



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. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary

October 18, 2011

Accepted November 15, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:12 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:

Sen. Katz, Sen. Craven, Sen. Trahan, and Sen. Diamond
Joining the meeting in progress: Sen. Sullivan, and Sen. McCormick

Representatives:

Rep. Burns, Rep. Pilon, and Rep. Fitzpatrick,
Joining the meeting in progress: Rep. Fossel
Absent: Rep. Boland and Rep. Lovejoy

Legislative Officers and Staff:

Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Matthew Kruk, Analyst, OPEGA
Maura Pillsbury, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Legislators:

Rep. Stacey Guerin

Executive Branch Officers
and Staff Providing
Information to the Committee:

Linda Pistner, Chief Deputy Attorney, Office of the Attorney General
Betty Lamoreau, Acting Director, Bureau of General Services
David Emery, Deputy Commissioner, Department of Administration
and Financial Services
Peter Mills, Executive Director, Maine State Turnpike Authority

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARIES OF THE MARCH 25 AND APRIL 15, 2011 GOC MEETINGS

The Meeting Summaries of March 25, and April 15, 2011 were accepted as written.

NEW BUSINESS

- **Quarterly List of Requests for OPEGA Reviews for GOC Consideration**

Director Ashcroft summarized the GOC's process regarding the review requests.

The Committee asked the Director to include the name of the sponsoring legislator on the Quarterly Review Request list in the future.

- **Department of Transportation – Maine State Ferry Service**

The Director reminded the GOC that an updated opinion from the Attorney General had been requested regarding Highway Fund support for the Ferry Services. Deputy AG Linda Pistner told the Director the letter will be finished soon and that there is no change to the prior AG opinion. Given this and other information gathered by OPEGA, the Director is not sure what additional value an OPEGA review of this topic would bring.

The GOC concurred and asked Director Ashcroft to draft a letter to the Transportation Committee that conveys the GOC's decision to take no further action on this topic, and what OPEGA has learned from its research. The updated opinion letter from the Attorney General's Office should also be attached.

- **Public Utilities Commission**

The Director briefed the GOC on the issues related to this review request and the information gathered by OPEGA in its brief research on the topic. The primary issue has to do with residential line extension policies and practices that are alleged to give an unfair competitive advantage to a certain electric utility over private line contractors. An associated issue has to do with the way the PUC handled the case that was filed with them about the unfair competition. Underlying both issues is a concern that close relationships between the PUC and the utility results in PUC's failure to properly address the complaints brought before them.

The Director said OPEGA had learned there was a carry-over bill currently with the Energy, Utilities and Technology (EUT) Committee dealing with the unfair competition issue. The complaint about attorneys violating due process and having ex parte communications during the case before the PUC has been heard by the Board of Overseers of the Bar and no wrong-doing was found. The requestor has also recently spoken with the Attorney General's Office about his concerns and the AG has apparently agreed to review the matter.

Chair Katz asked if the EUT Committee weighed in or sought GOC assistance in considering the areas of focus for this topic suggested by OPEGA, or in dealing with the requestor's specific concerns and related bill. OPEGA spoke with the OPLA Analyst for the Committee regarding where the EUT Committee was in their process, and that information is described in the Quarterly Request Listing spreadsheet. The EUT Committee has not asked for OPEGA assistance.

Chair Katz recognized Rep. Guerin, who had sponsored the request on behalf of two constituents. Rep. Guerin summarized the concerns of those constituents and why she felt it was an appropriate topic for the GOC to consider.

Sen. Katz asked why it was not a topic for the committee of jurisdiction.

Rep. Guerin said the EUT Committee would be looking at the laws related to the unfair competition but would not address the prejudice or bias exhibited by the PUC toward CMP. For example, the MPUC took an opposing position in a public legislative hearing on the unfair competition bill despite an open PUC case involving the same issue. One MPUC Commissioner failed to disclose a conflict of interest. The failures and mishandling of this issue by MPUC and the OPA have allowed CMP to under collect millions of dollars from customers needing line extensions, and those under collected dollars were passed on to all other rate payers. The outcome of the failures by the above stated agencies is that CMP has a monopoly status.

