



SEN. DEBORAH L. SIMPSON, CHAIR  
REP. DAWN HILL, CHAIR

MEMBERS:

SEN. RICHARD A. NASS  
SEN. JOSEPH C. BRANNIGAN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. DAVID TRAHAN  
REP. EVERETT W. MCLEOD, SR.  
REP. BRUCE A. BICKFORD  
REP. DAVID C. BURNS  
REP. PEGGY A. PENDLETON  
REP. MARGARET R. ROTUNDO

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**December 14, 2009**  
**Accepted January 22, 2010**

**CALL TO ORDER**

The Chair, Senator Simpson, called the Government Oversight Committee to order at 10:05 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Simpson, Sen. Nass, Sen. Brannigan, and Sen. Trahan  
Joining the meeting in progress: Sen. McCormick and Sen. Diamond

Representatives: Rep. Rotundo, Rep. Pendleton, Rep. Burns, and Rep. Bickford  
Absent: Rep. Hill and Rep. McLeod

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Jennifer Henderson, Principal Analyst, OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Etta Begin, Adm. Secretary, OPEGA

Executive Branch Officers and Staff Providing Information to the Committee: Ryan Low, Commissioner, Dept. of Administration & Financial Affairs  
Lucky Hollander, Director Legislative Relations, DHHS  
Denise Lord, Associate Commissioner, Department of Corrections

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

## OPEGA FINAL REPORT

- **Fund for a Healthy Maine Programs**

- **Continuation of the Public Comment Period**

The Public Comment Period on OPEGA's Fund for a Healthy Maine Program Report had been continued to this meeting.

Director Ashcroft said she had asked Commissioner Low and Grant Pennoyer, Director of the Legislature's Office of Fiscal and Program Review, to be at today's GOC meeting to answer Committee members' questions.

Chair Simpson recognized Commissioner Ryan Low.

Commissioner Low said his office read the Report and does not have any concerns about it or about segregating out the Fund for a Healthy Maine to a separate account. He suggested that any changes be done at the start of the 2012-2013 biennium because it is difficult to make program changes in the middle of a session. Commissioner Low said there would be fairly minor programming costs to change the system and although the costs are not substantial, the Bureau of the Budget could not at this time cover those costs.

The GOC's questions and comments follow.

GOC: Sen. Brannigan said he could not understand why there were not more people at the meeting to speak about the Fund for a Healthy Maine.

DAFS: Commissioner Low said he could not answer for everyone, but from the Administration's point of view the changes would provide more information to the Legislative Branch. He said the Administration knows exactly where they allocate the Fund for Healthy Maine resources, but that is not so on the Legislative side.

GOC: Senator Nass asked what the mechanism would be to move money in and out of the account if Fund for Healthy Maine had its own designated fund status.

DAFS: Commissioner Low said he did not think it would change how the Legislature does it now. The Administration has made minimal changes in the Fund for a Healthy Maine allocation since it started. It has shifted positions over to the Fund for a Healthy Maine and has moved funds around, and has swept funds into the General Fund in prior budgets, working with the Appropriations and Financial Affairs (AFA) Committee. He did not know if giving the Fund for Healthy Maine its own fund status would give it any more or less protection.

GOC: Sen. Nass referred to child care appropriations and expenditures that appeared in both the Fund for a Healthy Maine and General Fund programs and it is his view that legislators were not getting a sense as to how much is actually being spent.

DAFS: Commissioner Low said that to the extent the Legislature makes changes to the budget structure, it would be good to make sure that the Legislature would be in a position to use the additional information. In the past the Administration has spent time and money on making the requested changes in its system and those changes have not been able to carry through to the Legislature's budget system.

