



SEN. ELIZABETH H. MITCHELL, CHAIR  
REP. EDWARD R. DUGAY, CHAIR

## MAINE STATE LEGISLATURE

### MEMBERS:

SEN. PHILIP L. BARTLETT, II  
SEN. JONATHAN T.E. COURTNEY  
SEN. DANA L. DOW  
SEN. JOSEPH C. PERRY  
SEN. KEVIN L. RAYE

## GOVERNMENT OVERSIGHT COMMITTEE

(Joint Legislative Committee on Program Evaluation  
And Government Accountability)

REP. MARILYN E. CANAVAN  
REP. RONALD F. COLLINS  
REP. ROBERT H. CROSTHWAITE  
REP. LILLIAN LAFONTAINE O'BRIEN  
REP. A. DAVID TRAHAN

### **Meeting Summary November 14, 2006 Accepted December 4, 2006**

## **CALL TO ORDER**

The Chair, Senator Mitchell, called the Government Oversight Committee meeting to order at 10:12 a.m. in Room 206 of the Burton Cross Office Building.

## **ATTENDANCE**

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

Representatives: Rep. Trahan, Rep. Collins, Rep. O'Brien, and Rep. Crosthwaite  
Joining the meeting in progress: Rep. Canavan  
Absent: Rep. Dugay

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

## **Introduction of Government Oversight Committee Members**

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

## **SUMMARY OF SEPTEMBER 14, 2006 MEETING**

**Motion:** That the Meeting Summary of September 14, 2006 be approved as written. (Motion by Rep. Trahan, second by Rep. O'Brien, PASSED unanimously 8-0).

## REPORT FROM OPEGA DIRECTOR

### • **Project Status Report**

Director Ashcroft referred members to the status report material in their packets reminding them that the Committee has not reached agreement on the complete work plan for OPEGA for FY 07. The report includes the projects in progress, as well as the State-wide Performance Risk Assessment program discussed at the September 14<sup>th</sup> GOC meeting, and will be discussed in more detail later in the meeting. The status on performance audits in progress is:

- **Economic Development Programs'** draft report was sent out today to the Department of Economic and Community Development. The Department has until November 28, 2006 to provide comments to be included in the Report. Director Ashcroft thanked Susan Reynolds and Jennifer Reichenbach for their work on the report. Chair Mitchell agreed with Director Ashcroft that the report should be presented to the members of this GOC and will schedule another meeting in early December.
- **Highway Fund Use by Public Safety** report will not be ready for presentation before this Committee. The fieldwork is done, the review is complete and the exit conference has been held. OPEGA is in the report drafting stage. The final report is expected to be released in January of 2007.
- **Urban Renewal Initiative Program** is nearing the end of its preliminary phase. OPEGA will come back to the Committee with a recommendation as to how to proceed with the review if OPEGA feels the review should go in a different direction than previously agreed on.
- **Bureau of Rehabilitation Services** is in progress. The preliminary research is complete and the GOC will be entertaining the project direction recommendation later in today's meeting.

### • **Status of OPEGA Follow-up on Open Findings**

Director Ashcroft reported that there has been little change since the last GOC meeting. OPEGA has initiated follow up on one action of the Guardian *Ad Litem* Report and an additional item from the Information Technology Report. The number listed under "follow-up in progress but action status not known" is larger because approximately 13 of the items are from the IT Report. These had previously been provided to IT, draft responses have been received by OPEGA, IT and OPEGA have met to discuss the items and OPEGA is waiting for IT's final signed off versions.

### • **Legislative Oversight Guide for Information Technology**

OPEGA has completed a Legislative Oversight Guide for Information Technology resulting from the Report of State-wide Planning and Management of Information Technology. It includes high points of the findings, recommendations and actions that the Office of Information Technology has been taking and provides legislators with background on what OPEGA feels they should be tracking with regard to IT. The Guide was designed primarily for the State and Local Government Committee, who has responsibility for oversight of State-wide IT, but it is OPEGA's plan to meet with each of Joint Standing Committees to make them aware of how they can impact oversight of information technology.

