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REP. ANNE-MARIE MASTRACCIO  
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

**July 21, 2016**

**Accepted August 18, 2016**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:35 a.m. in the Cross Office Building.

**ATTENDANCE**

Senators:	Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis, Sen. Diamond and Sen. Gerzofsky
Representatives:	Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Duchesne, Rep. Mastraccio and Rep. Sanderson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Henderson, Senior Analyst, OPEGA Kari Hojara, Senior Researcher, OPEGA Etta Connors, Adm. Secretary, OPEGA
Legislators:	Rep. Jennifer DeChant, a member of Maine Economic Growth Council
Executive Branch Officers and Staff Providing Information to the Committee:	Cindy Brown, Director, Child Development Services, Department of Education
Others Providing Information To the Committee:	Yellow Breen, President and CEO, Maine Development Foundation Stephen Von Vogt, Co-Chair of Maine Economic Growth Council Ryan Neale, Program Director, Maine Development Foundation

**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 JUNE 23, 2016 GOC MEETING

The Meeting Summary of June 23, 2016 was accepted as written.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Unfinished Business, Report Backs and Follow-up on Prior OPEGA Reports.**

### UNFINISHED BUSINESS

- **Report Backs and Follow-up on Prior OPEGA Reports**

- **Office of Information Technology**

- › **Response from Governor on request for report back from OIT and DAFS**

Chair Katz noted that Governor LePage suggested in his letter that Commissioner Rosen and Chief Information Officer Jim Smith may attend the September GOC meeting to discuss OIT. The Committee was agreeable to the Governor's suggestion.

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

- › **Discussion of Maine Economic Growth Council's role and responsibilities for developing a State Economic Plan**

Director Ashcroft reminded the Committee that at their last meeting they discussed how to improve the effectiveness and efficiency of the economic development program evaluations that are currently being done by DECD. The Committee talked about what might be of most value for the objectives of those evaluations such that the objectives could get woven into statute. They also discussed the desire to have a foundation against which to evaluate those programs and that such a foundation might be an economic strategy or action plan for the State. The GOC previously learned that statute assigns that responsibility to Maine Economic Growth Council (MEGC). The GOC had requested that individuals who could represent MEGC come to a meeting to talk about what they see to be their statutory responsibility with regard to that, what challenges, if any, they have met in trying to do what has been assigned to them in statute, and to get an understanding of whether that organization expects to be putting forward any kind of strategy, or action plan, in the future that could be used as a basis for evaluations.

Chair Katz noted that as everyone dug into the issues around the evaluations determining what they were measuring success against became a front and center consideration for all of them. Is there an overall economic development plan for the State of Maine or does it just happen Administration to Administration? Does the State have a document that anybody can look to about what the plan is for growing Maine's economy? Chair Katz believes members of the GOC were surprised to learn that there was not a plan. Although it had been addressed in statute in 1993 by the Legislature, who appointed MEGC to development such a plan, the Legislature did not provide any resources to do that work.

Chair Katz said the GOC may want to talk with the MEGC about what their role might be going forward or what they see a State economic plan looking like and who ought to be doing it. He wanted to make it clear that in no way was the Committee suggesting that the MEGC, or the Maine Development Foundation (MDF) was not doing what they were supposed to do because the Legislature gave them no resources to do

the work. He said he was very impressed with the work of MEGC and the product they put out every year or two in terms of the Measures of Growth.

Chair Katz recognized Mr. Breen, Mr. Neale, Mr. Von Vogt, and Rep. DeChant.

Mr. Von Vogt introduced himself and said Maine has been very fortunate to have the people that have served on the MEGC and all have been unique. Members have represented both the House and Senate from both parties and there is a broad group from industry. He said he has never seen more constructive, non-partisan and genuine interest in the economy of the State than he has observed at the MEGC meetings and it is a tremendous resource. He said in terms of MEGC's charge, they looked at their first charge as putting out the Measures of Growth and view it as a very important barometer of Maine's economy. MEGC does its best to make it useful and do their best to get relevant data.

Mr. Von Vogt said the MEGC was aware that there is a charge that they do some kind of economic plan and said, in the spirit of that, there was an attempt a couple of years ago to amalgamate all of the studies on that topic that have been done into one study, but he does not think there has ever been an effort to do a true economic plan. He said his personal opinion is it would be a very interesting place to start because you have a group of people that broadly represents a variety of interests in the State and at MDF you have a safe convener of those discussions. Mr. Von Vogt said you could not do something like this without touching government, private sector, education, etc. It would be an important undertaking. He said the sense amongst the MEGC is that they would be interested in a dialogue about what could be done and think they are the place to have that dialogue.

Mr. Breen noted that MDF recently had a conference call with MEGC members and, although they did not have a quorum, those on the call had a strong receptivity to the idea. Both long time and new members, and across different perspectives from private industry to labor to legislative members, said that they would be willing to take a crack at something like this if the scope of it could be defined and if the resources could be provided. Mr. Breen said one of the considerations, aside from lack of resources, as to why they haven't developed a plan in the past is about whether they thought they could get unanimous consensus among the MEGC and getting nineteen members from across all sectors to strongly stand behind the product. He noted that as soon as you turn to action planning then you potentially start to splinter and the question is could the MEGC preserve enough of its own consensus through that difficult process. He thinks they would like to try. Mr. Breen said another consideration is whether such an effort would increase the potential that the MEGC would be perceived as politicized. Even with something as objective and neutral as the Measures of Growth, where it is really tracking the progress of the Maine economy and not the impact of policy decisions, if the data that comes out is not good, they perceive that as an explicit critique of what they have done, or not done, as public office holders. He said he understands that and thinks having an action plan attached to that increases the likelihood that it will be received as an explicit critique, and he does not think there is any way around that kind of human reaction.

Mr. Breen thinks the MEGC is aware of the risks that they could fragment more amongst themselves and that they will have to work hard to come up with an action plan they can all stand behind, or at least an overwhelming consensus of them can stand behind. They would have to make sure that it not only is fact, but is received by critical players as being non-politicized if they take it to that next level. He said another thing would be the resources. He noted for historical context that in the early 90's MEGC was appropriated \$250,000 a year, then that was reduced to \$125,000 and then reduced to the current level of approximately \$50,000 a year. Mr. Breen said getting the MEGC rolling in the early years was a much more significant undertaking than just stewarding the effort latter. They did a lot of work in the early years to identify data from scratch, doing an enormous amount of outreach, holding stakeholder meetings and focus groups so that it was not just the MEGC, even though the MEGC was spearheading the process. The MEGC created a lot of survey documents and data collection tools that were customized and Mr. Breen said the current product is much more modest, even on a tracking basis, then what was done in the early going with the MEGC, let alone not having the resources to do a plan.

Mr. Breen said a few other observations about strategic planning in general is that nobody is good at it. He noted that he came to MDF from working twelve years in the private sector and said most private sector management journals and blogs are filled with the do-nots of strategic planning and have the same challenge of writing great documents that sit on the shelves. He said what is known, no matter what sector you are in, is that it is the planning process itself that is the key and not the document. He said to actually use the document to inform operational decisions, which for the GOC is policy and budget making, they would need an interactive process around that strategy that is constantly in front of them as they are making decision. He said finally, the challenge is to hold yourself accountable. Mr. Breen said in this case, they already have the tool for the accountability part of the plan – tracking and reporting back as to whether the needle is being moved – and often that is the biggest struggle. He said strategic planning itself is never easy and actually having a document that any organization, or set of organizations, is going to use is never easy. However, their hope would be if, over the next few months, there was receptivity in the Legislature to really take that statutory mandate to heart then to clarify it a little bit, if needed. He noted you have got two non-partisan cross sector groups working together, the MEGC and MDF as its administrative arm that can do this.

Mr. Breen thinks the private sector would be very interested in being a partner and would want to do that in a way that would keep it non-partisan. He noted that nothing is a-political, but you want it to be perceived as something that is centrist and not be ruled out because of who was involved in the process. He spoke with Dana Connors, President, Maine Chamber of Commerce, who has worked with MDF in the past on the Making Maine Work series. His perspective is that the private sector would want to be an active collaborator in such planning and he agrees that the MEGC and MDF are probably the entities that have the credibility to attempt it if anyone does.

