



SEN. EMILY ANN CAIN, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. ROGER KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. CHRISTOPHER K. JOHNSON  
SEN. EDWARD M. YOUNGBLOOD  
REP. PAUL T. DAVIS, SR.  
REP. ANDREA M. BOLAND  
REP. H. DAVID COTTA  
REP. LANCE E. HARVELL  
REP. MATTHEW J. PETERSON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY  
December 12, 2013

**CALL TO ORDER**

The Chair, Rep. Kruger, called the Government Oversight Committee to order at 9:45 a.m. in the Cross Office Building.

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**ATTENDANCE**

Senators: Sen. Craven, Sen. Burns and Sen. Johnson  
Joining the meeting in progress: Sen. Cain  
Absent: Sen. Katz and Sen. Youngblood

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta and Rep. Harvell  
Absent: Rep. Peterson

Legislative Officers and Staff: Beth Ashcroft, Director, OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Scott Farwell, Analyst, OPEGA  
Matthew Kruk, Analyst, OPEGA  
Maura Pillsbury, Contracted Analyst, OPEGA  
Etta Connors, Adm. Secretary, OPEGA

**SUMMARIES OF THE SEPTEMBER 19, AND OCTOBER 28, 2013 GOC MEETINGS**

The Meeting Summary of September 19 was accepted as amended and the October 28, 2013 was accepted as written.

## NEW BUSINESS

### • **Presentation of Final Report on Healthy Maine Partnerships' FY13 Contracts and Funding**

Director Ashcroft thanked Matthew Kruk and Maura Pillsbury, OPEGA Analysts who worked on the review as well as the staff and management at the Maine Center for Disease Control and the Department of Health and Human Services, Department of Administrative and Financial Services' Office of Information Technology and Division of Purchases and OFPR.

Director Ashcroft presented OPEGA's Healthy Maine Partnerships' FY13 Contract and Funding Report.

Sen. Burns asked if the GOC should subpoena the document referred to in the Report by the MCDC Director of Local Public Health (DLPH). Director Ashcroft said the Department says it does not have the document. It was described to OPEGA as a "working document" and since MCDC has acknowledged they did not retain working documents then it is likely it has been destroyed. The Attorney General's (AG) Office and OPEGA requested that OIT do a search of electronic files on back-up tapes and they also searched the hard drive of the former DLPH's computer. Neither the AG or OPEGA have identified that particular document among the files. Therefore, Director Ashcroft is not certain a subpoena would turn up anything. MCDC told OPEGA they were not retaining working documents, and in fact, the staff was told to destroy documents. There was general acknowledgement that MCDC was to only retain the final version.

Sen. Craven said even when there is misconduct discovered, there does not seem to be any recourse for having people being held accountable. She thought it would be common practice for an agency to keep documentation when awarding a \$4 million grant, especially when there are going to be organizations like Healthy Androscoggin who lost two-thirds of their funding.

Sen. Craven understood that Scott Thistle from the Sun Journal had a FOAA request and that DHHS was asking for \$500 just to look at it. She does not know who has \$500 for a FOAA, especially if there are no documents to copy. It not only frustrated her, but there is no accountability for managing the public's money.

Rep. Boland asked if the former Sr. Manager indicated what she had expected to see and what was different about what she saw. Director Ashcroft said there was a particular document that was in the Manager's file that was described in the FOAA request to DHHS. Director Ashcroft thought it was specific enough that the MCDC would recognize it if they saw it.

Rep. Boland asked if it was normal practice to destroy working papers. Director Ashcroft said that is why OPEGA is not in a position to make a stronger recommendation in terms of accountability because they did not find any guidance around what should, or should not, be retained in the process and OPEGA was using its own professional judgment in taking the position that if a document is supporting key decisions made, then just for the sake of being able to answer public questions, or have some transparency, one would expect that information to be retained. The Department's response was that they are currently working with the State Archives. OPEGA made a recommendation that DHHS set up some clear guidance about what should be retained, but there was nothing already existing to suggest that working drafts and copies of documents needed to be kept.

Sen. Burns asked if OPEGA determined what the normal procedure was for MCDC regarding treatment of documents. Director Ashcroft said the only benchmark OPEGA had was what happens in a formal Requests for Proposal process. MCDC is very familiar with the formal RFP processes as it is what they normally run for awarding grants to HMPs. MCDC is very accustomed to those instances in following the guidance from DAFS' Purchases that sets out what documentation needs to be kept because there is an appeals process available for

RFPs. She said this was not an RFP process, but it had a similar approach and for those reasons MCDC knew enough about an RFP process that it could have applied a similar procedure for the documentation it maintained for this process.

Sen. Burns said MCDC must have gone through similar procedures in the past and asked if it was their normal course of action to destroy working documents before they had a final determination. Director Ashcroft said it was OPEGA's understanding that this was seen as a very atypical process and does not conform to any past practice that they were able to describe.

Chair Cain said she was struck by MCDC not knowing they were to keep documents and by there not being an expectation of that, especially when you are dealing with State resources.

Rep. Boland asked if it was not a crime to destroy public documents and Director Ashcroft said that is something the AG was considering as part of their review of whether documents were withheld in responding to FOAA requests. She said that is in a gray area in terms of what public documents need to be kept and MCDC has taken the position that as long as they have all the documentation of their final results that is what they were expected to keep.

