SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. GARRETT P. MASON
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. CHUCK KRUGER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary
January 6, 2012
Accepted January 27, 2012

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:05 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Craven, Sen. Diamond, and Sen. McCormick Joining the meeting in progress: Sen. Mason Absent: Sen. Sullivan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Fossel, Rep. Fitzpatrick, and Rep. Kruger Joining the meeting in progress: Rep. Boland
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Joseph Ponte, Commissioner, Department of Corrections David Emery, Deputy Commissioner, Department of Administration and Financial Services

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE NOVEMBER 15, 2011 GOC MEETING

Sen. Diamond asked if bullet three on page 4 of the Summary could be checked for accuracy. It was determined that Commissioner Ponte did state the information in that bullet item.

The Meeting Summary of November 15, 2011 was accepted as written.

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NEW BUSINESS

- **Heath Care Services in State Correctional Facilities**

Director Ashcroft gave a brief overview of OPEGA's Report on Health Care Services in State Correctional Facilities.

Chair Katz inquired whether the RFP for medical services talked about at the last GOC meeting had been issued and if its language incorporated the recommendations that OPEGA suggested. Director Ashcroft said OPEGA did review a copy of an earlier draft of the RFP and looked specifically as to whether DOC had incorporated the recommendations of the consultant for things that could reduce costs and improve performance. Those items were included in the draft RFP.

DOC will forward the final RFP to Director Ashcroft to be forwarded to Committee members.

- Public Comment Period

Individuals presenting public comment and providing a written copy of their testimony included:

► Judy Garvey, Co-Coordinator of the Maine Prisoner Advocacy Coalition

► Kay Page, CURE and wife of an inmate

► Larry Amberger, Regional Vice President for Corizon. Mr. Amberger indicated that Dr. Joseph Shubert, Regional Medical Director and Kimberly Partridge, RN and Health Services Administrator for Corizon were at the meeting to assist in answering any of the GOC's questions.

Following Mr. Amberger's testimony, Chair Katz observed that it appeared that if it was not for the new Administration and the light that has been cast on Corizon's work by OPEGA, the changes talked about in Mr. Amberger's testimony would not be occurring. Mr. Amberger explained that there had been monitoring of Corizon's services in the past. DOC previously hired outside auditors, including the Maine Medical Association, to examine the work that was being done by Corizon and those audits found that the quality of care was good. He said the previous Administration did enforce contract provisions and gave the example of paybacks. He said Corizon is very dedicated to the quality of the work. OPEGA's report has targeted things that were not high enough on Corizon's radar screen, which was not through willfulness or malice, it was simply in the crush of the huge volume of services they deliver, some things got missed.

Chair Katz listed the reported results of the medical file testing done by OPEGA's consultant and the fact that OPEGA also noted there were serious problems with the training of Corizon's staff. Chair Katz believes those are significant issues.

He asked Mr. Amberger, in light of the information in this report, why the State should consider any proposal Corizon might make to get the contract back. Mr. Amberger said Corizon's quality of services has been very high. He said the items addressed in the MGT audit represent the tip of the iceberg, and he questioned whether the audit methodology used in testing the Medical Administration Records (MAR) made the situation seem worse then it was. He does not know from direct knowledge, but has been told that OPEGA's consultant failed an MAR even if only one of the squares on the MAR they thought should have been filled in was blank. Obviously the goal and the standard is to have 100% of the squares filled in. However, given that in the course of a month there are approximately 300,000 squares that should be filled in, that it is a manual process and that staff are being asked to perform a high volume of work in fairly short periods of time, common sense says some squares will be missed. Both Corizon and DOC, subsequent to the issuance of the report, did their own audits and found that 98% of the squares on the MARS they

reviewed had been completed. Sen. Katz agreed there was bound to be errors, but that the error rate reported indicated the situation was a little different than what Mr. Amberger described.

In response to Chair Burns' statement that Mr. Amberger agreed with OPEGA's report recommendations, Mr. Amberger clarified that he only agreed with OPEGA's recommendation that an electronic medical records system (EMR) should be acquired and implemented. He would want to know more before agreeing with other recommendations in the report.

