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SEN. DAVID C. BURNS
SEN. PAUL T. DAVIS, SR.
SEN. BILL DIAMOND
SEN. STAN GERZOFSKY
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REP. RICHARD H. CAMPBELL
REP. ROBERT S. DUCHESNE
REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
November 17, 2016
Accepted January 20, 2017

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:33 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis, Sen. Diamond and Sen. Gerzofsky

Representatives: Rep. Kruger, Rep. Duchesne and Rep. Mastraccio
Joining the meeting in progress: Rep. Campbell
Absent: Rep. McClellan and Rep. Sanderson

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Scott Farwell, Senior Analyst, OPEGA
Matthew Kruk, Senior Analyst, OPEGA
Kari Hojara, Senior Researcher, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Executive Branch Officers and Staff Providing Information to the Committee: Matthew Dunlap, Secretary of State, Secretary of State's Office

Others Providing Information: Yellow Light Breen, President and CEO, Maine Development Foundation
Ryan Neale, Program Director, Maine Economic Growth Council

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE OCTOBER 6, 2016 GOC MEETING

The October 6, 2016 Meeting Summary was accepted as written.

Sen. Katz asked if there was objection to taking items out of order. Hearing none he said the order will be the Report Back from Secretary of State Dunlap, Committee Work Session on NNEPRA, Evaluation of Economic Development Programs in Maine and OPEGA's Interim Briefing on the State Lottery Review.

UNFINISHED BUSINESS

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report**

- **Report Back From Secretary of State Dunlap on Records Retention and Management Efforts**

Secretary Dunlap summarized his Interim Report to the Government Oversight Committee dated October 6, 2016. (A copy of the Report is attached to the Meeting Summary.)

Sen. Katz asked how many members were on the Archives Advisory Board and how many seats were currently unfilled. Secretary Dunlap said there are nine Board members and there are currently a couple of vacancies, but noted that the Board did have a quorum for their meetings and have had two appointments this year.

Sen. Katz asked what the difficulties were in appointing members to the Board. Secretary Dunlap said they had been proceeding with caution and, what they talked about internally is who should be on the Board, what the makeup of the Board should represent. In the 1960's the Board envisioned having areas of expertise around financial and technical histories and that was replaced by a general interest in Maine history which did not fulfill the needs of the Board. The question has been do they want to go back to the older statute or have a different framework where the makeup of the Board does not change dramatically, but gives the Board the authority to appoint subcommittees with people from the outside to work with the Board on technical matters as they emerge. He said they have gone back and forth on whether to have somebody who has expertise in the technical realm when you might only need them once a year or that it may be more productive to leave the makeup as it is and invite technical experts to participate in a subcommittee of the groups. Secretary Dunlap thought they would reach agreement regarding the Board before the cloture date.

Sen. Katz noted that the Secretary was asking various Records Officers to develop their own policies with respect to keeping draft reports and documents and understood that it needed to be different for different organizations. He asked if the Secretary has given the Officers any guidance. Secretary Dunlap said that was an ongoing project and his staff does offer the agencies the opportunity to talk over what their proposals are because it is different from agency-to-agency. Agencies working with draft documents is the area his Office has seen the need for improvement. He has asked agencies to contemplate the policies around preserving draft documents under the scope of their needs and the Secretary's staff will offer guidance because many agencies had no policy on how to deal with draft documents.

Sen. Katz asked if there was a target goal for when everybody will have their policy in place. Secretary Dunlap thought they would know what that looks like by the end of the Legislative session because by that time they will have contemplated law and rule changes. He thought by the summer they would be on firmer ground.

Sen. Johnson asked what was being done to identify the classifications of materials and what their schedules are in each of the departments and the statutory and regulatory basis for those classifications. Secretary

Dunlap said that was the trigger point that made them step back a little bit. He attended a Board meeting where they were reviewing a series of agency rules and it was a “taffy pull”. It took a long time to go over every aspect of those proposed rules and if they had to do that for every single agency it would take years. What they have proposed, and are talking about putting into their statutory framework, is having the Board create a series of frameworks that should cover most of the scope of State agencies and then have the State agencies fill in the blanks. It becomes a matter of a cursory review to make sure they have done everything they were expected to do rather than invent the wheel every time it rolls around the corner. Secretary Dunlap said the record retention policies are first and foremost, but also doing it in such a way that is meaningful to the agencies so they will actually follow their policies. They are not likely to follow a policy that comes from the Board that does not make sense to them.

Sen. Johnson asked if the Secretary knew the timeframe for Record Officers to have the schedules because that is the level at which employees and agencies have guidance. Secretary Dunlap agreed. Record Officers having the framework guidance and the assistance of the Archives and the Records Management Office with an understanding of what their policy needs are is going to be most effective. Once they have the statutory changes in hand, then it is just a matter of implementing it and he suspects that will happen over the course of the next year.

Sen. Diamond noted that the work the Secretary is doing is comprehensive and he is reaching out to the agencies. He asked if agencies were taking Archives seriously and if it was time for the Archives Department itself to be restructured and reorganized. Secretary Dunlap said those were intertwined questions. Archives has historically been within the Department of Secretary of State, but often is crowded out by whatever emergency faces the Secretary’s Office for that day. The Department of the Secretary of State is a large agency and has about 420 employees. Depending on what is tugging for the attention, it is difficult to keep the Archives in the forefront of their policy needs. Nonetheless, people do regard Archives as important and because of the GOC’s work folks understand that it is not a matter of taking the Archives seriously, it is a matter of taking their own work seriously and the implications that can befall them if they don’t. Secretary Dunlap thinks that has been an important change over the last year or so. Archives in the past had over thirty employees and is currently down to fewer than a dozen. They had gotten to a point that if somebody was out sick, they had to manage schedules so that the Search Room could stay open. There have been a significant number of retirements over the last couple of years and that has brought in new staff who are very energetic and engaged. Secretary Dunlap said Archives has done some restructuring that gave a lot more responsibility to the Director. They use to have a Director of Archive Services and a Director of Records Management and have consolidated that into one position.

Secretary Dunlap said he could not emphasize enough how big of a problem digital archiving is and how there is no real way to save that information. Maine is working on the problem with other States. The structure question is going to be an evolving one and you have to be responsive to the need for more information and background as the policies continue to grow.

Sen. Johnson asked if the Secretary worked with Maine’s major universities on the issues of appropriate archiving of digital information, not only the technology process, but how to achieve some appropriate degree of longevity and resiliency to disaster so as not to lose that information. Secretary Dunlap said they do talk with the University System about records preservation.

The members of the GOC thanked Secretary Dunlap for his report back and for answering their questions.

- **OPEGA Information Brief on Northern New England Passenger Rail Authority**

- **Committee Work Session**

Director Ashcroft said the Committee held a public comment period on the Information Brief on NNEPRA at its last meeting. OPEGA recommended that they report out to the GOC what they had learned during their

preliminary research phase on the project prior to the Committee making any decision about whether or not they wanted OPEGA to go forward with a more detailed review of any areas that were within the scope of the review as it was currently laid out. She said in terms of the Committee's work session at today's meeting she would suggest members' consider whether or not there are areas within the scope of the Brief and the work that OPEGA has done already that they would like a more detailed look at. If the answer to that is yes, then she needs to have a discussion with the Committee about exactly what areas those are and exactly what questions they would like OPEGA to address. She said whether the answer to the question is yes or no, another question for the GOC's consideration, and which they usually do consider, is whether this Committee itself wants to take any actions as a Committee on either any of the suggestions that OPEGA has made in the Brief or as a result of any of the testimony or information they have been processing as part of their work on OPEGA's review.

Director Ashcroft said the last question for a work session is typically whether or not the GOC wanted to endorse the Brief. If the Committee decides they want OPEGA to go forward with further work on this particular Review then she would suggest holding off on that vote because they will eventually be at a place where OPEGA will have a full and final report on the review. However, if the GOC decides not to go further on the review then a vote on endorsement would be appropriate.

Sen. Katz asked if there was any other information that any committee member thought the Committee needed to ask OPEGA staff to produce before they could make their decision on what action they wanted to take on the Brief.

Sen. Burns noted that in going through the materials on both sides of the issue there were a lot of questions that had been raised from a lot of very experienced people. Without talking about one particular suggestion, or area, he asked if any of those concerns were addressed internally by OPEGA apart from the review that was presented to the GOC and the scope that the Committee had initially provided.