Rep. Pilon asked the status of the issues in the EUT Committee. Rep. Guerin said it is a carry over bill. The EUT Committee felt like something needed to be done because obviously there was unfairness, but because the bill came in at the end of the session, felt they did not have time to deal with it and did not feel it would pass the way it was written. Rep. Pilon thought until the EUT Committee dealt with the bill it should not be before the GOC. Rep. Guerin said the bill is just related to changing the law and this request was brought to OPEGA because of the appearance of wrong doing by the PUC. The law change would not be dealing with the wrongdoing of the PUC which is an ongoing problem.

Chair Burns said in the past the GOC offered assistance to a committee and could offer assistance to the EUT Committee in this matter. He would like to hear from that Committee before making a decision.

Sen. Sullivan described instances where she had attended PUC public hearings and her concerns over the way citizens attempting to bring matters before the PUC were treated. Sen. McCormick said there is a growing group of concerned people who believe there is a public health hazard to the new line expansion by CMP and are frustrated in trying to get the PUC to address their problems. Sen. Trahan also expressed concerns about the potential health hazards to people living near power lines.

Sen. Diamond thought there were enough issues raised that the GOC, at this point, should not just say no to the request. He would like to see it stay at least at the preliminary inquiry level to see what the EUT Committee takes for action, and if that Committee thinks they need more resources and information, the GOC could discuss the request further next year.

Motion: That the Government Oversight Committee moves the Public Utilities Commission request for an OPEGA review “On Deck”. (Motion by Sen. Diamond, second by Sen. Sullivan).

Discussion: Sen. Trahan would support the motion as long the GOC sends a communication to the EUT Committee letting them know of the GOC’s discussion, and request feedback from them.

Chair Katz recognized Chief Deputy Linda Pistner and asked her about the status of the AG’s review. She said the AG has a statute that precludes them from discussing anything that they have under consideration. She did say that Rep. Guerin’s constituent had met in the past with Attorney Generals Rowe and Mills and recently had met with Attorney General Schneider. To the extent there is some jurisdiction for the AG’s Office in the matter that is distinct from that of the PUC, and the facts support some action, then the AG’s Office would have the authority to proceed, but she could not talk about it anymore than that.

The Committee moved to the previous stated motion with the added amendment by Sen. Trahan.

Motion: That the Government Oversight Committee moves the Public Utilities Commission request for an OPEGA review “On Deck” and that the Committee send a communication to the EUT Committee letting them know of the GOC’s discussion and asking for feedback from that Committee. (Motion by Sen. Diamond, second by Sen. Sullivan, Passed by unanimous vote 10-0).

Director Ashcroft summarized that a letter will be sent to the EUT Committee advising them that the GOC has received a request for a review of the Public Utilities Commission. The letter will include what the concerns are and will ask if they would like any assistance from the GOC regarding the issues.

The Committee thanked Rep. Guerin for attending the meeting and answering their questions.

- DAFS – Office of Information Technology

Director Ashcroft briefed the GOC on the myriad issues associated with this request. Those issues were summarized as several potential reviews under Possible Areas of Focus. She commented that the issues brought forward in this particular request were also supported by many anecdotal concerns OPEGA had heard over the years, as well as by the results of OIT audits conducted by the OIT internal auditor – who's reports OPEGA has been periodically reviewing. The Director also summarized what OPEGA learned about current efforts underway in DAFS to take a look at some of these issues.

Sen. Diamond was in favor of the review noting systemic problems. He has been particularly concerned about management of the State wide radio project. He feels the State is looking at a computer disaster much like what DHHS had gone through once with MECMS and is now going through again with the new system. Chair Burns and Sen. Trahan agreed.

Chair Katz asked what the GOC could do to mesh with what DAFS is already doing so there is no duplication of work being done. Director Ashcroft replied that one area DAFS is currently focused on is OIT's billing to other State agencies. The OIT internal auditor had done some work on this in the past and Deputy Commissioner Emery is aware of the work done. DAFS is in the process of hiring an external auditing firm to assist with further review of that area and the Director understands the scope of that audit is still in the process of being formulated. Nonetheless, it appears that the issue of OIT billing is going to get a good amount of attention in the near future.