Mr. Amberger said Corizon continually does Continuous Quality Improvement audits and their performance was not 100%, but in the high 90% for compliance. These audits are available for review. There are also monthly meetings between medical, site leadership and central office representatives for two of the larger facilities. Minutes from those meetings are also available. For the smaller facilities the meetings occur quarterly.

Sen. Craven asked if there was a budget connected with Corizon's contract with DOC. Mr. Amberger said the contract has a fixed price. In previous years there were multiple components with most of the contract at a fixed price, but off-site services was open-ended. The contract price included an estimate of what the costs for off-site services would be. In prior years, DOC bore 100% of the risk when the off-site services would exceed the budget. They do not have the final number for FY11, but he would estimate that the cost overrun is approximately $350,000 for that year.

Rep. Pilon said prisoners now take their medications from a cup, it is assumed they are swallowing the medication, but noted that may not always be the case. It appears there may be a drug problem in some of the facilities and asked if Corizon used the injection method rather than the pills. Mr. Amberger referred to Dr. Shubert for an answer. Dr. Shubert said they have diabetic patients who go to the clinic 3 times a day to get their blood sugars checked and have injectable insulin, but as far as injecting medications, no. Injection of medications is only done at the infirmary at the Maine State Prison.

In response to Sen. Diamond's questions, Mr. Amberger:

- Stated that over the past year Corizon has continued to provide the same high quality healthcare it always has but has been delivering it more efficiently. There are often multiple alternatives for treating any particular illness, injury or condition all of which comply with the standard of care. The previous administration's philosophy regarding care resulted in a larger expenditure for off-site services than under the present administration.

- Explained that Corizon provides the Department with a large amount of data every month. Corizon tracks outcomes and provides the DOC with data about utilization of services that is broken down to about 70 different categories. In addition, Corizon does monthly quality improvement assessments and all deaths are reviewed even if they are fully expected deaths from natural causes.

- Confirmed there are other companies offering the same services as Corizon and it would be accurate to say that DOC did not issue competitive RFP's for those services for the past eight years. Corizon got renewals of its existing contract without having to respond to an RFP.

Rep. Boland asked where Corizon made the cuts to meet the monetary changes made by the new administration. Mr. Amberger said the Department, in order to meet its budget for the current year, was forced to reduce the size of the medical contract and Corizon had to reduce the number of employees in the medical contract by approximately 6%. The selection was made in a way that resulted in a minimum amount of impact.

Responding to Rep. Boland's question of what percentage of complaints and requests from prisoners are not well founded, Dr. Shubert said the grievances don't get launched until patients have actually seen a

provider. Once the patient disagrees with the provider's recommendations, the grievance process can get launched. It can be for any reason that the patient disagrees with the recommendations. One hundred percent of the grievances are because they want more attention, more care or different medications than were provided. Records are kept of grievances and Dr. Shubert asked Ms. Partridge how many of the grievances she received came back unfounded. She said about 50%. Dr. Shubert commented that in his previous position in emergency medicine he never had a complaint to the Board of Medicine, a court case or malpractice suit filed against him. In the past year since working in correctional medicine he has had over 16 grievances to the Board of Medicine, with all at this point having been dismissed.

Rep. Kruger referred to earlier testimony about a patient who was diagnosed in 2004 with a serious medical condition and finally received treatment 7 years later. He asked if that was possible. Dr. Shubert did not know the case, but said that would be impossible.

Sen. McCormick asked if there was a reason some of the issues raised were not detected in the accreditation process. Mr. Amberger said ACA Accreditation is a facility wide accreditation and medical is just a component of that. There are about 70 standards that apply to medical, and undoubtedly, there is some lack of interface between those standards and the items OPEGA's consultant choose to audit.

In response to Chair Burns' questions, Mr. Amberger:

- Clarified that Corizon is the merger of the 2 largest correctional health care companies in the country, Correctional Medical Service and Prison Health Service, and that is part of the basis for him saying Corizon is the leading correctional health care services company. Corizon is significantly larger than any of their competitors.

