



SEN. ELIZABETH H. MITCHELL, CHAIR
REP. MARILYN E. CANAVAN, CHAIR

MEMBERS:

SEN. PHILIP L. BARTLETT, II
SEN. JONATHAN T.E. COURTNEY
SEN. DANA L. DOW
SEN. JOSEPH C. PERRY
SEN. KEVIN L. RAYE
REP. ANDREA M. BOLAND
REP. SCOTT E. LANSLEY
REP. EVERETT W. MCLEOD, SR.
REP. PEGGY A. PENDLETON
REP. MICHAEL A. VAUGHAN

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

April 2, 2007

Accepted April 9, 2007

CALL TO ORDER

The Chair, Sen. Mitchell, called the Government Oversight Committee meeting to order at 1:08 p.m. in Room 211 of the Burton Cross Building.

ATTENDANCE

Senators: Sen. Mitchell, Sen. Bartlett, Sen. Raye and Sen. Courtney
Joining the meeting in progress: Sen. Dow
Absent: Sen. Perry

Representatives: Rep. Pendleton, Rep. Lansley, Rep. Boland, Rep. McLeod
and Rep. Vaughan
Joining the meeting in progress: Rep. Canavan

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Analyst, OPEGA
Etta Begin, Adm. Secretary, OPEGA

Introduction of the Government Oversight Committee Members

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

SUMMARY OF MARCH 26, 2007 MEETING

Chair Mitchell asked members if they had changes to the March 26, 2007 Meeting Summary. Hearing none, the Summary was accepted as written.

REPORT FROM OPEGA DIRECTOR

• **Changes to Process for Handling Audit Requests**

Director Ashcroft referred the Committee to the draft Guiding Principles and the Process for Handling Requests for OPEGA Audits with the changes the Committee agreed to at its meeting on March 26, 2007.

With the changes in place, a request would be made public at one committee meeting, the entity that was the subject of the request would be given a chance to provide a written response and then the GOC would fully discuss the request at a subsequent meeting.

Director Ashcroft drafted Guiding Principles from discussions and decisions of the GOC. She explained that OPEGA's role at the meeting today regarding the two audit requests is to protect the integrity of the process in accordance with the Principles. Director Ashcroft read the 10 guiding principles.

Motion: The Government Oversight Committee agreed to the Guiding Principles reflected the Committee's policy and move to accept the Principles. (Motion by Rep. McLeod)

Sen. Raye felt the wording in #8 was not clear and needed to be changed. Sen. Bartlett suggested changing the word "without" in #8 to "prior to" and Sen. Raye suggested numbers 8 and 9 be combined. Rep. McLeod agreed to add Sen. Raye and Sen. Bartlett's amendments to his motion. (Motion by Rep. McLeod, second by Sen. Raye, PASSED, unanimous vote, 10-0).

Chair Mitchell asked if there was objection to taking items out of order. Hearing none, the Chair then moved to **Unfinished Business, Requests for OPEGA Audits.**

UNFINISHED BUSINESS

- **Requests for OPEGA Audits**

- **Citizen Request for Audit of Maine Center for Public Health Evaluation Contracts**

Director Ashcroft summarized the request, the action taken by the GOC at its meeting on March 26th, and what actions have been taken by OPEGA. The Director reminded members that Mr. Mildner did address the GOC at its last meeting, and at today's meeting, the agency will respond. She referred the members to the information in their notebooks received from Brenda Harvey, Commissioner, Department of Health and Human Services and Karen O'Rourke, Acting President, and Leah Binder, Chair Maine Center for Public Health.

Chair Mitchell asked Director Ashcroft to share the information she had gotten regarding conflicts of interest. Director Ashcroft said she had spoken with Phyllis Gardiner, Sr. Attorney, Attorney General's Office. Attorney Gardiner is the attorney for the Ethics Commission and has also prepared opinion letters for other requests received by the AG's Office regarding conflicts of interest. Ms. Gardiner said the Ethics Commission only has jurisdiction to deal with legislative conflicts of interest and would not be the body to handle questions on other conflicts of interest. Ms. Gardiner said each agency has an attorney general representative and that person may work with the agency around conflict of interest questions.

Director Ashcroft said she had discussed with Ms. Gardiner the nature of the conflicts of interest contained in the two citizen requests to Attorney Gardiner, explaining they were more related to potential conflicts of interest caused by board memberships rather than specific allegations that improper decisions were made as a result of a conflict. Attorney Gardiner felt that comment on such situations was within the program evaluation or performance realm. Ms. Gardiner also suggested that these type of potential conflict of interest questions related to an Executive Branch agency could be referred to the agency's Commissioner asking that the Commissioner review the situation and whether it created potential for conflict of interest. Attorney Gardiner referred Director Ashcroft to Title 13B, § 718, which explains the role of the Attorney General in conflicts of interest related to non-profit organizations.

