



SEN. CHRISTOPHER K. JOHNSON, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

## MAINE STATE LEGISLATURE GOVERNMENT OVERSIGHT COMMITTEE

### MEMBERS:

SEN. ROGER J. KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. TROY D. JACKSON  
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

## MEETING SUMMARY

June 26, 2014

Approved August 20, 2014

## CALL TO ORDER

The Chair, Rep. Kruger, called the Government Oversight Committee to order at 9:08 a.m. in Room 220 Cross Office Building.

## ATTENDANCE

Senators:	Sen. Johnson, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Jackson, and Sen. Youngblood
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 Wendy Cherubini, Senior Analyst, OPEGA Lucia Nixon, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Brenda Kielty, Ombudsman, Office of the Attorney General

Sen. Johnson was appointed as Senate Committee Chair replacing Senator Cain, who had stepped down. The members of the GOC welcomed a new member to the Committee, Sen. Troy Jackson.

Chair Kruger noted how much he appreciated Sen. Cain who had done a remarkable job leading the GOC and also in her work on the Appropriations and Financial Affairs Committee. She will be missed. He welcomed Senator Johnson's leadership as Co-Chair.

## 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 MAY 14, 2014 GOC MEETING NEW BUSINESS

**Motion:** That the GOC accept the Summary of the May 14, 2014 GOC meeting. (Motion by Sen. Craven, second by Sen. Youngblood, passed unanimous vote 10-0).

Director Ashcroft introduced Lucia Nixon, new Analyst, for OPEGA. She had previously been employed by the Office of Policy and Legal Analysis and left that Office to work at Efficiency Maine. Ms. Nixon has a PhD and Bachelor in Economics and a Masters in Social Work. The GOC welcomed Ms. Nixon.

### NEW BUSINESS

- **Presentation of Final Report on Maine Economic Improvement Fund**

Director Ashcroft thanked the OPEGA staff who worked on the review.

Director Ashcroft presented OPEGA's Report on Maine Economic Improvement Fund.

Rep. Cotta said the term University of Maine System (UMS) is a rename for the University of Maine Orono so as they got into the satellite campuses and the small campus initiative it is important to remember when referring to UMS it is the renaming of the former Orono Campus. Director Ashcroft clarified that when she uses the term University of Maine System it includes the University of Maine, which is the Orono campus, the University of Southern Maine, and Universities of Maine at Fort Kent, Presque Isle, Machias, Farmington and Augusta.

Sen. Burns referred to the statement that said the original intent was to do an 80/20 split of funds and thought the original intent was for the funds to go to UMO and then to the small campuses as needed. Director Ashcroft said she did not know about the original intent, her statement was about what had been done historically. She said the UMS Board of Trustees is responsible for administering the fund and since its inception UMS has split the State appropriation 80% to the University of Maine (Orono campus) and 20% to USM. Beginning in 2009, UMS started setting aside small amounts out of that appropriation to make available to the small campuses and in 2012 the Legislature set the minimum amounts of those allocations in statute for the Small Campus Initiative.

Sen. Burns thought initially or historically, it started out basically that UMO was the one who received and distributed the funds and then subsequently it was broken up 80/20. Director Ashcroft said the appropriation has always been split 80/20, and if you look back at the annual reports that have been produced since its inception, that financing reporting reflects that.

Sen. Burns said there is a different interpretation about the original intent of the Legislature of how the funds were to be disbursed among the other satellite campuses. He asked if OPEGA had found anything that specifically said that the lion's share of the funds were to go to those two major universities, or is that just unspoken. Director Ashcroft said OPEGA explored that question as fully as possible before starting the review, including checking with the Attorney General's (AG) Office and reviewing legislative history as to whether there was anything specific about which campuses were supposed to receive funds. OPEGA found nothing to indicate that there was any particular intent one way or another of funds going to one campus or another. It appeared to her that that decision rested with the University of Maine System Board of Trustees and their decision apparently was to split it 80/20, and that decision has been reflected all along in the annual reports that have been submitted on MEIF. In most recent years there has been a move to try to expand where those funds get distributed and the Legislature has been involved in that.

Sen. Katz asked who the individuals were at UMaine (Orono) and USM responsible for making decisions regarding use of the funds. Director Ashcroft said at each University the individuals go by different titles, but they are primarily the high level administrators who are responsible for research activities at the campuses. At the UMaine it is the Vice President for Research and at USM it is the Associate Provost of Research and Graduate Studies.

Rep. Cotta referred to the description of Fund 23 and 24 in OPEGA's report noting that as characterized in the report it seemed the information available for each fund seemed to impede the ability of OPEGA in its review. He asked if the Director could share more information on that. Director Ashcroft said that as part of analyzing the expenses, OPEGA had to get familiar with the way UMS in each of the campuses, was accounting for how they were using that fund. Fund 23 at UMS is really the restricted MEIF account funded primarily by the State appropriation. In UMaine's case, UMaine contributes additional funds into that account. There are many activities and functions supported by MEIF and a large part of what MEIF is spent for OPEGA would put in the category of infrastructure and capacity development as it is funding particular departments and functions at the campuses. Those kinds of expenses are paid out of Fund 23. The Fund is also used to support specific research and development (R&D) projects. For many of the R&D projects, UMaine in particular, MEIF is used as a match to get additional grant funds like other sources from the federal government or other nonprofit or private sources. When MEIF is going to be used as match, or cost share, those amounts of money, at some point, are transferred into Fund 24. So you can think of Fund 24 as the place where they park what they are going to spend on cost share on those particular grants.

Director Ashcroft said OPEGA wanted to analyze actual expenditures of MEIF. Most of those occur out of Fund 23 with the expenses related to cost share being paid for out of Fund 24. OPEGA requested data on the actual transactions that had been paid out of both Funds and wanted to use that information for analysis. OPEGA received both data sets as requested. Although OPEGA was comfortable with the data they received, because of the established accounting practices at UMS there were some data fields in each of the Funds that were not used consistently between Fund 23 to Fund 24, specifically project and program code fields. Director Ashcroft said the upshot of that is that OPEGA had to use a data set to do an analysis of expenditures by target sector that did not include the actual expenses for Fund 24, but rather the transfers from Fund 23 to Fund 24. OPEGA also was not able to perform an analysis by project because project code fields were not consistently used for Fund 23 expenditures. The description in OPEGA's Report is to inform the GOC why OPEGA used different data sets and what they had for challenges in trying to conduct the type of analysis they wanted to.

