



SEN. ROGER J. KATZ, SENATE CHAIR  
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:

SEN. NATHAN L. LIBBY  
SEN. PAUL T. DAVIS, SR.  
SEN. BILL DIAMOND  
SEN. GEOFFREY M. GRATWICK  
SEN. THOMAS B. SAVIELLO  
REP. JEFFREY K. PIERCE  
REP. JENNIFER L. DECHANT  
REP. MATTHEW A. HARRINGTON  
REP. DEANE RYKERSON  
REP. PAULA G. SUTTON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**January 20, 2017**  
**Accepted January 27, 2017**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:00 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Katz, Sen. Libby, Sen. Davis and Sen. Diamond  
Joining the meeting in progress: Sen. Gratwick  
Absent: Sen. Saviello

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. Harrington, Rep. Rykerson  
and Rep. Sutton  
Joining the meeting in progress: Rep. DeChant

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Scott Farwell, Senior Analyst, OPEGA  
Jennifer Henderson, Senior Analyst, OPEGA  
Matthew Kruk, Senior Analyst, OPEGA  
Amy Gagne, Analyst, OPEGA  
Joel Lee, Analyst, OPEGA  
Etta Connors, Adm. Secretary, OPEGA

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**INTRODUCTION OF THE OFFICE OF PROGRAM EVALUATION AND  
GOVERNMENT ACCOUNTABILITY STAFF**

Director Ashcroft introduced OPEGA staff.

## **SUMMARY OF THE NOVEMBER 17, 2016 GOC MEETING**

The November 17, 2016 Meeting Summary was accepted as written.

### **ORIENTATION OF NEW MEMBERS**

Director Ashcroft summarized the Orientation material regarding the GOC and OPEGA including:

- Review of Functions, Roles and Duties – GOC and OPEGA
- Review of Key Processes:
  - How Topics are Selected
  - How Requests for Reviews Are Processed/Considered
  - Checklist for Considering Potential Topics
  - How Reviews are Conducted
  - How Reports are Received
  - Voting Processes and Procedures
- Description of GOC/OPEGA Website

### **REVIEW COMMITTEE RULES**

Director Ashcroft said it was her understanding that the model Committee Rules has recently been revised. It is no longer in the model Committee rules that legislators can vote via phone or email with the permission of the Presiding Officer. That has been taken out of the model Committee Rules so the GOC will need to discuss that section of their Rules and discuss whether they want 9. (F) removed or revised.

Director Ashcroft noted that items 9. J, K and L in the Rules should not be in the GOC's Rules because they do not apply to the Committee in terms of the process and what members vote on.

Sen. Katz asked Committee members to review the Draft GOC Rules and the Committee will discuss and vote on the Rules at their January 27<sup>th</sup> meeting.

### **NEW BUSINESS**

- **Discussion of Process for Establishing OPEGA Work Plan for 2017-2018**

- **Review of Current Work Plan**

Director Ashcroft summarized the Work Plan Topics that are in Planned Status. (A copy is attached to the Meeting Summary.) She explained that during the process of deciding what will be on OPEGA's Biennial Work Plan for 2017-2018 the GOC can either continue with the topics that have been carried over on the Work Plan from the previous biennium or they would vote them off the Work Plan.

- **Review of On Deck List Topics**

Director Ashcroft described the purpose and information topics on the GOC's On Deck List. (A copy of the On Deck List is attached to the Meeting Summary.)

Director Ashcroft, in response to Rep. DeChant's question of how long topics stayed on the On Deck List, said topics are voted onto the On Deck by the GOC and stay on the List until the GOC votes them off.

Director Ashcroft explained that the Committee could choose topics from the On Deck List to add to OPEGA's Work Plan and at the same time can decide if there is any topic on that List the members would like to vote off.

#### - Solicitation of New Topics

Next meeting the Committee will begin discussing whether and how to solicit new topics for the Work Plan.

## UNFINISHED BUSINESS

None

## REPORT FROM DIRECTOR

#### - Status of Projects In Progress

#### - Status of OPEGA Action Items From Past GOC

Director Ashcroft noted that the Tax Expenditure Evaluations are required for OPEGA to do under statute now. OPEGA has some of those evaluations up for review every year and the GOC is involved in that process in a very particular way. At the next meeting she will review the Tax Expenditure Reviews process and the related roles and responsibilities of the Committee and OPEGA. She said it is OPEGA's goal to report out on the **New Markets Capital Investment Credit Program** at the February 17, 2017 GOC meeting. OPEGA is also aiming to report out both **Employment Tax Increment Financing** and **Pine Tree Development Zones** at the March 24 meeting. The report on **DHHS Licensing and Regulation of Child Care Providers** is expected to be presented to the Committee at their March 10<sup>th</sup> meeting and the **State Lottery** report on April 28<sup>th</sup>. Director Ashcroft referred to the **Northern New England Passenger Rail Authority** (NNEPRA) that is in progress noting that the 127<sup>th</sup> GOC voted to have OPEGA continue with work on the Review. She noted that OPEGA did issue an Information Brief on NNEPRA at an unusual point in their review process because they wanted the Committee to have the benefit of the information they had gathered in an extensive preliminary research phase before deciding whether there was further review work to be done on the topic. The Committee voted that OPEGA continue its work on the NNEPRA review and it is currently on hold while OPEGA is wrapping up all of its reports that are ready to come out. Director Ashcroft said it is currently the plan that OPEGA will move back to the NNEPRA review in April to develop specific scope questions for the review and to plan the work.

Rep. DeChant referred to the November 17, 2016 Meeting Summary and the discussion around the NNEPRA review going forward. She asked if a new GOC could say they did not want to move forward with the review at this point or does the review have to continue. Sen. Katz said it is now the 128<sup>th</sup> GOC and members could decide not to proceed further with the review.

Director Ashcroft said the other four Tax Expenditure Evaluations have to remain on OPEGA's Work Plan and OPEGA has dedicated staff assigned to do the work on these reviews. The **Maine Capital Investment Credit, Reimbursement for Business Equipment Tax Exemption to Municipalities (BETE) and Reimbursement for Taxes Paid on Certain Business Property (BETR)** reviews will get full evaluations done by OPEGA. Under the Tax Expenditure review process OPEGA is also responsible for gathering up information for the Taxation Committee to use for "Expedited Reviews" and that work is the **Special Project: Tax Expenditure Expedited Reviews – Tax Fairness**. The above four tax projects cannot be taken off OPEGA's Work Plan by this GOC because they have been assigned by the GOC in accordance with statutory requirements.

Sen. Libby asked how it is determined which tax credits get reviewed and when. Director Ashcroft said the process was started about four years ago to identify what a review process would look like. At that time, what was used for a population is what is reported as a tax expenditure in the report Maine Revenue Services produces every other year. That formed the basis for the population and since then the GOC/OPEGA has added other tax expenditures they have become aware of or that the Legislature has since passed. OPEGA has also

taken off the tax expenditures that have been repealed by the Legislature. OPEGA then recommends a schedule for the reviews. Currently it is a six year recurring schedule and the GOC votes every year on what is going to get reviewed in the next year.

#### **- Status of OPEGA's Budget**

Director Ashcroft will be reviewing with the GOC OPEGA's proposed budget for FY 18 and 19. She noted that OPEGA is a separate account in the State budget and all of the GOC's expenses are also captured in OPEGA's budget. OPEGA's account is a non-lapsing account so the Office carries an unencumbered balance from prior years when it was under budget. The Director has not checked recently to see what that balance is. In the past, portions of OPEGA's unencumbered balance have been used for other legislative needs.

Sen. Diamond asked what "Civil Right Insurance" is that is mentioned in the budget. Director Ashcroft did not know and will get that information and report back at the next meeting.

#### **NEXT GOC MEETING DATE**

The next GOC meeting is scheduled for Friday, January 27, 2017 at 9:00 a.m.

#### **ADJOURNMENT**

Sen. Katz adjourned the Government Oversight Committee meeting at 11:15 a.m. on the motion by Sen. Diamond, second by the Chair, Rep. Mastraccio, unanimous.)

