



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
May 14, 2014
Approved June 26, 2014

CALL TO ORDER

The Chair, Rep. Kruger, called the Government Oversight Committee to order at 9:10 a.m. in Room 220 Cross Office Building.

ATTENDANCE

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

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

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Maura Pillsbury, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

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 APRIL 11, 2014 GOC MEETING

Motion: That the GOC accept the Summary of the April 11, 2014 GOC meeting. (Motion by Sen. Craven, second by Sen. Youngblood, passed unanimous vote 8-0.)

NEW BUSINESS

- **Follow-Up on OPEGA Report on MaineHousing's LIHEAP and WAP Programs**

- Status Report From MaineHousing**

Director Ashcroft referred the Committee to the report from MaineHousing that they stated was their final progress report on action items taken to implement OPEGA's recommendations on the LIHEAP and Weatherization Programs. She said MaineHousing has taken whatever actions they intend to take.

- Status of OPEGA Follow-Up**

Director Ashcroft said OPEGA's follow-up involves reviewing MaineHousing's actions and the supporting documentation that has been submitted to confirm that the action has been taken and addresses the issue OPEGA reported on. If so, OPEGA will call that issue and related recommendation closed and implemented. MaineHousing may choose not to take additional action possibly because they do not find it cost-beneficial and instead accept the associated risks. OPEGA would then close that issue as such and would not follow-up on it further. OPEGA would report to the GOC that MaineHousing is not taking further action so the Committee would be in a position to consider further action if warranted.

Director Ashcroft said OPEGA has reviewed the documentation MaineHousing has submitted with regard to the recommendations but would like to have further conversations with MaineHousing on several of them to make sure OPEGA understands their actions fully, how that relates to the concerns that were reported and the actions they indicated they were going to take. After those discussions, OPEGA will decide whether there is anything else to report to the GOC or whether the follow-up on the recommendations will be closed out.

Director Ashcroft said OPEGA appreciates MaineHousing taking the incentive to provide their progress reports.

Sen. Youngblood asked if the cases of fraud MaineHousing mentioned had any legal ramifications or follow-up by the AG's Office or any other legal entity. Director Ashcroft said she had not asked that question of MaineHousing, but they have indicated that they work to recover the funds. She would say that probably on an individual case-by-case basis the dollar amount of the LIHEAP award is really so small she is not sure it would be seen as cost beneficial to pursue legal action on it unless MaineHousing sees a pattern in particular individuals time after time trying to abuse the Program. Director Ashcroft thinks it would have to be something MaineHousing saw on a larger scale.

Chair Kruger noted that usually when criminal activity is suspected the AG's Office steps in.

Sen. Craven said there has been a lot of changes on the federal level and that every person who qualifies now has to list their social security number. She thinks it is one way to be able to ensure that someone cannot apply twice, or that the benefit is going to be given out any other way, and that will cut down on the worry of fraud.

Sen. Johnson said the controls MaineHousing is adding and the updates to the programs will enable them to invalidate applications that would not be permissible, identifying the parties involved and preventing MaineHousing from having to go back to try to recoup costs. He thinks it is a positive step.

Director Ashcroft said MaineHousing was using social security numbers even at the time of OPEGA's review and relying on them as their key control for making sure they were not processing duplicate applications. OPEGA noted concerns that social security numbers were not being entered or otherwise were not being effective as a control. MaineHousing has been working to tighten up that control, probably in conjunction

with what the federal government is requiring. The “Healthy Data Queries” MaineHousing refers to and is now running occur after MaineHousing has given the LIHEAP benefit. Nonetheless it allows MaineHousing to address potential problems on a more timely basis with the community action agency that processed the application. Although it is not a completely preventative control, it does provide more timely detection so MaineHousing can take action on and can see themes emerging in any of the particular agencies or processes being used.

UNFINISHED BUSINESS

- **GOC Consideration of New Request for OPEGA Review of Gambling Control Board**

Chair Kruger said Rep. Mitchell contacted him asking that the request be tabled because a number of folks he would like to have at the meeting could not be there.

Motion: That the GOC table Rep. Mitchell’s request for an OPEGA Review of the Gambling Control Board. (Motion by Rep. Davis, second by Rep. Cotta.)

