



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

MEMBERS:

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

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

February 18, 2011  
Accepted June 24, 2011

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:30 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Katz, Sen. Trahan, and Sen. McCormick  
Joining the meeting in progress: Sen. Craven  
Absent: Sen. Bliss and Sen. Sullivan

Representatives: Rep. Burns, Rep. Pilon, Rep. Fossel, Rep. Fitzpatrick, and Rep. Lovejoy  
Joining the meeting in progress: Rep. Boland

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

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**OPEGA FINAL REPORT**

• **Maine Turnpike Authority**

- **Committee Work Session**

Chair Katz explained at today's meeting the GOC would be discussing how the Committee would proceed on OPEGA's Report on the Maine Turnpike Authority (MTA). He asked Director Ashcroft to walk the Committee through the Report Recommendations and MTA's responses.

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### **1. Expectations for Cash Transfers to MaineDOT Should be Clarified**

The GOC agreed with OPEGA's recommendation that legislative intent for transfer of surplus funds from MTA to MaineDOT should be clarified and that language in the statute should be changed as necessary. Committee members also agreed that the Transportation Committee was the appropriate legislative body to address this policy decision. It was noted that, even though cash transfers had not occurred since 1997, there was evidence that MTA had been contributing dollars to joint projects with the MaineDOT and that MTA had expressed a preference for contributing on a project by project basis rather than just transferring money to MaineDOT.

The GOC will suggest to the Transportation Committee that they review MTA's statute in regard to the issue of operating surplus transfers to the MaineDOT. The members discussed whether that should be in the form of the GOC introducing a bill or just via letter to the Transportation Committee. No decision was reached.

Chair Katz asked if there was objection to going to Recommendation 6. Hearing none the GOC moved to Recommendation 6.

### **6. MTA Should Formalize Criteria and Processes for Sponsorships and Donations**

Chair Katz wanted to address the issue of gift cards and summarized what has been learned and where the GOC is on that issue. Over a period of 3 years MTA purchased, with public money, over \$157,000 in gift cards or gift certificates, mostly purchased by MTA's Executive Director. Almost all of the gift cards were to luxury hotel chains, the Marriott Corporation, Fairmont Hotels, which include places like Le Chateau Frontenac in Quebec City, a chain called Leading Hotels, and the Relais & Chateau. These gift cards were bought by MTA and apparently were all given out, but they cannot tell where they went. MTA thinks they may have gone to certain organizations, which some did, but overall they are not sure. The GOC was told they have no records and no documentation. Despite the fact that this organization has an Executive Director, a Deputy Executive Director, a Chief Operating Officer, a Chief Financial Officer, a Controller and a Purchasing Manager, they say they have no records of where \$157,000 went. Throughout the OPEGA review MTA has said they are more like a business than a government agency, yet it is hard to imagine that any business in Maine would fail to keep records for tax reasons, and for internal financial control reasons, of where \$157,000 went. The Turnpike Authority is not a business, it is an agency of government, and entrusted with public funds. The fact that their money comes from tolls rather than taxes makes no difference, it is public money.

Chair Katz said he felt the Government Oversight Committee had an obligation to get answers to the gift card questions that so far MTA has not been able or willing to answer. He reminded members that the GOC is a little different than other Committees in the Legislature in one major respect, the GOC has subpoena powers. Short of sending subpoenas, he proposed the GOC direct OPEGA to send registered letters to the Turnpike Authority and its senior financial staff, the vendors who had sold the gift certificates, the Marriott Corporation, Fairmont Hotels, Leading Hotels and Relais & Chateau, and the organizations MTA thinks some of the gift cards might have gone to. Through these letters the GOC would request they submit any records associated with the gift certificate purchases, donations and redemptions to OPEGA by March 4, 2011. He said again that they were talking about public money, \$157,000 in gift cards with no information of how they were used, and asked for the consent of the Committee to send the letters he described to see what information comes back. Chair Katz asked if that was acceptable to the GOC. The members agreed and directed OPEGA to send the letters today.

