



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

April 26, 2013

Approved May 10, 2013

## CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:08 a.m. in the Cross Office Building.

## ATTENDANCE

Senators: Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Harvell, and Rep. McCabe  
Absent: Rep. Cotta

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

## INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

## SUMMARY OF THE APRIL 12, 2013 GOC MEETING

The Meeting Summary of April 12, 2013 was accepted as written.

## NEW BUSINESS

### • Subpoena Request for Confidential Data Needed for OPEGA's Review of MaineHousing's LIHEAP Program

Director Ashcroft said OPEGA's statute provides for the option of asking the GOC to issue a subpoena in the instance where that mechanism is needed in order to gain data for a review. OPEGA has made a request of the Community Action Agencies that the LIHEAP Program is administered through, requesting employee names and

addresses in order to conduct standard testing done by OPEGA in a review of this scope. The agencies are all willing to be cooperative, but given the fact that they consider it to be confidential information, would like a subpoena so will have a basis to release the information. Any information provided to OPEGA will be treated as a confidential working paper under OPEGA's statute and would be protected from disclosure.

**Motion:** That the Government Oversight Committee issue subpoenas to the nine Community Action Agencies OPEGA is seeking information from commanding those agencies to provide employee names and addresses to OPEGA with the understanding that those records will be considered "working papers" as defined in Title 3 section 992(7) and protected from disclosure under Title 3 section 997(5). (Motion by Chair Kruger, second by Sen. Burns, passed by unanimous vote 12-0).

- **Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings**

Chair Kruger noted the concern that has been raised regarding the question of undue influence of Administrative Hearing Officers at a luncheon at the Blaine House on March 21, 2013. He requested that OPEGA conduct an investigation answering, at a minimum, the following questions: (a) Was there perceived or actual improper influence by any public official during or related to the March 21, 2013 meeting; (b) Is legislation, governmental action or any other measure needed to strengthen and improve the structures of accountability and independence between the Office of the Governor, the Department of Labor, its Division of Administrative Hearings, and the Unemployment Insurance Commission.

Sen. Burns had reservations about the review request because he thought other appropriate actions were being taken regarding the matter and it would be inappropriate to use OPEGA's resources to investigate the Chief Executive's Office.

Rep. Harvell did not like the word "perceived" in question "a" and agreed with Sen. Burns that the proper channels are already being followed.

Chair Cain noted that nothing she has seen regarding the Governor's creation of the Blue Ribbon Commission (Commission) will look at anything related to the questions Chair Kruger outlined. Her impression is that the Commission will be focusing on the system itself.

Rep. McCabe thought the questions being asked in the review were appropriate and he would support the review request.

Sen. Johnson thought OPEGA, because of its independent status, was the perfect entity to be investigating this topic. He would question the value of a Commission appointed by an office to investigate that office.

Sen. Youngblood thought having OPEGA do the review would mean that the matter could be put to bed and the GOC should consider approving the request for a review.

Sen. Burns asked what precedent there was for OPEGA, or a similar office, to investigate the Chief Executive. Director Ashcroft said when OPEGA conducted the DHHS Communication review last year seeking to understand what had gone on in terms of information being communicated to the Legislature and why, the Governor's role in that was part of what was called into question and reviewed by OPEGA.

Sen. Craven understood that the GOC was formed to root out misconduct in State government, and has been disappointed in the past that the Committee was not more aggressive in making sure that State government works adequately and honorably.

Rep. Davis said the GOC and OPEGA are creations of the Legislature and he is struggling with the idea of the Legislature investigating the Chief Executive, especially when there are other avenues that could first be pursued. He did not think he could support the review request.

Sen. Katz said this was a difficult situation and Committee members are trying to be bipartisan. He has concerns about questions “a” and “b” in that the scope of the questions are not wide enough. Any suggestion that a judge, independent hearing officer or administrative law judge is subject to improper influences is of great concern to him. He is not concerned about the lunch at the Blaine House, but about information he has heard, going back some period of time, that within the Department there may have been some influence by the Bureau on hearing officers to affect how cases get decided. He thinks it is a subject that should be looked at. The Governor has created a Commission and his first two appointments are Chief Justice Wathen and George Jabar. Sen. Katz was uncertain whether Chair Kruger’s inquiry will be part of what the Commission will be tasked with, but knows the Commission will be looking at the whole system to determine if changes need to be made to their Rules, or in statute, of how cases are being handled. He does not know if the Commission’s review will include the subject of potential influencing of unemployment hearing officers, but if it does, that will affect his decision about whether the review should be done by OPEGA. He is also not certain whether the Federal government will share the results of their current activities here with the GOC. Before voting on this review request he would want to know whether either the Commission or the Federal government is going to investigate the subject of undue influence at the Department of Labor and, if so, whether their results will be available to the GOC

Sen. Katz recommended that the Government Oversight Committee request in writing from the Chairs of the Commission what the scope of their work will include. He also recommended sending a similar letter to the Federal Department of Labor to ask whether this subject matter is included in their review and, if so, will they share the results with the GOC. Sen. Katz would want to wait for answers to those questions before acting on the review request.

Chair Kruger pointed out that OPEGA conducts reviews of the Executive Branch very often and that the review could always be expanded at a later time. His interest is to ask a narrow question and get it answered as fast as possible. He has confidence in the Commission, and Chief Justice Wathen as Chair, but does not think they will answer his question. He thinks the public deserves answers and that is what he is asking to happen.

Rep. McCabe thinks the request is broader than the Chief Executive and because of OPEGA’s independent nature, it is critical that the GOC acts before the Commission so the current publicity will not cloud the work of the Commission.

Sen. Johnson said because hearing officers are required under federal law to make independent and nonbiased decisions, the review should be done by OPEGA because it is important for the public to perceive it as an independent review.

Rep. Boland noted that OPEGA can offer confidentiality protection to anyone who would like to speak freely.

Rep. Harvell did not think it was improper for OPEGA to review this topic. When a Governor meets with an organization and discusses State business that cannot be considered as a private meeting. He also agreed with Sen. Katz that, if the GOC decided to review this topic, he did not want to get in the way of the Commission.

Sen. Katz made the following motion:

**Motion:** That the Government Oversight Committee send letters to Chief Justice Wathen and Mr. Jabar, Co-Chairs of the Commission, and the Department of Labor asking them for an early response to the following three questions: (1) Is the issue of undue influence of hearing officers at the Department of Labor part of their mission?

(2) If it is, what is the timeframe for them completing that? (3) Will they make the results of their findings available to the GOC? (Motion by Sen. Katz, second by Sen. Burns)

**Discussion:** Chair Cain wanted to make it clear that the questions asked in the review request did not target just one particular person – it says “by any public official”. The issue is bigger than one person and she noted that in the last three and a half months of GOC meetings, at almost every meeting, a question has been raised about work place environment. It has been raised by departments across State government and it has been heard not in the context of just this Administration, but prior Administrations. This is about the importance of getting a handle on the question of work place environment because it is the foundation that gives confidence or credibility in any of the work done in any department. People need to go to work, do their jobs free of improper influence or pressure, and everyone needs to have that confidence. Whether it was the CDS, Maine Turnpike Authority, or MaineHousing investigation, she has a hard time imagining the GOC, if those agencies had appointed their own commission to look at something, saying see what you find out and get back to us. This review request is about people being able to do their jobs in a way that everyone has confidence in their outcome. She finds it concerning that the information regarding the topic is currently coming from only one source, the media.

