

# MAINE STATE LEGISLATURE

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**Start-up of the Maine Joint  
Legislative Oversight  
Committee and the Office of  
Program Evaluation and  
Government Accountability**



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**A Report to the  
OPEGA Oversight Committee**

**Submitted by:**



**2123 Centre Pointe Blvd.  
Tallahassee, FL 32308-4930**

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## **1.0 INTRODUCTION**

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## 1.0 INTRODUCTION

In October 2003, the Honorable Patrick Colwell, Speaker of the Maine House of Representatives, requested MGT of America, Inc., a national public sector management and research consulting firm, to assist the Office of Program Evaluation and Government Accountability (OPEGA) Oversight Committee and interested legislators. MGT was engaged to perform the following tasks:

- Meet with the oversight committee and interested legislators to describe the various mechanisms and key powers/authorities used by other states to evaluate and oversee state programs.
- Answer questions regarding those mechanisms and programs.
- Review Maine legislation relating to program oversight and evaluation and offer suggestions for improving effectiveness or refinement of laws.
- Make recommendations relative to start-up of the OPEGA office and the oversight committee including, but not limited to, budgetary needs, optimal staff skill mix, extent of delegation, and approaches to establish priorities for the initial two years of OPEGA office operations.
- Provide the committee with a report that summarizes suggestions and recommendations resulting from MGT's visit and discussion with legislators and staff.

Creation of special oversight units such as OPEGA coincided with a wave of reforms to strengthen state legislatures in the 1970s and 1980s. For example, the Mississippi Legislature in 1973 followed the recommendation of a contracted study by an institute,<sup>1</sup> which recommended that the legislature create its own independent oversight unit separate from the Mississippi Auditor of Public Accounts—an elected constitutional officer who conducted financial audits and investigations. The study called for a unit that would examine the performance of state and local government that would not duplicate

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<sup>1</sup> Ogle, David. "Strengthening the Mississippi Legislature," the Eagleton Institute of Politics, Rutgers—The State University of New Jersey, 1971.

the financial post audits conducted by the State Auditor. The legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) and appropriated funds sufficient for an initial professional staff of 20 analysts.

The Connecticut, South Carolina, and Virginia units also were formed in the early 1970s. The Virginia Joint Legislative Audit and Review Commission (JLARC) is noted for the depth and sophistication of methodologies applied by its staff. The most recently formed units are the Idaho Office of Performance Evaluations created in 1994, and the Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) also created in 1994. The Florida Legislature created OPPAGA by renaming the Auditor General's performance audit division and making it an independent agency to conduct policy analysis and serve as a clearinghouse for performance-based program budgeting. With a staff of 90, OPPAGA is the largest state office that conducts only legislative program evaluations.

Classification of legislative oversight offices into discrete "pigeon-holed" categories is inadvisable because history, traditions, and political climates alter organizational structures and placement. However, such organizations fall into two broad categories: (1) those that are part of an Auditor General's office with a financial and compliance audit tradition; and (2) those that are not.<sup>2</sup>

In 2002, the Maine Legislature enacted PL 2001, c. 702, §2, which created the Office of Program Evaluation and Government Accountability. OPEGA when operational will have powers and duties most similar to special purpose joint legislative oversight

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<sup>2</sup> Frances S. Berry, John W. Turcotte, and Sarah C. Latham, "Program Evaluation in State Legislatures: Professional Services Delivered in a Complex, Competitive Environment," pp. 73- 88, Chapter 5 of Rakesh Mohan, David J. Bernstein, Maria D. Whitsett, editors, "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).

and accountability units such as those in Connecticut, Florida, Idaho, Mississippi, Nebraska, South Carolina, Texas, Virginia, and Washington. Their distinguishing characteristics are that they were not created to conduct financial or compliance audits, nor were they set up as branches of traditional audit organizations.<sup>3</sup> An important premise upon which these offices were founded is that legislatures should not be solely dependent on information provided by agencies, lobbyists, and program stakeholders.

Special oversight units provide the legislature information about the efficiency, economy, and effectiveness of executive and local programs from a staff responsible only to the legislature, on the legislature's schedule, and in a format specified by the legislature. These units are not bound by financial post audit traditions and protocols determined largely by certified public accountants. To offer an analogy, OPEGA-type organizations are legislative branch management consulting firms that examine state and local programs without an executive branch invitation.

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<sup>3</sup> There are other special purpose organizations that conduct OPEGA-type work within legislatures, which are also not financial audit organizations. However, unlike OPEGA, the bulk of their work is budget analysis, fiscal note preparation, and committee research. Examples include the Kentucky Legislative Research Commission, the California Legislative Analyst, and the Iowa Legislative Fiscal Bureau.

**2.0 MECHANISMS AND  
POWERS OF OTHER STATE  
ORGANIZATIONS SIMILAR TO  
THE OFFICE OF PROGRAM  
EVALUATION AND  
GOVERNMENT  
ACCOUNTABILITY (OPEGA)**

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## 2.0 MECHANISMS AND POWERS OF OTHER STATE ORGANIZATIONS SIMILAR TO THE OFFICE OF PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY (OPEGA)

MGT presented details about legislative oversight mechanisms in other states to the OPEGA advisory committee on November 17 through 19, responded to questions, and participated in discussions with legislators and others present. Information about other state approaches was incorporated into the presentation and this report and was derived from a 2000 survey by the National Legislative Program Evaluation Society and from the experience of the MGT consultant.<sup>1</sup>

President Woodrow Wilson made the following convincing argument for the need for legislative oversight at the federal level in his classic work, "Congressional Government" (1885):

*It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will, of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration.*

Telford Taylor, "Grand Inquest," pp. 5-6, said:

A legislative body—be it the British House of Commons, or either house of Congress, or a state legislature—is endowed with the investigative power in order to obtain information, so that its legislative functions may be discharged in an enlightened rather than a benighted basis.

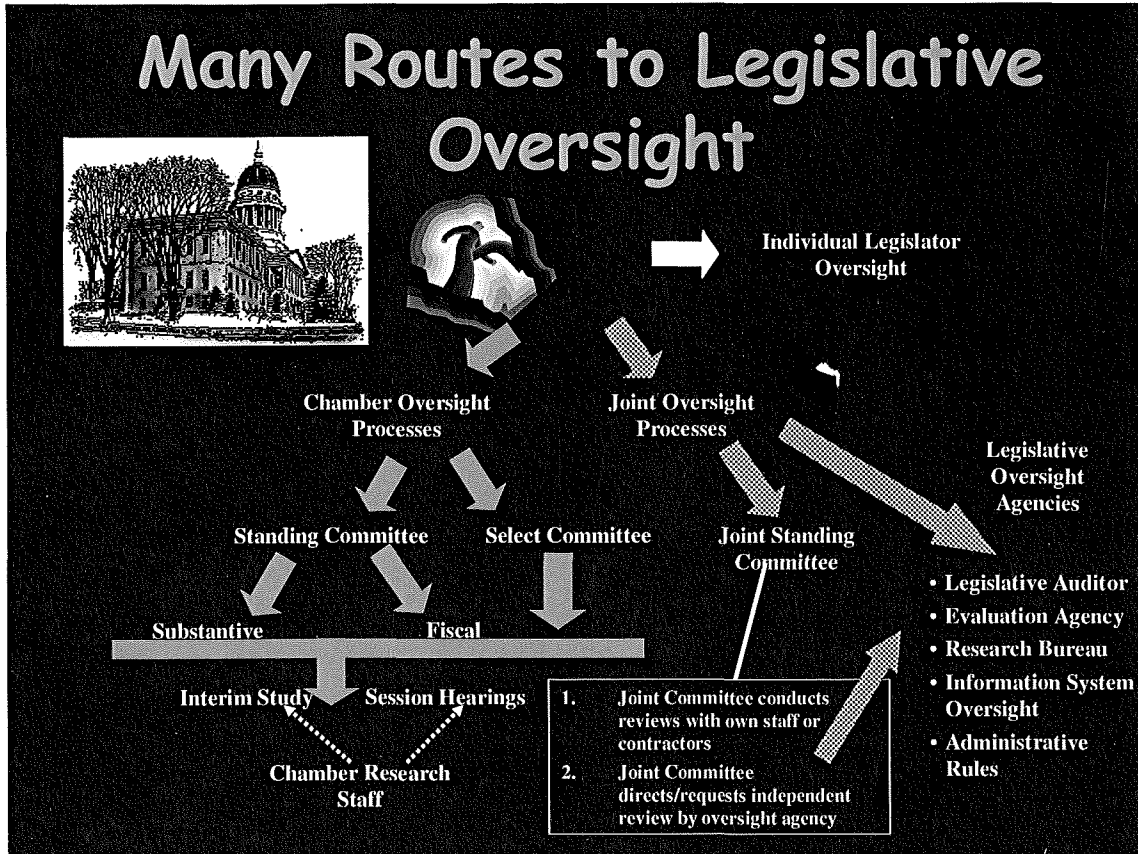
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<sup>1</sup> National Legislative Program Evaluation Society (NLPES) survey, "Ensuring the Public Trust: How Program Policy Evaluation Is Serving State Legislatures" (2000). <http://www.oppaga.state.fl.us/ppesurvey.html>. NLPES is a staff section of the National Conference of State Legislatures (NCSL) in Denver, Colorado. <http://www.ncsl.org>, 7700 East First Place, Denver, CO 80230.

**Mechanisms and Powers of Other State Organizations Similar to the Office of Program Evaluation and Government Accountability (OPEGA)**

There are many ways that state legislatures perform oversight as illustrated in Exhibit 2-1.

**EXHIBIT 2-1**

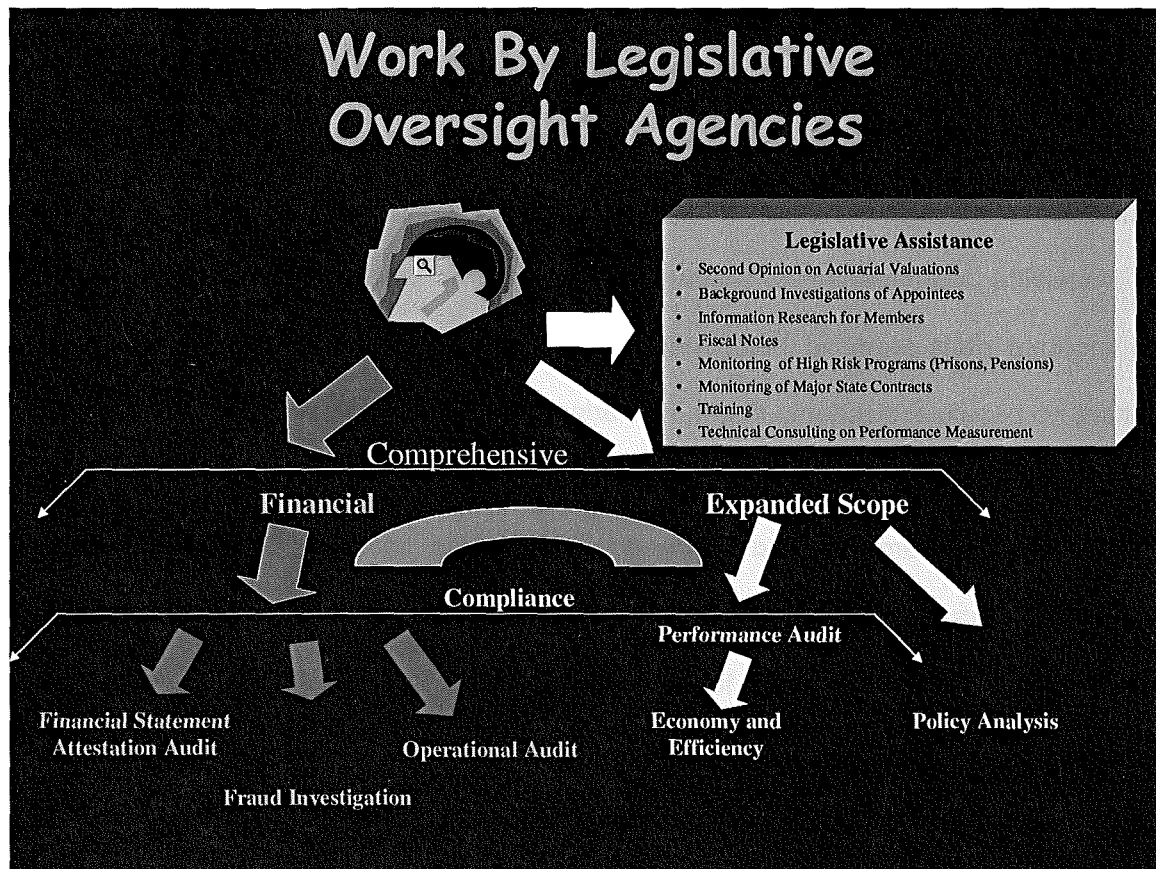


Source: John Turcotte, MGT Consultant.