Sen. Raye asked Director Ashcroft what the options were available to the GOC regarding making findings or recommendations on conflicts of interest. Director Ashcroft said she believed that it was within OPEGA's

purview to comment on situations that may present potential conflicts of interest and evaluate/make recommendations on mechanisms in place to prevent those conflicts from occurring. However, specific allegations that a conflict of interest had actually resulted in improper decisions or transactions should be forwarded to the AG's Office. Director Ashcroft said her perception of the concerns in the two audit requests on the agenda relate more to situations that present the potential for conflicts of interest rather than specific allegations that such conflicts had actually occurred. In both cases, she noted the membership of the boards involved, while dictated to some degree by legislation, did appear to present a potential for at least the perception of conflicts of interest.

Sen. Bartlett said that allegations regarding a conflict of interest are governed by statutes and are legal decisions that are better suited for the AG's Office. Director Ashcroft, using the audit request related to Maine Center for Public Health as an example, gave her perspective on why the potential for conflict of interest arising from the relationships of various MCPH board members to the contracting agency or the programs being evaluated was relevant to the primary question of whether the State is receiving effective evaluation services on the programs it is contracting an evaluation for. The question is can we get an effective evaluation with those kinds of arrangements in place, and what measures have been taken to make sure those potential conflicts of interest never came into play.

Sen. Bartlett partly agreed, stating he would expect OPEGA to comment on potential conflicts of interest if the issue presented itself while OPEGA was looking at the primary effectiveness question. However, he has concerns with the GOC and OPEGA specifically seeking to evaluate and comment on whether conflicts of interest exist.

Sen. Courtney suggested that perhaps it would be best if OPEGA were to fully scope out the request, have the facts before the Committee, and then make decisions, based on the merits, of what the specific scope of the review would be. In regards to Sen. Courtney's comment, Director Ashcroft suggested the Committee go back and look at OPEGA's audit process. She discussed how the first phase of audit is nothing more than gathering information and identifying potential issues that should be further examined. OPEGA's audit process calls for OPEGA to come back to the GOC after this preliminary phase with a recommendation on whether to continue with the review and suggestions on the specific issues that should be further examined. At this time, the GOC has an opportunity to decide whether the review should continue and OPEGA itself may recommend that the audit be discontinued.

Chair Mitchell noted that the question regarding conflicts of interest required more discussion but directed the Committee to return to the Citizen request for audit of Maine Center for Public Health Evaluation Contracts.

The GOC discussed procedures for moving forward on the request agreeing the respondents would have the opportunity to speak on the audit request. Chair Mitchell recognized Dr. Dora Anne Mills, M.D., Director, Maine Center for Disease Control.

Dr. Mills introduced Paul Gauvreau, Deputy Attorney General, and Chris Zukas-Lessard, Deputy Director, Maine Center for Disease Control. Dr. Mills summarized DHHS' written response with comments that addressed:

- the Department's process for determining whether the contracts on evaluation are a cost-effective use of resources;
- what was contained in the original RFP in April, 2005 and the subsequent contracts;
- the US Center for Disease Control's goal to integrate evaluations into everyday program activities;
- the evaluation components integrated in the existing programs;
- responsibilities and roles of contractors and subcontractors;
- the total amount of the contract for 2007 (\$705,000) and the fact that one-third of the amount (\$245,000) is funded by USCDC with oversight from USCDC and the remaining \$460,000 is funded by Fund for Healthy Maine; and
- the current subcontractors for MCPH.

Chair Mitchell thanked Dr. Mills for her information and asked Committee members if they had questions. Hearing none, she asked Dr. Mills if there was an appeal process regarding contracts. Dr. Mills said that at the time contracts are awarded there are a certain number of days the Department has to wait to encumber it to make sure an appeal is not filed. She introduced Paul Gauvreau, Deputy Attorney General, explaining she is not involved in the contract procedure. Attorney Gauvreau informed the Committee that the Maine Center for Disease Control is his client and he discussed the following:

- the process for contract appeals for the Department of Health and Human Services that is in Title 5, § 1825, subsection C;
- the process for an appeal on punitive contract awards by the Department; and
- the procedure for an aggrieved subcontractor to administratively receive recourse to their concerns.