- Did not have enough information to accurately answer whether the way Corizon's contract renewals with DOC and the other 3 facilities they provide services for were done typical across the country. He did not think 8 years is an unusual amount of time. Corizon has had the contract for the Cumberland County Jail longer than they have had their contract with DOC, but the Jail does not come under Mr. Amberger. He is responsible for Androscoggin and York County Jails.

- Clarified that the only OPEGA recommendation he strongly supported or agreed with was the recommendation for an EMR system.

- Explained that Corizon has put increased emphasis on cost-containment strategies for DOC and increased quality checks since OPEGA's recommendations were made known to them. Dr. Shubert said they have also had a doctor from the corporate office come do in-service training with the nurses regarding patient safety and the need for meticulous documentation of encounters with their patients.

In response to Sen. Craven's questions of whether Corizon had a plan of correction to address OPEGA's report, Mr. Amberger said they have been addressing it in several different ways as outlined in his written testimony.

In response to Chair Katz's questions, Mr. Amberger:

- Described the recent changes in the contract with DOC regarding off-site health care services. The fixed price of the contract has always included an estimated amount for off-site services and this amount is captured through a flat amount on Corizon's monthly invoices to DOC. Corizon pays all the claims for off-site services for DOC and then at the end of the year, the difference between the total claims paid and the amount invoiced is settled. There have been years when Corizon has written a check to DOC because they spent less then the budgeted amount, and there have been years when DOC has written Corizon a check. At all times, until this year, DOC bore the risk for any costs exceeding the budgeted amount. This year the Department, as part of the contract renewal with Corizon, negotiated a sharing arrangement with

a targeted amount of $1,640,000 for off-site expenditures for medical expenses. If the actual expense is greater than that, Corizon has agreed to share it 50/50 with DOC, and if it is less DOC will retain 75% of the underage and Corizon will receive 25%. At this time it looks like there will be an underage in the current fiscal year so Corizon will be writing a check to DOC.

- Explained that the number of monthly referrals for specialty, emergency room, and in-patient admissions began declining even before the new contract language took effect and he attributed it to the change in leadership at DOC. Corizon had advocated in the past that DOC should take a more conservative approach to medical care, but their instruction and guidance from leadership in DOC at that time, was to stay the course. The present administration, however, indicated they wanted to focus on necessary medical care, meeting the standard of care with a focus on functionality.

- Disagreed that the State has been overpaying for appropriate medical care in the past, although the State has been paying more than it would have paid if the interventions selected had been more conservative. Dr. Shubert added that, especially in the corrections environment, you always have to evaluate risk versus benefits of care. As a physician he holds himself to the standard of do no harm and you have to understand the risks and benefits of any type of invasive procedure or intervention against other possible alternatives.

► John Patterson, President of the American Civil Liberties Union of Maine

Mr. Patterson, upon the request of Chair Burns, will forward to him the information regarding the increase of correspondence from the prisoners to ACLU and what the requests are in regard to.

Chair Katz thought it would be helpful for the Criminal Justice and Public Safety Committee or GOC to review the information on the models in other states. Alysia Melnick, Public Policy Counsel for ACLU of Maine said she would be happy to work with their National Prison Project to investigate whether there are models in other states that reflect the recommendations in Mr. Patterson's testimony.

► Ann Woloson, Executive Director of Prescription Policy Choices

► Cheryl Saunders, wife of Al Saunders, prisoner, Maine State Prison read his written testimony.

Testimony received by the GOC, but not read at the meeting:

► Richard McEachern, Prisoner, Maine State Prison

The written testimony is on file in OPEGA.