The nature of work performed by oversight agencies ranges from traditional financial and compliance auditing to policy analysis as illustrated in Exhibit 2-2. Special purpose oversight organizations such as OPEGA will perform “expanded scope” examinations, including performance reviews and policy analysis depicted on the lower right of Exhibit 2-2 below. There could be some overlap with the Maine State Auditor’s responsibilities, which are depicted on the left side of Exhibit 2-2. The overlap may occur relative to compliance reviews. Inevitably, auditors and OPEGA evaluators will be

called on to determine compliance. To minimize overlap and potential duplication of effort, the two offices should hold regular discussions about projects.

**EXHIBIT 2-2**



Source: John Turcotte, MGT Consultant.

Terms that may be used to describe the work of OPEGA could create misunderstanding by the media and general public. Appropriate terms for describing the work of OPEGA are “program evaluation,” “review,” “examination,” or simply an OPEGA “project.” The following terms, however, should be avoided because they present problems when used to refer to OPEGA.

**Audit.** While technically correct as a descriptor of an independent examination of transactions occurring in the past, “audit” suggests the type of work conducted by financial examiners—usually certified public accountants. The use of the term “audit” or

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"auditor" relative to OPEGA suggests that OPEGA staff should be certified public accountants who must perform their work in accordance with governmental audit standards. Most program evaluators in organizations such as OPEGA, however, are not accountants. Although accountants may perform OPEGA-type examinations, OPEGA should not be generally restrained by the conventions and methodologies used by certified public accountants. A complication is that many OPEGA-like organizations conduct "performance audits," which are examinations of management, efficiency, and effectiveness. "Performance audits" are also conducted by most state auditors who perform financial audits. Problems arise when too much emphasis is placed on the term "audit" in "performance audit." The accounting profession often suggests that any type of "audit"—be it a financial or performance—must be performed by or under the supervision of a certified public accountant. This type of external restraint created by use of the word "audit" would limit the degree of flexibility needed by the Maine Legislature relative to the projects performed by OPEGA. For example, work performed by a professional industrial engineer or a decision scientist holding a doctoral degree does not require an accounting or financial audit background.

**Investigation.** While technically correct as a descriptor of any serious questioning examination, "investigation" suggests a determination of responsibility for civil liability or criminal wrongdoing. Programs under OPEGA review may become overly defensive if they believe that they are being "investigated." The media could characterize OPEGA reports as "investigations," and if reaching a conclusion other than that expected by the media or public could be termed either a "cover-up" or a "witch hunt."

**Research.** While technically correct as a descriptor of any detailed inquiry, "research" suggests the type of work performed in an academic setting. "Research" also

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connotes passive work performed quietly in a library that relies primarily on secondary sources.

There are some common principles that apply among the special purpose oversight organizations, some of which are shared with traditional audit organizations.

**Importance of staff independence.** It is critical that oversight staff not be subjected to or succumb to inevitable undue pressure *applied* by stakeholders, including elected public officials. Pressure to invent findings without basis, or to omit, understate, or overstate findings and recommendations will be applied by stakeholders and powerful state officials. However, put simply, *oversight staff should not have to choose between keeping their jobs and doing their jobs*. Oversight work is by necessity obtrusive and is often perceived as overly intrusive by supporters of the program under review. The probing and questioning nature of the work is often interpreted as a lack of trust in stakeholder assertions. *This interpretation is correct*. While evaluators must take care to act courteously and professionally, evaluators must *verify* claims of program merit, look behind documents, challenge traditions and conventions, and triangulate bits of related evidence. Threats of cutting the evaluation entity budget, abolishing the entity, or attempting to have evaluators demoted or fired, *if credible*, will have a chilling and counterproductive effect on evaluation staff.

**Mechanisms to protect staff from undue political interference or retribution.**

Some mechanisms used by states to enhance the independence of OPEGA-type agencies include:

- **Term of office for agency head.** A term of office provision for the OPEGA Director is currently provided for by the OPEGA statute.
- **Lump sum budget.** A lump sum budget ensures that the director will have flexibility over spending funds appropriated by the legislature without approval by higher or executive branch authorities who could use such approval as a vehicle to throttle evaluations.

- **Exemption of evaluation office from spending controls that could be used for retaliatory purposes.** Legislators should view the program evaluation staff as an extension of legislative power that is separate and distinct from executive and judicial power. With the exception of federal or state constitutionally imposed prior approvals that also restrict and apply to chamber officers (e.g. House Clerk or Senate Secretary) as well as legislative presiding officers, any external prior approval requirement should be questioned as a potential impairment to the independence of the evaluation unit, particularly any approval by the executive branch.

**Providing unfettered access to all records, files, or electronic information kept by state or local government.** Access to records goes to the heart of legislative oversight. Program managers cannot be depended on to voluntarily share records that may reveal inefficiency or ineffectiveness. Nearly every state audit and program evaluation operation has generally unrestricted access to state and local records, including records deemed confidential by state and federal laws. Legislative committees have subpoena power to require the appearance of persons or the production of records in pursuit of information needed for valid legislative purposes of law making and appropriation of public funds.<sup>2</sup> It follows that a legislature's evaluation or audit staff must have access as well, but that access needs affirmation and clarification by state law. State laws generally provide access to *all* records, not just *public* records, to state legislative oversight organizations. A survey of organizations similar to Maine's OPEGA found that organizations experience few problems accessing records needed and rarely if ever have to resort to legislative subpoenas.<sup>3</sup> The following are several representative comments by state evaluators taken from the survey.

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<sup>2</sup> Federal courts have upheld the power of state legislatures to conduct investigations and to do so with immunity as long as those investigations are for a valid legislative purpose. In the case of *Tenney v. Brandhove*, 341 U.S. 367, 71 S. Ct. 783 (1951), the United States Supreme Court upheld a district court dismissal of an action for damages brought under the Civil Rights Act of 1871 (present day 42 U.S.C. 1983) against members of a California legislative committee.

<sup>3</sup> 2002 survey by National Legislative Program Evaluation Society (NLPES). See: <http://www.ncsl.org/programs/nlpes/research/survey/agencyrecords02.htm>

**James Barber, Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review:**

Section 60 of the Mississippi Constitution "empowers legislative committees to administer oaths, to send for persons and papers, and generally make legislative investigations effective." This is PEER's general authority for obtaining records and conducting interviews. MISS. CODE ANN. § 5-3-57 specifically provides that the PEER Committee shall have the authority to "examine or investigate the budget, files, financial statements, records, documents or other papers of the agency deemed necessary by the committee." Despite PEER's broad authority to access records of state and local entities, such authority could be limited if records were deemed to be confidential by federal or state law. However, even in those cases, PEER would attempt to access the records in some manner--i.e., blinded records. MISS. CODE ANN. § 5-3-59 provides the PEER Committee with the authority to subpoena witnesses and compel the production of records. PEER uses this power very judiciously--i.e., usually less than once each year or so. Generally, PEER does not have any difficulties in obtaining records from state or local entities.

**Ken Levine, Texas Sunset Advisory Commission:**

The Sunset Act instructs agencies to cooperate with the Sunset Commission. The Act also authorizes the Commission and its staff to inspect the records, documents, and files of any state agency. The Commission also has subpoena authority for both records and witnesses. We have never needed to use the authority (although we have come close a couple of times.) Most of our problems in obtaining information come when an agency simply is unable to assemble and provide data we need. We will work with the agency to identify alternate forms of information that could be sufficient. In some cases, we just write up their inability to provide common and necessary data as the underlying problem.

**Jim Henderson, Idaho Office of Performance Evaluations:**

Our enacting stature gives the Joint Legislative Oversight Committee the power to "...require the appearance of any person and the production of papers or records, including books, accounts, documents, computer records, and other materials..." (Idaho Code 67-460) The same section authorizes the committee to issue subpoenas upon the signature of either of the cochairmen. Subpoena power has not been exercised since the office began operation in 1994. In practice we have not met with a great deal of resistance although some reluctance. More often we find that the data we need is not available, produced by an incompatible system, or of poor quality.

**Jane Thesing, South Carolina Legislative Audit Council:**

We have clear statutory authority giving us access to records. By law we have access to all state records except tax returns. Section 2-15-61 of the S.C. Code states, "For the purposes of carrying out its audit duties . . . the Legislative Audit Council shall have access to the records and facilities of every state agency. . . with the exception of reports and returns of the Department of Revenue. . . ." We do not currently have subpoena power. We had it previously under our Sunset Law, which was repealed in 1998. We used it infrequently and have not generally had problems getting access to the records we need. The law also requires us to keep confidential any agency records that are governed by confidentiality requirements, so this also helps defuse agency concerns about our access. Our access to records is generally known and accepted; we work out problems on a case-by-case basis.

**Gary VanLandingham, Florida Office of Program Policy Analysis and Government Accountability:**

Florida statutes provide that we have access to all state records (with a few exceptions such as trade secrets). The law also provides that it is a second degree misdemeanor for agencies to fail to provide requested records (we have never had to enforce this law but it is handy at times to cite to agencies). We have special procedures for requesting confidential records, as well as handling such records to ensure that they remain confidential. We do not have subpoena power, but have never really needed it. Occasionally, agencies will seek to control access to their information through a central control point (e.g., all information must be cleared by the Secretary's office before it will be released). While this can delay getting information, we have always been able to deal with it.

**Michael Nauer, Connecticut Legislative Program Review and Investigations Committee:**

All agencies are required by law to comply with data, information, and access requests by LPR&IC. The Committee has subpoena power for data, documents and individuals, and the authority to compel testimony under oath.

Generally, records considered confidential by state and or federal law in most states are accessed by legislative auditors and evaluators under the following type of conditions:

- The necessity for access should be explained in writing by the evaluation unit to the custodian of confidential records. Need for



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access is not mere curiosity, but a need to verify assertions of compliance by program managers, to measure the extent of a problem, or to determine underlying costs.

- The legal authority of the evaluator to access the records must be stated.
- The evaluator may accept redaction of personally-identifiable information in a record that has no bearing on the evaluation project. For example a determination by the evaluator may not require knowledge of the social security numbers, names and addresses of clients receiving medical services.
- The evaluator should define actions that will be taken to preserve the continued confidentiality of confidential information obtained for the evaluation. The Maine OPEGA law provides that all records obtained during an evaluation are working papers, which are confidential. This is the type of assurance of an unbroken chain of confidentiality that is important to records custodians.

**Restricting or prohibiting outside employment and political activity by evaluators.** Legislative evaluators and auditors are generally prohibited from engaging in political activities such as serving as officers of political parties; hosting fund-raising receptions; endorsing candidates; canvassing for votes; and running for any elected office or accepting appointments to an office if that office is responsible for functions subject to program evaluation or state audit. Similarly, evaluators must obtain prior approval before accepting outside employment. Generally, evaluators are not permitted to be employed by programs that may be subject to evaluation because of the conflict of interest that may be created.

**Requiring evaluators to be selected on a nonpartisan basis and designating evaluators as nonpartisan staff.** Political party membership or affiliation or independent registration should not be a factor in employment, retention, or promotion of the evaluation director or evaluators.

**Need for legislative support.** Legislative oversight agencies need the support of presiding officers, committee chairs, and the majority of legislators. Certainly,

stakeholders have the right and freedom to say what they want about evaluators. Legislators should understand that negative stakeholder allegations about evaluators need only be *believed* by legislators to have the desired effect. However, legislative evaluators have no economic stake in the budget of the program reviewed and must follow the law and legislative rules when reporting findings and recommendations. Evaluators need assurance that oversight committee chairs and legislative leadership will defend them against undue or premature allegations *if* evaluators have followed the law, adhered to legislative rules, and applied sound evaluation methodologies. State legislatures with enduring success with legislative oversight have been willing to "wait and see" before reacting to allegations about evaluator "witch hunt" tactics or suggestions that evaluators are incompetent.

**Need for the legislature to engage in high visibility activities that reinforce the importance of legislative oversight.** There is no greater motivation to program evaluators than seeing legislative committees use report findings and recommendations when questioning state officials about proposed spending or new legislation. The greater the frequency of such use, the more likely that program managers will take legislative program evaluation seriously.

**Evaluators should be held accountable for quality work.** Support by the legislature demands that evaluation staff use due diligence and professional care. Evaluators use national standards<sup>4</sup> or follow research methodologies used by professionals who publish their scientific work in refereed, peer-reviewed journals.

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<sup>4</sup> Traditional governmental audit organizations and some OPEGA-type units use Government Audit Standards (2003 revision) known as the "Yellow Book," published by the U.S. General Accounting Office. Others, such as the Florida Office of Program Policy Analysis and Government Accountability, use The Program Evaluation Standards, 2nd Edition, or "Red Book," issued by the Joint Committee on Standards for Educational Evaluation and published by SAGE Publications.