**Government Oversight Committee:  
Work Plan Topics in Planned Status  
(As of 1-20-17)**

	Topic	General Scope
1	<p><b>DHHS Audit Functions</b></p> <p>Responsible Agency: Department of Health and Human Services (DHHS)</p>	<ul style="list-style-type: none"> <li>• Effectiveness of DHHS audit functions in identifying and addressing fraud, waste and abuse in programs administered by the Department.</li> </ul>
<b>Additional Information</b>		
<ul style="list-style-type: none"> <li>• The 126<sup>th</sup> GOC placed this topic on the Work Plan in April 2013. It was requested by a GOC member.</li> <li>• In 2016, there are 4 separate audit Units within DHHS responsible for audits, examinations, investigations, and recoupment activities: MaineCare Audit Unit, Social Services Unit, the Program Integrity Unit and the Internal Audit Unit. The Fraud Investigative and Recovery Unit, which was under the Division of Audit in the past, reports directly into the Chief Operating Officer of DHHS. <ul style="list-style-type: none"> <li>○ The MaineCare Audit Unit conducts compliance audits and issues final cost settlements on all MaineCare cost reimbursed programs. The Unit processes over 600 cost reports representing approximately \$1 billion in MaineCare funding annually.</li> <li>○ Social Services Unit has oversight responsibilities for State and Federal grants that pass through DHHS to community agencies. At the end of a community agency's fiscal year, Social Services performs an examination/review of an agency's records to ensure compliance with applicable State and/or Federal legislation, statutes and regulations.</li> <li>○ Internal Audit Unit is responsible for monitoring all audits completed on DHHS, assisting in the implementation of internal controls to correct deficiencies identified in audit findings, and monitoring the effectiveness of controls and recommending changes as necessary. IA also conducts audits and reviews as directed by the DHHS Audit Committee. The Audit Committee was established in mid-2012 as a means to provide oversight of all external audits on the Department, monitor progress of and review results of the annual Single Audit and to approve the IA work plan. The Committee meets on a quarterly basis and more often as needed.</li> <li>○ Program Integrity Unit is responsible for monitoring and safeguarding the MaineCare Program against fraud, abuse and waste. It conducts analysis of MaineCare billings to detect utilization patterns or trends that may indicate fraud, abuse or waste. PI may perform retrospective audits/reviews of MaineCare providers and members to validate allegations.</li> <li>○ Fraud Investigative and Recovery Unit is authorized under 22 MRSA §13 to investigate fraud, attempted fraud, commingling or misapplication of funds administered by DHHS. FIRU is also responsible for the recovery of established improper payments in TANF, Food Supplement Program (Food Stamps), Medicaid and the General Assistance programs.</li> </ul> </li> <li>• Currently, the Division of Audit (not including FIRU) has 47 total positions with 10 vacancies. The Division reports that they are in the process of conducting interviews to fill 3 of those positions and are actively recruiting to fill the remaining 7 positions. The Division describes "aggressive recruiting" designed to address the difficulty in filling certain entry level positions within the Division.</li> <li>• In OPEGA's 2009 report on Durable Medical Equipment, OPEGA identified weaknesses in the Program Integrity Unit's capabilities to use data analytics and exception reporting from the MaineCare claims system to identify potential cases of fraud, waste and abuse. The Office of the State Auditor identified similar deficiencies in a 2013 limited procedures engagement, and in the FY13, FY14, and FY15 Single Audits.</li> <li>• In the Single Audits for FY10, FY11, FY12, FY13, FY14, and FY15, the State Auditor found that Division of Audit procedures related to long term facility audits need improvement. The State Auditor also identified deficiencies related to the Audit Division's handling of hospital cost settlements in a FY15 limited procedures engagement.</li> <li>• The Federal DHHS Office of Inspector General (OIG) noted the low number of fraud referrals from the Program Integrity Unit to the State's Medicaid Fraud Control Unit (MFCU) during FY12, FY13, and FY14. The OIG stated that referrals from the Program Integrity Unit are typically an essential component of a MFCU's ability to effectively investigate and prosecute Medicaid fraud.</li> </ul>		

	Topic	General Scope
2	Independent Living Services (multiple programs)  Responsible Agencies: Department of Labor (DOL) Department of Health and Human Services (DHHS) Other	<ul style="list-style-type: none"> <li>• Alignment of programs and resources with needs of eligible client population;</li> <li>• Efficient use of resources;</li> <li>• Compliance with State and federal program and funding requirements;</li> <li>• Coordination among programs;</li> <li>• Effectiveness of programs and services in support of independent living</li> </ul>

**Additional Information**

- The 127<sup>th</sup> GOC added this review to OPEGA’s Work Plan in June 2016 after considering a review request expressing concerns that many Maine people are waiting for Independent Living Services and that federally mandated mission, programming and funding requirements are not being followed.
- Although the original review request was specific to the Independent Living Services Program administered by the Department of Labor’s Division of Vocational Rehabilitation (DVR), the GOC determined that a review with a broader scope to encompass all State programs offering independent living services would be of value. Consequently, the general scope approved by the GOC intends to encompass the multiple programs delivered through State agencies, or supported by State-administered funding, that provide products or services to assist individuals with significant disabilities in living more independently in their homes and communities. These products and services will be referred to generally as Independent Living Services (ILS)
- OPEGA’s initial research on the Independent Living Services (ILS) Program administered by BRS produced the following information on that program:
  - The program assists people who have significant disabilities to live more independently in their homes and communities. The program is also an advocacy program for people with disabilities and their families.
  - The program provides for needed IL services subject to the availability of funds. The ILS Program is primarily funded through a federal grant. DVR is currently the Designated State Entity (DSE) to receive the grant by virtue of having been selected as the DSE by Maine’s Statewide Independent Living Council (SILC).
  - The SILC is a federally mandated Council that has responsibility for developing Maine’s State Plan for Independent Living. The Plan must be submitted to, and approved by, the federal administrators in order for Maine to receive the federal grant. The federal statute also requires that the Council to monitor, review, and evaluate the implementation of the State Plan and communicate with the State Rehabilitation Council (SRC) about activities that address the common needs of specific disability populations and issues under federal law.
  - The SILC is incorporated as a Section 501(c)(3) organization with charitable or educational purpose. It currently has nineteen members appointed by the Governor. SILC also currently employs a part-time Executive Director.
  - DVR provides supporting funds to SILC through a contract that requires SILC to perform certain activities and provide certain deliverables associated with the federal grant. The most recent two contracts include \$49,500 in funds from DVR, \$27,500 of which are from the federal grant and the remainder from other Vocational Rehab funds.
  - ILS Program Services are provided by Alpha One under a sole source contract with DVR. Alpha One has offices in South Portland and Bangor and is currently the only entity certified as a Council for Independent Living (CIL) in Maine under a separate federal program. The federal ILS Program requires that the services under the ILS grant be provided by a CIL. The Executive Director of Alpha One is a member of the SILC.
  - DVR’s contract with Alpha One for October 2015 through September 2016 was for \$475,000. The funding was comprised of \$89,690 in General Fund and \$385,310 Federal Funds, which included \$310,310 from the Independent Living State Grant awarded by the federal Department of Health and Human Services.

- All ILS Program services are carried out through an Independent Living Plan that is mutually agreed upon by the client and an IL counselor. The four core services that every Alpha One office provides are:
  - Individual and Systems Advocacy
  - Information and Referral
  - Individual Independent Living Skills Training
  - Peer Counseling
  - The ILS Program can also purchase products and services to help clients be more independent in their home and/or community.
- There is a maximum lifetime expenditure of \$5,000 allowed for each eligible individual served by the ILS Program. The ILS cannot pay for services that are traditionally provided by other state, federal or private agencies. Products and services that support independent living might also be available under other programs administered by DOL's Bureau of Rehabilitation Services and/or DHHS. According to DOL, the ILS Program is designed to be the program of "last resort".
- Individuals found eligible for the ILS Program are prioritized into four categories (Priority 1 being the highest priority). According to DOL, the Program has traditionally had a wait list for services for individuals in Priority categories 3 and 4. Alpha One regularly reports to DVR various performance metrics associated with the wait list, clients served and time to serve.
- According to DOL, in the fall of 2015 Alpha One and SILC discussed concerns about the wait list with the Governor. Alpha One estimated that another \$700,000 in funding would be needed to eliminate the wait list. Following that, DOL worked with DHHS and DOE to explore options for addressing the wait list. This led to a review of current wait list clients, and their needs, by DHHS to determine whether those needs could be met under other programs the clients were already enrolled in.
- As of June 2016, DHHS had reviewed 206 clients on the ILS Program wait list as Priority 3 and 4 and compared them to consumers enrolled in DHHS programs for Chapter 11 and Sections 12, 19, 63 and 96. DHHS found that 93 of those 206 were already enrolled in one of those programs and approximately 62 of them were, or may be, eligible to get some or all of their needs met under these programs, or other programs. DHHS and DOL were in the process of running an updated ILS program wait list against a master file of DHHS programs with components that may cover the needed products and services. This included MaineCare, MaineCare Waivers and Adult Protective Services.
- The 126th Legislature established the Commission on Independent Living and Disability to evaluate the needs of disabled Maine citizens, review existing available resources and services, and develop recommendations regarding expansion of citizen access to particular resources. The Commission's final report in December 2014 made recommendations in eight areas: transportation, education funding, reporting, building codes, public housing, employment, insurance and telehealth/assistive technology. There were no specific recommendations related to the ILS program. LD 949, which implements some of the recommendations from the Commission's report, was passed in the most recent legislative session following an override of gubernatorial veto.