Chair Katz asked Director Ashcroft to proceed with her summary of Recommendation 6 and MTA's response. The Director noted that MTA planned to implement OPEGA's recommendation and establish a formal policy and process for determining what donations and sponsorships MTA would contribute. MTA also planned to develop a budget line item specific to these contributions and establish an accounting code to track these expenditures.

GOC members agreed that the policy MTA developed should be reviewed by the GOC and Transportation Committee before being finalized to make sure it is in line with the Legislature's intent or expectations. The Committee also discussed how a penalty would be established that would apply if MTA violated its own policy.

Some members felt MTA's statute should be changed to make it clear what the Legislature's expectations about sponsorships and donations are and establish penalties. Members observed that such policy or guidelines should probably apply to all quasi-state agencies – not just MTA. Discussion ensued about what level of donation activity might be going on in other quasi-state agencies and whether the GOC should introduce legislation that would apply more broadly to all quasi-state agencies on this policy matter.

Following discussion, it was agreed that:

- The GOC would request that MTA draft a policy for guidance on sponsorships and donations, etc. and will bring that policy back for GOC review by July 1, 2011, MTA will then proceed with getting the policy implemented.
- OPEGA will research what other quasi-state agencies have for policies, practices and activity regarding sponsorships and donations.
- The GOC will suggest that the Transportation Committee review MTA's policy and decide if it is appropriate to take elements of that policy and incorporate them into MTA's statute. Also to decide whether there should be any statutory penalties associated with violating the policy.

Chair Katz referred the GOC back to Recommendation 2.

## **2. MTA's Relationship With its Contracted Engineering Firm Needs to be Redefined**

Director Ashcroft noted that on several occasions since the Report had been presented, MTA has made statements about OPEGA's endorsement of MTA's action plan. The implication has been that OPEGA agreed that if MTA took those actions, that would be sufficient to address the issues in the Report. The Director wanted to clarify that what OPEGA said is the actions MTA has put forth, in time frame and scope, began to address the issues. In the case of the concern with HNTB, she thinks MTA is taking it seriously and is setting themselves up to redefine that relationship, but the actions they will take as outlined in their response does not get them all the way there. They plan to get in-house expertise so they can take over some duties done by HNTB. MTA is also starting to go out to bid for some of the construction inspection services that HNTB used to be relied on to do. This is only the first step. Director Ashcroft said what they then need to do is take advantage of the framework they are setting up and continue to move down the path of competitively bidding the engineering services. She wanted to make it clear that she liked what MTA was doing, they are taking it seriously, but does not want it construed that it fully addresses on its own, the issue identified in the Report.

The GOC discussed how to monitor whether the MTA continued to make sufficient progress on this issue. Director Ashcroft thought that would come about as part of OPEGA's normal follow-up process on the review. MTA would be reporting back to the GOC on the progress. In addition, OPEGA would ask MTA about the actions that have been taken and what next steps are planned. Once MTA gets to the point of competitively bidding most of the work, OPEGA could also go back to see if splitting up the relationship between MTA and HNTB had been effective in the way it was intended. If not, OPEGA would report back to the GOC that there is still some risk.

The Director said OPEGA's review had not specifically tested to see if that happened in the past. Going forward, if the GOC had continued concerns about it, OPEGA could look at the justification for changes to the intended capital plans over a period of time as the slate of projects MTA tries to do are driven primarily by what the consulting engineer thinks needs to be done. Other than that, the most effective test would be for MTA to hire a consulting engineer other than HNTB but with similar expertise, to do an independent inspection of the Turnpike infrastructure and see whether the projects that HNTB has been saying need to be done, actually need to be done. That is not going to be determined by someone like Runyon Kersteen Ouellette, or even OPEGA. It needs somebody with expertise that can examine the structures on the Turnpike.

Rep. Fossel thought it would be worth querying other quasi government agencies who engage in sole source contracting because it may be endemic in other agencies. As the GOC goes through the information for MTA, they should ask themselves if it applies to other agencies. This might be another area where the GOC should take action to get some broader policies set that apply to all quasi-state agencies.