In the Director's opinion, the appropriate role for OPEGA would be to conduct a management review that assesses OIT's capacity in terms of human and fiscal resources and organizational structure. This would be a look at whether OIT is set up to properly support the State's needs and get some insight as to why the State is continuing to have so many problems with technology and information needs. She understands from Deputy Commissioner Emery that DAFS is also interested in that, but he does not know where they would get the fiscal resources, or time, to do a review of that nature. If the GOC proceeds with this request, OPEGA would be looking at hiring a consultant to provide significant assistance or do the whole review. Director Ashcroft would want a consultant who understands IT organizations, what their functions are and what kind of things need to be in place for them to be most effective and efficient. The Director believes that such a project could use most, if not all, of OPEGA's consulting budget. Committee members discussed their concern over using OPEGA's entire budget for one project, especially since it seemed like it should be of benefit to the Executive Branch. Possible alternatives for funding the projects were suggested.

Chair Katz recognized Deputy Commissioner Emery.

Deputy Commissioner Emery thinks an OPEGA study as described by the Director would be a most useful contribution to the OIT problem. He agreed it was not a matter of identifying the problems, but a matter of devising and implementing solutions to them. OIT is not waiting for an OPEGA report to be written, but has already started in a number of areas trying to get a handle on resolving the problems that DAFS has identified to date. Project management and billing are significant issues. An external audit to look at the billing structure and practices will begin shortly so service centers and others in State government who need reliable and accurate information will have a high level of confidence in the billing data that it is available to them. DAFS will keep the GOC apprised of that study. DAFS is also mindful of challenges with disaster recovery, security, and protection from external threats. They would also like to know if they have the proper allocation of resources so that money and manpower in the agency is being put to its best use and management and structure of their organization is sufficient, adequate and appropriate for the challenges ahead. Another concern is the difficulty in communication between the stakeholders, customers, agencies and the OIT hierarchy.

Sen. Diamond asked if the priority concerns included the radio system, the frequencies and the problem starting this December. Deputy Commissioner Emery is aware of the issue and it is something he will be looking into.

Rep. Fitzpatrick noted that IBM was commissioned to do a study in 2008 and questioned whether paying for another consultant to restudy things 3 years later is the best way to spend OPEGA resources. Director Ashcroft said OIT has been tracking its progress against issues that OPEGA identified in 2006 and IBM identified in 2008. That is why she thinks the question that warrants review is not about what the more specific issues are, as those have already been identified, but rather why can't OIT get those issues resolved. In other words, looking at root causes of why the specific issues exist and continue to be a problem. The CIO listed items that were the challenges being faced in making progress, even on the IBM recommendations. The CIO's list of challenges included management direction and priority, agency collaboration, staff availability, staff education, cultural acceptance, and lack of fiscal resources. The question has to be asked if OIT has everything it needs in terms of skill sets, management and technology expertise to move forward on the individual issues and that is what she suggested a consultant would be reviewing. Nonetheless, the Director said she does have the same concern as Rep. Fitzpatrick and perhaps the GOC would like OPEGA to spend more time going through all of the individual issues to determine if there are some that could be addressed in a different way other than through an OPEGA review.

Deputy Commissioner Emery noted that many of the problems that DAFS has encountered are not problems that are going to require thousand of dollars for additional studies, but rather a focus on what has to be done for them to move quickly to get a handle on the issues, whether technical or management. DAFS is moving on the issues immediately and hopefully by the time the study is done, whether internal or a contracted study, they will be able to report progress.

Director Ashcroft noted another concern she had is whether the State will be positioned to act on whatever recommendations come out of a review. It's possible that more resources may be needed to fix the problems identified.

Sen. Trahan noted the serious computer security issues identified by OPEGA's previous consultant back in 2006. He would like a review of all the past security issues. Director Ashcroft said that would be an add-on to what she was currently proposing for a review.

Chair Burns believed the management issues needed to be focused on. Although he was also concerned about the security aspect, he would hope that DAFS is addressing the security issues. DAFS has a responsibility under privacy laws, federal IRS statutes and regulations to protect private, personal, and confidential information of individuals and the entities that do business in Maine.