Director Ashcroft will ask Deputy AG Linda Pistner to the next GOC meeting for the Committee's work session on the Report for clarification of the law regarding retaining documents.

Sen. Craven said it did state in OPEGA's Report that the selection criteria had shifted several times. If MCDC kept shifting the requirements until the outcome was what they wanted, she would want to destroy the evidence too.

Director Ashcroft continued her presentation of OPEGA's Report and moved to the Recommendations.

**1. MCDC Should Gather Relevant Performance Data**

No Committee questions or comments.

**2. MCDC Should Ensure Integrity of Future Processes Used to Determine Funding Awards or Make Selections Among Competing Grantees**

Chair Cain commented that there are so many RFPs done across State government it was absolutely unbelievable to her that with a process that is so clearly defined in so many places, there wasn't extra caution around mimicking the RFP process. To have an evolving scoring and criteria during the awarding of anything as important as this is very disturbing, regardless of what the outcome is. She agreed with Sen. Craven and said the process should never have happened the way it did.

**3. DHHS Should Provide MCDC with Guidance and Clarification on Documentation Retention Policies**

No Committee questions or comments.

**4. MCDC Should Clarify the Roles and Responsibilities for the Tribal Contract and Make Them Consistent With Those for Other HMPs**

No Committee questions or comments.

Sen. Craven wanted to have someone from MCDC come to a GOC meeting to address and provide a plan of corrections regarding OPEGA's Report Recommendations including creating guidelines when awarding grants to private non-profits such that the Department's working papers would be kept and could be made public. Chair Cain agreed and asked if there was anyone at the meeting from DHHS who would like to comment on OPEGA's Report. No one in attendance wanted to speak.

Chair Cain said the Committee's next step is to have a work session on the Report and the GOC will take the formal steps necessary to invite the right people from DHHS to come and talk about the Report. Director Ashcroft asked if the GOC would also like to invite someone from the State Archives and the Division of Purchases. Members of the Committee agreed and thought for the work session they would like to have someone from MCDC and DHHS, the State Archives to comment on general practices and from the Division of Purchasing to discuss their advice given regarding RFPs and how it works typically across State government.

Chair Cain asked if there were any objections to taking items out of order. Hearing none, the Committee moved to **UNFINISHED BUSINESS – Report on Public Utilities.**

## **UNFINISHED BUSINESS**

### **• Report on Public Utilities Commission**

#### **- Committee Work Session Continued**

Chair Cain noted that at the last GOC meeting the Committee heard a lot of comments on OPEGA's Public Utilities Commission Report. Some of the comments did not necessarily fall within the scope of the Report, but the members heard a lot of feedback on other issues and they may want to discuss how to move forward with that information.

Rep. Boland thinks the culture at the PUC has to be continued to be looked at because she again witnessed another inclination to lean away from the public comment of well-regarded experts. She also noted that in the smart meter case there was a piece on health and safety that was omitted at the choice of the PUC because they did not think that was their territory and the Court found that it was. She referred to another instance of the Legislature requesting certain things and the PUC responding that it was not their duty to respond to the request.

Chair Cain said the GOC needs to decide what steps to take related to the Report. They also need to consider whether there were other elements they wanted to follow-up on, or perhaps consider adding as separate work to OPEGA's work plan. She asked the members of the Committee what other information they needed before they could take an action on the Report.

Director Ashcroft referred members to the information in their notebook that included responses from the PUC and the Office of the Public Advocate (OPA) to the questions the Committee asked at their last meeting. She gave an overview of PUC's responses.

Rep. Boland asked if the issue of what contributions on the docket are required to be taken into account was outside of what was being looked at by the GOC/OPEGA. Director Ashcroft said that the GOC asked that question and the PUC provided a response so thinks the Committee will be talking about it. She thought the question of whether the PUC could be doing it better than what they are is a little outside the scope of what was being looked at in terms of process because they are complying with the rules of evidence. Chair Cain noted that OPEGA's Report is addressing how they communicate what the current process is rather than what the process should or should not be. Director Ashcroft said it was observed that the adjudicatory process in general is not user friendly for citizens who want to participate in the PUC process and there are a number of ways that might be adjusted.

Chair Cain suggested that the GOC start with the PUC Report itself and the status of the PUC action items. She asked the Committee what other information, or what further steps, they were looking for in order to take a vote to accept OPEGA's PUC Report. The Committee also had to decide what other action they wanted to look at going forward, and that will be a discussion, not only for this meeting, but for other GOC meetings as well. The Committee may want to consider sending a letter to the Energy, Utilities and Technology (EUT)

Committee or look at drafting legislation. The Legislature may consider some revisions to the PUC statute to address the risk and perception of bias such as increasing the number of Commissioners, requiring certain interests be represented on the Commission or requiring Commissioners to have certain qualifications, and creating an independent advocate in the PUC to represent contrary viewpoints. The GOC may also want to communicate directly with the EUT Committee about what was in OPEGA's PUC Report. Chair Cain did not think the GOC was at a point of submitting a bill regarding the issues discussed because those issues should first be discussed by the policy committee.

Sen. Burns noted that Rep. Russell had submitted a bill and perhaps that should be reviewed.

