

OPEGA The Maine Legislature

Office of Program Evaluation & Government Accountability



82 State House Station Room 107 Cross Building Augusta, Maine 04333-0082 207-287-1901
Beth Ashcroft, Director

General Information about the Government Oversight Committee and OPEGA

What is the history of the Government Oversight Committee and OPEGA?

Oversight is an essential function because legislators need to know if current laws and appropriations are achieving intended results. The current statutes¹ relative to oversight as amended in 2003 created a Government Oversight Committee (GOC) and the Office of Program Evaluation and Government Accountability (OPEGA). The legislation resulted from several years of research into best practices of other states² and recommendations from experts in Maine and national organizations.³

Although the Maine Legislature has always conducted budget reviews and legislative studies, until OPEGA, the Legislature had no independent staff unit with sufficient resources and authority to evaluate efficiency and effectiveness of Maine government. The committee held its first meetings in 2004 and OPEGA began operations in early 2005.

What is the Government Oversight Committee?

Joint rules of the Legislature establish the membership of the Government Oversight Committee and the selection of chairs. The committee consists of twelve members appointed on

a bi-partisan and bi-cameral basis. State law⁴ specifies committee powers and duties:

- Provide direction to OPEGA
- Select review topics and approve scope
- May vote to endorse, to endorse in part or to release an OPEGA report without committee endorsement
- May initiate legislative action to address OPEGA's recommendations
- May request the Department of Audit to conduct financial audits or to direct OPEGA to retain a qualified financial auditor under certain circumstances
- May hold public hearings to receive OPEGA reports and to question public officials about OPEGA findings and recommendations
- May order the appearance of any person before the committee, may order the production of documents or electronic media, and, if necessary, may issue subpoenas according to laws governing legislative investigations
- May administer oaths under certain circumstances and may direct the Attorney General to institute perjury proceedings if a committee majority finds probable cause

What is OPEGA?

State law⁵ specifies that OPEGA is a non-partisan joint legislative staff. OPEGA assists the legislature in its government oversight duties by performing independent reviews of State programs, agencies and activities, including non-government entities receiving State funds. The Legislative Council appoints the OPEGA Director to a five-year term during which the

¹ MAINE STATUTES, Title 3, Chapter 37, Sections [991-997](#).

² See "Program Evaluation in State Legislatures: Professional Services Delivered in a Complex, Competitive Environment," Berry, Turcotte, and Latham, pp. 73- 88, *Responding to Sponsors and Stakeholders in Complex Evaluation Environments, New Directions for Evaluation: A Publication of the American Evaluation Association*, Number 95, Fall 2002 (San Francisco: Josey-Bass).

³ The National Legislative Program Evaluation Society of the National Conference of State Legislatures:
www.ncsl.org/nlpes

⁴ MAINE STATUTES, Title 3, Chapter 37, Section [994](#).

⁵ MAINE STATUTES, Title 3, Chapter 37, Sections [991](#), [992](#), [995](#), and [997](#).

Director may be removed only for cause. The Council may reappoint the Director. The Director hires OPEGA staff and is responsible for OPEGA's internal operations and budget.

What entities are subject to OPEGA review?

- State programs and agencies
- Local and county governments
- Special and utility districts
- Regional development agencies
- Municipal or non-profit corporations
- State contractors
- Public officials and employees

How are entities selected for review?

The Government Oversight Committee determines all entities to be reviewed and approves OPEGA's annual work plan by a majority vote. Suggested projects from any source must come through the committee. Proposed reviews for committee consideration may be suggested by legislators, legislative staff, presiding officers, state agencies, and public interest. The committee may also consider topics from a criteria-based risk assessment performed biennially by OPEGA and the committee. The work plan also provides for OPEGA rapid response reviews if a matter meets committee criteria for immediate investigation and the committee directs the review by a super majority vote.

What types of projects may be performed by OPEGA?

Legislative program reviews do not fit into clearly discrete categories but may include examinations to determine:

- Effective, efficient and economic use of resources
- Compliance with state and federal mandates
- Adequacy of internal (management) controls

What is the OPEGA review process and how will the entity under review be kept informed?

1. An agency will normally be notified of a potential OPEGA review during the committee's evaluation selection process and when OPEGA's annual work plan is approved.
2. Shortly before the review is scheduled to commence, OPEGA will send the agency a letter describing the scope and timing of the review.
3. OPEGA will conduct an opening conference with agency management to discuss the review, scheduling, and coordination procedures for access to personnel, records and data. OPEGA may also meet with other stakeholders.
4. If necessary, the OPEGA director may make a separate written request for records and data that would otherwise be confidential. (See question and answer about confidentiality later in this document.)
5. Throughout field work, OPEGA analysts will interview management and work with program staff as OPEGA applies its review methodology.
6. Upon conclusion of field work, OPEGA will hold an exit conference with agency management.
7. OPEGA will send its draft report to agency management and other affected parties for review and comment.
8. OPEGA releases the report to the committee during a public hearing and distributes the final version as a public record.