Rep. Cotta found it troubling that there were inconsistencies in the application of project codes. He said as the projects in the seven targeted fields mature and develop you have to watch where the money is going because they don't have goals and objectives and that takes the GOC right back to the first application in place to be consistent. He found that to be troubling. He would not say there is anything incorrect about it, but is difficult to come away with a high degree of confidence, not in OPEGA's work, but in the ability to track all the project costs and associated expenditures. Director Ashcroft referred to pages 8 and 9 of the Report of how UMaine and USM are using their MEIF allocations. There is some amount of MEIF that is now taken off the top by UMS to dedicate to the small campuses. They allocate those funds to the small campuses through a competitive process by which the campuses submit particular proposals for projects and then a rigorous criteria is applied to those proposals. They use an outside entity to score the proposals and make recommendations on which projects should get funded. She said UMaine and USM use their fund in one of two ways. One is to support general R&D infrastructure and capacity by supporting particular facilities, departments or functions at their campuses that have been established to conduct R&D generally in the seven targeted technology areas and which form the platform for specific projects they are seeking grant awards for. A significant portion of the funding that goes to those two campuses are used in infrastructure and capacity support and development.

Director Ashcroft said the remainder of the fund is used for specific projects and usually at UMaine those projects are associated with federal or other external grants or contracts for which UMaine is using the MEIF as a cost share, or match, portion on those grants. Fund 24 is used for cost share and always had a project code. If OPEGA wanted to analyze just project expenditures for cost share related projects, they could do that.

She said there are also project related activities being paid for out of Fund 23 but project codes were not used consistently for these transactions so OPEGA did not feel they could do a global analysis to identify all of the MEIF money going towards specific projects versus being used for infrastructure and capacity type support for activities and functions in that arena.

Rep. Cotta said Fund 24 sounds like cost sharing, but Fund 23 could actually be an operations and maintenance account and may, or may not, be focused. It does not have a clear objective when it starts on any given period of time. Director Ashcroft noted that decisions on which functions, activities and facilities will be supported with MEIF and how much occur through a regular annual budget process.

Chair Johnson said to be clear, OPEGA was trying to get far enough into the data to understand what was being done with the Fund to satisfy the inquiry, but it sounds like from what Director Ashcroft described for a process that is not particularly prescribed by statute. There is no outline of how that determination of what should be funded has to be made. The clear things are the change as of 2012 in dedicating a certain amount of funding to various campuses, and also that funds must be used within those certain seven technology areas.

Sen. Burns said UMS's process did not appear inconsistent with the statute, although he was not sure what was initially intended. What you have is a system where UMS, or the Board of Trustees, gives out the lion's share of the Fund to two campuses and a very small, minute amount of money to the satellite campuses who have a very stringent competitive market to get that small percentage. USM has a less restrictive process and it appears UMaine pretty much funds what falls in these categories. He said there appears to be three different levels going on, and OPEGA's position is that it is not inconsistent with the original statute's intent. Director Ashcroft said all of the activities they described as funding, or OPEGA could see being funded, in one way or another, do fit within the general purposes that are outlined in statute. Sen. Burns commented that the statute was pretty vague and subject to interpretation. He said if you want to look at it on face value, it is a very unfair distribution and he thinks that needs to be emphasized – it is a very small amount of money that is competitively offered to satellite campuses and the main portion of the \$14 million MEIF every year is easily accessed by those two major campuses. It is a self-determination situation.

Sen. Katz wanted to know how much of the total amount of MEIF goes to the kind of maintenance of the infrastructure to do research across the board, and how much is going to specific projects, either ones that are leveraging other grants or ones done on their own. Director Ashcroft said that is what OPEGA was not able to get a view of from the data requested and what was available. They wanted to do that kind of analysis, but because they were not sure that all of the project related expenditures had been identified with a project code, they did not feel comfortable doing that analysis. Sen. Katz noted there were representatives from the University at the meeting and said perhaps at the next GOC meeting someone from the University could address that question.

Chair Johnson said given that the requirements are quite general in statute, and if the GOC is going to look at changing that he thinks it would need to be a policy decision with legislation moved forward in the coming session rather than a matter of noncompliance noted in OPEGA's Report.

Sen. Youngblood asked if there ever was any evidence that showed at some level, at one time or another, that there were in fact goals or objectives put out, especially from the small universities that had a particular project. Director Ashcroft said the Small Campus Initiative itself has goals. She would not say they have measurable objectives associated with those goals, but they have identified clear goals and clear criteria on how those proposals are going to be scored.

Sen. Youngblood asked if there were ever any goals way back at the two major campuses and they just let them slide because if you don't have goals and objectives, you cannot be criticized for not meeting them. Director Ashcroft said the requirement that is in statute is for UMS to report annually on the measurable goals and objectives and the accomplishments towards those. This is the language that indicated to OPEGA that UMS is supposed to have goals and objectives. OPEGA did not see any evidence in any of the annual reports

reviewed, that UMS had discussed those as required by statute. She said the University will tell you there are goals and objectives relevant to R&D. For example, UMaine feels that it has an eye on a number of objectives that are associated with the University's own plan, the Blue Sky Plan, and larger R&D goals for the State, but OPEGA did not find any MEIF specific goals and objectives established that speak to specific things they are trying to do with the Fund, or the way in which the Fund is being used to accomplish some of the larger R&D goals and objectives. Director Ashcroft said she would say no in answer to Sen. Youngblood's question.

Sen. Burns said it sounds like the restrictions have been put on the small campuses to have goals and objectives and is a criteria set up for them in order to be competitive for the funds. Director Ashcroft said UMS set goals and objectives for the Small Campus Initiative and then, following on from those goals, they have set specific criteria against which they are going to score the proposals that come in from the individual campuses and that is what is shown in Appendix B in OPEGA's Report. Sen. Burns said UMS has not followed its own lead and set up their own goals and objectives and he asked whose responsibility it was to see that happens. Is it the Legislature, or is it self-determination. Director Ashcroft said the statute designates responsibility for administration of the Fund to the University of Maine System Board of Trustees and it is the responsibility of the Board to report to the Legislature and the Governor on the goals, objectives and accomplishments towards those goals and objectives. Sen. Burns noted it was self-determination and maybe the Legislature ought to be responsible to see that that happens.

**Recommendation 1: The University of Maine System Should Establish Measurable Goals and Objectives for MEIF and Report on Them as Statutorily Required**

No questions by the GOC members.