Discussion: Sen. Katz said he had no objection to tabling the request but because it was also tabled at the last GOC meeting, the Committee should at some point make a decision on the request to get it off their plate.

Vote on above Motion: Motion to table passed unanimously, vote 9-0.

- **OPEGA’s Report on Healthy Maine Partnerships’ FY13 Contracts and Funding**

- **Consideration of Information Gathered Through GOC Inquiry**

- **Further Consideration of Possible GOC Actions on Issues and Recommendations**

- **Vote on GOC Acceptance of OPEGA Report**

Director Ashcroft said the GOC still needed to consider and discuss actions they want to take with regard to the Healthy Maine Partnerships’ Report. In prior GOC meetings, there had been discussion of having State agency representatives come to a GOC meeting to discuss options or answer questions about State policies. Individuals mentioned were the State Archivist, someone from DAFS Human Resources and Purchases, and the AG’s Office. Director Ashcroft thought what the GOC was going to do at this meeting was to process all the information, think about what actions, or further questions they had, decide whether they wanted any other input from folks from State agencies and, in general, move toward what actions the GOC might want to take.

Chair Kruger said he feels there is a lot of information that has not been assimilated by the Committee and would welcome a Committee discussion of what the next steps should be so the same mistakes are not repeated.

Sen. Katz said the GOC went through a lot of testimony and documents trying to understand what occurred. He wanted to say for the record what he thought happened and other Committee members should do the same because that will inform the Committee’s decision of what to do to make sure this does not happen again.

Sen. Katz said the process for awarding grants needs to be fair and impartial partly because it is tax payer money and partly because the government depends on public trust. If folks think the game is rigged they are not going to have respect for State government. The conclusion he came to about the awarding of the HMP contracts is that the game was rigged, that the staff had established rules for awarding the grant and established a scoring system based on those rules and the winners were established. That should have been the end of it, but it wasn’t. He thinks the weight of the evidence shows that leadership did not like the game’s final score because the Bangor Office had finished second in its region and the message which came down was to fix it. Change the rules and fix it. A new criterion was added, a very subjective one at that, and it was given extra weight to change the result, and Bangor won. Sen. Katz said it was a process not worthy of State

government, and to make matters worse what happened next could only be described as a cover up, because the direction was given to destroy documents that would have shown the paper trail of what actually happened. Although there were a number of reasons given for the destruction of documents, he thinks the reason was so no one would be able to see the trail of evidence about what had really happened. That was wrong as well. It is a sad episode in State government, but the good news is that there has been a full airing of that and he is sure the Committee will come up with some good recommendations to try and make sure it does not happen again. He thinks the message is now out that the Legislature is going to insist that these processes be fair, open and transparent.

Sen. Johnson agreed. He also thought there was another failing when an employee reported to a supervisor about being given a directive that was concerning and no action was taken, and in fact, the matter was dropped rather than investigated to determine whether there was merit to the concern. He thought that was an important failing because if the various levels of administration in a department are not trying to do that then who is. Who can an employee go to, if not to their supervisor? Sen. Johnson thinks there should have been an immediate investigation and freeze of the activity until the Department got to the bottom of it. It was a significant failing because they were undermining the necessary support for employees to ensure there is responsibility and things are being done properly and ethically within any department or level. He thinks this failing should be added to the list of considerations for action.

Sen. Craven also agreed with Sen. Katz. She thinks it is the upper management staff in the departments that make the rules, and the actions in this instance were deliberate. She said it is very concerning that when legislators and the media asked for information it continued to be covered up.

Sen. Youngblood also agreed with Sen. Katz, but wondered if they did it because they knew they could do it. If so, the real problem is the State's negligence in their review of record retention procedures, training, and responsibilities of somebody in departments seeing that policies were being adhered to. It seemed that would be how you stop these things from happening.