- GOC: Sen. Trahan commented that he saw the recommendations in the Fund for a Healthy Maine Programs Report as having potential to help the committees of jurisdiction get better information and then for those committees to look into the programs to make sure the money is being spent wisely. The Report gives the GOC and the committees of jurisdiction ideas on how the programs can be looked at to improve oversight function.
- GOC: Rep. Bickford asked if there has been an increase in the amount of money given to the programs since the Fund started.
- DAFS: Commissioner Low said DAFS and the Office of Fiscal and Program Review (OFPR) has a spreadsheet that shows the funding levels in the various Fund for Healthy Maine accounts going back over the years. He said there has been increases over the years but not substantial and in some cases there are statutory requirements on where additional resources could be allocated. The Administration does look at the total package and if they think there are opportunities or places where resources should be moved, they do propose those.
- GOC: Rep. Bickford asked if the Fund has helped reduce the State's cost for the programs it supports.
- DAFS: Commissioner Low said he believes there are a few areas where the Fund for a Healthy Maine resources are used and the State does not spend General Fund resources.
- GOC: Chair Simpson said the number one recommendation for legislative action in the Report was looking to assess whether the Fund dollars are being used most cost effectively in terms of the current public health goals. She asked if the Administration, while preparing the next cycle of budgeting, goes back to the Department of Health and Human Services or Director Dora Mills to see whether the Fund uses align with the new wellness goals for the State.
- DAFS: Commissioner Low said they meet with Commissioner Harvey and her team, she proposes allocations or readjustment based on information that she has. DAFS takes the information and documentation the Commissioner provides and looks at it in the overall context of the Fund. Other agencies also share their information with the Governor and make recommendations based on that. He said the Administration does see some shifting based on what the departments are seeing in the programs.
- Chair Simpson thanked Commissioner Low for the information provided.
- Chair Simpson recognized Director Hollander.
- DHHS: Director Hollander spoke to Sen. Nass and Rep. Bickford's questions. She said there are a number of programs that use their Fund for a Healthy Maine allocation to access federal money and child care is one of them. There has been either level funding or cuts in federal allocations to child care over the years and DHHS uses all of the child care money received from the Fund for a Healthy Maine for a very specific purpose. The money from the Fund accesses more federal money for child care.
- GOC: Sen. Nass asked if the same was true for General Fund child care money.
- DHHS: Director Hollander said she would have to check. DHHS has a complete accounting for early child care and Commissioner Harvey knows in total exactly what is spent. All of the money in the Fund for Healthy Maine is used as match.

Chair Simpson thanked Director Hollander.

Chair Simpson closed the public comment period and moved to the committee work session.

**- Committee Work Session**

Director Ashcroft also addressed Rep. Bickford's question of whether the Fund for a Healthy Maine was offsetting other State funds. Director Ashcroft said, as pointed out in the Report, the statute actually specifies that Fund for Healthy Maine funds need to be used to supplement and not supplant other State resources. OPEGA observed that the agencies were trying to stay pretty true to that statutory requirement. She noted that if Rep. Bickford was asking whether adding Fund for Healthy Maine funds to child care, for example, served to reduce the amount of General Fund funding to that and keep it at the same resource level, then the answer was generally no as that was not the intent expressed in statute. Rather the intent is to increase overall resources so that there is more capacity to provide more child care if that is what is needed.

Director Ashcroft then referred to Sen. Simpson's questions to Commissioner Low about the degree to which, on an annual basis, as they worked on the budget, the Fund is looked at in terms of whether it is being allocated to the different places where it might best support current health goals. The Director noted that OPEGA had reported observing that over the last ten years, as Commissioner Low suggested, the allocations to various programs have tracked pretty much the same. There have been some changes and some increases, but they tend to be applied across the board to all the programs so OPEGA did not see the Administration making significant shifts that looked like they were based on whether they believe they needed more in a particular program over another. Director Ashcroft also noted that in DHHS' comment letter submitted at the November 20<sup>th</sup> GOC meeting, the Department was in agreement with the Report's first Recommendation.

Director Ashcroft referred members to information in their notebooks showing an example of how the programs shown in the State budget might change if Recommendations 2 and 4 were implemented. She noted that this was intended to be an illustrative example only. It was created by OPEGA for those purposes and some data and descriptions in the example are fictitious. Director Ashcroft walked the Committee through the illustration.

Committee questions and comments included:

GOC: Sen. Nass asked if the State currently has activity codes.

OPEGA: Director Ashcroft said there are activity-type codes being used by the departments and there is a data field already in the State's accounting system to use for such codes. Some departments are using them, but OPEGA could not be sure how complete the data is that is being captured as departments may not be consistently applying those codes when processing their expenditures.

GOC: Sen. Nass asked whether he understood correctly that some departments are using those codes for their own internal purposes.

OPEGA: Director Ashcroft said the data field for such a code already exists in the State's accounting system. Implementing OPEGA's recommendation would be an exercise in deciding what activities costs should be tracked for and making sure the code is set up and being used consistently whenever accounting for expenditures.

GOC: Sen. Nass said Director Ashcroft had mentioned that there could be a downside to implementing OPEGA's recommendations and he does not see it.

OPEGA: Director Ashcroft said the potential downside lay in only implementing the recommendation to establish Fund for a Healthy Maine as its own fund and not implementing either of the other recommendations for restructuring the budgetary programs or making the activity codes useful.