	Topic	General Scope
<b>3</b>	<b>Public Utilities Commission</b>  Responsible Agency: Public Utilities Commission (PUC)	<ul style="list-style-type: none"> <li>● Assessment of extent to which the PUC independently assesses risks and costs associated with ensuring safe, reasonable and adequate electrical services</li> </ul>

**Additional Information**

- The 126<sup>th</sup> GOC added this review to OPEGA's Work Plan in April 2014 on a 7-4-1 vote after considerable Committee discussion of whether additional work was necessary following OPEGA's 2013 report on the Public Utilities Committee.
- Some GOC members had concerns that the PUC had a tendency to rely on information and analyses provided by the utility companies while disregarding testimony and other information provided by experts on the opposite sides of the matter the PUC was considering. There was also concern that the PUC had not been sufficiently responsive to LD 131 directing the PUC to research and provide a report to the EUT committee on measures to mitigate the effects of geomagnetic disturbances and electromagnetic pulse on the State's electricity transmission system.
- The review is intended to be a study of a sample of cases that have been considered by the PUC.

	Topic	General Scope
4	<b>The Fund for a Healthy Maine</b>  Responsible Agency: Department of Health and Human Services (DHHS) Other	<ul style="list-style-type: none"> <li>• Grantees’ management and actual use of Fund for a Healthy Maine funds;</li> <li>• Portion of FHM funds used for administration;</li> <li>• Extent to which grantees are dependent on FHM funds</li> </ul>

**Additional Information**

- The 127<sup>th</sup> GOC added this review to OPEGA’s Work Plan in January 2016 after considering a request for a review. The review request expressed legislators’ concerns that there is a lack of information and understanding about how FHM dollars are ultimately spent by grantees and sub-grantees and whether those expenditures are for intended purposes.
- The Legislature established the Fund for a Healthy Maine (FHM) in 1999 to receive Maine’s annual Tobacco Master Settlement Agreement (TMSA) payments. 22 MRSA §1511 restricts uses of the fund to eight health-related purposes:
  - Smoking prevention, cessation and control activities;
  - Prevention, education and treatment activities concerning unhealthy weight and obesity;
  - Prenatal and young children’s care;
  - Health care for children and adults;
  - Prescription drugs for adults who are elderly or disabled;
  - Dental and oral health care to low-income persons who lack adequate dental coverage;
  - Substance abuse prevention and treatment; and
  - Comprehensive school health and nutrition programs, including school based health Centers.
- OPEGA completed a review of four specific programs supported by the FHM and published a report in October 2009. In 2009, OPEGA also published an Information Brief “Fund for a Healthy Maine Programs: A Comparison of Maine’s Allocations to Other States and a Summary of Programs.”
- A number of OPEGA recommendations from 2009 have been implemented—including making the FHM its own fund within the State accounting system.
- Total FHM for FY 2016 was \$55,859,469 coming from the following sources:
  - \$51,789,595 in dedicated revenue from Tobacco settlement payments;
  - \$4,042,819 from Casino revenue; and
  - \$27,056 income from investments.
- Total FHM expenditures for FY 2016 were \$50,252,607. Expenditures from the fund were made to initiatives for Smoking Cessation and Prevention, Child Care and Child Development, Medicaid Initiatives, Prescription Drugs, Dirigo Health Program, Other Health Initiatives, Substance Abuse, and the Attorney General.
- In 2015, the HHS Committee conducted a Legislative Committee Study: “Study of the Allocations of the Fund for a Healthy Maine” based on OPEGA’s 2009 recommendation that there be a recurring study of the fund. The purpose of the effort was to ensure that FHM allocations are aligned with the State’s current public health care and preventative health priorities and goals. The Committee’s 2015 Report recommended:
  - an annual report from DHHS on the FHM to the HHS and AFA Committees;
  - a show of support for OPEGA’s planned review of DHHS’ auditing functions;
  - follow up with Department of Administrative and Financial Services (DAFS) regarding implementation of certain provisions from a 2011 Commission related to reporting of FHM fund use;
  - support for the principles of the FHM statute; and
  - regular updates from DHHS on Request for Proposals that were expected to be issued in the near future for Healthy Maine Partnership contracts.

The Committee made no recommendations to change allocations to the FHM citing a lack of available information on how FMH funding is currently spent.



- The 127<sup>th</sup> Legislature passed LD 1650 “An Act to Enact the Recommendations of the Study of the Allocations of the Fund for a Healthy Maine” but the bill was vetoed by the Governor and the veto was sustained. The required report would have included:
  - Annual expenditures in all programs
  - Progress made toward improving the health status of persons in the State using the fund
  - A description of how funds were targeted to prevention and health-related purposes outlined in statute
  - Information on any audits in the previous year

The legislation would have required DHHS to submit an annual report on the Fund for a Healthy Maine to the HHS committee by January 1<sup>st</sup> each year. The bill would also have removed statutory requirements for reports on the Fund from DAFS and DHHS that were no longer necessary.

- Recent enacted legislation regarding the FHM includes:
  - **Public Law 2015, chapter 267** which pertains to appropriations and allocations for expenditures of State Government and in part transfers \$200,000 from the FHM to the Maine State Housing Authority and specifies that the funds must be used to provide loans and grants to low-income homeowners for repairs to remediate arsenic in drinking water.
  - **Resolve 2015, chapter 81**, directs the Finance Authority of Maine to contract with a statewide entity to distribute fresh and frozen Maine food products to increase access to those products for residents of the State with food insecurity. This initiative is funded using \$3,000,000 transferred on a one-time basis from the Fund for a Healthy Maine.

**Government Oversight Committee:  
On Deck List  
(As of 1-20-17)**

	Topic	General Scope
<b>1</b>	<b>Amtrak Contract with Brunswick Taxi</b>  Responsible Agency: Northern New England Passenger Rail Authority (NNEPRA)	<ul style="list-style-type: none"> <li>• Examination of the contract between Brunswick Taxi and Amtrak with consideration of NNEPRA's role in the Amtrak's selection of the vendor</li> </ul>
<b>Additional Information</b>		
<ul style="list-style-type: none"> <li>• The 127th GOC added this topic to the On Desk List in November 2016 during a work session on OPEGA's Information Brief on NNEPRA.</li> <li>• NNEPRA contracts with Amtrak for trains and personnel for the operation of the Downeaster passenger rail service in Maine. Amtrak is responsible for the staffing of trains.</li> <li>• Amtrak has contracted with Brunswick Taxi to provide transportation for Amtrak personnel between the Brunswick and Portland. Given the Downeaster's current train schedule, Amtrak must leave trains in Brunswick at the end of the day in order to begin service the next day. In these cases, Amtrak staff must be transported back to the main base and layover facility in Portland at the end of the day and then back to Brunswick at the beginning of the day.</li> <li>• There have been allegations that the contract was not competitively awarded and that NNEPRA staff assisted Brunswick Taxi in getting the contract. NNEPRA states they were not involved in the awarding of the contract and they are not party to the contract.</li> <li>• OPEGA's current understanding is that even though NNEPRA is not a party to the contract, NNEPRA does reimburse Amtrak for the expenses incurred for these services.</li> <li>• OPEGA is unsure whether this contract would be within OPEGA's jurisdiction to review. Amtrak is a private entity but if NNEPRA is reimbursing these costs then there is State and/or Federal money going to fund the contract. OPEGA will need to consult with the Attorney General's Office regarding jurisdiction if the review moves forward.</li> </ul>		

	Topic	General Scope
2	<p><b>Beverage Container Recycling (Bottle Bill)</b></p> <p>Responsible Agencies:</p> <ul style="list-style-type: none"> <li>Department of Environmental Protection (DEP)</li> <li>Department of Agriculture, Conservation and Forestry (DACF)</li> <li>Maine Revenue Services (MRS)</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance with current law by initiators of deposit</li> <li>• Current recycling rates for beverage containers</li> <li>• Current handling fees and bottler requirements of redemption centers</li> <li>• Continued need for current beverage container recycling laws</li> <li>• Opportunities to meet goals of beverage recycling laws via alternative models</li> <li>• Impact of potential changes to beverage container recycling laws on beverage container redemption facilities and initiators of deposit</li> </ul>

**Additional Information**

- Proposed by a former GOC member in the 124th Legislature.
- Maine's handling fees may exceed that of most other states with bottle bills.
- Expansion of redeemable beverages causes additional work for redemption centers despite attempts to mitigate costs via changes that allow commingling agreements.
- There may be bottlers, particularly those from out of state, not in compliance with Maine's law.
- Issues with the bottle bill have been raised for many years and bills have been considered and passed in the 125th, 126th and 127th Legislature. For example:
  - PL 2011 Chapter 429 changed the legislative oversight for this program to the Joint Standing Committee on Environmental and Natural Resources. It also established, as a civil violation, \$100 fine per container returned in excess of 48 containers that are found to be from out-of-state (attempt to reduce fraud).
  - PL 2013, Chapter 259: An Act to Promote the Production of Maine Beverages retained, in the returnable beverage container laws, the exemptions for small bottlers of water and small brewers and added an exemption for small manufacturers.
  - PL 2013, Chapter 275: An Act to Improve Efficiency in the Collection of Beverage Containers required collection from redemption centers be made by a distributor, or commingling group of distributors, every 15 days and required additional pickups when a center has a certain number of containers. It also required the Department of Agriculture, Conservation, and Forestry to adopt rules for conducting audits on containers presented to distributors by redemption centers as ready for redemption.
  - PL 2015, Chapter 166: An Act To Promote Recycling Program Integration and Efficiencies transferred administration of the provisions regarding returnable beverage containers from the Department of Agriculture to the Department of Environmental Protection.