Rep. Boland said recommendations in the Report included legislative action and agency action, but did not include other recommendations the GOC may develop. Chair Cain said it did not preclude it. She was not a member of the 125<sup>th</sup> GOC when the questions for the review were developed, but thinks the questions drafted were all good questions. There are other issues that have arisen that the Report did not necessarily consider directly.

#### - **Committee Vote**

**Motion:** The Government Oversight Committee accepts OPEGA's Public Utilities Commission Report. (Motion by Rep. Harvell, second by Rep. Davis, unanimous vote 10-0.)

**Note:** Sen. Youngblood stopped by OPEGA and voted on the GOC's motion subsequent to the meeting and in accordance with the Committee's Rules.

Chair Cain said because of the concerns that came up during the public comments it seemed appropriate that the next step would be to communicate directly with the EUT Committee and make a recommendation that EUT invite Director Ashcroft to review OPEGA's PUC Report with them, particularly the section that relates to recommended legislative action. At the last GOC meeting, she had noted areas of concern included:

- the number of Commissioners;
- an ombudsman to assist citizens perhaps located in OPA;
- the definition of health and safety;
- the possibility of video or phone swearing in;
- the availability of experts and their proximity to the actual meeting, the money to afford expert testimony;
- the way confidentiality is designed into the PUC's computer system and its effect on system accessibility;
- and
- the degree to which OPA should represent the public with regard to aspects of public health and safety beyond the cost to ratepayers.

Chair Cain asked the Committee if there was anything else they wanted to include in the letter to the EUT Committee. In response to Rep. Boland's comments, Chair Cain said the letter should also include that the GOC encourages the EUT Committee to review the PUC Report, and that the GOC is also in an ongoing posture of reviewing the issues. The GOC will be emailed a draft copy of the letter before it is sent to the EUT Committee.

Sen. Johnson suggested that the issues and concerns raised by individuals during the public comment period on the PUC Report should be included in the letter. Chair Cain agreed.

Rep. Boland asked if the GOC was getting at the issues of swearing in and the policy of how to treat the filing of a document as evidence because there has been a lot of frustration for people of not knowing if their voice is being heard. The other issue is the recognition of the division of regulatory authority between the State and federal jurisdiction. There is a need for the public to know how much their input is taken into account and made clear upfront. Director Ashcroft said the communications piece of trying to make it clear to lay people when they are entering into the process of what to expect, what will go on, how to work with the

Commission, etc. is addressed in one of OPEGA's recommendations. The recommendation said PUC should try to describe their procedure better on their website and in their documents and that an ombudsman might be able to help with that burden. She said the second piece is can the PUC be doing some things differently that allow for more consideration to be given so people can feel, or see, that consideration has been given to unsworn comments or understanding what types of evidence will be introduced or not.

Director Ashcroft will draft the letter to the EUT Committee and email it to the GOC members prior to sending it out. The GOC agreed that they would ask for a response from EUT by February 1, 2014. Director Ashcroft will also contact the EUT Committee's Analyst.

Chair Cain noted that the GOC now has the other set of questions that are outside the scope of OPEGA's PUC Report and asked the Committee members if that was something they wanted to discuss at the meeting or did they prefer to have some time to formulate their thoughts and/or wait to hear back from the EUT Committee before making any decisions of what actions the GOC should take. Members of the GOC agreed that they would like the opportunity to hear back from the EUT Committee.

Chair Cain thanked those at PUC and OPA for their time and for working with OPEGA and the GOC in answering questions and providing information.

• **GOC Consideration of OPEGA Project Direction Recommendation on State Lottery Review**

Director Ashcroft said OPEGA has completed the preliminary research phase on the State Lottery review and is making its recommendation on going forward and what particular questions might be useful to focus on.

OPEGA's recommended questions for the State Lottery review are:

- What are the expenses of the Maine State Lottery? Are they adequately controlled and minimized to the extent possible in order to maximize transfers to the State General Fund?
- How does the Maine State Lottery monitor and ensure that key provisions of the Lottery Gaming system contract are met?
- What entities have a role in governing and overseeing the Maine State Lottery? Is there sufficient governance and oversight of MSL key decisions impacting revenues, expenses and operations?

Chair Cain noted past OPEGA reviews of entities where there are large amounts of funds that are not necessarily overseen in the General Fund process and OPEGA has a strong opportunity to provide an analysis of how it is working. She thought the recommendation questions were clear and would give the Legislature an insight into the Lottery and its operations that the Legislature does not currently have.

Rep. Boland said she gets asked a lot about whether lottery revenues were intended to be, and are, dedicated to education. Other Committee members agreed and asked for that question to be added to the scope of the State Lottery Review. Rep. Davis noted that the Maine Lottery was created in 1976 for education.

Following Committee members' discussions and comments, Director Ashcroft said in addition to the three questions recommended, the marketing issues raised by the Committee would be better addressed by adding questions. She suggested what criteria or considerations are involved in decisions about marketing and what the games will be, who is part of making those decisions and who oversees what those decisions are.

**Motion:** That the Government Oversight Committee approves OPEGA's Recommendation for Project Direction of the Maine State Lottery with additional questions to be added regarding the Lottery's initial intent and the status of that intent and what criteria or considerations are involved in decisions about marketing and what the games will be and who oversees those decisions. (Motion by Rep. Harvell, second by Chair Kruger, unanimous vote, 10-0.)