Chair Mitchell thanked OPEGA staff for their work on the Legislative Oversight Guide and recommended that in addition to the Director's plan for distribution, the Guide also be presented to the Legislative Council in early January.

Director Ashcroft said there is ongoing communication with OIT regarding the actions they have taken and in the development of the Legislative Guide. OIT indicates it has been meeting organizational resistance over the change to a more centralized IT function and also lacks the resources to implement some recommendations. In particular, OPEGA believed OIT was going to establish an internal audit function, but has been informed that resources are not available. As mentioned in the report, the transition to an enterprise-wide approach to IT is very important, and will continue to face challenges. The transformation needs support and strong oversight by the Legislature.

Rep. Trahan asked if the savings from the IT consolidation could be used for an internal auditor and the other items mentioned.

Richard Thompson, Chief Information Officer, Office of Information Technology, said the funds went into the budget as a statewide deappropriation so are not available to IT. IT is not in disagreement with OPEGA in regard to internal auditing or that it is not going to follow through with the action, but is not able to do so immediately. The State Controller has an employee who performs such reviews who IT may be able to use, but that does not meet the original expectations that OPEGA had responded to. He said that the action items from the OPEGA audit are significant and many things have to be done to get them accomplished.

Sen. Raye asked for clarification regarding the \$500 million spent on IT that it cannot give an account of the return on the investment. Mr. Thompson said a portion of the money was spent on general operations and the remainder on systems the State would not be able to operate without. Director Ashcroft said that OPEGA was advocating for the State to treat its IT assets as an investment portfolio being able to show the return on the investment in total and will make that statement clearer in the final Guide.

- **Recent Training and Conferences**

Three OPEGA staff attended the annual conference of the National Legislative Program Evaluation Society held in Utah for offices across the country similar to OPEGA and 3 staff members attended fraud training that will enhance their awareness and skill level in terms of detecting and auditing for fraud. One staff person will be attending an IT Auditing class.

- **GOC Feedback on Past Two Years**

Director Ashcroft asked that the members of GOC complete their Review of OPEGA survey and return them to OPEGA as soon as possible.

Discussion followed regarding the need to make legislators, state agencies and the public more aware of OPEGA and the GOC. Director Ashcroft said copies of both OPEGA's Annual Report and its FAQ publication were provided to the Executive Director of the Legislative Council to be included in the information packets for new legislators during New Members Orientation. Also Diana Friou, Principal Analyst of OPEGA, is working with OPLA staff to schedule time before each joint standing committee to explain the GOC, and OPEGA, and how we work with Joint Standing Committees.

## UNFINISHED BUSINESS

### • GOC Action on Legislators Requests for OPEGA Audits

Director Ashcroft said that Rep. Shields and Rep. Moore would not be attending today's meeting. She summarized the status of each review request.

#### - Tobacco Helpline (Rep. Shields)

Rep. Shields requested a review of the Tobacco Helpline that is funded by the Fund for Healthy Maine. He feels that the costs for this service, \$1.8 million, are too high and has issues with the fact that the program overran its budget and then sought a \$500,000 supplemental appropriation earlier this year.

Rep. Shields' request regarding the Tobacco Helpline brought the Committee's attention to the procedures for contract management used by the State. Rep. O'Brien said State Departments know their work plan for the year and the amount of their budget funded by the Legislature. State Departments that bid with outside contractors need to make it clear that the amount of their bid be sufficient to complete the work according to the terms in the contract. No additional payment will be made by the State to complete the work. Director Ashcroft was told that in this particular case, the Department knew well in advance that there was going to be an overrun, the Department decided it still wanted to provide this service and made the decision that it would seek a supplemental appropriation.

Kenneth Lewis from the Center for Tobacco Independence answered the Committee members' questions regarding costs for the Tobacco Helpline raised in Rep. Shields' request.

**Motion:** That the GOC not proceed with a separate review regarding the Tobacco Helpline, but to place the larger issue the request points to in terms of contract management by the State "On Deck" for Committee action in the near future. (Motion by Sen. Raye, second by Rep. Collins, PASSED unanimously 10-0).