	Topic	General Scope
3	<p><b>Division of Financial and Personnel Services (Service Centers)</b></p> <p>Responsible Agency: Department of Administrative and Financial Services (DAFS)</p>	<ul style="list-style-type: none"> <li>• Potential for increased process efficiencies within Service Center and client agencies</li> <li>• Definition of roles/responsibilities between Service Center and client agencies</li> <li>• Staffing of financial processes and administration in Service Center and client agencies</li> <li>• Control environment and internal control systems</li> <li>• Change management</li> <li>• Achievement of expected savings from consolidation</li> </ul>

**Additional Information**

**GOC of the 127th did not have interest in this topic. OPEGA has not yet updated the topic awaiting direction from the 128th GOC.**

- The Division of Financial and Personnel Services is comprised of service centers that provide financial and human resource services to agencies across state government. There are five centers focused on common customers, and each center is comprised of a financial services office and a human resources office.
- OPEGA suggested this topic during 2007-2008 work plan development because centralization of key administrative functions affected most agencies and potential internal control weaknesses in financial processes were noted in some reviews. At the time, there were also complaints from agencies about process inefficiencies and quality of customer service. In addition, the Brookings Report had highlighted financial administration as an area of possible savings.
- The topic was placed on OPEGA's 2007-2008 work plan as a second level priority but OPEGA was not able to get to all the reviews on that biennial plan.
- Since then, the State Controller's Internal Audit Division has reviewed internal controls in at least one Service Center and provided internal control training to all. The Service Centers are supposed to have internal control plans that are submitted to the Controller's Office. OPEGA is not aware of the current status of those plans or the Controller's Office review of them.

	Topic	General Scope
4	<b>Downeaster Layover Facility in Brunswick</b>  Responsible Agency: Northern New England Passenger Rail Authority (NNEPRA)	<ul style="list-style-type: none"> <li>Case study of whether the decision-making and approval processes, including site selection, for the new train layover facility in Brunswick complied with laws and regulations for public transparency and otherwise provided adequate opportunity for public awareness and input</li> </ul>

**Additional Information**

- The 127th GOC added this topic to the On Desk List in November 2016 during a work session on OPEGA's Information Brief on NNEPRA.
- The layover facility, which was due to become operational in November 2016, was the focus of public controversy given its location near a residential neighborhood.
- Those voting in favor of adding this topic felt the public comment received on the NNEPRA Information Brief indicated there was more work to do to understand NNEPRA operations, public transparency and process, including the decisions leading up to the Brunswick layover facility siting and construction.

	Topic	General Scope
5	<b>Leased Office Space</b>  Responsible Agency: DAFS	<ul style="list-style-type: none"> <li>Costs and use of office space leased by the State</li> </ul>

**Additional Information**

**GOC of the 127th did not have interest in this topic. OPEGA has not yet updated the topic awaiting direction from the 128th GOC.**

- OPEGA began a review of this topic and was in fieldwork phase when the GOC suspended the review in October 2008 so OPEGA could move to a different project. The review was looking at whether the State was leasing space at the best possible price, and if the space was fully utilized.
- At the time of suspension, OPEGA had nearly completed the portion of the review covering general leased space processes and practices. OPEGA had also begun some analysis of whether the State was getting the best lease prices. Due to the passage of time, that analysis would need to be redone and updated. OPEGA had not yet begun work on how well leased space is utilized.
- OPEGA planned to submit a proposed revised scope to GOC for consideration in 2009, however the Appropriations and Financial Affairs Committee (AFA) was asking questions of the Bureau of General Services (BGS) regarding leases and a decision was made to wait and see what AFA was going to do with this topic. To OPEGA's knowledge there were no specific directions or actions taken by AFA at that time.
- In FY10, State agencies spent over \$26 million on leased office space with more than \$11 million coming from the General Fund.
- In 2011, new management in BGS was undertaking some efforts related to leased office space. BGS met with OPEGA to understand what work had been done on the leased office space review and what suggestions OPEGA might have for areas of improvement. OPEGA has not yet gathered further information on what efforts the Administration has undertaken since then on leased office space.

	Topic	General Scope
6	<p><b>Long-term Care: Nursing Homes</b></p> <p>Responsible Agency: Department of Health and Human Services (DHHS)</p>	<ul style="list-style-type: none"> <li>• Opportunities to reduce costs and improve quality through possible changes to: <ul style="list-style-type: none"> <li>○ Current payment rates and structure to incentivize reducing costs</li> <li>○ Inspection system to reduce inefficiencies</li> <li>○ Nursing services and care delivery approaches to better match them to patients' needs and wishes and</li> <li>○ Coordination between hospitals and nursing homes</li> </ul> </li> <li>• Quality of care in relation to cost</li> </ul>

**Additional Information**

- Proposed by former GOC member in the 124th Legislature.
- The Governor's 2016-2017 State of Maine Biennial Budget Briefing states that the proposed budget prioritizes the elderly and helps to support nursing homes by providing ongoing funding to increase their Medicaid reimbursement rates and establishing a special grant program for rural nursing homes.
- FY16-17 Budget authorized by the Legislature for Nursing Facilities (0148) was \$93,313,433 in General Fund, \$234,344,126 in Federal Funds and \$37,981,646 in Other Special Revenue Funds.
- Medicaid expenditures are audited as part of the State Single Audit, but that work would not cover the items listed in Possible Areas of Focus.
- In 2013, the 126th Legislature established the Commission to Study Long-term Care Facilities with the passage of Resolve 2013, Chapter 78. The Commission focused its work on the areas of adequate funding, staffing and regulatory requirements, and access to nursing facility services in rural and urban areas. The Commission's final report made 14 recommendations including recommendations to assist facilities in achieving adequate reimbursement for care of MaineCare recipients; a recommendation that Maine retain the current nursing facility and staffing requirements and ratios; a recommendation to address the use of consumer life insurance to pay for nursing facility care; recommendations related to errors in Cost of Care overpayments to facilities; and recommendations for further study of long-term care (through both a Blue Ribbon Commission and a Commission to Continue the Study of Long-term Care).
- The Commission to Continue the Study of Long-term Care Facilities was established by Public Law 2013, Chapter 594, section 6. The Commission continued the work of the Commission to Study Long-term Care Facilities discussed above.
- This Commission made 16 recommendations including convening a technical work group to examine rate-setting; developing policy for complex needs patients; convening a work group to develop pay-for-performance models; seeking assistance to improve options for pursuing unpaid cost of care; restoring crossover payments to nursing facilities; continuing education for direct care staff in direct care costs; lowering the threshold for occupancy adjustments; developing a critical access nursing facility designation; developing a procedure when bed rights are relocated; reviewing the recommendations in the Center for Long-term Care Reform; supporting the Maine Aging Initiative; and increasing the personal needs allowance.
- The 126th and 127th Legislatures passed several bills related to the work of these two Commissions. These enacted bills:
  - directed DHHS to adopt rules regarding the cost-of-living adjustment payable to a nursing facility for FY12;
  - established a new methodology under the MaineCare program for calculating recapture of depreciation upon the sale of a nursing facility;
  - established the Commission to Continue the Study of Long-term Care Facilities;
  - required DHHS to amend its rules governing reimbursement for nursing facilities under the MaineCare program;

- required debt overpayment collection efforts by DHHS;
- required DHHS to provide supplemental reimbursement to adult family care homes and residential care facilities in remote island locations;
- required DHHS to amend its rules so that the cost of continuing education for direct care staff is included as a direct care cost component; and
- clarified that the long-term care ombudsman has the authority to act as a resource during the hospital discharge process to assist patients with complex medical needs.