Rep. Cotta agreed with Sen. Youngblood and the systemic problem was there was not an adequate procedure as to what was supposed to be retained and what wasn't. What came out of the review, if nothing else, is that other State agencies and departments realize that perhaps they were lacking an established system on what was archival and required to be retained about the decision-making process. He said it was a system failure and his personal opinion from listening to the testimony is that there were issues, and was exacerbated by what would a supervisor be expected to say or do if they were presented a problem. He thinks more importantly that when the time line is short and the pressure is on, what you do is a test of character. Rep. Cotta said he did not come away with the idea that someone deliberately railroaded this and he would be careful to use the words rigged and covered up because they are accusations. He agreed the system did fail, people probably made bad decisions, but he does not think there was any deliberate criminal intent. He said while he may not agree with the outcome as Sen. Katz indicated it was, there was not a significant spread in the figures and the case can be made that perhaps they needed to be combed through again. Rep. Cotta understands it was a different outcome and it may be suspect, but he is not prepared to indict anyone or accuse anyone of deliberate criminal activity. He hopes that all of the State departments have learned they have to have a program that guides people on what information in the decision making process is archival and must be protected so one can go back and review it.

Sen. Johnson agreed with the need for greater clarity, understands records retention is a complex problem to solve, and is a system that deserves improvement. He said the GOC learned at a prior meeting that there was meeting minutes for a MCDC Senior Management Team meeting on August 15, 2011 at which management personal from DHHS were present and the meeting included discussion of records retention and actions that were to be taken which included, at a minimum, assigning records retention officers. There were noncompliance concerns flagged that people in those management positions were aware of and, although they may not have clarity as to all of the right retention classification and policies, they certainly knew there was an issue. It does not strike him as credible that someone who was aware of records retention concerns and noncompliance, would take it upon themselves to decide that information being used to make those

determinations did not need to be retained. Sen. Johnson said State government needs to improve its training regarding records retention, but he did not believe, given that it was raised specifically in a meeting in August, that lack of training was the reason for these failings.

Chair Kruger asked GOC members what they might want to see in legislation if that is what was to come out of the GOC's process.

Sen. Katz understood that the AG's Office and State Archivists might already be doing some work on this and asked if Director Ashcroft could give a status update. Director Ashcroft said the AG's Office has been doing some internal work regarding records retention that they believe helps inform some of the issues seen in this review. The AG's Office has offered to spearhead a staff level working group to try and add some additional clarities and improvements to records retention policies statewide to include what is a working document, or a draft document, and what is the criteria for when that needs to be retained and how.

Director Ashcroft referred the Committee to the document in their materials that listed suggested recommendations from the AG's Office. The Director said the AG's Office stands ready to accept a request from the GOC to pursue at least number one on the draft which is to convene a task force with the FOAA Ombudsman from the AG's Office, the Director of the Maine State Archives and representatives from the Office of Information Technology, Bureau of Human Resources and Department of Audit. The purpose of the task force is to give improved guidance for agencies on records retention, develop model policies for agencies on records retention, and discuss and determine what training requirements there should be. The task force would be in a position to report back to the GOC with their recommendations of what needs to be done in terms of legislation, rules, or guidance regarding records retention.

Director Ashcroft said the AG's Office also had several suggestions on how to put accountability in place for employees and supervisors regarding the need to be aware and adhere to records retention policies. She was not sure how the GOC would go about implementing two and four of the Draft Recommendations, but perhaps if they wanted to go with the task force idea, part of the charge that could be given to the task force is to ask that they bring back to the GOC recommendations for how they would implement those recommendations. Director Ashcroft said the AG's Office is only addressing records retention because that is where the GOC's primary discussions have been, but she would encourage the Committee to consider having discussions about additional possible actions to take to help prevent what has been going on at CDC. (A copy of the Draft Recommendations for Achieving Improvements in Records Retention from the AG's Office is attached to the Meeting Summary.)

Chair Kruger liked the AG's Office recommendations and would add at some point in the process the Right to Know Advisory Committee should be included, at least in a review capacity, because on some occasions it goes between the proper management of records and confidentiality versus the public's right to know.

Sen. Johnson also liked the suggestions for the task force, but said there should be a number in State government that anyone can call to ask questions regarding confidential documents and records retention policies. The ambiguity needs to be removed and no guidelines are going to do that entirely.