Chair Cain said this is an opportunity to have it come out of the spotlight and go into a place where it can be looked at with confidentiality that lends itself to confidence. She thinks the members appointed to the Commission thus far are great, and that the Federal Government has no accountability to report their findings to Maine, but this is an opportunity to take the politics out of it, bring public confidence into it and to focus on the integrity of the system. She thinks the request is not only proper for the GOC, but is something that is important for the Committee to look at. It is not about the Governor to her, but the integrity and confidence in government.

Sen. Youngblood said the GOC has a great reputation, but was not created to be a grievance board.

Sen. Burns said after listening to the discussion, he would be willing to support Sen. Katz’s motion and based on the content of the information received back from the Commission and the Federal government, to change his position and support an inquiry. He does not want to see the GOC/OPEGA get into the habit of investigating the Chief Executive, no matter what side of the isle he/she may be on and that there is always going to be issues that get a lot of press coverage.

Rep. Boland thinks that the questions in Sen. Katz’s motion are good, but would like to task Director Ashcroft with getting those answers in whatever way she finds appropriate. She asked the Director for her input on how she might see it designed.

Director Ashcroft said there are some advantages in asking OPEGA to seek the answers to the questions in Sen. Katz’s motion as opposed to doing a formal letter from the GOC and expecting a formal letter back. She is particularly thinking of the Federal Department of Labor and how much they would be willing to share if they were planning on doing an extensive review. They might be willing to share some information with OPEGA knowing that information will be protected under OPEGA’s statute. The downside is the GOC would be relying on her estimation of whether they will be reviewing what the GOC is concerned about.

In terms of the questions Chair Kruger posed in his request, from what she had heard, the Committee’s question is whether administrative hearing officers, who are supposed to be making their decisions based on impartial, objective viewpoints and information, were somehow unduly influenced in making those decisions. The first piece for her is are there adequate protections in the system, processes, procedures and structure of governance and independence, that regardless of whatever pressure is being applied, it does not find its way into their decisions. It is lining out whether that exists, and if it does, does what occurred on March 21<sup>st</sup> supersede whatever those structures are. Was there anything that occurred there, or around that, that somehow could have broken through the lines.

Sen. Johnson still thinks there is a difference between receiving results of a review by OPEGA versus the Commission or Federal government. Secondly, he doubts that the scope of a federal investigation is going to include what control structures are in place. He thinks that would be focused on whether there was something wrong that violated federal law and requirements for hearing officers, and if so, what were the violations. Questions “b” in Chair Kruger’s request asks whether or not there was a problem this time and how do they ensure it is prevented in the future. He thinks OPEGA is the right place to go to get answers to both “a” and “b” of the review request.

Rep. Davis has a problem with a committee of the Legislature investigating an event the Governor was at in this manner. He can drop his partisan hat at the door, and has many times, but he does have an issue with the Executive, himself, being investigated by a body of the Legislature. It may be proper, but he has issues with it.

Rep. McCabe feels OPEGA is the most nonpolitical tool there is at this time and the questions in Sen. Katz’s pending Motion are appropriate and need to be answered in a timely manner. He referred to the two questions in Chair Kruger’s letter and wondered if Sen. Katz would include question “a” in his pending Motion. He was also looking for a resolution to get it out of the headlines.

Rep. Harvell said if the Committee moves forward with question “a” he would like to have the word “perceived” stricken because of course anyone could perceive things in different ways.

Sen. Burns liked Director Ashcroft’s response regarding an effective method of obtaining the information he was seeking and asked if Sen. Katz would reconsider modifying his pending Motion. Sen. Katz agreed.

**Motion:** That the Government Oversight Committee direct Director Ashcroft to explore with the Blue Ribbon Commission Co-Chairs and the Federal Department of Labor the following subjects: (1) whether the issue of possible undue influence of hearing officers at the Maine Department of Labor is part of their mission; (2) what is their timeframe for completing that. The Motion also would ask that the Director report back to the GOC at its next meeting on May 10, 2013. (Motion by Sen. Katz, second by Sen. Burns).

**Discussion:** Chair Cain said Sen. Katz’s first question in his Motion is regarding undue influence, specifically within the Department of Labor and she wanted to clarify that. She thinks Rep. Kruger’s letter talked about the Department of Labor, as well as any public official on the Executive Branch side and asked if Sen. Katz would be open to that. Sen. Katz said he would and apologized for misstating that. It should be changed to “whether there has been any undue influence of hearing officers by anyone”. That was added as a friendly amendment by Chair Cain and agreed to by Sen. Katz.

Chair Cain had noted comments by Committee members and Director Ashcroft, and if Rep. Kruger agreed, she would like to see if the GOC would agree to an additional step to save time. If the answers to the Committee’s questions are going to be addressed at the May 10<sup>th</sup> meeting, they are also going to need answers to questions of what an OPEGA inquiry would look like if the Committee moved forward with it. She thinks the questions Director Ashcroft spoke about earlier - is there adequate protections for the hearing officers - are questions to be reviewed.

Sen. Katz said he would accept that as a friendly amendment.

Chair Kruger said he wants a simple question answered and does not think the Commission, although it will likely do great work, will answer the question of what took place at the March 21<sup>st</sup> meeting. In his opinion, this is within OPEGA’s purview. There are individuals who will speak to OPEGA who cannot speak to anybody else and the GOC has the right tools and the right lack of partisanship that it can get the answers to those questions. He wants a quick answer to a simple question and if the GOC decides at a later time it wants to expand the review, they can do that. It may also be that they will receive the answers at the May 10<sup>th</sup> meeting and can then move on to other work.

He wants this to be a narrow review because there are other entities that may give good answers, but it will take a while and he wants a quick answer to get the situation out of the headlines.

Chair Cain said she would also like to have Director Ashcroft find out the answer to the question of whether or not the GOC will be able to have access to the results of the Commission and the Federal investigation.

Sen. Katz agreed and accepted.

Chair Cain reviewed where the Committee was with Sen. Katz's motion.

The motion asked Director Ashcroft, by the GOC's May 10<sup>th</sup> meeting, to get answers to the following questions, asking the questions to both the Commission and the Federal investigators. (1) Whether they are investigating the question of undue and improper influence by anyone in relation to the hearing officers. (2) What is the timeframe for their work? (3) Will the GOC have access to the results of their work? The second part of the motion is: Have Director Ashcroft, for two weeks from the 26<sup>th</sup> of April, give the GOC the information of what the inquiry will look like from OPEGA, the design, and the best way to get answers to the questions Chair Kruger has posed should the GOC move forward. The reason for that is to make sure the Committee can take another action, if needed, in two weeks. Sen. Katz said Chair Cain correctly stated his motion. Sen. Burns agreed.

Director Ashcroft said while she would like to be responsive to the idea of being able to tell the GOC what the design for an OPEGA review would look like, she wanted to stay true to OPEGA's typical mode when assigned a review. Usually the GOC says these are the questions we want answered, and OPEGA then goes and figures out what is the best way to answer them. It does not usually involve a discussion between OPEGA and the GOC about what the proper methodology is. She understands why the Committee would want some idea of what framework they might be looking at, so in response, she would be looking to come back with something that balances those two aspects. Chair Cain said no one was trying to break the way the GOC/OPEGA does its work, it is that there is a lot of discomfort of what it would look like that is creating the hesitancy to take action.