Rep. DeChant said she has been on the MEGC for four years and noted that every time they have come through the process of Measures for Growth they hit a bump in the road in the sense of so now what. How do they make the information relevant and active for legislators that won't be something that will just be put on a shelf. She said as a legislator, which the GOC members all know as well as she does, there are many reports that litter their bookshelves that tried to review different economic programs. She said this underscores how completely relevant this next step is because there have been a variety of analysis and evaluation of programs. As a State, legislator or business person investing into Maine's economy, she said it would be nice to have something to reverberate against. Rep. DeChant said developing a strategic plan process, while not wildly innovative, is long overdue and the opportunity to take the well proven and good work behind the Measures of Growth to the next level and develop it through the partnerships that Mr. Breen mentioned is really a no brainer. She said the opportunity to do so with the resources and the propulsion behind it is a very good time to do it and the MEGC is the vehicle to do so.

Sen. Johnson asked what resources would be needed in order to do the job and what areas needed clarity. Mr. Breen thought it was a labor intensive process because the engagement, outreach and stakeholder ownership of the process and product is critical. They may have one member on the MEGC from the tourism sector, one member from the construction field, etc. Mr. Breen noted that what he has learned from work on a forest products related economic initiative over the last couple of months is that these are enormously complex sectors. Each one competes globally so you need to do a great job where you get a lot of the stakeholders engaged and work through it with them and this is labor intensive. He said, secondly, you need truly global data so one of his concerns about what they have done in the past is they just did a mashup of the greatest hits of current reports that have been issued in Maine over the last five or ten years. He said there is a lot of rich information there, but at the same time it does not necessarily give you real business insights into where the global economy is going in some of these sectors. He said by analogy, as he started to work on the forest products sector with a lot of collaborators, they needed to know what Finland, Indonesia, Brazil, India and China are doing, where there are new demands for products that Maine is not making, and where our competitors are strongest so we are not investing and running right into the teeth of where you cannot win economically. He thinks the two biggest pieces of costs are essentially the labor to run a very human intensive process and then research resources to not only look at the best data they have in Maine and readily available public resources, but on a selective basis, they are going to have to

look for a true global expertise in some of the areas of interest and not pretend they know it all. Mr. Breen said he could not give any order of magnitude. He did not think the \$250,000 that started the MEGC is off the mark in terms of some guesstimate of the kind of undertaking being talked about. He noted that MDF's work on forest products is a three year \$700,000 project for MDF, so thinks you have to be realistic about what these things cost.

Rep. Mastraccio noted she was wrestling with, as a member of the LCRED Committee, how you take an independent committee like the MEGC that does not have a lot of legislators on it and then translate that into policy and force that information into your policy developing. She was reluctant to spend a lot of money on something that is just going to sit there and that people are going to ignore because it does not fit into their own policy objectives that they have developed. Rep. Mastraccio said it needs to be independent, but effective and noted that sometimes when you are too independent and you do not have enough people that can actually implement, there is a challenge as to what to do with it. She would love to see something like this happen and it is needed, but she would like to hear how Mr. Breen thinks doing it this way would be different than in the past. She said she had not heard of the MEGC until she started serving as a legislator even though she was on an Economic Development Committee in her town. She asked how you would make something like this into a force that cannot be ignored.

Mr. Breen thought the factors that may have led past efforts to fail was when you have a group spearheading the effort that some constituencies automatically consider biased and so disregard the product. It is important that you have two groups that can minimize that risk because whether people think the Brookings Institution is biased, or the State Chamber is biased, etc. that plays into it. Secondly, he said you have to have a group, or a coalition, that has staying power. This is not going to happen in two years, four years, so the fact that MDF has been around for thirty-eight years and does not intend to go anywhere gives a vehicle to keep the work in front of Maine people and the Legislature, which he thinks is important.

Mr. Breen was not surprised by Rep. Mastraccio's comment that she had not heard about the MEGC and by extension MDF's work until she came to the Legislature. He thought one of his strategic goals and challenges as CEO of MDF is to build up the communication from of MDF and be a mouth piece for the products that come out of the MEGC. He thought the MEGC and MDF should probably, not just through this dialogue, but in general, have more constant interaction with LCRED and other key Committees in helping legislators assess where to focus the State's efforts. He said MDF can leverage some of their other influence policy makers, leaders and potential candidates through their Leadership Maine Program and Policy Leaders Academy Bus Tours and Seminars that they do with the Legislature. He said MDF has over one thousand alumni of their leadership program and another of his strategic goals is to make sure they leverage that kind of network to continue to plant the seed for what they should be working on as priorities for the State.

Rep. DeChant said it has been a challenge because of the amount of information that legislators get during the session so when they receive reports, such as the Measures of Growth, don't know what to do with it. She thinks the point is well taken in the sense that what the next evolutionary tick does is provide an evaluation part and teeth to it. She said currently it is information you can use if you want, whereas coming up with the strategic plan there would be objectives, evaluations, and timelines. The second way is throughout the process there is a variety of networks in which folks can be engaged in what currently exists. Rep. DeChant said if the MEGC does this, there has to be benchmarks where they report out and it is certainly about meeting with the Legislature and the leadership, and with term limits that is a challenge as well. She said there are many opportunities in front of them, but by not doing the work in a vacuum, by reporting out as the process continues and by providing the structure that exists within a strategic plan for the evaluation, timeline, etc. that all adds accountability to it that is completely absent from the document as it is now.

Mr. Neale noted that MDF presents to local and regional groups and quite often one of the comments they hear back frequently that the Measures of Growth deals with the numbers at the State level. That is where

the numbers are and it is very difficult to dig down further than that. However, a lot of the indicators that are currently in the Measures of Growth Report can be effected by local and regional efforts so local planning boards, select boards, etc. also have a role in a lot of the indicators. So, the State level is critical, but the action steps referred to by Rep. DeChant, would galvanize some of that support from other levels in the State who have a role to play, and should have a role to play.

Rep. Duchesne asked if MDF or MEGC knew of any other similar measures in Maine that progress can be compared to.

Mr. Breen said Educate Maine, a spinoff of MDF, does a much more in depth set of education indicators which in some ways has a similar feel. Instead of having two dozen indicators of which three or four are on education they have a whole set on just the education pipeline and how Maine is doing from pre-K through the workforce.

Mr. Von Vogt said there are industry and interest based groups, but if you take a long view of the Maine economy, the only barometer that goes back a number of years with any consistency is this. He said there really isn't anything that serves as a barometer of the State economy as a whole that you can look at. Mr. Von Vogt said if you go back over the years you see things. You can see the recessions and the numbers, you can see when things are good and not.

Rep. DeChant noted that in recent history the State Planning Office had information that would have been pertinent, but that agency doesn't exist anymore. She said that is why an economic development plan should exist and she would argue that it should be out of State government and be within an organization, or committee, that is configured in the way the MEGC is.

Rep. Duchesne noted that one of the things you have to deal with is that all the legislation comes into the process piece meal. It is whatever brainstorm a particular legislator has at a particular moment and submits a bill. He said there is not a lot of cohesion in getting a strategy of things together and submitting a package. He thought it made sense to look at some of the bills coming forward and look through the prism of the Measures of Growth to see if this bill is moving the needle and should that matter, but the Legislature as an institution does not do that. He said they also do not do gap analysis on the 2,000 bills in front of the Legislature, looking to see what the Legislature missed in terms of improving the Measures of Growth. He asked if any thought had been given as to how you institutionalize that process.

Mr. Breen thought that was more an undertaking that the Legislature itself needs to do using MDF's product. He said MDF would be willing to work with non-partisan legislative staff on trying to do that, but thinks it is an enterprise that the Legislature would need to direct MDF to do, for example, a crosswalk of bills against those things that they purport to impact. Then, in turn work with MDF to look at the metrics to see if there are some areas where no meaningful legislation is being proposed to move the needle and why that is.

Rep. Duchesne said the GOC can put in a package of bills and noted there was a Preservation Advisory Committee that was able to put in bills as well and put in packets of legislation to deal with issues that were cross cutting. He said the Legislature has done it before, but has never done it with economic development.