Sen. Katz believes the laws and procedures are pretty well established when there is a request for proposals with respect to the awarding of public money, but is not sure what the status is of the law or regulation with respect to what agencies are supposed to do when they do something less rigorous than a full RFP. Director Ashcroft said that is one of the areas she was going to ask the Committee to think about because there is an RFP process, there is a statute that says when you can sole source rather than going to an RFP, but it became clear in this Review there is a middle situation. In this case, DHHS said it was because they had to defund the programs, but Director Ashcroft thinks there is wider application that includes awarding grants in an environment where there are multiple entities that might be eligible for those grants. What kind of process is supposed to be used to make those determinations if it is not a full competitive process. She thinks to the degree that there ever are political kinds of pressures that come into play it would be worthwhile to consider

what is the appropriate way to get those expectations and guidance established. The GOC may want to think about legislation that would put something specific into statute for those situations whether they are related to defunding, or in similar situations where there is still plenty of money.

Sen. Craven agreed and said in this particular instance CDC changed the entire structure of the program and there was no opportunity for public comment or any kind of input. When the money was put back into the budget the agency could have gone back to what they usually do and distributed the money across the partnerships.

Sen. Katz said he would like to hear from the Department of Administration and Financial Services (DAFS) who might have some ideas about how the GOC might formalize a process to use in such situations.

Sen. Johnson said there should be guidelines for decisions about money. They should be triggered by how much money is involved, be a matter of consistent policy, and there should be minimum guidelines on the information kept to ensure fairness and openness of the process. He agreed with Sen. Katz that the Committee should ask for input from DAFS.

Sen. Johnson also had concerns about ethics and was not sure whether it would involve the Ethics Commission or whether there should be a different rule for inside State government. It concerns him greatly that an employee had nowhere else to go besides reporting to a supervisor, who in this case, was involved in the wrong doing and took no action to right it. Director Ashcroft said from OPEGA's perspective that is a big area and is not just specific to the situation that occurred at CDC. She said she could be wrong, but she has yet to see something in State government that gives a specific and strong code of ethics, or expected behavior for State employees that could be used as a basis for holding someone accountable to, other than if there is a specific procedure or statute on addressing particular situations. Director Ashcroft would be curious as to what the reporting avenues were for an employee where he/she would feel comfortable there would be timely and appropriate action taken on the concern they were reporting, especially if it involves a supervisor or somebody higher up in the chain of command. She said DHHS may have recently put something in place internally for their own Department for employees to have that kind of an avenue. Sen. Johnson agreed saying it needed to be more than a hotline, they need to establish the responsibility, authority and structure.

Chair Kruger said he would like to see the draft recommendations from the AG's Office be part of the follow-up and going forward would like information on what kind of protection is available for the whistle blower in a given agency or department. Director Ashcroft suggested that along with asking to hear from the appropriate people in DAFS about a competitive selection process without an RFP, it may be worthwhile asking them to bring someone from Human Resources. The GOC might also ask the AG's Office to speak to how something might be set up so that an employee has an outside reporting avenue to someone that has the authority to do some amount of investigation. That may not turn into a whistle blower complaint, but if it does, what are the protections for the whistle blower. The Director said she believes Chief Deputy Attorney General Linda Pistner had previously prepared a memo to a prior GOC regarding that and she will find it and forward that information to the Committee members.

Sen. Burns said he would like to receive the details regarding whistleblower protection, but his understanding is that there are already pretty adequate guidelines and protections in place for whistleblowers in Maine. He said the question is to whom you blow the whistle and he would be interested in knowing what other States are doing regarding whistleblower protection. He agreed that it would be good for the general public to be able to know where to go, to have some entity that was not going to be bound by a particular agency's confines and be able to express your concern, but would have to be careful not to build something that is too expensive.

Sen. Youngblood noted that an important part of the discussion is how far down the line it goes. Is it strictly State employees, is it quasi agencies, municipalities using State funds, etc. Director Ashcroft agreed and thinks establishing the policy or code of expectations around behavior might be the first step because that

would help frame the kinds of concerns the GOC thinks the hotline or whatever is set up would be responsible for taking in as opposed to everything anybody might want to complain about.

Chair Kruger suggested that the GOC schedule further consideration of possible GOC actions regarding the Healthy Maine Partnerships' FY13 Contracts and Funding Report for the next few meetings of the GOC and they invite a representative from the AG's Office, State Archives, DAFS and anyone else the GOC members would like to receive a brief presentation regarding issues raised at the meeting.

Sen. Craven noted that the unions will represent employees, but after individual cases are resolved there is still the same problem in the agencies. She has had several people talk with her about negotiating a settlement, but then there is a gag order, so would like to have Committee discussion regarding that issue. Sen. Craven appreciates the unions defending individuals, but it does not clean up the mess that caused the problem to begin with.