### **3. MTA Should Improve Contract Management for Services**

The GOC discussed getting a report back from MTA on the action items associated with this issue. Rep. Pilon said because of the dollar amount involved the GOC should be assured that contracts were done in a more professional manner and that the Committee have a timeline, perhaps six months, for a report back that the procedures have been fulfilled, and then again at 12 months from now, that the procedures are still in place.

Director Ashcroft explained that OPEGA typically plays a role in getting that assurance for the GOC by following up on recommendations. OPEGA generally does not just ask if the agency has completed the action they committed to, but asks for written evidence that it has occurred. Then wherever OPEGA sees insufficient resolution or the GOC is particularly concerned, the GOC can have OPEGA do more work. In the last legislative session, however, the GOC had also started getting report backs directly from agencies. She gave the example of the Emergency Communications in Kennebec County Report. The GOC required the Commissioner of Public Safety to report back at 3 months and 6 months. There was also a continuing report back on that kind of schedule until all of the action items had been taken care of. A standardized report back process similar to that might work best in this scenario where there are a lot of issues MTA will be working on that are coming due at different points. OPEGA is always available if the Committee wants them to verify or look more closely at what the agency is reporting back.

Sen. Craven asked why the outside businesses working with MTA did not request a contract. Director Ashcroft explained that some of these were sole source agreements with organizations that MTA had long term, long standing relationships with and the vendors may have seen formal contracts as unnecessary.

### **4. Controls Over Sole Sourcing Should be Strengthened**

Sen. Craven and Chair Katz questioned what the expectations were regarding competitive bidding or sole sourcing for MTA and state agencies in general.

Director Ashcroft said there was a statute requiring State agencies to use a competitive process unless one of three specific criteria is met. When an agency does do a sole source agreement, they are required to fill out a form documenting the justification of the situation meets the criteria allowing sole source procurement. The State's sole sourcing framework has recently been strengthened based on recommendations OPEGA made from its Review of State Contracting for Professional Services.

That statute does not apply to quasi independent agencies and there is nothing that specifically sets expectations in MTA's statute. It is a policy matter for the Legislature of what is expected of MTA. OPEGA recommended that MTA at least make whatever it is they are doing transparent by putting a formal policy in place, specifying what criteria they use, and documenting their justifications the way the State agencies are required to do.

Rep. Fossel thought it would be worth querying other quasi government agencies who engage in sole source contracting because it may be endemic in other agencies. As the GOC goes through the information for MTA, they should ask themselves if it applies to other agencies. This might be another area where the GOC should take action to get some broader policies set that apply to all quasi-state agencies.

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

The Committee discussed OPEGA's observation that the Legislature was currently not approving all of MTA's operating expenses, including travel expenses, as it seemed was called for under current statute. This is because

significant portion of typical operating expenses were being paid for from the Reserve Maintenance Fund budget which MTA gives the Legislature some information on but does not submit for approval. It was noted that MTA seemed to be giving two explanations for breaking expenses out this way. 1) MTA is doing it this way in part because Bond counsel is insisting on it in order to keep MTA's good bond rating; and 2) even if Bond counsel isn't insisting on it, MTA is nervous that the Legislature is going to make cuts and they don't want to submit that part of the budget for legislative approval.

The GOC decided it would like an opportunity to question MTA's Bond counsel to understand their perspective on this. Director Ashcroft was asked to arrange for Bond counsel to attend a future GOC meeting.

Director Ashcroft reviewed MTA's planned actions in response to this recommendation which includes three pieces.

1. MTA is going to reformat the budget and expense information provided to the Legislature to break down the expenses in the Reserve Maintenance Budget into the same expense categories shown currently for the Revenue Budget. It will be clear what the total amount of expenses for each expense category is, at least the Legislature can see the whole expense picture and ask informed questions.
2. MTA is going to review the expenses currently being paid for in the Reserve Maintenance Budget and move anything that should be more appropriately in the Revenue Budget into that Budget which the Legislature approves.
3. Have either the external auditors or an internal audit program regularly audit to assure expenses in the Reserve Maintenance Budget meet the criteria for what should be paid from that Fund.