Director Ashcroft reminded the Committee that in any review they task OPEGA with, one of the first things OPEGA does is figure out if there is anybody else covering the same ground. If the GOC decided to put the review request on OPEGA's Work Plan, that is probably step one, and depending on what was learned, she would be coming back to the Committee to let them know if she thinks the topic will be sufficiently covered by somebody else or it is not. If timing is a concern to the Committee, that is a way the request could be handled.

Rep. Boland said the opportunity to do initial interviews might be available to OPEGA regarding the March 21<sup>st</sup> meeting and wanted to move that part of the review request forward. Chair Cain said that was not included in the current Motion.

Chair Cain pointed out that Sen. Katz was not currently at the meeting, and if the members were going to add amendments to his pending Motion, it may have to be tabled and have a new motion introduced. Rep. Harvell said he was suggesting adding language that would say - within this has there been undue influence including the March 21<sup>st</sup> meeting - so it is broad enough to go beyond that, but also are they actually looking at that particular meeting. He asked if the pending Motion was giving Director Ashcroft the ability to talk with the Department of Labor hearing officers. Chair Cain did not think so, but there may be a way to get that in the question. Sen. Craven understood the pending Motion to imply that March 21<sup>st</sup> meeting would be included.

The Committee asked for Director Ashcroft's opinion. She said she is clear from the GOC's discussion, what information the GOC is seeking from the Commission or the Federal Department of Labor and she understands that includes wanting to know whether either of these entities are specifically looking at what transpired related to the March 21<sup>st</sup> meeting.

Sen. Johnson does not have a problem with anything contained in the pending Motion, but does have a problem with the GOC trying to do Director Ashcroft's job for her. For OPEGA to follow-up on this and come back with what will be the next steps, she has to know what the Committee's questions are and they have not established them yet. The Committee should be deciding whether "perceived" should be part of question "a". By the Committee's actions of making the review request narrow, they are precluding OPEGA from taking other actions that are appropriate based on the responses, such as having conversations with hearing officers. Instead of voting on the pending Motion, the GOC should be moving that Director Ashcroft proceed with an initial investigation of questions "a" and "b" with the word "perceived" removed from "a".

Chair Cain said she had discomfort taking the word "perceived" out of the question. The issue of "perception is reality" is relevant to the question, is a key element, and whether or not perception aligns with the structure that is in place, is an essential element.

Rep. McCabe thought the pending Motion included involving the hearing officers and is uncomfortable that the GOC is not giving OPEGA the opportunity to interact with them. He would like the hearing officers to have the opportunity to speak with OPEGA versus the media. Rep. McCabe asked if "b" of the request was something typical of any request to OPEGA and Director Ashcroft said it was. Most of the time OPEGA is looking at structures in some way, shape or form, or processes and procedures.

Sen. Burns thinks that what some of the members are suggesting is contrary to the pending Motion because they are now talking about opening their own investigation.

Chair Cain noted that the GOC can always ask Director Ashcroft to do things, but by the Committee making a motion to officially request certain things, formalizes it in a way that is important to the question of whether or not they will launch a more formal investigation. She thinks it is good that the GOC starts at a place with a little more formality and repeated what she thought the pending Motion was before them.

**Motion:** That the Government Oversight Committee is asking Director Ashcroft to gather information by the May 10, 2013 GOC meeting on (1) whether or not the Blue Ribbon Commission and the Federal Government is investigating the question of undue or improper influence by anyone. That would include inquiring about the Governor's May 21, 2013 meeting; (2) what is the timeframe for their work; (3) can and will the GOC have access to the results of that work. At this time the GOC is not asking Director Ashcroft to talk with the hearing officers, but to consider the types of questions the GOC would need to ask if they moved forward with an investigation based on what is learned.

Sen. Johnson was uncomfortable with the motion because they were tying Director Ashcroft's hands. He would have the Committee begin as they normally would – an initial investigation in which she would be asking questions of what the parties are looking at and does it match the scope of the GOC's questions. The Committee has not yet given the Director the questions to ask to make that determination.

Chair Cain said what she has been hearing from the members of the Committee is that there is an interest in understanding the answers to these questions before there is a willingness to vote on a formal investigation and that is what the GOC is trying to respond to. She thinks that was the intent of Sen. Katz's motion.

Director Ashcroft did not feel she would be hampered by the pending Motion in terms of her understanding of what the breath of the GOC's questions are or could be around the topic. In terms of the potential scope of the review, she thought she had a good grasp, based on the comments by members, and is not sure she needs it lined out any more specifically. If the Committee actually wants to put a review on OPEGA's Work Plan, then at some point, either today or at a future meeting, she would be looking for the GOC to approve the questions that OPEGA was going to specifically address. Director Ashcroft said the pending Motion did not take her to that point yet.

Rep. Boland reminded the Committee that although Sen. Katz has left the meeting and his Motion is pending before them, voting on his motion does not restrict them from offering another motion.

Chair Cain did not think anyone wanted to limit or infringe on the role of the Director or OPEGA, but the GOC was trying to find the right way to keep it on their radar screen for response and further inquiry and needed more information in order to do that.

Sen. Burns said the Committee's discussion today was not unusual, the GOC has had the same type of discussion about many issues. He was trying to find a reasonable comfort level for the majority of the members so they could move forward, rather than to end up with something that looks like a split decision between parties. Chair Cain agreed.

Rep. McCabe asked the Director if she thought there would be confidentiality issues for the Commission or the Federal government in sharing information with her. Director Ashcroft could only go from past experience, because OPEGA has not dealt with the Department of Labor at the Federal level yet. However, she would hope that because of OPEGA's ability to keep the information they share confidential, that the federal DOL would be willing to be at least up front enough with her that she can line out whether she thinks they will be covering the issues that are of concern to the GOC.

**Motion:** That the Government Oversight Committee is asking Director Ashcroft to gather information by the May 10, 2013 GOC meeting on (1) whether or not the Blue Ribbon Commission and the Federal Government is investigating the question of undue or improper influence by anyone. That would include inquiring about the Governor's May 21, 2013 meeting; (2) what is the timeframe for their work; (3) can and will the GOC have access to the results of that work. At this time the GOC is not asking Director Ashcroft to talk with the hearing officers, but to consider the types of questions the GOC would need to ask if they moved forward with an investigation based on what is learned. (Motion by Sen. Katz, second by Sen. Burns, unanimous vote 12-0.)

**Note:** Sen. Craven and Sen. Katz voted on the motion when they returned to the meeting and Rep. Cotta stopped by OPEGA and voted on the GOC's motion subsequent to the meeting, in accordance with the Committee's Rules.)

## **RECESS**

The Government Oversight Committee recessed at 10:47 a.m. on the motion of Chair Cain.

## **RECONVENED**

Chair Cain reconvened the meeting at 11:02 a.m.

Chair Cain asked if there was objection to taking items out of order. Hearing none she moved to **Unfinished Business, Continued Review of Potential Topics for Addition to OPEGA's Work Plan – List of Topics Under Consideration as of 4-12-13.**

## **UNFINISHED BUSINESS**

- **Continued Review of Potential Topics for Addition to OPEGA's Work Plan**
  - **List of Topics Under Consideration as of 4-12-13**



Director Ashcroft reminded the Committee that there were sixteen topics they had agreed to further consider for either addition to OPEGA's two year Work Plan or on the "On Deck" List. The purpose of having members rank the topics was to assess what the overall level of interest was among the entire Committee. (A copy of the List of Topics and the Ranking of Topics Being Considered is attached to the Meeting Summary.)

