



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

June 29, 2012

Accepted July 19, 2012

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 10:37 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Craven, and Sen. McCormick
Joining the meeting in progress: Sen. Sullivan
Absent: Sen. Diamond and Sen. Mason

Representatives: Rep. Burns, Rep. Pilon, Rep. Boland, Rep. Fitzpatrick, and
Rep. Kruger
Joining the meeting in progress: Rep. Fossel

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Scott Farwell, 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 JUNE 8, 2012 GOC MEETING

The Meeting Summary of June 8, 2012 was accepted as written.

UNFINISHED BUSINESS

- **Request to Review Contracts and Agreements Related to the Operation and Management of the State-owned Juniper Ridge Landfill**

Director Ashcroft summarized what has occurred since the original Juniper Ridge Landfill (JRL) request was presented to the GOC at its March 9, 2012 meeting.

She referred the GOC to the information in their notebooks regarding the Committee's process on a request for review and noted what work has been done regarding this request and what action the Committee could take at this time.

Director Ashcroft thinks there are four categories of issues that have been raised in the request.

1. A concern of whether JRL is being expanded, or will need to be expanded, in the future because there is too much out of state waste going into the facility. OPEGA has determined that under State statute material that some might define as out of state waste are allowed to go to JRL because they are first being brought into a Maine facility to process with the end result of the processing going to JRL. That is a policy decision for the Legislature, which is what Sen. Saviello expressed at a previous GOC meeting. If there is a role for OPEGA regarding this issue it would be to help provide any information or data, etc. for a future discussion the Legislature may have about whether or not to change that policy.
2. Whether there were ethical dealings in the arrangement that resulted in Casella being the operator of JRL. The GOC has received documents that contain information strongly indicating that there were groups trying to accomplish multiple objectives for both the State and Georgia-Pacific, a good employer in the State.

Director Ashcroft noted that she could understand why the requestors of this review have concerns regarding this. Whether there was actual violation of any State or federal laws in what occurred would be a more appropriate question for the Attorney General (AG) than OPEGA. Other than that the concerns about how this arrangement developed and the ethics involved is a larger issue. She is not sure what OPEGA's role would be in trying to assure that in the future such dealings are done in a more open and transparent manner as this is not the first time OPEGA has noted such a situation.

3. OPEGA could look at whether there were adequate avenues and hearing of public concerns throughout the process. The matter did go through the legislative process, but it appears the timeframe was limited from the time the legislation was introduced to when the Legislature passed the law.
4. Whether Casella is operating the landfill in compliance with its operating agreement, monitoring plans, and permits and licenses from DEP. This is within OPEGA's purview to look at and OPEGA's most appropriate role would be looking at the State agencies that have responsibility for overseeing JRL and Casella. Those agencies would be the Department of Environmental Protection and State Planning Office.

Sen. Craven asked if there was a specific allotment of waste in the JRL contract that is allowed to go into the landfill. She was not certain whether the GOC should make a request to the AG's Office or whether it should be the individuals who brought the request before the GOC that make such a request. Director Ashcroft said in the past if the GOC felt there was another avenue for the requestor to follow, the Committee would suggest they take advantage of that avenue. It has been rare that the Committee has tried to pursue that avenue on behalf of the requestor.

Mr. Farwell said there are multiple caps in the JRL license and Casella is also limited by their DEP license.

Rep. Pilon noted that it appears the State made a number of accommodations for Casella and he referred specifically to the required bond rating needed in order to bid on the RFP. Casella did not meet the rating, so the State made an accommodation. Mr. Farwell said that was seen in the material reviewed by OPEGA, but at this time OPEGA has not questioned it further. Rep. Pilon noted that the State went out of its way to accommodate Casella, and although Waste Management intended to bid, they sent a letter saying they did not meet the requirements in the RFP and would not be submitting a bid. Rep. Pilon said it appears the State streamlined the bid for Casella and did not make any other accommodations for any other bidders. Director Ashcroft said, from the emails reviewed, the inference she draws is that there was already an arrangement being talked about before the State got involved and everybody was working to facilitate that as much as possible. Rep. Boland had the same concerns as Rep. Pilon.

