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Maine Turnpike Authority – Strong Planning Process Drives Bond and Toll Decisions; Some Contracting Practices and Expenditure Controls Should Be Improved; Additional Clarity Needed Around Surplus Transfer and Operating Expenses, 2011

Maine State Legislature

Office of Program Evaluation and Government Accountability

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FINAL
REPORT

Maine Turnpike Authority – Strong Planning Process Drives Bond and Toll Decisions; Some Contracting Practices and Expenditure Controls Should Be Improved; Additional Clarity Needed Around Surplus Transfer and Operating Expenses

Report No. SR-MTA-10

Issues OPEGA noted during this review:

- Current Definition of Operating Surplus Makes Transfers to MaineDOT Unlikely (pg. 49)
- Nature of MTA's Relationship with Contracted Engineering Firm has Implications for Capital Program and Bondholder Protections (pg. 50)
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a report to the
Government Oversight Committee
from the
Office of Program Evaluation & Government Accountability
of the Maine State Legislature

January
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The Office of Program Evaluation and Government Accountability (OPEGA) was created by statute in 2003 to assist the Legislature in its oversight role by providing independent reviews of the agencies and programs of State Government. The Office began operation in January 2005. Oversight is an essential function because legislators need to know if current laws and appropriations are achieving intended results.

OPEGA is an independent staff unit overseen by the bipartisan joint legislative Government Oversight Committee (GOC). OPEGA's reviews are performed at the direction of the GOC. Independence, sufficient resources and the authorities granted to OPEGA and the GOC by the enacting statute are critical to OPEGA's ability to fully evaluate the efficiency and effectiveness of Maine government.

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Maine Turnpike Authority – Strong Planning Process Drives Bond and Toll Decisions; Some Contracting Practices and Expenditure Controls Should Be Improved; Additional Clarity Needed Around Surplus Transfer and Operating Expenses

Introduction

The Maine Legislature's Office of Program Evaluation and Government Accountability (OPEGA) has completed a review of the Maine Turnpike Authority (MTA). This review was performed at the direction of the Government Oversight Committee for the 124th Legislature. The questions addressed by OPEGA were approved by the Committee prior to the review's initiation. See Appendix A for complete scope and methods.

Questions, Answers and Issues

1. Why hasn't MTA been transferring operating surplus to MaineDOT as required by statute? Does MTA have an operating surplus as defined by 23 MRSA §1964? What other types of financial support has MTA been providing to MaineDOT, if any? To what degree can MTA provide financial support to MaineDOT without increasing toll rates?

see page 11 for more on this point

MTA maintains there has been no operating surplus per the definition in statute. OPEGA agrees there is technically no surplus given the statutory definition of operating surplus. The Legislature and MaineDOT appear to have been satisfied with this explanation, since no surplus funds have been transfered or specifically requested by the Legislature since 1997.

MTA is still paying on bonds it issued for MaineDOT's benefit in 1996. The Authority has also provided significant support for the State's transportation infrastructure and other efforts. Examples include paying all costs associated with State Police Troop G that patrols the Turnpike, conducting and/or funding transportation studies, and paying a portion of costs associated with constructing interchanges.

Any required transfer of funds to MaineDOT would affect the Authority's current financial situation and, therefore, its strategy for achieving stated objectives and maintaining a strong bond rating. MTA would likely make other adjustments to compensate for the transfer after analyzing various options and their impacts. Those options include changing the amount and timing of toll increases. Modifications to future bond amounts and their timing, the schedule for planned capital projects and/or the level of operating expenses could also be considered. MTA is constrained, however, in how much it can adjust any given area.

2. What factors most significantly affect MTA's bond rating? How is the bond rating affected by legislative oversight actions, including OPEGA reviews, or by changes in MTA's operations, governance structure, revenue stream, etc?

see page 16 for more on this point

The three major rating agencies consider similar factors when determining bond ratings for tolling entities, but they do not specify which are most significant. Their assessments appear more subjective than formulaic. OPEGA's observation is that those factors most directly affecting the level and stability of MTA's revenue stream, and its ability to pay bondholder obligations, are most significant. Factors most frequently mentioned in rating agency reports include independent ability to raise tolls, a history of raising tolls when necessary, and maintaining an acceptable debt service coverage ratio.

OPEGA noted legislative and other events since 1991 that could have concerned rating agencies. Nonetheless, MTA's revenue bond ratings have been stable, strong, and gradually improved between 1997 and 2003. These favorable ratings were likely due to the fact that none of the changes resulting from the activity substantially interfered with MTA's ability to repay bondholders and/or there were other positive factors offsetting any changes perceived as negative.

There is risk, however, of certain legislative actions negatively impacting MTA's bond rating. Any actions that could adversely affect MTA's revenue stream, or its ability to repay bondholders, should be approached with caution and a thorough understanding of potential impacts.

3. What specific obligations does MTA have to its bondholders as expressed in the Bond Resolution? Are these typical obligations for an entity that issues revenue bonds?

see page 19 for more on this point

MTA's Bond Resolution includes specific obligations that prevent it from issuing more bonds than can be paid, assure it has sufficient money to repay existing bonds, and require it to maintain the Turnpike in adequate condition. These obligations are generally typical of revenue bonds, but MTA's are more specific in some areas when compared to bond resolutions for other tolling authorities. The additional specificity provides all parties with more clarity and, while it could restrict MTA more in some situations, it does not appear to be unreasonable.

The Bond Resolution is a contract between MTA and bondholders. There is risk that legislative actions could result in a violation of this contract which could result in legal action being brought against the State. Legislators should proceed cautiously when considering action that would impact MTA's ability to meet it obligations under the Resolution.

4. Is the amount of bond debt currently held by MTA reasonable, and has the full amount of that debt been necessary to ensure the Authority could effectively carry out its mission?

see page 23 for more on this point

Overall, MTA's debt level appears reasonable. The Authority currently owes just over $400 million in bonds. This amount does not exceed the statutory bond cap, and rating agency reports have not included any negative comments about MTA's debt level. MTA uses cash to fund a portion of its capital and maintenance projects. Bond funding is limited to longer term capital improvements.

The Board has a strong, established process for deciding when to bond, and for how much, based on the Authority's 20 year financial and capital plan. OPEGA observed that decisions to refinance existing debt are well supported and justified in terms of cost savings or cashflow improvements. Decisions to issue new debt have been tied to capital projects related to MTA's mission.

5. Are MTA's policies, procedures and processes for selecting contractors and administering contracts adequate to ensure that MTA receives best value for contracted services?

see page 26 for more on this point

MTA manages its contracts for construction projects well. Processes and practices for selecting and monitoring construction contractors are sound, consistent and adequate to ensure best value. The same is true for contracts involving the procurement of goods. Services contracts, however, are not handled as well. Processes for selecting service contractors, and administering those contracts, are informal and do not consistently include practices typically relied upon to ensure best value.

6. What entities have a role in governing and overseeing MTA? What role is each entity supposed to play and how effectively does each entity carry out that role? How does MTA's governance structure compare with those of similar authorities in other states?

see page 30 for more on this point

MTA is overseen by a number of public and private entities, all of which appear to have appropriate and adequate authority to fulfill their roles. Effectiveness in filling these roles can vary with the characteristics, perspectives and priorities of the individuals representing these entities. Taken together, these oversight entities form a comprehensive governance structure that is not substantially different from the governance structures of tolling entities in other states OPEGA selected for comparison.

The specific entities overseeing the MTA include: the Legislature, which approves the operating budget and confirms board members appointed by the Governor; the Authority Board, which approves all significant financial matters, capital plans, and general operations; MaineDOT, which has a position on MTA's Board and separately approves all MTA construction contracts; the Consulting Engineer, responsible for inspecting the Turnpike and ensuring the Authority is in compliance with the Bond Resolution; and, the Trustee, responsible for ensuring MTA has adequate funds to repay bondholders and releasing bond funds for appropriate expenditures.

7. What is MTA spending its toll revenue on? How does MTA define reasonable expenditures? Are the Authority's expenditures reasonable?

see page 36 for more on this point

MTA spends its toll revenue on three major categories of expenses: operations, including routine maintenance; payments and required reserves for outstanding bonds; and projects to construct, reconstruct or repair the Turnpike and Authority facilities.

The Authority defines reasonable expenditures as any that are legal, consistent with MTA's mission and goals, within approved budgetary limits, and authorized for payment. Whether outsiders would judge MTA's expenditures reasonable depends on their perception of the Authority's mission, and their expectations for how this quasi-governmental agency should conduct its business.

OPEGA observed that MTA's current expenditures are consistent with the culture of a regulated private entity that is financially sound, values quality, desires to stay current, believes in being a good corporate citizen, recognizes its employees and assertively promotes its own best interests. From this perspective, MTA's expenditures overall could be judged as reasonable. However, certain categories of operating expenditures – by virtue of their nature or magnitude – might be questioned as to their reasonableness, appropriateness or necessity when judged against expectations for fiscal stewardship or adherence to statutory purpose typically applied to State agencies.

8. How does MTA compare to toll authorities in other states on financial and performance measures such as personnel and management costs and cost per mile?

see page 46 for more on this point

OPEGA attempted to compare MTA to a number of its peers in other states based on 26 selected financial and performance measures. MTA provided all data requested, but we encountered significant issues in collecting the necessary data from the other tolling entities. Those issues included difficulty finding truly comparable entities, incomplete survey responses and inconsistent publicly available data. In the end, we had too little useful data to complete a meaningful analysis on our selected measures within the timeframe for this review.

Bond ratings encompass both financial and other performance considerations and offer one general comparison point among tolling authorities. We noted that MTA's bond ratings compare favorably with those of other tolling entities. OPEGA also observed that MTA is pursuing some financial and performance objectives and is collecting performance-related data. We shared with MTA the performance indicators we had identified and discussed the benefits of establishing a more formalized performance measurement effort.

OPEGA identified the following issues during the course of this review. See pages 49 – 60 for further discussion and our recommendations.

- Current Definition of Operating Surplus Makes Transfers to MaineDOT Unlikely
- Nature of MTA's Relationship with Contracted Engineering Firm has Implications for Capital Program and Bondholder Protections
- Management of Services Contracts Often More Informal than Prudent
- MTA is Sole Sourcing Services that Could be Competitively Bid
- MTA's Operating Budget Does Not Include All Operating Expenses
- MTA's Sponsorships and Donations Suggest Expansion of Mission and Present Risk of Inappropriate Expenditures
- Policies Governing Expense Approvals, Required Documentation and Allowable Expenses Not Effectively Implemented, Particularly for Travel and Meal Expenses

In Summary

MTA was established in 1941 as an independent agency to fulfill a governmental purpose operating and maintaining the Turnpike. The Authority, as established in statute, is a Board that currently has a staff of about 470 to assist in carrying out its assigned function. MTA's status as a quasi-State agency, with its own self-generating revenue source and bonds secured by that revenue, make it challenging to find a comparative standard. Some expect MTA to behave like a State agency, others expect it to behave like a for-profit private entity. Judgments of MTA's conduct and performance will be based on those expectations. In conducting this review, OPEGA used what is typically expected of both types of organizations as comparisons.

Some expect the MTA to behave like a State agency. Others expect it to behave more like a for-profit private entity. In actuality, the MTA's culture is closer to the latter.

OPEGA finds MTA's culture is, in many ways, more like a regulated private entity than a State agency. MTA has a stable management team and a strong planning process that looks beyond the organization's immediate needs and drives financing decisions on bonding and tolling. The Authority's long-term focus also leads it to invest in items or projects that it believes will produce benefits over time - even if they have higher current costs. Examples include MTA's consistent pursuit of technologies to improve efficiencies and customer service, and investments in higher quality equipment and assets likely to have a longer useful life. MTA sees itself as a customer service oriented organization that needs to compete for customers and wants those customers to view it positively.

While MTA is current and progressive in many ways, there are other areas where its culture is old-fashioned compared with what is expected of either a regulated private entity or a State agency today. Over time the public has increasingly come to expect fiscal restraint and stewardship, transparency and accountability from its government and private entities alike - especially when tax dollars, personal investments, and fees for essential services are involved. MTA has been slow to effectively implement some changes in policies and practices that would keep it in line with these expectations. This may be because MTA's quasi-governmental status, and the fact that it receives no State or federal funds, has shielded it from needing to comply with certain State and federal rules and regulations, and the risk of scrutiny and penalties that accompany them.

While the MTA is progressive in many ways, it has been slow to implement some practices that would keep it in line with public expectations.

For example, MTA is not required to have an accounting and financial reporting system in compliance with Generally Accepted Accounting Principles and Standards (GAAP). GAAP compliance has been required for publicly traded entities for many years in a federal effort to assure transparency and consistency in their financial statements. MTA is not subject to these regulations, however, and previously maintained its financial system in accordance with the funding and reporting requirements in the Bond Resolution. MTA moved to become GAAP compliant in 2008, however, at the insistence of the Chairman of its Finance and Audit Subcommittee.

MTA also has yet to fully establish strong policies and practices to assure economic purchasing and reduce risk of inappropriate, unnecessary or excessive expenditures.

Some progress has been made in this area over the past decade, but a number of written policies and procedures still need to be developed or updated to provide adequate guidance. Even where written policies are strong, OPEGA identified incidents of non-compliance indicative of ineffective implementation, particularly among the Authority's top management.

A number of MTA's expenditures might be questioned as they are not typical of governmental entities. Though the amount of these expenditures is small compared to MTA's total operating expenses, they may indicate an expansion of MTA's mission or a use of toll revenue that differs from what may be expected based on MTA's statute.

A number of expenditures OPEGA reviewed might be questioned as reasonable, necessary or appropriate if one is expecting the same kind of fiscal stewardship and adherence to mission typically expected of governmental entities. According to MTA, some of these expenditures resulted from State requests for assistance. While MTA also benefitted from some of these expenditures, in other situations the benefit to MTA was less clear.

MTA has also been incurring expenses for purposes that seem more related to supporting general economic development, or other efforts, than to operating and maintaining the Turnpike. While such expenditures are a small portion of MTA's total operating expenditures, they are indicative of a possible expansion of MTA's mission being driven either by the State or MTA's perception of its role, or both. It also represents a use of toll revenue that some may not expect based on the language in MTA's statute and the Bond Resolution.

OPEGA observed a high degree of sensitivity to the terms and conditions of the Bond Resolution, and MTA's bond rating, exists among MTA's management and has apparently been passed down over time. Consequently, Bond Resolution requirements, input from the private oversight entities and advisors assigned under the Resolution, and MTA's desire to maintain a strong bond rating are primary considerations in MTA's planning and decision-making. They also drive how MTA manages its finances on a day to day basis with financial accounts established and funded according to a structure defined in the Bond Resolution.

MTA's focus on upholding its contract with bondholders makes it highly sensitive to any legislative activity that might be perceived as impacting this contract or MTA's bond rating.

MTA's focus on the Bond Resolution has several implications for the Legislature's ability to effectively carry out its oversight and policy-making role. For example, the Legislature has a role in determining "reasonable" operating expenses for MTA through its annual review and approval of MTA's operating budget. While the operating budget MTA provides to the Legislature for approval has substantial detail, it does not include all of MTA's operating expenses. Rather, it only includes those operating expenses MTA is planning to fund with monies in its Revenue Fund account. Operating expenses that MTA plans to pay for with monies from its Reserve Maintenance Fund – a separate fund mandated by the Bond Resolution - are presented separately, for informational purposes only, in the form of budgeted costs for perennial "projects" the Authority is undertaking. This format does not allow the Legislature to see, or approve, total dollars spent on all operating expense categories.

MTA's sensitivity to its contract with bondholders, and its bond rating, also leads it to be highly alert to any legislative activity that might infringe on its independence or impact its finances. MTA's assertiveness in protecting its bondholders' interests can have a dampening effect on legislative inquiry and debate that may not always be warranted. There is risk, however, that legislative actions with the potential to adversely impact MTA's revenue stream, its ability to repay bondholders or comply with Bond Resolution requirements could result in a downgrading of MTA's bonds

or legal action against the State. Consequently, such actions should be approached with caution and a thorough understanding of potential impacts.

MTA's enabling statute requires the Authority to annually transfer its operating surplus to MaineDOT. MTA has not transferred any surplus since it began paying on bonds issued on behalf of MaineDOT in 1996. The Authority maintains that it does not have an operating surplus under the definition in statute and OPEGA found this position to be supportable. However, there are a number of other significant ways MTA has contributed, and continues to contribute, to Maine's transportation infrastructure.

MTA's Mission

MTA's Statute

The Maine Turnpike Authority is authorized and governed by 23 MRSA, Chapter 24, §§1961-1983. Statute establishes the Authority as a board with seven members, six of which are appointed by the Governor subject to confirmation by the Legislature. The seventh member, ex-officio, is the Commissioner of the Department of Transportation or designee. Among the six appointed members, there must be at least one resident from each of the four counties through which the Maine Turnpike passes - York, Cumberland, Androscoggin and Kennebec. The Governor is also charged with naming one of the appointed members as chairperson of the Authority. A member who is named to represent a certain county ceases to be a member if they move their residence to another county.

MTA is governed by 23 MRSA §§1961-1983 which establish the Authority and list its powers and duties. The statute also defines the Authority's purpose as public and states that MTA is performing a governmental function.

Statute requires the Authority to operate and maintain the Turnpike including connecting tunnels, bridges, overpasses, underpasses, interchanges and toll facilities. To carry out this purpose, 23 MRSA §1965 establishes the Authority as "a body both corporate and politic in the State" imbued with certain powers including:

- adopting rules governing use of the Turnpike and other services;
- acquiring real property by purchase, lease, eminent domain or otherwise;
- charging and collecting fees, fares and tolls for use of the Turnpike and other services made available in connection with the Turnpike;
- entering into contracts;
- employing such assistants, agents, experts, inspectors, attorneys and other employees as deemed necessary or desirable; and
- issuing revenue bonds or other instruments of indebtedness secured by pledging all or part of the operating revenues of the Turnpike.

Statue further specifies that the assigned purpose of the Authority is public and that MTA shall be regarded as performing a governmental function. It also sets out particular duties and requirements for MTA. The sections of 23 MRSA Chapter 24 most relevant to this review are summarized in Appendix B.

Historical Changes to MTA's Statutory Mission

The Maine Turnpike Authority was originally created in 1941 via Public and Special Law 1941, Chapter 69. The Authority was authorized to build a turnpike from Kittery to Fort Kent and to issue revenue bonds, payable only by tolls, to fund this construction. The law specified that MTA's debt would not be considered a debt of the State, or a pledge of the State's faith and credit. It established the Authority's powers, appointment of board members, and eminent domain authority. The law also called for the Authority's termination when all bonds and interest had been paid in full, or enough money had been set aside to do so. When that time came, the Turnpike and all of MTA's other assets, were to become property of the State with toll revenue payable to the State Treasurer and the Turnpike maintained by the State highway commission.

Figure 1. Timeline of Select Legislative Activity Significantly Impacting MTA's Mission, Structure or Operations

1940s-1970s

1941	MTA created – once bonds paid off Turnpike to become property of State, toll revenues to go to State Treasurer.
1963	After bonds paid off MTA to be dissolved and road to be toll free.
1978	After bonds paid off MTA to be administered by MaineDOT, toll revenue for use by MaineDOT.

1980s

1981	MTA to be continued regardless of outstanding bonds. MTA to pay greater of 25% of operating revenue, or $4.7 million, to MaineDOT annually. MTA assumes cost of State Police activities on the Turnpike.
1982	MTA to pay MaineDOT $4.7 million of total annual operating revenue after money has been put aside to pay operating expenses and meet bond payments.
1987	Gubernatorial appointments to MTA board become subject to legislative confirmation.
1987	MTA required to report semiannually to Legislature and MaineDOT on activities, receipts and expenditures.
1988	MTA's maximum annual contribution to MaineDOT increased to $8.7 million.

1990s

1991	MTA's maximum annual payment to MaineDOT increased to $17.4 million. MTA to make $6.3 million early payment for Scarborough Interchange.
1991	Sensible Transportation Policy Act passes by referendum – MTA required to pay MaineDOT its annual operating surplus. Before highway capacity can be increased reasonable alternatives must be evaluated. Requires legislative approval of MTA's operating budget and revenues needed to meet requirements of any resolution authorizing MTA bonds. MTA may only make expenditures in accordance with allocations approved by the Legislature.
1992	MTA to make one time payment of $5 million to General Fund in addition to annual MaineDOT payments.
1993	MTA to purchase 4.7 miles of I-95 for $16 million in two installments; $15 million in 1993 and $1 million in 1994. Proceeds used for general purpose education aid.
1995	MTA to issue up to $40 million in bonds for MaineDOT's use. Bonds secured by no more than $4.7 million of the annual Turnpike revenues that would otherwise be deducted from operating surplus and provided to MaineDOT.
1996	Clarification that Legislative approval only required for MTA's operating budget. MTA provides, for informational purposes, statement of revenues needed for capital expenditures, reserves, and to meet bond requirements. Legislative approval not required for those expenditures.
1999	MTA board increased by 2; one to be added in 2000, one to be added in 2002. Of the total members one must reside in York County, one in Cumberland County, one in Androscoggin County and one in Kennebec County.

When the MTA was created in 1941, statute called for its termination once the bonds associated with the initial road construction were paid off. However, in 1981 statute was amended to allow for the MTA to exist as a closed toll facility regardless of whether outstanding bonds exist.

In 1981, 23 MRSA §§311-318 were enacted to continue the MTA beyond the time when its initial bonds were repaid. The Turnpike was to be a closed toll facility whether there are bonds to pay off or not, and toll revenues were to be used to retire debt, operate, maintain, and reconstruct the Turnpike. For the first time in statute, MTA was required to support the State by paying MaineDOT the greater of 25% of total operating revenue or $4.7 million. To the extent possible, MTA's net revenues were also to be used to pay for costs, or portions thereof, associated with maintaining, operating, constructing or reconstructing interconnecting access roads and interchanges. Although this new statute still included a provision to reorganize MTA when all bonds had been paid, in 1982 the language was amended again and replaced with a declaration that MTA would not be dissolved unless the Legislature called for such action.

Throughout the 1980's and 1990's there was also legislative activity that adjusted bond caps, increased the amount of cash MTA had to transfer to MaineDOT or contribute to other State purposes, and altered MTA's governance or oversight structure. Selected events with significant impact to MTA's mission, structure or operations are summarized in Figure 1.

MTA's Mission, Goals and Objectives

MTA's Board has adopted a mission for the organization:

"The Maine Turnpike Authority and its employees will continue to be national leaders in the user fee highway travel and significant contributors to Maine's transportation system. The Authority's primary function is to operate and maintain a toll express highway through its short term and long term capital improvement plans."

The Authority also has a number of goals and objectives including financial planning goals which reflect not only the Authority's responsibilities to Turnpike users and the citizens of Maine, but also to those who invest in MTA bonds.

Goals and Objectives of the Maine Turnpike Authority

- To manage a top quality highway serving Maine, providing the link between the Maine Department of Transportation and the rest of the United States and Eastern Canada.
- To seek innovative ways to improve service, building on our customer responsive tradition.
- To affect traffic movement that will encourage commerce, and emphasize safety.
- To provide excellent maintenance on a daily and long-term basis.
- To provide quality service at a reasonable cost to Turnpike patrons.
- To involve the talents and experience of our employees.
- To use tolls, fees and the Maine Turnpike Authority's unique revenue bonding capability to build partnerships that will benefit Maine transportation.
- To serve as facilitator for additional corridor needs.
- To assist in implementing corridor improvements that clearly demonstrate benefits relevant to the Maine Turnpike.
- To cooperate with local, regional, state and federal policies and initiatives.
- To be sensitive to Maine's special environmental heritage.

MTA's Financial and Capital Planning Process

MTA uses a 20 year plan to guide many of its long term decisions about capital improvements, tolls and bonding. The plan is updated regularly. It incorporates MTA's most current financial figures, recommendations from the Consulting Engineer, and forecasts from the Traffic Consultant.

MTA's staff and Board work together on an annual financial and capital plan in the context of the organization's long term plan. MTA pulls revenue projections, projected operating budgets, debt service obligations and capital improvement needs together in a model known as the 20-year Plan. The model shows whether cash available from revenue and previous bond issuances will suffice to cover MTA's anticipated operating expenses, debt service, and maintenance and construction costs. It also projects when toll increases and new bond issuances will be necessary to meet those needs.

<u>Debt Service Coverage Ratio</u> is a measure of how readily an entity can meet its debt service obligations. It is calculated as:

Net operating income (operating revenues less operating expenses) divided by total debt service.

The Board uses the model to make decisions about the Authority's ability to cover the costs of new and existing debt. The model calculates MTA's debt service coverage (DSC) ratio for each year in the Plan, which informs the Board's decisions about changes in toll rates. One of the Authority's goals, and an important factor for bond rating agencies, is maintaining a DSC ratio of at least 2.0. The model shows when the DSC ratio will drop below 2.0 without a toll increase.

The Long Range Planning Subcommittee of the Board updates the capital portion of the 20-year Plan based on information in the annual inspection report prepared by the Consulting Engineer (CE). The inspection report details current infrastructure conditions, and needed maintenance and capital improvement projects. Subcommittee members work with the management team and consultants in developing the capital program. It determines the schedule for projects and may choose whether to fund a project in one year or over two years. There is less flexibility with some projects, such as bridges in very poor condition that must be reconstructed quickly.

Financial Planning Goals of the Maine Turnpike Authority

- To maintain the 2 times or better annual debt service coverage financial ratio. (Operating Revenues less Operating Expenses divided by Debt Service)
- To fund Reserve Maintenance Projects and all required deposits from operating cash flows.
- To issue future debt using level debt service structures.
- To minimize future toll increases.
- To minimize future debt issuances.
- To maintain or increase the MTA's Financial Rating.
- To provide adequate funding to make all necessary system upgrades. (Roadway, Interchange, Bridgework, Toll System, etc.)
- To maintain manageability of capital improvement program by limiting the overlap of major projects.
- To maintain manageability of capital improvement costs by equalizing, to the extent possible, annual capital project costs.
- To maintain a minimum unencumbered residual value of at least 5 percent of annual toll revenue or five million dollars, which ever is greater, at each year end in working capital. (Exclusive of Reserve Maintenance Fund, and Bond Proceeds)

The Board's Finance and Audit Committee works with the Plan after the list of capital projects and their costs is completed by the Long Range Planning Committee. Finance and Audit develops MTA's annual operating and capital budgets and determines what level of bonding may be necessary.