Individuals presenting public comment, but not providing a written copy of their testimony included:

► Leslie Manning, President of the Board of the Maine Council of Churches
► Matt Lyons, describing the medical care his brother received at the Maine State Prison

Chair Katz recognized Rep. Boland who spoke on the results of the Inmate Survey of Healthcare Issues in Prison that she had developed and gave to Charles Page, prisoner at the Maine State Prison, for distribution. She gave him 20 copies of the survey to distribute and has received 27 back. It was Rep. Boland's intention to get a sampling of inmates' perspectives. Her questions covered both medical care and diet. She said the responses had similarities regarding whether the meds are effective, inmates' concerns that meds are going to be taken away, and concerns that the decisions made at the prison are more cost driven than care driven. A copy of Rep. Boland's Summary of responses to the inmate survey is on file with OPEGA.

RECESS

The Government Oversight Committee recessed at 12:27 p.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 1:03 p.m.

- **Public Comment Period continued**

Chair Katz said the GOC heard all the public testimony and wanted to afford Commissioner Ponte an opportunity to address the public comments and answer questions the GOC may have.

Commissioner Ponte said he shares many of the same concerns talked about in the public testimony. It is difficult to respond to individual cases and that he made an effort when he was first appointed Commissioner to meet with the inmates that he had received complaints from. He also met with the medical advisor and, in those cases, believed the medical response was appropriate. He thinks the more overriding concern is how to move forward from OPEGA's report.

DOC has issued an RFP as recommended in the report. They have received 10 requests for copies of the RFP so he thinks there will be good competition. DOC also took the consultant's suggestion and bundled everything into the RFP so he hopes to get one provider that will have overall responsibility for the cost of the health care and pharmaceutical care.

DOC has begun doing its own audits of the files, and meets monthly with Corizon. Commissioner Ponte said DOC does not dictate the medical care provided. No one in his agency tells medical staff what kind of care to provide, or what medications to offer. They are concerned about the costs and have been meeting monthly with both Correct RX and Corizon to discuss costs. DOC's medical costs are high compared to national standards and they are trying to understand why.

Sen. McCormick asked if the Electronic Medical Record system was included in the RFP. Commissioner Ponte said it was, but he will not know until the bids are submitted whether the State can afford the EMR.

Rep. Fitzpatrick asked about the possibility of receiving federal funds for inmates who are veterans. Commissioner Ponte said he and Jody Breton met with the Veterans staff and were told there was no way for incarcerated inmates to have access to veterans' care. He created a Case Manager for Veterans position in his agency whose job it will be to interact with all of the prisoners who are veterans and the federal resources that may be available to them.

The Committee thanked Commissioner Ponte for attending the meeting and answering their questions.

Director Ashcroft referred to comments made at the meeting regarding the audit procedure or process used and asked if there was any additional detailed information the Committee would like to have on that for their work session. The observations made by OPEGA's consultant MGT from the sample of files they looked at, was only one piece of the information they drew on to develop their conclusions and findings. The file sample was not the only basis for the conclusions they reported in regard to the adequacy of medication administration. There was other evidence of concerns and issues in the prison with regard to that. In the file review MGT performed, they were looking for documentation that was supposed to exist as per policy. When something that is supposed to happen is not documented, then you are left not knowing whether it occurred or not. What MGT was trying to convey in its findings is that they did not have documentation to tell whether certain things did or did not happen. The Director cautioned about leaping to further conclusions that it definitely was not

happening from these results alone. MGT said they did not see the evidence that they were supposed to see in the file and that is why they would call it a documentation exception.

The Director also addressed the comment by Corizon that they did not get the opportunity to interact with MGT or respond to the issues that had come up in the review. Director Ashcroft explained that OPEGA and the consultant, MGT, were dealing with DOC as they were responsible for managing the contract and monitoring the contractor. OPEGA was in conversations with the Department about various issues, including questions about some of the support for the consultant's findings. OPEGA was in the process of working through that with DOC when the administration changed. When that happened the focus went from trying to get everyone to agree on what the problems were to discussions of how to fix problems going forward.

If the GOC would like to hear from MGT, or would like the Director to put together the detail behind what has been presented, she would be happy to do that.

Sen. Craven would like to see how the MARs were counted or checked. Whether they eliminated the entire month if there was 1 or 2 doses missed and if they did dismiss the entire month, why they didn't just count the missing doses.