OPEGA field work will be conducted in a manner that:

- Effectively communicates with all affected parties to avoid surprises
- Applies a participatory, collaborative approach
- Minimizes disruption of program operations
- Identifies root causes of problems
- Provides recommendations that add value and make sense

Will affected parties have the opportunity to approve or control the wording of OPEGA reports?

No. Such control would compromise OPEGA's independence. OPEGA is an independent legislative agency that may arrive at conclusions that differ from those of the evaluated entity or interested elected public officials. However, during the exit conference and review of an OPEGA draft report, OPEGA will consider suggestions for making reports factually accurate.

May OPEGA examine confidential documents and data?

Yes. By state law, OPEGA has access to confidential information and entities holding such information must provide access to OPEGA.⁶ OPEGA cannot form independent conclusions about how well agencies serve the public and the cost of those services without examining all or a sample of source documents. Such access is ordinarily granted to state auditors and program evaluators in other states. Additionally, further protection of confidentiality is provided by state law that defines OPEGA working papers as confidential and shielded from access. However, entities under review and OPEGA must follow the strict procedures set forth in state law summarized below:

- **Agencies must provide access to OPEGA.** Entities subject to review must provide the office access to information that is privileged or confidential as defined by state law⁷ which governs public records and proceedings.
- **OPEGA will declare its intent to access confidential records and consult with agencies.** When OPEGA determines it is necessary to review records containing confidential or privileged information, OPEGA shall furnish to the entity a written statement of that determination. OPEGA will consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records.
- **Agencies shall inform OPEGA about protective measures.** During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or

agreements to protect information considered to be confidential or privileged.

- **OPEGA shall limit its access.** OPEGA shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.
- **OPEGA is subject to same restrictions and potential penalties as the agency.** Information obtained by OPEGA during the course of a review is privileged or confidential to the same extent under law that it would be in the possession of the state agency or other entity providing the information. Any statutory privilege or obligation concerning confidentiality which applies to the entity possessing the information applies equally to OPEGA. Privileged or confidential information obtained by the office during a review may be disclosed only as provided by law and with the agreement of the state agency or other entity that provided the information.
- **OPEGA will follow the same handling standards and controls as the agency.** If OPEGA accesses information classified as privileged or confidential according to the evaluated entity's policies or procedures, OPEGA shall comply with the entity's standards or procedures for handling that information.
- **OPEGA working papers under certain conditions may contain references to and excerpts of confidential records.** OPEGA may include in its working papers excerpts from information classified as confidential or privileged when necessary to complete a review, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

If an individual or employee wants to report potential inefficiency or waste of resources, will the individual's identity be protected?

Under State law⁸, the OPEGA director may, by written memorandum to the file, provide that an individual's identity will remain confidential if information supplied by the individual is needed for an OPEGA review. This written memorandum protects the identity of the person from disclosure

⁶ *Ibid.*, Section [997-3](#).

⁷ MAINE STATUTES, Title 1, [Chapter 13](#).

⁸ *Ibid.*, Title 3, Chapter 37, Sections [997-6](#).

notwithstanding any other provision of law to the contrary.

May OPEGA review expenditures of non-state funds?

Yes. OPEGA's authority is clear. The committee and OPEGA have unfettered access to information about the fiscal affairs of Maine government. OPEGA may examine state or local programs regardless of how those programs are financed. The Government Oversight Committee may direct OPEGA to ensure that public funds provided to localities or nonprofit corporations are expended for the purposes for which they were allocated, appropriated or contracted.⁹

In addition, when directed by the committee, state law authorizes OPEGA to examine any state contractor financed in whole or part by public funds as well as any expenditure by any public official or public employee during the course of public duty. This may include any expenditure of private money for the purposes of the agency or other entity.¹⁰

Are OPEGA analysts qualified to evaluate state and local programs?

Yes. OPEGA analysts and technical experts hold advanced degrees and experience in performance evaluation, administration, auditing and fiscal analysis. OPEGA may also contract for supplemental or special expertise. OPEGA analysts are skilled in working closely with agencies to assure OPEGA understanding of laws, policies, professional standards, and variables influencing performance.

If the Government Oversight Committee requires financial audit expertise, it may request the Department of Audit to provide those services or the committee may direct OPEGA to contract with a CPA.¹¹

What standards apply to OPEGA reviews?

OPEGA generally follows the *Government Auditing Standards* issued by the United States Comptroller and the Government Accountability Office.¹² The standards, also termed the "Yellow Book," prescribe procedures that should be followed in conducting independent reviews and are applicable to the types of work done by OPEGA.

Direct general questions about OPEGA procedures or reports to:

Beth Ashcroft
 Director of the Office of Program Evaluation and
 Government Accountability (OPEGA)
 82 State House Station
 Room 107 Cross Building
 Augusta, Maine 04333-0082
 207-287-1901
 beth.ashcroft@legislature.maine.gov

OPEGA The Maine Legislature
 Office of Program Evaluation
 & Government Accountability



⁹ *Ibid.*, Title 3, Section 991.

¹⁰ *Ibid.*

¹¹ *Ibid.*, Section 994 (3-A).

¹² *Government Auditing Standards* (2003 Revision), GAO-03-673G, June 2003.