	Topic	General Scope
<b>7</b>	<p><b>Maine Charter School Commission</b></p> <p>Responsible Agency: Maine Charter School Commission (MCSC)</p>	<ul style="list-style-type: none"> <li>● Processes, practices and standards the MCSC has used in soliciting, reviewing, and making approval decisions on public charter school applications</li> <li>● MCSC's role in providing advice and assistance to applicants</li> <li>● Factors that impact MCSC's ability to effectively and efficiently fulfill its statutorily assigned roles and responsibilities</li> </ul>

**Additional Information**

- The topic is the result of a formal request for an OPEGA review from the Chairs of the Education Committee of the 126th Legislature. The GOC ultimately voted (7-2) to put the topic on the On Deck List in May 2014.
- Additional information from OPEGA research related to this topic at that time is included in the attached summary.
- Enacted legislation related to this topic includes:
  - Public Law 2013, Chapter 216. An Act to Allow Charter Schools to Request Waivers from Certain Requirements allowed, upon approval by the public charter school's authorizer, a public charter school to request from the Commissioner of Education a waiver of requirement with certain exceptions.
  - Public Law 2013, Chapter 272. An Act to Improve Maine's Charter School Laws made changes to public charter school approval and funding processes.
  - Public Law 2015, Chapter 54. An Act to Amend the Laws Related to Public Funding of Charter Schools made changes to laws governing the funding of public charter schools authorized by the MCSC starting FY15-16.

	Topic	General Scope
<b>8</b>	<p><b>Pharmaceuticals (Prescription Drugs and Medicaid Drug Rebate)</b></p> <p>Responsible Agency: Department of Health and Human Services (DHHS)</p>	<ul style="list-style-type: none"> <li>● Effectiveness of measures taken to contain costs</li> <li>● Effectiveness of internal controls in place to prevent fraud and abuse related to controlled substances</li> </ul>

**Additional Information**

- The GOC considered this topic during development of the 2007-2008 Work Plan as other states had found savings in this area. At that time, DHHS had been making significant efforts to reduce costs in this area including establishing a preferred drug list.
- In 2009, the GAO reported on fraudulent, improper or abusive actions related to the prescribing and dispensing of controlled substances.
- The State Single Audit performed by the State Auditor includes a compliance audit of the Medicaid program including audit steps related to prescription drugs and drug rebates. Significant findings have been noted in the past. The FY11 State Single Audit Report included a finding that controls over the pharmacy claims processing

system need improvement. This finding was repeated in the reports for FY12, FY13 and FY14 but was apparently resolved by FY15.

- According to the State Single Audit Report for FY14, in FY14 the pharmacy claims system processed Medicaid claims totaling over \$214 million. This does not include claims associated with the CHIP program.
- In February 2012, DHHS began quality assurance audits of 50 paid pharmacy claims each month. OPEGA has not inquired as to whether these audits are still being conducted or have changed over the last 5 years.
- Several bills were passed in the 126<sup>th</sup> and 127<sup>th</sup> Legislature that related to the State's Controlled Substances Prescription Monitoring Program (PMP). The PMP is a secure online database that is used across the State of Maine. All prescribers and dispensers are able to review their patient's controlled substance drug history prior to prescribing or dispensing any schedule II - IV drugs. The PMP helps to prevent adverse drug-related events through opioid overdoses, drug diversion, and substance abuse by decreasing the amount and/or frequency of opioid prescribing. OPEGA observes that the PMP may also serve to help contain costs and prevent fraud and abuse related to controlled substances. The enacted legislation related to the PMP:
  - required the Substance Abuse Services Commission (SASC) to develop a process to increase registration in the PMP and to develop strategies to promote provider use of the program;
  - provided for legislative review of a major substantial rule change related to the PMP; and
  - implemented the recommendations of the SASC including repealing specific participation requirements, and requiring DHHS to update enrollment mechanism and its computer system.
- DHHS' PMP website indicates that it began transitioning to a new PMP system in December 2016.
- Other relevant legislation passed in the 126<sup>th</sup> and 127<sup>th</sup>:
  - provided that a pharmacy benefits manager may set a maximum allowable cost for a prescription drug only under certain conditions and establishes a review and appeal process;
  - added provisions to the requirements in current law relating to on-site audits of pharmacy providers conducted by pharmacy benefits managers on behalf of health insurance carriers;
  - required pharmacists and veterinarians who prescribe opioid medication to register with the PMP and establishes a fine for dispensers who fail to submit prescription monitoring information to the program;
  - required prescribers to check the PMP for records related to patients upon the initial prescription of a benzodiazepine or an opioid medication and every 90 days for as long as the prescription is renewed, or be subject to a fine;
  - required dispensers to check the PMP for out-of-state individuals, for out-of-state prescribers, for individuals with insurance paying cash and if an individual has not had a prescription for an opioid medication in the previous 12 months, or be subject to a fine;
  - required that a health care provider or veterinarian who is a prescriber of opioid medication must complete three hours every two years of continuing education related to opioid medication prescribing practices; and
  - sets limits on the supply of opioid medication that may be prescribed to a patient with statutory exceptions and requires DHHS to adopt rules for other exceptions.



	Topic	General Scope
9	<b>Public Health Labs</b>  Responsible Agency: Department of Health and Human Services (DHHS) Center for Disease Control (CDC)	<ul style="list-style-type: none"> <li>• Possible outsourcing of some lab work</li> <li>• User fees charged</li> <li>• Testing being conducted by multiple State agencies using different labs</li> <li>• Awarding of contracts</li> <li>• Use of federal grant funds</li> <li>• Management practices, including hiring and communication</li> </ul>

**Additional Information**

- GOC considered this topic during development of the 2007-2008 Work Plan. Other states have found savings in this area.
- It appears there are State agencies other than DHHS that also do laboratory work, i.e. Agriculture.
- A former GOC member had been made aware of potential concerns related to management of CDC's Health and Environmental Testing Laboratory. These concerns include awarding of contracts without bidding, use of federal grant funds for purposes other than intended, poor hiring and communications practices and general mismanagement.

	Topic	General Scope
10	<b>Personal Use of State Assets:</b> recreational vehicles (ATVs, boats, snowmobiles, etc.); airplanes and helicopters; houses and camps  Responsible Agencies: Various	<ul style="list-style-type: none"> <li>• Policies in place regarding personal use of assets</li> <li>• Compliance with policies and how compliance is monitored</li> <li>• Appropriateness of current or past personal use of significant State assets</li> </ul>

**Additional Information**

- This topic is based on a 2008 request directed to OPEGA through a legislator by an individual who requested confidentiality. OPEGA's research on this topic for the GOC at that time included collecting inventories of these assets from relevant State agencies, as well as policies governing their use.
- At that time, six departments had assets of this type with the substantial majority being in Departments of Marine Resources, Inland Fisheries & Wildlife and Conservation. Most departments reported that no personal use was allowed, but did not provide written policies that expressly communicate this. IF&W reported that assets (other than airplanes) were available for limited personal use and provided written policies to that affect.
- In 2013, OPEGA requested updated information from the six Departments that had assets of interest in 2008. All Departments responded and provided current information. Of note is that some Departments may have modified their inventory of state assets since 2008 and may no longer have pertinent assets or may have different types of assets than before. OPEGA did not request updated inventories. Furthermore, most Departments provided reference to policies pertinent to state-owned vehicles, but state-owned vehicles were not assets of interest in the original request.
- Most of the Departments provided reference to multiple policies or policy statements contained in various documents. Most maintain at least one general policy, often pertaining to "equipment." Other policies or policy statements provided were specific to certain types of assets. One Department did not have any policy relevant to the assets of interest. This department also had a relatively small inventory of these assets in 2008.
- Whether the policies allowed personal use of the assets of interest varied by Department and type of assets. Some policies did allow for personal use of certain assets under certain circumstances with prior approval by designated individuals. This was typically the case for policies on "equipment". Conservation also has a policy on camps and houses which allows for use of housing in the off season in exchange for "security, surveillance and maintenance." In other cases, personal use of certain specific assets was clearly prohibited like assets such as ATVs in IF&W and airplanes in Public Safety.

- OPEGA observes that additional specificity and coordination between the multiple policies in most of the Departments would improve understanding of which of the assets of interest are particularly governed by which policy.
- No Department provided a specific plan in regard to staff education about policies though most mentioned that policies are reviewed during the respective Department's new employee orientations. Most Departments also mentioned some sort of review mechanism when new policies are developed or when there are concerns / questions that arise.
- OPEGA has conducted no further research on this topic since 2013.