Director Ashcroft will let Rep. Shields know what action was taken on his request and thank him for bringing this matter to their attention.

Chair Mitchell, on behalf of the GOC, thanked Mr. Lewis for attending the meeting and answering the Committee's questions.

#### - Privatization of Wholesale Liquor (Rep. Moore)

Rep. Moore is asking that OPEGA examine issues regarding the privatization of the State's Wholesale Liquor Business. He does not believe the transfer has received the appropriate level of oversight that it deserves.

**Motion:** That the GOC not take action on Rep. Moore's request for review regarding the Privatization of Wholesale Liquor at this time. (Motion by Rep. O'Brien, second by Sen. Courtney, PASSED unanimously 10-0).

- **GOC Action on Citizen Requests for OPEGA Audits**

Director Ashcroft said the GOC had not yet taken final action on the two citizen requests listed below.

Chair Mitchell requested that Director Ashcroft outline what the Committee's procedure has been on citizens' requests for OPEGA audits. Director Ashcroft said it has been the practice of the Committee to hear the request, and determine if any additional information is needed to proceed. If more information is required before the Committee is able to decide how to proceed, OPEGA obtains the information, and brings that information back to the Committee. Ultimately the Committee votes on what action it wants to take with regard to the request.

- **DEP Water Quality Enforcement Efforts**

Director Ashcroft referred members to the letter dated June 30, 2006 from the Lakes Environmental Association and the information received from DEP. The information had been forwarded to Jim Dusch, Director of Procedures and Enforcement, Department of Environmental Protection. Chair Mitchell recognized Director Dusch.

Some GOC members thought the request was a policy question and should be addressed first by the committee of jurisdiction.

Rep. Crosthwaite felt the request was properly before the GOC. Sen. Courtney wanted to make certain that if the request was sent to the committee of jurisdiction that the GOC received information back on what action was taken. If action taken was not to the GOC's satisfaction, the GOC would have another opportunity to address the request.

**Motion:** The GOC recommends the requested review of the DEP Water Quality Enforcement Efforts be referred to the 123<sup>rd</sup> Legislature's joint standing committees of jurisdiction, the Natural Resources and Appropriations and Financial Affairs Committees. The GOC will ask the Committees to report back by March 31, 2007 what action they will be taking on the request. (Motion by Sen. Courtney, second by Sen. Raye, PASSED 9-1, Rep. Crosthwaite opposed).

Director Ashcroft will inform the Lakes Environmental Association and Maine Congress of Lake Associations of the GOC's action on their request.

- **Tax Subsidized Competition – Printing & Publishing**

Director Ashcroft summarized the tax subsidized competition review request and what additional information had been received since the last GOC meeting. Mr. McIntire, who owns a printing business, believes the University of Maine's printing operations are in competition with private enterprise. Director Ashcroft has had additional discussions with Mr. McIntire and Janet Waldron, Vice-President for Administration and Finance at the University of Maine, Orono and has also received additional written material from each. After reviewing all the information presented, Director Ashcroft said there is some evidence to support the allegation that the University is competing with private enterprise for work. Director Ashcroft also said that information provided by the University of Orono indicated that the University intended to stop providing services to nonprofits and others having no affiliations with the University. Director Ashcroft had not verified whether other UM campuses with printing functions are doing the same kind of business.

Discussion followed amongst Committee members regarding whether this was a policy question. The Committee was also interested in the definition of an affiliate.

Robin Toderian, Assistant Vice-President for Auxiliary Services and Elaine Clark, Associate Vice-President for Administration and Finance, from the University of Maine, Orono, were in attendance at the meeting. Ms. Toderian explained an affiliate as being a relationship to the University, which could include a relation directly to a department or someone who has done work for the University. The Print Shop does not solicit outside business, but if approached, seeks guidance from the University whether it would be appropriate to do the job. She said the printing department must be self-supporting. It does not receive funding from the University, and the State was not subsidizing the University's Print Shop in any way.