The Committee thanked Deputy Commissioner Emery for attending the meeting.

Chair Katz referred to the questions that had been raised regarding hiring a consultant and asked Director Ashcroft if she anticipated there would be a need for OPEGA's consulting budget for any of the other topics on OPEGA's Work Plan. Director Ashcroft said no, but noted there is a substantial list of other topics still pending for GOC reconsideration. Depending on what questions the GOC asked, there may be other reviews where an expert consultant would be required.

Motion: That the Government Oversight Committee moves the Office of Information Technology review on to OPEGA's Work Plan, that Director Ashcroft report back to the GOC the specific budget for hiring a consultant and the GOC can vote on that at its next meeting. (Motion by Chair Katz, second by Sen. Sullivan, Passed by unanimous vote 10-0).

Director Ashcroft noted that OPEGA could perhaps also research grants or other funding that may be available to assist in hiring a consultant.

- Dept. of Environmental Protection and DHHS Center for Disease Control and Prevention

Director Ashcroft explained the history of this request as it is the second time it has come before the GOC. When it was considered by the GOC in the 124th Legislature, there was much information presented by DEP and Maine

CDC, as well as OPEGA's research. There was consensus among GOC members and the agencies that health risks associated with wood smoke were of concern. OPEGA had found, however, that statutorily-defined authority, policy and processes were very limited in this area. The GOC determined that it really was a policy matter and referred it to the Legislature's Natural Resources Committee. That Committee did not take up the matter, but this past session the Health and Human Services Committee did consider and pass LD 547 which was directly related to the requestor's concerns regarding wood smoke. The bill was passed by the full Legislature but then vetoed by the Governor and the veto was upheld.

Sen. McCormick noted that LD 547 included a study on the subject of wood smoke emissions from wood stoves, fire places and outside wood boilers. The American Lung Association was geared up to fund the study, but the bill got vetoed. Sen. Craven, also a member of the HHS Committee, said she supported the legislation, but does not think work on the issues completely ceased with the veto. She thought the American Lung Association agreed after the veto that they would continue to look at how they could bring the two agencies together and work on the issue as much as possible. Rep. Fossel, also on the HHS Committee, supported the study and thinks the laws need to be changed regarding this topic, but the Governor felt otherwise and his veto was upheld. He did not know where to go to move forward other than to perhaps talk to the Governor about the need for the study.

There was Committee discussion about whether LD 547 could be reintroduced and who would be able to do it. Sen. Sullivan believed that in order to reintroduce a bill procedurally it would either have to come from the Governor's Office or the GOC, if it has the authority. It is clear that you cannot introduce the same bill in the second session. Sen. Katz asked if the ability to introduce a committee bill was limited to the GOC or did the Joint Standing Committees have that ability as well. Director Ashcroft's understanding is that generally the other committees do not have that ability. She also was not sure the GOC would have authority to introduce a bill on this topic either as statute gives this authority to the GOC in order to implement the recommendations from an OPEGA report. In this situation, OPEGA does not have a report. Sen. McCormick said that is the same for the other committees. If the HHS Committee had been able to have the study, they would have had the ability to introduce legislation based on the study.

Members ultimately thought the most appropriate avenue would be for HHS Committee members to speak to the Governor about reintroducing LD 547 if they so desired.

Motion: That the Government Oversight Committee moves to take no further action on the Department of Environmental Protection and DHHS Center for Disease Control and Prevention topic and it be moved off the Quarterly List for GOC Consideration. (Motion by Chair Burns, second by Rep. Fossel, Passed unanimous vote, 10-0).

- **Discussion on Selecting Additional Projects for OPEGA Work Plan**

- **Review of Topics Still Under Consideration as of September, 2011 Including On Deck Topics**

Director Ashcroft noted that OPEGA is currently working on all the remaining projects on its Work Plan and she would like to have a couple additional projects added in order to keep staff moving forward if lulls develop in the projects currently underway. She referred members to the list of topics that were technically still under consideration by the GOC, many of which were formally on the "On Deck" list.

Chair Katz asked if there were topics on the list that were of interest to Committee members.

