

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%.

Funding Source	Amount of Annual Funding (Range between FY11 and FY15)	% of Annual Operating Expenses Covered by Funding Source (Range between FY11 and FY15)
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.

Category	Total Expenditure FY11- FY15	% of Grand Total
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%
Grand Total	\$122,981,465.97	100.00%

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.