Rep. DeChant agreed that it has not been done consistently. She said in Leadership there has been the Prosperity Committee and the Workforce Development Committee which in its time were effective, but then it fizzed out. She thinks that is another argument for the need for consistency and does not think there is anyone who would argue against that need.

Chair Kruger noted that there was a time when a former State Representative actually convened a caucus to look at a series of bills through the lens of the Measures of Growth which was very effective and useful for him. He was sorry to see that go, but it may be something for legislators who are returning to talk with Leadership about and reconstitute.

Mr. Neale said it was the Measures of Growth Caucus, but was not institutionalized. It came about because of a few legislators driving it. He thought there was some real potential in keeping that process going.

Sen. Diamond noted that Rep. Mastraccio raised a question earlier and he asked if there was a structure already in existence where MDF and/or MEGC meets with the LCRED Committee on a regular basis for interaction, promotion, information sharing, etc. and if not, should there be.

Mr. Von Vogt thought at the very most there may have been a staff report to the LCRED Committee and its predecessor, the BRED Committee back when Laurie Lachance was President of MDF. To his knowledge, there has never been any kind of institutional interaction between the Committee, MEGC or MDF staff around this product. He thought it would be something that would be helpful.

Rep. DeChant said the link that has existed between MEGC and LCRED is through the Department of Economic and Community Development (DECD) noting that the Commissioner of DECD is a member of the MEGC. She said that has been a link, but not legislatively.

Sen. Diamond hopes legislators on the next LCRED Committee and those in Leadership will see this as being important and build that interaction into the structure of the Committee.

Rep. Mastraccio thought the only way you can do that is by statute. She thinks if the Legislature is going to let a group do a State plan for economic development, you cannot rely on DECD. It has been heard numerous times that DECD does not use the information in the evaluation reports to inform their decisions, they are just doing it because the statute says they have to produce the report. Rep. Mastraccio said any group, and they would need to be an independent group, would need to have the ability to report out legislation that would inform the policy committee so that we are trying to actually push forward. If the State is going to spend money and do all this work, there has to be some teeth behind it and there has to be the ability to have those discussions in front of the whole State at the legislative level.

Sen. Johnson thinks it is important to formulate a plan around what MDF and the MEGC brought the GOC for suggestions and what is needed for resources in order to do that. He referred back to the discussion of meeting with people in the various sectors and bringing in some knowledge of what is happening globally with the markets, as well. He suggested there may be one piece missing from that and that is to think beyond today and look to what innovation should they be building upon that best creates a stable demand for a product, good jobs and builds upon something that is a strength for the State of Maine.

Mr. Von Vogt said, in his opinion, not necessarily the MEGC's opinion, is that we as a State ought to be looking for what the next best thing is that matches what we know how to do. It would be great if there was somebody who would talk to all of the groups like MTI, Focus Maine, Chamber of Commerce and the University System and ask each of them what they are seeing, and what they are doing to contribute to what they see as the next best thing. He said one of the things that sometimes is missing is just the mechanism for that dialogue between those interest groups. Somebody needs to tell the University System and our education system what we see the next need is going to be and, conversely, they have to tell us what they think the next good thing is going to be. A mechanism to bring that dialogue together is missing and is what moves the dial on this report when that is done well.

Chair Katz asked if it was known what other states are doing and what the differences are between their approaches, what seems to work best in terms of actually translating into public policy. He said Maine did not have to reinvent the wheel and if that information is not known yet, he is certain it will be part of the exercise in trying to move forward in finding out where the best practices are and how they can move it forward in Maine.

Mr. Breen said Mr. Neale and himself were discussing that yesterday and had sent Director Ashcroft an email asking if that question had already been pursued. He wondered if DECD or DECD's current evaluation consultant may have already looked at that during the course of their dialogues last year. He said if it has not been done, MDF and MEGC would be happy to work with DECD or Director Ashcroft to try to get some answers.

Chair Katz noted that NCSL or CSG may be good sources to contact. Director Ashcroft thought NCSL would probably have information regarding other states, and she will look into that. Rep. DeChant said when she worked at DECD quite a few years ago she did that exact research and often times she found that it was kept inside government and was kept either in the Governor's Office or the Department of Commerce.

The GOC members thanked Mr. Breen, Mr. Neale, Mr. Von Vogt and Rep. DeChant for attending the meeting and answering their questions.

Chair Katz noted that Director Ashcroft will research through NCSL on what other states are doing that can help inform the GOC as they move the conversation ahead.

Sen. Burns commented that it was typical of the culture of the Legislature that there is little focus on things like the Measures of Growth report and discussions about strategy and policy around economic development. He thinks it should be incumbent upon the policy committees to initiate with the relevant contacts with the relevant agencies and follow through on reports. He does not think the Legislature does a good job at that, especially in the first session when there is so much work before committees that they just try to get through the minutia and the day. He thinks legislators should look at having a strategic effort in each of the policy committees to bring these topics on a regular basis before the committees and work with them rather than just take care of the business at hand. He said as he looks back over his time as a legislator he thinks that is a big problem with the culture of the Legislature.

Rep. Duchesne said you have to be sure that there is buy in from both the legislative and executive branch on anything done going forward. He said every election the priorities change a little depending on who is in office and they do not measure against a standard set of criteria as the Legislature decides on policy issues. Somehow the discussion has to involve both branches of government and some buy in that they are going to try to succeed with this.

Director Ashcroft said the GOC is interested in whether an economic development plan or strategy might be available at some point in the future. She said it was a specific observation and recommendation of DECD's consultant in the last two rounds of evaluations as well. It sounds like the MEGC is really interested in at least trying to tackle that challenge provided it is given enough resources and a sufficient scope. Director Ashcroft said it sounds like the legislation that the GOC is working towards with regard to the evaluations will include a piece that would support MEGC's willingness to take on this effort. That may mean adding a section for an appropriation of resources or making some changes to statute that will clarify the scope of what MEGC's will include. There also may be a piece about adding in some responsibility for LCRED and the MEGC to have more regular interaction. She thought all of those ideas could be woven into one piece of legislation. Alternatively, the pieces involving MEGC could be done in a separate piece of legislation.

Rep. Mastraccio said it was about institutionalizing whatever they do so that it gets done no matter who is sitting in the Legislature. She said she was concerned about LCRED because the work you get in front of that Committee can be extremely dense and hard for people to understand. LCRED does the day-to-day work and does not have the time to delve into other matters. She said this is not a full time Legislature and that legislators are employed in other jobs. She would like to have a discussion about economic development and its importance to the State and maybe it's too important to just be one part of a Committee. Rep. Mastraccio said economic development is only part of what comes before the LCRED Committee, which is a very contentious committee anyway. To think that it is going to be LCRED's job to



get into discussions about State economic development action plan is a concern for her. She thinks that is an important discussion to have. She thinks it should be in front of a standing committee overseeing economic development, but she is not sure the LCRED Committee is the committee to do that because of what she has seen in that Committee over the last four years.

Chair Katz said Rep. Mastraccio vocalized the frustration that all legislators have with their respective committees in that the day-to-day work overshadows everything else. That is exactly why he thinks the GOC is coming to a conclusion that an economic plan that is developed by a public/private entity in a more thoughtful and calm way would be a better approach.

Rep. Duchesne said what moves the needle is when some legislators are champions of a policy and they put in bill after bill, follow through with the testimony, and get the partners together to push a bill in committee and that is what is needed here.

Sen. Diamond thinks the elected leadership needs to buy into this and those leaders need to be thinking outside the box of how the committees, in particular LCRED, can work this through and redesign how the committee operates. He said legislators pretty much accept committee functions year-after-year, session-after-session, and he thinks this is the time and this is an example where you can change that. He said if the GOC could say that as a committee, that might make a difference.

Sen. Johnson said we should be looking at the trends nationally of what will influence the economy and gave the example of what is being done about where Maine gets its food from and how much is produced in Maine. He does not think that is being done in the LCRED Committee or by anybody else.

Director Ashcroft said perhaps the GOC could asked MDF and MEGC if they would be willing to share with her any specific ideas they have about what statutory changes might be needed to clarify the scope of effort they might embark on and get an idea of what resources might be needed so the Committee could weave that into the GOC's bill they are working on. Committee members agreed that should be done. Director Ashcroft will work with MDF and MEGC to get those pieces pulled in.