Chair Burns said he was interested in the Efficiency Maine Trust and the Maine State Housing Authority (MSHA) topics. Chair Katz was also interested in MSHA because there is substantial money, mostly federal dollars that the MSHA deals with. Although MSHA reports to the Legislature, he doesn't have the sense that the Legislature has a lot of knowledge about MSHA's operations and programs and they do not appear to be subject to a great deal of scrutiny. There may also be some functions at MSHA that overlap some other functions of State government. He is not suggesting there is anything improper going on, but it may be time to review what the MSHA is doing.

Motion: That the Government Oversight Committee move the topic of the Maine State Housing Authority on to OPEGA's Work Plan. (Motion by Rep. Fossel, second by Sen. McCormick).

Discussion: Sen. Craven referred to both topics that had been noted. Efficiency Maine Trust was scrutinized when OPEGA did the Maine Green Energy Alliance Report and she felt it would be a duplication to do any more work at this time. Regarding MSHA, she would like to know beforehand about all the on-going federal audits of MSHA and whether it would be more efficient to look at their audits.

Director Ashcroft said the first phase of an OPEGA review is preliminary research. MSHA does receive a lot of federal funding and has an internal auditor in-house. Therefore, one of the first things OPEGA would do as part of preliminary research is ferret out what has already been audited at MSHA, what the results of those audits are, and whether those audits suggest any particular questions the Legislature might want to ask about MSHA. Once the preliminary research phase is complete, OPEGA reports back to the GOC a recommendation for project direction. The recommendation includes a synopsis of what OPEGA has learned and whether OPEGA thinks there are any particular areas worth reviewing in more detail. There have been times when OPEGA has reported back to the GOC that it does not appear valuable to expend further OPEGA resources on a particular topic. If OPEGA does recommend proceeding, the recommendation will suggest questions that could or should be pursued.

Rep. Pilon asked if OPEGA's preliminary review was different than the federal review. Director Ashcroft said the goal of OPEGA's preliminary research is to identify for the GOC what questions, if any, might be worthwhile for OPEGA to seek answers to through a detailed review. It includes a process of eliminating areas where there does not seem to be much risk of potential issues going unidentified or remaining unaddressed. For example, if there are areas already being audited, then the risk is lower for things within the scope of those audits. Based on the Director's answer, Rep. Pilon was in favor of a preliminary review being done.

Sen. Sullivan noted that many of MSHA's loans would be subject to securities laws and banking rules so records may be confidential. She asked how much OPEGA could actually review. Director Ashcroft did not know the answer to that question as it is part of what OPEGA would have to figure out in the first phase of the review.

Sen. Diamond referred to the GOC's earlier discussion about what they might decide to do with the new request topics, noting that asking OPEGA to do more preliminary inquiry before deciding was one of the options. He was thinking about MSHA in that light and thought there was a big difference between doing preliminary inquiry on a topic and putting it on OPEGA's Work Plan and that the two actions send different messages. There are differences between jumping right to the Work Plan and preparing the topic to go to the Work Plan if necessary. If there are no specific concerns identified, then it would seem more appropriate to have OPEGA do preliminary inquiry to identify whether there are any concerns than to just say we are going ahead with a project by putting it on the Work Plan.

Director Ashcroft explained that the Preliminary Inquiry option under the Process for Handling Requests for OPEGA Audits is for when the GOC wants specific additional information to help it decide what final action to take on a request, i.e. no further action, put On Deck, put on the Work Plan, refer to another body. It is expected that OPEGA will be able to gather that information fairly quickly without expending significant resources. The work that OPEGA does in the Preliminary Research phase of a project that is on the Work Plan, however, is much broader and more comprehensive in scope. It requires significantly more OPEGA resources and, as previously described, results in a formal recommendation to the GOC on not only whether a more detailed review should be performed, but also what specific questions should be answered by that detailed review.

Sen. Craven said she would be voting against the motion because there is no evidence, or even an indication, that there has been wrongdoing at MSHA. Secondly, MSHA gets mostly federal dollars and she can not imagine that the Federal Government is not overseeing their investment.