**Note:** Sen. Youngblood stopped by OPEGA and voted on the GOC's motion subsequent to the meeting and in accordance with the Committee's Rules.

## **RECESS**

Chair Cain recessed the Government Oversight Committee at 12:03 p.m.

## **RECONVENED**

Chair Cain reconvened the meeting at 12:33 p.m.

### **• Blue Ribbon Unemployment Commission and Federal Review of Unemployment Compensation**

#### **- Update on status of federal review of unemployment compensation matters**

Director Ashcroft said the Federal government is still in the process of internal review of their draft report. She had contact from someone in the Executive Branch who told her it would probably be later in December or January before that report was ready.

This item will be kept on OPEGA's agenda.

#### **- Briefing from Co-Chairs, the Honorable Daniel Wathen and George Jabar, II**

Chair Cain recognized the Honorable Daniel Wathen and George Jabar, II, Co-Chairs of the of the Blue Ribbon Unemployment Commission. Chair Cain thanked both of them for being at the meeting explaining that the GOC was asked to review activities that occurred with regard to the Governor's meeting with Hearing Examiners earlier this year. The Commission was formed at the same time so the GOC decided to wait for the Blue Ribbon Commission's findings before proceeding with consideration of the review request they received.

Mr. Jabar recognized Chris Hastedt and Kristin Aiello, also members of the Blue Ribbon Commission, and in attendance at the meeting.

Mr. Jabar said the task of the Blue Ribbon Commission was undertaken very seriously by all the members. There was a lot of input from all the members who represent different sides of the employment spectrum. Because of the makeup of the Blue Ribbon Commission a lot of ideas were exchanged, and he thinks they had a good handle on what was going on. The unemployment process is a more complex process than he believed the Blue Ribbon Commission thought it was, and that is the public's misperception of what happens in the Unemployment Compensation Office and how it processes through Levels one, two and three.

Mr. Jabar said they met with hearing officers, with the Unemployment Commission, people that worked there before and wanted to come forward, and other Department of Labor (DOL) staff. Everyone was very helpful and no one shut them out. He said they are very hard working, independent, driven employees who spoke their minds very clearly to the Blue Ribbon Commission. They were never shy and never refused to talk or meet with the Commission. He said the Blue Ribbon Commission listened to hearings, read cases and files. As to some of the initial issues about bias towards employees or employers, they did not find any. There was nothing intentional or direct and what they did find was addressed in the Report findings. He believes there will now be more consistency throughout the process. The Commission believes a lot of the issues can be corrected with communication, and development of some better policies. Mr. Jabar thinks DOL needs more hearing officers and that would free up time for not only training within their own levels, but communication set up between the three levels. He thinks that will go a long way in not only making them more efficient, but

making the system better in terms of quicker response time to employees who have been let go, or avoiding the overpayments when they do get the unemployment benefits that they find themselves having to pay back.

Justice Wathen said the Blue Ribbon Commission held a public hearing which was helpful because the Commission got complaints from both sides and processes were explained. He said they reviewed a random sample of 10% of the voluntary quit and misconduct cases over a nine month period. The two problems the Commission focused on most were delays and the primary cause for delay. At level one they have twenty to twenty-two adjudicators and, particularly from 2008 and beyond, they had a huge increase in the number of claims. That is the primary cause of delays. The Commission found some evidentiary practices that are symbolic of the inconsistency in the three levels, but he thinks it is correctable with supervision and training.

Sen. Craven said she understood from the Commission's report that the additional hearing officers recommended would be federally funded. Justice Wathen said there is something called the Reed Act funding which is federal funding and he understands that if the Governor makes a declaration it can be used for staffing. Therefore, the Commission believes the additional staffing the Commission has recommended, or the staffing recommended by the DOL, will not be General Fund money but can be covered with federal funds.

Sen. Craven asked how many people the Commission recommend be hired. Justice Wathen said they recommended 6 to 11 for Level one and 2 at Level two, but noted in their Report that the number should be more defined by DOL.

Sen. Craven asked if the Administration agreed with the Commission's recommendations. Justice Wathen said he would not say they agreed, but said the Administration was supportive. Mr. Jabar and he met with the Governor and his staff who were supportive and expects DOL will make their views known. He was encouraged that each of the Commission's recommendations was going to be given serious consideration in a positive way.

Rep. Harvell said there was a GOC review request largely triggered by what was heard about a luncheon for unemployment hearing officers with the Governor and that he may have been using undue influence in the process. He asked if there were any findings of undue influence by the Governor in the process. Justice Wathen said the Commission was not charged with the responsibility of looking at the lunch, but obviously heard a little about it during their review. The 10% random sample of cases for a nine month period the Commission reviewed covered cases occurring before, during and after the lunch so the Commission might see if there was any change in the decision making process, particularly in regards to business records. There was not.

Rep. Harvell noted from the Blue Ribbon Commission's Report that there is \$47 million owed in overpayments from employees and his conclusion from reviewing that is that decisions are weighted toward the employee. Justice Wathen said he could not draw any conclusions from that citing examples of situations that might cause overpayments. He said the more consistency you can have across all three levels the less delay in payment and the less overpayment. Consistency is important.