Sen. Katz thinks there is someone from the AG's Office that can talk, not only about records retention, but also whistleblowing and contract procurements or grant awards.

Director Ashcroft said the GOC heard testimony of an intent to frustrate FOAA or to be less than transparent. Chief Deputy Pistner had spoken to the Committee about the FOAA statutes and some of the places where there is a gray area in terms of intent to frustrate FOAA as opposed to actually doing it. She didn't know if the Committee wanted to think about taking some action with regard to that. Director Ashcroft said past GOCs have sent letters to the AG's Office saying the Committee heard "x" allegation in testimony and ask them to consider whether or not they should pursue a further investigation of the matter.

Sen. Burns wanted to make sure that the GOC was passing that information along and letting the AG do their normal investigation, if needed, as opposed to passing judgment on it.

Motion: That the Government Oversight Committee send a letter to Attorney General's Office regarding the allegation of violation of FOAA or the intent of FOAA. (Motion by Sen. Craven, second by Sen. Johnson.)

Discussion: Sen. Burns said he would have issue if the letter indicated the GOC had found there was a frustration of FOAA. He would prefer that the letter say that information has come to the Committee indicating that there was an attempt to frustrate or violate FOAA.

Sen. Katz agreed with Sen. Burns and suggested that Sen. Burns and the Chairs and Leads sign off on the letter instead of waiting for the next GOC meeting.

Chair Kruger asked members if the Committee agreed. Hearing no objections the Committee will proceed in accordance with Sen. Katz's suggestion.

Vote on Motion: Passed, unanimous vote 9-0.

- **Further Consideration of Pending Request for OPEGA Review**

- **Charter School Commission**

- Director Ashcroft said back in March, 2013 the GOC received a request from the Chairs of the Education and Cultural Affairs (Education) Committee for a review of the Maine Charter School Commission (MCSC). At that time the GOC asked OPEGA to do some research around the subject and OPEGA prepared a summary related to MCSC. This Request was on the last GOC meeting agenda and the Committee asked that OPEGA seek the input of the requestors, who were the Chairs of the Education Committee, as to whether they still had

interest in seeing a review of this subject and, if so, what the scope of that might be. The Education Committee Chairs sent a Memo dated May 9th indicating that they would still like to see an OPEGA review of the MCSC's operation with the following areas of focus:

- *Standards, procedures and practices of the MCSC employees in soliciting, reviewing and making decisions on whether to approve applications for public charter schools;
- *MCSC's role in providing advice and assistance to applicants for public charter schools; and
- *Factors that impact MCSC's ability to effectively fulfill its statutorily assigned roles and responsibilities.

Director Ashcroft said it is an active request and the Committee needs to make a decision on it.

Sen. Youngblood said his initial reaction when he reviewed the information was that the three areas of focus are the responsibility of the Education Committee.

Sen. Johnson, a member of the Education Committee, said there was not a way for that Committee to review, in relation to standard practices and audit, what the procedures are for evaluating applications and what is going on for providing assistance and information to schools to comply with the application process. He did not see making that determination as being the policy Committee's oversight and to have OPEGA examine that end of the process is a reasonable request to make, for at least a preliminary look as to whether proper controls and policies are in place. That is not a policy question about education.

Sen. Burns asked if there was any credible evidence that these questions are not already being addressed by MCSC. He said it was a new entity in itself, and he did not see the need for OPEGA getting involved at this time, but does see a need for the policy committee to be deeply involved in it.

Sen. Craven said she did not know whether originally there was an accusation of wrong doing by the MCSC. Director Ashcroft said initially the Education Committee's request included concerns about how MCSC was processing the application for the Baxter Academy for Sciences in Portland. Through OPEGA's research and discussions with the GOC, the potential scope of that requested review shifted more to taking a look at how the MCSC was operating, how it was implementing what the State was planning for public charter schools, and whether there were challenges for them in effectively filling their role with regard to monitoring charter schools once applications had been approved. It was not part of the original request that came from the Education Committee, but is a more systemic look at how the implementation of public charter schools is going through the Commission. The Commission had very few resources and that raised a question of whether they are set up well to do what the Legislature had wanted them to do. Director Ashcroft did not see this current potential scope as being directly related to any allegation of wrong doing by the Commission and thinks the scope of the request is the same type of scope that OPEGA has looked at with other agencies. She said the fact that it is fairly new is a little different, but it might be a worthwhile time to take a look and see if there are some additional things that weren't thought of that need to be addressed as MCSC goes forward.