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Appendix A describes the *Program Evaluation Standards (Red Book)*<sup>5</sup> followed by the Florida Legislature's Office of Program Policy Analysis and Government Accountability. Stakeholders deserve to know that the evaluators will be held responsible for the quality of their work. Legislators should question evaluators about the accuracy and basis for findings and recommendations and should expect evaluators to make a strong case. While evaluators should be accountable to the head of the evaluation agency, legislators should hold the head of the evaluation staff accountable for mistakes. Such accountability actions are usually taken by a joint legislative oversight committee. In addition, the evaluation director should be expected to justify the evaluation budget request and past expenditures to the appropriations committees of the legislature.

MGT suggests that the OPEGA director and oversight committee decide whether professing adherence to national standards would improve the credibility and uniformity of OPEGA program evaluations. Because OPEGA will conduct program evaluations and not audits, the *Program Evaluation Standards (Red Book)* summarized in Appendix A appear more appropriate, and adoption would more clearly distinguish OPEGA from the Maine State Department of Audit, which adheres to U.S. General Accounting Audit Standards.

**Evaluators should be responsive to the legislature.** National standards notwithstanding, the most successful evaluation organizations are an integral part of the legislative organization and work in a teamwork or partnership manner, making regular contact with legislators and performing evaluation projects that are timely and relevant to the legislature. Legislatures have abolished or reorganized oversight organizations that attempted to remain separate from the legislature while pursuing projects of interest

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<sup>5</sup> The Program Evaluation Standards, 2nd Edition, or "Red Book," issued by the Joint Committee on Standards for Educational Evaluation and published by SAGE Publications. See Appendix A.

primarily to the evaluators themselves, to state agencies, or to the academic community (e.g. the former New York Legislative Commission on Expenditure Review).

**Evaluator credentials will be challenged.** Legislators should understand that a common attack on program evaluators is to question their education, training, and experience. For example, educators might suggest that only a person with a degree in education should conduct evaluations of school districts. Likewise, professional licensure boards might suggest that only a licensed member of their profession should conduct an evaluation of board regulatory and licensure functions. However, the criteria applied by evaluators generally cut across all functions of government. Analysis of statistics, process re-engineering, staffing analysis, and efficiency reviews do not require the expertise gained only through work experience or licensure by a program. There is an old saying in the program evaluation field, "It doesn't take a snowplow operator to evaluate the effectiveness of snow removal."<sup>6</sup>

**Legislatures should not assign certain tasks to evaluation units.** While OPEGA-type organizations should contribute to the teamwork needed among legislative staff units, assigning certain tasks to the unit could diminish effectiveness and limit oversight committee flexibility to assign evaluators to high priority topics when they arise. Often such assignments come about because of the analysis, writing, and presentation skills demonstrated by experienced evaluators. These tasks in some states include:

- preparing fiscal notes;
- performing routine research or constituent casework for members;
- staffing reapportionment and redistricting committees;
- permanently monitoring single programs such as corrections or state retirement programs and requiring the hiring of single-purpose evaluators for such tasks; and

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<sup>6</sup> John Turcotte, "Bureaucrat's Guide to Accountability Avoidance," *ASPA Times*, American Society for Public Administration, 1982.

- conducting background investigations of appointees subject to confirmation.

**Legislatures should provide for evaluation topic selection through a joint bi-partisan process in cooperation with other legislative standing committees.**

Consistent with the previous point, it is important for legislatures to establish procedures by law or rule that provide for an annual work plan for the evaluation agency. Without an annual work plan, there would be no controls to prevent project assignments that exceed the capacity of the program evaluation staff. The plan also serves as a business plan for the evaluation unit for project management and work priority setting.

- The work plan should be drafted by the evaluation unit in consultation with and approved by a joint oversight committee on a bi-partisan basis in consultation with other legislative standing committees and presiding officers.
- Legislative rules should prohibit introduction of bills, resolutions, or appropriations proviso language that would bypass the joint bi-partisan planning process. Program evaluation topic suggestions from legislators should go through the joint oversight committee.
- The joint committee should avoid approving projects that would duplicate or conflict with ongoing or planned interim studies of standing committees.
- The committee should include unassigned time in the work plan so that the evaluation unit may be directed to perform rapid response reviews of unanticipated but high priority issues. Rapid response reviews are limited scope projects that can be accomplished in a few weeks by one or two evaluators.

**Realistic expectations.** The general public and the media have high expectations for organizations such as OPEGA. Sometimes these expectations may be unrealistic. There are several misperceptions about the type of work performed:

- **Instances of fraud and isolated abuse may or may not be detected.** While special purpose oversight organizations as well as financial auditors have an obligation to report fraud or abuse discovered or brought to the examiner's attention during a project, every instance *may not be detected* when the scope of the examination does not include the activity where an act of fraud or abuse may have occurred. Also, financial examinations and

performance reviews rely on statistical sampling to prevent examinations from being overly expensive and time consuming. Fraud and abuse are often deterred by the potential threat of an independent examination. Reviews by OPEGA-type organizations are often requested after an incident of fraud and abuse has been publicized. Then the review will focus on causes and recommending corrective action. Finally, OPEGA-type organizations and financial auditors often recommend more effective management controls that if implemented could prevent fraud and abuse.

- **Cost savings recommendations should be expected, but not every OPEGA-type project will produce savings.** OPEGA type organizations produce a regular stream of proposed ideas to reduce taxpayer costs of government. It is not uncommon for a single evaluation to produce savings that more than pay for the evaluation.<sup>7</sup> However, every review should not be expected to save money. Legislatures often request examinations of problem areas of government for an explanation of the cause of problems and recommended corrective actions that while cost-effective, may not reduce the spending level of the program examined. Nevertheless, it is reasonable for legislators to expect and to encourage recommendations from OPEGA-type organizations. Exhibit 2-3 describes the criteria often used to determine if savings recommendations should be made.
- **It should be understood that savings recommendations tend to be controversial and fraught with technical difficulties that try the patience of the legislature:**
  - Actual costs of questionable activities are generally not kept readily available by program management. They have to be ferreted out by evaluators.
  - Outside funding sources such as the federal government or private foundations may object and throw up procedural roadblocks.
  - Management often objects to the way evaluators estimate savings because evaluators have to use estimates and projections in the absence of actual costs tracked in program accounts.

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<sup>7</sup> The Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) recommended savings, which were implemented by the Florida Highway Patrol after some nudging by the Joint Legislative Auditing Committee. The Patrol stopped purchasing patrol uniforms for dispatch officers and allowed dispatchers to wear less expensive soft attire. In addition, the Patrol revised the contract for statewide vehicle maintenance. These two actions saved the state \$365,000 per year. Another OPPAGA report recommended that the Patrol change traffic accident investigation functions by using civilians to conduct routine investigations. The Patrol implemented the recommendation and saved \$1,181,000 per year. See the OPPAGA Florida Government Accountability Report Web site profile of the Highway Patrol at <http://www.oppaga.state.fl.us/profiles/6080/>. Scroll down to the "Issues and Evaluative Comments" section of the page.

- The accuracy of a savings recommendation tends to decay over time as underlying cost behavior changes (program workload changes, program priorities change, or costly emergencies arise).

**EXHIBIT 2-3**

## **Sources of Cost Saving Proposals**



1. **Premise**--the problem or need addressed by the program no longer exists
2. **Success**--the program succeeded and is no longer necessary
3. **Economy**--program could produce the same or greater services for less cost through better management or a change in policy
4. **Market**--same or better quality services are available at lower cost through competition or economic incentives
5. **Cost Responsibility**--user fees have not kept pace with inflation and cost increases. Also, user fees are not levied in proportion to user benefit
6. **Burdensome to general taxpayer**--General revenue is subsidizing a program that could be more self-supporting
7. **Deterrent**--fines neither pay enforcement costs nor deter violators
8. **Earnings**--untimely deposit, sub-market interest, dead assets

- Program management may capture the savings immediately and spend the freed-up resources for more valid purposes before the legislature has time to capture the savings and reallocate it to the program, appropriate it for another program, or reduce taxes or fees.
- Some savings recommendations may be implemented by legislators by simply reducing appropriations to programs. However, some recommendations require legislators to repeal or amend state laws—adding to the political risk, complexity, and time needed to affect the reform. Meanwhile, program managers may capture and reallocate the savings.

**3.0 SUGGESTIONS FOR  
IMPROVING EFFECTIVENESS  
OF REFINEMENT OF LAWS  
CREATING THE MAINE  
OFFICE OF PROGRAM  
EVALUATION AND  
GOVERNMENT  
ACCOUNTABILITY**

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### **3.0 SUGGESTIONS FOR IMPROVING EFFECTIVENESS OR REFINEMENT OF LAWS CREATING THE MAINE OFFICE OF PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY**

This report section suggests improvements in PL 2001, c. 702, §2 as amended, inserted verbatim as Appendix B, which created the Office of Program Evaluation and Government Accountability.<sup>1</sup> The law is fundamentally sound from a program evaluation process standpoint, and if implemented should provide the Maine Legislature with a strong foundation for legislative program evaluation. Suggestions are limited to those parts of the statute needing refinement.<sup>2</sup>

#### **Suggestion 1: Consider Clarifying and Affirming Committee and OPEGA Authority to Conduct Program Evaluations of Local Government**

##### ***§991. Evaluation and Government Accountability***

*The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds. [2003, c. 451, Pt. KKK, §1 (amd).]*

*PL 2001, Ch. 702, §2 (NEW).*

*PL 2003, Ch. 451, §KKK1 (AMD).*

The first sentence, "The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies

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<sup>1</sup> Web link to Maine statute relative to the Oversight Committee and OPEGA:

<http://janus.state.me.us/legis/statutes/3/title3ch37sec0.htm>

<sup>2</sup> This section of the report is not a legal opinion, which MGT is not qualified to render. The observations are those of a management consultant offering suggestions as directed as to how the legislative oversight process could be made more efficient and effective. MGT will readily defer to legal counsel for the legislature concerning any official interpretation of the statutes cited in this report.

***Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability***

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and programs of State Government” limits the jurisdiction of OPEGA to state government.

Many programs funded by the Maine Legislature are funded by state funds but administered by local government. Section 991 provides a route for OPEGA to “ensure that public funds provided to local and county governments...are expended for the purposes for which they were allocated, appropriated or contracted.” However, that section appears to limit OPEGA’s jurisdiction to a compliance review that could determine only if public funds were or were not spent “for the purposes for which they were allocated, appropriated or contracted.”

The statute does not provide OPEGA with jurisdiction to conduct a program evaluation of localities to determine if public funds were spent efficiently, effectively, and economically. For example, a state law may require certain state funds to be spent on road projects. If OPEGA followed the flow of such funds to local government and found that a county had spent these funds on an unplanned and unnecessary bridge, OPEGA would have no clear authority to criticize the project on efficiency grounds because the funds were “expended for the purposes for which they were allocated, appropriated or contracted.” The OPEGA report in such a case without a determination of efficiency would be useless should the state seek to establish civil liability for wasted state funds. Similarly, if OPEGA exceeded its authority and criticized the expenditure, OPEGA could be accused of being a rogue entity, and any report again rendered useless.

If the legislature intended that the oversight committee should be authorized to direct OPEGA to conduct program evaluations of local government when determined necessary by the committee, the following amendment is suggested:

***§991. Evaluation and Government Accountability***

*The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and*

programs of State Government- and when determined necessary by the committee, local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation.

**Suggestion 2: Consider Expanding Jurisdiction of Committee and OPEGA over Expenditure of Private Money by State Officials**

A 2003 amendment deleted language from the original PL 2001, c. 702, which would have authorized OPEGA, when directed by the committee, to examine or direct an examination of "any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of private money for agency purposes."

The language, which was deleted, appeared to anticipate challenges to OPEGA's authority to review expenditures from funds donated to public agencies and educational institutions. Program evaluations and investigative audits in other states have found that some state institution heads with access to private donations wasted those funds on purchases that would have been illegal or considered unjust enrichment if public funds had been used.

The Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), which has jurisdiction to review all fiscal functions or activities of any official,<sup>3</sup> has taken exception to such activities.

- *Community college presidents created a "foundation," transferred public funds to the foundation, then used the "foundation" money for lobbying, clandestine meetings, and questionable purposes. The foundation director, a community college development director, submitted numerous false and duplicated travel claims including payments to his relatives and claims for mileage reimbursement for a private vehicle leased by the foundation while using foundation funds to buy gasoline for the vehicle. He did this while receiving additional compensation for a "vehicle allowance."*<sup>4</sup>

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<sup>3</sup> MISS. CODE ANN. Section 5-3-57 (b) (1972) <http://www.mscode.com/free/statutes/05/003/0057.htm>.

<sup>4</sup> Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), Report #333. "A Review of the Mississippi Community College Foundation," December 21, 1995.

***Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability***

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- *A university administrator diverted advertising revenue to his own for-profit, private company, which was operated by university employees. The administrator attempted to conceal ownership of the company, and then donated the company to the university during the PEER review in an apparent attempt to make the matter moot.*<sup>5</sup>

The South Carolina Audit Council took exception in 1989 to lavish travel expenses and other profligate and wasteful spending of private foundation funds by a state university president, who attacked the authority and credibility of the Audit Council. A series of contemporary news reports also revealed a pattern of abuse and of efforts to conceal records found by one reporter in a garbage dump. The president resigned in 1990 as a result of the scandal. In September 2003, this former university president was convicted of selling U.S. visas and money laundering by a Miami federal jury.<sup>6,7</sup>

If the legislature wishes to restore the committee's authority to direct OPEGA to conduct similar evaluations as performed in Mississippi and South Carolina cited above, it should adopt the following amendment restoring the original language in PL 2001 c. 702:

*When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds and any expenditure by any public official or public employee during the course of public duty, including but not limited to, any expenditure of private money for agency purposes.*

**Suggestion 3. Provide the Oversight Committee Discretion over Directing the Department of Audit to Conduct Certain Audits**

**§992. Definitions**

**5. Program evaluation.** *"Program evaluation" means an examination of any government program that includes performance audits, management analysis, inspections, operations or research or examinations of efficiency, effectiveness, or economy and, when determined necessary by the committee, financial audits and post-*

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<sup>5</sup> Mississippi PEER Report 294. "A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations and Athletic Programs," March 12, 1993,

<sup>6</sup> South Carolina Legislative Audit Council, "A Review of the Relationship between USC and its Foundations and USC Discretionary Spending," 1989.

<sup>7</sup> U.S. Department of Justice release, September 26, 2003, <http://www.usdoj.gov/usao/fls/Holderman.html>.

***Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability***

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*audits. All financial audits and post-audits must be performed by the Department of Audit or, if the Department of Audit is unable to perform the audit within the time frame established by the committee to complete the report, a qualified auditor.*

The section above defines program evaluation to include "when determined necessary by the committee, financial audits and post-audits," but requires that "All financial audits and post-audits must be performed by the Department of Audit or, if the Department of Audit is unable to perform the audit within the time frame established by the committee to complete the report, a qualified auditor."

However, the statute does not define the terms "financial audit" or "post-audits." All examinations of past transactions could be considered "post-audits" and every program evaluation is likely to contain some financial aspects. The lack of definition could lead to turf disputes between the State Auditor and the committee about what constitutes a financial audit or post-audit. The State Auditor told the OPEGA advisory committees that the OPEGA statute defining "program evaluation" encompasses performance audits, which personnel of her office were qualified to perform and which should be performed, in her opinion, in accordance with U.S. General Accounting Office (GAO) standards.

The concerns shared by the Auditor are reflective of ongoing but polite and healthy tension in the legislative oversight community between some accountants and some nonaccountants over staff qualifications and appropriate standards. These concerns could surface in Maine once the committee and OPEGA begin. Some accountant auditors contend that program evaluations are a type of "performance audit" and that generally accepted governmental auditing standards require that program evaluations should be conducted either by auditors who are accountants, by nonaccountants under supervision of an accountant, or by nonaccountants professing adherence to U.S. General Accounting Office standards. However, other professionals

***Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability***

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contend that GAO standards do not require that only accountants may conduct program evaluations and performance audits. They further contend that except for financial audits of or funded by federal funds, scholarly and scientific program evaluations can be performed using standards other than GAO standards such as the *Program Evaluation Standards (Red Book)* summarized in Appendix A. (See earlier discussion of standards and evaluation staff credibility in Section 2.0.)

MGT suggests that the oversight committee should decide in consultation with the OPEGA director on a project-by-project basis the type of expertise needed to conduct examinations that the committee directs, so the committee would not have to contend with jurisdictional disputes about the vague term "audit."

MGT suggests that instead of requiring the committee to use the Department of Audit, the committee should be given discretion to determine if the services of the Department of Audit or a qualified auditor are necessary to complete a program evaluation. If the Department of Audit cannot perform timely, the committee should be authorized to direct OPEGA to retain the temporary services of a qualified accountant either through a negotiated temporary assignment of an accountant from the Department of Audit or by an OPEGA contract with a private certified public accountant. The following language would provide that discretion:

**5. Program evaluation.** *"Program evaluation" means an examination of any government program that includes performance audits, management analysis, inspections, operations or research or examinations of efficiency, effectiveness, or economy, and, When the committee determines that an examination requires the services of a qualified auditor determined necessary by the committee, financial audits and post-audits. All financial audits and post-audits must be performed by the committee may direct the Department of Audit to conduct all or part of an examination or, if the Department of Audit is unable to perform the audit examination within the time frame established by the committee to complete the report, the committee may direct the office to obtain the services of a qualified auditor.*

Note that a technical correction is also suggested in the language above that deletes the "or" between the words "operations" and "research" in the second line. Apparently the bill authors intended to include "operations research" as one of the types of examination activities included within the definition of program evaluation and the word "or" was inadvertently inserted. Operations research is a technical field, which involves application of decision science or industrial engineering methodologies to work processes.

**Suggestion 4. Require the OPEGA Director and Employees to be Nonpartisan**

The credibility and objectivity of OPEGA requires that the Director and employees be selected and perform duties in a nonpartisan manner. The following changes are suggested:

**§995. Director**

- 1. Appointment.** *Not earlier than April 1, 2003, the Legislative Council shall appoint by an affirmative vote of 8 members of the Legislative Council a nonpartisan director of the office for the purposes of conducting program evaluations pursuant to this chapter. The director must be appointed to an initial 5-year term, which is subject to renewal by the Legislative Council every 5 years thereafter. During the term of the contract, the director may be terminated only for cause by an affirmative vote of 8 members of the Legislative Council. The Legislative Council shall establish the compensation of the director. The director's duties must be performed independently and in a nonpartisan manner but under the general policy direction of the committee.*
- 2. Duties.** *The director shall supervise the staff of the office in accordance with policies adopted by the committee and consistent with the policies of the Legislative Council. The director shall prepare and present a biennial budget to the committee for its approval. Money appropriated or allocated to the office must be expended in the discretion of the director and the committee only. The director also shall prepare and present an annual work plan to the committee for its consideration and approval. The director also may contract with private individuals or entities for the conduct of program evaluations under this chapter. The director may request the committee to issue subpoenas.*

3. **Employees.** *Employees shall be nonpartisan. Employees of the office are employed by and are responsible to the director, who shall hire and fix the compensation of each employee, subject to the approval of the committee and within resources available in the biennial budget. Other than the director appointed pursuant to subsection 1, an employee of the office may not be employed prior to July 1, 2003.*
4. **Annual report.** *The director shall prepare an annual report of the office's activities for each calendar year and shall submit that annual report to the committee and the Legislature no later than January 15th of each calendar year.*

**Suggestion 5. Clarify Authority of OPEGA to Access Confidential or Privileged Information**

The OPEGA advisory committee identified a number of issues and concerns about OPEGA access to confidential records. Such access is essential for OPEGA to carry out its functions for reasons explained earlier in Section 2.0 discussing common principles that apply among the special purpose oversight organizations.

Although it is apparent that the legislature intended OPEGA to have access to confidential records according to Sections 4 A and B (Appendix B), the opening language of Section 4 added by a 2003 amendment—"Information that is made available to the office is governed by Chapter 21, which governs legislative investigating committees, and by Title I, Chapter 13, which governs public records and proceedings"—could create confusion if not read together with the rest of Section 4.

**Public Record Language.** It is obvious that OPEGA may examine and copy any public record. Stakeholders of programs, however, could erroneously attempt to restrict OPEGA's access to only public records as defined by Title I, Chapter 13. The public records statute within the context of OPEGA's statute appears to simply clarify to records custodians the meaning of confidential or privileged information that OPEGA is authorized to review by Section 4.



*Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability*

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OPEGA, consistent with Section 4A (see Appendix B) is authorized to access "records containing confidential or privileged information," but should "limit access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source."

The underlined passage above clearly authorizes OPEGA to examine privileged or confidential records by using appropriate methods.

**Legislative Investigating Committee Language.** "Information that is made available to the office is governed by Chapter 21, which governs legislative investigating committees,..." This language, when read together with Chapter 21, appears to have no effect on OPEGA's access to records because OPEGA is not a "legislative investigating committee" as defined by Chapter 21, which states:

*4. Investigating committee. An "investigating committee" is any committee of the Legislature which has been granted by the Legislature the power to administer oaths, issue subpoenas and take depositions, as authorized by section 165, subsection 7. "Investigating committee" shall include the Legislative Council when it exercises the authority granted under section 162, subsection 4, but shall not include the Commission on Governmental Ethics and Election Practices when it exercises the authority granted under Title I, Chapter 25.*

However, the advisory committee expressed concerns that the limitations of Chapter 21 might be interpreted to throttle OPEGA procedurally because OPEGA cannot declare itself a legislative committee. The changes below would clarify OPEGA's access to confidential and privileged records.

Amend Section 994 relative to oversight committee duties as follows:

**10. Adopt rules.** To adopt rules, as long as the rules are not in conflict with the Joint Rules of the Legislature. By January 1, 2005, the committee must develop a mission statement to be included in the rules.

**11. Information available to the committee.** Information that is made available to the committee is governed by Chapter 21, which governs legislative investigating committees and by Title I, Chapter 13, which governs public records and proceedings.

*Suggestions for Improving Effectiveness or Refinement of Laws Creating the Maine Office of Program Evaluation and Government Accountability*

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Amend Section 997 relative to OPEGA as follows:

**5. Information available to the office.** Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title I, Chapter 13, which governs public records and proceedings.

- A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records. 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. The office 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.
- B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.
- C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

**4.0 START-UP OF THE  
OVERSIGHT COMMITTEE AND  
OPEGA**

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## **4.0 START-UP OF THE OVERSIGHT COMMITTEE AND OPEGA**

### ***Program Evaluation Office Budget Factors***

The OPEGA advisory committee requested MGT to prepare budgetary options for resources needed by OPEGA and the Legislative Oversight Committee with the lowest cost option set at a level sufficient to perform adequately. The committee declared that investment below this lowest cost option was inadvisable because OPEGA would be unable to return sufficient benefits to the State of Maine and likely lead to OPEGA's demise. There are several factors that may make OPEGA more expensive than other Maine staffs working for elected officials.

Salaries constitute over 75 percent of the budgets of most OPEGA-type organizations. The top priority for the Maine Legislative Council relative to OPEGA will be recruiting and selecting the first OPEGA director who will have to assemble a qualified staff quickly and produce several credible reports within the first year.

OPEGA's work will be more contentious because there is no such thing as a "routine" program evaluation. OPEGA will be under scrutiny by program stakeholders, skeptics, and the media. Expectations are high. The Maine Legislature will be building a small management consulting firm that will require the expertise of highly educated individuals with quantitative analysis and technology skills. These skills are in demand internationally and generally more expensive.

All state legislative staff work is technical, and physically and intellectually challenging. But there are aspects to OPEGA work that make it more stressful and consequently should be a factor in setting OPEGA salaries.

**Legislative program evaluation is project work and no project is ever the same.** While work variety is initially motivating, motivation diminishes after two or three years. At this point, many evaluators are recruited into less stressful jobs with more

predictable workloads. OPEGA will be too small for specialization by policy area; thus, for example, evaluators could review wildlife management for several months then commence a higher education evaluation. Program managers and employees are usually polite and helpful, but take a dim view of an unprepared evaluator about to express opinions upon their livelihoods. Program stakeholders will expect OPEGA to be conversant in terminology, acronyms, federal grant procedures, and to have other program specific knowledge. An OPEGA evaluator cannot declare lack of program knowledge then announce intent to conduct a program evaluation. Program evaluators must read large quantities of technical material to keep current and to maintain a working knowledge of policy areas under evaluation.

**Most information and evidence will not be submitted to OPEGA—OPEGA will have to toil for it in the field.** Legislators should understand that when legislators contact state agencies for information, agencies tend to respond quickly in the form requested. Agencies cannot afford to ignore legislator request. However, such is not as frequently the case when evaluators make requests. Agencies are more likely not to respond or to respond with less urgency. Put simply, evaluators cannot simply place telephone or e-mail orders for information and expect prompt, accurate, and truthful responses. Most information has to be “mined” directly from agency files or from formal interviews with government employees. Program evaluators are routinely away from their offices conducting interviews in state agency offices. Some overnight travel is essential.

**Projects overlap and workload continues unabated year-round.** OPEGA will be expected to conduct projects, plan new projects, and brief members on completed projects without interruption and will experience additional work demands before and

during sessions as members request presentations on recently completed projects as well as on reports completed earlier.

A small, newly formed unit such as OPEGA cannot be expected to perform with only entry-level professionals. Because of heightened interest, legislators will expect OPEGA to perform very important and sensitive projects right away. However, it takes two to three years of project work to season a program evaluator who is capable of leading teams, working with program managers, applying quantitative methods, preparing supporting documentation, conceptualizing findings and recommendations, writing the equivalent of a master's thesis every six months, and testifying and responding to technical questions.

