Cain opened up continued discussion on potential topics for addition to OPEGA's Work Plan. She noted that OPEGA could take on some more work at this time, but suggested the Committee should be careful not to overload OPEGA with a lot of work at this meeting. She thought it would be better to select just a few topics now so that the GOC had the ability, in the coming months, to take on other work that Legislators bring before them.

Sen. Katz suggested the GOC consider a review of the State Lottery as he felt the Lottery Commission has been outside of any active legislative oversight for years. He said it may be wise, at this time, to look at how that agency is operating, whether it is meeting its statutory responsibilities, how well it is being run, and what safeguards are in place. Other members of the Committee agreed and it was noted that this topic was already on the On Deck List.

Sen. Katz referred to OPEGA's Report on Economic Development Programs and said it did not seem the Legislature had done much with the information provided in that Report regarding tax incentives. He thought that now may be the time to take another look at the topic, and perhaps update OPEGA's Report, so the Legislature can take a hard look at what use the dollars from those tax breaks are going to. Chair Cain thinks business tax expenditures are extremely relevant, for even a quick look at some of those programs that are in the biennium

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budget. There are some specific programs in the budget up for major change, suspension, or repeal that were included in OPEGA's Economic Development Programs Report and the GOC may be of assistance to the Taxation and AFA Committees in asking OPEGA to do a quick review of the programs that appear in the biennial budget.

Sen. Johnson suggested a couple of potential review topics related to DHHS that had come to his attention. One was the work place culture and environment as he had heard from employees at DHHS who feel it is not a healthy and supportive work place environment. Sen. Johnson is also interested in the way DHHS is managing its contracts. DHHS has a lot of agencies that have contracts and he understands that currently it is set up that one staff person at DHHS oversees all of the contracts for a particular vendor. He wondered if this structure was best practice, or are there better ways for DHHS to administer contracts that would avoid the possibility of corruption.

Rep. Cotta mentioned the Maine Economic Improvement (MEI) Fund topic that he had briefly introduced last meeting. This Fund has been funded at levels of \$12.7 million and it is currently at \$14.7 million. The Legislature has never looked at how the funds are being managed. Sen. Burns agreed and would like to see the history of the Fund. Chair Kruger noted that there was a Report out or soon to be released, on this topic. Director Ashcroft said OPEGA had researched this a bit since the last GOC meeting and learned that as a result of legislation passed last year, there are to be new enhanced reports coming from the MEI Fund to the Legislature starting this year. There was also a task force established to review the Fund and recommend changes. The appointments to the task force were made late, but they are hoping to have a report out in March or April. Rep. Cotta said there is an annual report done regarding the MEI Fund that goes to the Governor, but he did not find it contained a lot of information relevant to what he was interested in. Chair Cain thought it was important to look at what other reports are currently available or expected in the near future regarding the use of the MEI Funds.

Rep. Peterson referred to the Long-term Care: Nursing Homes topic on the On Deck List that had been put there in the 124th Legislature. He asked how the topic was originally brought forward and whether OPEGA had ever reviewed any element of Maine's Long-term Care. Director Ashcroft said a member of the 124th GOC was interested in the topic, with the possible areas of focus as stated on the On Deck List. The Committee considered the topic, but it never was moved to OPEGA's Work Plan. OPEGA was aware that there was a special commission that looked at, not just nursing homes, but other long-term issues as well. There is a report from that special commission and it is the only report she is aware of. Rep. Peterson said the HHS Committee has undertaken significant efforts regarding long-term care over the past few years and he is not sure how Sen. Burns' bill would dovetail with what has been discussed. Sen. Burns said his bill will go before the HHS Committee, and if it passes, he sees an important role for OPEGA in working with the study committee being requested in his bill. Sen. Craven also has concerns and agreed that it may be best to wait until after the public hearings and work sessions on the bills related to this topic to help focus in on the issues being raised most often. The GOC members who also serve on the HHS Committee can bring the results of their work to the GOC.

Sen. Craven discussed her interest in a rapid response review on the Auditing Department at DHHS. They are short on auditors and some members of the HHS Committee had concerns with whether there are enough auditors to look at, for example, provider billing, or whether there was savings that could be identified if DHHS had sufficient auditors. Director Ashcroft said OPEGA did some work related to this topic in past reviews. There is an open issue and recommendation from OPEGA's Report on Durable Medical Equipment regarding what tools the Program Integrity Unit at DHHS has, and is using, to try to identify possible red flags for fraud, waste and abuse. DHHS was to have a new module in their new claims system call JSURS. That module, as described to OPEGA, would fill a function that DHHS had not had for many years. It is critical that DHHS have an effective tool to do the work Sen. Craven is referring to. As OPEGA did its follow up work this year, we learned that while the JSURS module has been implemented, it is not structured and designed the way it had been described to OPEGA nor, if the Director understands DHHS correctly, the way they thought it was going to be. OPEGA has left that recommendation open, but has not gone further to see what other tools and approaches the Program

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Integrity Unit is using to compensate, in terms of doing data analytics, that would enhance their capabilities or the staffing levels. OPEGA has had concerns over various reports about the effectiveness of the auditing efforts, at least from MaineCare's perspective.