**Recommendation 2: The University of Maine System Should Ensure Metrics Reported for MEIF are Consistent, Complete, and Accurate**

Chair Johnson asked if Director Ashcroft had any sense regarding the process of determining full time equivalents supported by MEIF as to whether there are individuals working more than a full day when projects being worked on require it because of deadlines. He asked how one handles long hours on a project versus full time equivalent because someone might be dividing their time worked on different projects. Director Ashcroft thinks that is a potential explanation. Another explanation the University shared with OPEGA is that full time status for a faculty member is not the full time job status (i.e. 40 hours per week all year) that people might envision. Full time for them might be a certain amount of months out of the year, but then they are engaged on projects at other times of the year so they end up exceeding one FTE. Chair Johnson said, at a minimum, they need some type of clear criteria to know what that means and how it is calculated. Director Ashcroft said UMS needs to decide how they want to report it and needs to make a decision on what they are going to use for the metric.

**Recommendation 3: The University of Maine System Should Complete the MEIF Task Force Report and Submit it to the Legislature**

Sen. Jackson said he was on the Labor Committee when the Legislature passed the bill regarding UMS completing the MEIF Task Force Report and they were to submit it to the Legislature. He asked who was on the Task Force. Ms. Cherubini said the Task Force members were all internal to UMS. Director Ashcroft said she did not have the information regarding which positions at the University were included, but will get it for the Committee. Sen. Jackson asked what their explanation was for not having the Report to the Legislature. Director Ashcroft said they had late appointments to the Task Force. He said it has been almost three years since the legislation was passed.

Sen. Burns asked if there were other reasons given, other than late appointments. Director Ashcroft said the individuals that were playing a prominent role in getting the Report together have had a number of other high priority tasks on their plate at the University. Other than that OPEGA has not sought any specific explanation.

Chair Johnson referred to UMS's response to Recommendation 2 included in OPEGA's Report noting that the Task Force will complete a Report and submit it to the Legislature's Labor, Commerce, and Research and Economic Development Committee by October 1, 2014 and said he would like to see that happen in their stated timeframe.

**Recommendation 4: The University of Maine System Should Ensure MEIF Expenditures and Commitments at Each Campus Align with Available Resources**

No questions by the GOC members.

**Recommendation 5: The University of Maine System Should Enhance its Ability to Monitor and Report on MEIF Activities, Expenditures and Match Commitments by Linking Data with Primary Financial Systems.**

No questions by the GOC members.

Chair Kruger noted that the GOC will be scheduling a public hearing regarding OPEGA's Maine Economic Improvement Fund Report.

Rep. Cotta asked if, at a later meeting, the GOC will have an opportunity to note what they think should happen regarding some of the issues raised in OPEGA's Report. Chair Kruger said Committee members will have that opportunity.

Chair Kruger said he first learned about MEIF when the GOC undertook the review and said he is impressed overall with what UMS has done, they have done a remarkable job of leveraging a modest amount of funds in the world of research and development. He also said OPEGA has done a good job in laying out all the information regarding MEIF.

Sen. Burns said he does not think anybody disagrees that UMS ought to be getting the money for R&D. He thinks the disagreement comes in how it is disbursed and whether or not it could be leveraging more resource if it was dispersed a little differently. Sen. Burns believes that was the original intent of the Legislature and that point was made in the 124<sup>th</sup> Legislature when the Small Campus Initiative was put into place so that some of the campuses could compete for some of the resources, and they might be in a better situation to do the research. For him it is about how to best use the money.

Sen. Craven agreed that the University does a great job regarding R&D, but also thinks it is unfair if the small campuses cannot compete for more dollars.

Rep. Cotta said it is a good report by OPEGA, but is slightly off the target because there were terms used during the Small Campus Initiative (SCI) of build-out. UMaine was in the process of building out and then the fixed costs ended up 76% in compensation. He said that was not the focus of the review, but thinks it is an indicator for a future GOC discussion of where to go from here and good steps to re-evaluate and look at and if MEIF is not doing what the Legislature thought it should, there may be a legislative remedy.

**• GOC Consideration of OPEGA Recommendation on Project Direction for Review of DHHS Licensing and Regulation of Child Care Providers**

Director Ashcroft summarized OPEGA's Recommendation for Project Direction on the review of DHHS Licensing and Regulation of Child Care Providers. (A copy is attached to the Meeting Summary).

Chair Johnson asked what was meant by implementing performance metric reporting. Ms. Cherubini said DHHS is reviewing the performance metrics to set timelines for when a complaint is received, how long it takes

once it is assigned to a community care worker or the out of home investigator, although the complaints of Child Abuse and Neglect have some separate rules under statute. It also includes how many days can pass before they go out there, or get in contact with somebody, and how they are evaluating it. She said DHHS did not have those guidelines in place previously.

Ms. Cherubini also described other actions being taken by DLRS from complaint investigations. She noted in the Sunshine case there were no actions taken after there were findings. Now the Community Care workers are looking at that and then the License Review Panel is meeting weekly to consider all enforcement actions. DLRS is also rewriting supervisor job descriptions so it is clear what the supervisors are doing, and how they supervise staff. DHHS has also hired two new supervisors who have experience in child care.

Chair Johnson said it appears DHHS is measuring and setting expectations as well. Ms. Cherubini agreed and said it was still a work in progress and OPEGA does not know how well it is working, or whether it will do what they intend it to do, but that is DHHS's intent.

Sen. Craven said she was very concerned about the issues raised by this review request and believes that if the review request was not taking place and if the media had not picked up on all of the activity, or lack of activity in the Department, that it would still be as it was. DHHS workers on the frontline have lost their jobs because they complained and reported the issues of neglect. Each worker had been assigned about 180 day care centers to inspect. It was disturbing to her to learn at the AFA Committee meeting the week before that there were federal funds available that were never applied for to hire new people to make sure this work can be carried out. She agreed that there is not much work that can be done by OPEGA right now but to monitor and take a look at what is going to be happening in the future. She hopes that OPEGA will continue to ask DHHS to report their progress to OPEGA every three months. Sen. Craven has great concerns regarding both the children in child care facilities and workers at DHHS.

Chair Kruger said if he is fortunate enough to return for the next session he will be paying attention to the issues of DHHS Licensing and Regulation of Child Care Providers. He thanked Sen. Craven for her commitment and passion regarding this matter.