Sen. McCormick was in support of the motion. He agrees with Sen. Craven that nobody has said anything wrong was being done, but that is not the focus or intent of the review. He hopes OPEGA may find ways to do things more efficiently.

Chair Katz reiterated that he is interested in MSHA because he thinks there are some areas that no other legislative committee is really overseeing and referred to the “Possible Areas of Focus” listed for MSHA as examples. Those are:

- How MSHA’s operations and mission fit with the rest of state government – whether mission has expanded and overlaps with others.
- Whether MSHA is accomplishing its goals as efficiently as possible.
- Reasonableness of operating expenses and employee compensation.
- Governance structure compared with other state housing finance agencies.
- Process for selecting bond underwriters.
- Relationship of MSHA with FAME and DECD.

Sen. Diamond said if the GOC is looking to see if there is a problem, he would support the motion, but there has been no articulation that there is a problem. MSHA therefore sits in a pool of a lot of other agencies that sometime the GOC should look at. That is his concern and the reason he would not support the motion.

Sen. Trahan said that if MSHA controls as much money as he believes they do, that alone is a good reason to do an OPEGA review. It’s possible that minor structural changes could have significant savings, both to the federal and state budgets.

The motion was restated.

Motion: That the Government Oversight Committee moves to put the topic of the Maine State House Authority on OPEGA’s Work Plan with the understanding that OPEGA is going to follow its normal process and the first phase of the work will include understanding what is going on at MSHA, at least to the level that OPEGA can tell the GOC what, if anything, would be valuable questions to look at in detail. (Motion by Rep. Fossel, second by Sen. McCormick, passed 7-3-2). (Voting against the motion: Senators Craven, Diamond and Sullivan. Representatives Lovejoy and Boland were absent).

Chair Burns returned to the topic of Efficiency Maine Trust. He said red flags were seen during the MGEA review and were typical with what has been seen nationally with the American Recovery Act money. He feels EMT deserves more scrutiny than what it has been given thus far. Rep. Fossel agreed. No action was taken by the GOC.

Rep. Fitzpatrick noted that DHHS Contracted Service Providers had ended up quite high on the list when the GOC had ranked topics earlier this year. She thought that topic was worth further consideration and discussion to understand what challenges there would be to reviewing that area. Sen. Craven noted the current Streamlining Commission is looking at all of the contracts so it may be a partnership for the GOC to work with Commission in their review of all the State contracts. No action was taken by the GOC.

Long-term Care: Nursing Homes is a topic of concern for Sen. Sullivan. Maine has a large elderly population and at this time the State has no real plan regarding long-term care. Other GOC members agreed it was an important issue that was entwined in the larger issues of cost of health care and declining federal reimbursement rates. Members debated whether there was a useful role an OPEGA review could play in an area where the problems seemed so large.

Director Ashcroft thought there was a Blue Ribbon Commission a few years back that dealt with long-term care, but could not remember the recommendations from their report. Sen. Craven recalled that several bills came from the recommendations of that Commission and she believes there is a Task Force working on long-term care issues, but it is not an investigation.

Motion: That the Government Oversight Committee moves Long-term Care: Nursing Homes on OPEGA's Work Plan. (Motion by Rep. Fossel, second by Sen. Trahan)

Discussion: Chair Katz thought the issue was more appropriate for the HHS Committee, who has the subject matter expertise. Sen. Trahan suggested asking the HHS Committee to weigh in on the topic because that Committee may have areas they would want OPEGA to look at. Sen. McCormick did not know what would be gained in having OPEGA work on this topic. It is known that this is a large problem, but there are many individuals and groups that are lobbying and advocating for money regarding the topic. Sen. Craven thought it would be useful to investigate the fragmented system and confusing levels of the various institutions. Sen. Diamond noted that in the 124th Legislature the AFA Committee tried to deal with some of these issues and would advise the GOC to think carefully about getting into an area that they are not experts in. He would be interested in sending the HHS Committee a letter asking if they would be willing to review the matter.