Chair Cain noted from the discussion that two items had potential relevance to the biennial budget – business tax incentives and the auditing in DHHS. She would suggest waiting on the MEI Fund until the Task Force's report is complete and then the GOC would have the information necessary to develop the scope question(s) of the work to be done. Rep. Cotta does not believe the Task Force report will address the areas of focus in his review request of the MEI Fund. Sen. Burns expressed interest in the MEI Fund regarding whether legislative intent was followed and he would like that information during this legislative session.

Director Ashcroft said if legislative intent is the focus OPEGA could do preliminary research work and bring back to the GOC the MEI Fund statute and whatever else can be determined that speaks to legislative intent for this Fund. The GOC can review and determine which particular aspects may be of value to zero in on. For the tax expenditures, OPEGA can line out those in the biennial budget and give the GOC a summary of what information is currently known about each.

Chair Cain said the possible next step for the MEI Fund topic would be to look at the statute and what is known about it. She asked Rep. Cotta and Sen. Burns if that would meet their needs at this point. They both agreed.

Rep. Davis expressed interest in a narrow review of the Tree Growth and Open Space Programs to make sure those programs are being used properly and legislative intent was being met. He would like to know what kind of information is available that would enable the GOC to ask formal questions of the Program.

Sen. Cain went back to the State Lottery topic saying she also had a lot of interest in it. She asked if the appropriate next step for OPEGA would be to see what information is out there to answer the issues raised. Director Ashcroft said if it is a topic of interest to the majority of the GOC, the Committee could take a formal vote to move the topic onto OPEGA's Work Plan. When the GOC tasks OPEGA with a review, the first portion of it is to do preliminary research and that includes looking at all of the existing information. OPEGA then comes back to the GOC and makes a recommendation to move forward, or not, with the review. Director Ashcroft said OPEGA would likely be looking at the agency itself and the commission that oversees it so the preliminary research work would be around determining where the risks or potential issues are.

Rep. Johnson referred to the Substance Abuse Treatment Programs in Prison System topic on the On Deck List and thought that also had relevance to the Legislature's budgetary decisions. He would like a quick look at how many times individuals are being recommitted, and whether they are successfully being reintroduced into society. Director Ashcroft said OPEGA has a request out to the Department of Corrections to get additional information about what performance measures, or metrics, the new contractor is using to try to measure the effectiveness of those programs and how they report that information to DOC. The individual OPEGA needs to speak with is on vacation, but will be back in the next week. Sen. Craven asked whether the costs for these programs were in the DOC or DHHS budget for the substance abuse. Director Ashcroft was not certain how it was structured under the new contract, but when this topic was first put On Deck, the funding came from a combination of funding from DOC and Office of Substance Abuse. OPEGA will find out if that is still the case.

Chair Cain recapped the work discussed on the On Deck topics for OPEGA to potentially begin on. For short term turn around topics include – the business tax incentives identified in the biennial budget and whether there is review work that could be done on those that would be relevant to Legislature's decisions on those budget initiatives; the DHHS audit function and whether there are potentially additional resources that should be provided in the budget; and issues regarding Corrections and substance abuse, with specific questions identified by the GOC regarding funding and protocol. Director Ashcroft thinks she can quickly bring back information

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about funding and what performance metrics, if any, they are using for the particular substance abuse programs. She didn't know whether she could do a rapid look of how they are actually administering that program.

In the next category Chair Cain said the GOC identified the Maine Economic Improvement Fund with the issue being about the legislative intent. The Tree Growth topic is also related to legislative intent. Maine State Lottery is a topic to consider moving on to OPEGA's Work Plan as a review. The Long-term Care topic stays on the list until the GOC receives information back from DHHS on the work that has been done in that Committee regarding current proposed legislation.

Rep. Boland believed the Tax Collection and the Pharmaceuticals topics on the On Deck List also meet the criteria for something that could be relevant to the development of the current budget, but noted that both topics may be too large at this time. Director Ashcroft agreed that both topics have cost implications, but she is not sure with the projects OPEGA currently has going, that the Office would be able to turn these reviews around with any valuable information in time for the budget. Chair Cain said the topics will stay on the On Deck List for further consideration.

Director Ashcroft summarized the GOC's discussion regarding the On Deck topics. The members planned to add the State Lottery to OPEGA's Work Plan. For further decision-making purposes OPEGA would be summarizing information on tax expenditures for businesses – which ones are in the biennial budget, and what is known, or not known, about them already. For the MEI Fund, OPEGA will look at what the Legislative intent was so the GOC will have that to review in making any further decisions on the topic, with Tree Growth having the same type of work to be done. OPEGA will line out the funding for the Substance Abuse Programs and the question OPEGA currently has out on their metrics. OPEGA may also be able to quickly give the GOC a sense of the scope of the efforts and resources that are in the auditing functions at DHHS.

Motion: That the Government Oversight Committee moves the State Lottery topic on to OPEGA's Work Plan. (Motion by Sen. Katz, second by Sen. Craven, passed unanimous vote 11-0. Rep. Harvell absent for the vote.)