Sen. Youngblood asked if OPEGA could tell if the objectives DHHS is working on now, or have recently implemented, occurred as a result of the review request, or were those things already in progress. Ms. Cherubini thought the timing of a lot of the things goes back to a 2011 Bureau of Human Resources review of the Division that made some upper management changes. The new Director that came in following that review started to reorganize the Division and make changes to the organizational reporting structure because there were some issues with silos. She said a lot of the changes were in response to the situation that came forward with Sunshine and the request for the OPEGA review.

Director Ashcroft said if the GOC was in agreement with OPEGA's recommendation that the review be delayed the Committee could vote to put the review request on OPEGA's Work Plan in suspended status and then OPEGA would bring it forward to the GOC when they thought it was time to move the review back into progress. At that time OPEGA will check with the GOC about whether they want to go forward with the review. She thinks that would also allow the GOC, if they want to, as Sen. Craven suggested, set up some sort of expectation that the Division would be reporting back, at some interval, the status of their implementation. OPEGA would then be in a position to answer the GOC's questions about the status of the actions being taken.

**Motion:** That the Government Oversight Committee put the review of DHHS Licensing and Regulation of Child Care Providers on OPEGA's Work Plan in suspended status. (Motion by Rep. Davis, second by Sen. Burns).

**Discussion:** Sen. Craven added a friendly amendment to the above motion to have an update regarding the status of DHHS's progress every three months.

Chair Kruger asked Rep. Davis and Sen. Burns if that would be agreeable to them. They said it was.

Chair Johnson asked if DHHS's report back was as Director Ashcroft had suggested of an update on the implementation to OPEGA or the GOC. Sen. Craven said the report back would be to OPEGA.

Sen. Youngblood asked what information the GOC was looking to have a report back on. Director Ashcroft referred members to the DLRS Strategic Map and the information in the column of Summary Status, June 15, 2014 in which OPEGA has asked DHHS to tell them what is the current situation with regard to their implementation of the objective and OPEGA was thinking they would give a similar status update on the objectives in the Plan. That is the information OPEGA would be asking from them on a quarterly basis as a way of monitoring that they are continuing to implement their plan and to be aware of any major challenges they are hitting.

**Vote on the Amended Motion:** Motion passed, unanimous vote, 10-0.

## **UNFINISHED BUSINESS**

### **• OPEGA's Report on Healthy Maine Partnerships' FY13 Contracts and Funding**

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

Director Ashcroft said the GOC was to decide what action they wanted to take in further response to issues that were identified in OPEGA's Report and other issues that came to light as part of the inquiry the Committee conducted of Maine CDC officials. She referred members to the Status of Government Oversight Committee Actions on Issues Identified. (A copy is attached to the Meeting Summary).

#### **Issue: Potential violation of Freedom of Access Act or intent to frustrate purpose of FOAA**

No questions or comments by the GOC members.

#### **Issue: Weaknesses in Records Retention Policies, Practices and Training at Maine CDC and Statewide**

Chair Kruger asked if there was a procedural or policy reason why you would not have a public member on the working group, or a member of the media. Director Ashcroft said she discussed that issue with a member of the media. She said Chief Deputy Attorney General Linda Pistner was not available to discuss that matter, but the Director's vision of what the working group is going to get down to is the technical nuts and bolts, staff level working on how to make improvements as opposed to policy decisions. Director Ashcroft said she does not know all of the issues the working group might get into, and that is why she left the general statement that the task force should seek input from folks as appropriate. She also thought that since the working group would be bringing their recommendations back to the GOC, if at that time, the GOC thought there were things that needed to be vetted with the public, or public representatives, that a process could be set up as part of the GOC's consideration of how to get those thoughts and ideas brought forward.

Sen. Craven wanted to add that the working group look at a reasonable cost for a FOAA request. If you have electronic copies on your computer and the person making the request is told it is going to cost \$500 that is not reasonable. She knows there are set costs for medical records, etc. being requested from hospital and physicians and you could look at how those rates are set. She thinks the cost is a barrier that any agency can use to frustrate a FOAA request.

Chair Johnson agreed with Sen. Craven and said as already heard, there is no simple set of guidelines regarding FOAA in any of the departments. So it is going to be important that the guidelines be established and be well vetted and drafted so they are workable in general for departments, and then more specifically, within the departments implementing them. He asked what the timeframe would be. He also said he likes the

idea of the GOC writing a letter to the parties as indicated with the FOAA cost included. Ms. Kielty said six months was a doable timeframe.

Director Ashcroft will draft a letter from the GOC Chairs that includes all of the above information plus a request that they bring some recommendations back about guidelines for how to determine reasonable and consistent costs for responding to a FOAA request.

**Issue: Lack of State-wide expectations and guidance for situations where agencies are making selection and funding decisions among competing entities without an RFP, including what documentation should be generated in such situations.**

Chair Johnson agreed that the GOC did not have a specific remedy prepared, but he would move that they vote to authorize OPEGA to work with agencies to clarify how best to address the State-wide expectations and guidance for situations where agencies are making selections and funding decisions. He thinks it should address more than just situations where there is a reduction of funding and there should be guidelines at different levels of money involved.

**Motion:** That the Government Oversight Committee ask the Office to work with the agencies to determine options for addressing the need for expectations and guidance on process and documentation when agencies are making selection and funding decisions. (Motion by Chair Johnson).

**Clarification of Motion:** Sen. Katz said he thought Sen. Johnson's motion was adopting the proposal made by staff as what should be done on the subject. Chair Johnson said that was correct, to check with DAFS Purchases and the Attorney General's Office.

**Motion:** The above Motion was seconded by Sen. Katz.

**Discussion:** Sen. Craven said she did not know how cumbersome it would be to have an RFP process for every time there was a reduction in funding. She said this particular instance was bizarre in that these people had already applied and gotten the funds and the changes happened in the middle of that cycle. Traditionally what happens when there is a cut the agencies do without until the next cycle happens. What happened in this case is that someone got the idea that they were going to change the whole structure of how the Healthy Maine Partnerships were going to be funded in the middle of the RFP cycle, hid it and were not willing to talk with anybody about it. Sen. Craven thinks it would be cumbersome for every agency that is going to be getting a cut, or a change, to have to produce another RFP in the middle of the cycle. Director Ashcroft said she was thinking that it not require them to necessarily do an RFP in the middle of the process, but if you are in a situation with certain components, you are defunded but are planning to make some other changes, then here is a process that can be used in lieu of an RFP to make sure there is transparency and fairness about the decisions being made.