The GOC agreed they wanted to have the work session on OPEGA's report at its next meeting.

►Severin Beliveau, Esq., Preti, Flaherty, Beliveau, Pachios and Haley.

Mr. Beliveau said his firm represents Corizon and asked for the opportunity to address some comments made. His client is familiar with some of the inmates Rep. Boland referred to in the survey results, but is constrained by federal law in discussing them. He was encouraged by the Commissioner's comment that he met with some inmates to determine whether they had received appropriate treatment, and concluded in every case, that he was satisfied that they had. It is not a perfect institution or process and Mr. Beliveau did not want the Committee to just accept statements made by prisoners that they received inadequate treatment without a response on Corizon's part. Corizon's Medical Director is very familiar with some of the cases referred to and Mr. Beliveau thinks they were misrepresented in many ways as to what the true treatment was.

- **Committee Work Session**
- **Committee Vote**

The Committee's work session and Vote on OPEGA's Health Care Services in State Correctional Facilities was carried over to their next meeting.

UNFINISHED BUSINESS

- **Report Back From Efficiency Maine Trust on Action Taken on OPEGA's Report**

Naomi Mermin, Chair of Efficiency Maine Trust Board of Trustees, read from her written testimony. A copy of that testimony is attached to the Meeting Summary.

Rep. Fossel asked Ms. Mermin to explain how it was that EMT came to discussing publicly information from OPEGA's confidential draft report before it had been presented to the GOC. Ms. Mermin said she could only explain her participation in that process. At the time she was Vice Chair and reports were coming in from both OPEGA and EMT's auditors. Staff regularly briefed herself and the Chair and also kept the trustees informed. That is the extent of her knowledge of what happened with OPEGA's report. They were aware that it was confidential information, and are now even more aware of the process and the absolute strictness of confidential information in all forms and methods. She never spoke with anyone about the report. Rep. Fossel said it appears, even though this was a violation of confidence, the Board has not changed any procedures that

it operates under. Ms. Mermin's understanding of the Board's procedures prior, and after this event, is that confidential information is maintained as confidential.

Sen. Craven thought the breach of confidentiality was caused by a legislator and asked Director Ashcroft whether EMT needs to put any other procedures in place. Director Ashcroft referred to Ms. Mermin's explanation that EMT now has a heightened awareness of what it means when it says confidential on the document. She believes that extends to Mr. Stoddard, the Executive Director of Efficiency Maine Trust, from who she believes the information was disseminated. As already discussed with the GOC, OPEGA is going to change some of its procedures to make the confidentiality requirement even more clear, if that is possible. The Director believes what happened is that this agency, similar to MTA, was trying to get out in front of what OPEGA was going to issue in the report to make sure that legislators were hearing their side of the story. She thinks it was done innocently and does not know what one would put in place other than the heightened awareness.

Chair Katz noted in Ms. Mermin's testimony that the Trust has amended its monitoring and compliance plan to incorporate some of OPEGA's recommendations and asked if a copy of that could be given to Director Ashcroft. The Director will follow-up with Ms. Mermin to get that information.

Ms. Mermin wanted to let the Committee know that the Board takes these matters extremely seriously. They appreciate all the work that has been done, they have taken action, and will continue to monitor these matters.

Rep. Fitzpatrick asked if the breach in confidentiality was discussed at any EMT Board meetings. Ms. Mermin said the Board has focused on the report and the action they need to take in oversight of the Agency and their Executive Director. That has been discussed and she believes that both the Executive Director, and the former Board Chair, were at the September GOC meeting and spoke to the issue, and had apologized to the extent that either of them had a role. As the current Board Chair, she thinks they have been clear in their meetings, and will continue to be clear, that Trustees and staff are expected to treat all information, and particularly around confidential information, in the manner required by law.

The GOC thanked Ms. Mermin for her update.

- **Report Back on DAFS State-wide Policy on Real Estate Sales**

Deputy Commissioner Emery introduced Donald McCormack who has been hired as DAFS Director for the Bureau of General Services.