Sen. Burns said the problem is bigger than just one aspect. He said this is a very important part of it and he appreciates the champions who come along from time-to-time and do take initiatives and bring important legislation to the State, but he thinks it is haphazard to depend on that happening each term. He suggested looking at what other states do so that long-range planning about many aspects of the State government are dealt with on a routine basis and the other responsibilities that each Legislature faces do not overshadow that. He said there must be other models and maybe they should be looking at a different format for the Legislature in the future as to how they, on a routine basis, have long range planning for many of the policy committees that come into play and it is a matter of course that they look at those rather than happenstance.

Chair Katz said this discussion regarding economic development will continue at the August GOC meeting. They will hear back from Director Ashcroft after she has had the opportunity to speak with the MEGC and to research what is happening in other states.

## **- Child Development Services**

### **› Report Back on changes/progress at CDS and perspective on CDS experience with enhanced Reporting to Legislature**

Director Ashcroft said OPEGA was working on the Child Development Services (CDS) Report in 2012. She said it was a situation where there were multiple different issues coming into play that impacted CDS' ability to effectively and efficiently deliver resources with an eye toward not only providing the best services, and getting results for the children they were serving, but also to do so in a fiscally responsible manner. She said at the time OPEGA was finishing up the review, Ms. Brown had

just been hired as the Director of CDS. Director Ashcroft said Ms. Brown took OPEGA's Report to heart and put together an incredible action plan with many different action steps across all areas of CDS. She said it was a pleasure to work with Ms. Brown. Ms. Brown had some positive things to report out in 2013 and she has continued to work on OPEGA's Report Recommendations.

Director Ashcroft said of the eight Recommendations in OPEGA's Report all but two have been closed as having been implemented or otherwise addressed by CDS. She said one of the two remaining open is more of a Department of Health and Human Services (DHHS) issue regarding an audit they were doing of Section 28. At OPEGA's last check in on this, they were in the final stages of that review, but it had not been closed out yet and OPEGA has not checked back since about March 2014. Director Ashcroft said the other open Recommendation is with CDS. It had to do with the data system that CDS uses to provide services to children and the data that was being collected and reported through that system. She said she was interested in having the GOC hear about what is one of the biggest success stories coming out of one of OPEGA's reviews in terms of what has been improved. She thought it was also valuable to check back on the enhanced annual report CDS is producing that is supposed to be providing the more transparency for the Legislature and what challenges CDS has had in producing the report and whether the Legislature has found it useful. Director Ashcroft noted that she had not had the opportunity to check in yet with the two policy committees that receive CDS's Annual Report, or their legislative staff, but she will do so.

Ms. Brown said she is proud of what CDS has been able to accomplish and referred to her Leadership Team saying they were a crackerjack team that has helped move the needle on all of the Recommendations that were in the OPEGA CDS Report. She said she was also pleased and proud to share with the GOC that they have finally launched the new CDS data system. She said they followed the RFP process the State of Maine follows and made a vendor award to a company called Yahasoft Incorporated and as of July 1, 2016 they have launched the new system. She said for the first time in CDS history contracted providers are going to have access to the data system and will be making entries into the data system so it will bring the team effect CDS had been trying to achieve.

Ms. Brown said CDS now has a real time web data system so if anyone should call CDS and ask, for example, how many children are being served she could pull that information up and tell them. She said as of fifteen minutes ago CDS had 5,297 children active in the CDS system across the State of Maine which breaks down to 1,369 infants and toddlers under the age of three and 3,928 children between the ages of 3 and 5. She said they have nine regions across the State that line up with the school superintendent regions and CDS can also give the data on children in each of those regions and can look at what stage of the process they are in. Ms. Brown said the system is going to bring CDS light years ahead and it is going to provide them data, not only for the annual legislative report, but also for their federal reporting requirements. She said CDS is very proud to bring the product to the State of Maine.

Ms. Brown said CDS's Annual Report is a fairly labor intensive report to put together. She thinks CDS has it down to a science after this last year, but said she has not had one inquiry, comment, phone call or email with questions regarding the Report. She said it gets delivered to the President of the Senate and Speaker of the House. Ms. Brown said a couple of years ago CDS was asked to do a briefing before the Educational and Cultural Affairs Committee, but she did not get a request from that Committee this year perhaps because the Committee may have had more on their plate and did not get to it. She noted the CDS Annual Report is fairly wordy and, after hearing members of the GOC talk about how many bills come before their committees, she wondered how useful and meaningful the report was to the Legislature.

Sen. Burns asked if CDS makes an announcement when they release their Report. Ms. Brown said CDS posts that information on their website, which is under the Department of Education's website, and sends it to the President and Speaker, but beyond that they do not make a public announcement. They could announce it in their daily/weekly news bulletin. Sen. Burns asked if it was worth a press

release because he thinks the Report is significant to the State of Maine. Ms. Brown said the Report contains very comprehensive information. She noted that Director Ashcroft asked if the Report was useful to CDS internally and said it was information that CDS staff already knows. However, the two pieces of information they have found useful through their data collection and collation is that CDS has seen a trend in the improved efficiency and productivity for the CDS employed staff. Overall they are about sixty-five percent productive which is very high and efficient. Ms. Brown explained that means in a forty hour work week, sixty-five percent of those forty hours are spent in meaningful productive work engaging in either evaluating children, serving children, or traveling to serve the children. To serve infants and toddlers, CDS has to go to where they are so it involves a lot of travel time. She said you can spend almost an entire eight hour work day travelling to see two or three children so they put all of those pieces together and factor that in. This is work that otherwise CDS would have to contract out and pay a vendor for.

Ms. Brown said the other trend CDS is starting to notice is that more and more of their contractors have become dissatisfied with the Medicaid rate of reimbursement. They feel it is low and it has not been changed or addressed in over ten years. Providers have told CDS they will not be able to continue to do business with them if CDS has to ask them to accept the Medicaid reimbursement. CDS has had to do some negotiating under their federal mandate. She said CDS has to provide the service to the child otherwise they would be found out of compliance so CDS has had to negotiate with providers to make sure that they do not have children going into unmet needs status. CDS is finding that the cost to employ CDS staff is now cheaper, in some instances, than to contract out for services. Ms. Brown said she was not suggesting that anything be changed, saying that seventy-five percent of the evaluations and services that are provided to the 0-5 group are still done by contractors and the vast majority of services are still provided by contractors as well. However, she thinks that it is a sign that CDS is holding people accountable and monitoring expenses, looking for effective and efficient services to serve kids in Maine.

Rep. Mastraccio asked if Ms. Brown does a report presentation at the beginning of a legislative session to the committees of jurisdiction about this. Ms. Brown said only if a committee asks for an official briefing.

Chair Katz said CDS has contracted vendors and in-house staff to provide services. He asked if there was a default that CDS uses to try to have all contracted people and only fill-in with staff when you can't find them. Ms. Brown said yes. One of the most notable trends is in the Early Intervention Program that is the Infant-Toddler Program where extensive travel is required. She said that has not been appealing to CDS's contracted provider community and that is where they have focused on having more of the CDS staff doing that work. She said they try to look at where there is a critical mass of children where travel might be less and try to give that group of children to the contracting providers and save the CDS staff for places where there is not a critical mass or where they have to travel more.

Director Ashcroft asked Ms. Brown if CDS's Annual Report were to go away would they still, through the new data system, be collecting the information she just described that would allow them to say to the AFA Committee, for example, here is the activity. She noted that the OPEGA review in 2012 stemmed from CDS being in a mode where it was going before the AFA Committee asking for supplemental appropriations and the Committee was asking for data that neither CDS or DOE was able to readily provide. That was the genesis for what kind of information needed to be reported out and available for the Legislature, not only on a regular basis, but when there were a budget discussion to be had around the program. Director Ashcroft said she was thinking forward about whether there needed to be tweaks in what the statute requires CDS to report if this kind of information is available on a moment's notice more than it was before. If they are already using some of those measures, is there still a need for such an expensive report unless the Legislature still wants to be able to pick something up and have it at their fingertips.

Rep. Mastraccio asked if CDS could tell on their website how many times the Report has been accessed. Ms. Brown believes they can. Rep. Mastraccio thought that information would be interesting because, for her, being able to access a report without having to call is helpful and said she does that a lot. She will go to a department's website and will look up an old report and said because there are so many people who are termed out and so many new legislators to committees, it seems to her that it would be easier to have a report than always having a different person saying what about this or that.