Chair Kruger said the Committee will now discuss and make motions on the topics that members want to move on to the Work Plan. He reminded the Committee that not all the topics will require the same amount of OPEGA resources.

**Tax Expenditure Programs** – Developing a framework for on-going legislative review and evaluation of tax expenditure programs. Director Ashcroft categorized this review as a special assistance project rather than a review that would include conclusions, recommendation, etc.

Chair Cain said the topic is in line with Representatives Keschl, Chase, Knight and Libby's request discussed at the April 10, 2013 GOC meeting. OPEGA's resources would be used to assist the Legislature in categorizing tax expenditure programs in an objective way and moving forward to on-going review of those programs. Senators Craven and Johnson agreed.

**Motion:** That the Government Oversight Committee moves the Tax Expenditure Programs topic on to OPEGA's Work Plan for 2013-2014. (Motion by Chair Cain, second by Rep. Davis, passed unanimous vote 12-0.)

**Maine Economic Improvement Fund** – Degree to which legislative intent for the program is being met, alignment of funded projects with the targeted technologies/areas defined in statute and list/description of funded projects.

Sen. Burns would recommend a brief review of the MEIF to determine whether the statute has been followed since the creation of the Fund. Chair Cain believes there is a specific question of whether or not they are following what is in the law and she is open to having OPEGA look at that, but does not want to see the GOC go beyond what is in the statute related to the Program. Anything other than looking at the statute would be for a policy committee to review.

Chair Kruger noted that at the last meeting there was discussion of a report due on the Fund and asked if they should wait until the report was released before taking action. Director Ashcroft said the Task Force's report should be issued any time, but it is her understanding that their report will not include the scope of whether their past practice has complied with the statutory intent.

**Motion:** That the Government Oversight Committee moves the Maine Economic Improvement Fund topic on to OPEGA's Work Plan for 2013-2014. (Motion by Sen. Burns, second by Rep. Boland, passed unanimous vote 12-0.)

**DHHS Audit Functions** – focus of audit efforts; resources and capabilities; results of audit efforts; and degree to which DHHS Audit functions have sufficient resources and capabilities to be effective in identifying fraud, waste and abuse.

**DHHS Workplace Culture and Environment** – Whether workplace culture and environment is conducive to recruiting, retaining and engaging capable, knowledgeable and motivated employees toward best results for DHHS programs and services; management behavior and treatment of employees in the workplace.

**Motion:** That the Government Oversight Committee moves both the DHHS Audit Functions and DHHS Workplace Culture and Environment topics on to OPEGA's Work Plan for 2013-2014. (Motion by Sen. Johnson, second by Sen. Craven, passed unanimous vote 12-0.)

**Healthy Maine Partnership Contracts: 2012 Adjustments to Contracts and Funding Levels** – Process used to score HMPs; process and decisions for selecting lead HMP agencies and determining funding levels; and maintenance of documentation supporting HMP scoring and related decisions on to OPEGA's Work Plan for 2013-2014 with the understanding that if someone else is investing the shredding of documents that information will be provided to the Committee before taking action on that issue.

**Motion:** That the Government Oversight Committee moves Healthy Maine Partnership Contracts: 2012 Adjustments to Contracts and Funding Levels on to OPEGA's 2013-2014 Work Plan. (Motion by Sen. Craven, second by Sen. Johnson, passed unanimous vote 12-0.)

**Note:** Rep. Cotta stopped by OPEGA and voted on the GOC's motions subsequent to the meeting, in accordance with the Committee's Rules.

• **Review of OPEGA's Proposed Budget for FY 14-15**

Director Ashcroft summarized for the GOC OPEGA's proposed budget for FY 14-15. She noted that in previous years OPEGA has generally been under budget in the Permanent Regular Salaries and Wages line because of vacancies being held open or turning over.

Director Ashcroft said a long term employee of OPEGA is currently in a limited period, part-time Principal Analyst position. That position was approved by the Legislative Council last year so OPEGA was able to use some unencumbered balance money and other money the Director expected to be unexpended for that year, to fund the limited period position that ends June 7, 2013. In reviewing OPEGA's budget, and because the Office now has the physical space, and office equipment for that position, she was considering the possibility of seeking approval to add a permanent part-time lower level analyst position to the staff. She believes she can fund the position using mostly money that exists in OPEGA's current budget by moving some funds out of the "All Other" lines and also downgrading the current position of Principal Analyst to a Senior Analyst. In doing that, Director Ashcroft would still need additional appropriations of approximately \$18,500 in FY 14 and \$22,000 in FY 15 to create the position. She noted that several years ago OPEGA voluntarily requested a de-appropriation of approximately \$35,000 from its budget to align the budget more closely with actual needs. The GOC recommended an additional decrease in OPEGA's budget to the Legislative Council that year of \$44,000. Those additional funds were taken from OPEGA's budget with the understanding that it would be a one-time reduction, but it instead became part of OPEGA's permanent base line budget. She would not be in the position of asking for the additional funds if it were not for the changes that had been made in prior years.

Chair Cain suggested that Director Ashcroft add to the proposed budget sheet a column that showed what she was proposing for the budget with the position added. This would be for the GOC's information and could also be forwarded to the Legislative Council so they will be able to see which lines the funds are being taken from.

Director Ashcroft will draft a letter from the GOC to the Legislative Council recommending the approval of OPEGA's budget as proposed and will prepare a revised budget sheet.

**Motion:** That the Government Oversight Committee approves OPEGA's budget and supports OPEGA's proposal for a budget initiative to add a permanent part-time Analyst position. (Motion by Sen. Johnson, second by Rep. Davis, passed unanimous vote 10-0).

- **Summary of OPEGA's Review of Quasi-Independent Agency Reports**

Director Ashcroft summarized OPEGA's Review of reports submitted by Quasi-independent State entities. She noted that of the 18 entities who described their monitoring mechanisms, OPEGA noted that five appeared to have a more robust combination of mechanisms and four appeared relatively weak in terms of what they described. The primary methods of monitoring appeared to be review and approval of budgets and budget variance reports, as well as reliance on an external audit by an independent auditor. Normally one would think an external audit would be robust, but OPEGA did find, for example in the case of the Maine Turnpike Authority, that even though they were having an external audit, the agreed upon audit procedures did not include a specific look at compliance with policy and procedures. It was more of a straight financial audit. For those entities that are relying on that mechanism, OPEGA was thinking of advising them that they may want to specify that they would like their external auditors to include a review of compliance with these policies and procedures.

Director Ashcroft said it was also OPEGA's intent to follow-up with the entities that did not report all of the required information, or do not appear to have all of the formal policies required by statute, to remind them of doing that and asking them to send the required information that was not included in the first report to OPEGA.

In response to Sen. Johnson's question regarding audits, Director Ashcroft said OPEGA will suggest that the Quasi-independent entities have their external auditors give them an assessment of whether their policies comply with what is in statute. If the entity does not have an external auditor, OPEGA would be happy to review it for them.

- **GOC Consideration of Open Recommendations From OPEGA Prior Reports On:**

- Children's Mental Health
- State Boards, Committees, Commissions and Councils
- State Administrative Staffing

Not discussed at this meeting.

## **REPORT FROM OPEGA DIRECTOR**

- **Status of Projects In Progress**

Not discussed at this meeting.

## **NEXT GOC MEETING DATE**

The next GOC meeting is scheduled for Friday, May 10, 2013 at 9:00 a.m.