### ***Peer Organizations***

For estimating purposes, MGT selected four peer organizations in South Carolina, Connecticut, Mississippi, and Idaho—states with relatively small populations whose oversight entities are engaged primarily in program evaluation and not financial auditing. Exhibit 4-1 lists comparative information about these offices.

### ***Idaho***

The Idaho Office of Performance Evaluation is most similar to OPEGA with respect to state population and state and local expenditures subject to oversight. Both Maine and Idaho have populations of about 1.3 million. Maine's state and local expenditure of about \$7 billion in FY 1998-99 was 13 percent higher than Idaho's \$6.2 billion.

MGT interviewed the Idaho director for details about the office budget (Exhibit 4-2). He said that their staffing level of eight was modest, and that the office was able to meet some but not all demands of the legislature. He was concerned that demand for

**EXHIBIT 4-1  
RELATIVE SIZE OF SPECIALIZED LEGISLATIVE OVERSIGHT AGENCIES  
SIMILAR TO OPEGA**

State Program Evaluation Office	Estimated State Population July 2002	Total State and Local Expenditures FY 1998-99 \$Billion	FY 2003-04 Office Budget	Analyst Staff	Support Staff	Total Staff
South Carolina Legislative Audit Council	4,107,183	\$21.2	\$977,989	11	3	14
Connecticut Program Review Committee	3,460,503	\$22.3	\$1,534,215 Excludes supplies, postage, tech services paid by central support unit	11	1	12
Mississippi PEER Committee	2,871,782	\$14.3	\$1,888,279	22	5	27
Idaho Office of Performance Evaluations	1,341,131	\$6.2	\$564,800	7	1	8

Source: U.S. Census and MGT telephone survey, November 24, 2003.

**EXHIBIT 4-2  
FY 2003-04 BUDGET OF IDAHO OFFICE OF PERFORMANCE EVALUATION**

Salaries and Benefits	\$488,100
Consultants and Temporary staff	40,000
Travel	5,000
Other	31,700
<b>Total</b>	<b>\$564,800</b>

Source: MGT Interview of Idaho Office Director

evaluations was increasing, but that there was very little possibility of adding staff (Exhibit 4-2). The office has had success stretching resources by conducting some

rapid response reviews in less than a month that were of surprisingly good quality and responsive to legislative requests.<sup>1</sup> The office does not contract out evaluations.

The office has very attractive office space, including private offices for each employee, two small conference rooms, a general work area, and space for storage. The office does not pay rent, as space is furnished by the state general services agency.

The total budget for in- and out-of-state travel of \$5,000 did not provide sufficient resources for staff to conduct as many or as extensive field examinations as the director believed professionally necessary, nor did it provide enough for staff training and professional development, most of which is available out of state. MGT concurs with this director's assessment. He plans to request a total of \$15,000.

Using salary and benefit costs available from the Mississippi and Idaho offices, MGT derived a combined cost per professional position for both states of \$64,210, including fringe benefits of 35 percent, which would equate to an average gross salary without benefits of \$47,000. The average per professional position cost in Mississippi was \$64,045, and \$64,729 in Idaho—significant in that the amounts for both offices were nearly identical.

However, the Idaho Director and the Mississippi Deputy Director reported difficulty recruiting and retaining experienced evaluators. The Mississippi PEER staff has routinely lost senior evaluators who began as entry-level PEER analysts with new master's or law degrees, received training, worked for about three years on projects with increasing levels of responsibility and performance, and then accepted job offers from other agencies offering more than 20 percent salary increases.

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<sup>1</sup> Legislators should not expect all or a major portion of OPEGA evaluations to be rapid response reviews. This modality is appropriate only for narrow scope requests that do not require extensive file reviews or travel. Such reviews require the best evaluators because projects are executed with minimal planning and supervision.



**OPEGA Staff and Budget Size Options**

The following cost and budgetary assumptions are applicable to all options (See Exhibit 4-3).

- As instructed by the oversight advisory committee, MGT will list no option that would provide inadequate resources to return sufficient benefits to the State of Maine.
- The Legislative Council will provide all accounting, purchasing, payroll, personnel, and technology support functions for OPEGA as are provided to the other nonpartisan staff offices. OPEGA will not be required to hire accounting, personnel support technicians, and computer software or network support technicians.
- The Director will employ a committee clerk who will serve as clerk to the Oversight Committee as well as function as receptionist and desktop publishing assistant.
- The Commissioner of Administrative and Financial Services shall provide office space at no charge to house the office within the Burton M. Cross Building.
  - OPEGA offices will require a controlled-access entry to maintain security of working papers containing confidential information.
  - The Oversight Committee will require a committee hearing room.
  - OPEGA will need a secure storage room for storing confidential and sensitive files.
  - OPEGA will need a small staff conference room for team working sessions.
- The salary for each proposed employee should be sufficient to recruit and retain that employee. No permanent employee will be funded by time-limited or nonrecurring resources.
- Each employee will have sufficient resources for a computer workstation, travel, supplies, and professional development.
- Start-up equipment and office renovation costs will be nonrecurring.
- Contractor costs will be nonrecurring and are scalable up or down in number and dollar value depending on legislative demand and availability of nonrecurring funds.

**EXHIBIT 4-3  
OPEGA START-UP COST OPTIONS**

<b>Expenditures</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Salaries & Fringe including 5% Recruiting Flexibility <sup>1</sup>	\$249,000	\$522,000	\$750,000
Operating Expense	7,000	16,000	22,000
Travel	6,000	13,000	19,000
Other	5,000	8,000	10,000
Equipment	20,000	35,000	51,000
Contracts	400,000	250,000	-
<b>Total Expenditures</b>	<b>\$687,000</b>	<b>\$844,000</b>	<b>\$852,000</b>
<b>Nature of Costs</b>			
Recurring: Salaries, Expenses, Travel, Other	\$267,000	\$559,000	\$801,000
Nonrecurring: Equipment and Contracts	420,000	285,000	51,000
<b>Total</b>	<b>\$687,000</b>	<b>\$844,000</b>	<b>\$852,000</b>
<b>Employees</b>			
Director	1	1	1
Principal Analyst-Attorney	1	3	6
Analyst-Attorney		1	1
Senior Legislative Researcher		1	1
Clerk	1	1	1
<b>Total Employees</b>	<b>3</b>	<b>7</b>	<b>10</b>
<b>Activities and Services</b>			
<b>By OPEGA Employees</b>			
Evaluations of Large Programs	0	1	2
Evaluations of Small to Medium Programs	0	2	4
Rapid Response Reviews	3	4	6
Annual Report	1	1	1
<b>By Contractors</b>			
Large Program \$100,000 to \$150,000	2	1	0
Small to Medium Program \$50,000 to \$75,000	3	2	0
<b>Total OPEGA Projects</b>	<b>9</b>	<b>12</b>	<b>13</b>

<sup>1</sup>The recruiting flexibility amount is an additional 5 percent of estimated salaries and fringe benefits to allow appointing authorities to offer slightly more than step 1 on the salary schedule.

**Option 1: Small Staff, Rapid Start with Contractors**

The total estimated cost of this option is \$687,000, with \$267,000 in recurring funds needed for staff, operating expenses, and travel. The balance of \$420,000 is nonrecurring, including \$20,000 for start-up equipment and \$400,000 for contracts. The start-up equipment amount may not have to be sustained in the second year; however, some funding would be required annually for replacing worn out or obsolete equipment.

The contracting amount is scalable up or down annually depending on the legislature's need for projects.

This option constitutes a minimum investment needed for OPEGA to contribute after a few months of organization and planning. During the first two months of operations, the Legislative Council would hire a director who would work with the Oversight Committee on the first work plan as well as establish an administrative infrastructure. The director would hire the committee clerk, and then employ a principal-analyst-attorney to help select contractors to perform the first projects.<sup>2</sup> It is imperative that the two professional employees have program evaluation and contracting expertise.

Using \$400,000 in contracting authority, the Director could hire contractors to conduct several projects concurrently. A contract to review a program with a large, complex budget such as one administering a federal-state entitlement program may cost \$100,000 to \$150,000 depending on the mix of contractor expertise needed and when decision makers need evaluation results—short, intensive, and controversial reviews add to cost. Small to medium projects may cost from \$50,000 to \$75,000. These estimates are inexact because actual costs are a function of the specifics of projects that OPEGA requires.

***Option 2: Medium-Size Staff, Rapid Start with Some Contracting***

The total estimated cost of this option is \$844,000, with \$559,000 in recurring funds needed for staff, operating expenses, and travel. The balance of \$285,000 is nonrecurring, including \$35,000 for start-up equipment and \$250,000 for contracts. The start-up equipment amount may not have to be sustained in the second year; however,

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<sup>2</sup> The staff of three consisting of the director, analyst, and committee clerk would be insufficient without contractor support and is not recommended as a stand alone staff. A staff this small, even if without contracting oversight responsibilities, would be unable to conduct more than one major review at a time and a handful of rapid response reviews.

some funding would be required annually for replacing worn out or obsolete equipment. The contracting amount is scalable up or down annually depending on the legislature's need for projects.

This option would build a core professional staff of six, including the director and five evaluators, three of whom would be experienced evaluators and two with proven contract management expertise. The staff, while still relatively small, could conduct three medium to large reports per year plus four rapid response reviews. These estimates are inexact because the size and number of projects are a function of the specifics of what the legislature requires.

During the first two months of operations, the Legislative Council would hire a director who would work with the Oversight Committee on the first work plan as well as establish an administrative infrastructure. The director would hire the committee clerk and employ a principal-analyst-attorney to assist with start-up hiring.

The \$250,000 for contracts would provide either two major reviews or a mix of small, medium, and one large review. Again, these estimates are inexact because actual costs are a function of the specifics of projects that OPEGA requires. The contracting amount is scalable up or down annually depending on the legislature's need for projects.

Core OPEGA staff under this option could work alongside contractors and observe how contract consultants conduct evaluation, business process re-engineering, and operations research.

***Option 3: Core Staff without Contracting***

The total estimated cost of this option is \$852,000, with \$801,000 in recurring funds needed for staff, operating expenses, and travel. The balance of \$51,000 is nonrecurring for start-up equipment, which may not have to be sustained in the second

year; however, some funding would be required annually for replacing worn out or obsolete equipment.

This option would build a staff that would conduct all OPEGA projects itself without using contractors during start-up. The staff could conduct a mix of up to six medium and large reports every 12 months, plus six rapid response reviews. Because this option provides no immediate capability to perform, OPEGA may not be able to produce its first major report until four to six months after the director is hired before having the capability to sustain the estimated level of performance. These estimates are inexact because the size and number of projects are a function of the specifics of what the legislature requires. Although no projects would be contracted out under this option, OPEGA would be able to add contracting responsibilities should the legislature and OPEGA director conclude that a project exceeded the available expertise of OPEGA.

**5.0 OVERSIGHT COMMITTEE  
RULES AND EXTENT OF  
DELEGATION AND  
APPROACHES TO ESTABLISH  
PRIORITIES FOR THE INITIAL  
TWO YEARS OF OPEGA  
OFFICE OPERATIONS**

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## **5.0 OVERSIGHT COMMITTEE RULES AND EXTENT OF DELEGATION AND APPROACHES TO ESTABLISH PRIORITIES FOR THE INITIAL TWO YEARS OF OPEGA OFFICE OPERATIONS**

### ***Oversight Committee Rules and Extent of Delegation***

The legislative oversight committee and OPEGA will have separate roles, but the two entities must work very closely together. The committee's rules should articulate the extent of delegation of authority to OPEGA. Chapter 21 of Maine Laws and the joint rules of the legislature will determine the duties and procedures of the committee. Maine legislative committees have established rules governing routine committee functions so it is not necessary to list every topic for which a rule should be established. However, the committee rules need to address the issues that often arise when oversight committees in other states have functioned. The suggestions below are listed in priority order.

**Bicameralism.** When a quorum is present and votes are taken, the rules should clarify that actions approved by a majority vote when a quorum was present should be considered equally reflective of both chambers. This issue becomes material because there often is disagreement between chambers that could affect the oversight committee and complicate or confuse OPEGA. Assuring bicameralism is critical if the party control is divided between chambers.

**Prohibition against individual committee member involvement in OPEGA projects.** All communications from committee members with OPEGA staff should go first through the OPEGA director. Other states have experienced severe problems when individual or small groups of members attempted to monitor and control oversight projects that had been delegated to the staff. Individual members should not take on the role of a supervisor to ensure either that the staff goes far or not far enough. If the

*Oversight Committee Rules and Extent of Delegation and Approaches to Establish  
Priorities for the Initial Two Years of OPEGA Office Operation*

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Maine legislative oversight committee decides to control and direct an OPEGA project through the full committee or a subcommittee, the committee should instead declare itself an investigative committee, assume responsibility for the report, and follow the procedures outlined in Section 21 of Maine laws and in joint rules.