**Vote:** Motion passed, unanimous vote, 10-0.

**Issue: Potential lack of accessible, effective and confidential (when necessary), avenues for employees to report, and get guidance/action on, concerns regarding violations of laws/regulations, State policy and procedures, or ethics.**

Director Ashcroft suggested that the GOC park the above issue until the next issue is discussed because to some degree she thinks they are linked.

**Issue: Potential lack of clear and effective Codes of Ethics or Conduct for State employees to set ethical expectations and serve as guidance in day to day activities/decisions. Also to serve as the foundation for employees to report ethical concerns and hold individuals accountable when ethical standards are not met.**

Sen. Burns said if there is no statute, policy, guideline, or procedure in place, but standards on ethics recommend something different, how does an employer implement that, or how do they take action, short of having those things in writing. An employee has the right to know what is expected of them. Director Ashcroft believes there are some strong structures and model policies for standards of conduct that can be laid out in a way that employees are guided and have clarity about what the expectations are of them. In her previous position with another organization she was charged with investigating employee complaints of ethical violations and the Company had a strict standard code of conduct that she could refer to see if it looked like a violation of ethics. She thinks you can set up a frame work, but it involves having some clear written guidance, making sure employees are aware of that and are expected to report things they see that seem out of line with that, and having an effective follow-up function. Ethics is often a matter of perception, but it is a topic area where there is a lot of research and information. Sen. Burns said it has to be implemented into writing so that everybody knows what the standard is otherwise there is no corrective action that you can take.

Sen. Katz said it came as a surprise to him because he had assumed there was some sort of standards of conduct, or ethical overall code and that may have been a little naïve on his part to think that there was. He said the goal of having one is important, but it sounds like a large undertaking. He thinks it is one that should be done, but it may be helpful to see a preliminary report from OPEGA staff after some investigation of:

- in Maine State government are there agencies that have codes of conduct unique to themselves, what are they, and what is the current environment; and
- a brief inquiry of NCSL, or others, about what other states have done.

After receiving that information the GOC may be in a position to be more directive of how to proceed. Sen. Katz thinks it is an important project that they should be concerned about.

Chair Johnson agreed with Sen. Katz. He referred to the 2009 Report in their notebooks from the Commission of Governmental Ethics and Election Practices on Ethics Laws for Executive Branch Employees. In the Report it is pointed out that a law was enacted in 2007 requiring agencies to develop an ethics code “to guide the operations and financial administration of each particular entity” and includes that the State Controller may ensure that agencies have complied with their code as it applies to financial administration. He said that is a bit narrow because it deals with financial administration, but thinks it might be worth investigating through the State Controller’s Office what Maine government has for current implementation of the law. He agrees that it is a very important topic. He doesn’t think the GOC is going to create a code of ethics, but needs to get a handle on what exists and then have discussions about how to proceed to ensure that they are created and created in a strong fashion.

Sen. Craven also agreed and said the lack of stability and ethics in the society generally diminishes people’s behavior at work as well and that needs to be addressed. People need to be held accountable for their behavior, especially in government.

Sen. Burns asked if they were saying that none of the State agencies have followed the directive, or some have and some have not. Director Ashcroft said OPEGA does not know what exists for Codes of Ethics in the agencies themselves and it did not appear that the Governmental Ethics Commission went as far as to determine what was available for an inventory. They did comment that one was supposed to exist. Sen. Burns thought the GOC needed to have that information before they got too deeply into the matter.

**Motion:** That the Government Oversight Committee have OPEGA research the current standards of conduct or ethics code that exists in State government, as well as current practices in other states, and what information and models the Institute on Global Ethics may offer on options for improvement and bring that information back to a future GOC meeting. (Motion by Chair Johnson, second by Sen. Katz).

**Discussion:** Sen. Burns said the above motion would indicate that OPEGA has to go to each one of the State agencies independently to review their current practices. Chair Johnson said the reference to the State

Controller has some responsibility or authority in statute so he suggested contacting the Controller's Office to find out where the State agencies currently stand. It would be a letter to the State Controller's Office as a starting point.

Sen. Jackson asked if the Committee was talking about all State employees including legislators, the Governor, etc. He said when he hears the word agencies he does not think of the Legislature or the Administration so was curious as to what Departments would be included. Chair Johnson said in line with his earlier comment about the importance of establishing trust in government thinks it should be applicable across the board in State government. Sen. Katz said he was hesitant to include the Chief Executive as a matter of separation of powers issues and without asking the Attorney General about that he would be reluctant to include the Chief Executive in any part of the review. Director Ashcroft suggested that OPEGA start with the inventory of what exists in the agencies. She said they do know from the Government Ethics Commission's prior Report what exists at a more global level, at least for Executive Branch employees. When OPEGA looks at what other states are doing they can ask the question more broadly about all branches of government.

Chair Kruger said there was a Motion and a second before the Committee to direct OPEGA staff to inventory State agencies on what exists in State government. Sen. Burns said he understood that the GOC was going to ask the State Controller to do that, not OPEGA. Director Ashcroft said she would start with the State Controller to ask if they have an inventory they could provide OPEGA. If they do not have one that is current, she would be looking for guidance as to whether the GOC wanted OPEGA to contact agencies to ask that they provide whatever it is they have.

Sen. Jackson said even though an agency might not have a written policy on ethics, any of the people under that agency would through their professional licenses. That should be kept in mind when information is received from a state agency that does not have written policies on ethics.

Chair Johnson wanted to make it clear that the Motion included research on current practices in other States and ethical guidelines that might be available from the Institute on Global Ethics so the GOC has a baseline to compare existing codes.

**Vote:** Motion passed, unanimous vote, 10-0.

Chair Kruger referred to the previous Issue and asked if it needed as much attention. Director Ashcroft recommended parking that until the GOC decides what action they would like to take on the ethics matters.

**Motion:** That the Government Oversight Committee park the potential lack of accessible, effective and confidential (when necessary), avenues for employees to report, and get guidance/action on, concerns regarding violations of laws/regulations, State policy and procedures, or ethics Issue. (Motion by Sen. Katz, second by Chair Johnson, unanimous vote, 10-0).

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

Chair Kruger asked if the GOC wanted to vote to accept OPEGA's Report on Healthy Maine Partnerships' FY13 Contracts and Funding.