	Topic	General Scope
11	<p><b>Publicly Funded Programs for Children Birth to Five Years</b></p> <p>Responsible Agencies:            Department of Education (DOE)            Department of Health and Human Services (DHHS)</p>	<ul style="list-style-type: none"> <li>• Strengths and weaknesses, including gaps, overlap, and coordination, in the State's current programs for children birth to five years</li> </ul>

**Additional Information**

- The GOC of the 125th Legislature voted this topic On Deck in September 2012 during its consideration of OPEGA's report on Child Development Services. The intention was that OPEGA and the next GOC would review the reported results of the children's task forces that were currently meeting on this topic and consider whether further review of this topic area was needed to identify overlaps and gaps in services.
- The 125th Legislature passed LD 568 which had called for creating a stakeholder group to conduct an assessment of this nature including, but not limited to, Child Development Services, public prekindergarten programs and six programs administered by DHHS Bureau of Child and Family Services. That bill was vetoed by the Governor, and consequently, the stakeholder group was not created.
- In testimony before the GOC in 2012, DOE described two groups doing work on Birth to 5 learning that the Department felt would cover the area of focus given for this topic. Those groups were the State Agency Interdepartmental Early Learning Team (SIEL) and the Maine Children's Growth Council (MCGC) Sustainability Committee.
- The Work Plan for SIEL had deadlines on several tasks set at end of June 2013, end of Dec 2013 and end of June 2014. It appears that one of SIEL tasks was to review the results of the MCGC Sustainability Committee and the deadline associated with that task was end of June 2013.
- OPEGA has recently asked DOE to provide information on the status of these efforts and any results or reports that came from them.
- Public Law 2013, Chapter 581. An Act to Establish a Process for the Implementation of Universal Voluntary Public Preschool Programs for Children 4 Years of Age was enacted in the 126th Legislature. It established a process for the implementation of public preschool programs including providing start-up, operational, and grant funding and directing the Commissioner of Education to promulgate rules.

	Topic	General Scope
12	<b>Revenue Collected through the Courts</b>  Responsible Agency: Judicial Branch	<ul style="list-style-type: none"> <li>Internal controls over collection, deposit, accounting and safeguarding of revenue</li> <li>Effectiveness and timeliness of collections efforts, i.e. are all funds due the State being collected timely</li> <li>Factors impacting the revenue stream, particularly those related to the decline in revenues from fines, forfeitures and penalties</li> </ul>

**Additional Information**

- OPEGA suggested this topic and it was placed on the 2007-2008 Work Plan because it had not been audited for some time and had a potential fiscal impact. OPEGA was not able to get to all planned reviews in that biennium and, therefore, the topic was moved to the On Deck list.
- According to the Revenue Forecasting Committee's December 2016 Report, actual FY16 revenues through the Judiciary for fines, forfeitures and penalties were \$20,610,571 (an 8.8% decrease from FY15) and are forecast to be \$22,237,275 in FY17; a 7.9% increase. Revenues from this category are primarily collected by the Judicial System. Some court collected surcharges are recorded as Other Special Revenue Funds for specific uses.

	Topic	General Scope
13	<b>Substance Abuse Treatment Programs in Prison System</b> (Correctional Recovery Academy and Intensive Outpatient Program)  Responsible Agency: Department of Corrections (DOC) Office of Substance Abuse (OSA)	<ul style="list-style-type: none"> <li>Effectiveness and/or cost-effectiveness of programs in rehabilitating participants and reducing recidivism</li> </ul>

**Additional Information**

- This topic was added to the On Deck list as the result of a citizen's 2009 request for a review of these programs. OPEGA recently requested that DOC provide updated information on these programs. The Information OPEGA had gathered about them in 2013 is:
  - The Correctional Recovery Academy (CRA) program is a 9 month residential intensive substance abuse treatment program that has the goal of reducing prisoner's dependency on drugs and alcohol.
  - The Intensive Outpatient Program (IOP) is a 16 week outpatient group therapy program for the treatment of drug and alcohol abuse.
  - In June 2006, the Muskie School of Public Service performed an evaluation of the Correctional Recovery Academy and a companion program. The evaluation resulted in some recommendations, including that DOC and OSA may want to consider conducting an evaluation to assess actual program effectiveness.
  - These programs have been a collaboration of the Department of Corrections (MDOC) and DHHS' Office of Substance Abuse (OSA) and in the past MDOC and OSA contracted for these services directly with Spectrum Health Systems, Inc. The contract that expired on 6/30/2011 was for \$698,820. MDOC funding is a combination of federal (\$121,000) and General Fund (\$469,668) dollars. OSA's portion is from Other Special Revenue funds (\$108,152).
  - As of July 2012, MDOC entered into a contract with Correctional Care Solutions to provide both medical and behavioral health services to the adult and juvenile populations. CCS assessed Spectrum Health Systems program and offered Spectrum a sub-contract to continue providing these programs. MDOC reports an advantage in contracting with one vendor who they are able to demand accountability from and who in turn is able to implement consistent evidence-based practice. The new contract includes provisions requiring the vendor to track outcome data to ensure that programs are efficient and effective with regard to our specific population.

- OPEGA requested further information from MDOC on what outcome or other performance measures are being tracked with regard to the two substance abuse treatment programs included in this topic. MDOC reports that they will be tracking recidivism rates as a performance measure for these programs but that it is too soon to look at that measure as it relates to the performance of programs under the current contractor. MDOC also reports that a challenge in determining recidivism rates is getting data from the jail system that would allow identification of individuals released from the State correctional system that end up back in the jail system because of crimes related to substance abuse.
- According to MDOC, there are three funding sources related to these programs. A federal block grant provides some matching funds and there are some funds from the Office of Substance Abuse for the juvenile component of the program. The remaining funds are associated with the larger CCS medical contract, which may not delineate the costs of each program/service. That contract is mostly funded with General Fund.

	Topic	General Scope
14	<p><b>Tax Collection</b> (income, sales, use, fuel, cigarette)</p> <p>Responsible Agency: Maine Revenue Services (MRS)</p>	<ul style="list-style-type: none"> <li>• Timely collection and deposit of taxes (including efforts to collect overdue taxes)</li> <li>• Effective efforts to assure credits, etc. taken to reduce taxes owed are valid</li> </ul>

#### Additional Information

- Other states have found savings in this area.
- OPEGA recently requested that MRS provide updated information on tax collection efforts. The Information OPEGA had gathered about them in 2013 is:
- The State has had past initiatives aimed at collecting overdue taxes and enhancing compliance with the Use Tax. These included a Tax Amnesty program in 2003, a Use Tax Compliance Program in 2006 and Tax Receivable Reduction initiatives in both 2009 and 2010. These initiatives brought in about \$70.7 million in unpaid taxes while waiving about \$44 million in interest, penalties, etc.
  - Maine Revenue Services was also assigned two initiatives for FY13 to collect unpaid taxes and increase compliance with Use Tax. The initiatives are budgeted to net about \$6.66 million in unpaid taxes.
  - According to MRS, it administers over 40 state tax regimes. Statute specifies the particular filing and payment requirements for each. MRS has a Compliance Division that has the objective of collecting all delinquent tax receivables. The Division focuses primarily, however, on individual income, corporate, sales and use and service provider taxes. The Division has contracts with independent collection contractors throughout the United States to assist with that effort.
  - MRS reports using several approaches to protect against underreporting and uncover non-filing. MRS employs over 50 field auditors who visit places of business across the US. MRS also has desk auditors to review for returns for any corrective assessments that may be necessary. MRS' Tax Compliance Unit is solely focused on discovery of non-filers and uses a computer data warehouse system, similar to that used in at least 20 other states, to uncover unfiled returns and unpaid taxes. MRS did not specify which particular tax types the auditors and computer system are focused on.
  - MRS has a variety of collection tools and procedures that increase in severity as the collection process progresses. MRS has a small Criminal Investigations Unit to investigate the most egregious offenders and refer cases to the Attorney General's Office for prosecution. MRS did not specify how often the more severe collection tools are utilized.
  - MRS tracks Tax Receivables and is required each year to recommend receivables deemed uncollectible for charge-off. According to data provided by MRS, total tax receivables as of the end of June 2012 and in March 2012 MRS recommended receivables charge-offs totaling about \$6.7 million. MRS cannot estimate amounts that may be due from non-filers or under reported taxes due.
  - Additional research and/or interviews with agency staff will be required for OPEGA to obtain a sufficient understanding of tax types and MRS efforts to assess risk or further scope this topic.