Director Ashcroft said everything that the GOC has seen that would have come in prior to the time that OPEGA prepared the NNEPRA Information Brief was catalogued and reviewed. They lined out what the themes of the concerns were and OPEGA gave a lot of consideration to what they were seeing in the comments. The staff then determined what, within those themes, were things that are in the purview of the review that the GOC assigned them to do and how many of those things seemed to be outside the scope. That is then where OPEGA came back to the Committee before they did the Information Brief with their recommendation and said it seemed like the majority of the concerns fell into policy decisions around passenger rail service in the State of Maine and OPEGA did not see that to be in the scope of the what the GOC assigned them to do. OPEGA tried to address contextually some of those questions and concerns and did provide that information in the Brief. A lot of the questions were very specific to the Brunswick layover facility and OPEGA had carved that out regarding how NNEPRA's process planning went and how they arrived at what projects they were going to do. OPEGA did cover that ground and it is described in the Information Brief. However, OPEGA did not pick out any particular project of NNEPRA's for a case study. She said OPEGA heard concerns about the level of public participation that was a part of that process and did again try to provide the GOC some contextual information, as they understood it, about where in all of the planning processes there was opportunity for public input, but OPEGA has not yet dug into some of the areas they felt were not within the purview of the review the GOC assigned.

Sen. Burns did not take issue with the Brief. His concern is there has been so many questions raised by credible and accomplished people on both sides of the issue. He did not disbelieve anybody's position, but there have been so many questions raised that, for him, warrant some more scrutiny outside of the initial scope as far as the whole complex of the Downeaster. The profitability, the way it is being managed, or not being managed, and several other aspects. Sen. Burns said he was still in a dilemma.

Rep. Mastraccio thought going further would be similar to micro managing another committee's work and there was going to be a lot of future discussions about expanding the railroad in Maine. She understands the issues, but what is being talked about for issues in Brunswick are not issues in Sanford and she would rather see the issues addressed through the Transportation Committee. She would not broaden the scope until that Committee came back to the GOC and said there are deeper issues that they cannot deal with.

Senators Gerzofsky, Burns, Diamond and Johnson thought it is the GOC's responsibility to move forward with the NNEPRA review because the Committee has been exposed to a lot of information and have had a lot of discussions regarding NNEPRA. It would be difficult for the Transportation Committee to delve into the issues raised.

Sen. Katz said the GOC has to keep in mind the limited resources of OPEGA and the GOC has to set priorities about what to work on.

Rep. Kruger said it is not that there will not be any more question regarding NNEPRA, but he trusted the next GOC to make good decisions. He thinks, as he suggested at the last meeting, a decision for a new NNEPRA review should be made by the next GOC rather than the present Committee keeping it alive.

Sen. Burns said he had great confidence in the next GOC, but he also has confidence in the current Committee and made the following motion.

Motion: That the GOC recommend that OPEGA engage a group of experts as the GOC has done in the past and as they do under legislative authority, to look at a lot of the concerns that have been raised about the entire process and report back to the 128th GOC. (Motion by Sen. Burns, second by Sen. Gerzofsky.)

Discussion:

Sen. Burns said questions have not been answered that need to be answered and there are going to be opportunities in the future to make decisions about the expansion of rail in the State of Maine. The different areas discussed at GOC meetings have to be cleared up before decisions can be made and the only way he knew how to do that, is to hire experts to review the concerns about NNEPRA raised in the solicited and unsolicited comments brought to the GOC.

Sen. Katz was not certain what Sen. Burns was asking OPEGA to do so asked him for clarification.

Sen. Burns said the GOC has voluminous concerns that have been both solicited and unsolicited from experts, citizens and others about fact checking the entire process of NNEPRA. How it came into being, what it is doing now, safety concerns, grant writing requests, etc. and are things that could be looked at by consultants to find out if they are valid concerns or not. The GOC has the resources and availability to do fact checking so he is suggesting that OPEGA hire a consultant to do that just as they have done in the past when the work has been too burdensome for OPEGA staff.

Sen. Katz asked Director Ashcroft if she was clear about the motion.

Director Ashcroft said Sen. Burns was right about the various concerns being voluminous, they have been stated in different ways, some of them she thinks OPEGA has addressed already in the work they have done or tried to do. She is not sure how OPEGA, or a consultant, would be able to do any fact checking if there is no documentation to fact check against. It would be a he said – she said sort of thing. She said there was a lot to be thought about in terms of whether or not OPEGA could effectively address some of the questions. OPEGA could go through grant application documents, could do a chronology of what happened, for example, in the process of deciding to put the maintenance facility in Brunswick, to the extent they have documentation to do that. OPEGA has done that kind of thing in the past and it is an intensive process. She said there are several different buckets of potential fact checking requests within

the concerns raised about NNEPRA and if OPEGA was going to do that, she would want to know which things specifically that the GOC wants OPEGA to do that level of work on. She would be hard pressed to explain to a consultant, and to make sure that a consultant was picking up on all of the nuances that OPEGA tries to nail down when they review something like that, so if what the GOC is after is an investigation of that sort she would rather OPEGA staff do that than hire a consultant to it. She thought the scope was still very wide and the issues involved strike her as being about trust between the NNEPRA Board, NNEPRA management and the communities that the Downeaster is running in, or some of the communities, or some of the people in some of the communities. She would prefer to know exactly where they are questioning the integrity of any of those parties in terms of doing the fact checking so OPEGA properly frames whatever work they will do or they will be spending money blindly on OPEGA's part.

Comments from Senators Johnson, Katz, Gerzofsky, Diamond and Burns were in regard to whether the process NNEPRA followed was appropriate and did they violate any rules about public participation or notice and if any of the rules and policies should be changed.

Director Ashcroft said OPEGA would be happy to do whatever work the Committee wants them to do, but it is her job to make sure that OPEGA, in doing the work, can come back to the Committee to tell them something that was worth spending resources on. If they do not have some benchmarks, standards, rules or general public understandings about how things are supposed to work, then OPEGA cannot tell the GOC anything more than this is what happened and that is somewhat dependent on having documents. Personal testimony, in and of itself, unless you get a lot of people saying exactly the same thing and have all the same facts together, is not sufficient evidence for the work that OPEGA does and OPEGA will not be able to draw any conclusions from that. She said that was her concern. If the GOC wants to go forward she needs to know specifically the question they want OPEGA to provide an answer to, not just are any of these allegations true.

Note: The Motion failed 5-5-2. Voting in favor of the motion were Rep. Campbell and Senators Burns, Davis, Diamond and Gerzofsky, absent Representatives Sanderson and McClellan. (Note: Rep. Campbell was not in attendance when vote was taken, but voted when he arrived at the meeting.)

Director Ashcroft said the GOC could discuss what areas of concern fell within the realm of what Committee members are most concerned about looking at further. She listed the following as areas of concern she thought had emerged:

- the effectiveness of Board oversight to include the makeup of the Board, how the Board is conducting its oversight of NNEPRA, etc.;
- the decisions that led to the maintenance facility being in Brunswick and review of the documents that were processed, a chronology of activities and decisions made, to the best that one could tell, from documents that existed, applications for federal grants, etc. and MaineDOT's participation in that process;
- the effectiveness and transparency of the Department's environmental process that was used in the siting for that facility; the accuracy and public transparency of performance metrics associated with the Downeaster; the role of TrainRiders Northeast in establishing rail in Maine and its current involvement with NNEPRA;
- the chronology and decisions around the way side power station that would be similar to what she described about the maintenance facility;
- NNEPRA's relationships and oversight of the various entities that are key partners in providing the Downeaster services, those being Pan Am and Amtrak.

She was not certain all of the areas were within the GOC/OPEGA's purview but some are in concert with what OPEGA has already done and would be a follow on.

Sen. Burns thanked the Director and said that was exactly what he was suggesting OPEGA do. He noted that some of comments the GOC received from the public, some being experts in their field, had merit and it would be wrong for the Committee to walk away from them.

Sen. Johnson asked which of these matters the Director felt would be within their purview.

Director Ashcroft thought the effectiveness of Board oversight is both something the GOC has done before and would be a more detailed portion to the review that OPEGA has already started. It was part of the scope OPEGA originally had. The case study or chronology and process associated with the actual decisions that were made and when around the Brunswick layover facility is beyond what the GOC/OPEGA was currently doing. If the Committee wanted to do that, they should consider it a new and separate review because it involved laying out a chronology of what happened from point "A" to point "B". It was not part of OPEGA's original scope to dive into one project of NNEPRA's, she would consider it a different review than the one OPEGA started.

Director Ashcroft said same thing was true with a review of the effectiveness and transparency of the process for getting needed permits and clearances from the Department of Environmental Protections. She would see that again as more of an investigatory type review, chronology and explanation of what that process was.

The accuracy and transparency of performance measure metrics around NNEPRA she believes is an area that is within the scope that is already laid out and started on in the Information Brief. As for the chronology and decisions around the wayside power stations; she would again say that is a specific look at a specific project and specific decisions made around that. She would see that as a new scope and new review.