Deputy Commissioner Emery summarized what actions DAFS has taken regarding the State's real estate sales and referred members to the Policy and Procedures Manual for the Disposition of Surplus Real Property that he had provided. A copy of that Manual is on file with OPEGA.

Deputy Commissioner Emery was looking for guidance from the GOC regarding 17 MRSA §3104 – Conflicts of interest; purchases by the State. As DAFS reviewed and discussed this section with the Attorney General, the interpretation received was very strict in the sense that State employees could not buy State property. The State may want to consider if that is the direction they intend to go because there may be a circumstance when the State may have property that is of no particular value and a State employee may be the only one to see any value from the property. He wondered whether there was a procedure that could be drafted, or an amendment to statute that could allow, under appropriate circumstances, for a State employee without any conflict of interest, to be able to buy that piece of property. DAFS has not addressed that situation in the Policy because they thought it a broader question that deserved the consideration of the GOC and the Legislature. GOC members agreed that it is difficult to determine exactly what the section means and whatever is decided, the Statute should be rewritten. Deputy Commissioner Emery pointed out that the statute relates to more then real estate sales and said they would need input from the AG's Office and a number of other committees.

Rep. Fossel said he has found the level of maintenance of some of the State's properties to be horrible and the properties essentially unsalable. He would like a report on the lack of maintenance of State buildings and what it is costing the State. Second he would like to see the State of Maine adhere to its own building codes. Deputy Commissioner Emery said DAFS discussed those matters extensively and how the State has fallen behind on its responsibility.

Chair Burns commented that if the State could not afford to maintain a property, or will not use it in the immediate future, then the property should be sold. The Deputy Commissioner agreed. DAFS struggles with that as they look at the possibility of moving people out of leased space into State owned property. That works only if the facility is properly maintained to be used for State facilities in the future. By selling the properties you bring capitol into the State and it also relieves the State of the obligation for maintenance.

The Deputy Commissioner indicated that the Policy will apply to anything under DAFS authority and noted that DAFS does not control the Department of Transportation's (DOT) property disposal. Chair Burns thought the Policy should be consistent for all disposal of State property rather than leaving exceptions. He thinks it would be clearer if there was one policy for anything that fit within it. Director Ashcroft thought it would require changing the Statutes that govern IF&W and Bureau of Parks and Lands, assuming Chair Burns was suggesting leaving DOT alone.

Chair Katz asked how many transactions DAFS was talking about historically within its jurisdiction. Director Ashcroft said when OPEGA looked at all the State property sales for the last 5 years there were 49 sales identified in various departments – not all of them under DAFS' jurisdiction.

Chair Katz asked how the State is going to ensure that potential sales are given sufficient public notice so that all interested citizens have an equal chance to bid on the property. The Deputy Commissioner said in reviewing the contract with E.S. Boulos on the sale of property to the Warden all of the provisions for public notice were included, but it was not done. Standard real estate marketing procedures would be adequate if they were followed. It is a matter of holding the vendor up to the agreement signed and the services the State is paying for.

Chair Katz referred to the section in the Policy that stated "The Commissioner of the Department of Administrative and Financial Services has the sole discretion to waive or modify any one or more of the provisions of this policy" and asked if that applied to any of the rules. Deputy Commissioner Emery said it would. Chair Katz observed that this would essentially allow a repeat of what just happened with the sale to the Warden even though there are a lot of safeguards in the Policy. The Deputy Commissioner said the purpose for the provision is to allow a way to address unusual circumstances that might come up. Checks and balances could be added to it, for example, requiring the approval of a particular committee. Chair Katz said the Appropriations and Financial Affairs (AFA) Committee meets year-round and that Committee could do something akin to a financial order waiver for any exception to the rule, including State employees.

In response to Rep. Fossel's questions, Deputy Commissioner Emery:

- Agreed to work further on the language in the Policy to assure every sale was very public.

- Stated that DAFS has identified properties that are in need of repair and it should be the State's responsibility to at least take steps necessary to prevent further deterioration.