**Definition of the committee role relative to OPEGA.** The committee should not attempt to perform a quality assurance or quality control function over OPEGA reports. Although it is appropriate for members to inquire about the basis for a finding and for illustration of cause, effects, or costs and for those questions to be pointed and detailed if necessary, members should refrain from lengthy or overly detailed questioning in an attempt to discredit the staff and the report. Expressions of opinion about the quality of work done or the reliability of work done should be reserved for the time set aside for discussion and debate by the committee, at its discretion to endorse, endorse in part, or release the report without endorsement.

**Prohibition against OPEGA staff from uttering argumentative language attempting to influence the outcome or reconsideration of committee votes taken to endorse the OPEGA report.** OPEGA staff should present the report and respond to questions but not engage in debate with members about the committee vote. It would be appropriate, however, for the OPEGA Director only, to seek recognition through the chair for the purpose of clarifying in a nonargumentative manner an issue concerning the report. The Director also should be required to respond to questions if properly recognized and requested by the chair.

**Delegation to OPEGA Director of Spending and Personnel Authority.** The committee should retain authority to require the director to present and justify both the budget request for consideration by the legislature and the operating budget for spending the OPEGA appropriation. Once the operating budget is approved, the



*Oversight Committee Rules and Extent of Delegation and Approaches to Establish  
Priorities for the Initial Two Years of OPEGA Office Operation*

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director should be delegated authority and responsibility for spending within the committee-approved operating budget. In addition, the rules should delegate to OPEGA complete authority pertaining to:

- hiring and termination of staff;
- setting starting salaries;
- awarding raises, bonuses, and promotions;
- approving staff travel including travel for training and professional development;
- approving leave with and without pay;
- conducting program evaluations; and
- assigning and determining the nature and priority of work assignments.

**Requirement that Director Keep the Chairs Informed.** The rules should require the director to keep the chairs informed about OPEGA but that does not constitute a requirement that the chairs must give prior approval of actions delegated to the director.

**Prohibition against statements to the media by the OPEGA Director and staff.** The OPEGA law clearly intends OPEGA to operate with a degree of confidentiality until reports are made public and presented to the oversight committee for the first time. However, the media will want to contact the director and staff for comments about proposed, ongoing, and completed program evaluations. Other states have experienced problems when evaluation directors have not dealt skillfully or truthfully with the media. MGT advises the committee to establish a rule that provides that only members of the committee may make comments to the media about OPEGA reports. The current OPEGA statute provides a good forum for informing the media about reports and for comments by members. The statute provides that OPEGA reports are not public documents until released during the committee meeting where the

committee may vote to endorse the report. When contacted by a reporter, OPEGA staff should respond politely by citing the committee rule.

**Committee rules should be comprehensive and contain any applicable constitutional provisions, state laws or joint rules that sustain or may be pertinent to the rule.** The rules need to stand alone as a complete guide to committee functions when read and not require the reader to switch between the rules and reference books.

***Approaches for Establishing Priorities for the Initial Two Years of OPEGA Office Operations***

Judging by the general legislative and media enthusiasm for OPEGA evident to MGT, OPEGA needs to set priorities quickly and rationally to avoid what would be characterized metaphorically as a "train wreck." MGT suggests the following ordering of priorities for the start-up and after start-up activities.

***Start-up***

1. The Director of the Legislative Council should establish the knowledge skills and abilities set for the OPEGA Director and begin the search for candidates for the position. The next chapter contains a suggested description of skills, minimum qualifications, and representative duties.
2. As soon as practical after the presiding officers complete appointments to the legislative oversight committee, the Director of the Legislative Council should assign a temporary committee clerk to the committee so the committee could hold its organizational meeting. The committee chair should request assistance from the Legislative Council to draft proposed committee rules.
3. At its first meeting, the committee should:
  - Adopt rules and delegate authority to the OPEGA Director.
  - Review the MGT report with the Director of the Legislative Council and determine the progress made by the Council in recruiting for the director position.
  - Request the Legislative Council Director to assemble all statutes, budgets, and other documents pertaining to OPEGA for reference by the OPEGA Director once appointed.

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Priorities for the Initial Two Years of OPEGA Office Operation*

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- Request the Legislative Council Director to provide the OPEGA Director temporary office space, a telephone, e-mail access, a temporary mailing address, and office supplies pending approval of the OPEGA operating budget by the committee.
  - Request the Legislative Council Director to determine steps necessary for implementing the statutory provision that the Commissioner of Administrative and Financial Services shall provide office space to house the office within the Burton M. Cross Building. This office space must be provided at no charge.
  - Schedule the next meeting date to coincide with the estimated starting date of the OPEGA director.
  - Set a preliminary meeting date for a second meeting with the OPEGA Director to review and approve the OPEGA operating budget and for formal committee input to the OPEGA director for projects to be included in the draft work plan.
  - Direct the committee clerk to schedule appointments for the OPEGA Director to meet with legislators and staff and to be available to assist the director with any necessary settling in activities.
  - Request committee members to begin compiling a list of potential program evaluation topics for inclusion in the draft work plan to be compiled by and submitted to the committee by the OPEGA Director.
  - Notify the presiding officers and all members of the organization of the committee and adoption of rules.
4. The OPEGA Director should spend the several weeks after appointment:
- meeting with other legislative staff and legislators;
  - locating office space in the Burton M. Cross building;
  - drafting a proposed operating budget for submittal to the committee at the first meeting with the committee;
  - confirming procedures with the Director of the Legislative Council for hiring and setting salaries for OPEGA employees;
  - confirming procedures with the Director of the Legislative Council for making purchases and entering into consulting contracts;

*Oversight Committee Rules and Extent of Delegation and Approaches to Establish  
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- contacting the National Legislative Program Evaluation Society (NLPES) for technical assistance and advice;<sup>1</sup>
  - visiting program evaluation agencies in other states for model procedures, methodologies, working paper systems, quality assurance procedures, and report format;
  - preparing briefing of actions taken and pending for the oversight committee at its first meeting; and
  - obtaining assistance from the Legislative Council Director for designing a Web site for OPEGA.
5. The committee should conduct their first regular meeting:
- approving the OPEGA operating budget;
  - reviewing committee rules and delegating authority to the director;
  - discussing potential topics to be included the first work plan; and
  - directing the director to submit a draft work plan for July 1—June 30 at the next meeting.
6. The director should prepare a draft work plan consisting of:
- staff expertise and contractual spending authority available for projects with a contingency allowance for time for rapid response reviews (Future plans will include a listing here of projects that are ongoing that may not be completed until after July 1. Future proposed work plans will be submitted to the committee after the session sine die and before July 1.);
  - an estimate of how many major, mid-sized, or rapid response reviews could be conducted in the next fiscal year;
  - a list of proposed projects and for each proposed topic;
    - Project title: "An Evaluation of Results Achieved by Program X";
    - who suggested or requested the project;
    - two-or-three paragraph explanation of what issues would be include within the project scope and any other studies or

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<sup>1</sup> Contact Bob Boerner, NLPES staff contact at the National Conference of State Legislatures in Denver, Colorado. [bob.boerner@ncsl.org](mailto:bob.boerner@ncsl.org). National Conference of State Legislatures, 7700 East First Place, Denver, CO 80230. Telephone: 303-364-7700. NLPES web site: <http://www.ncsl.org/programs/nlpes>. List of OPEGA Director counterparts in other states: <http://www.ncsl.org/programs/nlpes/contacts.htm>

*Oversight Committee Rules and Extent of Delegation and Approaches to Establish  
Priorities for the Initial Two Years of OPEGA Office Operation*

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- reviews that have been done or are ongoing related to the topic;
- OPEGA Director's opinion as to whether OPEGA has the expertise to conduct the review or whether a consultant should be engaged if OPEGA has funds available; and
  - when the project would begin and end.
7. The Director should prepare a briefing of proposed criteria for committee use when deciding projects on the work plan. Criteria might include:
- materiality of the issue or the size of the program's state budget and staff;
  - time since program was subjected to an independent review;
  - whether an evaluation might interfere with another legislative study or independent audit/investigation;
  - likelihood of the review resulting in material savings of state funds to reallocate within the program, to reallocate to another program, or for use to reduce taxes or fees;
  - number of legislators from each chamber expressing interest in the topic;
  - OPEGA Director's recommendation as to feasibility; and
  - whether review results are needed within the next fiscal year or could be postponed for consideration for the next work plan.
8. The committee should hold a special meeting solely to develop the work plan. The committee should arrange projects on the work plan into three categories with priorities within each category:
- Projects to be completed before January;
    - Priority 1
    - Priority 2, 3... etc.
  - Projects to be completed between January and July;
    - Priority 1
    - Priority 2, 3... etc.
  - Projects that could be completed before July 1 if time is available and if not carried over for consideration for the next plan.

***After Start-up***

The oversight committee will hold regular meetings during the fiscal year. The agenda for each meeting probably will consist of:

- receiving progress reports from the OPEGA Director;
- approving transfers in operating budget categories requested by the Director;
- receiving OPEGA reports as presented and after discussion deciding if the committee wishes to take a position on the report (Note that the OPEGA statute states that a vote to endorse, endorse in part, or release the report without endorsement is taken "at the committee's discretion.");
- considering whether to issue subpoenas to require the appearance of individuals to respond to committee questions and/or to produce documents for review by the committee and OPEGA;
- amending the approved work plan to direct OPEGA to conduct evaluations; and
- questioning state agency heads and program directors about OPEGA findings and recommendations.

**6.0 OPTIMAL STAFF SKILL  
MIX**

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## 6.0 OPTIMAL STAFF SKILL MIX

It is of strategic importance that the OPEGA staff at all levels be exceptionally competent and well-respected as experts capable of forming an opinion about the efficiency, effectiveness, and economy of state and local government. An essential element of this competence goes beyond the ability to recognize and describe problems. The element is the knowledge and ability to suggest corrective or remedial action. Many competent and capable government researchers make a strong contribution by reporting problems. However, a successful program evaluation office must do more than describe, it must *recommend*. Such ability is neither cheap nor easily obtained.

This section contains suggested qualifications and representative duties of the OPEGA professional staff. In general, the office will need staff competent in the following general areas:

- Above all else, an appreciation of state legislative life including the pressures and demands upon state legislators and their staffs and understanding what staff assistance is most helpful.
- Readiness to take on issues that are troubling the legislature or putting undue pressure on taxpayers. OPEGA will not be an occupying army, but a highly specialized team of experts that the legislature can send in to size up problems quickly, to establish the significance and dimensions of the problem, and above all to recommend corrective action—and then move on to other assignments.
- Ability to work with a sense of urgency in recognition of pressures created by term limits and session deadlines.
- Ability to act and behave as an expert—to have the demeanor of a calm and confident critical thinker.
- Ability to express thoughts clearly and concisely.
- Writing—a program evaluation office is a consulting firm that will live or die on the quality of its written work.
- Quality assurance, including proofreading of reports and presentations.



- Delivering engaging presentations using state of the art briefing software
- Recognition that nearly all state employees and managers are honest and capable people who may be chained to outdated methods and have never been asked for their opinions about those methods. OPEGA should. OPEGA needs staff who can help these public servants offer constructive suggestions with assurance that their opinions and suggestions will neither be ignored nor used detrimentally.

**Director: Office of Program Evaluation and Government Accountability**

***Required Knowledge, Skills, and Abilities:***

- Ability to function without supervision and independently but under the general policy direction of the legislative oversight committee and in compliance with the law and legislative rules.
- Knowledge of the construct and intent of laws, rules, and regulations relative to conducting legislative oversight and handling sensitive and confidential materials created by or coming into the possession of oversight staff.
- Knowledge of strategic planning, including identification of strengths, weaknesses, opportunities, threats, strategic issues, and strategies for action.
- Ability to conceptualize appropriate and sufficient governmental interventions and to determine if interventions are efficient, effective, and economical.
- Knowledge of state legislative oversight, program evaluation and applied research sufficient to lead a professional staff engaging in these activities.
- Knowledge of national and regional professional associations related to legislative oversight and program evaluation.
- Skill in directing and motivating the work of professionals with advanced academic degrees and/or licensure in accounting, internal auditing, law, and engineering.
- Knowledge of the critical importance of clear and convincing documentation and working papers underpinning reports to the legislature.
- Knowledge of the importance of protecting and ensuring confidentiality of working papers and confidential and privileged information coming into the possession of oversight staff.

- Knowledge of state and local government administration and finance.
- Knowledge of legislative committee and chamber procedures and functions and activities of leadership staff, chamber staff, committee staff, partisan staff, and other nonpartisan staff.
- Skill operating as a nonpartisan professional with a necessary understanding of state and local politics.
- Ability to interact diplomatically with legislators and elected and appointed public officials at the governing board and department head level.
- Knowledge of contracting for professional expertise, including:
  - conceptualizing the scope of work, pricing, and establishing contractor selection criteria;
  - negotiating sole source contracts, and preparing requests for proposals, requests for information, or notices of intent to engage in competitive negotiations;
  - preparing contracts and scheduling contract milestones and deliverables;
  - monitoring contract performance;
  - negotiating change orders and supplemental agreements; and
  - accepting or rejecting work submitted by contractors.
- Knowledge of generally accepted principles of personnel management, budgeting, accounting, and purchasing.
- Knowledge of statistical analysis, including principles of scientific sampling, statistical inference, and tests of significance.
- Knowledge of desktop publishing, statistical analysis software packages, and information systems management, including overall design and controls necessary within a local area network.
- Skill in operating office suite software comparable to WORD,<sup>®</sup> EXCEL,<sup>®</sup> and POWERPOINT.<sup>®</sup>
- Skill in writing and editing complex technical material.
- Skill in preparing and editing complex electronic audio-visual presentations.