	Topic	General Scope
15	<b>Unemployment Compensation</b>  Responsible Agency: Department of Labor (DOL)	<ul style="list-style-type: none"> <li>Status and effectiveness of actions planned and taken by DOL and Unemployment Commission in addressing recommendations contained in Blue Ribbon Commission report and Federal DOL letter</li> </ul>
<b>Additional Information</b>		
<ul style="list-style-type: none"> <li>A review of this topic was requested by a former GOC member in April 2013 in regards to concerns of possible inappropriate political pressure being used to influence Hearing Examiners' decisions.</li> <li>At the time, two separate efforts to review the same topic area were also just being initiated. The GOC decided to monitor the status and results of these efforts before making a decision on this review request.</li> <li>The Governor appointed a Blue Ribbon Commission on Unemployment Reform tasked with reviewing Maine citizens' concerns about the consistency and objectivity of the unemployment adjudication process. The Commission's report was released December 2013 and contained seven recommendations for improvements. The Commission Chairs briefed the GOC on the report.</li> <li>The U.S. Department of Labor (DOL) began a fact finding review of on the first-level appeals component of the Maine's Unemployment Compensation (UC) program as prompted by a combination of factors including public concerns about possible political interference in the state's UC appeals process. DOL's fact finding letter was released in February 2014 and contained five recommendations. OPEGA observed that several of the findings and recommendations from DOL were similar to those raised by the Blue Ribbon Commission.</li> <li>Following these reports, the Commissioner of Maine's Department of Labor shared with the GOC the State's action plan for addressing the recommendations.</li> <li>The GOC voted (6-4) in June 2014 to place the topic On Deck for possible future review of the implementation of those actions.</li> <li>OPEGA has recently requested that DOL provide a status update on actions taken in response to the recommendations from the Blue Ribbon Commission and the Federal DOL letter.</li> </ul>		

**Maine Charter School Commission and Baxter Academy**  
**OPEGA Summary for the Government Oversight Committee**  
**Updated for April 12, 2013**

## **Statute and Rules**

Legislation passed in 2011 allowed public charter schools in Maine. They are authorized and governed under Title 20-A Chapter 112 Public Charter Schools. Public charter schools are defined in statute as schools parents choose to send their children to that are independent of a school administrative unit, and are established and operated under the terms of a contract between the school's governing board and its authorizer. Public charter schools must provide a program of education for one or more of the following: preschool, prekindergarten and any grade(s) K-12. The program may focus on certain types of students such as special education or at-risk and may include various academic approaches or themes such as natural resources and the environment or science, mathematics and technology.

Pursuant to statute, the Department of Education has established major substantive Rule 05-071 Chapter 140 to govern the authorizing, oversight and operation of public charter schools in Maine. The rule requires public notice of activities of authorizers and charter schools, sets forth student enrollment procedures, establishes standards for the performance of authorizers, clarifies the funding of public charter schools, clarifies the process for petitioning for conversion of a non-charter public school, and provides criteria for determining when a charter school governing board is sufficiently independent of an education service provider with which the board may contract.

Statute sets out what shall be included in requests for proposals for charter schools, applications, and charter contracts. In addition, the Maine Charter School Commission, also pursuant to statute, has adopted Rule 90-668 Chapter 2 – Procedures for Commission Authorization of Public Charter Schools. The rule establishes the:

- process the Commission will use to solicit, accept and review public charter school applications;
- performance indicators that will be used as the performance framework for any approved application; and
- minimum requirements for a charter contract.

Rules adopted by the commission before June 30, 2014 are routine technical rules and after that they are major substantive rules.

The Maine Charter School Commission is established as one of the entities that can authorize public charter schools. Commission members are appointed for 3-year terms by the State Board of Education with input from the Joint Standing Committee on Education and Cultural Affairs. A local school board can also authorize public charter schools within the boundaries of the SAU it governs. Local school boards can form a collaborative to set up a regional public charter school.

Public charter schools are subject to federal, state and local laws such as those relating to special education and required to have independent audits. Statute charges authorizers with responsibility for oversight and evaluation of public charter schools they authorized. Statute also establishes roles and responsibilities for the Department of Education.

The Maine Charter School Commission is comprised of seven members appointed to three-year terms by the State Board of Education with input from the Legislature's Joint Standing Committee on Education and Cultural Affairs. Three Commission members must be members of the State Board of Education and they nominate the four other members who must be approved by a majority vote of the State Board. Members appointed to the Commission must have diverse professional experience in education, social services, youth training, business startup and administration, accounting and finance, strategic planning and nonprofit governance.

The Commission has two staff persons – an Executive Director and an Administrative Assistant. The Executive Director started in October 2012 but volunteered for the Commission prior to being hired. Legal assistance for the Commission is currently provided by the Assistant Attorney General who assists the Department of Education.

The law allows the Charter School Commission to authorize a maximum of 10 charter schools during an initial 10-year transition period. Charter schools authorized by local school boards do not count toward the 10-school limit of the Charter School Commission.

### **Maine Charter School Commission Process for Authorization of Public Charter Schools**

The basic process established in Commission Rule for soliciting and considering public charter school applicants includes:

- Issuance of a Request for Proposals (RFP) with notice to general public and interested parties.
- Public informational meetings to answer questions about the RFP (with notice of meetings posted on Commission website and distributed to interested parties) and/or written responses to questions on the RFP posted to the Commission website.
- Letter of Intent filed with the Commission by an entity intending to submit an application.
- Submission of Application and review for completeness by Commission or Commission staff.
- Evaluation of Application by an assigned Review Team consisting of not more than 3 Commissioners and other technical experts as needed.
- Review Team presentation of recommendations on Application to full Commission.
- Commission determination of whether the Application appears to demonstrate the applicant's competence in each element of the Commission's published approval criteria and appears to demonstrate that the applicant is likely to open and operate a successful public charter school as required in Title 20-A, section 2407(4)(C)(1).
- Denial of Application if Commission determines criteria not met. Otherwise,
  - Commission holds in-person interview with Applicant to clarify information provided in the application, to seek additional information, to determine whether members of the Board and school leaders understand their obligations for academic and operational accountability, and to gauge the applicant's capacity to effectively launch and oversee the proposed charter school.
  - Commission holds public hearing to elicit public comment on the expected impact of the proposed charter school on students, parents, the community to be served by the school, and public education in the State.
  - Commission votes to approve, conditionally approve or deny Application. A decision to conditionally approve the application must set forth the specific changes that must occur in order for the application to be fully approved, and the deadline by which the changes must occur. A decision to deny the application must state the reason for denial.
  - Commission negotiation and finalization of contract with approved Applicant.

The Rules prohibit Commission members, and any others participating in the application review process, from discussing any potential or actual application with a proposed or actual applicant during the period between the issuance of the RFP and the final Commission vote on all applications submitted in response to that RFP, except during the in-person interviews provided for in the Rules.

## **Publicly Accessible Information about Public Charter Schools and the Commission**

Information about public charter schools can be found on the Department of Education Charter School website - <http://www.maine.gov/doe/charterschools/index.html>. DOE's website includes the governing statute, questions and answers about charter schools, and information on: how charter schools are authorized, how to create a charter school, charter school founders and operators, and how to enroll in a charter school. The enrollment information includes links to two Commission-approved charter schools - Cornville Regional Charter School and The Maine Academy of Natural Sciences. DOE's website also includes a link to the website for the Maine Charter School Commission.

The Maine Charter School Commission website at <http://www.maine.gov/csc/index.html> has information on the Commission and its activities including:

- Commission members
- Meetings and materials – minutes, agendas
- Request for Proposals issued by the Commission
- Applications received in response to the two RFPs issued to date
- Additional information requested of applicants by the Commission
- Authorized schools
- Laws and rules

### **Baxter Academy**

Baxter Academy of Science and Technology is located on York Street in Portland, Maine and expects to open in September 2013. According to the Baxter Academy website at <http://baxter-academy.org>, the school has received the required number of applications and letters of intent for its charter, has a new 5-year lease on its building, and is reviewing over 200 teacher applications.

Baxter submitted its initial application to the Commission on May 29, 2012 and, after its review, the Commission granted Baxter conditional approval. The Commission specified its conditions in letters to Baxter and required a revised application by September 30, 2012 with revisions addressing those conditions incorporated. Baxter submitted its revised application on September 28, 2012 and the Commission granted approval and began negotiations for the charter contract with the further requirement that Baxter provide proof of a minimum of 150 letters of intent by March 15, 2013.

As discussed in the Commission's March 30, 2013 letter to the Government Oversight Committee, the Commission halted contract negotiations with Baxter when it learned the Baxter's Executive Director had been fired. The Commission requested 12 documents, and responses to Commission questions, from Baxter which were heard and reviewed at a public meeting held Monday, March 25<sup>th</sup>. The list of requested documents and Commission questions (as taken from the Commission's website) are attached. The Commission requested further information to be provided subsequent to the March 25<sup>th</sup> meeting.