Sen. Burns referred to a comment Justice Wathen made that the Commission found there was no intentional or direct bias, which lead him to believe there was unintentional bias and asked Justice Wathen if he could describe the bias he was talking about. Justice Wathen said at Level two business records are not being evaluated in conformity with the law and that should change. In a misconduct case, the employers are more likely to be depending upon business records, whereas the employee will always be testifying about what he or she did and will always be first-hand account. Employers have been disadvantaged because of the way DOL has been applying the burden of proof and the law with regard to business records. It is not because DOL had bias against business but because they had a mistaken view of how to evaluate that evidence and the Commission believes that is correctable.



Sen. Burns said the other area he noted in the Commission's Report was the lack of communication and asked if that was because of the workload or is more insidious. Mr. Jabar thought it was a combination of different things and especially at the first Level where they are handling such a volume of cases there is not a lot of communication between the adjudicators. He believes the Commission found that there was not communication between the first and second Level. They also did not think there was much communication, if any, between the second Level and third. DOL used to have a committee with people from each Level who would address issues of evidence, and policy and procedures and for whatever reason that culture in the Department stopped and communication between the Levels stopped happening. Mr. Jabar thought by the end of the Blue Ribbon Commission's work the employees were more receptive to open communications and the head hearing officer in Level two is going to start listening in on a couple of hearings a month and then communicate with those officers to talk about the issues. They have to improve the communication between themselves, but it is very important that they improve the communication and training between the three Levels as well. Justice Wathen said each Level is independent of each other, but at a certain level it is necessary that they work together. Not case specific, but to discuss how to handle procedural types of things.

Chair Kruger asked Justice Wathen what his reaction would be if a governor invited a group of judges to his house and told the group that they were making incorrect decisions. Justice Wathen said those discussions do take place, not exactly like that, but there are occasions when governors come and meet with judges at the judges' invitation. A general discussion of handling domestic violence cases in a particular way, for example, can be legitimate, but any case specific discussions are definitely not allowed or appropriate.

Chair Kruger said he was pleased to read in the Commission's Report that the charge that came from the Executive Branch of bias in the unemployment process toward employees has been responded to and resolved, though it did not resolve his questions about the appropriateness of the Governor's actions surrounding the lunch meeting.

Rep. Davis asked how the business records were being mishandled. Justice Wathen said it relates to a small subset of misconduct cases, for example, the employer has a written performance log or something that shows a history of incidents that led up to the employee being fired. Some of the performance incident reports or log entries may contain information supplied by someone who is no longer with the company and no longer available to provide first hand testimony. Consequently, the record is considered "hearsay". Usually at Level one that business record is accepted. It goes to the Level two hearing and the employer attends and wants to introduce the performance tracking log or the record of progressive discipline. Typically Level two will admit the business record but according to Labor's template language or guidelines, hearsay, referring to the business record, will not be give greater weight than direct evidence. So when they follow this they are not weighing the credibility of the record against the credibility of the employee, and will never give greater weight to the record than the testimony of the employee. This means that, by default, they will never find that an employee could be less than truthful. Business records, however, would be admissible in Court, and other administrative agencies and private arbitrations, and is one of the best recognized exceptions to the hearsay rule. The fact finder has to decide the weight of the credibility of the evidence, with the performance record and the employee. The fact finder has to decide if they are persuaded by the employer's record that the employer has met the burden of proof or not. Labor should not just be discounting the business record because it is hearsay but rather should be assessing whether they are persuaded by it or whether they find the employee to be more credible and for what reasons. It is a simple evaluation, but the fact finders should not be saying categorically they will never give greater weight to a record than to an employee. Justice Wathen is not sure that if Labor did it the correct way, that it would always result in the case coming out the other way, but there were a few to him that were so close, that the credibility determination could have been very important.

Rep. Cotta asked if the misuse of the template for employees and employers could be addressed through training. Justice Wathen said all six members of the Commission came to the conclusion that they thought that was the best way to do it. They could have made a recommendation for a change in the law that would have been very specific about business records, but the problem is that no matter what you say in the law, someone always has to determine the weight and the credibility. The law is pretty clear. In meeting with the

hearing officers and discussing with them what the Blue Ribbon Commission thought were inadequacies of their methods of evaluation, he thinks they are open to considering what the most effective way would be.

Sen. Johnson asked Justice Wathen if it would be appropriate if someone in a role of authority said to judges that they were deciding too much of the time in favor of the defendants in domestic violence cases. Justice Wathen said no, not if it was said that way.

Rep. Harvell referred to the employer's record of an employee talked about earlier and asked whether an incident report that carried the employee's signature was also treated as hearsay. Justice Wathen said yes and the ordinary reaction is that if it is hearsay then the evidence is no good. But if it is an exception to the hearsay rules, and there are 26 exceptions, then it is admissible and reliable and so-forth. Hearsay technically means a statement made out of Court that is offered in court for the purpose of proving the truth of the matter stated therein. Whether it is a written or oral statement, if it is outside of court and is offered in court for the purpose of proving the truth of the matter, it is hearsay. Then the question is, is it an exception to the hearsay rule and therefore admissible and requiring evaluation.