**Motion:** That the Government Oversight Committee moves to accept OPEGA's Report on Healthy Maine Partnerships' FY13 Contracts and Funding. (Motion by Sen. Katz, second by Rep. Davis).

**Discussion:** Chair Johnson asked Director Ashcroft to walk the Committee through what the implication of voting on OPEGA's Report was. Director Ashcroft said under OPEGA's statute there is a provision that says the Government Oversight Committee may vote to endorse or not endorse a report that is presented to the Committee. Prior GOCs have taken that vote after having had the presentation of the report, had a chance to review it, and had the public comment on the report. While statute is not specific about what endorsing the

report means, she has told Committees that, from her perspective it means the Committee finds the report to be credible and objective, that they think OPEGA did a decent job focusing on what the GOC had tasked them with and that the recommendations are worth consideration. It is the GOC's statement to the Legislature about OPEGA's work on the report. Following votes, Committees have gone on to have discussions about what actions the Committee itself might want to take on the report. Director Ashcroft said the current GOC has taken a different stance on it and has been waiting to vote until they have finalized what they want to take for action on the report and that is why this vote is so delayed from when the Report was issued. She said that voting to accept it does not mean that the Report is going away or that the GOC is not going to continue to discuss it.

Sen. Craven noted that it had been a very frustrating process and thinks it is a good Report. She thinks it was a difficult Report and feels somewhat vindicated with the action steps because it felt before like people could do whatever they wanted and not have to change their behavior. She thinks the review was a good solution.

Sen. Burns asked if Committee members were allowed to abstain on these votes if they have quorums with a particular issue. He said overall he supports the Report but has an issue that has not been resolved yet and he is negligent in not bringing the issue forward sooner. He said the issue has to do with the language that the Committee tried to edit pertaining to the Tribes and the disbursement of funds to them. Sen. Burns said he does not want to automatically support the entire Report because he still has an issue regarding that and asked if he was allowed to abstain.

Chair Kruger did not think an abstention was in order and if a member could not support the Motion, they should oppose it. Director Ashcroft referred members to the information in their notebooks regarding voting on reports and said "a member may abstain only if the member has a conflict of interest as described in Joint Rule 104". She said the GOC, in the past, has discussed situations that might arise when the Committee, as a whole, or in this case, a particular member, feels that they have a statement to make about a portion of the Report. Past Committees talked about writing a letter to the file to have something on record of what portion of the report they had an issue with.

Chair Kruger said Sen. Burns could convince the other Committee members to not accept the Report at this time and to have further discussions based on his concerns.

Sen. Burns said he did not want to give the impression that generally it was not a good Report, but thinks there needs to be some discussion, and possibly some editing, or clarification, given to the information regarding the Tribal portion of the grants. He asked if it would be a tabling motion, or just a request, that would be needed to hold the vote off on the pending motion.

Chair Kruger said a tabling motion would be in order and is not debatable.

**Motion:** That the above motion be tabled until the next GOC meeting. (Motion by Sen. Burns, second by Sen. Jackson, unanimous vote, 10-0).

- **Briefing on Administration's Completed or Planned Actions on Recommendations Contained in Federal Department of Labor Fact Finding Letter and Blue Ribbon Commission Report**

Director Ashcroft reminded members that at their last meeting they decided that it might be a good step to request from the Administration a report on what they intended to take for action with regard to the recommendations in the two Reports they had previously reviewed.

Director Ashcroft believes the GOC now needs to take a final vote of disposition on what to do with the request for an OPEGA review of certain unemployment compensation related matters. At this point the issues have been well identified by the Federal Department of Labor and the Blue Ribbon Commission and the Department of Labor is taking action with regard to each recommendation. She referred members to the report on actions

being taken submitted by the Department of Labor Commissioner Paquette. If the GOC is thinking about moving forward and wanted to do something with the topic she would suggest considering putting it in a status to think about it in the future of how these actions have been implemented and whether they have affected the improvements and change that they were intended to.

**Motion:** That the Government Oversight Committee take no further action on the request for an OPEGA review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings. (Motion by Sen. Katz, second by Sen. Burns).

**Discussion:** Sen. Katz said whether it is a court or a quasi-judicial role, everyone has to have confidence in the fairness of the people. He thinks there were some legitimate concerns raised over the fairness of the process at the Department of Labor, but they have been thoroughly vetted, through the federal process, the work of the Blue Ribbon Commission, and the Report of the Administration's Actions on Unemployment Compensation Recommendations provided by J. Paquette, Commissioner of the Department of Labor. He is satisfied that if there were problems, they have been addressed and that the system is now working properly and is confident that if there are problems in the future, someone will bring it to the Committee's attention.

Chair Johnson said he understands at present this is not something that is OPEGA's research and report on. The Reports are from the Blue Ribbon Commission and the US Department of Labor who took a look at the unemployment procedures. The US Department of Labor found it was a concern that hearing officers perceived they were being pressured to influence their outcomes. He thinks that was the basis of the federal determination and why they will be conducting quarterly audits for a while to see if that problem persists from the standpoint of perceived influence of the hearing officers or not. For him it is not something that is ready to rest. The GOC has not heard back on how the federal audits have come out. Chair Johnson thinks there have been some good actions taken to address the inconsistencies in how evidence is treated, training of staff and levels of staffing, but it is just beginning and he thinks it is something worth checking the progress of whether the recommendations are being implemented. He said he was inclined to not support the motion of no action at this time, but rather to defeat that and go on to keep the review request on deck with the review of implementation of the corrective actions at some later time.

Chair Kruger noted that the request for this review originally came from him. He thought it was important to note that though the Governor had alleged there was bias against employers in the unemployment compensation process, the Blue Ribbon Commission, that the Governor convened, found none. He said he will not be forgetting this issue a year from now and regardless of what happened at the March 21<sup>st</sup> lunch, there was an allegation of bias. Chair Kruger said he appreciates the work done by both of the two entities and the State Department of Labor's response.

Sen. Jackson said in reviewing the information regarding the pressure put on the unemployment hearing officers, he wants to make sure that it is handled appropriately so would not be supporting the motion.

Sen. Burns agreed with some of what Sen. Jackson said, but believes the issue has been well vetted and the Committee needed to move on.

**Vote:** Motion failed, 5-5 vote. Voting against the motion: Senators Jackson, Craven and Johnson and Representatives Kruger and Peterson.

**Motion:** That the Government Oversight Committee put On Deck a review at a future time of the implementation of the actions taken to address the recommendations from the two studies. (Motion by Chair Johnson, second by Sen. Craven).