Sen. Katz said he would be interested in knowing to what extent the Education Committee has, or has not, tried to get the questions answered on its own. Has the Education Committee had people from the MCSC in front of them and asked them about standards, procedures and practices the Commission was using in soliciting, reviewing and making decisions. He thinks those are the kinds of questions the committees of jurisdiction generally ask the agencies and such technical questions would not necessarily require the expertise of OPEGA. He asked Sen. Johnson, through the GOC Chair, what exploration the Education Committee has already made, or not made, on the issues.

Chair Kruger asked Sen. Johnson if he wanted to reply to Sen. Katz's question.

Sen. Johnson said he did not have a total recall of what the conversations were at the Education Committee meetings when talking about the MCSC, but the questions were asked and it is from that discussion and what the MCSC was able to provide for information that raised concerns about whether there were adequate controls in place. There was a description of the involvement of the MCSC in the process for application that seemed rather loose at that point and the concern was whether there was a line blur between coaching people through getting an application that succeeds versus informing everyone what the application requirements were and applicants having to satisfy those in their normal application process. Sen. Johnson said that was his recollection of the discussion of what the controls were and there did not appear to be a firm process as communicated by the Charter School Commission.

Director Ashcroft added that the application process is akin to a request for proposal process in that there are competing entities vying for approval so that is where some of the questions came up. Is there a formal and clean process that is transparent and fair for all of the applicants?

Sen. Burns asked if there was any indication of whether the MCSC had sufficient procedures in place to properly screen applicants. He thinks it is incumbent upon the policy committee to vet some of the issues out and then if they come to a point of frustration where they need extra help, then they should make a request to the GOC.

Chair Kruger said when the GOC first looked at the Charter School Commission question he felt it was premature because the Charter School process was just starting and needed more time to develop its process. In reviewing OPEGA's current Work Plan and from conversations with staff, he said if the GOC proceeded with a review of the Charter School Commission it would not get done this year. He asked if it would be a good idea to put the request "On Deck", with OPEGA doing some preliminary work and then review it again in a few months.

Sen. Craven agreed and made the following motion.

Motion: That the Government Oversight Committee place the Review of Maine Charter School Commission's Policies and Procedures "On Deck". (Motion by Sen. Craven, second by Rep. Cotta.)

Discussion: Sen. Katz asked Director Ashcroft if getting the Review request off the "On Deck" list and on to OPEGA's Work Plan would require additional votes by the GOC. Director Ashcroft said yes.

Sen. Youngblood asked if the GOC ever had a request before it that followed the above procedure. Director Ashcroft said this GOC had not done a lot of putting the topics that came before them "On Deck" but past GOCs have. She noted that it was the list of topics the GOC went through when they were first appointed to the Committee. What "On Deck" means is that this GOC thinks it might be a worthwhile use of OPEGA resources to take a look at the topic and then the additional work gets done when it comes up for consideration by the GOC.

Sen. Youngblood said before he could vote to put the topic "On Deck" he would have to see additional information that shows what the joint standing committee has done, what their issues were and why they could not get the data they needed. He said given all the topics already "On Deck", and the present workload, he does not see the topic being pushed further down the road.

Sen. Burns asked if Sen. Youngblood would consider a combination of the two. If the GOC put the review request "On Deck" and asked the committee of jurisdiction to do what they can regarding the three areas mentioned in their request when they convene again.

Chair Kruger asked if the GOC wanted to proceed in the form of an amendment, or can they assume the new Legislature's Joint Standing Committee on Education and Cultural Affairs will do that anyway.

Sen. Craven said she was willing to accept Sen. Burns' friendly amendment.

Motion: That the Government Oversight Committee place the Review of Maine Charter School Commission's Policies and Procedures "On Deck" and to send a letter to the Education and Cultural Affairs Committee asking that when they convene again they check into the three areas of concern raised in the Education Committee's review request letter.