In addition to departmental budget submissions and the recommended capital program, MTA's management team and the two

subcommittees consider toll revenue projections and MTA's financial planning goals as part of this process. Traffic and revenue projections incorporated into the model are based on projections developed by the traffic and revenue forecasting consultant and by MTA staff.

Once both Board committees have agreed upon a final project list and budget, the CE calculates the Reserve Maintenance (RM) Fund[1] deposit amount required by the Bond Resolution. The CE's final report includes the annual inspection results, approved list of projects to be funded with bond proceeds and reserve maintenance funds, and the RM deposit.

The Legislature's Transportation Committee receives a bill including MTA's proposed operating budget each spring. Upon passage of that bill, the MTA's annual operating budget for the following calendar year is established.

MTA's budget runs on a calendar year. MTA's Board approves a preliminary budget in October which is used to develop the legislative budget packet. This schedule provides time for MTA staff to review the proposed budget with the Legislature's Transportation Committee, and for the Board to consider issues raised during this review, before the Board approves the final budget. After MTA Board approval, the final budget goes back to the Transportation Committee and the Legislature in the form of a bill. The Legislature's passage of the bill in the spring establishes MTA's annual operating budget for the following calendar year beginning January 1.

MTA's 20-year Plan is a living document updated regularly to reflect changes in projected revenues and costs. For example, the Plan was recently updated to reflect revised traffic projections indicating additional capacity on the Turnpike will not be needed for some time. The widening of the Turnpike through and north of Portland that had been anticipated in the next 3-5 years was shifted in the Plan to a time much further out. However, bridge reconstruction projects along that stretch of the Turnpike, which must be completed in the near term, will be designed to accommodate a wider road.

Transfer of Operating Surplus

Historical Support Provided by MTA to the State

The MTA has provided support in various forms to the State since 1981. Total cash support of State programs has been approximately $75 million during that time. Some of this amount came from the annual payments of between $4.7 and $8.7 million MTA was required to make to MaineDOT for a period of years.

Since 1981, MTA has provided support of various kinds to the State, including cash transfers, spending to maintain interchanges, and other non-cash assistance MaineDOT. Cash transfers for State programs have totaled approximately $75 million since 1994. Most of that money went to support MaineDOT's transportation needs, but $16 million, paid by the MTA to purchase approximately 4.7 miles of Interstate 95 between Kittery and York, went to general purpose aid for education.

About $34 million of the $75 million was given to MaineDOT in a lump sum in 1996. MTA issued a special obligation bond specifically and solely to provide funds to the State. MTA was originally obligated to pay approximately $4.7 million per year to cover the interest and principal on those bonds over their ten year life.

[1]The Reserve Maintenance Fund is one of the specific accounts established by the Bond Resolution. The purpose and allowed uses of this account are described on page 20 in the section of this report that discusses MTA's Obligations to Bondholders.

MTA also provides non-cash assistance to MaineDOT. This includes reduced cost services such as striping, plowing or mowing. MTA estimates that support of this type in 2008 represented $78,960 in avoided costs for MaineDOT.

MTA refinanced these bonds in 1998, then again in 2008[2]. As a result, the Authority is still making payments on the special obligation bonds, though with a significantly lower annual cash outlay due to the refinancing. Current interest and principal payments on these bonds is approximately $2.4 million annually. These bonds cannot be refinanced again and are scheduled to be paid off in 2018. MTA's total cost for the bonds issued on behalf of MaineDOT, including interest paid, will be over $47 million.

MTA has also paid over $60 million additional dollars since 1994 to the State in the form of payment for the services rendered by the Maine State Police (MSP). MSP has a separate troop responsible for patrolling the Maine Turnpike. MTA pays all costs associated with that troop. Table 1 summarizes transfers of actual cash to the State from 1994 to 2009.

Table 1. Cash Transfers from MTA to State 1994 – 2009

Year	MTA Cash Transfers to the State	MTA Bond Proceeds to MaineDOT	MTA Payments to MSP	Total Cash to the State
1994	$23,354,488*		$2,399,592	**$25,754,080**
1995	$7,700,000*		$2,348,361	**$10,048,361**
1996	$4,700,000	$34,000,000**	$3,442,111	**$42,142,111**
1997	$4,700,000		$1,386,325	**$6,086,325**
1998			$2,878,080	**$2,878,080**
1999			$3,253,886	**$3,253,886**
2000			$3,625,449	**$3,625,449**
2001			$3,324,068	**$3,324,068**
2002			$3,946,214	**$3,946,214**
2003			$4,798,213	**$4,798,213**
2004			$4,647,854	**$4,647,854**
2005			$4,769,211	**$4,769,211**
2006			$5,415,847	**$5,415,847**
2007			$4,933,797	**$4,933,797**
2008			$5,706,942	**$5,706,942**
2009			$6,142,065	**$6,142,065**
Total	**$40,454,488**	**$34,000,000**	**$63,018,015**	**$137,472,503**

*$15 million of the cash transferred in 1994 and $1 million of the amount from 1995 were transferred to the State by MTA in exchange for 4.7 miles of the interstate from Kittery to York.
**$34 million was actually transferred to MaineDOT and the MTA incurred an additional $1.27 million in bond issuance costs.
Source: Data provided by MTA and confirmed to records maintained by the Legislature's Office of Program and Fiscal Review.

In addition to cash transferred directly to the State, MTA has provided certain non-cash assistance to MaineDOT. Such assistance has included performing maintenance on particular interchanges and stretches of road - striping, plowing, and mowing - at or below cost. In 2008, MTA provided these services to MaineDOT for $78,960 less than the cost incurred in providing them.

[2] According to MTA, the Legislature's Transportation Committee agreed that refinancing the bonds, and extending the term, was preferable to a substantial toll increase.

Other Contributions to Maine's Transportation Infrastructure

MTA assists with Maine's overall transportation infrastructure by working cooperatively with MaineDOT to share costs on projects that are directly linked to the Turnpike.

MTA contributes to improving Maine's transportation infrastructure more generally by participating in cooperative projects with MaineDOT. MTA and MaineDOT share costs on these projects which are linked directly – physically, functionally or both – to Maine Turnpike infrastructure. When doing a cooperative project, MaineDOT and MTA establish a Cooperative Agreement and assign responsibility for administering that agreement. When MTA administers the agreement, it pays all costs on the project and MaineDOT reimburses MTA for the percentage of project costs that has been agreed on. When MaineDOT administers the Agreement, it pays the upfront costs and MTA reimburses.

Table 2 lists examples of the cooperative projects MTA and MaineDOT have undertaken through the spring of 2008 with MTA's share of the costs.

Table 2. Examples of MaineDOT and MTA Cooperative Projects with MTA Share of Cost

1. Gray By-Pass/Route 202 bridge - joint agreement with MaineDOT	$2.3 million
2. GPCOG/Shuttlebus - Rideshare program and Zoom bus	$2.8 million
3. Park & Ride Studies - joint with MaineDOT (more in 2009 planned)	$53,000
4. Interchanges/Intersections/Connector studies with local roads - all joint efforts with MaineDOT/Communities	$32.6 million
5. Wells Train Station - joint project with FTA/MaineDOT/Wells	$2.4 million
6. West Gardiner Service Plaza/Truck Parking - joint project with MaineDOT	$11.2 million
7. Payne Road Bridge - MTA agreed to repurchase the bridge after it was rebuilt by MaineDOT	$6 million
8. Other Transportation planning/Origin & Destination studies not related to toll plazas/MaineDOT funding issues/ARTC	$500,000
9. Interstate renumbering/re-designation effort	$50,000
10. Streamlining and Mallar Studies (2000 and beyond)	$15,000

Source: Data provided by MTA. OPEGA was unable to obtain confirmation from MaineDOT.

MTA reports it is currently considering providing support to the replacement or rehabilitation of the Interstate-95 and Sara Mildred Long Bridges in Kittery, Maine. This support could be approximately $3 million annually for the next 30 years.

Statutory Requirement for Transfer of Operating Surplus

Statute used to require MTA to transfer a set amount of money to MaineDOT each year, but since 1991 has required MTA to transfer their operating surplus instead.

Maine Statute Title 23 §1961.2 states in part that the Department of Transportation must be provided each year the operating surplus of the Maine Turnpike Authority. Title 23 §1964.6-A goes on to define operating surplus:

> "Operating surplus" means the total annual operating revenues of the Maine Turnpike Authority, after money has been put aside to pay the reasonable operating expenses, to pay or to reserve for capital expenditures and to meet the requirements of any resolution authorizing bonds of the Maine Turnpike Authority, including any amounts pledged to secure obligations issued pursuant to section 1968, subsection 2-A or to pay principal, interest or premium, if any, with respect to these obligations.

This language resulted from the passage of a voter referendum in November 1991. Prior to that time, from 1982 – 1991, statute specified a particular dollar amount that MTA would transfer to MaineDOT. As shown in Figure 1 on page **8,** statute was amended to adjust the maximum amount of this transfer several times through the 1980's and early 1990's with the amount ranging from $4.7 million to $17.4 million.

For several years after the requirement for a specified dollar amount was replaced with the requirement to transfer "operating surplus", MTA continued to make annual cash transfers to MaineDOT in amounts ranging from $4.7 million to $8.7 million. These transfers continued until MTA began paying on the special obligation bonds issued on behalf of MaineDOT.

Determining Whether MTA Currently Has an Operating Surplus

MTA has not transferred any operating surplus to MaineDOT since its last payment of $4.7 million in 1997. MTA management maintains the Authority has no surplus according to the definition in statute. A cursory look at some key financial data would seem to confirm this. Operating the Turnpike and maintaining it in the manner required by the Bond Resolution costs MTA more money annually than it receives in revenue. As a result, the Authority issues bonds to pay for some long term capital improvements. MTA currently has over $400 million in outstanding bond obligations.

MTA has not been transferring any operating surplus to MaineDOT and maintains there has not been any "surplus". OPEGA found MTA's position supportable given the statutory definition, and further noted the definition is not specific enough to calculate a definitive surplus figure. Consequently, OPEGA believes it unlikely that any transfers of surplus will occur in the future.

Additionally, as described on page 20, MTA manages its finances using a "bucket" system as required by the Bond Resolution. It is designed to prioritize the uses of MTA's revenues and is a typical requirement in revenue bond resolutions for tolling authorities. Over the course of a year, this bucket system continually moves funds to lower priority buckets as higher priority ones fill. Any monies in the lower priority buckets can be, and often are, used to pay for capital improvements and emergency repairs to the Turnpike. All funds are assigned to a purpose at all times. As a result, there has never been any money that MTA would consider "surplus".

OPEGA attempted to definitively calculate whether MTA has had an operating surplus as defined in statute. In doing so, we found the statute lacks specificity as to the point in time when the surplus is to be calculated, whether it should be based on budgeted figures or actual revenues and expenditures, and whether it is meant to capture only current year expenditures or also projected future expenditures.

For example, the phrase "after money has been put aside to pay the reasonable operating expenses" could be taken to mean after MTA has paid its current operating expenses. It could also be taken to mean after MTA has put aside (or saved) any amount of money it reasonably believes it could need to cover operating expenses now or in the future. Similarly, the phrase "to pay or to reserve for capital expenditures" could be taken to mean MTA should only set aside funds needed for current capital expenditures. But, it could be taken to mean that MTA may first set aside any amounts needed for current and projected future capital expenditures before transferring any surplus to MaineDOT.

Consequently, OPEGA finds there is no operating surplus under the definition currently in statute, and further asserts it is unlikely there will ever be a surplus.

This is both due to the lack of specificity mentioned in the statutory language, and because MTA makes the decisions about what projects are to be done in any given year. Thus, the Authority can legitimately continue to "reserve" all monies for capital and reserve maintenance expenditures for as long as the annual resources needed to properly maintain and improve the Turnpike exceed annual revenues.

Potential Impacts of Requiring MTA to Transfer Funds to the State

If the Legislature wants MTA to transfer some amount of money to MaineDOT each year, then a change to statute would be required. Whether this is desirable is a policy matter for the Legislature's consideration. (See Recommendation 1.)

If required to transfer funds to MaineDOT, the MTA would likely make other financial adjustments. Options that may be considered under MTA's current planning model include: changing amount or timing of toll rates or bond issuances; adjusting schedule for capital projects; and reducing operating costs.

Any required transfer of funds to MaineDOT would affect the Authority's current financial situation and, therefore, its strategy for achieving stated objectives and maintaining a strong bond rating. MTA would likely make other adjustments to compensate for the transfer after analyzing various options and their impacts. Those options include changing the amount and timing of toll increases. Modifications to future bond amounts and their timing, the schedule for planned capital projects and/or the level of operating expenses would probably also be considered under MTA's current planning model. MTA is constrained, however, in how much it can adjust any given area, as depicted in Table 3.

Table 3. Adjustments MTA Could Make to Maintain Desired Financial Position if Required to Transfer Money to MaineDOT

Potential Adjustments		Limiters	Decision Makers
↑	Toll Rates	Public Acceptance	MTA Board
↑	Frequency or Amount of Bonds	Statute & Bond Resolution	MTA Board
↓	Operating Costs	Bond Resolution	MTA Board & Legislature
↓	Capital Improvements	Bond Resolution	MTA Board & CE
↓	Maintenance Costs	Bond Resolution	MTA Board & CE

Further analysis would need to be done by MTA, or the Legislature's non-partisan staff, to determine the potential impacts of any specific action(s) the Legislature considers. The amount of any required cash transfer from MTA to MaineDOT would be constrained by the Bond Resolution which appears to allow for a maximum transfer of $8.7 million from MTA's MaineDOT Provision Account. Additional funds might be transferable from the Improvement Account, but would be limited by allowable uses for that account and a Net Revenues test[3].

[3]As stated in the Bond Resolution, payments from the Improvement Account for "any other lawful purpose" may only be made if certain criteria are met. Those criteria include the condition that net revenues during the preceeding fiscal year were at least equal to 200% of the debt service on outstanding bonds for that fiscal year.

Factors Affecting MTA's Bond Rating

The Most Significant Factors Driving MTA's Bond Rating

MTA's bond rating is a measure of the risk associated with its bonds. The rating affects whether the bonds will be marketable and the interest rate the Authority must pay on the bonds it issues.

The interest rates on MTA's bonds and the attractiveness of those bonds are based on the Authority's bond rating, and how MTA's rating compares with other tolling entities. MTA guards its bond rating very carefully because this rating determines whether the Authority is able to borrow money and what interest rate it will have to pay. Given the substantial bonds the Authority issues to support its capital improvements, it is easy to see how a small difference in a bond's interest rate could have a big impact on the organization's finances.

The three major bond agencies that rate MTA's bonds, and most other bonds nationally, are FitchRatings, Moody's Investors Service, and Standard & Poor's. They assess an organization's finances, management structure, economic environment, political environment, revenue forecasts, and asset characteristics to determine whether an entity's bonds appear to be a stable investment. Ratings indicate how sure investors can be that an organization will be able to repay bonds over the long term. Table 4 shows the bond rating scales used by the three major rating agencies.

Table 4. Bond Rating Scale for Three Major Rating Agencies

	Moody's	S&P	Fitch
Strongest/extremely strong/high	Aaa	AAA	AAA
Very strong/very high	Aa (1,2,3)	AA (+,-)	AA (+,-)
Above average/strong/high	A (1,2,3)	A (+,-)	A (+,-)
Average/adequate/good	Baa (1,2,3)	BBB (+,-)	BBB (+,-)
Below average/major ongoing uncertainties/speculative	Ba (1,2,3)	BB (+,-)	BB (+,-)
Weak/highly speculative	B (1,2,3)	B (+,-)	B (+,-)
Very weak/vulnerable	Caa (1,2,3)	CCC (+,-)	CCC (+,-)
Extremely weak/highly vulnerable/probably default	Ca	CC	
Bankruptcy filed but payments made/imminent default		C	C
Weakest/default	C	D	D

Source: MTA

There are three major bond rating agencies. All of them use similar factors and their own subjective analysis to determine the ratings of entities issuing bonds. MTA has historically received strong ratings from all three.

Although the big three rating agencies use a number of similar factors when determining bond ratings for tolling entities, they do not specify which are the most significant. A review of their published analyses shows their consideration of factors appears more subjective than formulaic. Furthermore, it appears rating agencies consider a tolling authority's strong positives as possible offsets of some negatives. An entity with a stable and mature asset (i.e. older, established toll road), strong financial performance, and a history of capable management presents less risk to potential investors and therefore will be rated higher.

MTA has a history of strong ratings, and has most recently been rated A+, Aa3 and AA by S&P, Moody's and Fitch respectively. OPEGA reviewed a June 2009 special report by FitchRatings entitled "U.S. Toll Roads and the 2007-2008 Recession: A Diagnosis of Performance" that illustrated the interconnected factors

considered by a rating agency when assessing bond ratings. It also showed MTA's ratings comparing favorably with those of other tolling entities, some of which FitchRatings had downgraded due to conditions described in its report.

The factors that seem most critical to bond ratings for tolling entities are independent tolling Authority, a willingness to raise tolls when needed, and a good debt service coverage ratio.

Based on a review of rating documents published by the three major rating agencies, the most important factors appear to be those that directly affect MTA's revenue stream and, therefore, its ability to pay bondholder obligations. In particular, the following three factors seemed obviously important in the rating agency reviews:

- independent tolling authority;
- history showing a willingness to raise tolls when necessary; and
- maintenance of an acceptable debt service coverage.

It can be assumed, therefore, that any actions or events (including legislative actions) that would adversely impact any of these three things could potentially result in a change to MTA's bond rating.

The Effect of Legislative Actions on MTA's Bond Rating

Our review of legislative history for MTA identified several instances of legislative, and other activity, that could potentially have been concerning to rating agencies and, thus, negatively impacted MTA's bond rating. Examples of such activity include:

- In the late 1980's, the Legislature passed bills that required legislative confirmation of the Governor's appointments to the MTA Board and increased the maximum amount to be transferred to MaineDOT, after operating expenses, from $4.7 million to $8.7 million.
- In early 1991, the Legislature passed a supplemental budget bill that increased MTA's transfer to MaineDOT for fiscal year 1991 to a maximum of $17.4 million and required MTA to make an early payment of $6.3 million for the Scarborough interchange project.
- In November 1991, the Sensible Transportation Act, adopted by voter referendum, changed MTA's statute to require legislative approval of both MTA's operating budget and the revenues needed to meet Bond Resolution requirements. It also replaced the cash transfer of a specific amount to MaineDOT with the requirement to transfer "operating surplus" as discussed on page 13. Statute was changed in 1995 to clarify that only MTA's budget for operating expenses needed legislative approval.
- In early 1992, a supplemental budget bill for fiscal years 1992 and 1993 required MTA to transfer $5 million to the State's General Fund.
- In 1995, the Legislature passed an act requiring MTA to evaluate reasonable alternatives to widening as per the Sensible Transportation Policy Act and report back to the Legislature by a specified deadline.

OPEGA compared MTA's legislative history to its past bond ratings and was unable to find a direct correlation between the two.

OPEGA has been unable to detect, however, any direct correlation between specific past legislative actions and MTA's bond rating. As shown in Table 5, MTA's revenue bond ratings have been stable and strong, even gradually improving between 1997 and 2003, despite the noted examples and legislative debate on a number of controversial bills involving MTA.

Table 5. Bond Ratings for MTA's Revenue Bonds

		Bond Ratings (1)			
Year of Issue	$ Bonds Issued	Moody's	Fitch	S&P	DSC Ratio (2)
1991	$15,250,000	A	A	A	NA
1994	$73,130,000	A	A	A	9.120
1997	$50,000,000	A2	A+	A	2.66
1998**	$47,970,000	A1	A+	A	2.27
2000	$126,000,000	A1	AA-	A+	2.79
2003	$51,000,000	Aa3	AA-	A+	1.9
2004	$115,050,000	Aa3	AA-	A+	1.79
2005	$76,715,000	Aa3	AA-	A+	2.62
2007	$50,000,000	Aa3	AA-	A+	2.16
2008**	$45,885,000	Aa3	AA-	A+	2.04
2009	$50,000,000	Aa3	AA-	A+	NA

**These issuances were for the refinancing of existing bonds.
(1) Represents "underlying ratings" given
(2) Represents MTA's debt service coverage ratio in the year the bonds were issued
Source: Maine Turnpike Authority

MTA's management and Board members assert bond ratings have stayed strong despite legislative activity because:

- MTA has been able to fend off any legislative involvement that would decrease their autonomy;
- the rating agencies have seen some of these changes, such as the move to the "operating surplus" language and the 1995 reasonable alternatives requirement, as positives rather than negatives;
- the level of legislative activity has been low in the eyes of rating agencies and has given those agencies a level of comfort about the limits of political interference in MTA's finances;
- MTA has typically insured its bonds, making investments in MTA bonds essentially risk free, which rating agencies have seen as a significant strength[4]; and
- MTA stopped making cash transfers to MaineDOT in 1997.

MTA asserts its rating has stayed high despite legislative actions in part because it has prevented actions that would decrease autonomy and has also typically insured its bonds. OPEGA believes it is likely because none of the activity interfered with ability to repay bondholders and there were positive factors that offset any negative changes.

OPEGA reviewed the rating agencies' reports and found no specific explanation for why the noted legislative actions did not negatively impact the Authority's bond ratings. We believe it could have been for two primary reasons. First, it could have been due to the fact that none of these changes substantially interfered with MTA's ability to repay bondholders. This continues to be of critical importance in bond ratings.

A second reason could be that positive factors offset or overshadowed any negative changes. OPEGA also noted legislative activity that could have had a positive impact on MTA's bond rating – like increasing the authorized bonding limits and

[4]OPEGA notes that the situation with bond insurance has significantly changed in the past couple of years as bond ratings on the surety bonds MTA purchased as insurance have declined below the ratings on MTA's own bonds. Consequently, MTA currently does not have the level of bond insurance it has maintained in the past.

authorizing the widening of the Turnpike. In addition, MTA has typically maintained a debt service coverage ratio at or above 2x. It also has a mature toll road with little competition and a stable management team. These are factors rating agencies have noted as contributing to positive ratings.

It can not be assumed, however, that these positives will always be able to offset any negative impacts from legislative activity. Consequently, any actions that could potentially affect MTA's revenue stream or its ability to repay bondholders should still be approached with caution. Such actions include any potential legislation that would:

Any legislative actions that could affect MTA's ability to repay bondholders could impact its bond rating and should be carefully considered.

- impact MTA's independent ability to raise tolls (e.g. requiring legislative or executive approval of toll increases);
- impact MTA's ability to implement the Consulting Engineer's recommended capital plan and adhere to recommended maintenance and improvement schedule as required by the Bond Resolution (e.g. requiring legislative approval of the capital budget and specific projects or lowering the bond cap below what is necessary to cover capital needs);
- weaken MTA's financial position and/or impact MTA's ability to maintain an acceptable debt service coverage ratio (e.g. diverting MTA revenue to the State); or
- impact MTA's ability to maintain roadways to recommended standards without increasing revenues and/or impact MTA's ability to adequately fund reserve maintenance and capital improvement funds (e.g. requiring MTA to maintain additional roadways thereby increasing operating expenses and capital costs).

In addition to impacting MTA's bond ratings, there could be legal ramifications associated with any legislation that substantially hinders MTA's ability to repay its bondholders or violates other key provisions contained in the Bond Resolution. These contractual obligations are discussed below.

MTA's Obligations to Bondholders

MTA's Specific Obligations to Bondholders

OPEGA contracted with a law firm that has expertise in bond resolutions and other bond related legal issues to consult on questions related to MTA's Bond Resolution. That consultant, Edwards Angell Palmer & Dodge, reviewed the Authority's current Bond Resolution and noted that it includes a number of obligations that affect how MTA must manage its finances, assets, operations or planning. These obligations represent contractual duties that can be legally enforced against MTA through the Trustee.

The Bond Resolution represents a contract between MTA and its bondholders. The obligations included in the document can be legally enforced against the MTA by the Bond Trustee.

The full report provided by Edwards Angell Palmer & Dodge (EAPD), detailing all the obligations, may be seen in Appendix C. Articles V, VII and VIII, concerning the Authority's financial accounts and covenants, are most relevant to this review and are summarized below.

Articles V – Funds and Accounts

Article V of the MTA's Bond Resolution directs that MTA funds be placed into specific accounts, with specific requirements for the level of funds in each account, and limits the purpose for which the money from each account may be used. These accounts include the Capital Fund which holds bond proceeds and as a result can be used only for "Turnpike projects" or for other purposes provided the Bond Trustee agrees.[5] The level of funding required in the Capital Fund is determined based on capital improvement needs identified by the MTA, the Consulting Engineer, the MTA Board's Long-Range Planning Committee, and approved by the Board.

The other accounts specified in the Bond Resolution receive funds from MTA's operating and other revenue. They are arranged as a series of "buckets" such that only when the higher priority bucket's requirements have been met may the next lower bucket receive funding. This system is designed to protect the bondholders by prioritizing MTA's revenue. These accounts include:

MTA's Bond Resolution requires the Authority to deposit its revenues into a number of specific fund accounts, some of which are to be held by the Trustee. Each account has its own allowable uses and many have minimum funding amounts.

Revenue Fund - All revenues received by the Authority are deposited in the Revenue Fund. The moneys in the Revenue Fund are primarily used to pay operating expenses. Funding that exceeds operating expenses flow to the downstream buckets, and all funds in excess of 15% of the Annual Operating Budget must be flowed to other funds by the fifteenth of each month.

Debt Service Fund/ Debt Service Reserve Fund - Moneys in the Debt Service Fund are used to pay debt service on the revenue bonds. The funding level is determined by the amount of annual principal and interest payments due on outstanding bonds. The Debt Service Reserve Fund holds required backup funds available to pay the interest and principal on bonds in the event the Debt Service Fund has insufficient cash to make those payments. This reserve fund includes a combination of cash and surety bonds, and between those two, the fund's value must be equal to the Debt Service Reserve Requirement[6].

Reserve Maintenance Fund - Section 806 of the Bond Resolution stipulates that the recommended funding level for the Reserve Maintenance Fund is specified by the Consulting Engineer's annual inspection report from the prior year. Moneys in this account may be used:

- for costs associated with Reserve Maintenance Fund projects;
- for costs of Turnpike projects, provided that such payment is necessary to prevent a loss of revenues;
- to pay premiums for insurance required by the Bond Resolution;

[5] Capital Fund moneys have been used for other purposes, with the Trustee's agreement, twice in recent years, once in 2007 and once in 2009. In both cases the funds were transferred to the Debt Service Reserve Fund to cover shortages that had suddenly occurred in that fund due to circumstances beyond MTA's control.