Director Ashcroft said it appears from members' comments that there is general concern among the Committee regarding the capacity within the State to provide long-term care in institutional settings. If the Legislature needs any particular information on the current state of affairs in trying to address the situation then OPEGA could perhaps be of assistance. Although most OPEGA reviews are focused on finding problems, OPEGA can also add value by gathering, compiling and analyzing information that will help the Legislature make decisions. If there are areas where the HHS Committee, GOC, or Legislature need that kind of information, OPEGA can help play that information-gathering role. OPEGA might also be able to play a role in finding efficiencies in nursing homes so they do not need to fold, and looking at whether processes could be changed to reduce costs, both for the patient and/or the State.

Rep. Fossel understands that the federal reimbursements for long-term care is significantly below what it costs to provide the long-term care and costs keep rising. He would suggest that the GOC, within its motion, send the topic back to the committee of jurisdiction and ask them if there is anything OPEGA can do that would be useful to them.

Rep. Fossel withdrew his previous motion and Sen. Trahan withdrew his second.

Rep. Fossel introduced a new motion.

Motion: That the Government Oversight Committee refer the Long-term Care topic to the committee of jurisdiction and ask them if the GOC/OPEGA could assist them with the long-term care problem. (Motion by Rep. Fossel, second by Sen. Trahan, passed 9-0, Sen. Sullivan abstained).

RECESS

The Government Oversight Committee recessed at 12:30 p.m. on the motion of the Chair Katz.

RECONVENED

Chair Burns reconvened the meeting at 1:12 p.m.

• Presentation of Information Brief on Sales of State Owned Real Estate

Director Ashcroft presented OPEGA's Information Brief on Sales of State Owned Real Estate. Committee members' questions on existing RFP processes and the scope of the new policy being developed by DAFS were answered by Director Ashcroft, Betty Lamoreau, Director of Bureau of Purchases, and Deputy Commissioner Emery.

GOC members expressed their concerns over what appeared to be a general lack of transparency around most of the real estate sales. They expressed their preference for the establishment of a state-wide policy that required

certain actions of all agencies on real estate sales, in particular sufficient public notice. They also expressed a preference that such policy be incorporated into statute so that the expectations remained regardless of changes in the Executive and Legislative Branches.

Director Ashcroft asked if the GOC wanted OPEGA to do anything further or whether they wanted to send a communication to DAFS asking them to bring a proposal for State-wide policy back to the Legislature and that might be incorporated into statute.

Chair Burns asked if Deputy Commissioner Emery could speak to that issue. Deputy Commissioner Emery said DAFS is in the process of drafting a policy along the lines of that in the Governor's Executive Order. They will consult with the other agencies mentioned to coordinate an understanding of what policies exist and how they might be incorporated into a final draft. He will share that draft with the GOC. There are several directions DAFS could go and he would be interested in the GOC's guidance. 1. That DAFS proceeds as an agency and finalizes the policy that deals with DAFS' procedures only. 2. To broaden that policy to a statewide governing policy that would be used to govern the sales of property, not only in DAFS but IFW, Conservation and DOT as well. It is conceivable that the Legislature may want to put that policy in statute, although that may not be necessary as long as the fundamentals of the policy are clear and govern all sales. Some provisions of the policy DAFS is working on include: full public disclosure; using formal legal notification procedure; always reviewing a potential sale with the Attorney General's Office; following procedures for competitive bids, and marketing when appropriate using competitive procurement to select real estate brokers to guarantee the broadest participation by companies that might be interested in such a contract.

Deputy Commissioner Emery expects to have the draft policy completed in a few weeks, and when available, will share it with the GOC for further review. He thought it would be possible to get it in legislative form for the next session if that is what the GOC wants done.

UNFINISHED BUSINESS

- **Report Back from Maine Turnpike Authority**

- **Status of All Action Items Described in OPEGA's Report**
- **Any Other Actions and Events Resulting From OPEGA Report That Have Been Completed Since the July Report Back**

Director Ashcroft said at this time the report back from MTA is specifically focused on whether they are completing the action items they agreed to undertake in the OPEGA Report.

Chair Burns recognized Executive Director Mills. He reported what actions have been completed by MTA.