Vote: Motion passed 7-2. Voting against the motion: Sen. Youngblood and Rep. Davis.

Rep. Davis asked for a point of order. He said Sen. Burns' amendment was an amendment to the main motion and the GOC had to move on the main motion which was to have it put "On Deck".

Chair Kruger asked if GOC members if there was objection to taking a vote on the main Motion.

Discussion: Sen. Johnson said perhaps members had different understandings of the vote taken and suggested that the GOC retake the vote with clarity as to exactly what the question is. He thought there would have been no objection expressed by the Committee to accepting a friendly amendment and the GOC was therefore voting on the amended main Motion whether to put the review request "On Deck" and send a letter. If other Committee members believe that was not what they were voting on, they should record the vote again.

Chair Kruger clarified that Rep. Davis would like another vote on the amended motion. Rep. Davis said it was his understanding that there was a motion made, then there was a motion to amend the motion and believes under Robert's Rules you have to return to the main motion and act on that.

Sen. Johnson said he believes Chair Kruger said if there is no objection accepting the amendment, and no objection having been expressed by any member on the Committee, they were voting on the main Motion as amended.

Rep. Davis said it was his understanding the Committee was voting on the attempt to amend the main Motion.

Chair Kruger asked if any GOC member objected to re-voting on the Motion as amended.

Chair Kruger asked all in favor of the amended Motion. In response to a member's question, he said it was not a reconsideration motion, it is a re-vote on the Motion as amended, to put the request for a Review of Maine Charter School Commission's Policies and Processes "On Deck" and send a letter to the Education Committee. (7 in favor, 2 against, Motion carries.)

- **GOC Consideration of Unemployment Compensation Matters**

- **Federal Department of Labor Fact Finding Letter and Blue Ribbon Commission Report**
- **Pending Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings**

Director Ashcroft reminded the GOC that this is an open pending request for a Review and the Committee had delayed taking action pending the completion of the work of the Blue Ribbons Commission on Unemployment Compensation and the Federal Department of Labor's review of the Unemployment Compensation System in Maine. She said both of those Reports have been received. Director Ashcroft said her assessment in reviewing the scope of work in both Reports, the recommendations made, and the findings that were issued is that these efforts have addressed the primary questions in Rep. Kruger's request for an OPEGA review of Unemployment Compensation. She asked if, given that, there was any further role for the GOC, or work they would like OPEGA to do. The most valuable approach she thought would be to monitor

or determine how the Executive Branch is implementing the recommendations that are in the Reports. The GOC could invite someone from the Administration to a meeting to brief the Committee on what they plan to take, or have already taken, for action in regards to the recommendations in the Reports.

Chair Kruger said he initiated the request for a review of Unemployment Compensation Matters and he did not see a lot of work left for OPEGA to do given the two Reports and the information contained in them. He would, however, like to invite someone from the Administration to come to a meeting and report on what they have done in response to the recommendations in the two Reports.

Sen. Craven agreed and thought it would be informational.

Chair Kruger asked if Committee members had any objection to inviting the Administration to a GOC meeting. Hearing none he asked Director Ashcroft to invite the Administration to a future GOC meeting to discuss the recommendations in both the Blue Ribbon Commission on Unemployment Compensation and the Federal Department of Labor's Review of Unemployment Compensation System in Maine Reports.

REPORT FROM OPEGA DIRECTOR

- **Project Status**

Director Ashcroft said several of the "Planned" reviews were moved to "In Progress" and OPEGA now has seven projects "In Progress".

Office of Information Technology: Formal Follow-Up Review - OPEGA is checking in with OIT every few months to see where they are in terms of progressing toward their goal of improving project management, disaster recovery, business continuity and data type analytic capability in the State. OPEGA had expressed concern about whether there was going to be much progress in the data analytics area based on what OIT was able to accomplish on its own without the cooperation of the rest of the State agencies. OPEGA was seeing sufficient progress in the other two areas. Director Ashcroft said she will make a decision at some point of whether it makes sense to hire somebody with technical expertise to review how well OIT's action plan has been implemented. OPEGA may do that on its own, but may be more comfortable involving someone who has technical knowledge of the IT area. This review is ongoing and will stay ongoing through the end of the year at least.