- Explained that DAFS is operating under the assumption that they may proceed with selling properties that have been approved by the Legislature for sale.

In response to Rep. Pilon's questions, Deputy Commissioner Emery:

- Stated the policy document was drafted by himself, Bill Leet, and Joseph Ostwald from BGS with input from a variety of other individuals. The AG's Office has reviewed it.

- Explained that the revenue from the sale of real estate would, in most cases, go to the General Fund and the surveying of properties would most likely be done by a private sector surveyor.

- Said he thought the apparent statutory prohibition on State employees buying property would include legislators.

Chair Katz asked if the GOC had to take any further action on this issue. Director Ashcroft said the Committee did not have to do anything, but might want to give DAFS feedback if they thought it was a good policy they should follow. The GOC had discussed earlier whether they wanted to move it into statute so it would apply across administrations and be consistent across State agencies. If the GOC wants IF&W and the Bureau of Parks and Lands to also follow the Policy, the GOC would have to propose changes to their statutes regarding land sales to make sure they are also following the same protocols. Director Ashcroft thinks it would involve taking the key points out of the actual Policies and Procedures and putting them into a statute that expresses the expectations of the process the State will use for property sales, and giving DAFS the authority where you want them to have it.

Rep. Kruger thinks the Policy is a good, and a fast and important reaction to something that was bad, but he would like to make sure the Policy has been reviewed by a few trusted vendors who might be the prequalified real estate service providers to give feedback as to whether they can work with it. Deputy Commissioner Emery said that was reasonable, but that 96% of the policy is internal to DAFS, and for things the Department or the Legislature does. The other 4%, while important, is in the content of an RFP, and any other agreements with real estate professionals would be standard agreements that anyone might have in selling a house.

In response to Sen. Craven's question regarding the Statutes, Deputy Commissioner Emery said the Statutes have not been changed at all at this point. This policy and the process merely makes sure the Legislature, Governor's Office and the rest of the world knows what is being done in a timely fashion. Rep. Boland thought it would be appropriate to bring this Policy before the State and Local Government (SLG) Committee and the Deputy Commissioner agreed and said if invited, he will give the same presentation. Chair Burns agreed and would like to see the ability of the DAFS' Commissioner to waive the policy requirements on any property sale be in consultation with the SLG Committee.

Chair Burns asked if the GOC had to draft the legislation, and then tweak the language to make it fit the other State agencies. The GOC agreed to draft legislation that make reference to the principles outlined by Deputy Commissioner Emery and seek input from SLG and IF&W Committees. Director Ashcroft will draft the legislation for the GOC's review.

There was discussion of whether the procedure comes under substantive rule making. Director Ashcroft asked if there was anything statutorily that requires DAFS, or anyone else, to report annually to the SLG Committee the properties sold over the past year. The Deputy Commissioner said there is a reporting requirement. Chair Katz's concern is that legislators there now will be gone in a few years and nobody will remember what happened. Deputy Commissioner Emery would like to have the opportunity to check on the reporting requirement.

Director Ashcroft asked if the GOC wanted to revisit what actions they would like to take on this matter. The Committee agreed.

- **Draft Legislation Regarding Quasi-Governmental Agencies**

Director Ashcroft said when this was last discussed it was thought the legislation would be put in Title 5 to the section related to boards and commissions. As OPEGA tried to identify all of the entities that might be affected discovered there are a fair number of them that are not listed in Title 5. There are other entities the Legislature has created that either have a board, commission or executive director that has the same characteristics of the ones identified that might be affected by the legislation.

Director Ashcroft explained that she now plans to define what might be considered a quasi-independent state entity in the legislation and reviewed with the GOC which entities have been determined to meet the criteria so far.

The Director's next step is to meet with the Revisor's Office to make sure she has the right language. She will also want Linda Pistner, Chief Deputy Attorney, Attorney General's Office to review it to make sure the language used is something that, in Court, would be interpreted as intended.