The role of TrainRiders Northeast is a topic area that seems to be in a different realm. There are many advocacy groups that operate here in various different ways in the Legislature. She is not sure OPEGA could bring back anything concrete on this topic. Even if what is being alleged is that group in particular has too much influence here in the State House and too much influence with NNEPRA, she is not sure how OPEGA would necessarily confirm that.

Lastly she thinks the topic of NNEPRA's contractual relationships with key partners and NNEPRA's oversight of those would be an area that is within the scope of what they had initially set out to do in this review.

Sen. Johnson was not interested in the GOC taking up something like the role of TrainRiders Northeast as a topic of its own and if there are problems with inappropriate influence of a decision-making process he would expect that to come out of the study of other areas. Looking at the effectiveness of the Board oversight and how their business is conducted, or a case study of the Brunswick layover facility, that those concerns should come to light.

Motion: That the GOC do more work regarding the effectiveness of Board oversight in how business is conducted; the accuracy and public transparency of performance measures and metrics; and the contractual relations and management thereof with partners such as Pan Am and Amtrak. Further move that the GOC add the study of the decisions leading up to the construction of Brunswick layover facility, specifically looking for whether there are problems, or not, with adherence to public meeting laws or other specific violations of due process for public proceedings. (Motion by Sen. Johnson, second by Sen. Burns.)

Discussion:

Sen. Katz said he was going to vote against the motion because he had not heard any evidence that the Board is not effectively overseeing NNEPRA.

Rep. Kruger thought the Motion was about a new review, not about a continuation of the current one and would be more appropriate taken up by the next GOC. He was uncomfortable voting to do work on something that he would not be around to hear the results of so would not be voting for the above motion.

Rep. Duchesne thought there were oversight and metric problems, but if those are problems, they will continue to be problems and there may be more problems to investigate later on. He would be willing to back burner them and if more bad situations come up they can be brought before the GOC as a new review at some future time.

Rep. Mastraccio said she was going to vote against the motion and was ready to endorse the Brief.

Vote: Motion failed by a 4-4-4 vote. Voting in favor of the motion: Senators Johnson, Burns, Diamond and Gerzofsky; absent: Representatives Sanderson, McClellan and Campbell and Sen. Davis.)

Sen. Katz asked Director Ashcroft to refresh the Committee members about the rules for voting on motions by members of the Committee not present at the time of the vote. Director Ashcroft said Etta will send out an email after the GOC meeting to members not at the meeting at the time of the vote making them aware what the motion is that they can vote on. If the member was not on the State House and Cross Office Building property they have three days (counting the day of the vote – so that would be noon on Monday, 11-21-16) and if they were on State House property they had until 5:00 p.m. on the day of the vote.

Some Committee members were concerned that members voting who were not at the meeting when the votes were taken would not have an opportunity to hear the concerns expressed, the emotions and background information. Director Ashcroft said OPEGA will make the audio of the meeting available to Committee members.

Rep. Duchesne asked for clarification on the previous motion. Director Ashcroft said the motion was to continue the current review of NNEPRA with a more detailed look at effectiveness of Board oversight, the accuracy and public transparency of performance metrics relevant to NNEPRA, and the contractual arrangements and NNEPRA oversight of those with regard to the key partners, those being Pan Am and Amtrak primarily and that we also include as part of that review a case study or chronology of the process and decisions made with regard to the Brunswick layover facility making sure to include an eye toward whether there were any violations of public due process.

Sen. Katz asked Sen. Johnson if that captured the spirit of his motion. Sen. Johnson said it did, but clarified that the intent was to come up with a new study of the decisions leading up to the Brunswick layover facility and whether that was in compliance with the public meeting laws. He asked if that was Sen. Burns understanding of his seconding the motion. Sen. Burns said it was.

Rep. Mastraccio wanted to clarify that what Sen. Johnson wanted to do was hold the next GOC to an actual new investigation.

Sen. Johnson said yes and he is expecting that that is going to end up having to be scheduled and prioritized in relation to other studies. Some members of the Committee said that was different than what they understood the motion to be.

Sen. Katz said that was not included in the motion that the GOC members voted on. Director Ashcroft thought it would be part of the work OPEGA did to complete the NNEPRA review they are currently on, but apparently that was not what was being suggested. Sen. Katz asked if any member wished to reconsider the previous motion who was on the prevailing side of the vote. Sen. Diamond noted that the prevailing side would be one of the four members who voted against the motion because that stopped the motion.

Sen. Katz made the following motion:

Motion: That the GOC reconsider the vote on Sen. Johnson's previous motion by which the motion failed. (Motion by Sen. Katz, second by Sen. Diamond, passed unanimous vote 8-0.)

Sen. Katz asked if there was a new motion.

Motion: That the GOC do more work regarding the effectiveness of Board oversight of how business is conducted; the accuracy and public transparency of performance measures and metrics; and the contract relations and management thereof of partners such as Pan Am and Amtrak and would further move that the GOC add a case study of the decisions leading up to the Brunswick layover facility construction, specifically looking for whether there are problems, or not, with adherence to public meeting laws or other specific violations of due process for public proceedings with the clarification that it would be a new and separate study and would be subject to being prioritized with other work by the next GOC meeting. (Motion by Sen. Johnson)

Sen. Katz asked that Sen. Johnson make his motion into two separate motions with the first motion being the first three points which were Board oversight, public transparency, performance metric and contractual relations and management with key partners. Sen. Johnson agreed to the request.

Vote: Motion by Sen. Johnson, second by Sen. Burns, passed, 6-4-2 (At the time the vote was taken the Motion failed by a 4-4-4 vote. Rep. Campbell was not present at the meeting when the vote was taken, but voted in favor of the motion when he arrived and Sen. Davis stopped by OPEGA on Friday, 11/18/16, and voted in favor of the motion in accordance with the Committee's rules. Voting in favor: Senators Johnson, Burns, Davis, Diamond and Gerzofsky and Rep. Campbell, absent: Representatives Sanderson and McClellan.)

Motion: That a case study of the process by which the Brunswick site for the lay over facility was selected and the related public probe be added to the GOC's On Deck List . (Motion by Sen. Johnson, second by Sen. Gerzofsky.)

Vote: Motion passed 6-4-2. (At the time the vote was taken the Motion failed by a 4-4-4 vote. Rep. Campbell was not present at the meeting when the vote was taken, but voted in favor of the motion when he arrived and Sen. Davis stopped by OPEGA on Friday, 11/18/16, and voted in favor of the motion in accordance with the Committee's rules. Voting in favor: Senators Johnson, Burns, Davis, Diamond and Gerzofsky and Rep. Campbell; absent: Representatives Sanderson and McClellan.)

Sen. Gerzofsky noted that the Committee had set aside the taxi cab contract matter and asked if that was still going to come before the GOC or was it going to be dismissed. Sen. Katz said there was nothing currently pending before the GOC with respect to the taxi cab issue.

Motion: That the GOC further look into the taxi cab contract to find out how much assistance was given by any of the employees at NNEPRA toward Brunswick Taxi being awarded that contract. (Motion by Sen. Gerzofsky, second by Sen. Diamond.)

Discussion:

Director Ashcroft asked for clarification about whether Sen. Gerzofsky's motion was about sending a letter to the next GOC or whether it was about putting the topic on the "On-Deck" list or the Work Plan. She referred to the GOC's voting process and procedures and said Committee members not presently at the meeting would be given opportunity to vote on a motion to place a review on OPEGA's Work Plan but they are not typically given opportunity to vote on just putting a topic on the "On Deck" List. The vote the Committee takes to add something to the "On-Deck" list typically is a vote that must pass by a majority of those present. She wanted members to be aware of that process.

In response to Sen. Katz's question of whether the taxi cab contract was in the GOC/OPEGA purview Director Ashcroft said it was OPEGA's understanding that the contract with the Brunswick Taxi is held by Amtrak which is not a State entity. If NNEPRA was not involved in the taxi cab contract, then that may be why a copy of the contract is not available to legislators or others. She believes though that NNEPRA reimburses Amtrak for costs associated with the railroad so, from that perspective there is State or Federal money going to fund that contract. In that realm, she thinks it is in the GOC/OPEGA's purview, but she would have to ask the Attorney General's Office about jurisdiction.

Sen. Gerzofsky said his motion was to add the taxi cab contract to the Work Plan.

Sen. Burns asked for clarification on procedure and asked if this would preclude those who are not at the meeting from voting on the motion. Director Ashcroft said if the motion was to put it on the Work Plan then members that are not at the meeting will get an email from the GOC Committee Clerk giving them the opportunity to vote. Sen. Burns asked what the voting procedure was when putting the review request on the "On-Deck" list. Director Ashcroft said the motion would have to pass by a majority of those members present at the time of the vote

Sen. Katz said Sen. Gerzofsky's motion is to put the review request on the Work Plan. He said he was going to vote against the motion, but if it fails, he would vote for a motion to put it "On-Deck" because he thinks that gives the next Committee more flexibility. Sen. Johnson agreed.