Sen. Sullivan asked if the caps in Casella's license or contracts had been reached and/or gone over the limits. Is that the reason for the request to expand JRL's capacity, or did they make the request to expand because of the pending sale and closing of the MERC facility in Biddeford. Director Ashcroft said OPEGA has not looked at that specifically.

Chair Burns noted that members of the GOC were trying to answer their own questions without having charged OPEGA to review particular information. In reviewing the material, he saw other avenues that the requestor can pursue that were much more appropriate than an OPEGA review. He does not want OPEGA to speculate and from the Committee members' questions, that is what is being done.

Chair Katz agreed and said solid and out of state waste are highly charged subjects, but OPEGA has a full Work Plan with projects that the GOC has already assessed as high priority. He also thought there were other avenues for the requestors of the review to follow and made the following Motion:

Motion: That the Government Oversight Committee take no further action on the request to review contracts and agreements related to the operation and management of the State-owned Juniper Ridge Landfill. (Motion by Chair Katz, second by Sen. McCormick.)

Rep. Boland believed the GOC was the proper committee to bring such a request before, particularly if folks had not been able to get concerns addressed through other appropriate avenues.

Sen. Craven asked if Director Ashcroft was in a position to articulate what the requestor's expectation was regarding the request for a review of the process resulting in Casella being the JRL operator. Director Ashcroft said the question they wanted answered is whether there was an anti-competitive or non-competitive process for the RFP. Based on what can be seen in the FOAA-ed emails provided to the GOC, the likely answer to that question appears to be that it was not the most competitive process, but she does not know what would be sought from that unless there are actual violations in the constitution or law that should result in a penalty. That would be a question for the AG more than OPEGA.

Chair Burns would support the motion because there are other avenues the requestors could take.

Rep. Pilon noted he would not support the motion and Sen. Sullivan said she would support the motion if it included that the GOC send the letter to the AG's Office.

RECESS

The Government Oversight Committee recessed at 11:37 a.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 11:52 a.m.

Chair Katz withdrew his Motion and Sen. McCormick withdrew his second regarding the JRL request. The Committee will continue the discussion at the next GOC meeting.

Chair Burns thought it would be helpful, at a future meeting, for the GOC to discuss its procedure regarding requests for reviews to assure the GOC remains consistent in how it handles the requests coming in.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **New Business, Request for OPEGA Review of Proposed Toll Increases on Maine Turnpike.**

NEW BUSINESS

- **Request for OPEGA Review of Proposed Toll Increases on Maine Turnpike**

Director Ashcroft referred to the letter received from Sen. Craven requesting a review of the proposed toll increases on the Maine Turnpike.

Sen. Craven said tolls on the Maine Turnpike are not new issues for western and central Maine. Citizens living there are happy to pay their fair share, but feel they pay a disproportionate share. Her request was that OPEGA study the need for a toll increase and the fairness with which the increase is being applied over the length of the Turnpike.

Chair Katz recognized Peter Mills, Executive Director, Maine Turnpike Authority (MTA).

Director Mills said the need for a \$25 million increase in revenue was projected years ago and part of MTA's long range plan. The bonds relate to a number of Turnpike improvements, including the widening. As the planned increase gets closer, the amount and timing of the increase take on a different complexion. The original projection for an increase was based on future Turnpike revenues growing at a rate of 2.50 – 3% a year. In 2008, the first year in the Turnpike's history, it did not make more money than the year before and revenues have either been flat or diminished ever since 2008. Instead of being at a 2.50 – 3% compounded growth, they are down about \$1.3 million.

Director Mills said none of the toll increases are final yet. MTA's Board will be meeting July 19th to consider toll increases and may decide, or may make a provisional decision, that day with another hearing to take place later. A written decision of the Board will be issued that will give the public an explanation of what the Board decides.