GOC: Sen. Nass stated that with an activity code Fund for Healthy Maine would show up in the budget as a separate fund, as federal funds and the General Fund does, and it would also be possible to pull out the entire activity costs for just that Fund with all of its detail.

- OPEGA: Director Ashcroft said that is correct. The State has the capability, it is a matter of somebody designing how they wanted to use it to be able to provide the most useful level of information and using that procedure consistently.
- GOC: Sen. Simpson said the activity code function could show where else funds are being used on the same activity, not just on the Fund for a Healthy Maine funds, but the General Fund and other Special Revenues.
- OPEGA: Director Ashcroft agreed.
- GOC: Sen. Diamond asked how the Director would see implementing the recommended changes.
- OPEGA: Director Ashcroft said she envisioned it would require a work group of program and finance people to design what to set up for a budgetary and accounting structure. The program folks would know what might make sense to be tracking financially in order to match up resources with what they are trying to measure performance on. The DAFS folks would be familiar with the capabilities of the State's budget and accounting systems. Staff from OFPR should also be involved to represent the Legislature in terms of what information you would want to have available to you and how that information would flow between the Branches. It would involve figuring out what is desired for information, structuring and defining the names and content of the programs or activity codes, setting those up and then putting out policies and procedures to make sure that they are used consistently. The functionality to implement these changes already exists in Advantage ME. The State Controller's Office would probably need to take the lead in implementing the accounting policies and decisions and assuring they are consistently applied across the agencies.
- GOC: Sen. Diamond asked what the reality of making the changes would be.
- OPEGA: Director Ashcroft suggested that the Legislature could direct that a work group be formed to put together a proposal about how this could be implemented with an estimate of what it will take for resources. That proposal could come back to the Legislature for consideration and possibly a directive that it be implemented. Otherwise implementing any changes would be left to the Administration to get done on its own.
- GOC: Sen. Diamond expressed his concern that it end up on a shelf and never goes anywhere.
- OPEGA: Director Ashcroft said to some degree it would be incumbent upon the Legislature to want to see it changed and that either the GOC, the AFA Committee or another joint standing committee would need to oversee following it through to its final end result.
- GOC: Sen. Diamond said in the next three months the Legislature will have the budget as a priority and following that there will be a new Governor.
- OPEGA: Director Ashcroft said she agrees with Commissioner Low's suggestion that the more appropriate time for implementation would be the coming budget cycle and to work on the change over the interim as opposed to now. She said earlier this year the GOC and the AFA Committee Chairs and Leads discussed ways in which OPEGA could be helpful, particularly in getting the Legislature to a place where they had good performance and financial information available. This is an area where the Legislature could get better information and could get that alignment between financial and performance information. If the effort was put in for future years to come, the Legislature would have a different level of information available to it than is readily available now. These suggestions come from that discussion and OPEGA's thoughts about how to move the State in that direction with this situation as an opportunity to pilot such changes.

- GOC: Rep. Bickford noted that the illustrative example discussed how taking this approach would result in a model that allows one to see clearly how much progress in a particular program area is resulting from our appropriated and allocated funds. He asked how the progress would be measured, and how it would be correlated to the dollars being spent.
- OPEGA: Director Ashcroft said Rep. Bickford hit upon a piece that she had not expounded on. She envisioned that the Legislature would be requesting to receive, at the same time you are receiving the financial information, a report that tells you what the agency has been measuring regarding progress from these different efforts and what that progress looks like. There is already a report of this type called the Challenges Report that is submitted to the Legislature every year. It does not appear that it would take a lot to restructure that report to align with restructured budgetary programs and activity information. In fact it may be easier for the agency to communicate with the Legislature directly about, for example, cardiovascular health or tobacco. Having the agency provide that same kind of performance information at the same time that you have the financial piece, could make discussions about Fund uses much less confusing and more valuable.
- GOC: Rep. Bickford said he thinks it is a concern if the Legislature gives money to address certain issues year after year and does not know if goals are being met.
- OPEGA: Director Ashcroft said OPEGA is trying to help put the Legislature in a position to ask those questions and to be able to get those answers more easily than it can be done now.
- GOC: Rep. Rotundo said most are mindful about how under resourced the State is at this point. She noted that when the AFA Committee asks OFPR to do work for them they are sensitive to the fact that they cannot ask them to do everything and they have to prioritize the requests. She wondered if it would be helpful to have input from the Health and Human Services (HHS) and AFA Committees on their assessment of whether staff resources should be spent right now on the work that would need to be done to implement these recommendations versus other work the committees needs staff to do. Those committees might come back and say this is a great idea, but if we are going to have staff working on something, we would rather have them working on x, y or z because at this point in time, that is of greater value to us. She said she was putting that out to the GOC because of limited staff time and although these suggestions are very helpful, there might be things that are more important to the people of Maine at this point.
- OPEGA: Director Ashcroft said that is why the illustration was given to the GOC so they could see what the end result would be and could better assess whether it is something that would be beneficial for the next year or it is something that you want for the future, but is not the priority right now. OPEGA's role is to help the Legislature move in a direction it wants to go.
- GOC: Rep. Rotundo said it may be a priority of the GOC, but putting together a special committee to work on this when the HHS and AFA Committees might rather have that group working on something else that is more pressing is what she is concerned about.
- GOC: Sen. Trahan said in OPEGA's statute there is a section on the sharing of resources with the other offices, OPLA, OFPR and State Auditor. He said this is one of those items that falls into that category of letting these folks move forward with direction from the GOC. He said during the time that the Legislature is not here there are more resources available to do this type of work collaboratively. Perhaps the GOC should take a look at that part of the statute to give these offices flexibility in figuring out how to meet any GOC directive for them to do this for the next budget cycle.
- GOC: Sen. Nass said he thinks this process would bring more benefit to Legislators in the budgeting process than the amount of effort he thinks it will take.