Note: Motion failed 5-5. (At the time the vote was taken the Motion failed by a 3-5-4 vote. Rep. Campbell was not present at the meeting when the vote was taken, but voted in favor of the motion when he arrived and Sen. Davis stopped by OPEGA on Friday, 11/18/16, and voted in favor of the motion in accordance with the Committee's rules. Voting in favor: Senators Burns, Davis, Diamond and Gerzofsky and Rep. Campbell; absent: Representatives Sanderson and McClellan.)

Motion: That the GOC further look into the taxi cab contract to find out how much assistance was given by any of the employees at NNEPRA toward Brunswick Taxi being awarded that contract. That the review request be put on the "On-Deck" list. (Motion by Sen. Gerzofsky, second by Sen. Burns, motion passed, 7-1-4, Rep. Mastraccio voting against the Motion.)

Sen. Diamond suggested that the next GOC review the Committee's voting rules and procedures with regard to absentee voters because of the close votes at today's meeting. Rep. Mastraccio agreed because she was concerned about members being able to phone in their votes on motions they were not at the meeting to hear the discussions for. Sen. Burns disagreed with Rep. Mastraccio saying the GOC makes an exception because the Committee has a unique situation for putting review requests "On Deck" and they do not put stuff "On Deck" in policy committees. He said many times GOC members are familiar with the material, but just are not at a meeting for the discussion and they have two days to vote if they are not on campus and one day if they are. He said if the GOC is going to have that discussion they should discuss whether or not putting something "On Deck" has different merits or voting situation than voting on the issue. Director Ashcroft believes the current rules for voting take into consideration that some of these things are a definite commitment of OPEGA resources as opposed to others. Putting a review "On Deck" is not actually making the commitment of resources as is putting it on the Work Plan. She thought there may be opportunity to rethink what the criteria around that should be.

- Committee Vote

The GOC did not take a vote on OPEGA's NNEPRA Information Brief.

RECESS

Sen. Katz recessed the Government Oversight Committee at 11:43 a.m.

RECONVENED

Sen. Katz reconvened the GOC meeting at 12:08 p.m.

UNFINISHED BUSINESS con't

• Evaluation of Economic Development Programs in Maine

- Review of Draft Legislation to Improve Effectiveness and Efficiency of Evaluation

Director Ashcroft said she spoke with the Maine Economic Growth Council (MEGC) to let them know what the GOC was aspiring to do and answered some of their questions.

Director Ashcroft summarized the outline of Draft Legislation the GOC was considering introducing.

Director Ashcroft noted that Maine Development Foundation and OPEGA thought certain sections of the MEGC statute should be repealed rather than changed because it would be clearer to repeal and establish a new section than trying to make all the necessary amendments within MEGC's statute.

Sen. Katz referred to page 2 of the draft legislation in the Process section and asked what "absolute" meant where it stated that MEGC should consider Maine's "comparative, competitive and absolute advantages". Mr. Neale explained that absolute advantage is something that you do better than anyone else. The comparative and competitive advantages are things that Maine does the best within Maine but that does not necessarily mean it competes well with other States. The thought was that they spend a lot of time looking internally at what Maine does well relative to other things that Maine does, but still may not have an advantage relevant to other States or the rest of the world in those areas.

Sen. Katz noted that the GOC invited Commissioner Gervais to be at today's GOC meeting and said he wanted to be at the meeting, but had a conflict in his schedule and was not able to attend.

Sen. Katz asked how long a term the plan should cover. Mr. Neale said initially they were thinking five to seven years. However, at the MEGC meeting earlier in the week, they were thinking a ten year plan because that would, in part, give some continuity to where the State is heading, would allow administrations and legislators to fit their agendas into a larger plan with some understanding that they are not working in isolation and whoever picks up the mantel from them would then also be following along the same path to some extent.

Mr. Breen said at the MEGC meeting they liked the idea of a long range vision, but at the same time were noting that we are in such a dynamic economic and technological environment that sometimes your assumptions are out of date in a year or two. He thinks just like the GOC, the MEGC was trying to figure out how to balance that, but the Council likes the idea of something focusing on long range knowing that it is a big aircraft carrier and economic growth can take a while to evidence itself.

Sen. Katz asked if the funding was a General Fund expense. Director Ashcroft said that is how they currently have it set up. They did talk about the fact that there is a desire to see where they might be able to get funding from another stream. She thinks that is going to take some real thinking about regarding what might be workable and her thought at this point is just get it out there and as the bill gets processed hopefully ideas will surface. She said the current funding mechanism that DECD uses for its independent evaluations would not be sufficient to be drawing on for these activities nor did she think that would be particularly appropriate as economic development itself is only one piece of what the economic improvement plan for the State might be. She does not have enough knowledge about what all the other possibilities might be at this point to suggest anything else.

Sen. Katz asked Mr. Breen and/or Mr. Neale if there might be other funding sources so it could be more of a public/private effort. Mr. Breen thought there was a significant amount of interest in a project like this. He mentioned an effort called Focus Maine that is trying to identify two or three promising clusters for job creation. That effort attracted quite a bit of private sector and other support. His concern is that it is a lot easier to attract one time project support from corporate and foundation donors than to sustain an ongoing activity and he would hate to set it up relying on donors.

Director Ashcroft moved to the evaluation of economic development type programs. The economic development programs they are talking about evaluating are just one set of tools in a tool kit for applying toward a long term economic improvement strategy. Those words, economic improvement plan, are used deliberately in the proposed bill for MEGC to try to distinguish it from what DECD and the Administration might adopt for any kind of economic development strategy or plan. She said it should be complementary to the economic improvement plan, but there is a lot of other pieces that would need to be considered in an overall improvement plan.

The GOC had expressed interest in OPEGA doing the evaluations of the non-tax expenditure economic development programs, to include research and development type activities, within the same structure that OPEGA is currently using for the tax expenditure processes. Although it is a separate agenda item, Director Ashcroft thought if the Committee wanted to take it in order, they could discuss that idea or they could skip to Part III of the bill which is how to improve the effectiveness and efficiency of the evaluation that DECD is doing. She thought they should talk about the idea of the individual program evaluation first and then the Committee can see what the differences are that have been made for changes for the DECD evaluation.

Director Ashcroft referred to Part II of the Draft Legislation noting that she did not get the opportunity to continue fleshing out what is on pages 3 to 5 which is the current statutory language for tax expenditures reviews. What the GOC would be looking at would be amendments to those sections to include whatever they decide is the additional bucket of programs that the Committee wanted to add. She thought it would be a similar set up in terms of OPEGA, or someone, being the entity that keeps the population or inventory of all the programs that go in the bucket updated, having a process where there is interaction with the GOC and the appropriate policy committees to make sure there is agreement on what the purpose of the program is, the beneficiaries, etc. That all still makes sense for the economic development programs, as well as the tax expenditure ones. It would be weaved into the process that is already laid out.

- Continued Discussion of Potentially Tasking OPEGA With Reviews of Individual Economic Development Programs

Director Ashcroft referred members to the Options for Adding Economic Development Program Evaluations to Current Responsibilities for Tax Expenditures document. She summarized that information for the GOC. (A copy is attached to the Meeting Summary.)

Referring to the Director's proposal to eliminate OPEGA's responsibility to produce information for the Taxation Committee's Expedited Reviews, Rep. Mastraccio asked if Director Ashcroft thought that information was valuable or necessary for the Taxation Committee and was OPEGA able to get the information in a more expedited way from Maine Revenue Services (MRS) than from another entity might be

able to. Director Ashcroft thought OPEGA packaged the information for the Taxation Committee in a way that has not been available to the Committee before. She thinks it was a useful tool and the Committee commented on that, but she thinks the problem is in knowing how to use the information provided to do the kind of review envisioned when that process was set in place in statute. It is probably something that will evolve in terms of how the Taxation Committee addresses it, but thinks the Committee had difficulties this first go round figuring out exactly what they were trying to accomplish in those Expedited Reviews.

Sen. Katz asked for an example of what expenditures were subject to Expedited Reviews that OPEGA was gathering and packaging information for but not doing evaluations on. The Director said that for this year's reviews those expenditures were categorized as the Necessity of Life being the purpose so it included things like sales tax exemptions on groceries, etc. OPEGA was to provide fiscal impact information and the only thing they had available to them in the end was the Red Book estimates that MRS had been doing so they dug in to understand what is behind the estimates. OPEGA was able to provide information on how the estimate was generated and added to that discussion a legislative history and changes in the legislation that had also been made. She said it is all information that any other research arm of the Legislature could potentially pull together as well.