- **Briefing on MPBN Broadcast of Legislative Proceedings**

Chair Cain recognized Director Boulter who briefed the GOC on the agreement reached between the Legislative Council and the Maine Public Broadcasting Network on a pilot program for broadcasting legislative proceedings. The agreement is a six month pilot program and ends after the First Regular Session of the 126th Legislature. The intent is to allow the Committees to do their work unimpeded by the broadcasting. He described how broadcasting under this pilot would be different than the usual media coverage.

The Committee thanked Director Boulter for the information he provided.

RECESS

The Government Oversight Committee recessed at 12:56 p.m. on the motion of Chair Cain.

RECONVENED

Chair Cain reconvened the meeting at 1:37 p.m.

UNFINISHED BUSINESS con't

- **Draft of Potential Revisions to GOC's Mission Statement**

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Chair Cain reviewed the current GOC Mission Statement for members. Director Ashcroft said in the draft revision of the Statement she made the changes the GOC suggested at its last meeting. She changed the name of the Committee from the Joint Legislative Committee on Program Evaluation and Government Accountability to the Government Oversight Committee, and the stated mission comes directly from the Statute, as does the description of the public funds, etc.

The revised proposed GOC Mission Statement is:

The mission of the joint legislative Government Oversight Committee, hereafter called the "Committee", is to oversee program evaluation and government accountability matters in State government. The Committee seeks to ensure that public funds are expended for intended purposes, and that programs and activities are effectively, efficiently and economically managed. The Committee accomplishes this mission by conducting public inquiries and directing the Office of Program Evaluation and Government Accountability to conduct independent, objective reviews of State agencies and programs and other entities receiving public funds or expending private monies for public purposes.

Motion: That the Government Oversight Committee adopt the revised GOC Mission Statement. (Motion by Rep. Kruger, second by Sen. Craven, passed unanimous vote 10-0.)

- **Information Regarding a Peer Review of OPEGA**

Director Ashcroft said OPEGA does not have a regular peer review as required by the professional standards they otherwise try to follow. The GOC had asked that she bring back more information regarding a peer review. NLPES, a part of NCSL, does conduct peer reviews and the costs for peer reviews they have done in other states range from approximately \$7,300 to \$19,000, depending on the size of the peer team requested, airfares and hotel room rates. She would expect OPEGA's cost to be at the lower end of the scale because of the size of the office. The review would look at whether the work is professional, independent and objectively designed and executed; the evidence is competent and reliable, and conclusions reached are supported; that the products are fair and balanced; that stakeholders and users of the office's products are satisfied with the quality of the work performed; and that staff is competent to perform the work required. They also look at any specific standards that apply to the office.

Chair Cain believed it was important to have a peer review done of OPEGA because it has never been done before. She thought it would be useful to compare with similar offices in other States. Other members of the GOC agreed. Director Ashcroft thinks it would fit within OPEGA's budget and was asked by the Committee to include the costs of a peer review when preparing OPEGA's upcoming budget.

Chair Kruger said Director Ashcroft will prepare costs figures and more detail of the review, and bring that information back to the GOC.

- **List of Quasi-independent State Entities Included in Enacted Legislation, Reporting Status and Reports Received**

Director Ashcroft said all the Quasi-independent State Entities required to report to the Legislature by February 1, 2013 in accordance with 5 MRSA §12031-1 did report and the reports were referred to the appropriate joint standing committees. The GOC sent a letter to the legislative policy committees advising them they were going to be receiving the reports, and what kinds of things the GOC envisioned they might do with them. OPEGA has not reviewed the reports for their content and was looking to the GOC for direction. Does the GOC want OPEGA

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to assess the reports to see whether they included the information that was envisioned, or does the Committee want to rely on the policy committees to do that?

Chair Kruger asked if the reports were online and Director Ashcroft did not think they were. Chair Cain noted that they were on the Senate and House Calendars so would be available. She asked other members of the Committee who were involved in submitting the initial legislation that required the reporting, whether they thought the GOC should be looking at the reports. Members of the GOC agreed that OPEGA should review the quasi-independent state entities' submitted reports, not that the policy committees would not, but to make sure that the entities included the information required by statute.

REPORT FROM OPEGA DIRECTOR

Status of Projects In Progress

Director Ashcroft said there has not been any change in the status of the projects in progress since the GOC's last meeting. OPEGA is planning to have a report on the PUC review in June, 2013 and will be back to the Committee on an estimated completion date on the Maine State Housing Authority review.

NEXT GOC MEETING DATE

The next GOC meeting is scheduled for Friday, March 8, 2013 at 10:00 a.m. Sen. Burns noted that the IFW Committee had a field trip scheduled for the 8th and he and Rep. Davis are on that Committee. The Chairs will check on other legislative activities going on and will adjust the next GOC meeting if needed. Unless notified otherwise, the next GOC meeting will be on March 8th.

ADJOURNMENT

The Government Oversight Committee was adjourned at 2:08 p.m.