Ms. Brown said CDS previously collected data in many different ways and then they had to try to pull that information together and that made OPEGA's task quite daunting in their review. She said with the new data system, information will be collected and it will link directly to CDS's accounting system. She said she was wondering whether the GOC wanted to think about Director Ashcroft following up with CDS to get a tour of the new data system. Ms. Brown agreed with Rep. Mastraccio that some sort of annual report is good and necessary, but maybe it could be tweaked, refined and simplified a bit.

Ms. Brown said the new data system is called CINC, the Child Information Network Connection.

Rep. Campbell asked if this was both transparent and accountable and does anyone see any value in using this system in any of the other departments. Ms. Brown said CDS was asked that question yesterday. Because the system is so new, they have not had a chance to do a lot of PR and demos, but they were asked if the program had any capability to service the K-12 population and she said it certainly could.

Sen. Burns noted that he thought every superintendent would want this type of information for their jurisdiction. Ms. Brown thought schools already had access to information and said they have different reporting requirements than CDS has. She said the program may be helpful for special education in public schools.

Sen. Johnson said this sort of thing in various ways needs to be reported by people in schools for services provided. He asked if they were providing that through Infinite Campus and whether DOE and CDS is having to interface that to the application.

Ms. Brown said yes and one of the problems with their previous data system is that they could not upload or get CDS's data into the bigger picture of the DOE data. She said the new system will be compatible with that so now CDS's data will be more readily integrated and accessed through the DOE. She said there are federal reports that CDS has to put together, but this new system is going to make it more concise, clear and streamlined.

Sen. Johnson asked what was being done working with stakeholders and DOE to look at how to make the work in schools simpler rather than doubling the involvement with different application environments.

Director Ashcroft said the school system is not doing anything with CDS's application. CDS services children before school starts so there is not a dual requirement. She said this is about bringing CDS's information into the larger DOE system and the schools meeting their piece, etc.

Sen. Johnson said there is reference to the work in CAP agencies, for instance, and some schools are collaborating with CAP agencies on preschool. Ms. Brown thinks where the interaction lies is in the State longitudinal data system and CDS is working towards that. She thinks things have slowed down a bit in that area, but that CDS's data would be able to be migrated into the State longitude data which they had done with the CAP agencies, the Headstart Programs. She said Sen. Johnson was right, the public schools are collaborating very closely with many CAP agencies through their Headstart Programs and CDS is the third party in that relationship.

Sen. Diamond said one of the biggest problems to date has been tracking children who have been sexually abused, and their progress and treatment. He wondered if what Ms. Brown was sharing with the GOC is going to provide more accurate and more detailed information in terms of the progress of the children who have been abused.

Ms. Brown said it depends. She said CDS has eligibility categories for children and often times children who have experienced that sort of trauma may be identified as a child with emotional disturbance. She said more than likely, if it is a three or four year old who has experienced that misfortune, they might be identified as developmentally delayed. Sometimes CDS is only provided limited access to some of that information because it is so highly sensitive and volatile. Ms. Brown said CDS works very closely with children in the foster care system and often times when they go into the foster care system it is because of that sort of abuse. CDS does not always have that information available to them and sometimes the children display some other type of identifying issue that would qualify them for the CDS program. Ms. Brown said what Sen. Diamond was interested in might be more of a DHHS data tracking component. Sen. Diamond said it was the foster care children that he was really focusing on in his earlier question and it seems like somebody must have the answer. Ms. Brown said, although it may take a year for them to get solid data and see what the reporting shows, thinks they will have a better handle on some of that information. Sen. Diamond said the GOC should check back with CDS in a year or six months.

The GOC thanked Ms. Brown for the information she provided and for answering their questions. Ms. Brown said she will be leaving CDS on August 5 because she is moving out of state and said she appreciated the opportunity to talk with the Committee and to make improvements on behalf of children and families in Maine.

## **NEW BUSINESS**

- **Consideration of OPEGA Project Direction for the Northern New England Passenger Rail Authority Review**

Director Ashcroft said OPEGA started working on the NNEPRA review in April 2016. She said OPEGA has done an extensive amount of preliminary research work that has given them a good grounding in the agency and its operations and how it is governed, etc. In addition, OPEGA looked at different areas of concern that might have come up that lead to the review.

Director Ashcroft summarized OPEGA's Recommendation for Project Direction of the Northern New England Passenger Rail Authority. (A copy is attached to the Meeting Summary.)

The GOC's discussion and questions included:

Sen. Gerzofsky thanked Director Ashcroft for her presentation and OPEGA's work. He said one of his concerns comes from getting an OPEGA Report two days ago that he was not allowed to share with anybody outside the GOC because it was marked confidential. He did not realize the Report had been shared with anybody outside the GOC. He is concerned with understanding the OPEGA/GOC process because this request was brought by a legislator on behalf of constituents' concerns in multiple towns and areas and he did not know what part the public was going to play in the process, or where the Committee was going or how they were going to get there, if the GOC was going to follow OPEGA's recommendations to produce an Information Brief now. He would like to understand that better because there are several things not in the Project Direction that he was expecting to see. Those included the bonding, the State's obligation, the stimulus package, \$38 million the State is not responsible for paying back, but it is still tax payer money that funded building the track. Sen. Gerzofsky said there is a bond out right now for projects to benefit the service. He said when he requested the review of NNEPRA he narrowed the scope of it. He said it was about management, communication, how people get along as far as the public and NNEPRA and Northeast train riders. He said it were those things he

and his constituents had concerns about. Sen. Gerzofsky said his requested review involved whether NNEPRA was being managed properly, and is meeting its goals in bringing public rail service to Maine. He said there are multiple communities that are interested in it and he has maintained that they have to have faith in the product before they can expect anybody to want to get on board. He said his concern is not about whether they should have service or not, or whether it is going to pay for itself or not, the concern is how do you expand it. He said he has not heard people say they want to get rid of rail service, but rather what role constituents get to play or don't get to play and who has oversight of what.

Director Ashcroft said OPEGA did its best to understand, to the degree that they usually do in preliminary research, the context and information available in each of those areas and they did not put everything that had been learned in the Project Direction Recommendation document. She said the Project Direction Recommendation was not a report, it is only a summary of the work OPEGA has done to this point and their recommendation to the GOC about whether or not they should continue to spend OPEGA resources on it. She said normally she is either saying to the Committee that there is no need to look further or they have some specific ideas about which questions OPEGA thinks would be valuable to answer. Director Ashcroft said on this particular topic OPEGA is on the fence about what should be looked at further that would be a valuable use of OPEGA resources. That is mostly dependent in this case on what is of legislative interest. OPEGA is not identifying through the work done to date any areas they think OPEGA should definitely spend more time on. She said that is not to say there would not be some areas that the GOC would like to have OPEGA address and she thinks being able to ask the GOC for that input would be best done after OPEGA gets the opportunity to share with the Committee what they have already learned about some of the areas of concern.

Director Ashcroft said OPEGA was looking to explain all that to the GOC in much more depth through an Information Brief. When the Committee gets the Information Brief, it is a presentation of an OPEGA report to the Committee and the Committee at that time could decide to hold its typical public comment period as they do on any report OPEGA releases. She said if the Committee makes the decision, once they have the Information Brief, that they do not need OPEGA to go any further, they could schedule a public comment period. If the GOC decides they want OPEGA to go further, than they can discuss where it would make sense to focus OPEGA's resources to give the Committee what is of most value. In that case, OPEGA would conduct further review and then put out a final report at which time there would be a public comment period.

Sen. Gerzofsky said he was not aware of how OPEGA did its work and he had communicated to the people who brought the concerns to him to stay out of the review process and that there would be a role for them to play later on in some type of venue. He said he is more concerned about the people who brought their concerns regarding NNEPRA management, etc. He said he had not been contacted by any of those constituents so he assumed that they were involved during the review. Director Ashcroft said OPEGA did not reach out to interview anyone other than Sen. Gerzofsky. She said OPEGA relied on the very extensive nature of his initial letter of request to OPEGA that laid out well what the areas of concern were so at this juncture OPEGA thought they had a good understanding of that. She said, if for some reason, Sen. Gerzofsky thought those were not all expressed well, then that should be talked about, but she thinks in terms of the areas of concern, OPEGA has done its best to look at that based on what he had shared with them through the process.