Sen. Katz asked how much of OPEGA's time would be freed up if they stopped doing the Expedited Reviews. Director Ashcroft said OPEGA spent about 350-400 hours, not including her time, but noted that it was the first time OPEGA had done that work and it was the first time they had to ask all the questions of MRS. Sen. Katz asked how much time would be freed up if they eliminated some of the actual reviews which was the Director's first option. She explained it would not free up time in one year, but free up how many reviews OPEGA could accomplish over the six year schedule. If more reviews are added and OPEGA only has the same resources that means, if the Reviews are to be kept on a regular schedule then the schedule would extend out more than six years.

Sen. Johnson asked how you would structure the process to determine what three programs to review. He thinks there needs to be some criteria in terms of changing factors around the relevance of a particular tax expenditure, development investment and/or a weighting in accordance with the amount of money that the State is expending and making them more frequent in a recurring review schedule. Director Ashcroft envisioned a process that recommended to the Committee six or seven programs that would be best or more timely to review so would come up with some criteria for recommending programs.

Sen. Katz asked for the total amount the Legislature would be spending with adding the additional OPEGA Analysts to evaluate all of the tax expenditures and economic development program activities. Director Ashcroft said it would be about \$580,000, including the contracting money OPEGA has.

Rep. Mastraccio thought it possible that as they evolve through the reviews and have an economic development plan that the whole bucket could get smaller and become simpler. Director Ashcroft agreed and would expect that, over time, OPEGA would become more efficient at doing the reviews and would be able to branch out into other areas. Currently OPEGA is breaking ground and learning about programs, but once they have learned about a program in depth then the next time they review it in the six year cycle, it will be more about what has changed around the program.

Sen. Diamond asked if there was going to be a fiscal note with the legislation, and if so, to do it with the package as opposed to after the fact. Director Ashcroft said that was another thing the GOC needed to talk about. She was initially planning to put the appropriation pages on the legislation unless the GOC wanted to, like the OPEGA piece, add that in to existing resources then their piece would not have an additional appropriation, but they would need one for the MEGC and maybe DECD.

Director Ashcroft said the question for the GOC is whether they are still interested in setting up a process where OPEGA does these reviews.

Sen. Johnson referred to A.(2) under Disclosure on page 7 of the legislation and speaks to the “number, type and wage levels of jobs”. He asked if there was a definition of “type” because he would want to know if they were part-time jobs, scheduled on a week-to-week or day-to-day basis because that is an important factor economically. Director Ashcroft said that was a good question, but she could not say that she had seen anywhere that it is defined. If that is important the GOC could classify it here or create a definition.

Director Ashcroft summarized the Comprehensive Evaluation of State Investments in Economic Development starting on page 8 of the legislation and asked for the GOC’s input on what that evaluation would be under this proposed legislation. Basically it is a broad look at what the State has that they are investing in for economic development in an effort to try to achieve the goals of the economic improvement plan and how well aligned that portfolio is with the overall strategy. It would be intended to highlight whether the State could be investing in different things, or mixing up the economic development investments, in ways that would better achieve the economic improvement strategy overall.

Sen. Katz asked if the Director saw that task as being more or less robust than the current statute on what they are doing and therefore either being more or less expensive to do. She said it was a slimmed down scope and she did receive some indication from DECD that they thought it would cost about \$150,000 each time they do it based on what they had to pay the contractor for a piece that captures some of this kind of information in the past. She had not had a chance to get back to DECD about it, but said it was a more defined scope. Sen. Katz asked for a cost comparison. She said DECD spent \$150,000 for this type of evaluation scope on the latest contract. The total cost for all elements of the report has ranged from \$100,000 to \$355,000 each year depending on where they were in the cycle. The GOC’s legislation also proposes making this an every four years evaluation rather than every two.

Sen. Katz said it appeared that if you added the OPEGA evaluation for these programs, as they are doing for tax expenditures, it would cost more money but it would be a slimmed down project for DECD every four years just to evaluate how the economic development incentives are fitting into the overall plan. He asked if the total resources being spent on evaluation overall, would be less than what is being spent now? Director Ashcroft said her very rough estimate of what is being proposed would overall be more money by approximately an additional \$120,000 per year. She noted that figure did not include the MEGC’s funding which was discussed earlier. The plan would be a much more strategic approach and more specific in terms of what the Legislature will get out of the evaluations. There is opportunity to tweak it over time as the Legislature sees whether what is being provided is useful or not. She thought it had lots of improvements in terms of just the extra work that has been done to make sure they are being as specific as possible without being micro managing.

Sen. Johnson thought it would be a more sufficient process because people would be applying the same evaluation process in examining the tax expenditures and the economic development expenditures. What has not been factored in yet is what the Director said earlier, it is not easy to quantify what resources these efforts will take as OPEGA gets into subsequent years, having unearthed a lot of stuff that was hard to find the first time around. He thought the Legislature would get better information for a slightly larger cost that may in fact, not be greater in the long run. Director Ashcroft said between what the MEGC is going to do in terms of monitoring progress against the plan and what OPEGA would have for results on the individual program evaluations, the evaluator at DECD would have more information to work with.

Mr. Breen did not think it made sense to put the whole thing in MDF for a lot of reasons, capacity being one of them. MDF would like to have the evaluation results inform the redraft of the next strategic plan but, at the same time, thinks the intent of the Committee has been to use the strategic plan as a better anchor point for the evaluation. He thought the results will not be so stale if they are doing a significant progress report and update to the plan every two years. The evaluation results will be a year, or so, on the shelf while they are using them for the plan updates and he has been thinking more about the interplay between the two. Director Ashcroft said she thought MDF thought an evaluation that had these kinds of objectives laid out for DECD would be helpful for the MEGC’s work as well as for the Legislature. She had discussed with MDF whether the DECD evaluation to look at the whole portfolio is even needed if OPEGA was going to be doing the

individual program evaluations. But then you would not have a good read against how the whole thing is working together toward achievement of what MEGC has recommended in the Strategic Plan and she thought that would be a missing piece that would be noticed if it was not included. Mr. Breen agreed.

Director Ashcroft said it would be helpful for her to sit down with DECD again at some point and go through the funding piece of the proposed legislation. The legislation currently just combines the two pieces of current statute on the funding mechanisms to get them all into one pot, but she knows and agrees that it is not a perfect funding mechanism. For now, however, she just put them together in the hopes that down the line they will be able to make some changes if it is not going to work.

Sen. Diamond noted that the GOC had sent Commissioner Gervais a letter requesting his input on the proposed legislation and said the Committee needed to hear from him. Sen. Katz said he spoke with the Commissioner earlier in the week and he would have been at the meeting but he had a previous commitment. He had asked the Commissioner if anyone else in DECD would be coming in the Commissioner's absence and he said no. Sen. Katz expressed to the Commissioner that it was the GOC's sentiment that it was difficult to be trying to design a plan that obviously involves the Department without the Department's participation. Sen. Diamond asked if the Commissioner was making plans to attend a meeting so the GOC can have interaction with him. Sen. Katz said he hoped the Commissioner would be doing that in the next Legislature, but he did not ask him beyond this meeting. Sen. Diamond said not having the Commissioner at the meeting is understandable because of other conflicts, but him not sending anyone from his Department to the meeting raises concerns.

Director Ashcroft said she did reach out to see if she could meet with DECD to work on the legislation prior to today's GOC meeting and because she thought this GOC wanted to be the one to vote on whether or not to submit the legislation. If so, the Committee could approve the draft legislation and let the rest of it wash out in the bill process with DECD, or the draft legislation can be held over to the next GOC.

Sen. Katz was in favor of this GOC submitting the legislation because it is fairly complicated, they have spent a lot time on it and it would take quite a bit of time getting the next GOC up to speed on it. He is hopeful for communication with DECD in the next Legislature, but that is not known for certain. He would vote to move forward with the draft legislation. Director Ashcroft said the wording details can be worked out once it is in form from the Revisor's Office. She said there are other pieces she would prefer to talk with DECD about one more time and whether they would change or not as a result of those conversations, she does not know.

Rep. Mastraccio said she was fine with sending the draft legislation to the Revisor's Office, but said the access to confidential information always seems to be the thing that gets in the way of everything. Director Ashcroft said with the ongoing tax expenditure evaluations OPEGA has learned a bit about exactly what pieces of statute are creating issues and will be bringing forward some suggestions to the next GOC about what may need to be changed in statute to remove some of those barriers. To give taxpayer data to a consultant right now is not something that can be done and she does not know if it is something that ever could be done with DECD's evaluator, but her hope is that OPEGA could be an avenue for being able to get that information which is why she has included some language that says coordinate with OPEGA on available data. She also did not know whether, with this type of scope for the DECD evaluation, access to confidential information would be needed to the same degree that they needed it to accomplish the work they had been asked to do in the past. She said there is more figuring out what that would mean, but she did not want to lose it as something that needed to be thought about.