[6] The Debt Service Reserve Requirement is equal to either the maximum annual debt service (MADS) or, if MTA has maintained two times the amount of debt service coverage for the prior two fiscal years, then only half the MADS.

- to replenish the Debt Service Reserve Fund if there are insufficient moneys in the General Reserve Fund to replenish it and certain other conditions are met; and
- to pay for an emergency, subject to certain conditions.

General Reserve Fund - Section 509 of the Bond Resolution describes the many allowed uses of the General Reserve Fund. MTA explained that the General Reserve Fund is comprised of three major accounts, the MaineDOT account, the Interchange account, and the Improvement account. The MaineDOT account is used for debt service on the subordinated bonds that were issued for MaineDOT, and residually to fund any transfers to the MaineDOT. The Interchange account is used to pay for interchange related capital costs. The Improvement account is used pay general capital or maintenance expenses and to meet any funding deficiencies in the higher buckets. Under the Resolution, moneys in this account can also be used "to pay for any other lawful corporate purpose of the Authority as authorized in the Enabling Act," as long as certain criteria are met.

Article VIII of the Bond Resolution requires MTA to take specific steps to manage its finances, assets and operations. These steps include keeping the Turnpike in good repair, charging adequate tolls, and employing a consulting engineer to report annually on the Turnpike's condition.

Articles VII-VIII – Authority Covenants

Article VII includes the Authority covenants to pay debt service on the bonds, to take all action that may be necessary to confirm the pledge made under the Bond Resolution, and to do all that may be necessary to ensure the tax-exempt status of any tax-exempt bonds. Section 704 specifically prevents the Authority from issuing any indebtedness secured by the Turnpike revenues other than the bonds and the subordinated bonds.

Article VIII contains the provisions that most directly affect how the Authority must manage its finances, assets and operations. Section 801 requires the Authority to operate the Turnpike in a sound manner and keep it in good repair and working condition. It stipulates the conditions under which the Authority may acquire a road that is more than five miles long. This Section further provides that the Authority may not transfer more than $8.7 million to the Department of Transportation from the Department of Transportation Provision Account in any fiscal year.

Section 802 of Article VIII requires the tolls established by the Authority must be sufficient (1) to provide funds for the payment of operating expenses and (2) to provide net revenues that are at least equal to the net revenue requirement[7] in any fiscal year. Section 803 provides a timeline for the Authority's submittal of a preliminary and final budget. It further specifies the amount expended on operation and maintenance of the Turnpike may not exceed the amount provided for operating expenses in the annual budget, except in the case of an emergency or if paid from the Reserve Maintenance Fund or General Reserve Fund.

[7] Net Revenue Requirement is, for any stated fiscal year, the greater of:

(a) 120% of the debt service; and
(b) 100% of the sum of (i) the debt service, (ii) the required Reserve Maintenance deposit, (iii) the required debt service reserve deposit and (iv) any other required deposit set forth in any Supplemental Resolution.

Section 804 provides a deadline for the Authority to file its audited financial statements and also stipulates the information it must file annually with the Trustee and Consulting Engineer.

Sections 805 and 806 require MTA to employ independent firms to carry out the duties of the Consulting Engineer and the Traffic Consultant. The Authority must have the Consulting Engineering submit a report by October 1 of each year to include the firm's findings with respect to the condition of the Turnpike; recommendations for proper operation and maintenance of the Turnpike for the following fiscal year, including estimated costs; recommendations for the insurance to be carried by the Authority; and recommendations for the amount to be deposited in the Reserve Maintenance Fund.

Other sections in Article VIII deal with additional financial matters like the types of insurance that the Authority is required to carry and stipulations related to construction contracts.

MTA's Bond Resolution Compared to Those of Other Tolling Authorities

According to EAPD, the terms of MTA's Bond Resolution are generally comparable to those of other toll revenue bond issuers. This is true both for bond documents originally used in the early 1990's as well as the current market. The terms are expected to differ some between issuers to reflect the individual circumstances of each issuer and the nature of the governmental entity that is issuing the debt. Most revenue bond issuers need to balance the terms of their financing documents against their overall responsibilities for operating their particular revenue enterprise.

MTA's Bond Resolution is generally comparable to those of other tolling entities. It includes a few covenants that are more detailed than others. While the specificity may be more restrictive on MTA in some situations, it also provides greater clarity for bondholders and MTA.

While typical, the consultant also noted that certain covenants contained in MTA's Resolution are more detailed than those contained in governing documents for other revenue bond issuers. The increased specificity may be more restrictive on the MTA in certain circumstances but also provides more clarity with respect to MTA's obligations to bondholders as compared to the more general terms of other bond documents. Examples of such detail noted by the consultant included:

- formulas for the Debt Service Reserve Fund requirement;
- set of requirements MTA must meet if it wants to expand the system;
- requirements for the annual report; and
- the requirement for the Consulting Engineer to conduct an annual inspection of the system.

Also according to the consultant, the roles for the Consulting Engineer in MTA's Resolution are defined more specifically than in some other resolutions. It is typical to require various independent third parties to be involved in certain matters to give comfort that the issuer is fulfilling obligations. However, the roles for the CE specifically defined in the bond document are usually related just to the physical condition of the Turnpike. The consultant offered examples of why the CE may have been specified for the other roles but could not opine on the current CE's expertise in any of those areas.

Bond Resolution Constraints on Legislative Actions

OPEGA asked EAPD to provide their opinion on how, if at all, the obligations to bondholders contained in the Resolution might limit any actions the Legislature could consider taking regarding the Authority. Below is a summary of the consultant's response. The full response is included in the consultant's complete report in Appendix C.

EAPD notes the Authority was established by an act of the Maine Legislature and, in general, it remains subject to further legislative action that could either expand or restrict the activities of the Authority. The primary concerns in regard to legislative action that might conflict with the Bond Resolution are presented by the contract clauses of the United States Constitution and the Maine Constitution which provide, in part, that no state shall pass any law impairing the obligations of contracts.

In the opinion of OPEGA's bond consultant, the MTA is a creation of the Legislature and is subject to further legislative action, so long as that action does not adversely affect the Authority's contractual obligations.

However, the contract clause does not disallow all legislation that might adversely affect the Authority's contractual obligations under the Bond Resolution. United States Supreme Court decisions have found legislative action that does "impair" a contract constitutional to the extent the impairment is reasonable and necessary to serve an important public purpose. It should be noted, however, that the Supreme Judicial Court of Maine, approximately 20 years before the U.S. Supreme Court decisions, established an arguably more stringent standard that would prohibit virtually any impairment, regardless of how material.

Assessing the outcome of any particular controversy depends on the actual facts and circumstances of the legislation. For example, necessity will be found if the objectives of the legislation could not be satisfied by a "less drastic alternative". Other factors used to assess reasonableness include the extent of the impairment and whether the circumstances giving rise to the impairment were foreseeable at the time the contract was made.

MTA's Outstanding Debt

Amount of Debt MTA Has Currently Outstanding

Unlike State bonds, MTA revenue bonds do not require voter approval. The Maine Turnpike Authority uses a mixture of toll revenues and bonding to fund its capital program. Bond funds are only used for long term capital improvements and the term on bonds issued for any project is no longer than the useful life of the asset. Shorter lived capital projects, such as paving projects, are paid for with cash and bonds are never used for MTA's operational expenses.

Title 23 §1968 caps MTA's revenue bonds at $486 million. The Authority's audited financial statements show a total of $390 million in outstanding revenue bonds as of 2009.

Title 23 MRSA §1968 sets limits on MTA's bonding authority. The current limits are $486 million for revenue bonds and $40 million for special obligation bonds specific to pay costs of MaineDOT projects. Statute further specifies the $40 million in special obligation bonds could be issued no later than June 30, 1997.

MTA's audited financial statements report MTA had approximately $390 million in revenue bonds and $18.5 million in special obligation bonds outstanding as of December 31, 2009. Though the statutory deadline has passed for issuing additional special obligation bonds, MTA could issue additional revenue bonds of almost $96 million without exceeding its statutory bond cap. Table 6 shows MTA's outstanding bonds as compared to the bond caps in statute.

Table 6. MTA's Outstanding Debt as of 2009 Compared to Statutory Caps

	Revenue Bonds	Special Obligation Bonds
Statutory Cap	$486,000,000	$40,000,000
Outstanding Debt	$390,115,000	$18,530,000
Remaining Bonding Capacity	$95,885,000	$0 *
*MTA has no remaining bonding capacity for special obligation bonds because statute required all bonds of that type to be issued by June 30, 1997.		

MTA's Board makes decisions to issue new bonds based on MTA's 20 year plan and considers the input of the Consulting Engineer, Traffic Consultant and MTA staff.

Processes for Deciding the Timing and Amount of Bond Issuances

New Bond Issuances

The decision to issue new bonds is based on the 20 year financial and capital planning model described on page 10. Only the Board can authorize the issuance of new bonds, but the decision-making process also includes the involvement of the Consulting Engineer (CE), the Traffic Consultant, and members of MTA staff.

Outline of Steps in Deciding Whether to Issue New Bonds

1. CE performs annual inspection.
2. CE presents inspection results in preliminary capital improvements report.
3. Traffic Consultant prepares preliminary traffic and revenue projections.
4. Staff reviews capital needs, and projected revenues and costs with the Board to assess whether new bonds are necessary to support capital needs.
5. The Long Range Planning Subcommittee of MTA's Board reviews capital projects and selects which will be funded with cash and which will be funded with bond proceeds. An initial determination is made of whether new debt will be needed in the coming year.
6. The Finance and Audit Subcommittee of the MTA Board reviews the results of the Long Range Planning Subcommittee's work, and the two work together to finalize the capital plans and bonding decisions.
7. The full Board authorizes bond issuance if new bonds have been determined to be necessary.

Refinancing Outstanding Debt

The process involved in deciding to refinance existing debt is far simpler than that for deciding whether new debt should be issued. Refinancing may be suggested by MTA staff, MTA's Board, or the Authority's senior bankers. Once it has been decided that refinancing is worth consideration, the Authority's bankers prepare a proposal or analysis for MTA staff to review.

MTA pays close attention to the net present value and current dollar value of refinancing and considers:

- how much the refinancing will cost;

When deciding whether to refinance existing bonds, MTA considers the cost of refinancing, the time needed to recoup those costs, and whether refinancing would produce at least $1 million in savings over the repayment of the bond.

- how long it would take for the cost of refinancing to be recouped; and
- whether refinancing would produce at least $1 million in savings, preferably $2 million or more.

If MTA managers decide refinancing makes sense for the organization, then the proposal is brought before the Board's Finance and Audit Subcommittee. The Finance and Audit Subcommittee reviews the proposal and brings the proposal to the full Board for a final decision if they agree it should be considered.

Assessing Whether MTA's Current Debt Load Is Reasonable

OPEGA considered a number of criteria in assessing the reasonableness of MTA's current debt load including whether:

- all bonding has been clearly related to organization's mission;
- the current debt is within the limits of the bond cap established in statute;
- rating agencies have made any negative comments about MTA's debt levels in their recent rating analyses;
- MTA has maintained a debt service coverage ratio of 2.0 or higher;
- debt was the sole funding source for capital improvements;
- bond proceeds are ever used to cover operating expenses, debt service payments or reserve maintenance requirements;
- plans to issue bonds were adjusted as capital needs changed; and
- there has been an established and reasonable process, with appropriate Board involvement, for deciding when to bond and for how much.

OPEGA concluded that MTA's current debt level is reasonable because it is within the statutory bond cap, has drawn no negative comments from rating agencies and has been used to support capital projects that have also been funded partly with cash from revenues.

OPEGA concluded that overall MTA's current debt level is reasonable. It is within the limits of the bond cap established in statute. Rating agencies have made no negative comments about the debt levels in MTA's recent rating analyses, and the bond ratings have risen. Furthermore, MTA uses funds other than debt to fund some portion of the capital and maintenance projects required by the CE.

We reviewed the details of MTA's most recent refinancings, and found they are generally well supported and justified in terms of cost savings or cashflow improvements. New issuances from recent years were also reviewed and found to be tied to capital projects that appear reasonable and related to MTA's mission.

Furthermore, we observed the Authority's Board appears to have a strong and well-established process for deciding when to bond and for how much, based on a 20 year planning model. Our opinion of the soundness of this process, and the 20 year Plan, assumes the CE only recommends projects that are necessary to the operation of the Turnpike. It was beyond the scope and resources of this review to reassess the necessity of the CE's recommended projects, and we have no reason to believe any unnecessary projects have been recommended. However, we did note that the firm currently serving as the Consulting Engineer fills a dual role for MTA that does present some risk with regard to required projects. (See Recommendation 2.)

Contractor Selection and Contract Management

Overview of MTA's Current Contracts

MTA contracts for large projects such as a bridge reconstruction, and smaller projects such as servicing office copiers. Although not legally required to award contracts by competitive bid, the Authority uses a competitive public process most of the time and aims to select vendors that represent "best total value." Best total value is defined by MTA as the lowest price quoted which provides quality, service and delivery to meet the requirements of the proposed work or usage.

MTA's contracts can be divided into two categories — construction and non-construction — each of which are handled somewhat differently both in terms of how contractors are selected and in the way contracts are administered once they are established. Contracts for construction and reconstruction projects include work specified by the Consulting Engineer. They generally follow a process outlined in the Maine Turnpike General Specifications, which is a slightly modified version of the Maine Department of Transportation Standard Specifications. Non-construction contracts follow the process described in MTA's Purchasing Policy. OPEGA assessed whether MTA's processes included appropriate practices for ensuring best value through discussions with MTA management and reviewing files for a selected sample of the highest dollar contracts in both categories.

MTA has 100 currently active contracts. Some are for large projects, like bridge construction, and others are for minor service, like copier repair.

MTA provided OPEGA a list of 98 active contracts. In our testing of expenditures, we identified an additional two contractual situations bringing the total of active contracts we are aware of to 100. Two of the 100 contracts are associated with the service plazas along the Turnpike and generated about $3.8 million in revenue for MTA in 2009. Total 2009 payments on the remaining 98 contracts were about $44.3 million.

Ten of MTA's contracts represent situations where the Authority is locked into a particular vendor. For example, MTA is part of the State's employee benefit plans and four of the contracts were for those benefits with vendors used by the State. Four more of the ten were situations where the need for the contract and/or the vendor has been mandated by State government. These include the contract with the State Police for patrolling the Turnpike and three contracts associated with alternative transportation requirements that are part of the permit MTA received to modernize and widen the Turnpike.

Seventy-five of MTA's 100 contracts were competitively bid. Of the 25 not bid, ten were situations where the Authority was locked into using particular vendors.

Ninety contracts, then, represent situations where MTA makes choices about how contractors will be selected. Of those 90 contracts, MTA considers 80 as having been competitively bid, meaning the vendor was selected through a formal process that solicited information on vendor qualifications and proposals for cost and approach. Vendors for the other 10 contracts were selected without soliciting qualifications or proposed costs from other vendors and were categorized by MTA as sole source contracts.

In our review of selected contracts, we determined that five of the contracts MTA had categorized as competitively bid were effectively sole source contracts. There was either no evidence of a competitive bidding process having ever occurred or the bidding was long ago with the contract having been continued with the same vendor since then. Table 7 summarizes the number of MTA contracts OPEGA is aware of by type and contractor selection method.

Table 7. Summary of MTA's 2009 Contracts by Type and Contractor Selection Method

	Competitively Bid	Not Biddable	Sole Sourced	Total
Construction	20	0	0	**20**
Non-Construction - Expense	55	10	13	**78**
Non-Construction - Revenue	0	0	2	**2**
Total – All Types of Contracts	**75**	**10**	**15**	**100**

Construction Contract Processes

All of MTA's 20 construction contracts were competitively bid using a RFP process. Under that process, bids are evaluated based on projects specs. The lowest bid from a pre-qualified contractor that meets those specs is generally selected.

MTA has 20 construction contracts and all are established through a competitive bidding process. In fact, Turnpike construction and reconstruction work must follow the procedures required for competitive sealed bids as outlined in MTA's General Specifications. The process starts when a construction or reconstruction project need is identified in the CE's annual report and incorporated into MTA's Plan.

Plans and contract documents are drawn up using the MaineDOT Specifications as modified by MTA's Engineering Department. For larger projects, a Request For Proposal (RFP) is written and a public invitation to bid is advertised in all major local newspapers. Bids are typically solicited directly from several pre-qualified contractors on smaller dollar projects. A pre-bid conference is held to address any bidder questions prior to the bid submission deadline.

Bids are evaluated based on the project specifications. The lowest bid proposal that meets the required specifications is generally selected. MTA's Board approves all major construction and reconstruction projects; however it will occasionally authorize the Executive Director to make an award if there are issues connected to the timing of a project. MTA's Purchasing Department explained that when several factors other than price are important to the selection decision, a more formalized scoring process may be used. This is done rarely, for example during the selection of architectural services for MTA's administration building.

Active construction contracts are monitored by MTA's Engineering Department. Engineering staff review and approve all construction documents, including monthly invoices, and conduct regular project meetings to discuss progress, safety, scheduling and traffic control.

Once established, construction contracts are overseen by MTA's Engineering Department. Although there is no formal, written procedure detailing contract administration responsibilities, MTA describes a standard process for construction contracts that includes appropriate monitoring and approvals. All projects are assigned to either the MTA Deputy Director of Engineering & Building Maintenance or the MTA Project Administrator for management and coordination. During the bid phase, a resident engineer and construction inspectors are also assigned to the project.

MTA engineering staff reviews and approves all construction documents. The inspector works with a project engineer, contractor, and any consultants hired for quality control testing. Monthly invoices from the contractor are reviewed and approved - first by the inspector, and then by either the Deputy Engineer or Project Administrator. Weekly or bi-weekly on-site project meetings are held to discuss various construction issues such as schedule, safety, progress, change orders and traffic control. Any contractor claims or disputes are settled based on a decision matrix developed during the pre-construction meeting.

MTA's Board receives periodic status updates on significant projects. Board approval is required for final payment and to release all retainage[8] upon successful project completion.

Non-Construction Contracts Processes

Non-construction contracts may be for goods or services. Fifty-five of MTA's non-construction contracts were competitively bid using procedures detailed in the Purchasing Policy. Under this process, bids are solicited, generally by RFP, then evaluated for "best total value". Contracts of particularly high cost may be awarded by the MTA Board.

Non-construction contracts are for goods or services not associated with specific construction or reconstruction projects. MTA has 80 of these, 10 of which represent situations where MTA is locked into a particular vendor as previously described. The majority of the remaining 70 have been established through a competitive process. Fifteen of the 70, including the two revenue generating contracts, are sole source arrangements.

MTA's Purchasing Policy describes the process for competitively selecting vendors to supply non-construction goods and services. A purchasing need is identified by MTA staff and approved by a manager. An approved purchase requisition is sent to MTA's Department of Purchasing. Vendors who should receive proposals are selected by Purchasing which also determines which type of bid request is appropriate for the situation. There are three types of bid request processes:

- formal sealed bids if the expected cost is greater than $5,000 (or when MTA's interests will be best served);
- requests for quotations if cost is expected to be less than $5,000; or
- fax or telephone quotations for low value items, urgent purchases, or otherwise at MTA's discretion.

Request for Proposal specifications and the contract may be developed by either a manager or by Purchasing, as deemed appropriate. After soliciting bids, but before they are due, a pre-bid conference may be held to clarify the scope of work for certain services, such as landscaping or snow removal.

Active non-construction contracts are monitored by the responsible MTA department in the manner that seems appropriate to the individual contract.

The Department of Purchasing, along with the appropriate manager, reviews the bids or quotes and determines to whom the award will be made based on "best total value". If the contract is particularly significant, such as the annual salt contract, the MTA Board may award the contract. According to the Purchasing Department, awards go to the lowest bid proposals that meet the specifications.

[8] Although invoices are paid as a construction project progresses, 7.5% of the total cost (1.5% when project is substantially complete) is retained until the project is complete and the MTA Board approves the final payment.

MTA's Purchasing Policy does not describe any process for selecting vendors without a competitive process. MTA also has no other formal policy to guide when sole sourced contracts are appropriate, or how they should be justified.

Once established, non-construction contracts are administered and monitored by the appropriate department within MTA, in whatever manner is deemed most appropriate for the individual contract. MTA's Purchasing Policy outlines responsibilities for monitoring quality, quantity and prices of goods purchased and received. However, there are no formal, written procedures describing responsibilities for administering contracts and monitoring contractor performance related to contracts for services.

Results of Contract File Review

Construction Contracts

OPEGA's review of 10 contracts for construction services found practices for selecting those contractors and monitoring the contracts adequate to ensure MTA receives best value.

OPEGA reviewed contract and invoice documentation for 10 of the 20 construction contracts, representing 2009 payments of about $12.4 million. We found that MTA's policies, procedures and processes for selecting contractors and administering contracts are adequate to ensure that MTA receives best value for contracted construction services.

The bid information is detailed and accessible to bidders. There is a reasonable pre-qualification process in place using MaineDOT's pre-qualified vendor list for construction and reconstruction projects. MTA has written policies that describe how the bid process should be handled. Construction contract files are easily located and complete. We also observed evidence that the standard contract administration and management process described to us is consistently adhered to.

Non-Construction Contracts

OPEGA also reviewed contract and invoice documentation for 13 non-construction contracts where the vendor was not pre-determined by a government mandate or other situation. MTA's 2009 payments associated with these 13 contracts totaled approximately $12.5 million. We found that these contracts were generally not as formal as construction contracts and took a variety of forms. Some were detailed contracts, but others were just rate sheet agreements or letters accepting a low bid.

OPEGA's review of 13 non-construction contracts revealed that practices for purchasing goods generally included expected controls for ensuring best value. However, practices for purchases of services were generally less robust.

Four of the contracts reviewed were for procurement of goods. Documentation in the files showed that the expected controls for ensuring best value, as described in MTA's Purchasing Manual, were usually performed. These controls include competitive selection, inspection of goods received, comparison of quantity and price received to what was ordered, and approval of the invoice by a knowledgeable employee.

Processes and practices for ensuring best value were, however, not as robust for the nine services contracts we reviewed. The services covered by eight of these contracts had not been bid recently or, in a few cases, ever. There was no written

justification for these sole source arrangements, although MTA management did provide explanations for them. Based on these explanations, two of the contracts do not appear to be good candidates for competitive bidding because of the particular conditions under which these services are being procured. The other six, though, were services that could be competitively bid.

We also found that some of the professional services contracts did not reflect work currently being performed or current prices being charged. For example, we noted that neither MTA's sole sourced contract for engineering services nor its sole sourced contract for legal services provided sufficient detail on the scope of services or the duration of the contractual relationship. These contracts were also less formal than others reviewed and were out of date in some aspects, such as travel reimbursement rates for contractor staff.

OPEGA also noted the monitoring of work performed under services contracts was less robust than that of other contracts. Invoices for services contracts were properly approved by individuals in a position to be knowledgeable about the contractors work. However, enhanced processes for monitoring the quality of services would reduce the risk that MTA does not receive the full service it pays for, and may be worth considering given that some non-construction service contracts are high value.

Lastly, we observed that original, signed versions of non-construction contracts, particularly those for professional services, were not maintained in a central location. Rather they were in the possession of whichever MTA staff person was most involved with the vendor. Consequently, these documents are not readily accessible to all who may need them. The lack of centralization may also explain why OPEGA's expenditure testing found contract-type agreements that MTA had not included on its contract list

For more discussion on contract issues and OPEGA's recommendations, see Recommendations 3 and 4.

Oversight and Governance

Entities Involved in Overseeing the Maine Turnpike Authority

MTA Board members are appointed by the Governor and confirmed by the Legislature. Besides the Board, other entities with oversight of MTA include the Legislature, MaineDOT, the Bond Trustee and the Consulting Engineer.

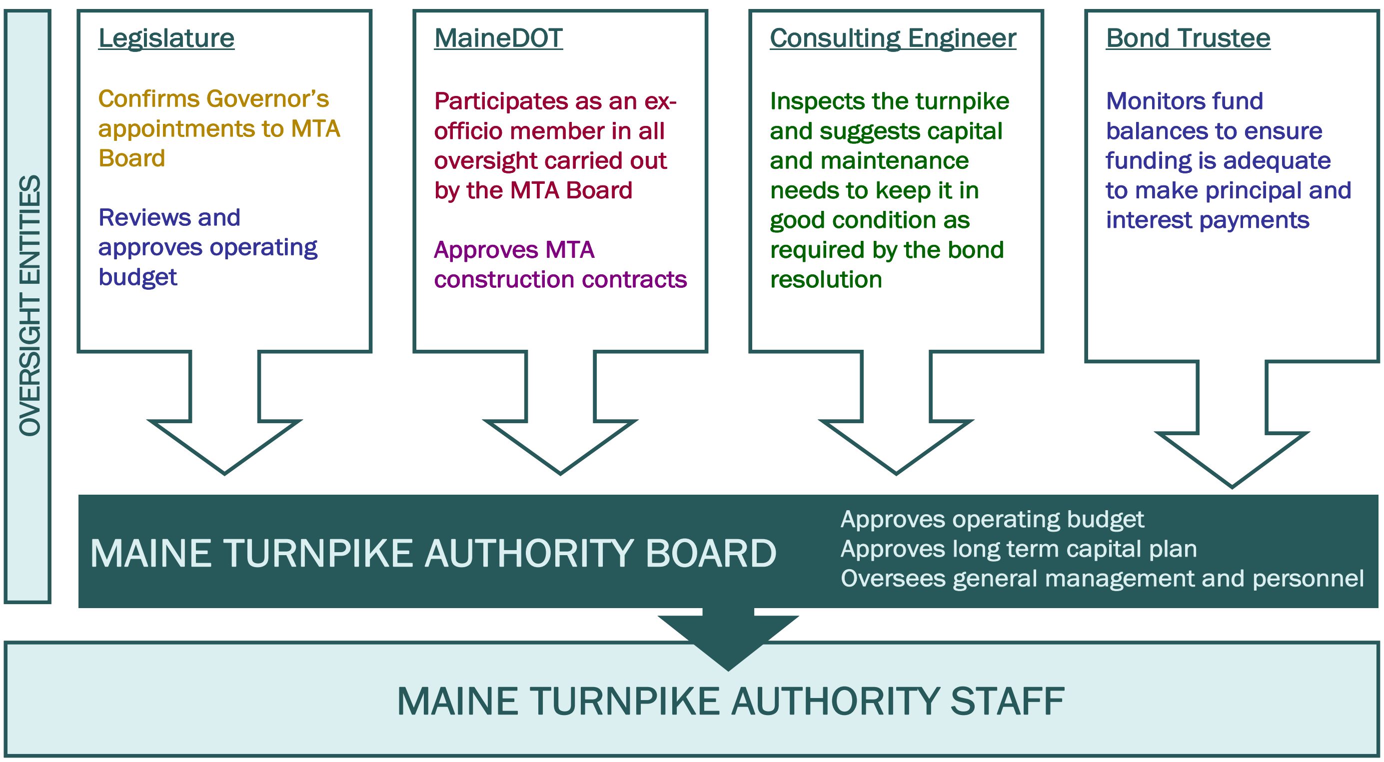
In accordance with statute, the members of the Authority are appointed by the Governor, subject to review and confirmation by the Legislature. The Governor also designates one of the appointed members as Chair of the Authority. Accordingly, the Governor has significant influence over the composition of the Authority.