Rep. Boland said it was her understanding that the request did not involve the contract.

Deputy Attorney Gauvreau deferred to the Maine Center for Public Health, explaining they are the policy makers, and the AG's Office provides the legal advice.

The GOC thanked Attorney Gauvreau for attending the meeting and providing information.

Chair Mitchell recognized Leah Binder, MA, MGA, Chair, Maine Center for Public Health. Ms. Binder discussed the following:

- background information on the creation of the Maine Center for Public Health;
- the procedure for making the decisions of how to proceed on various health issues and who is involved;
- Maine Center for Public Health's procedure regarding the contract administration, including financial and management controls in place to assure accountability for the overall evaluation contract;
- the current evaluation team working under the Healthy Maine Programs contract;
- procedures Maine Center for Public Health follows to assure their evaluations are effective;
- what procedure is followed should a conflict of interest arise between the Maine Center for Public Health, Maine Center for Disease Control and the Healthy Maine Partnerships.

Chair Mitchell asked if there were questions from the GOC. Hearing none, she thanked Ms. Binder for the information she provided to the Committee.

Mr. Mildner requested he be allowed to address the GOC. Chair Mitchell asked that he share the information with Director Ashcroft to present. Director Ashcroft then read a statement Mr. Milder pointed out that was contained in Commissioner Harvey's response letter to the GOC. Director Ashcroft refrained from reading portions of a second letter provided by Mr. Mildner that had not already been provided by the Committee explaining that this was the type of additional detail OPEGA would review if the GOC directed OPEGA to perform an audit of this topic.

Sen. Bartlett expressed his concerns regarding the use of the GOC and OPEGA to solve contract disputes.

Sen. Courtney, although not agreeing with Sen. Bartlett's concern, said it would easily be discovered if that was the motive for the case, but wanted to move forward, believing the request to be focused on a larger concern than the contract issue and made the following motion:

Motion: That the Government Oversight Committee move the request for an audit of Maine Center for Public Health Evaluation Contracts on deck. (Motion by Sen. Courtney, seconded by Rep. Lansley)

Further Committee discussion followed.

Rep. Lansley concurred that after reviewing the information provided the request did not appear to be a contract issue and OPEGA should further explore the matter and provide its recommendations to the Committee.

Rep. Pendleton, perceiving that this request was not about the contract dispute, had concerns regarding the process used by the State, or any agency, in awarding contracts, and the involvement of subcontractors. She thought this review may give information to the GOC regarding the process used by the State on contracting out, including use of subcontractors.

Director Ashcroft asked for clarification on Sen. Courtney's motion to put the request for an audit "on deck" given his comments on wanting to move the case forward. Director Ashcroft explained that "on deck" meant the topic would go on a list that the GOC may draw from to populate OPEGA's biennial plan. She pointed out that this was different from the recommendation OPEGA had given on its Recommendation Form, which was to put the topic on OPEGA's current biennial plan. She also requested that if the GOC were to put the topic on OPEGA's biennial plan that the GOC provide further clarification around the general questions to be asked about this topic. In its recommendation, OPEGA had provided what it believed to be relevant questions that should be asked after setting aside contract dispute details and conducting its own research. She referred members to the recommendations explaining the questions generally focused on the effectiveness of the evaluation effort and whether the Maine Center for Disease Control was receiving the services it expected to receive under the evaluation contract.

Sen. Courtney amended his motion to move the request for an audit on OPEGA's work plan.

Sen. Mitchell clarified for the Committee that OPEGA's recommendations were:

1. Whether the State expenditures on the contract for evaluation of certain Healthy Maine Partnership Programs are cost-effective use of resources, that is, are quality evaluation services, results and work products being received for the funds being spent; and
2. Whether the makeup of the Maine Center for Public Health Board presents conflicts of interest that could interfere with the State receiving objective and quality evaluations.

Chair Mitchell asked if that was what Sen. Courtney moved and Rep. Lansley seconded.

Chair Mitchell said she would be voting against the motion for the following reasons:

- Concerns with the precedent setting on this request since she believes it to be related to a contract dispute and the GOC and OPEGA are not the proper forum for that dispute to be resolved.
- The conflict of interest issue is not in OPEGA's realm for review.
- This will create false expectations of the public and the procedure will not be helpful to the State.
- Her disappointment in OPEGA's recommendations.

Sen. Bartlett concurred with Chair Mitchell and stated his concerns regarding conflicts of interest and contract disputes.