Sen. Johnson asked if the long term strategic plan for the economy would include looking at what the challenges are and looking at not only what the strengths are, which is valuable, but what is changing. Mr. Breen thought the opportunity piece is implied throughout in terms of the industries' growth potential on page 1 of the draft legislation and the evaluation of the comparative advantages and where can they make the most ground in terms of economic impact. He would support adding appropriate language somewhere in terms of an analysis of those sectors that are under the most competitive pressure and the ways in which they can respond to either moderate their decline or enable them to find new opportunities. Sen. Johnson said you

need to be looking at where the State is going to be suffering economically with their existing industries and what can be done to mitigate that. Mr. Breen said sometimes that is precisely where you will find the opportunity.

Director Ashcroft asked for the GOC's input on moving forward with the draft legislation.

Sen. Johnson said given that they will be slimming down some of the analysis and costs on the DECD side there is no better time to try to keep this on a reasonable schedule and to be useful strategically than for the GOC to attempt, at the outset and in the initial draft of the bill, to be gearing up the staffing in OPEGA to handle that. He thinks the other alternatives are what we might have to shift to if there is insufficient support for that in the course of the bill working its way through the Legislature.

Sen. Katz asked if there were any contrary views to Sen. Johnson. There was no response from other Committee members.

Director Ashcroft said she believed that meant to go with the option to add resources and see how that plays out and to be prepared with Option B.

Rep. Campbell asked if that meant the need for more OPEGA space. Director Ashcroft said that was correct.

Sen. Katz asked if the Director needed more guidance from the Committee having made that decision. He noted that the GOC had talked about whether it would be a single bill or not. Director Ashcroft said that would be the only other open question. She said it made sense to leave it all together in one way because you can see how it all fits, but the MEGC's effort is something that is separate from the whole question of how are we going to evaluate things on economic development. She said the Committee members knew better than she of how things like that work, but getting MEGC what they need to actually do a plan seems like the more important step.

Sen. Johnson thinks how it will all work and fit together is part of the same hearing process on a bill. If, in the end, there is no stomach for making the changes in the evaluation process, he would certainly hope that legislators would see the wisdom of having an economic plan as a State and at least move forward with that portion of the bill.

Sen. Katz asked if Sen. Johnson was advocating for a separate bill for the MEGC plan. Sen. Johnson said he was advocating for one bill that has all of it so that the hearing process will show how each relates to the other and is heard at the same time. There are several changes that do relate to each other and if the Committee were to do only part of it, they might have a broken system still.

Sen. Katz said both are going to be committee bills so they will be numbered sequentially, both could get presented at the same time and the MEGC's overall plan is somewhat related, but he would hate to see the waters get too muddied by technical problems with the second part. He thought it might be wiser to have the economic improvement plan as a bill and the rest of the evaluation portions be separate. He thought it would be easier to sell to their colleagues because the evaluation issues are more complicated and the fact that there is not a plan for the State is very easy for people to understand. Most people think that the State does have an economic development plan and to have each issue stand-alone might make sense.

Rep. Campbell said it then becomes the risk of one without the other. Sen. Katz said he believes in both of them strongly, but said if the evaluation part is not done the State still needs a plan. Director Ashcroft noted that the MEGC still will be going through a process to update and monitor progress. The Legislature would at least have the benefit of all of that work. If you ended up with that in the beginning and the DECD piece at the end, which would currently be able to fund itself, what you would have to figure out in the middle is how to get the evaluator what they need for information without the benefit of the individual program evaluations.

Rep. Mastraccio thought Director Ashcroft was probably right, but she was concerned about the confidentiality piece and asked if that was still going to be tweaked in terms of the other bill that already exists. She is concerned that they are going to continue to give incentives without being able to get the information to be able to evaluate expenditures in the way you are able to right now. Director Ashcroft said whatever she comes up with that might work needs to contemplate both possible outcomes.

Sen. Diamond agreed politically and procedurally with Sen. Katz's position. He thinks the members of the Committee have been around enough to see how these things can fail and how they pass and the GOC's prospects are better if they follow Sen. Katz's lead. Sen. Johnson agreed.

Director Ashcroft will submit the draft legislation to the Revisor's Office and after they have prepared the bills, the Director will bring that legislation back to the 128th GOC for their review. Prior to submitting the draft legislation to the Revisor's Office, Director Ashcroft will work with DECD to get their input on the bill.

Sen. Diamond said DECD not working with the GOC to draft the legislation was unacceptable for him. He noted that nobody from DECD showed up at the GOC meeting to participate so he suspected that it was more than just conflicting schedules and he finds that to be inappropriate and unacceptable.

Motion: For the GOC to introduce two bills for consideration by the 128th Legislature. One bill related to the Maine Economic Growth Council's development and maintenance of a long-term strategic economic improvement plan for the State and the other to improve the effectiveness and efficiency of evaluations of the State's investments in economic development with final language review of the bill to be done by the next GOC. (Motion by Sen. Johnson, second by Rep. Kruger, passed unanimous vote 10-0. Sen. Gerzofsky and Sen. Davis voted later in favor of the motion in accordance with Committee rules.)

NEW BUSINESS

• OPEGA's Interim Briefing on the State Lottery Review

Sen. Katz noted that it was unusual for OPEGA to present an Interim Briefing on a review that was in progress, but the Office is doing so because this is the last meeting of the 127th GOC and there are some members on the Committee who had interest in the review.

Director Ashcroft said OPEGA is sharing with the GOC what they feel they are able to say at this juncture of the review with regard to the scope questions that have been assigned to their review. She hoped it would be informative for those members who are interested. OPEGA will present the full report in January or early February.

Director Ashcroft summarized the slides that OPEGA prepared for the Interim Briefing on the State Lottery Review. (Copies of the State Lottery Slides are attached to the Meeting Summary.)

Sen. Burns asked whether the percentage of Television and Radio Spots in each demographic market area correlated to the population in that area. Director Ashcroft said yes based on the fact that she thought the Portland Market DMA has a higher population than the others.

Rep. Kruger said he had a little experience in advertising spots and referred to the Farmington Radio Market area saying it was on the list because there is a strong radio signal coming out of Farmington not necessarily because of the population is in Farmington. People listening to the Farmington station are from Auburn to Bangor. The DMA is different from the transmitter location and that is fairly consistent with all the radio and TV advertising buying he has done.

Sen. Johnson asked if OPEGA could add a column for the percentage of the population in counties to be able to compare to percent of sales or winnings in those counties. He noted that the sale in some counties like

Washington seemed out of line with the population figures. Director Ashcroft said there are some things that do not follow the general trends and OPEGA is focusing on those as part of the analysis. Sen. Johnson said another statistic to chart is in relation to how economically challenged the people of the county are and the percentage of population below poverty level might be an interesting indicator to correlate with the outliers on the population percentages.

Sen. Johnson said he was glad there was no indication that there is targeting of different socioeconomic groups based on what the RFP and contract responses show. He questioned whether samples of what is being used for marketing materials could be examined by someone with marketing and sociology expertise to tell whether they are in fact targeting social or economic groups. Director Ashcroft said OPEGA has not gone that far. They have analyzed the advertising data and what OPEGA can say is when the Lottery runs a spot they run it everywhere, it is a blanket spot for all the broadcast areas. Who the message is designed to strike a stronger cord with is a different question entirely. Sen. Johnson commented that what OPEGA found so far would speak towards indicating that there is not a deliberate attempt to target people socioeconomically, however, he thinks it is the Committee's responsibility to also look at whether the design of the ads is in fact doing so and whether they should take some corrective actions in State government in that regard. Director Ashcroft said OPEGA was not planning on going that far to answer that question and it would require hiring someone with technical expertise to review. She said OPEGA has answered the question they set out to answer and she did not know if that remaining question is for the policy committee to consider, but if that is something the GOC feels strongly about OPEGA doing that work, they will find a way to incorporate it into the review.

Sen. Johnson said it did matter to him to know whether, not just whether on paper that such targeting is being asked for and provided, but whether in fact the materials advertising the Lottery are targeting specific socioeconomic groups from a policy perspective.

Sen. Katz did not know who exactly would figure Sen. Johnson's concern out and from looking at the ads himself said the ads seem to be relatively stable, well-off, happy people. He did not see a reason to go down that road, but maybe other members of the Committee did.

Rep. Kruger, who buys advertising, said you never have enough money and doing that level of research behind each ad is way more expensive than giving it your best shot. He would be surprised if the Lottery was spending the kind of money you would have to spend to get the psychological data that you would need to back up what Sen. Johnson was suggesting. Rep. Mastraccio agreed.