Maine Economic Improvement Fund - OPEGA is entering the reporting stage. Field work is finishing up, OPEGA is beginning to draft the Report and is hoping to release it in the later part of June. Rep. Cotta noted that there was a request for selection criteria and he assumed that information was in OPEGA's possession as they draft their Report. Director Ashcroft said if Rep. Cotta was asking what their process was for determining where they are going to be allocating the funds and what projects they are going to be allocating them to, that was part of the scope of the review OPEGA did. Rep. Cotta said it was.

State Lottery – OPEGA has finished preliminary research and the GOC approved the scope questions for the review. Staff has been working on this review as they have had time.

Formal Follow-Up Review: Healthcare in Corrections System – OPEGA has begun work on this review and is currently determining what data is available to follow some selected cases through, whether any of the data is confidential and how to handle that. It is a review that will receive priority as the MEIF review is winding down.

DHHS Workplace Culture and Environment – OPEGA has begun some work on this review and is at the planning phase. OPEGA learned that DHHS itself had done a couple of employee climate surveys, one in 2013 and one again this spring and are still in the process of receiving the results back. One of OPEGA's first orders of business was to understand what that climate survey was about, what kinds of questions were asked

of the employees, what the results were and whether OPEGA saw potential overlap between the kinds of things OPEGA's work would address and things DHHS has already done. OPEGA does not want to duplicate efforts, but at the same time make sure that the concerns that led to the topic being on OPEGA's Work Plan are something that are well incorporated into any actions that have been taken.

DHHS Licensing and Regulation of Child Care Providers – OPEGA has begun the preliminary research phase. The GOC had indicated they wanted this review to be priority and OPEGA is working on the review right now as resources are available from the MEIF review. As MEIF is winding down, OPEGA will make this review a priority.

Special Project: Tax Expenditure Programs Phase II – The veto on the legislation that was looking for OPEGA to take the next step toward implementing a process for on-going legislative review of the programs did get overridden and OPEGA has started its work on the Project. The legislation does call for OPEGA to prepare a proposal that addresses a number of different elements to present to the Taxation Committee no later than March 1, 2015. Director Ashcroft said she thinks in the end the Project will be a good opportunity to put all of the details of what that might involve together so they are aware right up front before the process actually gets implemented what challenges might be faced with regard to finding appropriate ways to evaluate the programs and the data available to do so. She said the part-time resource OPEGA had will continue through FY15 with her primary focus being to get this proposal together. OPEGA also had some unencumbered balances available for a consultant should one be needed.

- **Staffing**

Director Ashcroft reported that Lucia Nixon will be filling the Analyst position in OPEGA and will be starting May 27, 2014. She noted that Ms. Nixon was previously with the Office of Policy and Legal Analysis and had left for a position with Efficiency Maine.

Director Ashcroft said OPEGA was also losing an Analyst. Kirk Duplessis, who has not been with OPEGA very long, is going to DHHS' Office of Quality Improvement Services. OPEGA will be working to get that position filled as quickly as possible.

- **Final Disposition of LD 1463 – Tax Expenditure Review**

Discussed above.

Director Ashcroft referred to the Committee's discussion about the request for a review of the Charter School Commission and said it reminded her of making the point that OPEGA was not ever intended to just work on reviews where the issues, concerns or allegations are about something being wrong. OPEGA was originally envisioned to also take a regular or systemic look at how programs were being implemented, how agencies were generally going about doing their jobs. She wanted to clarify that it doesn't mean that every topic that comes before the GOC is because there is something wrong necessarily, or a concern that something is wrong. Sometimes it is just wanting to know how things are being done and whether a program is being implemented in accordance with the Legislature's idea of what was going to be occurring.

NEXT GOC MEETING DATE

Chair Kruger said the next GOC meeting would be in June or July. The Committee members agreed it would be easier to poll them by email regarding their availability for the next meeting.

ADJOURNMENT

Chair Kruger adjourned the Government Oversight Committee meeting at 11:08 a.m.

Office of the Attorney General's
Draft Recommendations for Achieving Improvements in Records Retention
for GOC Consideration

1. A task force be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit. The purpose of the task force will be to develop and/or make specific recommendations concerning the following:

- a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
- b. model policies on record retention;
- c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures.

The task force described above will report back to the GOC by _____, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

2. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.

3. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.

4. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.