Sen. Raye suggested a friendly amendment to Sen. Courtney's motion. To amend the motion to have OPEGA explore the first question, but not include the second question regarding the conflict of interest. Sen. Courtney agreed to change part two of his motion to be "Whether adequate safeguards are in place to ensure an objective analysis".

Chair Mitchell asked Sen. Courtney to restate his motion.

Motion: That the Government Oversight Committee move the request for an audit of Maine Center for Public Health Evaluation Contracts onto OPEGA's work plan. The review will seek to answer whether State

expenditures on the contract for evaluation of certain Healthy Maine Partnership Programs are a cost-effective use of resources, i.e. are quality evaluation services, results and work products being received for the funds being spent; and whether adequate safeguards are in place to ensure an objective analysis.

Chair Mitchell asked if Director Ashcroft had comments regarding the motion. The Director asked for the opportunity to explain her recommendations. She noted that her intention was for OPEGA's review to focus on what was the purpose of contracting out the review in the first place, what was MECDC hoping to get and whether that is what was being delivered. OPEGA would not be focused on determining right or wrong in a contract dispute, but looking at currently existing situations for whether they can be improved. The only degree that OPEGA will care at all about what has happened in the past around the contract is if it helps inform why the current situation exists, or how it can be improved. OPEGA's recommendation was not driven by details of the contract dispute, but by the dollar amount of the programs that are being evaluated, the role of the evaluation services toward making sure those programs are as effective as possible, and the dollar amount of the contract itself. Director Ashcroft strives for OPEGA to do a good job on every request at bringing out what the larger questions are that the Legislature might be interested in, and then leaves it to the GOC to decide. OPEGA's recommendation for this request was based on other objective research done by OPEGA staff, aside from what the Committee has heard from both parties, and believes the primary question reflects a topic legislators have expressed interest in, aside from any contract dispute.

Rep. Lansley said his reason for placing the request on OPEGA's work plan was related to the potential beneficial outcomes of a review as given in response to a question on OPEGA's Audit Request form. The potential beneficial outcomes included: improving the evaluation effort could lead to improving programs and initiatives as needed; an improved accountability structure within the agency for wise and effective spending of funds and clearer conflict of interest rules for agency and contractor staff.

Chair Mitchell asked if OPEGA was evaluating the evaluations or evaluating the programs. Director Ashcroft said it was not evaluating the programs, but rather looking at the mechanisms in place to make sure the State is getting effective evaluations and that the Maine Center for Disease Control is getting what it has contracted for.

Sen. Bartlett asked for clarification as to why this request was being added to OPEGA's work plan and not being placed "on deck". Director Ashcroft explained that the GOC has not yet determined what OPEGA's work plan is for the current biennium. It is for discussion by the Committee whether it wants to put this item on the plan, it does not mean it is something OPEGA would begin immediately, it is something that will be scheduled over the biennium as appropriate.

Motion: That the Government Oversight Committee move the request for an audit of Maine Center for Public Health Evaluation Contracts on OPEGA's work plan. The topic will seek to answer whether State expenditures on the contract for evaluation of certain Healthy Maine Partnership Programs are a cost-effective use of resources, are quality evaluation services, are results and work products being received for the funds being spent, and whether adequate safeguards are in place to insure an objective analysis. (Motion by Sen. Courtney, seconded by Rep. Lansley, PASSED, vote 7-5). (Members voting against the Motion: Sen. Mitchell, Sen. Bartlett, Sen. Dow, Sen. Perry, and Rep. Canavan).

- **Citizen Request for Audit of Maine Heritage Outdoor Fund and Board**

Director Ashcroft summarized Mr. Glowa's request, what action the GOC and OPEGA have taken to date and then referred the Committee to the memo from Danny Martin, Commissioner, Department of Inland Fisheries and Wildlife. She said that Mr. Glowa did not address the GOC at the March 26th meeting so it would be appropriate to give him the opportunity to do so at this meeting if the Committee so desired.

Chair Mitchell recognized Mr. Glowa. He thanked the Committee and members of OPEGA and stated he was requesting the review and was at the meeting as a private citizen. His concerns included:

- the Maine Heritage Outdoor Fund and Board operations regarding how money is being spent, the disbursements of the monies, and that the operation of the Board may not be consistent with statutory requirements;
- whether past and present members of the Outdoor Heritage Fund Board may have committed civil violations of Maine's conflict of interest statutes;
- whether the Board is meeting its statutory obligations and is acting appropriately and properly as an agency of the State;
- whether monies have been properly allocated or properly spent;
- whether all grant awards have been consistent with statutory requirements;
- whether the activities of the Maine Heritage Outdoor Fund and Board have ever been audited;
- whether there are adequate policies and procedures in place to make sure monies are properly spent, and if so, are they being adhered to;
- whether procurement for all administrative good and services been consistent with State policies and procedures;
- the reason for expanding the scope of the Heritage Fund and how it will effect the program; and
- three specific grants under the category of natural resources law enforcement.