**Discussion:** Sen. Katz noted that when a vote of the GOC breaks down exactly on party lines it is a sad day.

In response to Sen. Jackson questions of when this matter would come back before the GOC, Chair Kruger said it would be in 2015. It will not be an active review until the next GOC decides to put it on OPEGA's Work Plan.

**Vote:** Motion passed, 6-4 vote. Voting against the motion: Senators Katz, Burns and Youngblood and Rep. Davis.

## REPORT FROM OPEGA DIRECTOR

### • Project Status

Director Ashcroft gave a project status update.

**DHHS Licensing and Regulation of Child Care Providers** was discussed earlier in the meeting, and as voted by the GOC, will be put in suspended status and OPEGA will monitor as directed.

**DHHS Workplace Culture and Environment** is in planning stage. OPEGA learned that the DHHS itself had conducted an employee climate survey in 2013 and were in progress with another annual employee climate survey in 2014. OPEGA is waiting to get the results from the 2014 survey.

**Health Care in Corrections System** is in progress and is in a fieldwork phase. OPEGA is selecting the sample of cases that they are going to try to determine the root cause of the ongoing concerns that get reported to the advocacy organizations.

**Office of Information Technology** – OPEGA is monitoring the implementation of OIT's action plan for achieving some improvements in project management, business continuity and disaster recovery planning, and data analytic capabilities. OPEGA continues to request periodic status reports and will make a decision whether it would be worthwhile to hire a consultant with technical expertise to evaluate whether there has been effective change as a result of the actions OIT has taken to date.

**Special Project: Tax Expenditure Programs** – OPEGA is developing the pieces of the proposal that they are committed to submit back to the Taxation Committee by March 1, 2015. For some components of that proposal Director Ashcroft would like to get some legislative feedback earlier rather than waiting until the proposal is complete. She expects to be bringing those components to the GOC for their feedback. Director Ashcroft talked with the Senate Chair of Taxation and she did not think that Committee would be meeting over the Interim, but suggested a sub-group of the Taxation Committee might be invited to join the GOC when OPEGA presents their draft suggestions to date for feedback.

**State Lottery** is in progress and is being worked on as OPEGA staff has free time from other reviews.

Chair Johnson asked the timeframe of the DHHS Workplace Culture and Environment Review. Director Ashcroft said she expected, depending on when the GOC's next meeting was scheduled, to be prepared to have some specific recommendation for the Committee of how to move forward with the review and if that involved hiring a consultant, what the scope of that work would be.

## NEXT GOC MEETING DATE

The GOC members will be polled for meeting dates.

## ADJOURNMENT

Chair Kruger adjourned the Government Oversight at 12:20 p.m.

## **OPEGA Recommendation for Project Direction**

### **DHHS Division of Licensing and Regulatory Services Child Care Licensing**

#### **Background**

On February 28, 2014, the GOC voted to place this topic on OPEGA's work plan after considering a request by the Chairs of the Joint Standing Committee on Health and Human Services. OPEGA began preliminary research in March of 2014. As part of the preliminary research phase OPEGA has:

- reviewed issues discussed by the GOC at the February 28, 2014 meeting;
- reviewed statutes, rules, and policies related to child care licensing and investigations of child abuse & neglect in out of home settings;
- reviewed public media coverage of the Sunshine Child Care & Preschool Investigation from January and February of 2014;
- spoke with and reviewed information provided by former DLRS employees;
- reviewed Child Care Aware of America's report "We Can Do Better" 2013 Update regarding child care program and oversight standards and Maine's ranking among the states;
- reviewed historical and current budget data for DLRS Child Care Licensing;
- reviewed historical and current DLRS organizational charts;
- reviewed previous and current DLRS strategic plans;
- interviewed DLRS management to learn about recent management reviews and investigations of DLRS and its Child Care Licensing Unit; and
- developed a general understanding of data available in Maine's Automated Child Welfare Information System (MACWIS).

#### **Summary of Preliminary Research and Analysis**

The Department of Health and Human Services Division of Licensing and Regulatory Services (DLRS) is responsible for licensing and monitoring of child care centers, family child care providers and nursery schools. Within DLRS, the Children's Licensing and Investigations Unit oversees child care licensing and the investigation of child abuse and neglect in out of home settings, including child care settings.

Community Care Workers (CCW) are responsible for inspecting licensed child care providers and license applicants. CCWs also investigate complaints alleging noncompliance with license rules. When there are findings of noncompliance, DLRS now issues a statement of deficiency (SOD) requiring the provider to develop and submit a plan of action that includes a timeframe for correcting deficiencies. According to DLRS management, SODs were introduced early in 2013. CCWs also provide technical assistance to providers and make unannounced visits to monitor compliance with licensure requirements. Currently there are 1,253 family child cares, 727 child care facilities and about 78 nursery schools for a total of 2,058 licensed child care facilities.

DLRS may issue a Conditional License when there are ongoing uncorrected deficiencies or findings of serious noncompliance issues during an inspection or unannounced visit to a child care provider, or it is otherwise determined to be in the best interest of the public. A Conditional License includes a directed plan of action written by DLRS that the provider must follow. If the provider does not correct the deficiencies as per the Conditional License, the license is voided or revoked. If very serious issues are identified, DLRS may, with the approval of the DHHS Commissioner, issue an administrative suspension that immediately closes a facility for up to 10 days pending further investigation or prior to obtaining a court ordered emergency suspension.

Out of Home Investigators within the DLRS Community Programs unit, are responsible for investigating complaints alleging child abuse and/or neglect in out of home settings, including licensed child care facilities and nursery schools. Substantiated allegations can result in a corrective letter, issuance of a Conditional License or license revocation.

In January 2014, DLRS findings of child abuse and neglect at a child care center in Lyman were publicly reported. These findings were from investigations in 2012 and again in 2013. The Division took no enforcement action in 2012 when there were findings of abuse and neglect. In 2013, a second investigation also had findings, but DLRS took no action for several months.

This case brought into question serious concerns about the safety of children in child care facilities as well as DLRS' performance with regard to the timeliness of investigations of allegations of abuse and neglect, and the timeliness and appropriateness of enforcement actions when investigations resulted in findings. According to some former DLRS employees, the Lyman case was not unusual. They reported a lack of enforcement action by DLRS on findings of licensure violations, high CCW caseloads that adversely affected their ability to perform their jobs and an unhealthy organizational culture causing employees to fear retaliation, including dismissal, for bringing forward issues of concern.