He explained the past and present tolling structures and why the structural changes occurred. The cash system will never be elegant, but E-ZPass has the capacity to grow into a much more equitable system. Unless you are charged the minimum toll, you will never pay more than 8¢ a mile, never more than the cash rate at any given toll plaza and if anyone is looking for equity, he recommended getting an E-ZPass transponder.

Sen. Craven noted that the Lewiston area businesses traveling south on the Turnpike will have toll increases of 40%. She does not want businesses moving out of Lewiston because they cannot afford to operate in the area. Director Mills acknowledged the level of increase that would be seen by those businesses and explained some of the limitations MTA faced in designing the toll structure, i.e. what amount is collected at each toll barrier and booth.

Sen. Sullivan is not happy with toll increases, but does understand the necessity.

Rep. Kruger believes this to be a fairness issue and that people in Lewiston/Auburn are feeling the increases hit them harder than others. From Director Mills' comments, he now knows that MTA is constrained in its options

because of where the physical toll structures are and asked if the unfairness question is not so much part of the toll increase as it is an amplification of an unfairness that has been there all along. Director Mills agreed.

Rep. Boland asked for a comparison of what it cost to maintain the E-ZPass system as compared to having a person man the toll booth. Director Mills will get that information to her. She also asked if there were other ways to raise the \$26 million needed. Director Mills provided Rep. Boland with the information sheet created for ways to raise revenues and asked that after she has reviewed the information, let him know her suggestions. He said there are many different ways to raise the money.

Rep. Pilon asked how many States were selling their toll roads. Director Mills said very few and thought that would be the worst direction the State could take.

Sen. Craven would not want the Turnpike dismantled and OPEGA has come up with excellent recommendations for other organizations. Her initiative was for the Lewiston area to not have to pay anymore than anyone else that uses the Turnpike. She recommended that MTA reduce the proposed increase.

Director Mills said if anyone has specific questions, he would be glad to sit down with them and explain the process in greater depth. The Committee thanked Director Mills for his presentation and answering their questions.

Motion: That the Government Oversight Committee have OPEGA review the disparity and make a recommendation for a more equitable solution. (Motion by Sen. Craven, no second, motion failed.)

Motion: That the Government Oversight Committee take no further action on the request for OPEGA to study the need for a toll increase and the fairness with which the increase is being applied over the length of the Turnpike. (Motion by Chair Burns, second by Rep. Kruger, passed 8-2 - opposed Sen. Craven and Rep. Boland.)

UNFINISHED BUSINESS con't

• Review of Past OPEGA Reports That DHHS Will be Reporting Back on at Future GOC Meetings:

- DHHS Contracting for Cost-Shared Non-MaineCare Human Services – Report issued July, 2008
- MaineCare Children's Outpatient Mental Health Services – Report issued February, 2009
- MaineCare Durable Medical Equipment and Medical Supplies – Report issued July, 2009

Director Ashcroft noted that the GOC had been discussing follow-up on past reports and the Committee decided that the most appropriate way to do that would be to have report backs over the Interim. She is giving the Committee the necessary information they would need to be prepared for the report backs from the Department of Health and Human Services (DHHS). Commissioner Mayhew is prepared to attend the GOC's July 19th meeting to report back on at least one of the reports. Considering what will now be on the July 19th agenda, Director Ashcroft asked the Committee if they were going to want a report back at that meeting. Chair Burns is not concerned about necessarily having it at that meeting, but said the consensus was that follow-ups needed to be done. The Committee asked the Director to brief them on the follow-up status on the MaineCare Durable Medical Equipment and Supplies Report in anticipation that the Commissioner would report back on that one first.