Sen. Burns said OPEGA always gives a full, detailed and comprehensive explanation of things. He noted from Director Ashcroft's earlier comments that she would like the GOC to have the Information Brief prior to making further decisions regarding NNEPRA. He said it sounded like there would be an opportunity for a public hearing once that information comes to the Committee. His concern is that he thinks it is extremely important to this particular topic that they have both of those things occur while Sen. Gerzofsky is still a member of the GOC. Sen. Burns was interested in receiving the Information Brief so he could make up his own mind and asked if that could be done simultaneously with the public weighing in also. Director Ashcroft said she would defer to the Chairs and the Committee because they can do it however they want. She said OPEGA is going to issue an Information Brief, if that is what the Committee decides it wants to receive. Whether the GOC wants OPEGA to go further, or they want to receive public input, at that point is the GOC's

decision to make. Director Ashcroft said she would be looking to get the Information Brief to the Committee for their September meeting and then they have a couple of months beyond that to weave in any public comment period, or they could decide to meet on a day other than the monthly meeting schedule.

Chair Katz noted that the presentation of an Information Brief on NNEPRA does not foreclose any inquiry into anything in the future should the Committee want to do that. Director Ashcroft said that was correct. She said the Information Brief is more than just sharing what OPEGA has learned, it is also an opportunity to discuss areas of risk for NNEPRA's operation or some suggested areas for improvement. The GOC might find that there is enough there already for the Committee to go forward and decide it wants to take some sort of action, pass it on to the policy committee, or whatever needs to happen at that point. Director Ashcroft said that is why OPEGA was recommending this action at this juncture because there is already information to share. Chair Katz asked how much staff resources are needed to do the Information Brief. Director Ashcroft said she has had two staff on the review full time and she expects they will collaborate on getting the Brief complete. She would keep at least one and a half staff from now until the Brief is drafted.

**Motion:** That the Government Oversight Committee approves OPEGA's Recommendation for Project Direction of the Northern New England Passenger Rail Authority. (Motion by Sen. Diamond, second by Rep. Campbell, motion passed by unanimous vote 12-0.)

Chair Katz assumed the Committee would make a decision about when and if to hold a public hearing at the September meeting when the Information Brief will be presented to the Committee.

Following a Committee discussion it was decided the GOC should keep consistent with their policies and procedures and receive OPEGA's Information Brief in September and have the public comment on the Brief at their October meeting.

- **Tax Expenditure Expedited Reviews – Necessity of Life Information Provided to the Taxation Committee**

Director Ashcroft reminded the GOC that this was a report that OPEGA was statutorily required to put together for the Taxation Committee with the idea being that the information would be useful for them in conducting what is considered to be an Expedited Review by the Taxation Committee. She said the GOC does not have a role in the Expedited Review process, but she did share the information with the GOC at the same time it was given to the Taxation Committee. Director Ashcroft said it was on today's agenda just to let the Committee know that the information has been issued and OPEGA did brief the Taxation Committee on July 19<sup>th</sup>. The Taxation Committee is in the process of determining how they want to conduct their Expedited Reviews. Director Ashcroft wanted to answer any questions that the GOC members might have.

Rep. Mastraccio said she found the information very interesting and it showed her how much money is involved in life and safety type things that you probably do not think about. She thought they all made sense, but it was interesting to see how much money is actually not being collected that Maine could collect if they didn't have the policies in place. She hoped the Taxation Committee felt the same way and asked if it was information that Committee ever had before. Director Ashcroft said what OPEGA provided is a compilation of information from various sources, but she was not sure there had been a look to see what the fiscal information over a span of time had been. She said the Taxation Committee has had access to the legislative history, but she is not sure that anybody had put that information together in this way and she thinks there was value in the Taxation Committee getting the information in a distinct format. Director Ashcroft said from the Taxation Committee's discussion she thought they were in the same place as Rep. Mastraccio as far as whether the exemptions still made sense for Maine. She said there was discussion about whether there was a need to further define what the Necessity of Life policy is for the State of Maine and they wanted to work their way through a discussion guide OPEGA also provided to them to help them cover the points that are required for them to look at by statute. She thinks the Committee will have further dialogue with the Maine Revenue Services.

Rep. Mastraccio thought it was a very important exercise and having the information and having the Taxation Committee discuss it is important.

## **UNFINISHED BUSINESS con't**

- **Report Backs and Follow-up on Prior OPEGA Reports**

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

- › **Continued Consideration of Desired Objectives for Statutorily-Required Evaluation of Economic Development Programs (including Research and Development)**

Director Ashcroft said she thinks the conversation the GOC had earlier about whether there is going to be an economic development strategy and a plan would get woven into desired objectives for the DECD evaluation. She will draft some objectives for the GOC to consider incorporating into their proposed legislation.

Director Ashcroft also noted that from the GOC's previous discussion that there is a desire to have reviews of individual programs with some of the detailed objectives that OPEGA is currently pursuing for tax expenditures. She said she called those individual program reviews. She said there is also a desire to have a broader view of how the State was making progress against either an economic development plan, or measures of growth, and how the portfolio of what Maine has for programs was either contributing or could be improved to contribute to that. She said those are different types of evaluations so for the next conversation the GOC will need to talk about those individual program reviews and what is the best way to get them done. Whether the evaluations are done by DECD's consultant or somebody else, the GOC might want to think about getting them lined out, put on a schedule or specifying that they need to be reviewed at some point in time, and set the objectives out for those separately from what might be a broader every three or four year review. She said that is a much broader look at how the State is progressing and doing with its plan and the programs that are in place to help support that. Director Ashcroft said that is probably more in the realm of the kind of review that DECD has currently been doing. She said the next discussion is how they want to get that individual program piece done. Director Ashcroft noted that in the past Chair Katz raised the idea that maybe they should be looking to incorporate those somehow into the schedule OPEGA already has for tax expenditures. She said that is one option, but they could equally task DECD or somebody else with performing that same kind of review for those programs.

Rep. Mastraccio said that was a much bigger discussion and as the GOC goes through this process she is leaning more towards what Sen. Katz said in the past, that it is better to put it on OPEGA's list. She said the State is going to spend the money anyway and at least if it is in the pipeline it does not matter who is sitting in the Committee chairs or who is in DECD. It would be independent of the political process in some way which makes it more valuable. Rep. Mastraccio has noticed that DECD has been absent from some of the GOC's important discussions. That in and of itself raises a red flag for her in terms of politically if they are not buying into it, then the evaluation is just going to be an evaluation and is not going to have any effect. In that case she wants something that can be more independent and she thinks that is what has been missing.

## **REPORT FROM DIRECTOR**

- **Status of Current Projects in Progress**

Director Ashcroft said OPEGA will be doing an Information Brief on the **NNEPRA** review that will be presented to the GOC at their September meeting.



**Licensing and Regulation of Child Care Providers** is in the fieldwork stage and that is moving along. **State Lottery** is also being worked. OPEGA did not have a timeframe for either one of those reviews, but it is their goal to have both reports issued before this Committee leaves.

Director Ashcroft said she wanted to talk about the **Tax Expenditure Evaluations** and what OPEGA has for a goal on reporting out at the August GOC meeting. She said OPEGA realized that putting out reports at the end of the year will go to a non-existent GOC. She wants to make a proposal to the Committee about sanctioning a waiver from the statutory requirement. She does not want to put a report out into the public domain without having presented it to a sitting Committee. She will have proposals on that for the GOC in August as well.