GOC members also wanted an Attorney General's opinion on whether MTA was allowed to hire outside lobbyists. Director Ashcroft was asked to contact the AG's Office to get that opinion.

The GOC also asked MTA who was receiving free E-Z Pages. Executive Director Violette said free E-Z passes were given to the Governor, the 7 members of the MTA Board, MTA employees for the purpose of getting to and from work, and a small number of State Police has E-Z Passes. He noted the passes were good for in State travel only. Contractors doing work for MTA are also allowed a limited E-Z Pass to get on and off the Turnpike.

The Committee asked for the total number of E-Z Passes given to employees. Executive Director Violette will get that information for the GOC.

#### **7. MTA Should Clarify and Ensure Adherence to Approval and Documentation Requirements for Expenses, in Particular Travel and Meal Expenses**

GOC members discussed MTA's planned actions to update and clarify MTA's written policy and procedures regarding approvals, documentation and appropriate expenses by November 1, 2011.

Sen. McCormick said he does not believe they should wait until November to implement this policy. If MTA is serious about addressing these issues, there could be an interim directive. By April 1<sup>st</sup> if anyone expected reimbursement they would have to provide receipts or documentation, and if it exceeds a certain amount, would have to get approval from somebody. Director Ashcroft believes MTA has begun implementing the process. They provided OPEGA with a directive sent to all supervisors, and are in the process of bringing everyone up to date of what the policy is and what it means.

Chair Burns asked who would have oversight of the MTA Board or Executive Director expenses under the new policies. Director Ashcroft did not know what MTA would include in the policy. Currently there is nothing to specify that. It would seem the Board would oversee the Executive Director and vice-versa. Rep. Fossel thought one solution might be to send the Board or Executive Director's expenses through the State system. He

wondered how the other quasi government agencies handle this. Sen. Trahan said this is another area he suggested a statutory change to make the expectations clear.

GOC members also discussed whether changes to the size make up or length of terms for the MTA Board could be part of a solution for addressing the issues OPEGA had raised. Ideas included:

- increasing the number of Board members;
- making the State Treasurer an ex-officio member of the Board;
- reducing the terms of Board members from 7 years to 4; and
- clarifying in statute the conditions under which a Board member could be suspended or expelled.

Following the summary and questions of the recommendations and agency responses, the Committee discussed the next steps they would like to take.

Sen. Craven asked Director Ashcroft if she had concerns about any area that is not being sufficiently addressed by MTA. The Director responded that, based on detailed discussions she had with the managers at MTA, she felt that what MTA is taking for actions right now are reasonable and appropriate at this point in time.

Following Committee discussion it was decided that the GOC would not be taking any final action on the MTA Report at this meeting. The next scheduled meeting to discuss MTA will be March 11, 2011 and MTA was asked to make their bond counsel available for that meeting. Director Ashcroft will also draft a letter to the Transportation Committee with the suggestions for policy matters that Committee should consider and will send it to the entire GOC for their review before the Chairs sign it. OPEGA will also send out letters today from the GOC Chairs requesting information on the gift certificates and cards.

## **RECESS**

The Government Oversight Committee recessed at 11:50 a.m. on the motion of Chair Katz.

## **RECONVENED**

Chair Burns reconvened the meeting at 1:10 p.m.

Sen. Trahan reported that he met with Linda Pistner, Chief Deputy AG during the break. It was her understanding that the GOC would ask her formally to give an opinion on the issues of allowability of hiring outside lobbyists and making donations. He asked if the Committee agreed to ask the AG's Office for a formal response. The GOC members agreed.