Sen. Burns asked if the Committee has other alternative meeting date plans once the Legislature started having sessions on Friday and/or many other Joint Standing Committees started to meet on Friday. Chair Cain said that will begin to happen for the GOC's May 24<sup>th</sup> meeting and the Chairs will have conversations with the Presiding Officers to find out what the options are and report back to the Committee at the next meeting.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 12:23 p.m.

Ranking of Topics Being Considered for OPEGA's 2011 Work Plan

0=not interested, 1=a little interested, 2=somewhat interested, 3=very interested, 4=extremely interested

	Topic	1	2	3	4	5	6	7	8	9	10	11	12	Average Rank	Max Rank	Min Rank
16	Tax Expenditure Programs	4	3	4	3	4	4	4	2	4	2	4		3.5	4	2
10	DHHS Audit Functions	4	3	1	3	3	4	4	3	3	4	4		3.3	4	1
11	DHHS Workplace Culture and Environment	3	4	2	2	1	3	4	3	3	4	4		3.0	4	1
12	DHHS Contract Management	3	2	2	3	3	3	4	3	3	4	3		3.0	4	2
3	Pharmaceuticals (Prescription Drugs and Medicaid Drug Rebate)	3	3	1	2	2	3	4	3	2	4	4		2.8	4	1
13	Healthy Maine Partnership Contracts: 2012 Adjustments to Contracts and Funding Levels	3	4	3	2	2	3	1	3	4	4	2		2.8	4	1
2	Long-term Care: Nursing Homes	3	4	1	2	3	3	3	3	2	2	4		2.7	4	1
8	Tax Collection (income, sales, use, fuel, cigarette)	3	2	1	3	2	4	4	4	2	1	3		2.6	4	1
7	Substance Abuse Treatment Programs in Prison System	3	3	2	2	2	3	4	3	2	1	3		2.5	4	1
4	Public Health Labs	3	4	2	1	2	1	2	3	2	4	3		2.5	4	1
5	Publicly Funded Programs for Children Birth to Five Years	3	3	3	1	2	3	3	3	2	1	2		2.4	3	1
15	Maine Economic Improvement Fund	0	1	3	3	4	2	3	4	0	2	4		2.4	4	0
14	Maine Charter School Commission	2	2	3	2	1	0	1	4	4	3	2		2.2	4	0
6	Revenue Collected through the Courts	2	1	1	2	3	2	3	2	1	0	4		1.9	4	0
1	Beverage Container Recycling (Bottle Bill)	1	2	0	1	2	3	1	3	0	2	2		1.5	3	0
9	Personal Use of State Assets: Recreational Vehicles, Airplanes, Helicopters, Houses and Camps	1	1	1	3	1	4	3	0	1	0	2		1.5	4	0

# Government Oversight Committee

## Topics Under Consideration by GOC for Ranking (as of 4-12-13)

Note that there are two topics currently on the On Deck List that the GOC decided not to rank for further consideration at this time. These topics are Leased Office Space and Division of Financial and Personnel Services (Service Centers) and they do not appear on this ranking list. GOC will revisit whether or not to remove these two topics from the On Deck List at a future time.

Section A: Topics Currently On Deck			
	Topic	Possible Areas of Focus	Additional Information
1	Beverage Container Recycling (Bottle Bill)  Responsible Dept: Agriculture MRS	<ul style="list-style-type: none"> <li>• compliance with current law by initiators of deposit</li> <li>• current recycling rates for beverage containers;</li> <li>• current handling fees and bottler requirements of redemption centers;</li> <li>• continued need for current beverage container recycling laws;</li> <li>• opportunities to meet goals of beverage recycling laws via alternative models;</li> <li>• impact of potential changes to beverage container recycling laws on beverage container redemption facilities and initiators of deposit;</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed by a former GOC member in the 124<sup>th</sup> Legislature.</li> <li>• Maine’s handling fees may exceed that of most other states with bottle bills.</li> <li>• Expansion of redeemable beverages causes additional work for redemption centers despite attempts to mitigate costs via changes that allow commingling agreements.</li> <li>• There may be bottlers, particularly those from out of state, not in compliance with Maine’s law.</li> <li>• Issues with the bottle bill have been raised for many years. During the 125<sup>th</sup> session the Legislature considered two bills – one to repeal the law and one aimed at reducing fraud.</li> <li>• LD 1324 was passed and enacted as PL 2011 Chapter 429. The law changed the legislative oversight for this program to the committee on environmental and natural resources. It also established, as a civil violation, \$100 fine per container returned in excess of 48 containers that are found to be from out-of-state (attempt to reduce fraud).</li> <li>• There are at least four bills related to this topic that have been filed in the 126<sup>th</sup> Legislature. They are:                         <ul style="list-style-type: none"> <li>○ LD 124 An Act to Amend the Bottle Redemption Laws</li> <li>○ LD 291 An Act to Transfer Responsibility for the Returnable Beverage Container Laws from the Department of Agriculture, Conservation and Forestry to the Department of Environmental Protection</li> <li>○ LD 1080 An Act to Improve Efficiency in the Collection of Beverage Containers</li> <li>○ LD 1121 An Act To Promote the Production of Maine Beverages</li> </ul> </li> </ul>

## Section A: Topics Currently On Deck

	Topic	Possible Areas of Focus	Additional Information
2	<p>Long-term Care: Nursing Homes</p> <p>Responsible Dept: DHHS</p>	<ul style="list-style-type: none"> <li>Reducing costs and improving quality through possible changes to: <ul style="list-style-type: none"> <li>current payment rates and structure to incentivize reducing costs;</li> <li>inspection system to reduce inefficiencies;</li> <li>nursing services and care delivery approaches to better match them to patients' needs and wishes; and</li> <li>coordination between hospitals and nursing homes.</li> </ul> </li> <li>Quality of care in relation to cost</li> </ul>	<ul style="list-style-type: none"> <li>Proposed by former GOC member in the 124<sup>th</sup> Legislature.</li> <li>Proposed FY12 Budget for Nursing Facilities (0148) is \$71,869,096 in General Fund, \$271,468,065 in Federal Funds and \$32,403,540 in Other Special Revenue Funds.</li> <li>Medicaid expenditures are audited as part of the State Single Audit, but that work would not cover the items listed in Possible Areas of Focus.</li> <li>LD 986, Resolve, To Establish the Commission to Study Long-term Care Facilities has been filed in the 126<sup>th</sup> Legislature. Public hearing has not yet been held. The duties of the Commission in the bill are to study: <ul style="list-style-type: none"> <li>Funding for long-term care facilities;</li> <li>Staffing and regulatory requirements;</li> <li>Collaborative agreements with critical access hospitals;</li> <li>Differential reimbursement mechanisms;</li> <li>Viability of privately owned nursing facilities in rural communities; and</li> <li>Impact of nursing home closures on rural populations.</li> </ul> </li> </ul>
3	<p>Pharmaceuticals (Prescription Drugs and Medicaid Drug Rebate)</p> <p>Responsible Dept: DHHS</p>	<ul style="list-style-type: none"> <li>Effectiveness of measures taken to contain costs</li> <li>Effectiveness of internal controls in place to prevent fraud and abuse related to controlled substances.</li> </ul>	<ul style="list-style-type: none"> <li>GOC considered this topic during development of 2007-2008 work plan as other states had found savings in this area.</li> <li>At that time, DHHS had been making significant efforts to reduce costs in this area including establishing a preferred drug list</li> <li>In 2009, the GAO reported on fraudulent, improper or abusive actions related to the prescribing and dispensing of controlled substances.</li> <li>In FY12, the pharmacy claims processing system processed Medicaid and CHIP claims totaling \$243 million.</li> <li>The State Single Audit performed by the State Auditor includes a compliance audit of the Medicaid program including audit steps related to prescription drugs and drug rebates. Significant findings have been noted in the past. Both of the most recently completed State Single Audits for FY11 and FY12 included a finding that controls over the pharmacy claims processing system need improvement.</li> <li>In February 2012, DHHS began quality assurance audits of 50 paid pharmacy claims each month.</li> </ul>
4	<p>Public Health Labs</p> <p>Responsible Dept: DHHS/CDC</p>	<ul style="list-style-type: none"> <li>Possible outsourcing of some lab work</li> <li>User fees charged</li> <li>Testing being conducted by multiple State agencies using different labs.</li> <li>Awarding of contracts</li> <li>Use of federal grant funds</li> <li>Management practices, including hiring and communication</li> </ul>	<ul style="list-style-type: none"> <li>GOC considered this topic during development of its 2007-2008 work plan. Other states have found savings in this area.</li> <li>It appears there are State agencies other than DHHS that also do laboratory work, i.e. Agriculture.</li> <li>A current GOC member has recently been made aware of potential concerns related to management of CDC's Health and Environmental Testing Laboratory. These concerns include awarding of contracts without bidding, use of federal grant funds for purposes other than intended, poor hiring and communications practices and general mismanagement.</li> </ul>