Sen. Burns said he would be surprised if the entire industry doesn't use the focus on that inverse relationship across the country. If they know that low-income is their best target and opportunity to sell tickets then they are going to construct their ads accordingly, whether the nuances are seen or not, it is the same as in politics. They target people who they want to influence.

Sen. Katz reminded the GOC members that this is an Interim Briefing on the State Lottery covering where OPEGA currently is in their review is not about accepting or expanding the Review.

Sen. Diamond referred to the information that the Lottery has averaged \$231 million over the past five years and asked if that was average per year. Director Ashcroft said all of the dollar amounts in the tables should say average per year. He asked where the Lottery's expenses were if the Lottery is selling \$231 million per year and are paying out \$178 million, which is a 77% winners rate, and they average \$52 million to the General Fund. Director Ashcroft said OPEGA did have a question previous on expenses for the Lottery and when the Scope of the Review was changed that issue did not remain, but OPEGA did have some information on the Lottery's expenses and will note that might be something that comes up as a question. Sen. Diamond said it did not make sense that someone making that amount of money is walking away with \$1 million.

REPORT FROM DIRECTOR

- **Status of Current Projects in Progress**

OPEGA will be presenting the final **State Lottery Report** and **DHHS Licensing and Regulation of Child Care Providers Report** in the early part of next year to the 128th GOC. The three **Tax Expenditure Reports** will be presented before March 1, 2017.

- **Staffing**

OPEGA is recruiting for an open Analyst position and is hoping to have the position filled sometime in January.

ADJOURN

Sen. Katz adjourned the GOC meeting at 2:15 p.m. on the motion of Sen. Diamond, second by Sen. Burns, unanimous.



MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

**Interim Report to the Joint Standing Committee on Government Oversight
Office of the Secretary of State
Regarding Compliance with Public Records Laws**

Thursday, October 6th 2016

Senator Katz, Representative Kruger and distinguished members of the Committee on Government Oversight; my name is Matt Dunlap and I am the Secretary of State for the State of Maine.

For more than a year, our offices have been working to update our processes for assisting agencies in state government in meeting their obligations under the public records laws. The nature of public records, as we have discussed, has evolved rapidly in the last two decades, and many of our policies and procedures had become dated. Further, the process for reviewing new policies or policy changes did not lend itself to flexibility or any type of expedited timeline. As a result, the intent of the public policy fell dangerously by the wayside, thus capturing the attention of this committee and the legislative office that you work with.

Since that time, we have made significant changes to the way that we do business. Most importantly, the institutional inquiry has brought the need for this work foremost in our daily calendar.

The efforts that have emanated from that awareness continue to bear fruit. Our work with the Executive has been productive; and while the work on filling vacancies within the Archives Advisory Board is ongoing, the board itself is now fully functional, and operates with a view towards extending their understanding of the needs of state agencies in the digital age. As we have proceeded, representatives of the Judicial and Legislative branches as well as the Office of Information Technology and the Secretary of States Information Services Office have pledged to maintain open lines of communication about the opportunities to improve the product of the work of the Archives Advisory Board.

Additionally, the Archives has endeavored to send out periodic records management bulletins designed to foster discussion and provide guidance to all state employees including our state's records management officers.

The Archives continues to offer training workshops and webinars for all state employees, directors/agency heads, records officers, and legislators/public officials. Agency directors are encouraged to create records management policies within their agencies encouraging employees to properly maintain the records they create.

In our last meeting, this committee discussed with us providing a uniform policy on retention of draft documents. After careful examination, we do find that crafting an appropriate uniform policy on draft documents is an elusive task, given that every state agency has different needs on a broad spectrum of governing statutes. But we have emphasized that agencies, nonetheless, should strive to have such policies in place that are developed with their needs in mind. Attached to this report is the records management bulletin issued in July of this year that speaks to the guidelines for what a department policy should look like.

Other issues that we have contemplated have included the representative makeup of the Archives Advisory Board and what their authority should be; we plan on developing a proposal to the Legislature on the makeup of the board, but we feel that the rulemaking authority of the Department of the Secretary of State is sufficient to accomplish the goals of the Archives Advisory Board as future needs require without endowing it with separate rulemaking authority.

It is our plan to distribute our proposed statutory changes to the Stakeholder Group for review and comment prior to submission for consideration by the Legislature. There are a number of moving parts to this, so it is our intent to streamline and simplify our work prior to submission for Legislative consideration in order to insure that our shared goals are being met.



RECORDS MANAGEMENT ADVICE

Issued: July 2016

Basics of Records Management: Working Documents and Drafts

Purpose: Provide guidance to state government agencies on required retention of working documents and drafts.

Working documents and drafts are public records but they might only need to be retained for a brief period of time if they do not have significant administrative, legal, fiscal or historical value.

Considerations when retaining working documents and drafts:

- Significance of the document being drafted;
- Specific legal requirements relating to the retention of certain preliminary drafts;
- Need for records as evidence that the agency practiced due diligence in the drafting process;
- Unique/substantive information relating to formulation and execution of high-level policies, decisions, actions, or responsibilities.

Other types of working documents and drafts supporting certain financial, legal, and other mission-critical functions, however, may continue to have value even after the final, official copy has been approved. Agencies should have clearly defined policies and/or schedules regarding the retention and disposition of these types of working documents and drafts. Any record management decisions (not clearly defined) should be made on a case-by-case basis in consultation with your Records Officer.

Examples of drafts that might be immediately discarded following the creation of a new draft are:

- Documents which do not contain unique information documenting significant policy development, action, or decision making.
- Preliminary drafts produced solely for proof reading or internal discussion, reference or consultation. Materials may include notes, associated transmittals, and reference and background materials.
- Documents containing only minor non-substantive changes such as correction of grammar and/or spelling or minor "word-smithing."

Agency policy should address internal record requirements for staff and also target record management procedures for those documents circulated to outside agencies, including but not limited to working documents and drafts. For some agencies, statute and/or rule dictate the retention of this type of material.

Additional advice regarding the management of public records is available at
<http://www.maine.gov/sos/arc/records/state/statetraining.html>

"The right record, to the right person, at the right time, at the lowest possible cost"

Office of Program Evaluation and Government Accountability

Options for Adding Economic Development Program Evaluations to Current Responsibilities for Tax Expenditures

With Existing Resources

Reduce scope of Current Tax Expenditure Review Work required by statute

- Put only Full Evaluations of Business Incentives, and other tax expenditures whose clear primary purpose is for economic development/improvement, on the recurring schedule – consider also possibly including Non-Business Incentives
- Eliminate OPEGA responsibility to produce information for Taxation Committee's Expedited Reviews
- Reduce the number of evaluation objectives pursued in each evaluation

Add programs meeting definition for investments in economic development per the draft legislation to the population of programs to be considered for full evaluation

- OPEGA determine the population and maintain on-going inventory of these programs in concert with GOC similar to what is currently required for tax expenditure programs. Use most recent inventory of economic development programs developed by Maine Development Foundation as a base.

OPEGA recommend a schedule for full evaluations to the GOC that is on a cycle such that only 3 evaluations are conducted each year. This 3 per year to be from the population that includes Tax Expenditures within the scope described above and economic development investment programs. Estimate this would be total of approximately 50 – 56 programs. Estimate this would result in a cycle of a program being evaluated every 16 - 18 years. Possibly set up a process where the GOC, in consultation with other committees, selects three from the population to be evaluated each year rather than maintaining a schedule that includes all programs. Also possible to establish criteria that would further reduce the number of programs needing full evaluation, i.e. dollars spent/forgone, age, number of participants.

With Additional Resources

Reduce scope of Current Tax Expenditure Review Work required by statute

- Eliminate OPEGA responsibility to produce information for Taxation Committee's Expedited Reviews
- Reduce the number of evaluation objectives pursued in each evaluation

Add programs meeting definition for investments in economic development per the draft legislation to the population of programs to be considered for full evaluation

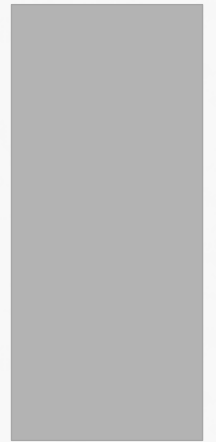
- OPEGA determine the population and maintain on-going inventory of these programs in concert with GOC similar to what is currently required for tax expenditure programs. Use most recent inventory of economic development programs developed by Maine Development Foundation as a base.

OPEGA incorporate the additional evaluations of economic development investments into the current 6-year cycle schedule for Tax Expenditure evaluations. OPEGA estimates this will result in approximately 8 evaluations per year.