## **UNFINISHED BUSINESS**

- **Discussion on Selecting Next Projects for OPEGA Work Plan** (On Deck List and New Topics for Consideration)

The Director reminded the GOC that at today's meeting their task is to decide what they want OPEGA to be working on next for the Work Plan. During that process they may identify topics they don't want to lose and they can vote to put them on the "On Deck" List. A number of topics the Committee was considering at this meeting were placed on the "On Deck" list by prior GOC's so they might also want to vote topics off the list if they are no longer relevant or of interest.

Director Ashcroft referred the GOC to the information in their notebooks regarding the topics to be considered. The Committee's questions and comments regarding some topics on the List follow.

**Governor's Training Initiative**

Sen. Craven noted that this has been taken out of the Governor's proposed budget.

**Cooperative Agreements**

Rep. Fossel asked what the size of this study would be. Director Ashcroft said it would likely be a 1,200-1,500 hundred hour review. Sen. McCormick asked if it would include looking at whether the Muskie Institute charged more for a study than what could have been gotten competitively somewhere else. The Director said that could possibly be within the scope of the review.

**BETR & BETE Economic Development Programs**

Committee members discussed whether the Taxation Committee had recently reviewed the BETR and BETE programs, particularly the issue of whether significant dollars are flowing to out-of-state corporations. Rep. Pilon and Senator Trahan said the programs had been discussed in the Taxation Committee and the Analyst should have all that information from the last session. They suggested Director Ashcroft request it from the Analyst.

**BETR and TIF (Economic Development Program) Overlap**

Rep. Lovejoy thought this topic and the one above could be combined.

**Child Development Services (CDS)**

The GOC discussed the financial issues that have continued to surround this program and make it a topic of discussion for the AFA and Education Committees each year.

Sen. Katz reported the Appropriations and Financial Affairs (AFA) Committee were on this Program a couple of weeks ago. The services CDS provides are critical services to children with developmental disabilities, but the financial management of the Program is a mess. CDS is consistently running deficits and appears to have very few adequate financial controls in place.

Sen. Craven commented on the upset that had occurred last year when a change in MaineCare rules resulted in less of the CDS services being covered by MaineCare and thus the program needed more General Funds. She also worries about duplication of services and potential for conflict of interest because CDS provides services itself but also contracts with private nonprofit organizations.

Rep. Lovejoy, who also sits on the Education Committee, confirmed that CDS is a topic that comes up every year and the financial issues are there despite CDS having consolidated sites from 16 to 9 to achieve savings. Sen. Craven said part of the problem is that those savings were not fully achieved.

**Consolidation of Prison Facilities**

Sen. Trahan, Rep. Boland and Rep. Fossel mentioned concerns they had heard that the Correction's consolidation plan was shifting the costs of housing prisoners from the State to the counties and municipalities. Some counties built new county jails anticipating receiving money from the State that is not coming in as planned so therefore is costing taxpayers in those districts a lot of money. Sen. McCormick said it was not the intent when the legislation was passed, to place more of a burden on local taxpayers. He would want to know if it did not work out as intended.

Chair Burns said there is at least one bill coming to the Criminal Justice and Public Safety (CJPS) Committee to either modify or undo the consolidation plan and thinks there will be ample opportunity to weigh in on the topic. Perhaps an OPEGA review of the Cost Per Prisoner would be able to provide information to that effort.

**Cultural Agencies**

Several members did not see this topic as high on the priority list as there are relatively small amounts of money in each agency and have already had reductions in past years. Rep. Fossel noted a couple of them also have very good reputations nationwide.

Chair Katz commented that his interest would be in looking at the organizational structure and whether it could be more efficient. He would agree now that this topic probably would not be high on the list.

**Efficiency Maine**

Rep. Boland asked what ISO New England's forward capacity market was. Director Ashcroft said ISO New England was an organization that helps to coordinate the electrical capacity, needs and use in the New England region. She does not know specifically what the forward capacity market refers to.

Rep. Fossel noted the group was in flux, are about to have most of their money disappear because it is one time federal money. He suggested giving them more time before subjecting them to a review. Sen. McCormick thought the Legislature had given Efficiency Maine bonding capability.