For the purposes of this review, however, OPEGA considered oversight entities to be any entity outside management with direct influence over the Maine Turnpike Authority's decisions, actions, operations or structure. Based on this definition, we determined the following entities had a prescribed oversight role assigned in either statute or the Bond Resolution:

- Maine Turnpike Authority Board;
- Maine State Legislature;
- Maine Department of Transportation;
- Bond Trustee; and
- Consulting Engineering.

As depicted in Figure 2, each of these oversight entities fills a different role with respect to the MTA. Taken together they represent a relatively comprehensive governance structure if all of them are functioning effectively. OPEGA observed that all the entities appear to have appropriate and adequate authority to fulfill their roles, although effectiveness could be impacted by the characteristics, perspectives and priorities of the individuals representing them.

Figure 2. Entities Involved in Oversight of the Maine Turnpike Authority



The Maine Turnpike Authority Board

The Authority Board provides policy direction, contractual approval, budgetary review and approval, financial oversight, approval of capital projects, and general direction to the MTA's operating staff in addition to overseeing compliance with MTA's Bond Resolution and all relevant statutes. The Board has three subcommittees that provide more detailed oversight in the specific areas:

> The MTA Board provides policy direction, contract approval, budgetary review, financial oversight, capital project approval and general management direction to MTA staff.

- The Finance and Audit Subcommittee – oversees financial and related policies and procedures to ensure compliance with MTA objectives and other best practices; reviews results of independent audits; works with Long Range Planning Subcommittee to determine whether capital projects require new bond issuances; and reviews annual budget in detail before recommending it to the full Board.

- The Long Range Planning Subcommittee – reviews MTA projects that involve long planning timeframes or have potential for major community impacts; reviews the proposed 20 year Plan and its supporting detail to develop a list of capital projects prioritized according to MTA's financial planning goals; and works with the Finance and Audit Subcommittee to determine whether the capital plan requires new bond issuances.
- The Personnel Subcommittee – reviews and approves collective bargaining agreements and determines adjustments to compensation, including cost of living adjustments and pay scales. This subcommittee also reviews MTA's human resource practices and policies, and oversees the development or revision of policies, to ensure compliance and consistency with MTA's objectives and other best practices.

The MTA Board currently has no vacant seats and holds formal meetings usually once or twice a month. The Board has three subcommittees actively engaged in oversight of specific segments of MTA's business.

The MTA Board currently has no vacant seats and is quite active. They hold formal meetings as necessary—usually once or twice a month—and individual Board members stop by the MTA offices more often to attend subcommittee meetings, sign contracts or other documents, or to talk with MTA management about specific concerns, questions, or ideas they may have about the Authority's finances or capital projects.

The Maine State Legislature

Title 23 §§1961-1983 provide for legislative oversight of the Maine Turnpike Authority in a number of ways:

- Each year the Legislature votes to approve MTA's operating budget after the Transportation Committee has reviewed the budget in detail and reported it out in a bill.
- The Legislature sets the amount of MTA's bond cap in statute.
- The Transportation Committee, and then the full Legislature, reviews and confirms the Governor's appointments to the MTA Board.
- The Transportation Committee, and then the full Legislature, reviews and considers any proposed legislation pertaining to the MTA.

The Legislature oversees MTA by approving the agency's operating budget, setting its bond cap, confirming gubernatorial appointments to the Board and considering any proposed legislation affecting MTA. The Joint Standing Committee on Transportation is the legislative entity with the most direct oversight of MTA.

The Legislature's Joint Standing Committee on Transportation is the legislative entity with the most direct oversight of the Maine Turnpike Authority. The Committee has the opportunity, during Committee meetings, to ask questions of MTA's management about any of the Authority's significant decisions, such as decisions affecting timelines for capital projects, plans for adjustments to tolls, or plans to issue new bonds.

The Transportation Committee assigns a subcommittee of its members to review and scrutinize the detail of MTA's operating budget before it goes to the full Committee for consideration. OPEGA reviewed the materials MTA provides as part of the operating budget review process and noted that they contain substantial detail on MTA's budgeted and actual expenses. However, we also found that the operating budget submitted for review, and ultimately legislative approval, does not include all of MTA's operating expenses. (See Recommendation 5.)

MTA is also subject to review by the Legislature under the Government Evaluation Act (GEA) as required by 3 MRSA §§951– 963. The Authority's last GEA review was conducted by the Transportation Committee in 2005. As part of this process, MTA is required to submit a report containing a variety of information about its activities, finances and performance. OPEGA observed that MTA's 2005 GEA report was very well done and included all the information required by the GEA statute.

The Maine Department of Transportation

MaineDOT must approve all MTA construction contracts. In addition, the MaineDOT Commissioner, or his designee, is a full member of the MTA Board and, therefore, a full participant in all Board oversight activities.

The Maine Department of Transportation has an interesting and unique oversight role with respect to MTA. Statute dictates MaineDOT's commissioner is an ex-officio member on the Board. The Commissioner may appoint a designee, and currently the Deputy Commissioner fills this role. As a full member of the MTA Board, MaineDOT, through its Deputy Commissioner, has a say in all of the Authority's most significant long term planning, financial management, and capital projects. MaineDOT's Deputy Commissioner is also currently a member of the Board's Long Term Planning Subcommittee.

In addition to a seat on MTA's Board, statute also gives MaineDOT approval authority over some specific MTA contracts. Title 23 §1966.2 requires the MaineDOT to approve all contracts and agreements relating to the construction or reconstruction of the Turnpike, and the construction or reconstruction of connecting tunnels and bridges, overpasses, underpasses, interchanges and toll facilities. According to MTA, the Authority generally expects MaineDOT to question whether the applicable project uses MaineDOT specifications, is within projected budget and has been part of the regular planning process.

The Trustee

There are three primary parties involved in the Maine Turnpike Authority's bond instruments:

- the grantor – MTA;
- the beneficiaries – bond holders;
- the trustee – currently Bangor Savings Bank.

As MTA's Bond Trustee, Bangor Savings Bank is responsible for communicating pertinent information to bondholders, and ensuring MTA's accounts are adequately funded to cover all principal and interest payments to bondholders.

Bangor Savings Bank has been the corporate trustee for MTA revenue bonds since August 2006. This is an administrative function carried out by the Fiduciary Department of the bank. The representatives of Bangor Savings Bank that OPEGA spoke with explained that the specifics of the Bank's role as Trustee are governed by MTA's Bond Resolution, and where not defined in the Resolution, by general fiduciary laws. The Trustee's tasks include acting as the conduit for any information that needs to be disseminated to the public and making principale and interest payments to the bondholders in accordance with due dates. They are also involved in the creation of new bonds and redemption or call of existing bonds.

The Trustee's primary focus is whether the principal and interest payments on the Bonds are paid on time. MTA is required to fund the accounts from which these payments are made on the 15th of each month. Interest payments are made on January 1st and July 1st of each year. The annual principal payment is made on July 1 of each year. The Trustee monitors the appropriate accounts to be sure they are funded adequately and then makes the payments to the Depository Trust Company which disburses the funds to each bondholder.

In addition, the Trustee releases funds to cover MTA's capital and operating expenses after receiving certification from MTA of the need for the funds. MTA can not access their funds without the Trustee's release. The Trustee does not generally question the appropriateness of the expenditures before releasing the funds. Instead it relies on a formal certification by MTA's management as adequate evidence that the funds are needed for budgeted expenditures.

The Trustee receives certain information and reports from MTA as required by the Bond Resolution, including financial statements and a copy of the Consulting Engineer's annual report. The Trustee does not generally interact with other entities involved with MTA or get involved in the MTA's operations or how the Authority is spending its funds. However, the Trustee is expected to interject as needed to protect bondholders, including bringing suit if necessary.

The Consulting Engineer

MTA's Consulting Engineer must assess the turnpike annually and report on the road's condition and required maintenance. The CE must also recommend the amount of insurance MTA needs to carry and the amount that MTA must deposit in the Reserve Maintenance Account each year.

Sections 805 and 806 of MTA's Bond Resolution describe the requirements and duties of the Consulting Engineer. The MTA must employ an independent engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in such work as its CE. The CE, in turn, must make an inspection at least once a year of the Turnpike and submit a report of findings to the Trustee and the Authority by October first of each year. This report must include the CE's:

a) findings as to whether the Turnpike has been maintained in good repair, working order and condition;

b) advice and recommendations as to the proper maintenance, repair and operation of the Turnpike during the next fiscal year and an estimate of the amount of money necessary for such purposes;

c) advice and recommendations as to the insurance to be carried under the provisions of Section 807 of the Bond Resolution; and

d) recommendations as to the amount that should be deposited during the next fiscal year to the Reserve Maintenance Fund.

Since the 1940's, HNTB has been the MTA's Consulting Engineer. This long term relationship has benefits, but presents some risks as HNTB has also been MTA's primary contractor for project management and engineering.

MTA has contracted with Howard, Needles, Tammen & Bergendoff (HNTB) as its CE since the 1940's and has never worked with any other CE. HNTB also serves as the MTA's general engineering services firm. The current arrangement provides benefits with regard to efficiency and depth of knowledge of MTA's system. MTA also explained that the long term relationship is seen as a strength by bond rating agencies. We believe, however, that the nature of the relationship between HNTB and MTA has potential to impact HNTB's independence, and thus effectiveness, in fulfilling the Consulting Engineer's role representing bondholders' interests. (See Recommendation 2.)

Comparing MTA's Legislative Oversight to Other States'

OPEGA selected four tolling authorities from other states to compare their legislative oversight with MTA's. These four were selected because they are most comparable to MTA in type of asset and region, and MTA agreed they were the best comparables. They are the New York Thruway Authority, the New Jersey Turnpike Authority, the New Hampshire Turnpike Bureau and the Pennsylvania Turnpike Commission. The New Hampshire Turnpike Bureau is part of New Hampshire's Department of Transportation (NHDOT). The other three tolling authorities are independent like MTA.

OPEGA reviewed the sections of statute from each state pertaining to governance and legislative oversight of the tolling authority. We noted that MTA has similar legislative oversight to three of the four other state turnpikes although it is the only independent tolling authority we reviewed that has its operating budget approved by the Legislature. Our comparison is summarized in Table 8.

Table 8. Comparison of Legislative Oversight in Five Northeastern States

	Maine Turnpike Authority	New Hampshire Turnpike Bureau	New Jersey Turnpike Authority	Pennsylvania Turnpike Commission	New York Thruway Authority
BUDGET	X	X*			
CAPITAL PLANNING		X*			
TOLL CHANGES		X			
BOND ISSUANCE OR BOND CAPS	X**	X		X	X**
REVIEW GOVERNOR APPOINTMENTS TO AUTHORITY	X	N/A	X	X	X

*Since New Hampshire's Turnpike is part of NHDOT, the Legislature implicitly approves toll rates and bond issuances when approving the NHDOT budget and capital plan.

**These states had bond caps but no legislative involvement in bond issuance.

Source: State statutes as compiled by the Law and Legislative Reference Library.

OPEGA compared the MTA to four other tolling entities and found their oversight was generally comparable. However, of the four, MTA is the only independent Authority with its operating budget subject to legislative approval.

Similar to Maine's, each of the other authorities, with the exception of New Hampshire, has an independent board whose members are appointed by the Governor with the advice and consent of at least one branch of the legislature. There is also usually a close relationship between the Commissioner of Transportation for the state and the authority board with commissioners or their designee's serving on the board as is the case in Maine. In addition, most states, except New Jersey, had their turnpike authority bond caps set by the legislature in statute. Some legislatures had adopted statutory language requiring their turnpike authorities to competitively bid contracts for construction projects. MTA is subject to similar requirements by virtue of the fact that MaineDOT must approve construction contracts.

MTA's Expenditures

Expectations for Use of Toll Revenue

Title 23 §1974 defines the allowable uses for MTA's revenues. The uses specified in statute are consistent with those in the Bond Resolution.

Title 23 §1974 limits the uses of toll revenues, and all other revenues derived from Turnpike operations, to the following purposes:

A. Maintenance, repair and operation of the Turnpike and the establishment of related reserves required or permitted by the resolutions authorizing the issuance of bonds or by the trust indentures relating to those bonds.

B. Payment of the cost of any debt incurred by the Authority, including, but not limited to, interest and principal payments on issued bonds and payments into any required sinking funds.

C. Construction or reconstruction to improve the Turnpike to meet greater traffic demands or improve safety of operation, including related necessary and authorized reserves.

D. Maintenance, construction or reconstruction of access roads and interchanges, or portions thereof.

E. Payments to reserve or sinking funds established to meet anticipated future costs of constructing or reconstructing designated interchanges or portions thereof, or to accomplish other designated purposes for which the Authority is authorized to issue bonds.

F. Repayment to the federal government for grants or loans that were used in connection with the construction or reconstruction of any portion of the Turnpike or of any interconnecting access roads, but only to the extent that the repayment is required in order for the Authority to maintain or establish tolls on the Turnpike.

G. Payment or repayment to the federal government or any agency of the federal government of any charges, taxes or other payments required by law in connection with the construction, reconstruction or operation of the Turnpike or the financing or refinancing of the Turnpike or any part of the Turnpike.

These uses are consistent with the uses allowed in the Bond Resolution for the various accounts established by the Resolution – described on pages 20 and 21 - that receive monies from toll and other operating revenue.

What MTA Spends Its Toll Revenue On

MTA uses its toll revenue for three general purposes:

- operating expenses, including routine maintenance;
- principal and interest payments for issued bonds, and required reserves; and
- repair, reconstruction or construction projects for maintenance and capital improvement.

Table 9 gives the revenue dollars spent in each category for 2005 – 2009.

Table 9. Uses of MTA Toll Revenue 2005 – 2009 (in thousands, rounded to nearest thousand)

Category	2005	2006	2007	2008	2009
Revenue	$ 84,068	$ 86,819	$ 87,804	$ 85,821	$ 105,707
Operating Expenses	$ 32,460	$ 35,989	$ 37,466	$ 37,794	$ 38,110
Principal, Interest & Reserves for Debt	$ 22,232	$ 23,862	$ 26,516	$ 28,566	$ 29,277
Construction & Reconstruction Projects	$ 20,899	$ 26,928	$ 25,639	$ 27,383	$ 23,507
Total Uses	**$ 75,670**	**$ 86,778**	**$ 89,621**	**$ 93,742**	**$ 90,894**

Source: MTA's Source and Application Fund Report provided annually to MaineDOT

Roughly 28% of MTA's toll revenue was spent on construction and reconstruction in the period 2005 - 2009. Another 40% was spent on operating expenses.

Roughly 28% of MTA's toll revenue was spent on construction and reconstruction projects in the period 2005 - 2009. MTA strives to repave the entire 109 miles of the Turnpike every 12-15 years, so paving projects are ongoing nearly every paving season. In addition, MTA is responsible for the maintenance and repair of approximately 175 bridges and overpasses, 50 of which will need rehabilitation within the next 10 years. While bond proceeds are used for capital projects, MTA tries to cover a substantial portion of the costs of those projects using toll revenue.

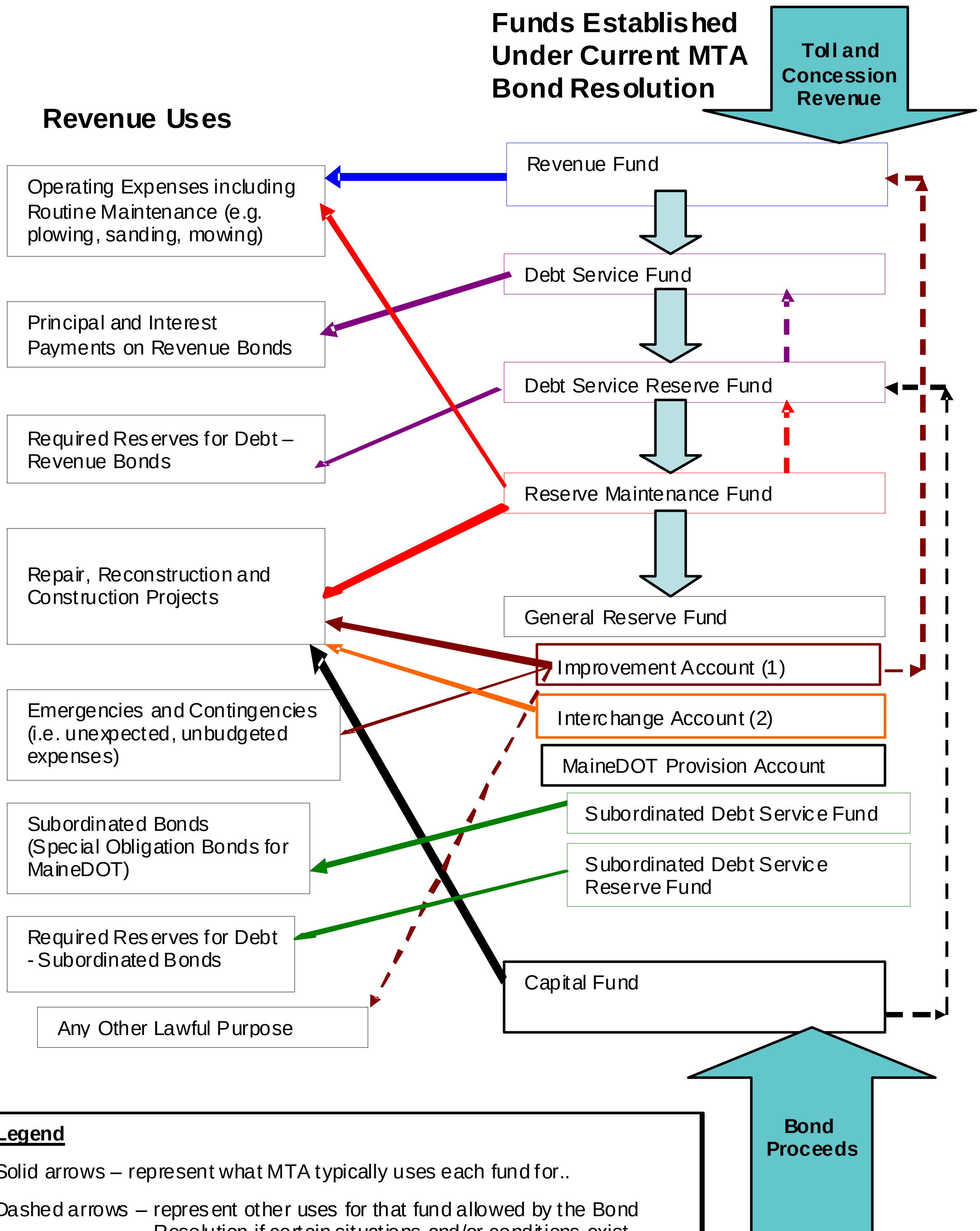
Public information on MTA's finances can be found:

- in MTA's Annual Reports which contain the annual independent auditor's report and MTA's financial statements (available on MTA's website),
- in MTA's 2005 Government Evaluation Act Report (available in the Maine State Law and Legislative Reference Library);
- on various bond information websites, including DAC Bond and EMMA (Electronic Municipal Market Access); and
- in documents submitted to the Legislature's Joint Standing Committee on Transportation.

Operating expenses include salaries, wages and benefits, employee training and recognition, maintenance supplies, the State Police Troop G budget, utilities, and other typical day to day expenses. This category also includes routine maintenance on the Turnpike, i.e. plowing, sanding and mowing. MTA spent about 40% of toll revenue on operating expenses for the period 2005 - 2009. Both the operating expenses and construction project categories may also include unplanned expenditures, such as repair of damage to an overpass or bridge struck by a vehicle.

MTA often discusses its use of toll and other operating revenues in terms of the funds and accounts from which it funds those expenditures. As described on page 20, those funds and accounts are established by the Bond Resolution and are arranged in a "bucket" system that serves to prioritize the use of MTA's revenues. Figure 3 illustrates how revenue flows through those accounts in order of priority and what use categories each account typically funds.

Figure 3. Uses of MTA's Operating Revenue and the Bond Resolution Accounts



Legend

Solid arrows – represent what MTA typically uses each fund for..

Dashed arrows – represent other uses for that fund allowed by the Bond Resolution if certain situations and/or conditions exist.

(1) Improvement Account can be used to fill shortfalls in higher accounts. To do this it must be transferred to the Revenue Fund and then flow into the account with the shortfall.

(2) Projects funded by the Interchange Account are done in coordination with MaineDOT.

Analysis of MTA's Operating Expenses

From an accounting perspective, an organization's operating expenses are typically those expenses necessary for the normal day-to-day running of a business or income-producing property. MTA's Bond Resolution similarly defines operating expenses as *"the Authority's reasonable and necessary current expenses of maintenance, repair and operation of the Turnpike…"* . It further specifies that operating expenses shall include, without limitation, the following expenses, to the extent they are *"properly and directly attributable to the operation of the Turnpike, …"*:

- all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring;
- premiums for insurance;
- all administrative and engineering expenses relating to maintenance, repair and operation of the Turnpike; and
- all fees and expenses required to be paid by the Authority under the provisions of the Resolution or by law.

Typical operating expenses for an organization include:

- salaries, wages and benefits
- rent
- equipment and fixtures
- maintenance and repairs, such as snow and trash removal, janitorial service, pest control, and lawn care
- marketing and advertising
- office expenses
- supplies
- taxes and legal fees
- telephone and utilities
- insurance
- travel and vehicle expenses
- professional services, such as accountants, attorneys, and payroll providers

OPEGA analyzed expenditures coded to MTA's various operating expense accounts in 2005 - 2009. In addition to operating expenses, these expenditures include the costs of construction projects paid for with revenue. The expenditures we analyzed averaged $61 million annually and 72.8% were for salaries, benefits and contractual services.

Operating expenses, according to the Resolution's definition, shall not include any reserves for extraordinary maintenance or repair, any costs or expenses for new construction, any allowance for depreciation, or any deposits or transfers to the credit of the other accounts established under the Bond Resolution, including the Reserve Maintenance Fund.

OPEGA analyzed expenditures coded to MTA's operating expense accounts for 2005 – 2009. These expenditures averaged about $61.2 million annually and included both operating expenses and construction project uses shown in Table 9. Appendix D contains detail by expense category for each year.

Table 10 shows the 30 expense categories that contain approximately 97% of MTA's operating expenses for the period 2005 - 2009[9]. Approximately 73% of those expenditures have been for salaries, employee benefits and contractual services. Of the 30 expense categories, 18 had overall increases or decreases of 25% or more from 2005 to 2009.

[9] The expenses categories are assigned by MTA staff under MTA's current detailed account structure as part of the accounting process. OPEGA has combined some similar expense categories for the purposes of our analysis.

Table 10. MTA Expense Categories Comprising 97% of Total Operating Expenses for Period 2005 - 2009

Expense Category	Total $ 2005 - 2009	% of 5 yr Total	2005 $ Spent	2009 $ Spent	% Change over 5 yrs
Salaries	$104,832,997	34.2%	$19,212,872	$22,493,744	17.1%
Contractual Services	$75,943,643	24.8%	$11,375,641	$13,370,412	17.5%
Employee Benefits	$42,263,438	13.8%	$7,333,513	$9,973,406	36.0%
Consulting Engineering Fees & Exp.	$14,772,341	4.8%	$3,048,915	$2,319,622	-23.9%
Work Performed By Others	$13,924,373	4.5%	$3,282,610	$2,079,445	-36.7%
Telephone	$4,521,762	1.5%	$942,052	$710,840	-24.5%
Salt & Calcium Chloride	$4,040,111	1.3%	$853,818	$486,266	-43.0%
Comprehensive Gen. Liability	$3,316,909	1.1%	$892,095	$471,802	-47.1%
Workers Compensation	$3,294,873	1.1%	$309,449	$986,615	218.8%
Electricity	$2,965,070	1.0%	$493,238	$598,190	21.3%
Reg. & Spec. Counsel Fees & Exp.	$2,585,408	0.8%	$319,243	$455,926	42.8%
Office Machines & Equip. Pur/Rent	$2,377,744	0.8%	$344,103	$496,514	44.3%
Fuel For Heating	$1,997,305	0.7%	$340,333	$519,106	52.5%
Snowplowing Equipment	$1,668,897	0.5%	$524,282	$255,750	-51.2%
Money Transport Services	$1,593,876	0.5%	$302,455	$334,223	10.5%
Diesel Oil Equipment Maintenance	$1,586,882	0.5%	$292,155	$256,166	-12.3%
Trustee's Fees	$1,542,919	0.5%	$190,082	$352,459	85.4%
Truck Purchases	$1,500,397	0.5%	$433,049	$23,150	-94.7%
Gas Equipment Maintenance	$1,348,595	0.4%	$224,361	$218,477	-2.6%
Postage & Shipping	$1,183,636	0.4%	$225,706	$317,241	40.6%
Travel & Subsistence	$1,104,402	0.4%	$411,847	$132,441	-67.8%
Printing	$1,093,359	0.4%	$253,355	$249,424	-1.6%
Acct. Mach Supplies & Maintenance	$1,049,545	0.3%	$319,686	$255,873	-20.0%
Paint Products	$1,011,570	0.3%	$154,636	$237,017	53.3%
Informational Services	$985,628	0.3%	$146,907	$199,331	35.7%
Indemnification Insurance	$970,198	0.3%	$61,520	$331,355	438.6%
Rent: Land/Buildings	$967,406	0.3%	$194,023	$177,636	-8.4%
Truck Parts, Accessories & Repair	$862,004	0.3%	$187,797	$197,361	5.1%
Auto Purchases	$697,457	0.2%	$41,440	$0	-100.0%
Organization Fee	$629,603	0.2%	$164,023	$102,354	-37.6%

Source: Calculated by OPEGA from data in expense file provided by MTA. Full analysis in Appendix D.