## Section A: Topics Currently On Deck

	Topic	Possible Areas of Focus	Additional Information
5	<p>Publicly Funded Programs for Children Birth to Five Years</p> <p>Responsible Dept: MDOE DHHS</p>	<ul style="list-style-type: none"> <li>Strengths and weaknesses, including gaps, overlaps and coordination, in State's current programs for children birth to five years.</li> </ul>	<ul style="list-style-type: none"> <li>The GOC of the 125th Legislature voted this topic On Deck in September 2012 during its consideration of OPEGA's report on Child Development Services. The intention was that OPEGA and the next GOC would review the reported results of the children's task forces that are currently meeting on this topic and consider whether further review of this topic area to identify overlaps and gaps in services is needed.</li> <li>The 125<sup>th</sup> Legislature passed LD 568 which had called for creating a stakeholder group to conduct an assessment of this nature including, but not limited to, Child Development Services, public prekindergarten programs and six programs administered by DHHS Bureau of Child and Family Services. That bill was vetoed by the Governor, and consequently, the stakeholder group was not created.</li> <li>In testimony before the GOC, MDOE described two groups currently doing work on Birth to 5 learning that the Department felt would cover the area of focus given for this topic. Those groups are the State Agency Interdepartmental Early Learning Team (SAEIL) and the Maine Children's Growth Council (MCGC) Sustainability Committee.</li> <li>OPEGA is currently monitoring the status and focus of these efforts for the GOC and expects to obtain any reports or other results when they are ready.</li> <li>The Work Plan for SAEIL is now available on the State's website at <a href="http://www.maine.gov/earlylearning/saiel/saiel-workplan-revised-timeline-31113.pdf">http://www.maine.gov/earlylearning/saiel/saiel-workplan-revised-timeline-31113.pdf</a>. The Work Plan has deadlines on several tasks set at end of June 2013, end of Dec 2013 and end of June 2014. It appears that one of SAEIL's tasks is to review the results of the MCGC Sustainability Committee. The deadline associated with that task is end of June 2013.</li> </ul>
6	<p>Revenue Collected through the Courts</p> <p>Responsible Dept: JUD</p>	<ul style="list-style-type: none"> <li>Internal controls over collection, deposit, accounting and safeguarding of revenue</li> <li>Effectiveness and timeliness of collections efforts, i.e. are all funds due the State being collected timely</li> <li>Factors impacting the revenue stream, particularly those related to the decline in revenues from fines, forfeitures and penalties</li> </ul>	<ul style="list-style-type: none"> <li>OPEGA suggested this topic and it was placed on the 2007-2008 work plan because it had not been audited for some time and had a potential fiscal impact. OPEGA was not able to get to all planned reviews in that biennium and, therefore, the topic was moved to the On Deck list.</li> <li>According to the Revenue Forecasting Committee's December 2012 Report, actual FY12 revenues through the Judiciary for fines, forfeitures and penalties were \$25,120,959 and are forecast to be \$24,452,139 in FY13; a 2.7% decrease. The FY12 revenues were also a decrease from FY10 when actual revenues were \$32,787,060. Revenues from fines are primarily from judicial collections.</li> <li>Previously the Forecasting Committee has noted that major factors affecting this revenue source are the number of violators being prosecuted, the ability of violators to pay fines and the collection effort implemented by the Judicial Branch.</li> </ul>

**Section A: Topics Currently On Deck**

	Topic	Possible Areas of Focus	Additional Information
7	<p>Substance Abuse Treatment Programs in Prison System (Correctional Recovery Academy and Intensive Outpatient Program)</p> <p>Responsible Dept: DOC OSA</p>	<ul style="list-style-type: none"> <li>effectiveness and/or cost-effectiveness of programs in rehabilitating participants and reducing recidivism</li> </ul>	<ul style="list-style-type: none"> <li>This topic was added to the On Deck list as the result of a citizen's 2009 request for a review of these programs.</li> <li>The Correctional Recovery Academy (CRA) program is a 9 month residential intensive substance abuse treatment program that has the goal of reducing prisoner's dependency on drugs and alcohol.</li> <li>The Intensive Outpatient Program (IOP) is a 16 week outpatient group therapy program for the treatment of drug and alcohol abuse.</li> <li>In June 2006, the Muskie School of Public Service performed an evaluation of the Correctional Recovery Academy and a companion program. The evaluation resulted in some recommendations, including that DOC and OSA may want to consider conducting an evaluation to assess actual program effectiveness.</li> <li>These programs have been a collaboration of the Department of Corrections (MDOC) and DHHS' Office of Substance Abuse (OSA) and in the past MDOC and OSA contracted for these services directly with Spectrum Health Systems, Inc. The contract that expired on 6/30/2011 was for \$698,820. MDOC funding is a combination of federal (\$121,000) and General Fund (\$469,668) dollars. OSA's portion is from Other Special Revenue funds (\$108,152).</li> <li>As of July 2012, MDOC entered into a contract with Correctional Care Solutions to provide both medical and behavioral health services to the adult and juvenile populations. CCS assessed Spectrum Health Systems program and offered Spectrum a sub-contract to continue providing these programs. MDOC reports an advantage in contracting with one vendor who they are able to demand accountability from and who in turn is able to implement consistent evidence-based practice. The new contract includes provisions requiring the vendor to track outcome data to ensure that programs are efficient and effective with regard to our specific population.</li> <li>OPEGA requested further information from MDOC on what outcome or other performance measures are being tracked with regard to the two substance abuse treatment programs included in this topic. MDOC reports that they will be tracking recidivism rates as a performance measure for these programs but that it is too soon to look at that measure as relates to the performance of programs under the current contractor. MDOC also reports that a challenge in determining recidivism rates is getting data from the jail system that would allow identification of individuals released from the State correctional system that end up back in the jail system because of crimes related to substance abuse.</li> <li>According to MDOC, there are three funding sources related to these programs. A federal block grant provides some matching funds and there are some funds from the Office of Substance Abuse for the juvenile component of the program. The remaining funds are associated with the larger CCS medical contract, which may not delineate the costs of each program/service. That contract is mostly funded with General Fund.</li> </ul>



