

Government Oversight Committee  
(Joint Legislative Committee on Program Evaluation  
and Government Accountability)

**Meeting Summary**  
**March 7, 2005**

**CALL TO ORDER**

The Co-chair, Representative Dugay, called the meeting to order at approximately 4:10 p.m. in the Labor Committee Room.

**ROLL CALL**

Senators: Sen. Courtney, Sen. Dow, Sen. Raye  
Absent: Sen. Gagnon, Sen. Perry, Sen. Mitchell (Sen. Mitchell joined meeting in progress)

Representatives: Rep. Dugay, Rep. Canavan, Rep. Collins, Rep. O'Brien,  
Absent: Rep. Trahan, Rep. Crosthwaite (both joined the meeting in progress)

Legislative Officers: Beth Ashcroft, Director, Office of Program Evaluation and Government Accountability

Guest Speakers: Linda Pistner, Chief Deputy, Attorney General's Office  
Jim Adolph, Legislative Analyst, Office of Policy and Legal Analysis

**SUMMARY OF FEBRUARY 28th MEETING**

The Committee did not request any changes.

**REPORT FROM OPEGA DIRECTOR**

Director Ashcroft briefed the Committee on the status of the Office start up activities. In regards to the open positions, she reported that interviews for the Administrative Secretary position had been held and she was in the process of evaluating the outcome of those interviews. She also reported that she had decided to hire the services of a consultant familiar with state program evaluation functions to assist in the review of the resumes for the Principal Analyst position.

In regards to office space, Director Ashcroft told the Committee that the contractor had begun work on Room 107 and was expecting to be finished within two weeks.

Director Ashcroft, on behalf of the Executive Director, inquired of the Committee as to whether they wished to formally establish Monday as the Committee's scheduled meeting day. The Committee members expressed their wishes to do that. Director Ashcroft will

request that the Executive Director take the actions necessary to get the Legislative Leadership to approve Monday as the scheduled meeting day for the Government Oversight Committee.

## **OLD BUSINESS**

There was no old business to address.

## **NEW BUSINESS**

### **Freedom of Access**

Linda Pistner, Chief Deputy for the Attorney General's Office, presented the Committee with her assessment of the confidentiality provisions currently in the OPEGA statute and how the Committee's activities were impacted by the Freedom of Access laws. The Chief Deputy also responded to questions from the Committee and the Director. Significant points made during the discussion include:

- According to Ms. Pistner, under the OPEGA statute the OPEGA Director can designate the names of certain individuals to remain confidential. She believes that confidentiality would survive even when the working papers for any particular review become public documents when the final report is issued.
- Ms. Pistner also told the Committee that any of their working papers or any information they receive up until the report is final, or some action is taken or decision is reached, can be treated as confidential information under the OPEGA statute.
- Ms. Pistner informed the Committee that the use of Executive Session was available to the Committee when discussing any information that is confidential by statute or on other grounds provided by the Freedom of Access Law.
- Rep. Trahan asked whether any changes to the OPEGA statute or Committee Rules should be made to make it clear that the results of any subpoena action taken by the Committee would be confidential. Ms. Pistner felt that the statute already allowed for this.
- Sen. Mitchell questioned what the requirements were for going into Executive Session. Ms. Pistner responded that initiating an Executive Session required a "super majority" (3/5ths) vote of the Committee, that the reason for going into Executive Session had to be clearly stated in the Motion made and that the Committee could not make any final decisions while in Executive Session.
- Rep. Canavan expressed an interest in having some guidelines on what specific reasons would be appropriate under the law for the Committee to go into Executive Session.
- Rep. Dugay was curious as to whether the members of Government Oversight Committee had any more authority to gain access to confidential information than

members of the other Joint Standing Committees or other legislators. Rep. Trahan and Ms. Pistner responded that, under the OPEGA statute, the Director had the authority to review items that might not otherwise be available to a legislator. The Director would be able to report to the Committee the results of any evaluation or investigation she had been performing but it would not be permissible for her to discuss the specifics of particular confidential documents or files that she had reviewed.

- Rep. Collins mentioned that his experience had been that Dept. of Health and Human Services claimed very broad confidentiality protections over their information and questioned whether other departments and agencies also had broad protections. Ms. Pistner confirmed that there were some departments where confidentiality was required by federal law and possibly also state law which mirrored the federal law. While OPEGA would have authority to review information considered confidential under state law, OPEGA would not necessarily have access to information protected by federal law. Ms. Pistner indicated that in the past, the Attorney General's office had researched the ability of legislative committees to gain access to federally protected information in the Health and Human Services arena and had met with many roadblocks.

Rep. Dugay requested that the Chief Deputy prepare a briefing paper for the Committee regarding what the Committee could and could not do with regard to confidentiality and freedom of access issues. He also requested she provide some general protocol and language for the Committee to use when it found it necessary to go into Executive Session. Ms. Pistner indicated that she could provide this information within two weeks.

Rep. Trahan also suggested that the Committee should have available to them, in written form, the other statutes affecting confidentiality that were incorporated by reference into the OPEGA statute. The Director will obtain these and include them in the Committee's notebooks.

Ms. Pistner also suggested that the Committee may want to consider adjusting the timeframes provided for agency responses in the current OPEGA statute to accommodate the need for timely responses in a Rapid Response review situation.

### **Whistleblower Protections**

Jim Adolf, Legislative Analyst with the OPLA, briefed the Committee on research he had done on Maine's current Whistleblower statute and what protections it provides for those that might come forward with concerns. He provided a brief report that he talked the Committee through.

Basically, Mr. Adolf informed the Committee that the current Whistleblower Statute was really an employment statute designed to protect workers from being retaliated against by their employers for raising concerns. This would apply to state workers making complaints in that the State as an employer could not retaliate against them. It does not, however, provide for confidentiality. He noted that he had reviewed some other state whistleblower statutes that did provide some confidentiality for public employee whistleblowers – these being California, Florida and Washington.

Mr. Adolf advised the Committee that if they wished to provide additional confidentiality protections for whistleblowers that this could be accomplished through the OPEGA statute or through the Whistleblower statute. He did caution the Committee, however, that protections provided in the Whistleblower statute may end up having broader implications than what the Committee intends.

Sen. Mitchell noted that the Whistleblower statute currently deals with “illegal” acts and that OPEGA may be dealing with complaints that do not necessarily rise to the level of “illegal” activity.

Rep. Trahan asked to receive a copy of the Washington Whistleblower statute which Mr. Adolf did have available and provided to the Rep.

### **Additional Business**

Rep. Crosthwaite informed the Committee that L.D. 245, which required OPEGA to establish an “immediate review” process, was scheduled to be heard by the Joint Standing Committee on State and Local Government on Friday, March 18<sup>th</sup> at 9:00 am. Rep. Crosthwaite encouraged other members of the Committee to attend and suggested that the Director might provide testimony. The Director informed the Committee that, regretfully, she would be out of state on the 18<sup>th</sup> and unable to attend. She asked Rep. Crosthwaite to let her know what she might be able to provide in her absence.

Sen. Raye mentioned that perhaps the Committee should somehow provide an opportunity for the Committee to incorporate any public comments into normal Committee meetings if there happened to be folks attending the meeting that wanted to speak. The Committee may consider this at a future meeting.

### **SCHEDULE NEXT COMMITTEE MEETING**

The next Committee meeting is scheduled for Monday, March 14, 2005 at 4:00 pm in the Labor Committee Room. At the Director’s suggestion, the Committee will review a list of possible “To Do” items that had been mentioned in previous Committee meetings.

### **ADJOURNMENT**

The meeting was adjourned at 5:20 p.m.