Our full analysis shows that MTA's total operating expenses have increased 15.5% over the five year period. Table 11 shows the percentage changes from year to year. The amount of change between years is inconsistent in part because costs for construction and reconstruction projects vary each year depending on the nature and timing of projects. Similarly, costs of Turnpike maintenance like plowing and sanding are impacted by weather conditions and vary annually.

Table 11. Annual % Change in Operating Expense

Year	Total Operating Expense	% Chg From Prior Year
2005	$53,359,195.86	
2006	$62,916,662.80	17.9%
2007	$63,104,363.39	0.3%
2008	$65,241,802.13	3.4%
2009	$61,616,332.14	-5.6%
Total 5 Yr. Period	$306,238,356.32	

Defining Reasonableness

MTA defines reasonable expenditures as those that are legal, consistent with the MTA's mission and goals, within approved budgetary limits, and authorized for payment. This definition provides fairly wide latitude for assessing the reasonableness of operating expenditures.

The Legislature and the Authority's Board play a role in determining the reasonableness of MTA's operating expenses via their approval of the Authority's operating budget. In fact, both statute and the Bond Resolution require that MTA's operating expenses in any year not exceed the approved budget. Under 23 MRSA §1961-6, the Authority may only pay operating expenses in accordance with allocations approved by the Legislature or as necessary to satisfy the requirements of any resolution authorizing bonds of the Authority. Similarly, Section 803 of the Bond Resolution requires the Authority to adopt a budget each year that must be filed with the Trustee. It further provides that the Authority will not incur operating expenses that exceed what is provided for in the annual budget unless those expenses are paid from funds other than the Revenue Fund.

<u>Excerpt of 23 MRSA §1961-6</u>
On or before January 31st of each year, the Authority shall present to each regular session of the Legislature for its approval a budget for the operating expenses of the Authority for the calendar year that begins after the adjournment of that regular session........ The Authority may only pay operating expenses in accordance with allocations approved by the Legislature or as necessary to satisfy the requirements of any resolution authorizing bonds of the Authority.

<u>Excerpt of Section 803(e) from MTA's Current Bond Resolution</u>
The Authority covenants that the Operating Expenses incurred in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obligations for maintenance, repair and operation in excess of the amounts provided for Operating Expenses in the Annual Budget, except as provided in Section 504 hereof and except amounts payable from the Reserve Maintenance Fund and the General Reserve Fund.

The Legislature's Transportation Committee receives detailed information related to the operating budget MTA submits for the Legislature's approval. This information includes budgeted versus actual expenses by expense category for several previous years, as well as detailed salary and wages by position. The Board also receives this detailed information and likely is provided more as it is involved in making decisions about all of MTA's finances. OPEGA noted several issues, however, that interfere with the Legislature's ability to have a complete picture of what it is costing to operate the Authority, to understand all expenses and/or judge their reasonableness. See Recommendation 5.

The Legislature receives detailed information about the operating expenses paid from MTA's Revenue Fund. However, the budget the Legislature approves does not include expenses paid from the Reserve Maintenance Fund, which represent roughly 40% of MTA's total annual operating costs.

The primary issue is that the operating budget submitted to the Legislature for approval does not include all of MTA's operating expenses. In our analysis of operating expenses for 2005 – 2009, we noted that on average about 40.6% of MTA's operating expenses each year have been paid for from MTA's Reserve Maintenance Fund. These expenses are not included in MTA's operating budget. Table 12 and Figure 4 show the breakdown of expenses funded from the Revenue Fund versus the Reserve Maintenance Fund by year.

MTA's Reserve Maintenance Fund pays for 50% or more of costs such as insurances, safety equipment, travel and subsistence, legal counsel fees and printing, among others.

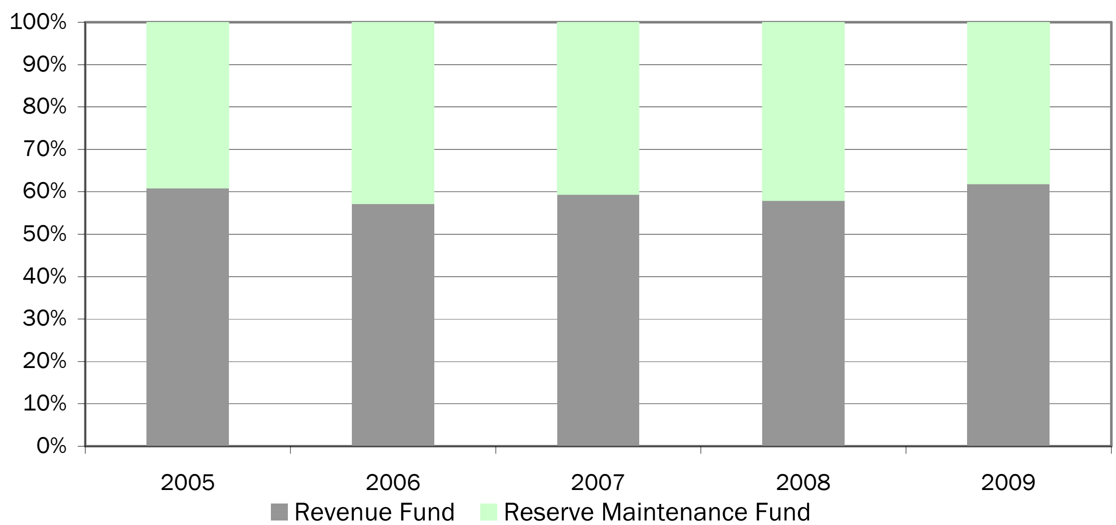
All of MTA's expenses for insurance, i.e. worker's compensation and liability, are paid for from the Reserve Maintenance Fund. Other categories typically considered operating expenses that have been funded 50% or more from the Reserve Maintenance Fund in the period 2005 – 2009 include:

- Truck and Auto Purchases
- Office Machines and Equipment (Purchase, Rent and Maintenance)
- Safety Equipment
- Rent
- Informational Services
- Legal Counsel Fees
- Postage
- Snowplowing Equipment
- Printing
- Organization Fees and Dues
- Electrical Supplies
- Employee Training
- Travel and Subsistence
- Telephone

Table 12. Operating Expenses Funded by Revenue and Reserve Maintenance Funds

		Funded by Revenue Fund		Funded by Res Maint Fund	
Year	Total Oper Exp	RF $	% of Total	RMF $	% of Total
2005	$53,359,196	$32,459,653	60.8%	$20,899,542	39.2%
2006	$62,916,663	$35,988,601	57.2%	$26,928,061	42.8%
2007	$63,104,363	$37,465,689	59.4%	$25,638,675	40.6%
2008	$65,241,802	$37,793,531	57.9%	$27,448,271	42.1%
2009	$61,616,332	$38,109,687	61.8%	$23,506,645	38.2%
Total 5 Year	**$306,238,356**	**$181,817,162**	**59.4%**	**$124,421,195**	**40.6%**

Figure 4. Percent of MTA's Total Operating Expenses 2005- 2009



Reasonableness of MTA's Operating Expenditures

OPEGA sought to assess the reasonableness of MTA's operating expenses. MTA's status as a quasi-State agency, with its own self-generating revenue source, made it challenging to find a standard for comparison. Some expect MTA to behave like a State agency; others expect it to behave like a for-profit private entity. Whether MTA's operating expenses are judged as reasonable, depends on what those expectations are. In conducting this review, OPEGA has used what is typically expected of both types of organizations as comparisons.

OPEGA reviewed 224 MTA invoices from 2005 – 2009 totaling about $1 million in expenses. Some of the expenditures reviewed could potentially be questioned on the basis of their nature or magnitude.

We analyzed MTA's operating expense transactions for 2005 – 2009 and identified those with the highest potential for being judged unreasonable. We selected a judgmental sample of these transactions and reviewed the related 224 invoices or other documents used for processing payment of these expenses. Expenditures processed on those documents totaled $1,008,609 – representing 0.3% of MTA's total operating expenses over the five-year period. We sought explanation for MTA's purpose in incurring the expenses and tested for proper approvals, adequate supporting document and accurate account coding.

MTA's expenditures are generally consistent with the culture of a regulated private entity that is financially sound, values quality, desires to stay current, believes in being a good corporate citizen, recognizes its employees and assertively promotes its own best interests. From this perspective, MTA's expenditures could be judged as reasonable. In fact, the Authority's consistent pursuit of technologies to improve efficiencies and customer service, and its investments in higher quality equipment and assets that have a longer useful life, would likely be seen as sound business strategies.

However, a number of the expenditures we reviewed – by virtue of their nature or magnitude – might be questioned as to their reasonableness, appropriateness or necessity when judged against the expectations for fiscal restraint and adherence to mission typically applied to governmental entities. The categories that most of these expenditures fell into are described below.

The expenses OPEGA identified that might be questioned were in five categories: Employee Recognition, Sponsorships and Donations, Lobbying, Travel and Meals, and Support of Other State Efforts. All expenses in these groupings totaled $2.3 million over a 5 year period.

Operating Expenditures that Might Be Questioned

Certain expenditures contained within the five categories we identified as possibly questionable would likely be recognized as reasonable and appropriate regardless of one's perspective. Other expenditures within each category, however, could be questioned and OPEGA examined many of these in detail.

The five year total of expenditures identified by OPEGA in all of the following categories is $2,265,773.53. Some of these categories correspond directly with established MTA expense account codes. We included all expenses coded to that category in this total, though we did not review them all in detail. Other categories described below are groupings of expenses determined by OPEGA as a result of our detailed expenditure review.

The five year total calculates to an average annual expense of $453,154, representing only 0.74% of MTA's average annual operating expenses. Roughly 70% of the five year total expenditures ($1,591,295) were budgeted and expensed within perennial projects funded by the Reserve Maintenance Fund and not approved by the Legislature.

From 2005 to 2009, MTA spent $257,780 on employee recognition including service awards, banquets and cookouts, safety awards, holiday turkeys and items sent to staff members serving in the military overseas.

Employee Recognition. In the five year period under review, MTA coded $222,159 to expense categories for employee recognition events and items. OPEGA identified an additional $35,620 that had been charged to other account codes bringing total 2005 - 2009 expenses identified in this category to about $257,780. Employee recognition expenditures included length of service awards and gifts, annual employee banquets or cookouts, safety awards and gifts, annual

gift certificates for turkeys at Thanksgiving and items sent to MTA employees serving overseas in the military.

MTA spent $454,238 over five years on sponsorships or donations to at least 50 different non-profit organizations. $157,000 of this total was for gift certificates purchased in 2005 and 2006 from various hotel chains and restaurants then donated to other organizations.

Sponsorships and Donations. OPEGA identified $297,238 in expenses for sponsorships or donations to charitable and non-charitable non-profit organizations that were coded to several different expense categories. According to MTA, donations in 2005 – 2007 were also made in the form of gift certificates. OPEGA identified over $157,000 in gift certificate purchases made in 2005 and 2006 from various hotel chains and restaurants that were coded to the Travel and Subsistence expense category. MTA reports that the gift certificates were donated to a variety of organizations, although no formal records of the donations exist. In all, OPEGA identified $454,238 sponsorships or donations made to 50 different organizations. Some organizations received contributions on an annual basis.

MTA is a member of some of the recipient organizations and, consequently also provides support through membership dues or other payments. We noted that sponsorships or donations also went to non-charitable organizations that did not appear to have a direct tie to MTA's mission. This may be because MTA's top management sits on the boards or councils of some of the organizations, or could be indicative of an expansion of MTA's mission. (See Recommendation 6.)

Lobbying costs totaled $577,237 for the MTA over a 5 year period, not including the cost of their internal government relations staff.

Lobbying. OPEGA identified $577,237 in 2005 – 2009 expenses that primarily appear to be for lobbying services. MTA has an internal government relations function, which was supplemented at various points with services from a former MTA employee, an independent government relations consulting firm (Maine Governmental Relations), and Preti Flaherty Beliveau and Pachios, the firm that provides most of MTA's legal counsel.

Travel and Meals. From 2005 – 2009, MTA coded $1,104,402 to the expense category Travel and Subsistence. OPEGA determined that at least $157,000 of this was attributable to the purchase of gift certificates for donations mentioned earlier. A substantial portion of the remaining $947,402 can be attributed to:

Over 5 years the MTA coded $1.1 million as travel and subsistence expenses. These expenses included: frequent national and international travel (mostly before 2008); meals at regular supervisory and employee meetings; meals for board meetings and events; meals for management meetings and events; and workday lunch meetings.

- Frequent national and international travel, primarily from 2005 through 2007, to participate in conferences and meetings of several industry organizations, meet with various entities involved in MTA bond issuances, meet with MTA's Consulting Engineer, or visit other tolling authorities and observe their operations (e.g. to research open road tolling). This travel was primarily on the part of MTA's Executive Director, but occasionally involved other members of MTA's management team or Board. Often these trips involved stays at expensive hotels as well as expensive meals - some of which appeared to involve MTA paying for people other than MTA staff.
- Meals associated with mandatory quarterly supervisory meetings, and annual employee meetings, with the Executive Director to discuss MTA policies, procedures, organizational issues and other matters.
- Meals associated with MTA Board meetings or gatherings at Maine-based, higher end restaurants. Such meetings or gatherings typically appear to include one or more members of MTA's management team. Sometimes they also appear to include other guests like MTA's consultants.

- Meals associated with meetings and gatherings of members of MTA's management team at Maine-based restaurants or other facilities. Frequently these expenses were incurred for what appear to be dinner meetings at expensive restaurants that occasionally included consultants or other guests. We also observed expenses for what appear to be work day luncheon meetings among two or more members of MTA's management team. The lunches were either on site at MTA facilities or at local restaurants. While not overly expensive individually, these luncheon meetings seem to occur with some frequency, and sometimes include consultants or other invited guests.

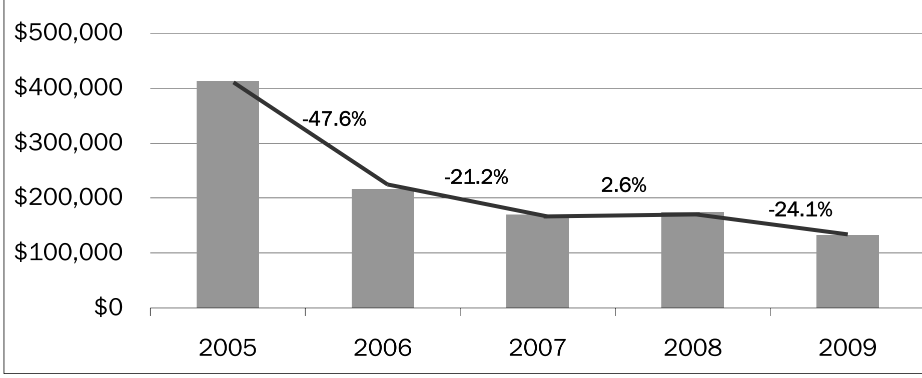
MTA's travel and subsistence expenses declined by 67.8% from 2005 to 2009. This was primarily due to reduced travel and less frequent meals. MTA managers explained they made changes to their practices in response to negative public reaction from news stories about some expenses in 2006 and 2007.

As shown previously in Table 10, MTA's expenses in the Travel & Subsistence category have declined by 67.8% from 2005 to 2009. There has been a fairly consistent downward trend each year since 2005 as shown in Table 13 and Figure 5. The decline appears to be primarily related to a reduction in national and international travel, as well as less frequent in-state meals. MTA management explained that these changes in behavior were partly the result of negative public reaction to some expenses in 2006 and 2007 that made the Authority more aware of public expectations for its activities. Some of the decline is likely also due to the fact that MTA discontinued the practice of purchasing gift certificates for donations that were being coded to the Travel & Subsistence expense category in 2005 and 2006.

Table 13. Annual % Change in Travel & Subsistence

Year	Total T&S Expense	% Chg From Prior Year
2005	$411,847	
2006	$215,683	-47.6%
2007	$169,985	-21.2%
2008	$174,446	2.6%
2009	$132,441	-24.1%
Total 5 Yr. Period	$1,104,402	

Figure 5. Travel & Subsistance Expense 2005 - 2009



A comprehensive travel and meals policy has been in place at the MTA since 2004, but was not effectively implemented among management.

MTA's written policy on travel and meal reimbursements has been in place since at least 2004 and had some minor updates in 2006. This policy is comprehensive and should serve to limit travel and meal expenses to only those that are reasonable and necessary for the conduct of MTA's business. However, we noted several issues with travel and meal expenses, including non-compliance with certain aspects of the policy, that indicate it has not been effectively implemented, particularly among MTA's top management. (See Recommendation 7.)

From 2005 to 2009, the MTA spent $29,116 on support of other state efforts. These costs stemmed from requests made to MTA by various individuals within State government, but were not always clearly linked to the MTA's mission.

Support of Other State Efforts. MTA has also incurred expenses for purposes that seem more closely related to supporting general economic development, or other State efforts, than to its own core mission. OPEGA identified miscellaneous expenditures, totaling $29,116 over the five years, that fell in this category. These include:

- the purchase and distribution of tourism-related giveaways, e.g. lighthouse-shaped cookie cutters;
- travel costs for MTA's Board chairman to participate in international trade missions; and
- sponsorship to cover costs for the Legislature's Clerk of the House to attend a national training conference.

MTA management indicated that some of these expenses were incurred as a result of requests from various individuals within State government. While such expenditures are immaterial in relation to MTA's total operating expenditures, they are indicative of a possible expansion of MTA's mission that is being driven either by the State, MTA's perception of its role, or both. Such expenses also represent a use of toll revenue that some may not expect based on the language in MTA's statute and the Bond Resolution.

Benchmarking Against Other Tolling Authorities

MTA's Performance Compared to Other States'

OPEGA intended to answer questions about the MTA's performance by comparing performance data for the Turnpike Authority and a number of its peers in other states. In our attempt to complete that comparison we encountered more than the usual number of data collection issues, including difficulty finding truly comparable entities, available data that was self-reported and not reported similarly from one entity to the next, and in the end, entities in other states that mostly refused to comply with our requests for specific and up-to-date performance data.

OPEGA intended to compare MTA's performance data to that of its peers, but encountered difficulty obtaining reliable data for the other tolling entities. We were unable to complete this analysis despite our best efforts.

The MTA and the NH Turnpike Bureau were the only ones to provide data in a useable form as requested. Limited additional data on other states was gathered from publicly available sources, but it was not from the same time period, and had very apparent issues with inconsistent reporting of critical information such as administrative costs and number of employees assigned to admin versus traffic enforcement versus road maintenance.

In the end, there was too little available data for meaningful analysis. Even a comparison of MTA to NH Turnpike Bureau was complicated by uncertainty as to the comparability of certain reported financial data, like administrative costs, given that the NH Turnpike Bureau is incorporated within NH's Department of Transportation. We concluded that drawing comparisons between tolling entities is a challenging task since the tolling authorities are independent entities with widely varying asset types and organizational structures. They also appear generally uninterested in being compared to others, and therefore unmotivated to make their performance data available in a uniform format that facilitates such comparisons.

However, in the course of our work on this question we identified a number of key performance indicators that could prove useful in tracking MTA's performance if MTA, in conjunction with its oversight bodies, was to set goals and measureable objectives for each and consistently report how its actual performance compared to the goals and objectives year to year. Having such a performance measurement system would help MTA management, and its overseers, identify areas where the Turnpike Authority is meeting or exceeding its goals, and areas where it may be falling short and could reconsider its strategies or the allocation of resources. In addition, the act of working with its oversight bodies to determine the goals for each performance measure could be a useful activity to galvanize all involved parties around a set of clear, specific goals for what a high performing MTA would look like.

As part of the performance comparison effort, OPEGA identified a number of key performance indicators that could prove useful in tracking MTA's performance over time.

Meaningful goals and objectives should focus on the activities that are most critical to achievement of MTA's mission. Ideally, they should also represent the following performance categories as appropriate for the activity:

- effectiveness – whether the desired outcome is being achieved;
- efficiency – how the inputs used compare to outputs produced;
- timeliness – whether the outputs are produced at the appropriate time without requiring excessive waiting on the part of customers;
- quality – whether the outputs are as expected and meet customer expectations; and
- economy – how well the costs associated with the activities are being contained and controlled.

In the case of MTA, it may make sense to choose measures for both the maintenance of the Turnpike and the organization's customer service operations. MTA appears to already have some financial and performance objectives and is collecting or tracking some types of data that could be utilized in a more formalized performance measurement effort. That effort, however, would still require MTA to clearly define what performance measures are most useful, what processes will be used to assure the data is consistently and accurately captured.

Table 14 includes several of the performance measures OPEGA identified, along with the type of data that would be needed for each measure, where that data should be available, and what elements of performance each measure would assess. These are by no means the only performance measures that could be used, and are perhaps not the best ones, but they are offered as examples should the MTA and its oversight entities choose to begin using the performance measurement approach outlined above.

Table 14. Examples of Potential Performance Measures for the Maine Turnpike Authority

Performance Measure	Purpose	Data Required	Source for Data
Administrative Costs as a % of Total Costs	To assess how much administrative costs are driving MTA's budget	Total costs, Administrative costs	MTA's accounting system
Maintenance Costs Per Lane Mile	To assess the annual cost of maintenance per lane mile of MTA roadway	Maintenance costs, Number of lane miles	MTA's accounting system and in-house statistics
Average Bridge Condition	To assess the overall condition of the Authority's bridges and whether the bridge assets are being maintained adequately	Condition of each bridge as rated during the current year	MTA's in-house engineers, contracted engineers, or the CE report
Number of Fatalities Per 100 miles	To assess safety of the Turnpike in terms of quality of the policing function and adequacy of response to accidents	Number of fatalities per year, Number of road miles operated by the MTA	Statistics maintained by MTA and/or the State's Highway Safety Division

In any performance measurement system, it is critical to consistently calculate the data from year to year in order to facilitate trending and comparisons.

Consistency in calculating the measures from one year to the next is critical to the usefulness of performance measures such as these. If administrative costs are calculated to include items such as meetings with employees and provision of employee recognition in one year, but those items are included in maintenance the next year, the data will not be comparable over time and will be useless for spotting trends. For this reason, it is important to assure a specific calculation method is pre-defined and consistently applied for each performance measure.

Recommendations

1

Expectations for Cash Transfers to MaineDOT Should be Clarified

Title 23 §1961(6) states that MTA must transfer its operating surplus to the Department of Transportation each year. Operating surplus is defined in 23 MRSA §1964(6-A) as total annual operating revenues, *"after money has been put aside to pay the reasonable operating expenses, to pay or to reserve for capital expenditures and to meet the requirements of any resolution authorizing bonds of the Maine Turnpike Authority…"*.

These statutory provisions were established as the result of a referendum that passed in November 1991. Prior to that time, cash transfers from MTA to MaineDOT were made based on an amount set in statute. Statutory provisions requiring transfers from MTA began in 1981 when the Legislature took action to continue the Authority as a separate entity, regardless of whether or not there were still outstanding revenue bonds to be paid. Statute was amended to adjust the maximum amount of transfers several times throughout the 1980's and early 1990's with the amount ranging from $4.7 million to $17.4 million annually.

Even after the requirement for a specified dollar amount was replaced with the requirement to transfer "operating surplus" in 1991, MTA continued to make annual cash transfers to MaineDOT in amounts ranging from $4.7 million to $8.7 million. These transfers continued until MTA began paying on the special obligation bonds issued on behalf of MaineDOT in 1996. Initial annual payments on those bonds were approximately $4.7 million.

No transfers of operating surplus have been made to MaineDOT since 1997, even though annual payments on the special obligation bonds were reduced by about half through re-financings in 1998 and 2008[10]. MTA maintains that it has had no surplus according to the statutory definition. OPEGA's review of MTA's finances finds MTA's conclusion supportable given the current definition of operating surplus which lacks specificity as to:

- the point is time when the surplus is supposed to be calculated
- whether it should be figured based on budgeted figures or actual revenues and expenditures; and
- whether it is meant to capture only current year expenditures or also projected future expenditures.

The Legislature and MaineDOT appear to have accepted MTA's explanation as they have not required any transfers. There is also some indication that at least MaineDOT, and perhaps the Legislature's Transportation Committee, no longer expected any transfers once MTA began paying on the bonds for MaineDOT.

10 These special obligation bonds will be paid off in 2018.

There is, however, no clear public record to clarify what the expectation might have been and statute has not changed.

The statutory requirements for cash transfers since 1981, and the past history of MTA making transfers even after the 1991 language change, raises an expectation that there is a surplus to be transferred. It is our observation, however, that any future cash transfers of surplus under the current definition are unlikely.

Recommended Legislative Action:

We believe that clarifying the Legislature's current expectations regarding cash transfers from MTA to MaineDOT would be beneficial to both the Legislature and MTA. If the Legislature no longer finds transfers to be necessary or appropriate, it could consider removing the statutory requirement for the transfer of operating surplus. If the intent is for MTA to make additional cash contributions beyond what it already pays toward cooperative projects and payment on existing bonds for MaineDOT, then the Legislature should consider either:

- amending the definition of operating surplus to include more specificity about when and how the surplus is to be calculated, particularly in regard to the terms "pay or reserve for" and "set aside"; or
- replacing "operating surplus" with a specific dollar amount to be transferred.

As discussed on page 15, requiring a transfer of a specific dollar amount would have implications for MTA's financial situation and potentially its bond rating. It is likely that MTA would make other adjustments to compensate for transferred revenues after analyzing its options and their impacts. The Legislature should seek to understand those possible consequences when considering potential actions.

2 *MTA's Relationship with its Contracted Engineering Firm Needs to be Redefined*

MTA has had a long-term and exclusive (sole source) relationship with its current engineering services contractor, HNTB. Over the years this firm has served both in the capacity of Consulting Engineer, required by the Bond Resolution, and as MTA's general engineering services firm for construction and maintenance projects. As a result, HNTB's VP and Principal Engineer assigned to MTA has effectively become part of MTA's management team. MTA appears to view and use HNTB as an extension of its own Engineering Department.

The current relationship provides benefits in efficiency and depth of knowledge of MTA's system. However, the sole sourced dual roles and the degree to which HNTB staff are integrated into MTA's planning processes and decisions also present the following risks:

- As Consulting Engineer, HNTB is in position to have significant influence over determining what maintenance and improvement work needs to be done, and the budgeted cost of those projects, while the firm is also in the position of profiting from these projects as MTA's general engineering services firm. This risk would exist regardless of whether it was HNTB or some other firm that

filled both roles. The risk is presently increased, however, because of the degree to which the firm participates in MTA's capital and maintenance program planning, budgeting and decision-making.