Chair Katz said mechanisms should be included so a legislative committee may consider and grant exceptions. Director Ashcroft is hoping to have it set up so it is up to the organization to draft its own rules. She was hoping to make it flexible for each organization to draft a policy that would work for them so the Legislature would not have to approve a waiver. The Legislature would be able to review the organization's policy and determine whether they were comfortable with it and there would be transparency about what the quasi-independent agency was supposed to be doing. The committee of jurisdiction would do the review. Rep. Fossel would like to make sure that all quasi-governmental agencies have a committee of jurisdiction. Rep. Kruger agreed.

Sen. Craven recommended culling the small agencies that had very little money or no staff. Director Ashcroft agreed and said she could make an attempt to identify and add a criteria that slim down the list of entities the requirements would apply to. The GOC asked her to do that.

Director Ashcroft will include language that speaks to the size and magnitude of the entity and report back at the next meeting.

- **Review Draft Letters From GOC to Joint Standing Committees**

- To Energy, Utilities and Technology Committee Re: PUC

No changes made by the GOC.

- To Transportation Committee Re: Ferry Services

The GOC had a request from the Transportation Committee for OPEGA to do a review of the use of Highway Fund money to support the Ferry Service. There was an older Attorney General's opinion on this matter and the GOC asked for an updated opinion. The last time the GOC talked about the topic they thought the AG's opinion was going to be the same as issued in the past and decided to send a letter to the Transportation Committee letting them know that the GOC was not going to do anything further with the topic and attach the AG's opinion letter. Director Ashcroft said the AG's Office has done a lot of additional research and she has not yet received their opinion. She is waiting to receive it before sending a letter to the Transportation Committee to make sure that the opinion is the same.

- To Health and Human Services Committee Re: Long-Term Care

No changes made by the GOC.

- **Follow-up on OPEGA 2009 Report on Fund for Healthy Maine Programs**

  Last session the GOC had introduced legislation to have a study committee on the allocations of a Fund for Healthy Maine Programs to make sure they were aligned with the State's current health priorities. The GOC agreed to have OPEGA fund that study out of its consulting budget because there was no other budget for it in the Legislative Council's budget. The study committee has concluded and the Director referred members to the Executive Summary of the committee's report.

  Director Ashcroft said it appears that a number of the recommendations that came out of this committee were similar to the recommendations in OPEGA's report. The GOC of the 124th Legislature had directed her to draft legislation to implement the recommendations, but Director Ashcroft believes, for the most part, the legislation that the OPLA staff drafted for the study committee covers it such that it would have nearly the same effect as what OPEGA had in its report. Director Ashcroft is not seeing the need for OPEGA to draft additional legislation.

  Sen. McCormick, Chair of the Health and Human Resources Committee agreed. The HHS Committee received the report and will be having a work session on it.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

  Child Development Services and **Cost Per Prisoner** reviews are in the field work stage, which is the detailed analysis and testing stage. It was Director Ashcroft's initial plan to have reports for the Legislature by mid-February so if the Legislature found the information provided helpful, they would have it available to use. The two reviews were put on hold to do the Maine Green Energy Alliance and the Real Estate reviews that the GOC tasked OPEGA with. Consequently she knows that having final reports on these reviews in mid-February is no longer a goal OPEGA is going to meet.

  Director Ashcroft's next goal on the reviews was to have much of the detailed work completed by the end of January so that even if a formal report could not yet be issued, OPEGA could still be in a position to share some results with interested legislative committees. She is still hoping for that to happen but wanted to make the GOC aware that OPEGA currently has a major challenge with getting the data needed for the **Child Development Services.** Although CDS has been working very diligently with OPEGA, they are now at the point in their process where federal reporting is due so the resources OPEGA needs to help with the data are tied up trying to get the federal reporting done. OPEGA has recently been told that there is probably not going to be anyone available until the end of January to assist with getting the rest of the needed information. Consequently, this project may not be as far along as she had hoped by the end of January.

SCHEDULE NEXT COMMITTEE MEETING

The Committee set Friday, January 27 at 9:00 a.m. for the next GOC meeting.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 3:35 p.m. (Motion by Rep. Fossel, second Sen. McCormick, unanimous).