Director Ashcroft noted that OPEGA was having some challenges in getting access to data that is confidential at Maine Revenue Services (MRS) and DECD. She said the attorneys are now involved. Chair Katz asked where the problem was at this point on that kind of information. Director Ashcroft said OPEGA has asked, for example on the New Markets Program, for some information from MRS. There is language in the new statute around tax expenditures that says OPEGA is going to ask for that in a de-identified way and MRS is going to provide that in a format that is de-identified. As it turns out, although what OPEGA was asking for was totals, there are so few tax payers who are getting those credits that MRS feels very strongly that OPEGA would have the ability to put that information together with what is public information at FAME and be able to tell who the tax payer is. By virtue of that, they will not have met their statutory requirement of only providing de-identified data. She said her interpretation of the statute is somewhat different and she thinks OPEGA ought to be able to see the data even if they cannot report on it, or otherwise share it with the consultant. The Attorney General's Office is involved in interpreting what is there in statute and if, in fact, MRS's interpretation is correct then she will be coming back to the GOC at some point with suggestions for changing what is in statute to be able to allow OPEGA to access the data. Director Ashcroft said DECD also has information that is confidential under statute so OPEGA is just beginning the process with them. It is her understanding that DECD is going to follow MRS's lead in terms of how the statute is interpreted so it is a matter of whether their own statute that provides for confidentiality in a way that leaves them any room that MRS thinks it does not have. Director Ashcroft said also the level of data OPEGA is seeking to get can be de-identified. She said the rub is if there is a distinction between what OPEGA should be able to see, use and analyze versus what OPEGA would be allowed to share with anybody else. MRS seems to want to put OPEGA in the same bucket as the Legislature, public or whoever. She said that has to be sorted out, and once that is done, OPEGA will be on a better track.

## **NEXT GOC MEETING DATE**

The next GOC meeting is scheduled for August 18, 2016 at 9:30 a.m.

## **ADJOURN**

The Government Oversight Committee meeting was adjourned at 12:20 p.m. (Motion by Sen. Gerzofsky, second by Rep. Campbell, passed by unanimous vote.)

## **OPEGA Recommendation for Project Direction**

### **Northern New England Passenger Rail Authority**

#### **Background**

On March 13, 2015, the Government Oversight Committee (GOC) voted to place a review of the Northern New England Passenger Rail Authority (NNEPRA) on OPEGA's Work Plan after considering a request by a GOC member. OPEGA began preliminary research in April of 2016. During the preliminary research phase of this project OPEGA:

- reviewed issues discussed by the GOC at the March 13, 2015 and July 17, 2015 meetings, and issues discussed by the Joint Standing Committee on Transportation at its March 18, 2016 meeting;
- reviewed issues discussed in 39 unsolicited emails or letters provided to OPEGA by concerned citizens;
- reviewed reports produced by the federal Government Accountability Office and other states with results from their reviews of passenger rail services;
- interviewed the NNEPRA Executive Director and the Manager of Budget and Administration, as well as other NNEPRA personnel;
- interviewed the Chairman of the NNEPRA Board of Directors, and the Commissioners of the Departments of Transportation and Economic and Community Development;
- attended a presentation of NNEPRA's "Downeaster 101," a presentation that is also given to new Board of Directors' members;
- reviewed statutes, legislative history, and rules related to NNEPRA and its operations;
- reviewed reports from annual financial audits and regular federal government audits of NNEPRA;
- reviewed NNEPRA strategic plans and planning process;
- reviewed NNEPRA's policies and procedures relevant to procurement, contracting, accounts payable, and budgeting processes and identified key controls;
- reviewed NNEPRA's website and materials including: operating statistics, reports and studies, Board meeting packets, and information on projects; and
- reviewed historical and current budget data for NNEPRA; and
- analyzed the last five years of NNEPRA's expenditures.

#### **Summary of Preliminary Research and Analysis**

##### **Overview of the Northern New England Passenger Rail Authority**

###### **Relevant Statute and Rules**

The Northern New England Passenger Rail Authority was established in 1995 in Title 5, section 12004-F, subsection 16. Its organization, purpose, duties and authorities, however, are defined in Title 23, Chapter 621, known as the Passenger Rail Service Act, which also establishes passenger rail service in Maine. Bylaws governing the internal management of NNEPRA are set forth in Rule 95-584.

Since 2012, NNEPRA has also been subject to new statutory requirements for quasi-independent state entities. Title 5, sections 12021 – 12023 establishes responsibilities and requirements for these entities with regard to certain financial policies and procedures.

### Organization

NNEPRA is established as a body both corporate and politic in the State. The Authority consists of a Board of seven directors. Two of the directors are the Commissioners of Transportation and Community and Economic Development, who are directors ex officio. The remaining five directors are members of the public, appointed by the Governor and confirmed by the Legislature for five-year staggered terms.

NNEPRA employs an Executive Director and six other staff: the Manager of Budget and Administration; Manager of Passenger Services; Marketing Director; Manager of Special Projects; Data Specialist; and Marketing and Sales Assistant. NNEPRA's offices are located in Portland.

### Purpose and Mission

Statute states that NNEPRA is established for the governmental purpose of promoting passenger rail service. It directs the Authority to take all actions that are reasonably necessary to initiate, establish or reinstate regularly scheduled passenger rail service between points within this State and points within and outside this State. These actions may include, but are not limited to, the acquisition, holding, use, operation, repair, construction, reconstruction, rehabilitation, modernization, rebuilding, relocation, maintenance and disposition of railroad lines, railway facilities, rolling stock, machinery and equipment, trackage rights, real and personal property of any kind and any rights in or related to that property.

NNEPRA describes its mission as developing and managing a quality passenger rail system that meets the transportation needs of its customers, delivers value, and enhances economic development within its service region. This mission is supported with Board-approved goals, strategic initiatives and performance measures.

To fulfill its statutory purpose and mission, NNEPRA facilitates coordination between many operating partners and manages the budget, contracts, promotions, and customer services associated with the Downeaster passenger rail service operating between Boston, MA and Brunswick, ME. NNEPRA holds a 20-year agreement with Amtrak to operate the Downeaster and is party to agreements with host railroads, i.e., Pan Am Railways and the Massachusetts Bay Transportation Authority (MBTA). Additionally, NNEPRA manages the contract with Epicurean Feast to provide onboard food service and holds liability and insurance policies associated with the operation of the Downeaster.

Considerable information regarding NNEPRA's mission, operations, plans, finances and performance is available on NNEPRA's website at <http://www.nnepra.com>.

### Sources and Uses of Funds

Statute directs NNEPRA to use revenues received from passenger rail service to pay for operational expenses. Operating revenues are the cumulative funds NNEPRA earns via ticket revenue, food service revenue, Portland Transportation Center parking, and other smaller, miscellaneous sources. As shown in Table 1, operating revenues totaled between \$8 and \$10 million annually from FY11 to FY15 and met between 49% and 55% of NNEPRA's annual operating expenditures.

Statute requires NNEPRA to keep fares at reasonable levels to encourage use of the passenger rail service. It also directs NNEPRA to seek and use funds necessary to pay all operational expenses that are not met by fares or other funds or revenues. NNEPRA is authorized to seek federal funds in the form of grants or

loans and to obtain additional funds through borrowing, revenues, or other means to satisfy operating deficits. Statute also authorizes other government agencies to allocate funds or otherwise aid in the implementation of passenger rail service.

NNEPRA’s operating costs that are not covered by operating revenues are funded with a combination of the following:

Congestion Mitigation Air Quality (CMAQ) Funds – Federal Transit Administration (FTA) funds for transportation improvements designed to improve air quality and mitigate congestion. These funds are apportioned annually to each state according to the severity of its air quality problems. A portion of Maine’s CMAQ funds are allocated to NNEPRA by Maine’s Department of Transportation (MDOT).

Formula Funds - FTA funds made available for transit capital and operating assistance in urbanized areas and transportation-related planning. Funding is apportioned on the basis of federally-established formulas. Formula funds have only been available to NNEPRA since FY13 when Portland gained federal status as an “urbanized area” and "transportation management area" due to its growing population.

Multi-Modal Account Funds (MMA) – State funds comprised from multiple sources but primarily derived from car rental sales tax. NNEPRA has a cooperative agreement with the MDOT in which the MDOT agrees to provide a 20% match of federal funds for NNEPRA using the MMA.

NNEPRA’s funding from the combined two federal fund sources was approximately \$5.5 to \$7.5 million a year in the period FY11 to FY15 and met between 36% and 41% of NNEPRA’s operating expenditures. State MMA funding ranged from \$1.4 to \$1.8 million in the five year period.

The availability of federal Formula Funds since FY13 has significantly reduced the amount of CMAQ funds the MDOT allocates to NNEPRA. CMAQ funds have ranged between 9% and 18% since FY13 with Formula Funds in that time period ranging between 18% and 32%.