The Commission held a meeting on April 8, 2013 to further consider whether to proceed with a contract for Baxter Academy. OPEGA observed the Commission reviewed the additional information provided by Baxter, further questioned Baxter Academy representatives present at the meeting and revisited criteria that had previously caused concerns for various Commission members. Citing recent significant improvements in Baxter's academic plans, financial situation, potential enrollment figures and Board and parent involvement, the Commission voted unanimously to go forward with a contract - noting that a finalized contract would still be contingent on the Board making changes to its by-laws and completing the hiring of an Executive Director.

### **Public Concerns Raised**



On March 22, 2013, the Mayor of the City of Portland formally requested that the Attorney General conduct a review of several matters since recent changes to the Board and management of Baxter Academy had raised serious questions about its viability, as well as concerns about the application process and subsequent approval granted by the Maine Charter School Commission. The Attorney General responded that she understood the Charter Commission was currently reviewing these and other concerns and that she was confident and hopeful the Commission would take the allegations seriously and thoughtfully consider them as it re-examined its approval of the Baxter Academy application.

The Mayor's request to the AG and his concerns were recently covered in the media preceded by recent media coverage related to the Baxter Academy Board's dismissal of its Executive Director in March 2013. Other questions and concerns discussed in the media since Baxter Academy submitted its application to the Charter Commission regard the financial assumptions in Baxter's budget including specific questions about lines of credit, enrollment projections and the availability of federal grants.

A summary of selected media coverage of the Baxter School's application and the Charter Commission's consideration of that application is attached.

**Maine Charter School Commission Document and Information Request to Baxter Academy for the Commission's March 25, 2013 Meeting**

(as taken from the Commission's website at <http://www.maine.gov/csc/index.html>)

**Documents to be delivered to the Commission by the Board of Directors for Baxter Academy by March 18 in advance of the interview scheduled for March 21, 2013:**

1. The names of all current members of the Board of Directors for Baxter Academy, along with their resumes, the date of appointment to the board for each member, and their primary role as a board member (either office and/or special area of expertise).
2. The number of current proposed enrollments, based on received letters of intent, along with the grade levels. Include the numbers from each SAU, to the extent that this number is known.
3. A statement on the financial status for the pre-opening period, with documentation on the status of funds either received or committed from donors, other fund-raising, or from commercial lines of credit.
4. A current three-year budget plan.
5. An updated organizational chart showing the key administrative positions and their relationship to the Board.
6. The name and resume for the new Executive Director, if presently known.
7. If known, the names and resumes for the chief financial officer, director of technology, and the director of special education/special services.
8. The status of the building lease agreement, together with a copy of the lease, if signed.
9. A description of the present status of contracts for transportation, food service, custodial services.
10. The names and roles of the current membership of the Advisory Board.
11. A description of the present status of a hiring plan for instructional staff.
12. Information on pending litigation against Baxter Academy of Technology and Science or its Board.

**Potential MCSC questions to the Baxter Academy Board of Directors for the March 25, 2013 Interview**

1. The Commission has a number of questions concerning Baxter Academy's financial capacity to open its school and to fulfill the requirements of the charter contract that we must enter into before the school may open and receive public tuition subsidy from the per pupil allocation as provided by law.
  - a. What is your current forecasted enrollment, based on a verified list of "intents to enroll" received from parents? Has this list been checked to ensure that none of the caps on enrollment from one or more SAUs has not been exceeded?
  - b. Do you have a revised three year budget plan based on: a) a new estimated enrollment plan; b) a revised staffing plan (including revisions to the administrative structure); and c) updated information on transportation, food service, and other contracted services?
  - c. What is the status of the potential new line of credit? Has FAME agreed to serve as a guarantor? Is it able to be drawn upon at present?

- d. Does this plan have contingencies within it should enrollment drop below either the 150 student forecast as approved in the Commission's vote to grant a charter (date of vote), or in your current best estimate for enrollment numbers?
    - e. What present revenue or other access to funds does the school have on hand to enable it to enter into either facilities lease or other contractual arrangements necessary before school opens? Please specify the amounts available from donations, grants, other fundraising, and from an approved line of bank credit.
  2. With regard to the academic program offering: In light of personnel and budgetary changes, what revisions, if any, does the school propose to make to its stated academic program and schedule based on its present enrollment projections?
  3. There has been high turnover on the Baxter Academies board of Directors since the first submission of its application and even since the vote to issue a charter. The Commission needs further assurances that the present Board has the capacity necessary to enter a contract and open a school in September 2013. Specifically, we need information and plans from the Board in the following areas:
    - a. Based on updated list of Board members, their resumes and specific areas of expertise that will support Baxter Academy, what areas of needed expertise will you now seek to add? A timeline for this?
    - b. Please give us an indication as to the frequency and number of board meetings you have held since the vote to approve the charter and minutes of formal votes taken at those meetings.
    - c. Can you give us an indication as to your projected number and frequency of planned board meeting going forward throughout this next year?
    - d. How have you posted public notice of Board meetings to date? What is your plan for the future for notifying parents, staff and public about the dates and times for board meetings, and your plans, if any, to involve them in your decision making?
    - e. Please list for us the action steps, with names of the specific Board member assigned, for specific operational tasks and oversight activities that the Board and school intend to make in order that school may open in September and operate throughout the first full year of operation.
  4. What is the potential impact of any pending litigation on the ability to go forward as a school? How are the litigation costs to be paid? If the intellectual property is deemed not to belong to the school, how would this effect the ability to go forward as a school? If the litigation was to go for a long period of time, how would that affect the school?

**Summary of Select Media Coverage of Baxter Academy Application  
to Maine Charter School Commission (MCSC)  
July 2012 – April 1, 2013**

In June and July 2012, the MCSC was considering multiple charter school applications including Baxter Academy in Portland. Baxter Academy is planned as a Science, Technology, Engineering and Math (STEM) school. Opponents, such as the Mayor of Portland and Maine Education Association, raised questions about the financial assumptions in the Baxter Academy budget. Baxter stated it had secured a \$500,000 line of credit from an anonymous benefactor to fund start-up costs and was projecting \$360,000 in the first year from federal U.S. Department of Education grants. The grant amounts were questioned, as were enrollment projections of 160. Baxter presented a new budget for 100 students with a smaller federal grant projection.

The MCSC subcommittee recommended approval, but the full Commission continued to have questions about Baxter's finances. One member suggested a budget based on 80 students might be good. Supporters noted the need for a STEM school and some MCSC members characterized issues raised in opposition as political.

At the same time the Commission was being criticized for the time it was taking to approve charter schools and the small number being approved. Commission members stated they were making decisions based on specific merits, not whether charter schools are good or bad generally.

In November Baxter Academy was approved as Maine's third charter school with a projected opening in September 2013.

In March 2013, the Baxter Academy Board dismissed John Jaques, the Director stating that it saw a pattern of mismanagement and had been considering dismissing Jaques after it learned the school did not have the line of credit it needs for its contract with the State. The Board discovered the line of credit was not in place when it went to sign the building lease.

Jaques denied mismanagement and stated board acted unethically and dismissed him in order to obtain a donation of \$250,000 contingent upon his removal. Jaques said that donation was from the father of a member of the school's advisory board. The Board said a family member was paying Jaques' salary, and that the donation did come from someone who had previously worked with Jaques then pulled his support. The individual who said his organization, the Jebediah Foundation, would not provide any more funding to the academy as long as Jaques was in charge confirmed this.

Jaques cut board off from school email, records, website and facebook page which included applications for positions and enrollment. There was back and forth in the press between current Baxter board members who supported the dismissal and former advisory board members who supported Jaques. A lawsuit was filed by the Board to get materials from Jaques because they were necessary in order to proceed with plans to open school in September.

Board has now signed lease and gained access to teacher applications.

On March 22 it was reported that the Portland Mayor asked Attorney General to investigate allegations of mismanagement, determine whether MCSC conducted an appropriate review of the school's financial picture and whether Commission offered inappropriate advice or assistance during application process.

The MCSC meeting on 3-25-13 to discuss Baxter Academy was covered. Jaques supporters criticized new leadership at school and said that most members of advisory board had resigned and school is corrupt. Baxter supporters claimed problems are a distraction and that the school is moving forward with a new

plan, parents are still supportive, they have 156 student applications and are only about \$100,000 short of \$350,000 fundraising goal.

March 29 reports on GOC to be asked to authorize an inquiry, review school's finances, standards used by MCSC to consider application. The Governor criticized Portland Mayor for requesting an Attorney General investigation. The Mayor reiterated his discomfort with sending hundreds of thousands of school funds to a school whose own directors have raised questions about financial management. The MCSC Chair stated that criticism is from those who don't want charter schools, and the Commission is doing the oversight and vetting as deeply as it can. Baxter board members raised a concern that a long inquiry could jeopardize a September opening.