Mr. Glowa asked to include in his audit request concerns regarding data reliability and usefulness as well as proper and accurate recordkeeping.

Chair Mitchell asked if the members of the Committee had questions for Mr. Glowa. Hearing none, she asked for a spokesperson for the Maine Heritage Outdoor Fund and recognized Commissioner Martin.

Commissioner Martin summarized the memo he prepared for the GOC in response to the audit request. This included:

- when the Maine Heritage Outdoor Fund and Board was established, by whom and the membership;
- fund distribution criteria for strategic plan and grants;
- who administers and disburses the funds; and
- how potential conflicts of interest are addressed.

Chair Mitchell asked if the members had questions for Commissioner Martin. Hearing none, the Chair on behalf of the GOC, thanked Commissioner Martin for attending the meeting and providing his information to the Committee.

Director Ashcroft spoke on OPEGA's recommendation for this request which was to put the topic "on deck" with the intent of performing a full sunset review of the Maine Outdoor Heritage Fund Board. A sunset review would address not only Mr. Glowa's many concerns, but is also appropriate for general accountability purposes and possible cost savings. The end result of such a review would include a recommendation on whether the Maine Outdoor Heritage Fund and Board should be continued. OPEGA was not aware that the Attorney General had acted on Mr. Glowa's request regarding the conflict of interest. OPEGA recommended the sunset review put on the "on deck" list because of number of issues raised by Mr. Glowa regarding expenditures, and because in OPEGA's own independent research around the topic, it had questions about possible scope or mission creep on the part of the Heritage Fund Board. It also appeared that a large portion of the revenues received in from the lottery ticket sales was being expended on fixed lottery related costs, begging the question as to whether this was the best way to raise funds for these endeavors. A sunset review would be a fairly large review and may be time consuming. Consequently, OPEGA recommended placing it "on deck" as opposed to directly on the biennial work plan.

Sen. Bartlett asked if the money involved was audited by the State Auditor and the Chair recognized Jody Breton, Service Center Director.

Director Breton said that the money involved in the request falls under the purview of the State Auditor, but does not know if information has been requested by the Audit Department.

Sen. Raye asked for clarification on whether there was an option for the Committee to just take the request under advisement.

Director Ashcroft explained that OPEGA does not have a list of requests for audits that the GOC decided to take no action on. The only list kept is for “on deck” requests although OPEGA does note concerns raised for future reference if the topic should come up again.

Director Ashcroft brought to the Committee’s attention, at the request of Commissioner Martin, that LD 1080 An Act to Increase Public Participation in the Maine Outdoor Heritage Fund and Board, is being heard Tuesday, April 3rd and may help with some questions regarding the audit request.

Sen. Bartlett questioned the process the Committee should be taking regarding to place requests on OPEGA’s work plan or “on deck”, and would like to have the Committee meet to discuss what should be added to OPEGA’s work plan and the process the Committee should follow.

Committee discussion followed as to why requests are added to the work plan or “on deck”, and the necessity for the members to discuss the process for Committee action.

The following motion was offered on the Audit Request of the Maine Heritage Outdoor Fund and Board.

Motion: That the Government Oversight Committee take no action at this time on the Citizen Request for an Audit of Maine Heritage Outdoor Fund and Board. (Motion by Sen. Raye, seconded by Rep. Lansley, PASSED, 11-1). (Rep. Boland voted against the motion).

The Government Oversight Committee thanked those in attendance for their information.

Committee members further discussed the citizen requests procedure and the need for discussion. Chair Mitchell suggested that time be taken at the next GOC meeting for that purpose. Director Ashcroft reminded the Committee that it had previously decided to have a meeting to discuss only OPEGA’s biennial work plan and perhaps the two topics could be combined.

REPORT FROM OPEGA DIRECTOR con’t

- **Update on Legislation With Potential to Impact OPEGA**

This item was not discussed at the meeting.

NEW BUSINESS

None

SCHEDULE NEXT COMMITTEE MEETING

The Committee scheduled Monday, April 9, 2007 at 1:00 for the next GOC meeting for the purpose of discussing the procedure to follow on audit requests and OPEGA’s work plan.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned by Chair Mitchell at 3:10 p.m.