- HNTB may not have sufficient independence from MTA to effectively fill the role of Consulting Engineer, and provide bondholder protection, as intended by the Bond Resolution.
- MTA and MaineDOT may pay more for engineering services on those cooperative projects administered by MTA. HNTB will be involved in those projects and rates for services under MTA's sole source arrangement may be higher than those that MaineDOT would be able to secure through its competitive procurement process.

Recommended Management Action:

MTA reports that it has worked to bring more separation between MTA and HNTB over the years as MTA has developed its own Engineering Department. MTA's Board should take steps to continue moving toward a more arm's length relationship with HNTB. Options include:

- Splitting the two roles into separate contracts and competitively bidding one or both every four years using a process for contractor selection that is consistent with the process used in selecting consultant engineers at MaineDOT. Each contract would specify scope of work, performance expectations, and cost.
- Continuing to move some of the work typically performed by HNTB to MTA's own Engineering Department. This will likely require additional resources for either a) doing the actual engineering work on projects or b) managing a competitive bidding process for project engineering services and subsequent monitoring of engineering contracts and administration of the contracts. MTA's Board should conduct an objective cost benefit analysis of outsourcing versus in-house resources before making this decision.

3 *MTA Should Improve Contract Management for Services*

OPEGA's review of contract files found that contract management practices for construction services and purchases of goods were generally sound. Management of contracts associated with services, however, has often been informal and inconsistent. This increases the risk that:

- Unnecessary services will be provided and paid for;
- Services not meeting MTA's expectations for quality or price will be procured;
- Expense reimbursements to vendors will be higher than necessary; and
- MTA will not have adequate legal remedies available to address contractor performance or billing issues.

Specifically we noted:

a) MTA does not have written policies and procedures that set forth expectations and responsibilities for monitoring and administering service contracts.

b) Original, signed versions of contracts for professional services were not all filed in a centralized location. Rather they resided in the files of the person responsible for the contract. If that person was not available, MTA had difficulty producing the contract. OPEGA discovered one written agreement between MTA and a provider of government relations services that was not included in the list of MTA contracts initially provided to OPEGA because it had been overlooked.

c) Several situations in which MTA has procured a service from a specific vendor over a period of time, but the contracts have not been kept current or there had never been a contract formalizing the contract period, scope, performance expectations and agreed upon prices or rates.

Of particular note was MTA's administration of its engineering services contract with HNTB, for which MTA paid over $5.7 million in 2009. Due to the nature of the relationship between the two parties, management of the contract has been more informal than is prudent for external contractors. Specifically, OPEGA noted that:

a) The contract has not been kept current and does not reflect current arrangements and expectations between MTA and HNTB. The contract was established in 1985 with an amendment in 1997 that increased the allowable rate for overhead and profit. It references an outdated bond resolution and the scope of services defined in the contract for Consulting Engineer are related to past resolution requirements that no longer exist. The contract also calls for outdated reimbursement rates for mileage, and does not reflect current arrangements between HNTB and MTA for reimbursement of expenses.

b) There is often no formal written agreement or other documentation on the agreed upon scope or price of any particular work that MTA requests. Rather, it is common to establish these specifics through a verbal negotiation and understanding between MTA's Chief Operations Officer and HNTB. OPEGA notes that Article I.B of the contract does require that "Special Services" - which are really the project engineering services - shall be performed by HNTB only upon written instruction from the Authority.

c) The information provided on HNTB invoices for billing of subsistence and travel expenses (including mileage reimbursement) is not detailed enough to allow MTA's staff to know what those expenses are for, or to judge their reasonableness. MTA does not regularly review the detailed support for these charges that HNTB says it maintains. These expense reimbursements can add up. OPEGA documented a total of $45,411 in subsistence and travel reimbursements paid on invoices for the three month period October to December 2008, with total reimbursable expenses on those invoices being $253,064.

Recommended Management Actions:

A. MTA should establish formal, current written agreements for all contracts. They should have defined contract duration and cost, scope of services, expected deliverables, and specific terms and conditions, including rate schedules and agreements with regard to reimbursement of expenses

B. MTA should develop a centralized filing and tracking system for all services contracts, like the existing construction contract file, to aid:
   - Accessing original, signed contracts;
   - Monitoring contracts for expirations or updating; and
   - Identifying situations where contracts should be established.

C. MTA should establish and adhere to a standard process for monitoring and administering services contracts that includes appropriate procedures for assuring only needed services are provided, services provided meet expectations for quality, timeliness, etc. and charges for those services are in accordance with the contract before payment to contractors are made. Responsibility for these procedures should also be clearly assigned.

D. As a best practice, MTA should also formalize its processes for managing both construction and other services contracts into written policy and procedure as a means of communicating it to all staff and assuring consistent adherence to the established practices.

E. Specifically related to HNTB, MTA should assure there is a written agreement on scope and estimated cost of each project MTA requests HNTB services for. In addition, MTA should require HNTB to provide additional detail on invoices that includes:
   - summary of total monthly hours and expenses by employee across all projects,
   - detail of individual reimbursable expenses, i.e. date incurred, what the expense is for, breakdown of mileage charges for HNTB vehicles.

   MTA should also periodically review HNTB's supporting documentation for its invoices. This would be most effective if conducted through a periodic audit conducted by MTA's external auditors or by a MTA department not responsible for approving the HNTB invoices.

4

Controls Over Sole Sourcing Should be Strengthened

Fifteen of MTA's 90 active contracts that could have been competitively bid (16.6%) are sole source arrangements, meaning the vendor was selected without soliciting proposals or costs from other vendors. Two of these contracts are associated with service plazas along the Turnpike and generated about $3.8 million in revenue for MTA in 2009. The other 13 had associated payments of about $10.3 million in 2009.

OPEGA reviewed eight of the 15 sole source arrangements as part of our contract review. All the contracts in our sample were for services. Some of the services associated with these contracts had never been competitively bid, including some procured from HNTB. Others had apparently been competitively bid at some point in the past and then never re-bid. The bid process occurred so long ago in some cases that MTA was not sure when it was done and could provide no documentation.

There was no written justification for the seven sole source arrangements we reviewed, although MTA management provided reasonable explanations for them. Based on these explanations, two of the contracts we reviewed do not appear to be good candidates for competitive bidding because of the particular conditions under which these services are being procured. The other five, though, were services that could be competitively bid.

OPEGA acknowledges there are situations in which sole source procurement may be more appropriate. However, MTA has no formal criteria or written policy for determining when sole source arrangements are appropriate, or documenting justification and approvals for them.

According to management, the reasons for selecting each sole source vendor are unique, and therefore the decision making process has never been reduced to a written policy. Management also described sole sourced contracts as resulting from situations that require a lengthy ongoing collaboration between the parties, usually in the development of a unique product and/or relationship.[11]

OPEGA observed that MTA management also values the familiarity, and related efficiencies, that come from long-term relationships with the same vendors. Without a competitive selection process, however, the Authority is at risk of procuring goods and services that are not the best value. Policies for determining when sole sourcing is appropriate, and requiring some type of justification and approval for sole source arrangements, can mitigate these risks.

Recommended Management Action:

MTA should adopt a formal policy that includes criteria for when sole sourcing and contract extensions are appropriate. MTA managers should be required to justify their sole source requests, and continuing contract extensions, against the criteria and document that justification in writing. Sole source contracts, or other

[11] The Legislature's Transportation Committee, reviewed MTA's specific reasons for sole sourcing six of its contracts as part of the 2005 Government Evaluations Act review.

arrangements, exceeding an established dollar amount should be reviewed and approved by the MTA Board.

MTA could consider whether to adopt the State's Purchasing Policy and procedures for sole source contracts, which have recently been revised in response to OPEGA recommendations to strengthen the State's processes.

5 MTA Should Provide Detail on All Operating Expenses as Part of Legislature's Statutory Review and Approval of Budget

Statue requires that MTA submit its budget for operating expenses to the Legislature for approval each year. Under 23 MRSA §1961-6, the Authority may only pay operating expenses in accordance with allocations approved by the Legislature, or as necessary to satisfy the requirements of any resolution authorizing bonds of the Authority. In this way, the Legislature plays a role in establishing MTA's operating expenses at a "reasonable" level.

The Joint Standing Committee on Transportation reviews the budget submitted by MTA as part of the Legislature's approval process, which takes the form of a bill. Past Transportation Committee members said they were pleased with the expenditure detail MTA provides, noting that the information is much more detailed than that typically provided by State agencies. Committee members also commented on MTA's responsiveness to their questions and willingness to provide additional information and detail when requested to do so.

OPEGA reviewed the materials and information supplied to the Transportation Committee. We agree that the detail provided allows for a substantial amount of transparency and noted that the budget materials even include detail on prior years' actual versus budgeted expenses for each expense category.

However, the operating budget submitted to the Legislature for approval does not include all of MTA's operating expenses. Rather, it only includes those operating expenses that MTA is planning to fund with monies from its Revenue Fund account. Operating expenses that MTA plans to pay for with monies from its Reserve Maintenance Fund are presented separately, for informational purposes only, in the form of budgeted costs for "perennial" projects. MTA does not routinely present any information on actual expenditures incurred for these "perennial" projects, and paid for from the Reserve Maintenance Fund, to the Legislature.

This format does not allow the Legislature to see, or approve, MTA's operating expenses in total, or the dollars budgeted and spent for particular operating expense categories. In our analysis of operating expenses for 2005 – 2009, we noted that on average about 40.6% of MTA's operating expenses each year have been paid for from the Reserve Maintenance Fund and, were not part of the operating budget submitted for Legislative approval.

Furthermore, the format does not allow the Legislature to monitor whether MTA is keeping its actual operating expenses within the approved budget. OPEGA saw

evidence that expenditures identified by MTA as "unbudgeted" are sometimes coded so they can be paid for under Reserve Maintenance Fund "perennial" projects. The Bond Resolution allows this as it only requires MTA to adhere to the budget for operating expenses approved by the Board and funded by the Revenue Fund.

We also noted that the information provided in the operating budget is typically detailed by MTA department and that some summarization of the detail would allow the Committee to more easily see the total, and trends, of expenditures budgeted and spent in particular expense categories. Either MTA or non-partisan legislative staff should easily be able to provide such summarization if requested, but we think it would be helpful for MTA to provide it as part of the prepared budget materials.

Lastly, throughout our analysis of MTA's operating expenses we noted inconsistency in the account coding for similar types of expenses. For example, some expenses for employee recognition items were coded to the safety equipment expenses and sponsorship and donations were coded to a variety of different expense categories. Such inconsistency affects MTA's and the Legislature's understanding of exactly how many dollars are going to each type of expense.

Recommended Management Action:

To fully comply with statute, MTA's budget presented to the Legislature for approval should include all expenses typically considered operating expenses, regardless of what account they are being funded from. MTA could show detail by the funding accounts if desired. This would be similar to how State agencies show detail by funding source for different types of expenses within individual programs. MTA could also provide information on which expense categories, and the dollars budgeted for them, were at levels required by the Bond Resolution, i.e. insurance. The budget materials for the entire operating expense budget should continue to include information on actual expenditures in each category for prior years.

At a minimum, MTA should provide the Legislature the same type of expense detail on its "perennial" budget funded from Reserve Maintenance as it does for the operating budget that is submitted for approval.

MTA should also provide, in the budget materials prepared, a summary of the detail budget and actual expenditures by expense category for all of MTA operating expenses, regardless of fund, to accompany the breakdowns by department.

6

MTA Should Formalize Criteria and Processes for Sponsorships and Donations

OPEGA identified at least $454,238 in sponsorships and donations to as many as 50 different charitable and non-charitable organizations. It was difficult to determine exactly how much MTA has in these types of expenditures as there is not a specific expense account code to capture them. The sponsorship and donation expenses we identified had been coded to expense categories Organization Fees, Informational Services, Work Performed by Others, Miscellaneous Fees and Travel and Subsistence.

The total dollars we identified includes $157,000 in gift certificates that MTA says were donated to various organizations although there have been no records kept of the specific donations made or received by any particular organization. These gift certificates were purchased by the Executive Director in 2005 and 2006. He reports distributing these, with no involvement from other MTA personnel, as donations over the period 2005 – 2007. The gift certificate purchases had been coded to the Travel and Subsistence expense category. We understand that MTA discontinued the practice of making donations in the form of gift certificates after 2007.

We noted the following about the sponsorship and donation expenses we identified:

- MTA's typical donation to charitable organizations ranged from $200 - $500 in any given year. There were several organizations that received more than that, however. For example in 2009, L/A Arts received $600, the Maine Irish Heritage Center received $2,500, and the Nature Conservancy of Maine Chapter and the New England Pond Hockey Festival each received $1,000.
- Some of the organizations receiving sponsorships and donations are also supported by MTA through membership dues and other payments. Examples include:

  Maine Better Transportation Association (MBTA) to which MTA made total payments of $403,640 between 2005 and 2009. Some of this amount is for annual membership dues. MTA also pays MBTA rent for office space for MTA's Government Relations Director to use when he is in Augusta at $1,375 per quarter. We identified an additional $39,438 in payments that appear to be sponsorships and donations.[12] According to MTA, MBTA was also the recipient of substantial donations in the form of gift certificates.

  Maine Development Foundation (MDF) to which MTA paid membership dues of $1,500 per year. MDF received at least an additional $18,100 from MTA in the form of sponsorships over the five year period.

  Maine State Chamber of Commerce to which MTA made total payments of $103,295 over the five year period that included $10,000 per year in

[12] OPEGA is unsure what the remaining payments to MBTA were for as there was not enough detail in the electronic transaction file we were provided to make that determination without reviewing each individual invoice.

membership dues. An additional $35,500 of that total appears to be for sponsorships or donations.

- MTA has made donations to non-charitable organizations with no direct link to MTA's mission and purpose. Some of them are organizations that have members of MTA management or Board members on their boards or commissions. Donations to some of the others are possibly indicative of an expansion of MTA's mission. For example, over the period 2005 – 2009, MTA has spent at least the following in donations and sponsorships: $10,000 to the Maine Center for Economic Policy, $3,255 to GrowSmart Maine, $2,500 to the Maine Grocer's Association, $10,000 to the Maine Restaurant Association as an Expo sponsor, $11,000 for the Governor's Conference on Tourism, and $27,000 to the Maine Preservation Foundation. According to MTA, the Maine Preservation Foundation also received substantial donations in the form of gift certificates.

OPEGA reviewed the documentation associated with a number of the sponsorship and donation expenses during our testing of MTA's expenditures. We noted in general that these expenses are not well supported by documentation showing the solicitation to MTA, the purpose the donation would be put to, or confirmation of receipt of the donation. We also noted that MTA has no formal policies or procedures for guiding what types of organizations will receive MTA support and how much support they will receive.

Given the expense activity OPEGA observed, we believe there is risk of MTA resources being used to support efforts not directly tied to its mission. There is also risk that perceived, or actual, personal benefit will accrue to members of MTA management from these sponsorships and donations.

Recommended Management Action:

The Authority should establish a formal policy and process for sponsorships and donations that includes criteria for deciding which organizations will receive them and in what amounts. Sponsorships and donations should be approved by vote of the MTA Board and be well documented with copies of the solicitation requests received by MTA, as well as receipts or letters confirming receipt by the organization.

MTA should also establish a specific expense code for sponsorships and donations so that a budget can be set and actual expenditures tracked against it. This expense category would show as a detailed line item in MTA's operating budget presented for Legislative approval.

7

MTA Should Clarify and Ensure Adherence to Approval and Documentation Requirements for Expenses, in Particular Travel and Meal Expenses

MTA processes payments for operating expenses on a variety of documents including invoices from individual vendors, credit card statements, employee reimbursement requests, Request for Check Forms, and Revolving Checks. OPEGA reviewed 224 of these documents specifically selected because they contained one or more expenses that had potential for being considered inappropriate, excessive or unnecessary. We noted the following with regard to approvals on these documents:

- 20 payments did not have proper approvals, either because they had been approved by individuals that did not have approval authority under MTA's current Purchasing Policy, or because they had been requisitioned and approved by the same individual.
- Monthly credit card payments being made via a Request for Check were typically approved by MTA's Chief Financial Officer (CFO). Those payments covered the charges on the individual statements for all cardholders, including those for the CFO and Executive Director. There was no review and approval of the credit card statements by the supervisor of the employee incurring charges, or by the Board for the charges incurred by the Executive Director.

The lack of appropriate approvals may stem from the fact that MTA's approval policies for the types of expenses we reviewed were not particularly clear on whose approval is required for different dollar limits, different documents or different kinds of expenses. For example, the Purchasing Policy contains an approval matrix that OPEGA found confusing for determining who should be signing for various departments and dollar limits. That Policy does not state that the same individual cannot approve both the requisition and the subsequent invoice for an item even though MTA's Director of Finance told us that was prohibited.

We also noted several issues specific to travel and meal expenses. MTA has a comprehensive Travel and Meal Reimbursement Policy that clearly applies to employee reimbursements. It specifically notes that the requirements are meant to apply to travel and meal expenses incurred on MTA credit cards. Despite this, our review of travel and meal expenses charged to MTA credit cards found instances of MTA paying for expenses incurred by members of MTA's management team that were discouraged, or not allowed, under the Policy including:

- private limousine services;
- hotel rooms of a type that would be viewed as exceeding what is necessary to be "consistent with reasonable living standards";
- meals and entertainment during business meetings with fellow employees that are not documented as meeting one of the exceptions where reimbursement would be allowed;
- in-room movies;
- airline club dues; and
- alcoholic beverages.

We also found that in general travel and meal expenses incurred on MTA credit cards issued to MTA managers did not have all the supporting documentation required by the Travel and Meals Reimbursement Policy. Many of the expenses had no supporting documentation at all. The Policy requires expenses to be supported by detailed receipts along with records of the amount, time, place, names of persons and business purpose for each. Despite the lack of required documentation, MTA had still paid for the expenses.

Finally, we observed that travel and meal expenses processed on documents other than employee reimbursement requests or credit card statements, although not technically covered by the Travel and Meal Reimbursement Policy, also included items not allowed under the policy, like alcoholic beverages and private limousine services. The expenses on these documents often did not have adequate supporting documentation such that we could determine the business purpose of the expense, specifics on who was covered by the expense and the dates or locations of the expenses.

Recommended Management Action:

MTA should take steps to clarify, and ensure effective implementation of, its policies governing:

- authorized approvers and approval limits for various types of expenses and expense documents;
- supporting documentation required for all travel and meal expenses paid for by MTA, regardless of who incurred or authorized the expenses or what type of documents they are processed on; and
- allowable travel and meal expenses for all MTA employees and managers, regardless of the type of document they are processed on.

Such steps should include developing or revising written policies as appropriate, communicating the specifics of those policies to MTA employees at all levels, and establishing controls to assure policies are adhered to.

Agency Response

In accordance with 3 MRSA §996, OPEGA provided the Maine Turnpike Authority an opportunity to submit additional comments on the draft of this report. The Authority's response letter can be found at the end of this report.

In addition, OPEGA discussed the preceding issues and recommendations with MTA's management in advance. Upon receiving our recommendations, MTA devoted significant attention to developing action plans that would address those issues that are the Authority's responsibility. Details of the proposed actions were shared with OPEGA as MTA sought feedback on whether they would sufficiently address the concerns identified. According to MTA management, some of OPEGA's recommendations have provided further impetus for implementing ideas they had already been considering.

We understand MTA has already begun implementing some actions, and others will be submitted to the Board for review and approval. MTA has sought to strike a balance between fiscal controls and efficient operations, as well as balance between compliance with statute and compliance with the terms of its Bond Resolution. Not all of the proposed actions exactly mirror OPEGA's recommendations, but in our opinion they are reasonable, both in scope and timeframe, for addressing the issues we raised. If effectively implemented, they should strengthen MTA's processes, begin to substantially redefine the relationship with HNTB, and bring additional transparency to MTA's budget and expenditures.

We note that some actions being taken by MTA go beyond the scope of OPEGA's recommendations and will provide for additional improvements and efficiencies. We also observe that MTA's detailed plans have been developed with an eye toward using any new resources, e.g. personnel or technology, most efficiently and effectively for MTA's longer term needs. We see this as an indication that MTA is truly interested in fully integrating the changes in a way that impacts MTA's culture and makes it a stronger organization.

MTA's planned management actions, as provided by its management team, are summarized below. They are numbered to correspond with the issues described by OPEGA in the Recommendations section of the report.

2

MTA's Relationship with its Contracted Engineering Firm Needs to be Redefined

MTA's Chief Operating Officer has proposed a detailed action plan that will be substantially implemented in the first half of 2011. The plan formalizes MTA's agreements with HNTB, and provides for transitioning portions of work HNTB has historically performed to either in-house resources or other consultants. It addresses issues identified by OPEGA as well as policies, procedures and staffing requirements MTA considers vital to the successful management of a larger capital program in 2011 to 2015.

When crafting the plan, MTA was mindful of its need to continue to provide timely, cost-effective, safe, quality-driven, and environmentally sensitive projects. Consequently, HNTB will continue to be MTA's primary engineering consultant on 2011 – 2012 projects currently in progress, and until MTA has developed sufficient capacity to manage its procurement of various engineering services differently. Key actions included in MTA's overall plan are:

A. Establish new contracts with HNTB that have defined durations, scopes of service, terms and conditions and costs.
    1. By June 2011, establish four new general consulting agreements (GCA) with HNTB to reflect the various services MTA expects to procure. These are consulting engineer services[13], program management services[14], project engineering services and construction inspection services.
    2. By December 31, 2011, establish a project-specific written agreement defining duration, scope and cost for each 2011 and 2012 project assigned to HNTB under the GCA's for project engineering or construction inspection services.

   The MTA Board, with Trustee approval, will award the Consulting Engineer contract and re-approve it every five years. MTA expects to continue awarding this contract to HNTB, with five year terms, until such time as the Board deems it appropriate or advisable to competitively bid the consulting engineer services. The other three services will also continue to be procured from HNTB initially, but MTA expects to reduce the amount of services procured under these contracts as it builds in-house capacity to perform or competitively bid more work.

B. Develop a formal project management process during the first half of 2011 where MTA Engineering Department will assign and manage all engineering work.
    1. By June 30, 2011, create and fill a new staff position to assume project management responsibilities. These responsibilities involve: managing all consultant resources, including HNTB; managing the RFP process for new design projects and studies; providing additional review of plans and specifications; and providing the MTA with capacity to perform some assessment work in-house.
    2. By the end of 2011, implement a formal in-house process for selection and assignment of consultants to perform project development and design work, prior to project initiation. For each project, MTA will decide whether to assign work directly to HNTB under the established

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13 Scope of services for the Consulting Engineer Services contract will include fulfilling Bond Resolution functions; high-level planning and assisting with 20-Year Plan as requested by the MTA; providing advice and counsel to the MTA board and executive management team; acting as day-to-day traffic engineer; and forecasting functions.

14 Through this contract, HNTB will continue to assist MTA's engineering group with some administrative functions. Scope of services will include managing the library of specifications and standards details for construction contracts; assisting with administration of the overall capital and reserve maintenance program, as well as the coordination of projects; performing some design work as assigned by MTA; and providing full project management on some projects, especially complex projects in HNTB's area of expertise.

GCA or to solicit proposals from other MaineDOT pre-qualified firms and select one or more of those firms to perform work. MTA expects that projects under $100,000 will continue to be directly assigned to HNTB for efficiency reasons, but it will begin competitively selecting the consultants for larger projects. In 2011, the Authority intends to competitively bid the engineering services for at least one major 2012 construction project.

C. Use resources other than HNTB to assume some of the construction inspection responsibilities:

   1. By July 1, 2011, hire two additional MTA construction inspectors (one senior-level resident engineer and one resident engineer to join the three existing MTA technician-level inspectors. MTA has performed a preliminary cost/benefit analysis and has determined that, in the long run, the two additional inspectors are warranted and the new positions will cost less than consultant resources.

   2. Due to immediate needs and their high level of experience and success working for the MTA in this area, HNTB will still have a contract to perform construction inspection. However, by April 2011, MTA will solicit proposals from other engineering firms pre-qualified by MaineDOT to fill additional inspector openings created by the larger 2011-2015 capital program. MTA expects to establish contracts with other firms as a result of these proposals. MTA engineering staff will manage those consultant inspectors directly.

3

MTA Should Improve Contract Management for Professional Services

MTA has begun development of a contract management database and related procedures that is expected to be complete in April 2011. This contract management system will provide for centralized tracking and review of all contracts. The database will be used to determine when contracts are due for updating or reconsideration, and to help assure those contracts get timely attention.

Once development of the contract database software is complete, MTA will begin populating the database with information on all its current contracts. In conjunction with this process, MTA will be identifying all contracts that are out of date or do not have the specific terms and conditions recommended by OPEGA. MTA will take action to update and strengthen those contracts as they are identified. MTA expects to be completed with the review of all contracts, and to have the database fully populated, by October 1, 2011.

MTA will also establish a formal contract management and administration policy for all contracts by fall 2011. The policy is expected to clarify the roles and responsibilities associated with monitoring professional services contracts to assure acceptable contractor performance, and adherence to contract terms and conditions.

In response to OPEGA's recommendations for management of HNTB contracts, MTA intends to establish new contracts as described in Action 2 above. In addition, MTA will require that HNTB provide additional detail for reimbursable expenses on each invoice, similar to what HNTB is required to provide on its

invoicing to MaineDOT. MTA is also considering the most cost-effective way to periodically audit HNTB's expenses. Initially, MTA expects to hire its external auditors to conduct this audit, with the first audit performed by spring 2012. This work may eventually be conducted under an in-house internal audit program.

4

Controls Over Sole Sourcing Should be Strengthened

MTA staff will draft a formal policy on sole sourcing consistent with OPEGA's recommendations for standard criteria, written justification and Board review of sole source arrangements. Staff expects to submit the draft to the Board's Finance and Audit Subcommittee by the summer of 2011. Staff will work with the Subcommittee to finalize the policy and present to the full Board for approval. Assuming Board approval is obtained, MTA expects to implement a policy in the autumn of 2011. In conjunction with this effort, MTA will establish written guidelines on the Request for Quotations process for professional services.

MTA will also begin conducting a regular review of sole source contracts to determine if their sole source status remains appropriate as part of the contract management system described above in Action 3.