Ms. Clark said there is a State Statute on the competition between State government and the private sector that includes an appeal process and asked if Mr. McIntire had requested a review through that process. Director Ashcroft said he had not availed himself of that avenue because he believes the present membership is now all individuals within State government and does not feel comfortable his concern would receive a fair hearing.

Sen. Raye thought there may be other areas where State government is competing with small business. Rep. Trahan said more information was needed regarding the committee that was created by State Statute on competition between State government and the private sector. Director Ashcroft was asked to get that information, including membership and its mission, and report back at the next GOC meeting.

**Motion:** That the Tax Subsidized Competition review request be tabled until the December, 2006 meeting. (Motion by Rep. Trahan, second by Rep. Crosthwaite, PASSED unanimously 10-0).

The GOC thanked Robin Toderian and Elaine Clark for attending the meeting.

- **Improvements to OPEGA's Audit Process and What it Means to GOC**

OPEGA has been working on a process to streamline and have as much consistency as possible in its approach to the projects pursued. As a result, OPEGA would like to take a slightly different approach in scoping a review. During the preliminary research phase of a performance audit, OPEGA obtains an understanding of the activity or program it has been asked to review, identify all the potential areas of concern related to that topic and identify data sources available to do the work. This process will help identify the areas where a more detailed examination would add the most value. Instead of starting with a specific question from the GOC, OPEGA would take the Committee's question, fold it into their preliminary research process, conduct the preliminary research appropriate for the topic and return to the GOC with specific recommendations on project direction. If OPEGA recommends continuing the audit it will also recommend what should be looked at in detail. If OPEGA recommends discontinuing the audit, it could use the substantial information gathered to produce a Legislative Guide or other product that would be helpful to the Legislature.

Because of this refinement in its process, OPEGA will encourage the GOC to provide a topic for review rather than a specific question. There will be quite a bit of time spent working on the preliminary research, but in the end, it will result in improvements for the State.

No Committee action was required for this item.

- **OPEGA's Recommendations on Project Direction for Current Projects**

- **Bureau of Rehabilitation Services Audit**

Director Ashcroft directed the Committee's attention to the Recommendation for Project Direction in their notebooks. She summarized the information that had been gained through preliminary research work. She noted that OPEGA had identified a number of potential areas of concern, each of which could be the subject of further audit. However, it is her recommendation that this particular review proceed with a more detailed audit of the client service expenditures in the Division of Vocational Rehabilitation and the Division of the Blind and Visual Impaired. The question OPEGA would pursue is whether internal controls are adequate to insure that expenditures for clients are appropriate, reasonable, properly approved and accounted for. OPEGA will use its own resources on this audit, and to date, has used a little over 400 hours for the preliminary research. The actual estimate of hours needed to do the field work portion on this question will not be known until OPEGA designs the test steps it would need to take, but will not exceed 550 hours more. All of the other potential areas of concern that were noted are being logged by OPEGA as part of the risk assessment process for possible future reviews.

**Motion:** That OPEGA proceed with a more detailed review of the client service expenditures in the Division of Vocational Rehabilitation and the Division of the Blind and Visual Impaired regarding whether the internal controls are adequate to insure that expenditures for clients are appropriate, reasonable, properly approved and accounted for. (Motion by Rep. O'Brien, second by Sen. Dow, PASSED unanimously 7-0).

Jill Duson, Director, Bureau of Rehabilitation Services, was recognized by the Chair. Director Duson expressed the Bureau's appreciation of OPEGA involvement. The Bureau has done a lot of work to try to implement the management issues in the Berry, Dunn, McNeal and Parker Report. It views the review by OPEGA as an opportunity to find out if the changes made have made a difference. The Bureau welcomes the review.

The Committee thanked Director Duson for attending the meeting and for the Bureau's cooperation.

Sen. Raye, Acting Chair, asked if there was objection to taking up an item not on the agenda. Hearing none, the Committee moved to Rep. Trahan's item of concern.