Chair Kruger asked if any Commission members had thoughts on ways to keep the political out of the unemployment process. Justice Wathen did not think it was subject to a lot of political influence and did not see that in the operation of the agency. At the third Level, the Unemployment Insurance Commission itself is, by design, political, but in the first two Levels of operation, he did not see political considerations. Mr. Jabar said he was satisfied that there was no politics involved and says that only after his meeting with the hearing officers. He was impressed by the fact that the hearing officers were very independent, spoke their minds and were not influenced by anyone. He thinks they were more concerned with the quality and quantity of their work and doing a good job rather than whether their decision was going to affect one political party or another.

Chair Kruger recognized Christine Hastedt from Maine Equal Justice Partners and Kristin Aiello from The Disabilities Right Center, Inc. Both are Employee Representatives on the Commission.

Ms. Aiello said all Commission members worked hard. They reviewed cases, listened to hearings, talked to people and found all along the way great cooperation amongst the Commission and with those individuals interviewed.

Ms. Hastedt responded to Chair Kruger's question of how to stop the process from being political. She thought one of the most important ways to prevent that is in the way the GOC receives the information they were provided at the meeting. Ms. Hastedt said the Commission worked hard to come to an unanimous report and generally agreed to everything in the Report. The most important piece of the Report to her, and the low income clients she represents, was the recognition that the delay issue has to be addressed and has to stop. It is the reason people wait eight to ten weeks for benefits and the adjudicators at the first Level handle about 2,500 cases a month. The delays are inconsistent with what federal law requires and puts an untenable burden on people and public benefits in the State. It also results in overpayment that is not the fault of individuals, but rather the fault of delay in the system. Ms. Hastedt said it would be a mistake to make an issue of something that occurs in a small subset of cases, and that is not to minimize something that needs to be fixed, but again to put it in perspective. From her perspective it would also be a mistake to assume that those 12 cases were incorrectly decided. After her own review of those cases, she rarely disagreed with the finding in them. The fault she saw was the failure to articulate in the decision the way in which the evidence was weighed.

Ms. Hastedt said the Commission believed that the business records should get in, they should be weighed and the way in which they are weighed should be noted. Constitutional due process and the standard under the administrative procedures act will still apply in the cases. She said there are no political points to make, but is simply wanting a fair hearing to comport with the due process that is intended. They want to make sure that is happening in every case and that it is being expressly described in the hearing decision.

Ms. Aiello said members of the Commission approached it as putting the system under a microscope and in looking at anything in that manner, you will always find ways for improvement. She came away from the Commission's review with a great sense of appreciation for the adjudicators and the hearing officers who work very hard to deliver the promise of the unemployment insurance system. It is important to keep in mind that it is an insurance system. If people pay into the system and are deemed to be qualified, they should be able to collect those benefits if they are terminated through no fault of their own. It is hard to comprehend the number of cases the adjudicators are handling and by far the biggest recommendation the Commission could have made, and did, was the increase in staffing.

Rep. Boland said at the time of the work incident that is recorded the employee sees that entry and is able to comment or acknowledge it and asked if those employer records would be more credible than others. Ms. Hastedt thought the fairest statement you can make about the records is that they are not all created equal. She noted that in some cases the employee is signing that they received it and not signing to admit whatever the charge is. A hearing officer cannot assume that the information is correct and that is where the evaluation comes in.

Rep. Boland said the case of the Governor inviting hearing officers to a luncheon was different than the comparison made earlier regarding judges because those were two co-equal branches of government as opposed to talking with someone who is in the direct line of command. She asked if they considered whether there was any impropriety. Ms. Hastedt said the Commission deliberately did not look at that particular event and it was not part of their charge to do so. She said that was the federal investigation. The Commission's charge from the Governor was to evaluate the system to determine whether or not there essentially was a bias in the way in which decisions were being made. Ms. Aiello added they were also to look at ways the system could be improved.

Chair Kruger and other members of the GOC thanked the members of the Commission for attending the meeting and answering their questions.

- **OPEGA Follow-up on Healthcare Services in the Corrections Systems**

Director Ashcroft said this item was added to the Agenda with the intention of starting the conversation around concerns related to the follow-up that OPEGA was doing on the Review of Healthcare Services in the Corrections System that OPEGA felt the GOC should be aware of. Over the past year, even since the change to the new healthcare provider for the System, OPEGA has continued to be contacted by different advocacy organizations representing inmates' concerns, or from inmates directly, about their medical care. Director Ashcroft referred members to the memo received from the Maine Prisoner Advocacy Coalition regarding Prisoner Health Care that was in their notebooks.

Director Ashcroft said OPEGA is following-up on what the Administration had said it would do and are continuing to talk with them and receiving documents from them that show that they are taking the actions they said they were going to take. In terms of the experience the advocacy organizations are having, it does not seem to be reducing the workload on their end. That begs the questions of whether there is additional analysis of what is going on that would be worthwhile to identify whether it is just a difference in expectation of standards of care or whether there are areas to be looking at for further improvement in the healthcare system.

Director Ashcroft wanted to make the Committee aware of what was going on and thinks there is a question for the GOC about what kind of follow-up they want OPEGA to do. Is there some additional work or an additional review or a special formal follow-up review that might be considered.