5

MTA Should Provide Detail on All Operating Expenses as Part of Legislature's Statutory Review and Approval of Budget

MTA's Board and management strongly believe that protecting its ability to pay certain operating expenses is critical to maintaining the desired bond ratings. Consequently, MTA intends to continue budgeting for operating expenses that are critical to complying with bondholder expectations in the Reserve Maintenance project budget that is not subject to the Legislature's approval. MTA is committed, however, to improving the transparency of all its operating expenses, and assuring that any expenses excluded from the operating budget submitted for legislative approval are appropriately limited. To this end, MTA will take several actions:

1. Expand information provided to the Legislature in the budget materials. Beginning with the budget for 2013 submitted in fall of 2011, budget materials will include:
    - detail by expense category for all operating expenses, regardless of the fund they are budgeted to, with indication of which are included in the operating budget for the Legislature's approval and which are not; and
    - a summary of total actual versus budgeted operating expenses by expense category across all MTA departments and funds.
2. Review all operating expenses currently funded by the Reserve Maintenance Fund and identify those that are not critical to complying with Bond Resolution terms. In the future, these expenses will be funded from the Revenue Fund and will be included in operating budgets presented for legislative approval. MTA staff have already begun this review. The Board has requested that bond counsel also participate in this process and provide an opinion.
3. Audit expenses paid for by the Reserve Maintenance Fund annually, thereafter, to assure any that should be submitted for Legislature's approval are captured in the operating budget considered by the Legislature. MTA is

assessing whether to establish an in-house internal audit program that would be assigned this responsibility.

4. Update accounting reference codes for expenses and standardize use of these codes across departments by winter 2011-12.

6

MTA Should Formalize Criteria and Processes for Sponsorships and Donations

MTA staff will draft a formal policy on sponsorships and donations consistent with OPEGA's recommendations. The policy, which will include criteria and process for guiding expenditures of this type, will be submitted to the MTA Board for review and approval in the autumn of 2011. Assuming Board approval is obtained, the policy will be implemented by January 1, 2012.

In addition, MTA intends to develop annual budgets for sponsorships and donations that specify the amounts MTA expects to contribute to particular organizations each year. An accounting code will be established to capture sponsorship and donation expenditures, and regular monthly reports will be generated for monitoring actual expenses against the budget. MTA expects to have the first budget prepared for the calendar year 2013 and implement the monitoring process in 2012.

7

MTA Should Clarify and Ensure Adherence to Approval and Documentation Requirements for Expenses, in Particular Travel and Meal Expenses

MTA has identified a number of written policies and procedures that will be updated or established to clarify the Authority's expectations regarding approval, documentation and appropriateness of expenditures. MTA will update its Purchasing Policy, including the approval matrix, field purchasing policy, invoice authorizations and purchasing card policy by November 1, 2011. In addition, policies and procedures covering the following will also be current and in place by that time, and will include proper controls to minimize risk of inappropriate expenditures:

- travel;
- company paid meals;
- company credit cards;
- payroll reimbursement and cell phone reimbursement; and
- petty cash and the revolving checking account.

MTA will distribute the policies and discuss their requirements with all MTA supervisors at the regular quarterly Supervisors' meetings. Management has already sent memos on approval and documentation requirements for travel and meal expenses to all credit card holders and those supervisors that have Open Purchase Orders for these types of expenses. The agenda for the March 2011 Supervisors' meeting will include a review and discussion of the Travel Policy. Other policies and procedures will be distributed and scheduled for discussion as they are finalized.

MTA is also considering the most cost-effective way to audit for compliance with various policies and procedures. Options include requiring review of expenses by MTA's Controller, requesting that external auditors incorporate specific testing into their annual audit or establishing an in-house internal audit program as described below.

In the course of addressing issues raised by OPEGA, MTA identified several additional opportunities to strengthen its internal control framework. MTA intends to act on these opportunities by the end of 2011:

Establish a system for tracking status of MTA policy documents using the same database framework and process as the system being developed for contract management. This tracking system will provide for identifying when policies need to be reviewed for updates, and will assign responsibility for those reviews and updates to particular individuals. As part of the process of populating the policy database, MTA will review all policies and update them as necessary.

Update or establish additional written policies and procedures to govern employee job training and internships, protection of whistleblowers, network access, computer usage, and union negotiations.

Develop a formal internal audit program within MTA that may include establishment of an internal audit position. MTA will seek assistance from a consultant in designing a program that has sufficient independence and resources. MTA envisions that capacity for handling whistleblower complaints would also be built into the internal audit program.

Replace a soon-to-be-vacant position with a Project Engineer position. Responsibilities of the new position will include: creating and administering proposed future asset and fleet management systems; tracking and managing performance measures in Operations & Maintenance; and providing general project coordination. The new position will replace an existing position in the budget.

Acknowledgements

OPEGA would like to thank the management and staff of both the Maine Turnpike Authority and the Maine Department of Transportation for their cooperation during this review. We would also like to thank the management and staff in the Legislature's Office of Program and Fiscal Review, Office of Policy and Legal Analysis, and Law and Legislative Reference Library for their assistance in providing information.

Additionally, we would like to acknowledge the New Hampshire Bureau of Turnpikes and the New York State Thruway Authority for taking the time to respond to our survey requesting performance data.

Lastly, we appreciate the technical expertise and perspective that Edwards Angell Palmer & Dodge brought to this project.

Appendix A. Scope and Methods

The scope for this review, as approved by the Government Oversight Committee, included a number of questions covering a broad range of topic areas. In order to answer each question fully, OPEGA conducted work including:

- interviewing the managers and staff of the Maine Turnpike Authority as needed;
- reviewing MTA's documented policies and procedures concerning purchases and travel and meals;
- surveying tolling entities from other states in an attempt to gather performance data for comparison with MTA's;
- interviewing the Bond Trustee, MaineDOT Commissioner, Consulting Engineer, Transportation Committee chair, and MTA Board members about their oversight roles and functions;
- obtaining a data file including all of MTA's transactions from 2005 to 2009, and subjecting it to rigorous analysis;
- reviewing MTA's most recent annual report, enacting statute, audited financial statements, 20 year planning documents, Consulting Engineer's reports and Traffic Forecast reports;
- reviewing the MTA's legislative history;
- obtaining and reviewing the statutes of tolling entities from other states in order to compare the oversight required by statute to that of MTA;
- analyzing the methods rating agencies used to determine the MTA's bond rating, the trends in MTA's bond rating, and MTA's bond rating in comparison to those of other tolling entities
- obtaining records from both the Legislature's Office of Fiscal and Program Review and the MTA of cash transfers from the MTA to the State, and analyzing the types and amounts of transfers;
- obtaining record of non-cash contributions MTA has made to Maine's transportation infrastructure, and attempting to confirm the value of these contributions with MaineDOT;
- selecting a sample of MTA's expense transactions for detailed review, and reviewing all invoices and other documentation associated with those transactions;
- selecting a sample of contracts to review for compliance with MTA's Purchasing Policy and to assess the adequacy of the Authority's contractor selection and contract administration processes;
- seeking performance benchmarks appropriate to entities like the MTA that are responsible for the operation of a toll road; and
- reviewing MTA's current Bond Resolution.

Early in this review, OPEGA decided to contract with a consultant to opine on issues that require legal and bond expertise in relation to MTA's Bond Resolution. OPEGA sought recommendations for a consultant from the State Attorney General, the State Treasurer and the Executive Director of the Maine Municipal Bond Bank. From this process, we selected Edwards Angell Palmer & Dodge and requested that firm address the scope related questions concerning:

- the specific covenants included in the MTA's current Bond Resolution;
- whether MTA's Bond Resolution includes covenants that are atypical of those in the resolutions of other tolling entities that issue revenue bonds; and
- how the Legislature may, or may not, be constricted by the Bond Resolution, or anything else, in what future legislative action can be taken with regard to the Maine Turnpike Authority.

Appendix B. Summary of Selected Sections of 23 MRSA Chapter 24

Summary of 23 MRSA Chapter 24 Sections Relevant to OPEGA's Review	
§1961	Legislative Findings; Cooperation with the Department of Transportation; Bonds; Governmental Function – States that a safe, efficient and functional turnpike is essential to the State transportation system and the well-being of Maine's citizens. Requires the MTA carry out its purposes in cooperation with the MaineDOT and provide its operating surplus to the MaineDOT each year. Declares that the purposes of the chapter are public and that the MTA shall be regarded as performing a governmental function. Requires the MTA to comply with the Sensible Transportation Policy Act. Requires the MTA submit to the Legislature, annually, a budget for the following year's operating expenses, along with a statement of revenues needed for capital costs, reserves, and to meet bond resolution requirements.
§1962	Preservation of Rights – Protects the rights of existing bondholders and anyone to whom the MTA owes contractual obligations.
§1963	Maine Turnpike Authority – States that the MTA will operate and maintain the Turnpike from Kittery to Augusta until the Legislature provides for its termination.
§1964	Definitions – Defines certain terms as used in the chapter.
§1965	Maine Turnpike Authority; Powers; Membership – Describes the powers of the MTA and establishes the membership of the Authority: the MaineDOT Commissioner as an ex officio member, and 6 other members appointed by the Governor and confirmed by the Legislature for 7 year terms.
§1966	Obligations of the Authority – States that all contracts for Turnpike construction and reconstruction must be approved by the MaineDOT. States that revenue bonds issued under by MTA are not a debt of the State or a pledge of the faith and credit of the State. Requires a report detailing the Authority's receipts and expenditures from all sources be submitted to the Legislature semiannually.
§1968	Issuance of Bonds – Provides for the issuance of Turnpike revenue bonds, not to exceed $486,000,000, for purposes described in §1969, and for the issuance of up to $40,000,000 in special obligation bonds for MaineDOT projects prior to June 30, 1997. States MTA bonds do not constitute a debt of the State and are payable from the operating revenues of the Turnpike and provides MTA the authority to set bond terms.
§1969	Application of Proceeds of Bonds or Notes in Anticipation Thereof – States how bond proceeds shall be applied, including for: construction and reconstruction of the Turnpike, payment to the MaineDOT for MaineDOT projects, repayment of federal grants or loans used to construct or maintain the Turnpike, payment of costs to construct or reconstruct interchanges, bond issuance costs, creation of reserves.
§1970	Bonds; How Secured – Provides the bonds may be secured by a trust indenture or bond resolution between the MTA and a trust company or bank, and describes what may be included in the trust indenture or resolution.
§1971	Exemption from Taxes – States that by accomplishing the purpose stated in this chapter the Authority will be performing essential governmental functions, and will not be required to pay taxes on property or income.
§1972	Refunding Bonds – Grants the MTA the authority to refinance existing bonds.
§1973	Maintenance of the Turnpike – Authorizes the MTA to maintain and repair the Turnpike and utilize the services of the Maine State Police. Sets the maximum speed limit on the Turnpike. Gives the MTA tolling authority and declares the fixing of tolls is not subject to supervision or regulation by any State entity. Establishes that toll rates may be revised, will include a commuter system discount and will exempt the military.
§1974	Use of Turnpike Revenues – States how Turnpike revenues may be expended. Provides for use of revenues for construction or improvement of interchanges not incorporated into the Turnpike. Describes Maine State Police duties to be paid by MTA. Provides for the use of revenues for certain MaineDOT projects.
§1975	Provisions in Case of Default on Bonds – Describes duties of the bond trustee and the rights of bondholders in the event of default on bonds.
§1978	Termination of the Authority – States the Authority will not be dissolved until the Legislature directs its termination and all bonds have been paid or a trust has been established sufficient to pay the bonds.
§1979	Governmental Functions – States that the purposes of the chapter are public and that the Authority shall be regarded as performing a governmental function in the carrying out of the provisions of the chapter.

Appendix C. Bond Resolution Summary Provided by Edwards Angell Palmer & Dodge

EDWARDS ANGELL PALMER & DODGE LLP

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TO: Office of Program Evaluation and Government Accountability

FROM: Walter J. St. Onge III

Isaac D. Fine

DATE: September 2, 2010

RE: Maine Turnpike Authority General Bond Resolution

In accordance with our engagement with the Office of Program Evaluation and Government Accountability (OPEGA) in connection with OPEGA's current review of the Maine Turnpike Authority (the "Authority"), we have reviewed the Authority's General Turnpike Revenue Bond Resolution adopted April 18, 1991 as amended through September 13, 2007 (the "Bond Resolution"). The Request for Quotations provided by OPEGA seeks input on certain matters related to the Authority's obligations under the Bond Resolution. This memorandum addresses each topic in turn. Capitalized terms not otherwise defined herein are used as defined in the Bond Resolution.

For purposes of this memorandum, in addition to the Bond Resolution, we have reviewed the Authority's enabling act (23 MRSA §§ 1961-1983), the Official Statement of the Authority dated January 29, 2009 pertaining to its $50,000,000 Turnpike Revenue Bonds, Series 2009, the General Bond Resolution of the State of New Hampshire Turnpike System[1] and Trust Agreements of the Massachusetts Turnpike Authority[2], reports of rating agencies relating to toll facilities in the United States, relevant case law and other documents that we deemed pertinent to our analysis.

PART 1

A listing and brief description of the specific legal obligations to bondholders contained in the Bond Resolution that affect:

- how the Authority must manage its finances, assets, operations or planning; and/or
- what the Authority must establish or maintain for an organizational, governances and accountability structure.

[1] Edwards Angell Palmer & Dodge ("EAPD") has served as bond counsel to the State of New Hampshire for all of its debt issuance for many years, including with respect to the establishment of and all revenue bond financings for the State of New Hampshire Turnpike System.

[2] EAPD served as underwriters' counsel with respect to the 1997 bond issues of the Massachusetts Turnpike Authority at which time the trust agreements referenced herein were adopted. EAPD also served as bond counsel to the Massachusetts Turnpike Authority from December 2007 to November 2009 and since then has served as bond counsel to the Massachusetts Department of Transportation, the successor to the Massachusetts Turnpike Authority.

BOSTON MA | FT. LAUDERDALE FL | HARTFORD CT | MADISON NJ | NEW YORK NY | NEWPORT BEACH CA | PROVIDENCE RI
STAMFORD CT | WASHINGTON DC | WEST PALM BEACH FL | WILMINGTON DE | LONDON UK | HONG KONG (ASSOCIATED OFFICE)

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This section of the memorandum summarizes each article of the Bond Resolution, focusing on the obligations to bondholders that affect (i) how the Authority must manage its finances, assets, operations or planning; and (ii) what the Authority must establish or maintain for an accountability structure. In particular, the section-by-section summary of Article VIII highlights the financial tests, reporting requirements and other obligations that the Authority must meet on an ongoing basis.

The Bond Resolution does not impose any particular requirements regarding the organizational or governance structure of the Authority. The Authority is essentially permitted to conduct its activities as it determines, subject to limitations imposed by the Enabling Act and compliance with the terms of the Bond Resolution.

Article I – Definitions

Article I provides the definitions for each of the defined terms used in the Bond Resolution.

Articles II-IV – Terms of Bonds

Articles II, III and IV provide the general terms applicable to all Bonds issued under the Bond Resolution. The specific terms of each individual series of Bonds issued by the Authority under the Bond Resolution, such as the principal amounts, maturities, interest rates and redemption terms, are contained in the supplemental bond resolution related to such series of Bonds. The documents that are required to be delivered upon the issuance of each series of Bonds are listed in Section 202. The supplemental resolution for each series of Bonds may contain additional conditions to the bond issue. For example, certain outstanding Bonds were issued with bond insurance policies issued for the benefit of the applicable bondholders. This resulted in certain provisions of the Bond Resolution being modified to reflect the particular requirements of the individual bond insurers. See, for example, the definition of “Investment Securities” in Section 101 and the provisions of Article IX that refer to the various bond insurers.

Sections 204 and 205 set forth the requirements for the issuance of additional parity Bonds and additional Subordinated Bonds. The most important requirement is that the Authority must certify that Net Revenues were at least equal to the Net Revenue Requirement[3] for the fiscal year immediately preceding the fiscal year in which the Additional Bonds are to be issued. In the case of additional parity bonds, the Authority must also demonstrate that, based on reports prepared by a consulting engineer and a traffic consultant, projected Net Revenues are expected to be (i) at least equal to the Net Revenue Requirement for a certain period of time following the issuance of such additional parity bonds and (ii) at least equal to 120% of maximum Debt Service on all outstanding Bonds for any fiscal year in which such Bonds will be outstanding.

[3] The Net Revenue Requirement means the greater of (i) 120% of Debt Service and (ii) 100% of the sum of Debt Service, the Required Reserve Maintenance Deposit, the Required Debt Service Reserve Deposit and any other Required Deposit. This is a customary concept for many revenue bond issues of all types.

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Article V – Funds and Accounts

Article V includes the pledge of all Revenues and other moneys and securities held under the Bond Resolution to pay the Bonds and the Subordinated Bonds. Article V also establishes each of the funds and accounts under the Bond Resolution, and sets out the purposes for which such funds and accounts may be used. To the extent the Authority must follow the specifications of Article V in managing its finances, it is useful to provide some detail on how certain of these funds function.

Revenue Fund – All Revenues received by the Authority are deposited in the Revenue Fund. The moneys in the Revenue Fund are used to pay the Operating Expenses of the Authority and the Debt Service Charges on the Bonds. The Revenue Fund is also used to make up any deficiency in the Debt Service Reserve Fund, Reserve Maintenance Fund and General Reserve Fund.

Debt Service Reserve Fund / Subordinated Debt Service Reserve Fund – Moneys in the Debt Service Reserve Fund and the Subordinated Debt Service Reserve Fund are used to pay debt service on the Bonds and Subordinated Bonds, respectively, whenever moneys in the Debt Service Fund or Subordinated Debt Service Fund, respectively, are insufficient for such purpose.

Reserve Maintenance Fund – This fund can be used for any of the following purposes, as directed by the Authority: (1) pay the costs of renewal and replacement projects ("Reserve Maintenance Fund Projects"); (2) pay the costs of constructing, rehabilitating or improving the Turnpike ("Turnpike Projects") in order to prevent a loss of Revenues; (3) pay insurance premiums; (4) replenish the Debt Service Reserve Fund, subject to certain conditions; and (5) to pay for an Emergency, subject to certain conditions.

General Reserve Fund – The Bond Resolution established within the General Reserve Fund, the Insurance Account, the Improvement Account, the Department of Transportation Provision Account and the Interchange Account. On a monthly basis, the moneys in the General Reserve Fund are transferred to the accounts established to pay Debt Service on the Bonds and the Subordinated Bonds to the extent a deficiency exists in such accounts, and then to the Insurance Account, Improvement Account, Department of Transportation Provision Account and the Interchange Account in the amounts specified by the Authority. Any balance remaining after such transfers is deposited in the Improvement Account.

Department of Transportation Provision Account – Moneys in this account may be transferred (i) to a trustee for payment of special obligation bonds of the Department of Transportation (ii) to the Department of Transportation, (iii) to replenish the Debt Service Reserve Fund or (iv) to another account within the General Reserve Fund.

See the summary of Section 801 below for restrictions on certain transfers from this account.

Improvement Account – This account is the final use of Revenues under the Bond Resolution. Moneys in this account may be used at the direction of the Authority to pay for Reserve Maintenance Fund Projects, Turnpike Projects or an Emergency, or transferred to the Debt Service Reserve Fund or another account within the General Reserve Fund or "to pay for any other lawful corporate purpose of the Authority as authorized in the Enabling Act," as long as there are no deficiencies in any fund or account, no event of default exists and Net Revenues were at least equal to 200% of Debt Service for the fiscal year preceding such payment.

Article VI – Investment of Funds

The moneys on deposit in any fund or account created under the Bond Resolution can only be invested as provided in Article VI. The investment parameters for some funds are more flexible than those applicable to other funds. For example, the types of investments available to the Debt Service Reserve Fund and Subordinated Debt Service Reserve Fund are more limited than those available to the Revenue Fund or Capital Fund. This is a common limitation. Article VI also dictates where the earnings from the investment of moneys in each fund are deposited. In general, investment earnings are transferred to the Revenue Fund, with certain exceptions set forth in Section 602(d).

Articles VII-VIII – Authority Covenants

Article VII includes the Authority covenants to pay debt service on the Bonds, to take all action that may be necessary to confirm the pledge made under the Bond Resolution, and to do all that may be necessary to ensure the tax-exempt status of any tax-exempt Bonds. Section 704 provides that the Authority shall not issue any indebtedness secured by the Pledged Collateral other than the Bonds and the Subordinated Bonds. However, the Authority may issue indebtedness under a separate resolution that is secured by a pledge of Non-Turnpike Revenues or other moneys that are not part of the Pledged Collateral. Non-Turnpike Revenues are any moneys received by the Authority from other than operation of the Turnpike, including payments received from the federal government or the State or any fees levied by the Authority in connection with any project that is not a Turnpike Project. However, Non-Turnpike Revenues do not include payments or taxes which are pledged to the payment of debt service on Bonds issued under the Bond Resolution.

Article VIII contains the provisions that most directly affect how the Authority must manage its finances, assets and operations.

Section 801 – The Authority must operate the Turnpike in a sound manner and keep the Turnpike in good repair and working condition. The Authority may not acquire a road that is more than five miles long unless it is authorized to charge tolls on such road in an amount sufficient to cover the costs of the acquisition, operation and maintenance of such road or unless the Authority demonstrates that, based on a Consultant's Report, Net Revenues would be at least equal to the Net Revenue Requirement for each fiscal year in which the road was acquired and the five fiscal years thereafter. However, the Authority may authorize the acquisition of any road without meeting the Net Revenue Requirement upon the unanimous consent of its members so long as no event of default exists under the Bond Resolution and the Authority can demonstrate that it expects to be in compliance with the other covenants and conditions contain in the Bond Resolution for the current fiscal year and the following five fiscal years.

Section 801 further provides that the Authority may not transfer to the Department of Transportation from the Department of Transportation Provision Account an amount in excess of $8,700,000 in any fiscal year.

Section 802 – The tolls established by the Authority must be sufficient (1) to provide funds for the payment of Operating Expenses and (2) to provide Net Revenues that are at least equal to the Net Revenue Requirement in any fiscal year. The Authority may not reduce or modify tolls unless it demonstrates that, based on a Consultant's Report, it is expected that the Net Revenue Requirement will be satisfied in the current fiscal year and in each of the five fiscal years following the rate reduction or modification.

If Net Revenues are less than the Net Revenue Requirement then the Authority must, before the 15th day of February of the following fiscal year, request the preparation of a Consultant's Report for the purpose of making recommendations as to a revised toll schedule in order that Net Revenues are reasonably expected to equal the Net Revenue Requirement for the following fiscal year. The Authority must adopt and institute the revised toll schedule within 180 days after receipt of the Consultant's Report.

Section 803 – Annual Budget – On or before the 20th day of October of each year, the Authority must adopt a preliminary budget for the following fiscal year, which must include a preliminary determination of the Required Debt Service Deposit, the Required Reserve Maintenance Deposit and any Required Debt Service Reserve Deposit. On or before December 20 of each year the Authority must adopt a final budget, which sets the final Required Debt Service Deposit and Required Reserve Maintenance Deposit and any Required Debt Service Reserve Deposit. If the final budget is not approved by December 20, then the preliminary budget (if approved by the Consulting Engineer) is treated as the Annual Budget. The amount expended on operation and maintenance of the Turnpike may not exceed the amount provided for Operating Expenses in the Annual Budget, except in the case of an Emergency or if paid from the Reserve Maintenance Fund or General Reserve Fund.

Section 804 – Annual Report and Audit – The Authority must keep accurate records of the Revenues collected, the number and class of vehicles using the Turnpike and the application of the Revenues. At least once each fiscal year, the Authority must file with the Trustee and Consulting Engineer copies of any revised toll schedule for the preceding fiscal year as well as an annual report setting forth:

- an income and expense statement showing Revenues, Operating Expenses and Debt Service;
- the number of vehicles in each class using the Turnpike;
- all deposits and withdrawals from each fund and account;
- the details of all Bonds issued, paid, purchased or redeemed;
- a balance sheet;
- the amounts in each fund and account at the end of the preceding fiscal year; and
- the proceeds of any sales of property.

The Authority must employ an Accountant to audit its books relating to the Turnpike for the preceding fiscal year and, within 120 days after each fiscal year, file the audited financial statements with the same parties receiving the annual report described above.

Section 805 – The Authority must employ an independent engineer or engineering firm and a traffic engineer or consultant to carry out the duties of the Consulting Engineer and the Traffic Consultant, respectively, set forth in the Bond Resolution.

Section 806 – Report of Consulting Engineer – The Authority must cause the Consulting Engineering to do an annual inspection of the Turnpike and, by October 1 of each year, to submit a report to the Authority setting forth (i) the Consulting Engineer's findings with respect to the condition of the Turnpike, (ii) recommendations for proper operation and maintenance of the Turnpike for the following fiscal year and the estimated costs thereof, (iii) recommendations regarding the insurance to be carried by the Authority and (iv) recommendations for the amount to be deposited in the Reserve Maintenance Fund.

Section 807 – This section lists the types of insurance that the Authority is required to carry. They include multi-risk insurance covering loss or damage to the Turnpike, use and occupancy insurance covering interruption in the use of Turnpike facilities, public liability insurance and workers' compensation insurance.

Section 808 – Insurance Schedule – Within the first three months of each fiscal year, the Authority must provide the Trustee and Consulting Engineer with a schedule of all insurance policies currently in effect. This section sets forth the required disposition of insurance proceeds received on account of damage or destruction of any part of the Turnpike and the proceeds of use and occupancy insurance.

Section 809 – Any person with whom the Authority contracts for construction must furnish a bond or marketable securities to secure the performance of the work contracted for. Each contract must provide that the Authority will retain a certain percentage of the payments to be made to ensure adequate performance.

Section 810 – The Authority may allow the State or any of its agencies, departments or subdivisions to pay the costs of operating and maintaining the Turnpike out of funds other than Revenues.

Section 811 – The Authority may not sell or lease the Turnpike or create or permit to be created any lien on the Revenues or funds created under the Bond Resolution. However, the Authority may sell or dispose of any property if (i) such property has become obsolete or is to be replaced by other property or (ii) the Consulting Engineer states such disposition is consistent with prudent practice and the Authority certifies that it expects to satisfy the test for issuing additional parity bonds (as described in the second paragraph under the heading "Articles II-IV – Terms of Bonds" above) after such disposition. The Authority also may grant leases or licenses with respect to any property consistent with the operation of the Turnpike as permitted by the Enabling Act, and the net proceeds of any such lease or license shall constitute Revenues and be deposited in the Revenue Fund.