- Skill in conducting public presentations and testifying before assemblies of elected officials or governing boards.

***Examples of Duties:***

- Confers with committee chairs, presiding officers, and members to schedule oversight committee meetings and prepare agendas.
- Supervises committee clerk functions in scheduling committee meetings and tracking committee actions.
- Ensures that committee members are provided sufficient and timely information.
- Testifies and presents program evaluation reports to the oversight committee and to legislative committees and presiding officers upon request.
- Works cooperatively in a team spirit with the committee, presiding officers, the Legislative Council, and nonpartisan and partisan staff.
- Drafts annual work plans for approval by the committee adding or deleting proposed projects, then implementing the work plan approved by the committee.
- Provides clear written and verbal instructions to staff managers.
- Follows up instructions to ensure timely and quality action.
- Edits all draft reports or official communications emanating from the office.
- Conducts evaluations of staff performance.
- Provides suggested solutions to staff to problems encountered during the course of program evaluation field work.
- Intervenes appropriately with evaluated entities when those entities need clarification of project intent and the need for documents or access to data.
- Conducts training sessions for program evaluation staff.

***Desirable Minimum Qualifications:***

- Master's degree.
- Academic concentration in law, public administration, program evaluation, public policy analysis, business administration, political science, economics, industrial engineering, or a closely-related field of preparation for someone to engage in evaluation or inspection of

government or business applying quantitative or qualitative research methods.

- Five years of experience in legislative program evaluation or a comparable executive position with department or division-level organizational responsibility and authority.
- Three years of experience in managing program evaluations, performance audits, or applied public policy/administration research.
- Authorship of reports submitted to professional journals, state legislatures, and government agency heads.

### **Principal Evaluator<sup>1</sup>**

#### ***Required Knowledge, Skills, and Abilities:***

- Ability to function with minimal supervision by the director and in compliance with the law and legislative rules.
- Ability to conceptualize appropriate and sufficient governmental interventions and to determine if interventions are efficient, effective, and economical.
- Knowledge of state legislative oversight, program evaluation, post-auditing, and applied research sufficient.
- Skill in directing, supervising, and motivating the work of peers with advanced academic degrees and/or licensure in accounting, internal auditing, law, and engineering.
- Ability to prepare and/or supervise preparation of clear and convincing documentation and working papers underpinning reports to the legislature.
- Ability to establish organization and filing systems for working papers.
- Knowledge of the importance of protecting and ensuring confidentiality of working papers and confidential and privileged information coming into the possession of oversight staff.
- Knowledge of state and local government administration and finance.
- Skill in operating as a nonpartisan professional with a necessary understanding of state and local politics.

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<sup>1</sup> Certification or licensure as a certified public accountant, certified internal auditor, attorney, or engineer without the requisite education and experience is not sufficient to qualify as a principal evaluator.

- Ability to interact diplomatically with legislators and elected and appointed public officials at the governing board and department head level.
- Knowledge of contracting for professional expertise, including:
  - conceptualizing the scope of work, pricing, and establishing contractor selection criteria;
  - negotiating sole source contracts, and preparing requests for proposals, requests for information, or notices of intent to engage in competitive negotiations;
  - preparing contracts and scheduling contract milestones and deliverables;
  - monitoring contract performance;
  - negotiating change orders and supplemental agreements; and
  - accepting or rejecting work submitted.
- Knowledge of generally accepted principles of personnel management, budgeting, accounting, and purchasing.
- Knowledge of statistical analysis, including principles of scientific sampling, statistical inference, and tests of significance.
- Knowledge of desktop publishing, statistical analysis software packages and information systems management, including overall design and controls necessary within a local area network.
- Skill in operating office suite software comparable to WORD,<sup>®</sup> EXCEL,<sup>®</sup> and POWERPOINT.<sup>®</sup>
- Skill in writing and editing complex technical material demonstrated by experience as an author of a technical report, journal article, or book.
- Skill in preparing and editing complex electronic audio-visual presentations.
- Skill in conducting public presentations and testifying before assemblies of elected officials or governing boards.

***Examples of Duties:***

- Assists director with drafting of annual work plan.
- As directed and in accordance with work plan:

- designs program evaluations;
  - engages in critical thinking to define nature of questions posed by the legislature; and
  - prepares detailed proposed evaluation project plans defining evaluation methodologies, milestones, and deliverables.
- Individually or as a team leader, executes highly complex and intricate program evaluation project field work:
- prepares entrance notice letter to the head of the entity administering the program under evaluation for signature by the director;
  - schedules entrance conference with program management to discuss evaluation purpose, procedures, records, and necessary data and staff access;
  - conducts formal structured and unstructured interviews of program staff and other stakeholders individually or in focus groups;
  - communicates with all stakeholders and staff in a clinical, objective, cordial, and cooperative manner;
  - inspects, tests, and measures work processes to determine bottlenecks, unnecessary tasks, duplication of tasks, or untimely or erroneous performance;
  - administers telephone or mail questionnaire surveys;
  - writes detailed interview or field notes;
  - engages in "mining" of electronic databases;
  - compiles professional working papers;
  - applies critical thinking and analysis to information gathered before declaring findings;
  - drafts or edits proposed report of findings and recommendations; and
  - conducts exit conference with head of the entity and staff administering the program under evaluation.
- When directed, executes rapid response reviews of more narrowly-scoped and short duration program evaluations that, while professional, accurate, and objective, may not contain all steps necessary for a more detailed program evaluation.

- Manages contracts for consulting services.
- Conducts or assists the director in making presentations of reports to the committee or other official bodies.
- Acts as office liaison on special research, administrative, or legal projects involving more than one office or the legislature as a whole.

***Minimum Qualifications:***

- Master's degree preferred, or a bachelor's degree and professional licensure or certification as a certified public accountant, certified internal auditor, attorney, or engineer.
- Five years of experience and demonstrated competence at the level of senior legislative analyst, senior legislative attorney, or a comparable position
- Academic concentration in law, public administration, program evaluation, public policy analysis, business administration, political science, economics, industrial engineering, or a closely related field of preparation for someone to engage in evaluation or inspection of government or business applying quantitative or qualitative research methods.
- Five years of experience in legislative program evaluation or a comparable executive or managerial position with department or bureau-level organizational responsibility and authority for managing program evaluations, performance audits, or applied public policy/administration research.
- Authorship of reports submitted to professional journals, state legislatures, government agency heads.

**Senior Evaluator<sup>2</sup>**

***Required Knowledge, Skills, and Abilities:***

- Ability to conceptualize appropriate and sufficient governmental interventions and to determine if interventions are efficient, effective, and economical.
- Knowledge of state legislative oversight, program evaluation, post-auditing, and applied research.
- Ability to prepare clear and convincing documentation and working papers underpinning reports to the legislature.

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<sup>2</sup> Certification or licensure as a certified public accountant, certified internal auditor, attorney or engineer without the requisite education and experience is not sufficient to qualify as a senior evaluator.

- Knowledge of the importance of protecting and ensuring confidentiality of working papers and confidential and privileged information coming into the possession of oversight staff.
- Knowledge of state and local government administration and finance.
- Skill in operating as a nonpartisan professional with a necessary understanding of state and local politics.
- Ability to interact diplomatically with staff of entities under evaluation and with stakeholders.
- Knowledge of generally accepted principles of personnel management, budgeting, accounting, and purchasing.
- Knowledge of statistical analysis, including principles of scientific sampling, statistical inference, and tests of significance.
- Knowledge of desktop publishing, statistical analysis software packages, and information systems management, including overall design and controls necessary within a local area network.
- Skill in operating office suite software comparable to WORD,<sup>®</sup> EXCEL,<sup>®</sup> and POWERPOINT.<sup>®</sup>
- Skill in writing and editing complex technical material.
- Skill in preparing and editing complex electronic audio-visual presentations.

***Examples of Duties:***

- With limited supervision by a principal analyst or the director, executes highly complex and intricate program evaluation project field work:
  - conducts formal structured and unstructured interviews of program staff and other stakeholders individually or in focus groups;
  - communicates with all stakeholders and staff in a clinical, objective, cordial, and cooperative manner;
  - inspects, tests, and measures work processes to determine bottlenecks, unnecessary tasks, duplication of tasks, or untimely or erroneous performance;
  - administers telephone or mail questionnaire surveys;
  - writes detailed interview or field notes;



- engages in "data mining" of data;
- compiles professional working papers;
- applies critical thinking and analysis to information gathered before declaring findings; and
- drafts or edits proposed report of findings and recommendations.

***Minimum Qualifications:***

- Master's degree preferred, or a bachelor's degree.
- Two years of experience and demonstrated competence at the level of legislative analyst, legislative attorney, or a comparable position.
- Academic concentration in law, public administration, program evaluation, public policy analysis, business administration, political science, economics, industrial engineering, or a closely related field of preparation for someone to engage in evaluation or inspection of government or business applying quantitative or qualitative research methods.
- Demonstrated technical writing ability.

**Evaluator**

***Required Knowledge, Skills, and Abilities:***

- Knowledge of state legislative oversight, program evaluation, post-auditing, and applied research sufficient to lead a professional staff engaging in these activities.
- Ability to prepare clear and convincing documentation and working papers underpinning reports to the legislature.
- Knowledge of the importance of protecting and ensuring confidentiality of working papers and confidential and privileged information coming into the possession of oversight staff.
- Knowledge of state and local government administration and finance.
- Skill in operating as a nonpartisan professional with a necessary understanding of state and local politics.
- Ability to interact diplomatically with staff of entities under evaluation and with stakeholders.

- Knowledge of generally accepted principles of personnel management, budgeting, accounting, and purchasing.
- Knowledge of statistical analysis, including principles of scientific sampling, statistical inference, and tests of significance.
- Knowledge of desktop publishing, statistical analysis software packages, and information systems management, including overall design and controls necessary within a local area network.
- Skill in operating office suite software comparable to WORD,<sup>®</sup> EXCEL,<sup>®</sup> and POWERPOINT.<sup>®</sup>
- Skill in writing and editing complex technical material.
- Skill in preparing and editing complex electronic audio-visual presentations.

***Examples of Duties:***

- With supervision by a principal analyst, executes highly complex and intricate program evaluation project field work:
  - communicates with all stakeholders and staff in a clinical, objective, cordial, and cooperative manner;
  - inspects, tests, and measures work processes to determine bottlenecks, unnecessary tasks, duplication of tasks, or untimely or erroneous performance;
  - administers telephone or mail questionnaire surveys;
  - writes detailed interview or field notes;
  - assists with "data mining" tasks;
  - compiles professional working papers; and
  - drafts or edits proposed report of findings and recommendations.

***Minimum Qualifications:***

- Bachelor's degree, master's preferred.
- Academic concentration in law public administration, program evaluation, public policy analysis, business administration, political science, economics, industrial engineering, or a closely related field of preparation for someone to engage in evaluation or inspection of

government or business applying quantitative or qualitative research methods.

- Experience in writing, editing, and proofreading.
- Skill in operating office suite software comparable to WORD,<sup>®</sup> EXCEL,<sup>®</sup> and POWERPOINT.<sup>®</sup>

**APPENDICES**

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**APPENDIX A:**

**THE PROGRAM EVALUATION  
STANDARDS SUMMARY OF  
THE STANDARDS**

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## APPENDIX A

### THE PROGRAM EVALUATION STANDARDS<sup>1</sup> SUMMARY OF THE STANDARDS

#### Utility Standards

The utility standards are intended to ensure that an evaluation will serve the information needs of intended users.

U1 Stakeholder Identification--Persons involved in or affected by the evaluation should be identified, so that their needs can be addressed.

U2 Evaluator Credibility--The persons conducting the evaluation should be both trustworthy and competent to perform the evaluation, so that the evaluation findings achieve maximum credibility and acceptance.

U3 Information Scope and Selection--Information collected should be broadly selected to address pertinent questions about the program and be responsive to the needs and interests of clients and other specified stakeholders.

U4 Values Identification--The perspectives, procedures, and rationale used to interpret the findings should be carefully described, so that the bases for value judgments are clear.

U5 Report Clarity--Evaluation reports should clearly describe the program being evaluated, including its context, and the purposes, procedures, and findings of the evaluation, so that essential information is provided and easily understood.

U6 Report Timeliness and Dissemination--Significant interim findings and evaluation reports should be disseminated to intended users, so that they can be used in a timely fashion.