**MaineCare:**

Rep. Fossel said this was a request of his and he moved to withdraw it.

**Maine Quality Forum**

Rep. Fossel, Sens. Craven and McCormick think the Maine Quality Forum does good work and produces valuable information for the State. Director Ashcroft clarified for Rep. Pilon that the Advisory Council of Health Systems Development (ACHSD) was separate from the Quality Forum and would not be included in this review.

**Maine State Housing Authority**

Chair Katz said he had recommended this topic because MSHA is an independent quasi government agency that does not appear to get the same level of scrutiny as government agencies do. It is not that anything is going on, or that they are not fulfilling their mission, but MSHA does have a large impact on the State, and gets substantial federal funding. For those reasons he felt it was worth a review to check in on whether it was operating effectively and efficiently.

**Property Tax Assessment**

Rep. Lovejoy noted that although a review of this topic may not have a big impact directly on the State, it has a huge impact on school funding. He thought a review could provide ideas on how to provide more equity for towns across the State and, in the long run, a lower cost overall for the State. The State licenses assessors and provides training, but he understands the training has been cut back and some required courses are no longer offered. He is not certain how people will get their continuing education credits to maintain their licenses.

Director Ashcroft moved to Section D of the List of topics being considered and offered to answer any questions or provide any additional information members needed to be able to rank the topics. There were no questions regarding the topics in Section D.

Director Ashcroft then referred to Section C of the List. Sen. Craven questioned how the topic of Long-term Care: Nursing Homes was on the List. Director Ashcroft said it was proposed by a former GOC member. The GOC/OPEGA never did discuss it in detail, but she thinks the member proposing it was focused on ways to reduce cost by helping nursing homes be more efficient. This is a program funded by MaineCare or Medicaid so the State



Audit Department likely looks at the program during its Single Audit, but that would not necessary cover issues around efficiency or effectiveness.

At the direction of Chair Katz, Director Ashcroft proceeded to describe the procedure for GOC members to each individually rank the topics being considered. She explained the ranking spreadsheet OPEGA had developed to use in this process.

Chair Katz said the intention was for members to review the List of Topics and Rank each of them on the Ranking Sheet and return that information to the Director by Tuesday, March 1<sup>st</sup> for calculation. She will report the results at the March 4<sup>th</sup> meeting.

Sen. McCormick wanted to know how he should rank topics that he thought there were bills related to them in this session so that it may make sense to wait before deciding if a review was still desired.

Director Ashcroft said members should rank the topics based on the level of interest or potential value. After she calculates the rankings, the GOC will still have to have discussions, even on the high ranking topics, about the timing for any particular review. It may be that some of the topics go on the "On Deck" list instead of the Work Plan.

Director Ashcroft reminded the members, when ranking the topics, to keep in mind that there a several ways in which work by OPEGA can be helpful to the Legislature. Sometimes it is getting deep into areas that the Legislature does not get a chance to look at often and answering questions like in the MTA review. Sometimes it is to bring existing information together in a way that the Legislature can find useful when considering a bill topic or a budget item. Sometime it may be valuable for OPEGA to validate some of the information they are getting from other sources.

Sens. Craven and McCormick mentioned the bills related to the Certificate of Need that were coming before the HHS Committee. They thought it would be helpful if the HHS Committee had more information on CON.

Director Ashcroft said OPEGA could, between now and the next meeting be gathering some of that basic information about CON to put in an Information Brief. The GOC could then decide if they wanted OPEGA to go forward with a specific question.

Chair Katz asked if that was the pleasure of the Committee and they said it was.

## **STATUS REPORTS FROM DIRECTOR**

- Current Work in Progress

Not discussed.

## **OPEGA'S ANNUAL REPORT**

Will be discussed at the next meeting.

## **NEXT GOC MEETING DATE**

The next Government Oversight Committee is scheduled for March 4, 2011 at 9:30 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 2:40 p.m. (Motion by Sen. Craven, second by Rep. Pilon, unanimous).