Chair Kruger asked how long Corrections' new healthcare contract had been in effect. Director Ashcroft said the healthcare contract changed July 2012. He thought the request was premature, but asked for other Committee members' thoughts.

Sen. Craven said she went to the Maine State Prison in Warren last week with a group and met the management from the healthcare team, but they met specifically about the new mental health facility being prepared in Warren. She got a tour of their healthcare facility and met some people. They are caring for people who have no place else to go and do not have an appropriate setting so it is difficult to find adequate placement. She would like to see a follow-up to see the improvements and would like to include the mental health facility as well. When she met with them they seemed organized and competent, but the State pays a lot of money for the service and there is no reason why it should not improve substantially as they go forward and implement their plan. Sen. Craven would like OPEGA to at least have reports from the Department of Corrections (MDOC) and advocacy groups to see if they match and if there are ways the Legislature may be able to help.

Sen. Burns wondered if the numbers in the MPAC's memo were any different than in the past. He asked if the advocacy group had gone to the Board of Visitors in Warren about their concerns. He believes that should be their first contact because they have a very active Board of Visitors and that would be the group for them to approach if they feel that medical needs are not being met. He would want to know if MPAC has done that. Sen. Burns thought the matter was more in the purview of the Criminal Justice and Public Safety Committee and that Committee needs to know if Correction's new medical contract is working.

Rep. Boland said the nutrition in the Corrections System is poor and if they could stop looking at medicine as the way to get people healthy and start looking at some of the healthy alternatives, the problem will get a long way to being solved. She met with Commissioner Ponte and his staff to discuss nutrition and when she followed-up with the Commissioner about getting hi-grade nutrition supplementation in the prisoners he said the only thing he had to say about it was that the medical people wouldn't like that much. She said the State does not have an open system that is willing to try different strategies to health.

Director Ashcroft said she was just looking to start the conversation. She said advocacy groups had forwarded OPEGA examples of the types of things that are coming to them and one of the main concerns has been that there seems to be delays in folks being able to get access to medical care or there appears that something like neglect is going on that causes their condition to worsen over time. Timely medical care and how the contractor and MDOC were monitoring to make sure there was timely medical care was one of the issues that came up in OPEGA's Report. She questions whether there are significant delays in getting care for folks with the new contractor, and if so, what is the cause of that.

Director Ashcroft thinks there are several ways the GOC could go. One would be to ask the Department to come in and speak to why the advocacy groups are reaching outside Corrections for help. Another would be to ask the advocacy groups or OPEGA to do an analysis of some of the complaints received to see what the themes are, and see if they can deduce what the root causes of the themes are and identify whether there are additional actions that could be taken by the MDOC that are not already part of their action plan.

Sen. Johnson was interested in knowing what the corrective actions were and the timeframe for implementing them. If it means that they have, or have not, complied with their plan of addressing the issues, he thinks that would be worthwhile for the GOC to look at. If those corrective actions are not sufficient, or is something else going on that was not previously identified, that is a different question. Director Ashcroft said OPEGA has been hearing from MDOC on what they say they are doing so OPEGA's next step would be to review what that looks like. OPEGA is in the process of doing that and perhaps by the next GOC meeting, will be in a better position to tell the GOC what has been done.

Chair Kruger said it should be an agenda item for the next meeting.

Rep. Cotta agreed with Sen. Burns that the CJPS Committee needs to be involved. Sen. Craven agreed, but was curious about closing the circle because it is hard to figure out whether the complaints are higher or lower than what had been going on before.

Director Ashcroft will draft ideas of how the GOC may want to move forward once OPEGA has completed its follow-up work.

## **UNFINISHED BUSINESS**

- **Update on OPEGA's Review of Maine Economic Improvement Fund**

- **Information previously requested by GOC**
- **GOC request to Attorney General's Office**
- **Final Review and Decision on Scope Questions**

Director Ashcroft said the GOC had approved several questions for OPEGA to go forward with on the Review and were still holding open whether the Committee wanted to add additional questions to the scope. One of the areas the GOC had concerns about was the original statutory intent with regard to the language for the Fund and whether it was intended originally to be distributed more widely amongst the campuses than has been the case. The GOC did submit a letter to the AG's Office requesting an interpretation of the statutory language and if they might be able to determine what the original intent was. Director Ashcroft referred members to the response from Deputy AG Linda Pistner. She said Attorney Pistner came to pretty much the same conclusion as OPEGA in that they do not see anything in the legislative history that would speak necessarily to an intent regarding the distribution of funds among campuses. The only intent is in regard to the target areas that the fund was to be distributed to.

Rep. Cotta disagreed with Attorney Pistner's opinion, but will leave it to the Committee to decide if they should add additional scope questions.

Chair Kruger said the GOC is now faced with the decision of where they go from here with the Review Request of MEIF.

Director Ashcroft said from the questions approved for the scope of OPEGA's review of MEIF there will be an understanding of what processes are used to distribute funds among campuses. Hopefully that will be useful information for determining whether additional adjustments ought to be made in the way the Fund is distributed going forward. If the GOC was looking for some basis to say the University of Maine System has not been distributing the funds in accordance with statute, OPEGA's observation and now the AG's observation, is they don't have any foundation on which to say that from the stand point of intent shown in the legislative history records. In terms of adding additional questions to the review, she does not know what they could add for a question that would result in them bringing any valuable information back to the GOC about the original intent and the distribution of funds from an historical perspective. She thinks the Committee will have information from OPEGA's Review that allows them to think about what they want that to look like going forward.