In response to the Lyman case, DLRS conducted an internal investigation and found both system and human errors to be root causes. The Division is currently implementing a strategic plan for FY14-15 that management feels will address many of the issues brought to light by the Lyman case. The strategic plan includes five broad initiatives: Resource Utilization, Accountability, Work Force Development, Provider Relations and Regulations/Statutes. Each initiative has a number of objectives associated with it. For each objective, the plan outlines action steps by calendar quarter for January 1, 2014 through June 30, 2015.

Some of the objectives DLRS is working on or has recently implemented are:

- hiring and training additional staff to reduce caseloads;
- implementing performance metric reporting;
- establishing a licensing action advisory panel;
- developing standard operating procedures and work flows;
- writing supervisor job descriptions;
- developing a web portal for parents to access information;
- instituting a differential monitoring program;
- developing an amnesty program for unlicensed child care providers who opt to seek licensure;
- and
- assessing the need for out of home investigation rules different from those of the Office of Child and Family Services.

DLRS provided OPEGA with a progress report as of June 15, 2014 for each objective (attached). In May, DLRS added 16 new positions including 13 CCWS, 2 supervisors, and 1 clerical position, using federal Child Care Development Block Grant funds (see attached June 2014 organizational chart). DLRS has hired and trained the new personnel. Currently the 13 new CCW positions are limited period, expiring in May 2016. DLRS plans to make these permanent positions in the next biennial budget. With the new CCWs, caseloads are now down from 180 to 82.

The Division has also begun to implement performance metrics for staff. Examples include making initial contact with complainants within 5 days of approval/assignment of a licensure complaint, requiring a narrative to be documented in the case file within 10 days of a complaint, and completing inspections of licensure violations and Out of Home Investigations of allegations of child abuse and neglect within 35 days. DLRS has also established the license action advisory panel and it meets weekly to consider enforcement actions; however policies and procedures for the panel have not yet been developed. According to DLRS, parents can now call or email the Division and obtain a child care facility's licensing history.

### **OPEGA's Recommendation**

Based on our preliminary research, OPEGA recommends delaying further detailed review for one year. DLRS has made some important changes to its organizational structure and licensing and enforcement processes. In addition, DLRS has many other changes in progress that it believes will improve the Division's functionality and ensure the safety of children in child care facilities. It is our assessment that the actions taken and planned will, if effectively implemented, address the concerns that led to this review topic being placed on our work plan. However, these changes, which are very recent or still in progress, have not been in place long enough to conduct a meaningful review of their effectiveness.

A year from now, OPEGA could assess whether DLRS implemented the specific objectives in the FY14-15 Strategic Plan, and if so, how well they are working to improve DLRS' performance. An OPEGA review in one year could also examine the extent to which the Division's practices, policies and procedures are adequate to ensure complaints alleging noncompliance of child cares with licensure requirements or child abuse or neglect are investigated and addressed timely and that children in child cares are safe and not at-risk.

Over the coming year, the Legislature may want to consider monitoring DLRS' implementation of its Strategic Map objectives via the Health and Human Services Committee or the GOC.

As previously agreed by the GOC, the issues regarding DLRS' organizational culture and treatment of employees will be incorporated into OPEGA's separate review of DHHS Organizational Culture, which is on the current work plan.

**OPEGA's Report on  
Healthy Maine Partnerships' FY13 Contracts and Funding  
Status of Government Oversight Committee Actions on Issues Identified**

**Issue:** Potential violation of Freedom of Access Act or intent to frustrate purpose of FOAA

**GOC Action:** On May 22, 2014, GOC sent letter to Attorney General Mills advising that Committee had received sworn testimony and other information suggesting there were actions taken by managers at Maine CDC that may constitute a violation of FOAA. GOC requested that AG's office review the information the GOC had received and investigate as deemed appropriate.

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**Issue:** Weaknesses in Records Retention Policies, Practices and Training at Maine CDC and Statewide

**GOC Action:** GOC intends to accept offer for AG's FOAA Ombudsman and the Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations with regards to improvements in the State's Records Retention framework. GOC will make formal request for this action via letter. GOC needs to agree on what the working group will be asked to do. OPEGA suggests the GOC request that:

- A. 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.
- B. The task force 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; and
  - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
- C. The task force also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
  1. 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.

2. 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.
  3. 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.
- D. In developing its recommendations and suggestions, the task force seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
- E. The task force 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.
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**Issue:** Lack of State-wide expectations and guidance for situations where agencies are making selection and funding decisions among competing entities without an RFP, including what documentation should be generated in such situations.

**GOC Potential Action:** Establish State-wide expectations and guidance for the described situations. There are still unanswered questions as to the best way to effectively accomplish this. These questions would potentially benefit from discussions with DAF Purchases and the Attorney General's office. GOC could consider directing OPEGA to explore options with these agencies and bring back more specific actions for consideration to a future GOC meeting.

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**Issue:** Potential lack of accessible, effective, and confidential (when necessary), avenues for employees to report, and get guidance/action on, concerns regarding violations of laws/regulations, State policy and procedures, or ethics.

**GOC Potential Action:** Enhance/improve existing avenues and/or establish new avenues. There are still unanswered questions as to what already exists for avenues and expectations associated with those, i.e. what are supervisors expected to do when an employee reports a concern, and how best to implement improvements if they are needed. These questions would benefit from discussions with other State agencies possibly including DAFS Human Resources, Legal Counsel within the Departments and Attorney General. GOC could consider directing OPEGA to explore these questions and options for improvements with these agencies and bring more specific information/actions for consideration to a future GOC meeting.

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**Issue:** Potential lack of clear and effective Codes of Ethics or Conduct for State employees to set ethical expectations and serve as guidance in day to day activities/decisions. Also to serve as the foundation for employees to report ethical concerns and hold individuals accountable when ethical standards are not met.

**GOC Potential Action:** Review existing ethical standards/Codes of Conduct and framework for communicating those to all employees. Could use the 2009 report by the Commission on Governmental Ethics and Election Practices (Report on Ethics Laws for Executive Branch Employees) as a foundation for this effort. Consider taking action on recommendations in that report or identifying other appropriate actions. This effort would likely benefit from discussions with representatives from appropriate State agencies, i.e. DAFS Human Resources and the Ethics Commission. It may also benefit from researching what exists in other states or model ethics standards for organizations.