U7 Evaluation Impact--Evaluations should be planned, conducted, and reported in ways that encourage follow-through by stakeholders, so that the likelihood that the evaluation will be used is increased.

#### Feasibility Standards

The feasibility standards are intended to ensure that an evaluation will be realistic, prudent, diplomatic, and frugal.

F1 Practical Procedures--The evaluation procedures should be practical, to keep disruption to a minimum while needed information is obtained.

F2 Political Viability--The evaluation should be planned and conducted with anticipation of the different positions of various interest groups, so that their cooperation may be obtained, and so that possible attempts by any of these groups to curtail evaluation operations or to bias or misapply the results can be averted or counteracted.

F3 Cost Effectiveness--The evaluation should be efficient and produce information of sufficient value, so that the resources expended can be justified.

#### Propriety Standards

The propriety standards are intended to ensure that an evaluation will be conducted legally, ethically, and with due regard for the welfare of those involved in the evaluation, as well as those affected by its results.

P1 Service Orientation--Evaluations should be designed to assist organizations to address and effectively serve the needs of the full range of targeted participants.

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<sup>1</sup> Mary E. Ramlow, The Evaluation Center, 401B Ellsworth Hall, Western Michigan University, Kalamazoo, MI 49008-5178, Phone: 616-387-5895, Fax: 616-387-5923, Email: [Mary.Ramlow@wmich.edu](mailto:Mary.Ramlow@wmich.edu)

## THE PROGRAM EVALUATION STANDARDS SUMMARY OF THE STANDARDS

P2 Formal Agreements--Obligations of the formal parties to an evaluation (what is to be done, how, by whom, when) should be agreed to in writing, so that these parties are obligated to adhere to all conditions of the agreement or formally to renegotiate it.

P3 Rights of Human Subjects--Evaluations should be designed and conducted to respect and protect the rights and welfare of human subjects.

P4 Human Interactions--Evaluators should respect human dignity and worth in their interactions with other persons associated with an evaluation, so that participants are not threatened or harmed.

P5 Complete and Fair Assessment--The evaluation should be complete and fair in its examination and recording of strengths and weaknesses of the program being evaluated, so that strengths can be built upon and problem areas addressed.

P6 Disclosure of Findings--The formal parties to an evaluation should ensure that the full set of evaluation findings along with pertinent limitations are made accessible to the persons affected by the evaluation, and any others with expressed legal rights to receive the results.

P7 Conflict of Interest--Conflict of interest should be dealt with openly and honestly, so that it does not compromise the evaluation processes and results.

P8 Fiscal Responsibility--The evaluator's allocation and expenditure of resources should reflect sound accountability procedures and otherwise be prudent and ethically responsible, so that expenditures are accounted for and appropriate.

### Accuracy Standards

The accuracy standards are intended to ensure that an evaluation will reveal and convey technically adequate information about the features that determine worth or merit of the program being evaluated.

A1 Program Documentation--The program being evaluated should be described and documented clearly and accurately, so that the program is clearly identified.

A2 Context Analysis--The context in which the program exists should be examined in enough detail, so that its likely influences on the program can be identified.

A3 Described Purposes and Procedures--The purposes and procedures of the evaluation should be monitored and described in enough detail, so that they can be identified and assessed.

A4 Defensible Information Sources--The sources of information used in a program evaluation should be described in enough detail, so that the adequacy of the information can be assessed.

A5 Valid Information--The information gathering procedures should be chosen or developed and then implemented so that they will assure that the interpretation arrived at is valid for the intended use.

A6 Reliable Information--The information gathering procedures should be chosen or developed and then implemented so that they will assure that the information obtained is sufficiently reliable for the intended use.

A7 Systematic Information--The information collected, processed, and reported in an evaluation should be systematically reviewed and any errors found should be corrected.

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## THE PROGRAM EVALUATION STANDARDS SUMMARY OF THE STANDARDS

A8 Analysis of Quantitative Information--Quantitative information in an evaluation should be appropriately and systematically analyzed so that evaluation questions are effectively answered.

A9 Analysis of Qualitative Information--Qualitative information in an evaluation should be appropriately and systematically analyzed so that evaluation questions are effectively answered.

A10 Justified Conclusions--The conclusions reached in an evaluation should be explicitly justified, so that stakeholders can assess them.

A11 Impartial Reporting--Reporting procedures should guard against distortion caused by personal feelings and biases of any party to the evaluation, so that evaluation reports fairly reflect the evaluation findings.

A12 Metaevaluation--The evaluation itself should be formatively and summatively evaluated against these and other pertinent standards, so that its conduct is appropriately guided and, on completion, stakeholders can closely examine its strengths and weaknesses.



*APPENDIX B:*

*CURRENT OPEGA STATUTES*

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## APPENDIX B

### CURRENT OPEGA STATUTES

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Regular Session of the 121st Legislature, which ended June 14, 2003, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

#### Chapter 37: LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND PROGRAMS (HEADING: PL 2001, c. 702, @2 (new))

##### §991. Evaluation and Government Accountability

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds. [2003, c. 451, Pt. KKK, §1 (amd).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK1 (AMD).

##### §992. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 702, §2 (new).]

**1. Committee.** "Committee" means a joint legislative committee established to oversee program evaluation and government accountability matters.

[2001, c. 702, §2 (new).]

**2. Director.** "Director" means the Director of the Office of Program Evaluation and Government Accountability.

[2001, c. 702, §2 (new).]

**3. Office.** "Office" means the Office of Program Evaluation and Government Accountability established in section 991.

[2001, c. 702, §2 (new).]

**4. Other entity.** "Other entity" means any public or private entity in this State that may be subject to program evaluation under this chapter as the result of its receipt or expenditure of public funds.

[2001, c. 702, §2 (new).]

**5. Program evaluation.** "Program evaluation" means an examination of any government program that includes performance audits, management analysis, inspections, operations or research or examinations of efficiency, effectiveness, or economy and, when determined necessary by the committee, financial audits and post-audits. All financial audits and post-audits must be performed by the Department of Audit or, if the Department of Audit is unable to perform the audit within the time frame established by the committee to complete the report, a qualified auditor.

[2003, c. 463, §1 (amd).]

**5-A. Qualified auditor.** "Qualified auditor" means an auditor who meets the education and experience requirements of the Office of State Auditor as defined in Title 5, section 241.

[2003, c. 463, §2 (new).]

**6. State agency.** "State agency" means each state board, commission, department, program, office or institution, educational or otherwise, of this State.

[2001, c. 702, §2 (new).]

**7. Working paper.** "Working paper" means all documentary and other information acquired, prepared or maintained by the office during the conduct of a program evaluation, including all intra-agency and interagency communications relating to a program evaluation and includes electronic messages and draft reports or any portion of a draft report.

[2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 463, §1,2 (AMD).

**§993. Committee membership; chairs**

The membership of the committee and the selection of chairs are established by joint rule of the Legislature. [2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

**§994. Duties of committee**

The committee has the following duties: [2001, c. 702, §2 (new).]

**1. Director.** To evaluate the director of the office and make a recommendation to the Legislative Council in writing regarding the reappointment of the director of the office before the Legislative Council considers the reappointment of the director of the office;

[2001, c. 702, §2 (new).]

**2. Annual work plan.** To review and approve the annual work plan of the office;

[2001, c. 702, §2 (new).]

**3. Direct evaluations.** To direct the office to conduct program evaluations;

[2001, c. 702, §2 (new).]

**4. Conduct hearings.** To hold public hearings for the purpose of receiving reports from the office and questioning public officials about office findings and recommendations;

[2001, c. 702, §2 (new).]

**5. Examine witnesses.** To examine witnesses and to order the appearance of any person or the appearance of any person for the purpose of production to the committee of papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other materials regardless of their physical or electronic form;

[2001, c. 702, §2 (new).]

**6. Administer oaths.** To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee determines the administration of an oath necessary and advisable, to determine if there is probable cause that a witness has committed perjury by testifying falsely before the committee and to direct the Attorney General to institute legal proceedings as provided by law;

[2001, c. 702, §2 (new).]

**7. Vote on reports.** To vote at the committee's discretion to endorse, to endorse in part or to release a report of the office without endorsement;

[2001, c. 702, §2 (new).]

**8. Subpoenas.** To issue subpoenas upon a majority vote of the committee in the event of refusal to appear or to produce papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other materials regardless of their physical or electronic form. A subpoena issued

under this subsection must be issued pursuant to the provisions of section 165 and chapter 21;

[2003, c. 451, Pt. KKK, §2 (amd).]

**9. Meetings.** To conduct meetings at such times as the cochairs determine necessary; and

[2001, c. 702, §2 (new).]

**10. Adopt rules.** To adopt rules, as long as the rules are not in conflict with the Joint Rules of the Legislature. By January 1, 2005, the committee must develop a mission statement to be included in the rules.

[2003, c. 463, §3 (amd).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK2 (AMD).

PL 2003, Ch. 463, §3 (AMD).

#### §995. Director

**1. Appointment.** Not earlier than April 1, 2003, the Legislative Council shall appoint by an affirmative vote of 8 members of the Legislative Council a director of the office for the purposes of conducting program evaluations pursuant to this chapter. The director must be appointed to an initial 5-year term, which is subject to renewal by the Legislative Council every 5 years thereafter. During the term of the contract, the director may be terminated only for cause by an affirmative vote of 8 members of the Legislative Council. The Legislative Council shall establish the compensation of the director. The director's duties must be performed independently but under the general policy direction of the committee.

[2001, c. 702, §2 (new).]

**2. Duties.** The director shall supervise the staff of the office in accordance with policies adopted by the committee and consistent with the policies of the Legislative Council. The director shall prepare and present a biennial budget to the committee for its approval. Money appropriated or allocated to the office must be expended in the discretion of the director and the committee only. The director also shall prepare and present an annual work plan to the committee for its consideration and approval. The director also may contract with private individuals or entities for the conduct of program evaluations under this chapter. The director may request the committee to issue subpoenas.

[2001, c. 702, §2 (new).]

**3. Employees.** Employees of the office are employed by and are responsible to the director, who shall hire and fix the compensation of each employee, subject to the approval of the committee and within resources available in the biennial budget. Other than the director appointed pursuant to subsection 1, an employee of the office may not be employed prior to July 1, 2003.

[2001, c. 702, §2 (new).]

**4. Annual report.** The director shall prepare an annual report of the office's activities for each calendar year and shall submit that annual report to the committee and the Legislature no later than January 15th of each calendar year.

[2003, c. 463, §4 (amd).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 463, §4 (AMD).

**§996. Assistance to committee**

The Department of the Attorney General, the State Auditor, the State Controller, the Commissioner of Administrative and Financial Services, the Director of the Office of Fiscal and Program Review and the Director of the Office of Policy and Legal Analysis shall assist the committee and office with program evaluations under this chapter if the committee and the director determine that such assistance is necessary. [2001, c. 702, §2 (new).]

The Commissioner of Administrative and Financial Services shall provide office space to house the office within the Burton M. Cross Building. This office space must be provided at no charge. [2003, c. 451, Pt. KKK, §3 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK3 (AMD).

**§997. Conduct and issuance of program evaluation reports**

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter. [2001, c. 702, §2 (new).]

**1. Review and response.** Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection 3. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

[2001, c. 702, §2 (new).]

**2. Submission of final report to committee.** The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office.

[2001, c. 702, §2 (new).]

**3. Confidentiality.** The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and exempt from disclosure pursuant to Title I, Chapter 13. All other records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title I, Chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title I, Chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.

[2001, c. 702, §2 (new).]

**4. Information available to the office.** Information that is made available to the office is governed by chapter 21, which governs legislative investigating committees, and by Title I, Chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall consult with representatives of the state agency or other entity to discuss methods



of identifying and protecting privileged or confidential information in those records. 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. The office shall limit access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

[2001, c. 702, §2 (new).]

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

[2001, c. 702, §2 (new).]

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

[2001, c. 702, §2 (new).]

[2003, c. 451, Pt. KKK, §4 (amd).]

**5. Confidentiality of working papers.** Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.

[2001, c. 702, §2 (new).]

**6. Confidential sources.** If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title I, Chapter 13, and this written



memorandum protects the identity of the person from disclosure under Title I, Chapter 13, notwithstanding any other provision of law to the contrary.

[2001, c. 702, §2 (new).]

**7. Disposition of final report.** A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

[2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK4 (AMD).

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# **MGT**

*of America*

*Corporate Office*

**2123 Centre Pointe Boulevard  
Tallahassee, Florida 32308  
(850) 386-3191**

**Regional Offices**

**711 Capitol Way  
Suite 608  
Olympia, WA 98501  
(360) 866-7303**

**455 Capitol Mall  
Suite 600  
Sacramento, CA 95814  
(916) 443-3411**

**1411 Gervais Street  
Suite 350  
Columbia, SC 29201  
(803) 255-0122**

**502 E. 11th Street  
Suite 300  
Austin, TX 78701  
(512) 476-4697**

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