## Section A: Topics Currently On Deck

	Topic	Possible Areas of Focus	Additional Information
8	<p>Tax Collection (income, sales, use, fuel, cigarette)</p> <p>Responsible Dept: MRS</p>	<ul style="list-style-type: none"> <li>• Timely collection and deposit of taxes (including efforts to collect overdue taxes)</li> <li>• Effective efforts to assure credits, etc. taken to reduce taxes owed are valid</li> </ul>	<ul style="list-style-type: none"> <li>• Other states have found savings in this area.</li> <li>• The State has had several initiatives over the past ten years aimed at collecting overdue taxes and enhancing compliance with the Use Tax. These included a Tax Amnesty program in 2003, a Use Tax Compliance Program in 2006 and Tax Receivable Reduction initiatives in both 2009 and 2010. These initiatives brought in about \$70.7 million in unpaid taxes while waiving about \$44 million in interest, penalties, etc.</li> <li>• Maine Revenue Services was also assigned two initiatives for FY13 to collect unpaid taxes and increase compliance with Use Tax. The initiatives are budgeted to net about \$6.66 million in unpaid taxes.</li> <li>• According to MRS, it administers over 40 state tax regimes. Statute specifies the particular filing and payment requirements for each. MRS has a Compliance Division that has the objective of collecting all delinquent tax receivables. The Division focuses primarily, however, on individual income, corporate, sales and use and service provider taxes. The Division has contracts with independent collection contractors throughout the United States to assist with that effort.</li> <li>• MRS reports using several approaches to protect against underreporting and uncover non-filing. MRS employs over 50 field auditors who visit places of business across the US. MRS also has desk auditors to review for returns for any corrective assessments that may be necessary. MRS' Tax Compliance Unit is solely focused on discovery of non-filers and uses a computer data warehouse system, similar to that used in at least 20 other states, to uncover unfiled returns and unpaid taxes. MRS did not specify which particular tax types the auditors and computer system are focused on.</li> <li>• MRS has a variety of collection tools and procedures that increase in severity as the collection process progresses. MRS has a small Criminal Investigations Unit to investigate the most egregious offenders and refer cases to the Attorney General's Office for prosecution. MRS did not specify how often the more severe collection tools are utilized.</li> <li>• MRS tracks Tax Receivables and is required each year to recommend receivables deemed uncollectible for charge-off. According to data provided by MRS, total tax receivables as of the end of June 2012 and in March 2012 MRS recommended receivables charge-offs totaling about \$6.7 million. MRS cannot estimate amounts that may be due from non-filers or under reported taxes due. Additional detail MRS provided on taxes receivables and tax collections from various on-going compliance and audit efforts is attached.</li> <li>• Additional research and/or interviews with agency staff will be required for OPEGA to obtain a sufficient understanding of tax types and MRS efforts to assess risk or further scope this topic.</li> </ul>

**Section A: Topics Currently On Deck**

<p><b>9</b></p>	<p>Personal Use of State Assets: recreational vehicles (ATVs, boats, snowmobiles, etc.); airplanes and helicopters; houses and camps</p> <p>Responsible Dept: Various</p>	<ul style="list-style-type: none"> <li>• Policies in place regarding personal use of assets</li> <li>• Compliance with policies and how compliance is monitored</li> <li>• Appropriateness of current or past personal use of significant State assets</li> </ul>	<ul style="list-style-type: none"> <li>• This topic is based on a request directed to OPEGA through a legislator by an individual who requested confidentiality. OPEGA conducted minor research in preparation for putting this topic before the GOC for consideration in 2008. Research included collecting inventories of these assets from Departments that had them as well as policies governing their use.</li> <li>• At that time, six departments had assets of this type with the substantial majority being in Departments of Marine Resources, Inland Fisheries &amp; Wildlife and Conservation. Most departments reported that no personal use was allowed, but did not provide written policies that expressly communicate this. IF&amp;W reported that assets (other than airplanes) were available for limited personal use and provided written policies to that affect.</li> <li>• OPEGA recently requested updated information from the six Departments that had assets of interest in 2008. All Departments responded and provided current information. Of note is that some Departments may have modified their inventory of state assets since 2008 and may no longer have pertinent assets or may have different types of assets than before. OPEGA did not request updated inventories. Furthermore, most Departments provided reference to policies pertinent to state-owned vehicles, but state-owned vehicles were not assets of interest in the original request.</li> <li>• Most of the Departments provided reference to multiple policies or policy statements contained in various documents. Most maintain at least one general policy, often pertaining to “equipment.” Other policies or policy statements provided were specific to certain types of assets. One Department did not have any policy relevant to the assets of interest. This department also had a relatively small inventory of these assets in 2008.</li> <li>• Whether the policies allowed personal use of the assets of interest varied by Department and type of assets. Some policies did allow for personal use of certain assets under certain circumstances with prior approval by designated individuals. This was typically the case for policies on “equipment”. Conservation also has a policy on camps and houses which allows for use of housing in the off season in exchange for “security, surveillance and maintenance.” In other cases, personal use of certain specific assets was clearly prohibited like assets such as ATVs in IF&amp;W and airplanes in Public Safety.</li> <li>• OPEGA observes that additional specificity and coordination between the multiple policies in most of the Departments would improve understanding of which of the assets of interest are particularly governed by which policy.</li> <li>• No Department provided a specific plan in regard to staff education about policies though most mentioned that policies are reviewed during the respective Department’s new employee orientations. Most Departments also mentioned some sort of review mechanism when new policies are developed or when there are concerns / questions that arise.</li> </ul>
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**Section B: Topics Suggested by Current GOC Members or from Recent Legislator Requests**