Director Ashcroft said in 2009 OPEGA released the Report regarding MaineCare Durable Medical Equipment and Medical Supplies. OPEGA did a lot of detailed data analysis on MaineCare claims coming out of the Maine Claims Management System (MECMS), and in particular looked for potential unnecessary expenses, duplicate claims, fraud, waste and abuse. OPEGA made 9 recommendations for both improving controls in MECMS and also for improving communications regarding things going on in DHHS' Program Integrity Unit, which audits for fraud, waste and abuse. From what OPEGA last knew, all but four of the recommendations had been addressed. The fix for the remainder was supposed to be the new computer system and controls built into the new MIHMS computer system. The GOC had been tracking and waiting for evidence and information

to come from DHHS about the specific controls that had been put in place and looking for information that those controls had been tested and were working in the new system. The GOC and OPEGA have never gotten that information because DHHS was in the process of implementing MIHMS and the report back never was provided. Given what is now being learned of MIHMS, and the concerns with the controls in it, Director Ashcroft thinks it is an area that will require some delving into to determine whether there are controls to make sure the previous issues observed were addressed in the new system, and that those controls are strong enough to make sure what was found for wasted dollars are no longer being paid under MaineCare.

Director Ashcroft thought it would also be helpful hearing back from the Commissioner on what processes are in place to assure that problems with the systems identified by the Program Integrity Unit are working their way up through the chain of command at DHHS or OIT to make sure they get corrected. OPEGA discovered that the root cause for some of the wasted dollars, overpayments and incorrect payments to providers identified by OPEGA were policy or computer system weaknesses that the Program Integrity Unit identified as root causes many years ago. However, those issues had never been communicated to the appropriate managers in a way for those managers to recognize that something needed to be fixed so that overpayment did not keep happening. Although the Program Integrity Unit audited and collected the overpayments, the weakness that allowed it to happen continued. She thinks it would be good to hear from Commissioner Mayhew about what they now have in place for protocols with the Program Integrity Unit. The Unit was supposed to be having more robust data and information coming out of the new MIHMS to monitor fraud, waste and abuse so theoretically they should be in a much better position to identify any weaknesses that are allowing for wasted dollars in the MaineCare Program.

Director Ashcroft noted that another item from the Report review that OPEGA never heard the end result of was a potential fraud case DHHS had referred to the AG's Office based on information provided by OPEGA.

In response to Rep. Boland's comment of how easy a home health aide told her it was to get durable equipment without needing it, Director Ashcroft said Recommendation 1 of the Report addressed that issue. That should be getting identified in the new MIHMS through a strong system that monitors claims that are excessive, not needed or inappropriate.

Chair Burns would like to hear from Commissioner Mayhew about how active and effective the Program Integrity Unit is.

Following Committee discussion it was decided that at the July 19th GOC meeting Director Ashcroft will give a briefing on the follow-up status on another of the DHHS past reports and that Commissioner Mayhew will report back on MaineCare Durable Equipment and Medical Supplies at the August 14, 2012 meeting.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Not discussed.

SCHEDULE NEXT COMMITTEE MEETING

The Government Oversight Committee members discussed the dates for their next two meetings. The Committee will meet Thursday, July 19 and Tuesday, August 14, 2012. Meetings will begin at 10:00 a.m.

Director Ashcroft wanted to make the GOC aware that OPEGA has come up with a procedure and form, in conjunction with the AG's Office, regarding OPEGA's confidential reports. A Non-disclosure Acknowledgement and Agreement form was created. When OPEGA first meets with agencies they have been giving the form to those who might be getting work products, to both inform them of the requirements in OPEGA's statute regarding confidentiality and to also ask for their cooperation and acknowledgement that they will be dealing with OPEGA in a

confidential manner as OPEGA progresses through the review. All the agencies OPEGA is now doing a review with have signed the forms. When the Director asked folks in the Governor's Office to sign the form, they had some concern about doing so. She has not heard back from them yet. The Director asked whether the GOC members thought the GOC should also be required to sign an acknowledgment form because they received advanced confidential copies of reports. She will wait to hear back from the Committee before drafting an agreement. Rep. Fitzpatrick would not object to signing a form and thought it might be a good way to make new GOC members aware of the nature of the Committee and how members are held to some confidentiality. Chair Burns agreed.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 1:13 p.m. (Motion by Sen. Sullivan, seconded by Rep. Pilon, unanimous.)