- The Maine Statute was confusing because no one knew what surplus meant. The Transportation Committee and the Legislature passed a new statute that says MTA will owe the State, either in-kind or in cash, approximately 5% of its revenue every year. That action item is complete.
- As reported to the GOC at prior meetings, MTA has taken a number of actions to significantly change its relationship with vendor HNTB. Those include:
 - Separating out the services provided by HNTB and establishing formal contracts for each of those services;
 - Bringing some of the work historically contracted to HNTB, like project management and inspection services in-house at MTA instead; and
 - Competitively bidding and assigning some services historically sole-sourced to HNTB, like project design and inspection services to multiple engineering firms.

For now, HNTB is retaining the contract as MTA's Consulting Engineer, required by the Bond Resolution. However, MTA anticipates competitively bidding that contract in the future as well.

- Director Mills referred to the information he distributed to the GOC which illustrates a database created by MTA to manage all contracts executed by MTA and the task orders that define the scope and fee associated with a specific task under their respective contract.
- MTA's statute now includes a requirement that any procurements above \$25,000 has to be competitively bid unless there is a reason not to. Director Mills believes the sole source issue has been taken care of, first by the statute, and then by MTA's own internal policies which track the statute.

Director Ashcroft asked Director Mills if there was someone at MTA she could work with to get copies of the new policy. He recommended she contact Jonathan Arey.

- The presentation of MTA's budget to the Legislature was a great controversy because its operating budget is split into two pieces. About 2/3 comes from MTA's Revenue Fund and is for expenses that are to be funded ahead of paying debt service. Then there are other operating expenses which the bond resolutions say can only be paid after MTA has met its obligation to the bond holders. The gift cards and other controversial expenses were coming out of perennial expenses that are in that Reserve Maintenance account. Since OPEGA raised this issue, MTA has made two presentations to the Transportation Committee and provided consolidated information on operating expenses supported by both funds. That Committee appears to be happy with what MTA is doing with the new budget reporting format. MTA will continue to make sure the Transportation Committee has full information regarding its projected operating expenses and budgets regardless of what fund they are paid from.
- Roger Mallar worked on criteria and processes for sponsorships and donations. MTA was spending about \$140,000 a year and that has been cut down to a budget of about \$58,000.
- MTA has a policy regarding travel and meal expense reimbursement which has been shared with Director Ashcroft and one that Director Mills feels is fairly tight. They have contracted with Macdonald Page to go to MTA for several days each quarter and run tests on a number of transactions, which they select, and to match the transactions against policy to see if MTA is truly complying with all of its expenditure policies. It is what an internal auditor would do if MTA had an internal auditor. There is now a regular system in place to test compliance and those reports are given to the Transportation Committee.
- MTA has also implemented a system to control all of their internal policies. The management system makes available all policies, groups them, and then issues emails periodically to the person who is responsible for reviewing and updating the policy. The software retains all versions of the policy, comments and changes, so there is a history of how the policy has evolved over time.
- Director Mills said MTA has been working on drafting a whistle blower policy which is to be reviewed by MTA's Board within the next few weeks. Director Ashcroft noted that the policy contained more than a whistle blower policy. It also included a procedure for reporting violations, and in addition, says MTA will honor the whistle blower statute and will not retaliate. She noted that MTA's draft policy says "employees are encouraged to report". They may want to consider changing that to "employees are required to report".

Director Ashcroft said in terms of continued report backs from MTA on their action items, she will follow-up and get the documentation needed to verify the implementation of the various actions described. Assuming that information is received and OPEGA agrees that they have been completed, she would suggest that MTA's report backs could be discontinued for now. The GOC agreed.

The Committee thanked Director Mills for his report.

- **Proposed Changes to OPEGA's Process for Distributing Draft Reports to Agencies**

Not discussed.

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

Not discussed.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Not discussed.

SCHEDULE NEXT COMMITTEE MEETING

The next GOC meeting is scheduled for Tuesday, November 15, 2011, 9:00 a.m. Director Ashcroft noted that at this meeting OPEGA plans to release its final Report on Health Care Services in the Correctional System. The GOC is also scheduled to hear a report back from the Department of Corrections on their progress of management issues at the Maine State Prison.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:43 p.m. (Motion by Rep. Fossel, second by Sen. Diamond, unanimous).