10	DHHS Audit Functions	<ul style="list-style-type: none"> <li>• Focus of audit efforts</li> <li>• Resources and Capabilities</li> <li>• Results of audit efforts</li> <li>• Degree to which DHHS Audit functions have sufficient resources and capabilities to be effective in identifying fraud, waste and abuse</li> </ul>	<ul style="list-style-type: none"> <li>• This topic was raised by a GOC member at the 2-22-13 GOC meeting.</li> <li>• OPEGA has previously identified issues with weaknesses in DHHS' Program Integrity Unit's capabilities to use data analytics and exception reporting from the MaineCare claims system to identify potential cases of fraud, waste and abuse. These issues were reported in OPEGA's 2009 report on Durable Medical Equipment and OPEGA is still tracking the related recommendation as acceptable action has not yet been completed.</li> <li>• Additional information can be found in the separate summary of OPEGA research conducted since the 2-22-13 GOC meeting where this topic was raised.</li> </ul>
11	DHHS Workplace Culture and Environment	<ul style="list-style-type: none"> <li>• Whether workplace culture and environment is conducive to recruiting, retaining and engaging capable, knowledgeable and motivated employees toward best results for DHHS programs and services.</li> <li>• Management behavior and treatment of employees in the workplace</li> </ul>	<ul style="list-style-type: none"> <li>• This topic was raised by a GOC member at the 2-22-13 GOC meeting based on concerns this member had been hearing from former and current DHHS employees.</li> <li>• A separate current GOC member has also recently received comments and complaints from several other former and current employees of Maine CDC regarding inappropriate behavior and mistreatment on the part of certain managers in the wake of the claims of retaliation and harassment contained in a Whistleblower case recently filed with Maine Human Rights Commission by a CDC Manager.</li> </ul>
12	DHHS Contract Management	<ul style="list-style-type: none"> <li>• Functions, structure and approach to contract management</li> </ul>	<ul style="list-style-type: none"> <li>• This topic was raised by a GOC member at the 2-22-13 GOC meeting. This member was concerned that the contract management structure DHHS had established may not have sufficient controls to mitigate risk of procurement fraud and abuse in establishing and administering contracts.</li> </ul>
13	Healthy Maine Partnership Contracts: 2012 Adjustments to Contracts and Funding Levels	<ul style="list-style-type: none"> <li>• Process used to score HMPs</li> <li>• Process and decisions for selecting lead HMP agencies and determining funding levels</li> <li>• Maintenance of documentation supporting HMP scoring and related decisions</li> </ul>	<ul style="list-style-type: none"> <li>• This topic is from a formal request for an OPEGA review submitted by several legislators, including a current GOC member. The GOC considered this request at its April 12, 2013 meeting and decided to include in on the list of topics to be ranked for further consideration.</li> <li>• In the summer of 2012, the legislators requesting this review sought explanations for DHHS' decisions to significantly reduce funding for their local HMP in Lewiston/Auburn while significantly increasing funding, and giving lead agency status, to a smaller HMP in Rumford. These legislators did not feel they received adequate explanation or understanding of the scoring tool used. These legislators became concerned again recently given the claims of a DHHS manager in a case filed with the Maine Human Rights Commission. One of the claims regarded the potential shredding of documents associated with the HMP scoring.</li> <li>• The Maine Human Rights Committee is currently reviewing the claim of retaliation and harassment on the Whistleblower Complaint and the Attorney General's Office is currently reviewing whether there is a basis for an AG investigation into the shredding of documents. The possible areas of focus for an OPEGA review of this topic are not duplicative of these other two efforts.</li> </ul>

**Section B: Topics Suggested by Current GOC Members or from Recent Legislator Requests**

<p><b>14</b></p>	<p>Maine Charter School Commission</p>	<ul style="list-style-type: none"> <li>• Processes, practices and standards the MCSC has used in soliciting, reviewing and making approval decisions on public charter school applications</li> <li>• MCSC's role in providing advice and assistants to applicants</li> <li>• Factors that impact MCSC's ability to effectively and efficiently fulfill its statutorily assigned roles and responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• The topic is the result of a formal request for an OPEGA review from the Chairs of the Education Committee. The GOC first considered this request on 4-2-13 and decided at its 4-12-13 meeting to include it on the list of topics for further consideration.</li> <li>• Additional information from OPEGA research related to this topic is included in the attached summary. Also attached is the checklist for considering potential topics that the GOC requested OPEGA prepare and which was reviewed by the Committee at its 4-12-13 meeting.</li> </ul>
<p><b>15</b></p>	<p>Maine Economic Improvement Fund</p> <p>Responsible Dept: University of Maine System</p>	<ul style="list-style-type: none"> <li>• Degree to which legislative intent for the program is being met</li> <li>• Decision making process for awarding funds</li> <li>• List/description of funded projects</li> <li>• Alignment of funded projects with the targeted technologies/areas defined in statute</li> <li>• Geographic distribution of grant awards</li> <li>• Costs of administering the fund</li> <li>• Outcomes of funded projects</li> </ul>	<ul style="list-style-type: none"> <li>• This topic came from a formal request for an OPEGA review submitted by a current GOC member.</li> <li>• Maine Economic Improvement Fund (MEIF) was established in Statute in 1997 - Title 10 MRSA Ch. 107-C. The fund was budgeted for \$14.7 million (General Fund) in the FY12/13 budget MEIF is administered by the University of Maine System. Funds must be used in statutorily-defined Targeted Areas - biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and agriculture, information technology and precision manufacturing technology.</li> <li>• Concerns have been raised in the past about the funds being used almost exclusively by the University of Maine at Orono and the University of Southern Maine. During the 125<sup>th</sup> Legislature, MEIF statute was amended by P.L. 2011, ch. 698 which established minimum percentages of annual MEIF disbursements for the Universities of Maine at Augusta, Farmington, Fort Kent, Machias and Presque Isle to support research and development. The minimum disbursements are 2.5% beginning 7/1/13 and 3% beginning 7/1/15.</li> <li>• The University is also required to include, in its future annual reports on the MEIF due January 1<sup>st</sup> each year, a summary of the R &amp; D projects at the smaller universities that have been funded as a result of MEIF disbursements, as well as any external funding sources that have been leveraged as a result of these awards.</li> <li>• The law also established a Task Force to review the MEIF and recommend any changes necessary to enhance investment in targeted research and development and product innovation, as well as to provide basic investment necessary to obtain matching funds and competitive grants from private and federal sources. A Report from the Task Force to the Joint Standing Committee on Labor, Commerce, Research and Economic Development is expected soon.</li> <li>• Additional information can be found in the separate summary of OPEGA research conducted since a review of the topic was requested. Summary attached.</li> </ul>

**Section B: Topics Suggested by Current GOC Members or From Recent Legislator Requests**

16	Tax Expenditure Programs	<ul style="list-style-type: none"> <li>• Effectiveness and efficiency of programs</li> <li>• Degree to which they are meeting legislative intent/purpose</li> <li>• Developing a framework for on-going legislative review and evaluation of tax expenditure programs</li> <li>• Analysis/categorization of current tax expenditure programs to determine those that have like characteristics for purposes of subsequent evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• This topic was raised by a GOC member at the 2-22-13 GOC meeting, particularly in the context of tax expenditure programs intended as incentives for business/economic development.</li> <li>• There are two programs associated with a budget initiative in the Governor's proposed budget for FY14/15. These are the Business Equipment Tax Reimbursement (BETR) and the Business Equipment Tax Exemption (BETE).</li> <li>• The GOC of the 125<sup>th</sup> Legislature had also expressed interest in the BETR and BETE programs as well the Tax Increment Financing program. OPEGA conducted initial research on the programs to determine what level of effort would be needed to answer the questions that had been posed. OPEGA determined and reported to the GOC that answering the questions would require significant time and resources due to limitations on readily available data and the GOC decided not to pursue it further.</li> <li>• The current GOC, at the 2-22-13 meeting, requested that OPEGA conduct some additional research on these programs and the related budget initiative. A summary of OPEGA's research on BETR and BETE is attached.</li> <li>• At the GOC's 4-12-13 meeting, the Committee received and considered a request from several legislators for OPEGA assistance in analyzing/categorizing current tax expenditure programs and establishing a framework for on-going legislative review and evaluation of these programs. The GOC decided to expand this topic to include the scope of that request.</li> <li>• LD 1255 is currently in process in the Taxation Committee and is scheduled for public hearing on April 29<sup>th</sup>. That bill seeks an independent consultant, contracted by the Bureau of Revenue Services, to perform work very similar to what has been requested of OPEGA. OPEGA understands there may also be other bills related to this topic area forthcoming this legislative session.</li> <li>• A representative from the PEW Center for the States has recently visited with the Taxation Committee, other legislators interested in this topic, and OPEGA to discuss research PEW has done related to evaluation of tax expenditure programs. It appears that PEW could be a valuable resource in establishing the framework for legislative review of these programs – regardless of what avenue is pursued to accomplish that.</li> </ul>
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