OPEGA estimates pursuing this option would require an additional 2 analyst positions dedicated to the Tax Expenditure/Economic Development Investment evaluations (currently there are 2 dedicated resources) and likely an additional Senior Analyst position for the overall Office to allow for structuring the office so that some of the current roles and responsibilities the Director handles in evaluations can be shifted to another upper level staff position. Very rough estimate of additional funding required for the positions is \$332,000.

Any additional positions would require additional office space for OPEGA as our current location is maxed out and already not well suited for the work we need to perform, i.e. no space for team meetings or discussions that involve confidential information that not all staff should be overhearing. This would require additional one time funding for creating, furnishing and equipping the additional space. Do not have a reasonable estimate of this additional cost at this time.

MAINE STATE LOTTERY
INTERIM BRIEFING



SCOPE QUESTIONS

What entities have a role in governing and overseeing the Maine State Lottery? Is there sufficient governance and oversight of MSL key decisions impacting revenues, expenses and operations?

What does the Maine State Lottery consider when making decisions about games to be offered and how they will be marketed? Are any particular demographic groups or regions of the State specifically targeted in the Lottery's advertising and marketing? Who has responsibility for making and overseeing those decisions?

How are lottery winnings considered in determining eligibility for public benefits? Are lists of lottery winners compared to lists of benefits recipients to determine continued benefit eligibility?

What is the breakdown of lottery ticket purchases and lottery winnings by municipality or county?

SCOPE AND METHODS

To address the scope questions OPEGA has and continues to:

- Review documents including, Maine Statute, Rules, BABLO financial documents, policies and related materials, and Academic research papers;
- Review relevant Requests for Proposal (RFP), RFP responses, and resulting contracts;
- Analyze lottery ticket sales and winnings data,
- Analyze advertising data, and
- Conduct interviews with BABLO staff, State Liquor and Lottery Commission Chairperson, Legislators, and Legislative staff

LOTTERY

- The Maine Lottery offers two types of tickets: Instant or “scratch” tickets, and Draw game tickets (such as MegaBucks or Powerball)
- BABLO reports:
 - there are over 1,200 lottery ticket retailers in Maine
 - lottery tickets sales in Maine have averaged \$231 million over the past 5 fiscal years
 - the Lottery has paid out an average of \$178 million to prize winners over the past 5 years
 - the lottery has contributed an average of \$52 million per year to the General Fund over the past 5 years

SCOPE QUESTION 1 OVERSIGHT ENTITIES (1)

State Agency- The Lottery is:

- A Division of the Bureau of Alcoholic Beverages and Lottery Operations (BABLO)
- BABLO is a Bureau in the Department of Administrative and Financial Services (DAFS)
- The BABLO Director is appointed by DAFS Commissioner

SCOPE QUESTION 1 OVERSIGHT ENTITIES (2)

State Liquor and Lottery Commission (SLLC)

- Makes recommendations and sets policy
- Promulgates and amends rules on the conduct of lottery games
- Approve new instant ticket games
- Hears appeals from applicants on the denial by the Bureau of a lottery retail license
- Does not make decisions regarding lottery budget, contracts, marketing and advertising

SCOPE QUESTION 1 OVERSIGHT ENTITIES (3)

Maine Legislature's Joint Standing Committee on Veterans and Legal Affairs (VLA)

- Invited BABLO to make a presentation at the beginning of the last two legislative sessions
- Reviewed and commented on 2015 Lottery GEA report
- Processes bills related to the MSL
- Is notified when rules related to MSL are promulgated or amended
- Is notified when MSL has plans for “pattern breaking” game

SCOPE QUESTION 1

OVERSIGHT ENTITIES (4)

Tri-State Lottery Commission, MUSL

- **Tri-State Lotto Compact.** Maine, Vermont, and New Hampshire formed the first multi-state lottery association in April 1985 and began selling MegaBucks tickets. The SLLC has no jurisdiction over the Tri-State, but one member of the SLLC is on the Tri-State Commission
- **Multi-State Lottery Association (MUSL)** is a non-profit, government-benefit association owned and operated by its 33 member lotteries. Maine joined 42 other jurisdictions and began selling Powerball tickets in July 2004.

SCOPE QUESTION 2

ADVERTISING AND MARKETING (1)

Decision Making

- Advertising/marketing decisions are made by MSL/BABLO/DAFS staff in consultation with its gaming system and advertising contractors.
- The gaming system and advertising contractors each present monthly updates at State Liquor and Lottery Commission meetings.
- Neither the gaming system RFP, the contractor response to the RFP or resulting contract contained any mention of any specific demographic group to target.
- The advertising RFP and contractor response to the RFP made mention of the “millennial” age demographic. OPEGA noted no current efforts to target this demographic.

SCOPE QUESTION 2

ADVERTISING AND MARKETING (2)

Broadcast Television

Three Designated Marketing Areas (DMAs):

- Portland-Auburn
 - Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, York and Carroll (NH), Coös (NH)
- Bangor
 - Hancock, Penobscot, Piscataquis, Somerset, Waldo, Washington
- Presque Isle
 - Aroostook, parts of New Brunswick, CA

Percentage of spots in each DMA:

- Portland
 - 44%
- Bangor
 - 37%
- Presque Isle
 - 9%

SCOPE QUESTION 2

ADVERTISING AND MARKETING (3)

Radio

Market Areas and Percentage of Spots	
Portland	39%
Bangor	30%
Augusta-Waterville	14%
Presque Isle	9%
Calais	6%
Farmington	2.5%

SCOPE QUESTION 3

PUBLIC BENEFIT ELIGIBILITY

TANF, SNAP, and MaineCare

- Eligibility requirements vary, but all have income and asset limits
- All require that changes in income or assets be reported to DHHS and eligibility reassessed
- All have 12 month eligibility reassessment periods
- BABLO indicates that DHHS has asked for a list of lottery winners only once recently
- Lottery currently checks winners of \$600 or more for unpaid state income tax, unpaid child support, and overpaid unemployment benefits owed
- Proposed rule change for SNAP

SCOPE QUESTION 4

TICKET SALES AND WINNINGS (1)

Sales and Winnings

- OPEGA has not completed its analysis of sales and winnings data, however preliminary analysis indicates that total sales and total winnings correspond fairly closely with population size.

FY12-FY16 Sales and Winnings			
COUNTY	ADULT POPULATION*	SALES	WINNINGS
		PERCENT OF TOTAL	PERCENT OF TOTAL
CUMBERLAND	222,780	20.0%	19.8%
YORK	155,040	14.5%	14.9%
PENOBSCOT	123,568	10.8%	10.3%
KENNEBEC	96,843	10.5%	11.0%
ANDROSCOGGIN	83,394	8.6%	8.6%
AROOSTOOK	57,486	5.9%	5.7%
SOMERSET	41,052	4.3%	4.2%
OXFORD	45,516	3.8%	3.6%
WASHINGTON	26,292	3.8%	3.9%
HANCOCK	44,441	3.6%	3.5%
KNOX	32,026	2.9%	3.2%
SAGADAHOC	27,871	2.8%	3.3%
LINCOLN	27,989	2.5%	2.5%
WALDO	30,639	2.3%	2.2%
FRANKLIN	24,721	2.2%	2.1%
PISCATAQUIS	14,170	1.3%	1.2%

*Adult population figures from the 2010 US Census

SCOPE QUESTION 4

TICKET SALES AND WINNINGS (2)

OPEGA used available location data for ticket sales and winnings transactions to attribute sales and winnings to specific municipalities or counties where the purchase or prize redemption was made. This data may not reflect purchases and winnings for actual residents of those counties and municipalities because:

- Tickets may be purchased from any retailer, not necessarily the purchaser's municipality or county of residence
- A significant number of municipalities have no lottery retailer
- Tickets may be sold to, and winnings redeemed by, non-Maine residents
- Prize winnings of \$599 or less may be redeemed at any retailer, not necessarily where the ticket was purchased or where the purchaser lives
- Prize winnings of \$600 or more must be redeemed through the MSL office, and are attributed to the winner's hometown, which may not be the municipality where the ticket was purchased

SCOPE QUESTION 4

TICKET SALES AND WINNINGS (3)

Sales and Winnings Per Capita

OPEGA is currently analyzing data to determine sales and winnings per capita. We are finding there are many factors that may impact the results.

- Resident population size vs seasonal population
- Tourism
- Seasonal Workers
- Location and number of lottery retailers:
 - One retailer for multiple municipalities
 - Heavily traveled routes
 - Regional service centers

PRELIMINARY OBSERVATIONS

- In the academic research literature OPEGA has reviewed to date, there is general agreement that an inverse relationship exists between socio-economic status and lottery play
- OPEGA's analysis of advertising data for media buys and review of advertising contracts finds no evidence that the Maine State lottery is specifically targeting any demographic or socio-economic group