Sen. Burns said it is clear to him that it is a very unfair process. He based that on reading the law himself, listening to a lot of discussions and talking with a lot of people that are involved in this, trying to get a piece of the pie and the big dog is basically doing whatever they want. If anyone looks at the statute, the amount of money and the mere pittance that has been given out to the small campus initiatives, it is clear that it has been an unfair process. The money was to be shared among the various satellite campuses, as well as the University of Maine. Anybody would assume the big campuses were going to get the lion's share of it, but to get the amounts they have gotten, and just by looking at the information OPEGA has provided, it is clear to him that it is not being done equitably. He agreed with Rep. Cotta about if you are from a satellite campus, then you need not apply, because you won't be heard. Director Ashcroft said OPEGA is going to explore the process by which money is being disbursed and if, once that has been described to the GOC, members do not find it to be an equitable system or fair, the GOC will have the opportunity to talk about whether it wants to initiate some adjustment to that. It is more about looking forward than necessarily being able to hold accountable for what has occurred in the past.

Rep. Cotta agrees with the Scope Questions in the Review and that the Committee was heading in the right direction.

Rep. Boland would like to know whether the decision process had anything to do with the size of the department, number of students required to support the effort, etc.

Director Ashcroft pointed out that the Committee had requested some additional information on the small campus initiative and referred them to the information in their notebooks that was received from UMS with regard to that.

Director Ashcroft said if the GOC did not have additional questions they would like to add, OPEGA will move forward with the questions already approved.

- **Update on OPEGA Special Projects**

- Technical Assistance with Education Committee's Independent Review of School Funding Formula**

Ms. Cherubini said OPEGA's role was to manage the contract with the consultant hired to do the review for the Education Committee and the Legislative Council. She said the contract deliverable did come in on time and the consultant presented their final Report to the Education Committee on December 10, 2013. The Education Committee is now ready to take it forward. The Legislature has the consultant under contract through March to assist the Legislature should their services be needed during session if there are questions regarding the recommendations in the Report, or information people want as they consider possible legislation moving forward.

Ms. Cherubini informed the GOC that the consultant's Report, all of the documents associated with the Report, including power points that the consultant presented to the Committee, the original Resolve, the RFP to hire the consultant and the actual Reports are available on the OPLA website.

Sen. Craven asked if there was a fiscal note included in the Report. Ms. Cherubini said the consultant's recommendation would be to move more toward their model, the Evidence Based Model, and base their model for school funding on national research. Moving from EPS to the Evidence Base Model they estimate would be about an additional \$327 million at the State level. She said the consultant included in their recommendation suggestions of ways to move gradually towards that and ways the State may consider prioritizing changes if they wish to adopt those.

- Tax Expenditure Programs**

Director Ashcroft said OPEGA was working with the Task Force that was established on tax expenditures and referred the GOC to the information in their notebooks. For OPEGA's purposes and for the special project the GOC has assigned, OPEGA has taken the input from the Task Force, the input from the GOC, and has been working with the PEW Center representative to come up with an outline for a potential bill that would establish an ongoing legislative review process that involves OPEGA and the GOC as key players in making sure those evaluations get done, with the Taxation Committee playing the role of final considerer and decider on what should be done with any of the results of the reviews.

Director Ashcroft said the Task Force submitted their Report to the Appropriations and Financial Affairs (AFA) Committee on December 12, 2013. Going forward Director Ashcroft will be working with Julie Jones, OFPR Analyst for the Taxation Committee to turn the draft outline into draft legislation that will go to the AFA Committee for consideration in conjunction with the report. She was looking to whether the GOC wanted to take a look in detail at the bill outline, what it involves and provide any input or comment to AFA as they consider the draft legislation.

This item will be on the next GOC meeting for further discussion.

## REPORT FROM OPEGA DIRECTOR

- **Status of Projects In Progress**

Director Ashcroft said State Lottery was discussed earlier in the meeting. **MEIF** is getting ready to move into the fieldwork phase. The **Office of Information Technology** is still in progress and OPEGA continues to take stock of what actions they have taken and monitoring whether they are hitting any challenges. She will be expecting to give the GOC a report on the status of that at its next meeting. The two Special Projects of **Tax Expenditure Programs** and **Technical Assistance for Education Committee Contracted Study of Education Funding** were discussed earlier in the meeting.

- **OPEGA Staffing Update**

Director Ashcroft said OPEGA had an analyst position to fill and have made an offer to Kirk Duplessis. He is currently employed at the Department of Labor and will be starting on Monday, December 16<sup>th</sup>. She also reported that another analyst has left to go back to Maine CDC so OPEGA still has one full time position open and will be advertising for that. The Legislative Council did authorize OPEGA to establish a part-time temporary analyst position through the end of FY14 and she had hope there may be folks who have previous experience in OPEGA who might be willing to fill that position.

## NEXT GOC MEETING DATE

The Legislature will be back in Session in January and the Committees will be back on the Legislative meeting schedule. The GOC is authorized to meet the second and fourth Fridays of each month. Etta will poll the members for their availability.

## ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:45 p.m.