<b>Funding Source</b>	<b>Amount of Annual Funding (Range between FY11 and FY15)</b>	<b>% of Annual Operating Expenses Covered by Funding Source (Range between FY11 and FY15)</b>
Operating Revenues	\$8 million to \$10 million	49% to 55%
Federal Funds (CMAQ and Formula)	\$5.5 million to \$7.5 million	36% to 41%
State Funds (MMA)	\$1.4 million to \$1.8 million	9% to 10%

NNEPRA also applies for and receives other federal grants from the FTA and Federal Railroad Administration to fund particular capital and maintenance projects.

NNEPRA’s total expenditures in the period FY11 to FY15 ranged from \$20 million to \$31.5 million annually. Table 2 shows the nine major categories of expenditures and the percent that each represented of the total expenditures in the five year period.

<b>Category</b>	<b>Total Expenditure FY11- FY15</b>	<b>% of Grand Total</b>
Train Operations	\$68,069,841.49	55.30%
Projects	\$38,497,342.97	31.30%
Food Service	\$4,048,054.53	3.30%
Capital Maintenance	\$3,144,059.34	2.60%
Station Operations	\$2,608,037.13	2.10%
Wages and Benefits	\$2,412,310.28	2.00%
Marketing	\$2,392,517.79	1.90%
Administration	\$1,031,831.84	0.80%
Other	\$777,470.60	0.60%
<b>Grand Total</b>	<b>\$122,981,465.97</b>	<b>100.00%</b>

### Oversight

NNEPRA reports financial, ridership and train data to the FTA as a condition of the FTA grants NNEPRA receives. The FTA also conducts a Triennial Review of NNEPRA, the most recent of which was completed in August 2015. The triennial review is the FTA’s assessment of NNEPRA’s compliance with federal requirements, determined by examining a sample of grant management and program implementation practices. During the most recent review, the FTA considered 14 areas under which NNEPRA needed to demonstrate compliance. These included:

- Technical Capacity
- Procurement
- Public Comment on Fare Increases and Major Service Reductions
- Financial Management and Capacity
- Maintenance
- Legal
- Satisfactory Continuing Control
- Planning/Program of Projects
- Half Fare

The FTA noted deficiencies in Technical Capacity and Procurement related to lack of documentation and written, adopted procedures. A deficiency in Public Comment was also noted due to NNEPRA initiating a major service reduction without soliciting public comment. NNEPRA has taken the required corrective action to address those deficiencies.

The Federal Railway Administration (FRA) also conducts a yearly audit of one of the FRA-funded projects that NNEPRA has underway. The 2014 audit is the most recent for which there is a final report. The 2015 audit is still pending and the 2016 audit is scheduled for September 2016.

The FRA’s 2014 audit covered 23 different areas and identified no significant findings. A couple areas of potential concern were noted that were exclusively related to the changes within MBTA, the new working relationship for the project that NNEPRA and MBTA needed to establish and the resulting potential for the delay of completion of the project. NNEPRA was not required to take any further actions.

NNEPRA also is subject to an annual independent financial audit. OPEGA reviewed the audit reports for FY13, FY14 and FY15. Each audit found that NNEPRA's financial documents present fairly the financial position of NNEPRA and the changes in financial position and cash flows for the year end in accordance with generally accepted accounting principles. No material weaknesses in internal controls were noted.

With regard to State-level oversight, NNEPRA is required to present its operating budget to the MDOT Commissioner on an annual basis for approval. NNEPRA may only make expenditures in accordance with the allocations approved by the Commissioner.

NNEPRA is also required to make an annual report to the Legislative Council and provide copies of it to the Joint Standing Committee on Transportation and the MDOT Commissioner. The report is to include a description of NNEPRA's activities for the previous fiscal year and an accounting of its receipts and expenditures from all sources.

Since 2013, NNEPRA's required annual reporting to the Legislature has also included the following, which is submitted to the Executive Director of the Legislative Council and forwarded to the Transportation Committee:

- list of all procurements exceeding \$10,000 for which competitive procurement was waived;
- list of all persons to which the entity made contributions greater than \$1,000 in the preceding year (including dollar amounts); and
- description of changes made in the preceding year to written policies and procedures required by Title 5 section 12022: procurement and vendor selection; contributions; travel, meals and entertainment expenses; and use of lobbyists.

In accordance with Title 5 section 12005-A, the Board of Directors is also required to appoint a clerk of the board who is responsible for submitting reports to the Secretary of State. The reports are required to include:

- names and addresses of Board members;
- dates of appointments and end of terms for members;
- dates and locations of all meetings, attendance at meetings, and length of meetings;
- compensation for Board members;
- expenses related to the meetings or activities of the Board;
- funding source for expenses;
- Board vacancies; and
- activities of the Board related to its mission.

### **Areas of Interest**

During preliminary research, OPEGA heard about numerous areas of interest or concern from both solicited and unsolicited sources. A majority of the comments and concerns were generally encompassed in the following areas:

- Governance and Oversight of NNEPRA
- Lack of Transparency (primarily a concern of unsolicited complaints)
- Management Effectiveness (primarily a concern of unsolicited complaints)
- Service and Operational Issues (primarily a concern of the Transportation Committee)
- Financial Management and Planning (primarily a concern of the Transportation Committee)
- Project Management and Contract Administration (primarily a concern of unsolicited complaints)

Other concerns raised in unsolicited complaints and comments OPEGA received involved:

- the siting and justification for the Brunswick Layover and Maintenance Facility;
- environmental and health impacts from Downeaster operations;
- NNEPRA's relationship with the TrainRiders Northeast; and
- insufficient ridership and justification for the Downeaster service to exist.

### **OPEGA's Recommendation**

From our fairly extensive preliminary research, OPEGA has developed a sound understanding of:

- existing or prior concerns;
- compliance and reporting requirements;
- organizational structure and governance;
- purpose, mission and performance goals;
- financial and operational processes and controls;
- sources and use of financial resources including federal grants; and
- information systems and available data.

A number of the concerns prompting this review appear to stem from the fundamental public policy debate around the value of passenger rail service in Maine, or are the result of past public policy decisions and the premises on which those decisions were founded. We believe we are already able to offer perspective in this area, as well as any suggestions that would be appropriate to our role, which would primarily be related to information and data that is available for policy-making.

Other concerns prompting this review suggested mismanagement and/or lack of transparency at NNEPRA. While further OPEGA review may identify some specific opportunities for improvement, we do not find these to be areas of high risk at this time. We believe these concerns may be addressed to some degree through additional information and context regarding NNEPRA that OPEGA is already in a position to share.

From the perspective of how well NNEPRA is fulfilling its statutory intent and mission, OPEGA has identified several NNEPRA functions we would consider key to providing the most effective and efficient passenger rail service possible. These are:

- planning and oversight of infrastructure maintenance and improvements;
- minimizing capital and operational costs;
- establishing fares and schedules; and
- marketing and promotion of passenger rail service.

The governance and oversight structure for NNEPRA would also be a factor to consider.

We note that NNEPRA faces certain constraints, challenges and inherent risks in several of these areas associated with the various arrangements through which passenger services are provided and funded. Beyond this, however, we have not identified any potential concerns or high risk conditions that lead us to definitely recommend further review of any of these particular functions. In fact, NNEPRA appears to have strong practices in some areas, like procurement and contracting, which are already reviewed to some degree through the federal reviews and annual independent financial audits. Again, OPEGA has already gathered information that would allow us to describe generally NNEPRA's efforts and practices in these areas as well as the constraints, challenges and any associated risks.

Given all these considerations, there may be limited value to spending OPEGA resources on more detailed review of NNEPRA at this time given other projects in progress or pending on our Work Plan. Consequently, we recommend that OPEGA develop and present an Information Brief at this juncture to convey the substantial amount of information we have gathered on NNEPRA. The Information Brief will also allow OPEGA to point out areas of risk or potential improvement opportunities which could be considered and acted on by the agency, the GOC, the policy committee or individual legislators if desired. If, after considering the Information Brief, the GOC decides it would like more detailed review of a particular aspect of NNEPRA we can proceed with defining a specific scope for further work.