Article IX – Events of Default and Remedies

Article IX lists the events that constitute an event of default and the remedies available to the Trustee and the bondholders upon an event of default, which include the right to accelerate the payment of the Bonds. Article IX also provides that, upon demand of the Trustee following a declaration of acceleration, all Revenues shall be paid over to the Trustee to be applied first, to the payment of certain fees, second, to the payment of operating expenses, third, to the payment of debt service on the Bonds and fourth, to the payment of debt service on the Subordinated Bonds.

Article X – Fiduciaries

Article X describes the responsibilities of the Trustee and the conditions under which the Trustee may resign or be removed.

Article XI – Supplemental Resolutions, Amendments and Modifications

The Bond Resolution may be amended and supplemented as provided in Article XI. Certain types of amendments can be made by filing such amendment with the Trustee (as described in Section 1101), some amendments require the consent of the Trustee (as described in Section 1102) and some amendments can be made only with bondholder consent (as described in Section 1105).

Article XII – Defeasance

Article XII sets forth the circumstances under which the security provided by the Bond Resolution is released with respect to any bonds issued under the Bond Resolution. Such release occurs when moneys sufficient to pay the debt service (or certain securities maturing in the amounts and at the times necessary to pay the debt service) on such bonds have been paid or provided to the Trustee.

Article XIII – Miscellaneous

Article XIII provides that the Bond Resolution is binding upon successors of the Authority and it contains certain other standard provisions for any bond resolution or trust agreement.

PART 2

An opinion on whether these obligations are typical for revenue bond resolutions for bonds issued by tolling authorities developed in the early 1990s. In the current market? For example, are there obligations that would not usually be found in revenue bond resolutions developed in these time periods, or obligations that are more or less restrictive on the issuing entity than might be typical?

The specific terms of the governing document for each issuer of toll revenue bonds (or any revenue bond for that matter) vary to reflect the individual circumstances of each issuer and the nature of the governmental entity that is issuing the debt. Differing state laws and enabling acts will result in differences, often in terms of governance of the entity. For example, the State of Maine chose to establish a separate legal entity, the Maine Turnpike Authority. Other jurisdictions have used the same approach, but in some cases a statewide department of transportation has operational responsibility for the tolled facilities, but a revenue bond financing structure may still be used with the debt issued through the state treasurer's office. The State of New Hampshire, for example, uses this approach.

We believe the terms of the Bond Resolution are generally comparable to those of other toll revenue bond issuers. This is true both for bond documents originally used in the early 1990s as well as in the current market. Most revenue bond issuers need to balance the terms of their financing documents against their overall responsibilities for operating their particular revenue enterprise, whether a toll road or some other system or facility. While more stringent legal covenants and protections for bondholders may allow for a higher debt rating, the legal structure to which any revenue bond issue is subject is only one consideration, among many, in the rating process. An entity may still choose to adopt less stringent covenants in order to maintain operational flexibility and to be able to adapt to changing circumstances over time. Moreover, the types of covenants that might be required for a mature, well-established toll road, such as the Maine Turnpike will be different from those required for a new, start-up entity. The essential terms of the Bond Resolution seem appropriate for the Authority in light of its track record and responsibilities in 1991 as well as more current circumstances.

In undertaking our analysis, we reviewed the specific terms of the Bond Resolution and compared them to two other toll revenue bond documents: the State of New Hampshire's General Bond Resolution for its Turnpike System Revenue Bonds, which was adopted in November, 1987, and the Western Turnpike Trust Agreement of the Massachusetts Turnpike Authority dated as of September 1, 1997. All of these documents contain fundamentally similar provisions. The Bond Resolution sets forth the terms under which bonds may be issued. (See Article II, III and IV) It pledges toll revenues and other moneys to secure the repayment of the bonds. (See Section 501). The first use of toll revenues, as with most revenue bond structures, whether toll roads or other revenue enterprises, is to pay operating expenses of the Turnpike. (See Section 504). Without the continued operation of the Turnpike, no revenues would be received to repay the debt. Net toll revenues are then used to pay debt service on bonds, replenish any shortfalls in the debt service reserve fund and then essentially fund on-going capital improvements. (See Sections 504 through 509). Finally, any remaining funds are available for any "lawful corporate purpose of the Authority as authorized in the Enabling Act…" (Section 509)

Both New Hampshire and Massachusetts have similar provisions. The details, of course, vary to reflect in part specific requirements that pertain solely to a particular issuer. For example, the Bond Resolution incorporates various provisions required by terms of the Enabling Act. See, for example, the various provisions and references to the "Department of Transportation Provision Account" and the "Interchange Account."

Certain covenants contained in the Bond Resolution are more detailed than those contained in the governing documents for other revenue bond issuers. While the increased specificity may be more restrictive on the Authority in certain circumstances, it also provides more clarity with respect to the Authority's obligations to bondholders as compared to more general terms of other bond documents. Examples of this include the following:

> The Debt Service Reserve Fund Requirement (see definition thereof in Section 101) is effectively established at <u>one-half</u> of maximum annual Debt Service so long as Net Revenues for the two preceding years were at least 200% of Debt Service on all Bonds Outstanding; otherwise, the requirement is 100% of maximum annual Debt Service. Other bond documents typically set the requirement at maximum annual debt service or, in some cases, simply at one-half the maximum amount, but less often with this hybrid approach;
>
> Section 801 establishes a set of requirements if the Authority seeks to expand the system. (See description of this covenant above.) A similar concept is often found in the governing bond documents of other toll road bond issuers, although not necessarily with the same amount of detail. Most issuers are permitted to expand their "system," even if the expanded roads may or may not be tolled, but compliance with the toll covenants is still needed.
>
> The requirements for the annual report (see Section 804) are more detailed than may be found in some other cases, although this specificity also provides more certainty as to what the Authority must provide; and
>
> The Authority must conduct an annual inspection of the Turnpike (see Section 806) whereas other bond resolutions may require less frequent inspections, such as at least once every 3 years, or, in some cases no inspection may be required at all.

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The Bond Resolution also provides that the bonds may be subject to acceleration upon an event of default (see Section 902). The remedy of acceleration is not universally available in revenue bond transactions. Absent significant cash reserves, the revenue bond issuer typically will not have sufficient funds on hand to pay all of the outstanding bonds at once. While accelerating the debt will preserve the aggregate claim for bondholders, satisfaction of the claim will likely not occur sooner than would have been the case without acceleration because the only source of repayment is the ongoing flow of toll revenues or other pledged revenues derived from the continued operation of the particular revenue enterprise. For example, the New Hampshire turnpike system revenue bonds do allow acceleration as a remedy, but the Massachusetts Turnpike Authority bonds do not.

The requirements for amending the Bond Resolution vary from what some other revenue bond resolutions contain. The Bond Resolution requires the consent of the holders of two-thirds in principal amount of bonds outstanding (see Section 1105) while other bond resolutions may be amended upon the consent of a majority of bondholders. Both thresholds are used in governmental issues. However, these amendment provisions are not used very often due to the fact that it is difficult in many cases to obtain the necessary consents of bondholders, at whatever percentage is required. Also, in the case of bond insured issues, the bond insurer often retains the right either to consent in addition to the holders, or to consent in lieu of the actual holders.

PART 3

An opinion on how, if at all, the obligations to bondholders contained in the resolution might limit any actions the Legislature could consider taking regarding the Authority or its function, or the Legislature's ability to establish statutory directives for the Authority.

The Authority was established by an act of the Maine Legislature and, in general, it remains subject to further legislative action that could either expand or restrict the activities of the Authority. The only limitation on future action by the Maine Legislature is the contract clauses of the United States Constitution and the Maine Constitution. Article I, Section 10 of the United States Constitution (the "Contract Clause") provides, in part, that no state shall pass any law impairing the obligations of contracts. Article 1, Section 11 of the Maine Constitution contains similar language. The issuance of the Authority's bonds created a contractual relationship between the Authority and its Bondholders. As a result, while the Maine Legislature continues to have the power to enact further legislation that may adversely affect the Authority, it may only do so to the extent constitutionally permissible.

The Contract Clause is not an absolute bar to legislation that might adversely affect the Authority, its obligations under the Bond Resolution or even Bondholders directly. Assuming that any particular legislative action does "impair" the contract with Bondholders, it may still be found constitutional to the extent the impairment is reasonable and necessary to serve an important public purpose. In *United States Trust Company v. New Jersey,* 431 U.S. 1 (1977), the United States Supreme Court reiterated the basic principles of the Contract Clause and held that a higher degree of scrutiny would apply to laws that impaired contracts of governmental entities, particularly financial covenants. In other words, while states retain significant power to modify private contracts through the exercise of their police powers (for example, imposing new regulations or legal requirements for conduct of a particular business might adversely affect certain contractual relationships, but would likely be constitutional to the extent the legislation protected public health or safety), a more substantial justification would be needed to justify impairment of financial obligations.

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It should be noted that the Supreme Judicial Court of Maine arguably established a more stringent standard that would prohibit virtually any impairment, regardless of how material. In *First Nat. Bank of Boston v. Maine Turnpike Authority*, 153 Me. 131 (1957), the Supreme Judicial Court of Maine found unconstitutional an act by the Legislature that would have required the Authority to reimburse certain utilities for the relocation costs of their facilities because such reimbursement represented a diversion of funds pledged to bondholders under the Authority's then-existing bond resolution. This case predated by 20 years the *U.S. Trust* decision cited above and it is not clear to what extent the earlier analysis would remain the law today. Such an analysis is beyond the scope of this Memorandum. It is worth noting, though, that the current Bond Resolution allows revenues to be used for any lawful corporate purpose of the Authority after the payment of debt service and the satisfaction of other required deposits and thus a particular legislative direction to the Authority might be permissible.

While the analysis of any Contract Clause claim is fairly well settled, assessing the outcome of any particular controversy depends on the actual facts and circumstances of the legislation. For example, necessity will be found if the particular objectives of the legislation could not be satisfied by a "less drastic alternative." Other factors used to assess the reasonableness of any particular impairment include the extent of the impairment and the degree to which the circumstances giving rise to the impairment were foreseeable at the time the contract was made. It is not possible to assess a potential Contract Clause claim in the abstract, other than to outline the considerations to be used in analyzing the question.

Appendix D. Analysis of MTA's Expenditures 2005 – 2009

Line Item Name	2005 Total	2006 Total	2007 Total	2008 Total	2009 Total	2005 - 2009 Total	% of 5 yr Total	% Change Over 5 years
Salaries	$19,212,871.63	$19,894,574.70	$21,112,662.42	$22,119,143.99	$22,493,744.29	$104,832,997.03	34.2%	17.1%
Contractual Services	$11,375,640.81	$18,766,480.21	$15,416,252.40	$17,014,857.79	$13,370,412.03	$75,943,643.24	24.8%	17.5%
Employee Benefits (Medical, Dental, Life, MSRS)	$7,333,513.29	$7,463,849.16	$7,739,653.87	$9,753,015.85	$9,973,405.81	$42,263,437.98	13.8%	36.0%
Consulting Engineering Fees & Exp	$3,048,914.51	$2,826,181.22	$3,687,546.43	$2,890,076.56	$2,319,622.27	$14,772,340.99	4.8%	-23.9%
Work Performed By Others	$3,282,610.04	$3,056,622.34	$3,322,401.25	$2,183,294.33	$2,079,444.68	$13,924,372.64	4.5%	-36.7%
Telephone	$942,052.21	$1,209,508.61	$868,654.75	$790,706.03	$710,840.18	$4,521,761.78	1.5%	-24.5%
Salt & Calcium Chloride	$853,817.85	$748,036.21	$850,719.70	$1,101,271.73	$486,265.82	$4,040,111.31	1.3%	-43.0%
Comprehensive Gen Liab	$892,095.00	$862,112.00	$406,637.00	$684,263.22	$471,802.27	$3,316,909.49	1.1%	-47.1%
Workers Comp	$309,449.03	$915,014.31	$476,690.07	$607,104.95	$986,614.99	$3,294,873.35	1.1%	218.8%
Electricity	$493,237.79	$628,938.68	$662,614.17	$582,090.11	$598,189.54	$2,965,070.29	1.0%	21.3%
Reg. & Spec Counsel Fees & Exp	$319,242.82	$581,797.08	$532,211.60	$696,230.10	$455,926.05	$2,585,407.65	0.8%	42.8%
Office Machines & Equip Pur/Rent	$344,103.11	$443,355.63	$647,248.06	$446,523.85	$496,513.79	$2,377,744.44	0.8%	44.3%
Fuel For Heating	$340,333.04	$294,141.41	$402,131.16	$441,593.34	$519,105.76	$1,997,304.71	0.7%	52.5%
Snowplowing Equipment	$524,281.75	$188,560.26	$484,139.98	$216,165.28	$255,750.04	$1,668,897.31	0.5%	-51.2%
Money Trnsprt Services	$302,454.99	$307,183.72	$320,151.27	$329,863.29	$334,222.95	$1,593,876.22	0.5%	10.5%
Diesel Oil Eq Maint	$292,154.54	$209,224.62	$371,105.85	$458,231.28	$256,166.18	$1,586,882.47	0.5%	-12.3%
Trustee's Fees	$190,081.64	$255,847.08	$378,146.38	$366,385.74	$352,458.64	$1,542,919.48	0.5%	85.4%
Truck Purchases	$433,048.95	$701,790.79	$354,966.00	-$12,558.72	$23,150.00	$1,500,397.02	0.5%	-94.7%
Gas Eq Maint	$224,361.09	$249,304.67	$314,388.08	$342,063.40	$218,477.43	$1,348,594.67	0.4%	-2.6%
Postage & Shipping	$225,705.51	$200,410.81	$224,911.11	$215,367.57	$317,241.30	$1,183,636.30	0.4%	40.6%
Travel and Subsistence	$411,847.35	$215,682.59	$169,984.73	$174,446.45	$132,441.16	$1,104,402.28	0.4%	-67.8%
Printing	$253,354.97	$231,630.44	$196,895.23	$162,054.33	$249,423.93	$1,093,358.90	0.4%	-1.6%
Acct. Mach Supplies, Mnt, Parts, Service	$319,685.90	$175,499.31	$167,605.66	$130,880.67	$255,873.48	$1,049,545.02	0.3%	-20.0%
Paint Products	$154,635.99	$186,494.55	$201,068.65	$232,354.13	$237,016.91	$1,011,570.23	0.3%	53.3%
Informational Services	$146,906.66	$216,327.55	$266,366.60	$156,696.52	$199,330.73	$985,628.06	0.3%	35.7%
Indemnification Insurance	$61,520.00	$51,850.00	$411,103.00	$114,369.54	$331,355.00	$970,197.54	0.3%	438.6%
Rent: Land/Buildings	$194,023.26	$198,265.21	$164,500.60	$232,981.00	$177,635.73	$967,405.80	0.3%	-8.4%
Truck Parts, Accessories & Repair	$187,796.78	$147,062.21	$155,983.87	$173,800.06	$197,360.83	$862,003.75	0.3%	5.1%
Auto Purchases	$41,440.00	$251,591.34	$88,077.80	$316,348.10	$0.00	$697,457.24	0.2%	-100.0%
Organization Fee	$164,022.68	$130,440.06	$129,597.64	$103,188.75	$102,354.06	$629,603.19	0.2%	-37.6%
Hazardous Waste Disposal	$156,244.58	$258,604.23	$146,217.26	$8,943.45	$24,387.23	$594,396.75	0.2%	-84.4%
Trs Bttrs Flters	$124,698.88	$102,567.69	$99,006.25	$128,538.40	$126,981.57	$581,792.79	0.2%	1.8%
Bituminous Material	$74,113.39	$91,840.63	$58,492.28	$170,768.50	$146,274.53	$541,489.33	0.2%	97.4%
Safety Equip	$130,760.68	$111,991.06	$96,781.48	$86,684.83	$97,991.55	$524,209.60	0.2%	-25.1%
Steelbeam Guard Rail/Fittings	$77,890.68	$6,175.84	$63,941.68	$71,223.02	$278,974.71	$498,205.93	0.2%	258.2%
Fees Spec Employee Training	$65,861.36	$102,446.69	$142,078.87	$108,356.34	$78,171.76	$496,915.02	0.2%	18.7%
Radio Receivers/Transmitter	$32,643.49	$91,342.96	$240,359.76	$55,103.24	$35,440.78	$454,890.23	0.1%	8.6%

Line Item Name	2005 Total	2006 Total	2007 Total	2008 Total	2009 Total	2005 - 2009 Total	% of 5 yr Total	% Change Over 5 years
Traffic Controllers Purchase, Parts, Maintenance	$78,651.50	$525.00	$141,350.31	$750.00	$203,739.70	$425,016.51	0.1%	159.0%
Office Supplies	$83,242.86	$84,944.33	$57,585.21	$73,701.61	$68,189.95	$367,663.96	0.1%	-18.1%
Office Building Service	$46,251.82	$76,038.28	$74,156.10	$81,631.64	$77,296.49	$355,374.33	0.1%	67.1%
Shop Supplies	$49,916.59	$64,642.32	$59,666.68	$90,117.23	$80,232.88	$344,575.70	0.1%	60.7%
Shop Tools & Equip (inc Power & Hand Tools)	$55,074.20	$79,801.17	$95,988.02	$48,504.93	$45,636.51	$325,004.83	0.1%	-17.1%
Janitorial Supplies	$47,404.42	$60,153.01	$52,505.51	$65,193.37	$66,013.65	$291,269.96	0.1%	39.3%
Spreader Parts Access	$25,075.45	$49,445.13	$185,409.19	$136.39	$0.00	$260,066.16	0.1%	-100.0%
Uniform Purchase, Repair & Cleaning	$51,801.42	$54,639.72	$60,693.57	$35,023.98	$54,594.37	$256,753.06	0.1%	5.4%
Auditing Fees & Expense Account	$45,830.78	$42,594.50	$38,136.62	$55,242.38	$66,862.50	$248,666.78	0.1%	45.9%
Electrical Supplies	$68,531.93	$44,073.52	$46,939.58	$49,949.22	$35,969.88	$245,464.13	0.1%	-47.5%
Building Materials	$49,119.93	$46,057.58	$72,028.91	$33,200.43	$21,830.56	$222,237.41	0.1%	-55.6%
Employee Recognition Public Meetings	$37,309.26	$59,870.28	$39,150.75	$48,189.32	$37,639.58	$222,159.19	0.1%	0.9%
Tool & Shoe Allow	$28,664.79	$47,032.88	$47,911.16	$46,514.20	$47,537.29	$217,660.32	0.1%	65.8%
Construction Equipment Parts Access	$10,176.05	$49,556.96	$43,794.88	$47,406.70	$63,507.02	$214,441.61	0.1%	524.1%
Water	$30,604.91	$28,480.06	$32,325.41	$29,609.32	$49,749.01	$170,768.71	0.1%	62.6%
Medical Services	$27,079.30	$45,823.81	$29,072.24	$29,354.54	$37,025.03	$168,354.92	0.1%	36.7%
Unemployment Comp Payments	$25,350.44	$26,563.11	$20,019.40	$24,033.54	$58,889.39	$154,855.88	0.1%	132.3%
OTHER	-$938,306.04	-$316,324.73	$636,336.94	$830,816.31	$1,211,250.35	$1,423,772.83	0.5%	-229.1%
Total	**$53,359,195.86**	**$62,916,662.80**	**$63,104,363.39**	**$65,241,802.13**	**$61,616,332.14**	**$306,238,356.32**	**100.0%**	**15.5%**

Note: This financial summary does not include depreciation figures. MTA switched from cash based accounting to GAAP in 2008 which accounts for some of the big variations between years and also for the negative figures in the OTHER row.

Source: OPEGA performed this analysis based on the financial data files provided by MTA.

Maine Turnpike Authority

2360 CONGRESS STREET
PORTLAND, MAINE 04102

January 25, 2011

Government Oversight Committee
82 State House Station
Augusta, Maine 04333-0082

Dear Senator Katz, Representative Burns, and Distinguished Members of the Government Oversight Committee,

On behalf of the Maine Turnpike Authority (MTA) staff and board of directors, we would like to take this opportunity to personally thank Director Beth Ashcroft and her colleagues at the Office of Program Evaluation & Government Accountability (OPEGA) for their thorough and thoughtful review of the MTA.

It was an enlightening experience that reaffirmed the MTA's many positive attributes while identifying areas we all agreed could use some improvements. To that end, several MTA practices will be formalized and, where needed, new policies and procedures will be created—all with an eye toward increased transparency and accountability.

Although the rigorous and broad-ranging nature of the audit meant a significant investment of time, energy and capital from both MTA and OPEGA, we're confident it will pay dividends by making our already solid organization even better. In fact the MTA has begun implementing substantive changes to our procurement and management of engineering and other professional services, as well as our budgeting and expenditure practices.

The OPEGA staff's professionalism, candor and cooperative spirit were greatly appreciated by the MTA and proved instrumental in achieving a reasonable set of mutually agreeable solutions to the issues

identified. A detailed action plan specifically addressing OPEGA's recommendations—and endorsed by both OPEGA and the MTA—can be found in the Agency Response Section of the Report on pages 61-66 of the report.

Even so, there are a few areas of the report we feel deserve some clarification and/or amplification. To that end we have attached a concise list of comments for your consideration. The MTA staff is happy to discuss the attached notes in greater detail at your convenience.

Sincerely,

Paul E. Violette

Paul Violette
Executive Director

Gerard P. Conley Sr.

Gerard P. Conley, Sr.
Chairman

Maine Turnpike Authority Notes on OPEGA Report

I. The MTA's Bond Resolution

- OPEGA engaged the services of Edwards, Angell, Palmer & Dodge to analyze the provisions of the MTA Bond Resolution and we believe their review is a useful component of the report. As the analysis recognizes, legislative action regarding the Authority has the potential to affect Authority bond ratings but it may also raise constitutional issues because of the Bond Resolution's status as a legally binding contract. The focus of the constitutional analysis is on the Contracts Clause issue, but issues related to other constitutional provisions, most notably the takings clause and commerce clause, can also arise with legislation related to the Authority. We believe the Edwards Angell review helps to explain why the MTA so often believes it has a fiduciary duty to raise bond resolution concerns in this context. We are pleased to have an objective review of our bond resolution from an independent source and believe that this will be a helpful resource for discussion with legislators and other policy makers in the future

II. Consulting Engineers and Contractual Engineering Services

- The MTA believes that our organization and our customers have been well served by our relationship with HNTB for many years. However, we understand the concerns raised by OPEGA and agree that there is a need to take steps that will bring a greater transparency and accountability to this relationship. We have therefore developed a detailed proposal that takes on more work in-house, formalizes our relationship with HNTB, and opens up some of the functions currently performed by HNTB to competition. We believe that this proposal addresses the concerns raised in the report without sacrificing the cost and efficiency benefits the MTA and its customers derive from our relationship with HNTB.

III. Contracting Practices

- We agree with OPEGA that having a policy on sole sourcing so that the decision making process around sole sourcing is more accessible would have benefits to the MTA and the public it serves. MTA's sole source contracts are few in number, and, as OPEGA notes, have reasonable explanations for their sole source nature. We also agree that a centralized contract management system would have efficiency benefits and have begun the process of implementing that system.

IV. Expenses

- We agree with OPEGA's observation that the MTA's expenditures are generally consistent with the culture of a regulated private entity that is "financially sound ... values quality ", "desires to stay current" and "believes in being a good corporate citizen." The business function of the MTA requires interaction with other entities, including other toll agencies, trade groups, and rating agencies, that necessitates travel. We believe that function also includes participation by the MTA in wider spheres of transportation, economic development and public policy. For instance, participation with groups such as Maine Motor Transport or Chambers of Commerce, enable us to better understand the economic climate we are operating in and the needs of our business customers. Participation with groups such as Associated General Contractors allows the MTA to better understand the issues faced by our contractors, which translates into more efficient and economic delivery of capital projects. Participation in community organizations, even when an organization does not seem directly "transportation" related allows the MTA to better understand, and therefore satisfy, the communities we serve. We also note that even from a purely governmental perspective membership and other forms of support for outside organizations is often a regular part of operation.

- OPEGA was required by the Government Oversight Committee to evaluate whether the MTA's expenses were "reasonable" and did not conclude that any MTA expenses were unreasonable. There was a category of expenses

that OPEGA thought "might be questioned" from the perspective of a governmental entity and we would describe that category of expenses as follows:

(1) OPEGA believes that MTA's expenditures are "generally consistent" with "a regulated private entity that is financially sound" and "from this perspective the MTA's expenditures could be judged as reasonable",

(2) Less than three quarters of one percent of the MTA's operational expenses "might be questioned as reasonable" if the standards of a governmental entity are applied,

(3) Even this small percentages of expenses that the Report states "might be questioned" contains expenses that "would be recognized as reasonable and appropriate regardless of one's perspective", and

(4) As OPEGA notes in the Report, a major component of this category of expenditures that "might be questioned", which OPEGA classifies as "Travel and Subsistence", declined by 67.8% over the five year period studied.

In summary, the number and dollar amounts of the transactions OPEGA cited as being even potentially unreasonable are a very small percentage of the whole and continue to decline year after year. Even if the travel and subsistence expenditures that OPEGA examined for 2009 were entirely eliminated, for instance, it would represent approximately two tenths of one percent of the MTA's operational expenditures and would not affect in any way the MTA's existing toll rates or borrowing needs.

V. Operating Surplus

- It is, of course, the prerogative of the legislature to review or amend the provisions of any statute whenever they wish. However, we are concerned with OPEGA's premise that the statute adopted by referendum in 1991 is ambiguous to the extent that it requires amendment. This statute has served its function well for nearly 20 years without the administration or legislature attempting to revise it. If the Committee believes this matter should be revisited, we believe the most appropriate action would be to initiate a formal discussion between the MTA, the MaineDOT and the Transportation Committee, with participation by the Government Oversight Committee if it so desired.

VI. Presentation of the MTA Budget and Reserve Maintenance Fund

- As OPEGA recognizes, the Transportation Committee has always been pleased with the amount of detail provided to it in the MTA budget process, characterizing our submittals as "much more detailed than that typically provided by State agencies." The MTA values this working relationship with the Transportation Committee and is more than willing to present its finances to the Legislature in any manner that would help to clarify the kind of expenses being paid from any fund, including the Reserve Maintenance Fund. We have proposed a solution to the issues raised by OPEGA which includes modifications to the format of our budget presentation and an analysis of whether some expenses could be shifted from the Reserve Maintenance to the Revenue Fund. We believe that OPEGA agrees that this is a reasonable proposal that would satisfy their concerns.