Rep. Trahan had become aware of a situation and thought it was important for the Committee to address it before adopting OPEGA's work plan. The Legislature's Office of Fiscal and Program Review has concerns with the new broad statutory language that gives the Department of Human Services flexibility with Medicaid accounts. In 2003, a statutory waiver was created for the Department of Human Services' administrators when handling money in Medicaid accounts. When a Medicaid account had a shortfall, in order to transfer money to cover that shortfall, DHS previously had to go to the Appropriations Committee 30 days prior to the transfer of money. Recently there was a \$24 million and a \$12 million transfer to cover costs in DHS that was done with Medicaid accounts. The transfers were made and then the Legislature became aware of them, after the money had already been moved. Rep. Trahan thinks DHS is the only government department that can make this type of transfer without the Legislature's knowledge. The statutory language allowing this is very broad and the Fiscal Office believes there should be more accountability. The waiver was created at the request of the Commissioner of DHS for flexibility when DHS and BDS were being combined. The two departments have since been combined, but the waiver was renewed in 2005. Rep. Trahan thinks the GOC should get feedback from the

Appropriations Committee regarding these concerns. DHS moved \$36 million and the only reason the Legislature found out is because the Fiscal Office flagged it. A closer look should be taken now because it could be a significant problem in the future.

Rep. Canavan asked if it was an issue for the Appropriations Committee and not the GOC to review initially. Rep. Trahan agreed and said he would like to receive an answer from the Appropriations Committee regarding these concerns and what actions they may take. The original waiver was for the one purpose of combining DHS and DDS, but now it has broadened.

**Motion:** That the GOC communicate in writing to the Appropriations and Financial Affairs Committee their concerns regarding the statutory waiver created for the Department of Human Services and respectfully ask that the Committee respond to the GOC of what action may be taken to address this issue. (Motion by Rep. Collins, second by Rep. Canavan, PASSED unanimously 7-0).

- **OPEGA Fiscal Year 07 Work Plan**

At the September, 2006 GOC meeting, the members wanted to know the proposed risk factors before including a state-wide risk assessment on performance type matters in OPEGA's work plan.

Director Ashcroft said that Diana Friou, Principal Analyst, was working on putting together the necessary tools that will be needed for developing a data base with the universe of possible risks and the universe of audible activities for OPEGA's TeamMate software. Director Ashcroft now proposes that 350 hours be approved for OPEGA to populate the data bases.

Director Ashcroft also gave an overview of what was on the GOC's On Deck list to which she had also added OPEGA's suggestions for possible audits. She asked the Committee to move forward before the next GOC was appointed.

Sen. Dow expressed preference for issues raised in the Bookings Institute report, and said it is a major function of the GOC to find out what can be saved for monies in the State and improve efficiencies.

Members of the GOC and Director Ashcroft discussed recommendations or concerns with the Brooking Institute's Report.

Director Ashcroft referred members to the information on OPEGA's past work, stating there were a number of information technology reviews that were top priorities on the 3-5 year audit plan that they asked Jefferson Wells to provide. The IT auditing work would need to be contracted out, and given that IT is not going to establish its own internal audit function, Director Ashcroft wanted the committee to revisit whether it would seek to have OPEGA use its contracting dollars to conduct more IT audits. She said OPEGA would start the process of getting RFP's out if the GOC want to proceed with those reviews. She specifically recommended audits of Project Managements, Systems Security and Technology Infrastructure.

**Motion:** That the three IT audits be moved on to OPEGA's FY 07 work plan. (Motion by Rep. Crosthwaite, second by Sen. Dow, PASSED unanimously, 6-0).

Sen. Raye wanted to make sure that his earlier motion to adopt folding Rep. Shields' concern into the larger view of contract management be approved before he left the meeting.



**Motion:** That a review of contracting for Social and Health Services be moved onto OPEGA's FY 07 Work Plan. (Motion by Sen. Raye, second by Sen. Dow, PASSED unanimously, 6-0).

Several members of the GOC were missing so it was decided to wait until the next meeting for further discussion of the work plan.

## **NEW BUSINESS**

None.

## **SCHEDULE NEXT COMMITTEE MEETING**

The Committee set Monday, December 4, 2006 at 10:00 a.m. for the next GOC meeting.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 1:44 p.m. (Motion by Rep. Collins, second by Rep. O'Brien, unanimous).