- GOC: Rep. Rotundo said it is not that she does not support the recommendations or think they are a good idea, but she is concerned about time. For example, if there had been chunks of time taken out of OFPR to work on this as opposed to what the AFA Committee needed them to be working on this past fall she would have been concerned. She believes the recommendation should include some opportunity for prioritizing so that those who are asked to be involved can work on more pressing issues that the Legislature needs to have them working on.
- GOC: Sen. McCormick asked Rep. Rotundo if her work would have been easier when trying to identify a program or a place to realistically make cuts with the least harm if she had this information. He believes that is the goal down the road.
- GOC: Rep. Rotundo said she was not against implementing changes, she just thinks priorities have to be kept in mind.
- GOC: Sen. Brannigan said it seems that because of the budget problems some programs will have to be done away with and it is not the time to invest in a major process to get this restructured, and thinks it is premature.
- GOC: Sen. Trahan said it is up to the GOC when it asks OPEGA to do a review to act on the GOC's priorities. If the GOC really wants OPEGA to find places to cut costs as opposed to identifying opportunities for improving processes and information, then the reviews the GOC directs OPEGA to conduct, and the scope of those reviews, should reflect that priority.
- GOC: Sen. Diamond said that for the next two months it is all about money. Director Ashcroft appeared before the AFA Committee last week to discuss OPEGA's work on contracts and how that might generate some cost savings opportunities. He expressed to Director Ashcroft at that time it was important for the AFA Committee to have whatever OPEGA's work generated by the end of January so they can act on it as part as the budget process. He said that in these unusual times, it is all about money and he hopes the GOC would give priority to helping the Legislature find the best way to make whatever reductions the Legislature has to make to fill the budgetary gap.
- GOC: Sen. Simpson said she sees OPEGA's Report as a useful tool, and the task today is whether the GOC accepts the Report.
- OPEGA: Director Ashcroft reminded the Committee that its work session usually involves considering whether or not to endorse the Report and then separately considering whether the Committee would like to take any specific action on the recommendations. She said she was not suggesting that the recommendations in this Report had to be implemented immediately but they do offer a path to improving things for the Legislature at some point. The GOC has handled such situations in the past by acknowledging the timing is not right and asking OPEGA to bring the suggestions back before the GOC at some specific point in the future for their reconsideration. Other alternatives are to send the recommendations to one of the other committees for consideration, but what she is hearing is that every committee's priority right now is something other than finding ways to improve the system for the future.
- Motion:** That the Government Oversight Committee endorses OPEGA's Fund for a Healthy Maine Programs Report and then will look at the Report's individual Recommendations in terms of timing and priority. (Motion by Sen. Diamond, second by Sen. Trahan, PASSED, unanimous).

Chair Simpson moved to the Report's Recommendation.

**Recommendation 1 – Allocation of FHM Funds Should be Reviewed in Context of Changing Health Environment and Goals**

Chair Simpson suggested that Recommendation 1 be referred to the HHS Committee to look at in terms of the alignment of the use of funds of the Funds for a Healthy Maine and the public health goals.

GOC: Sen. Brannigan said if the Recommendation was referred to the HHS Committee and depending on how much the AFA Committee asks them to do, this would not be dealt with until the interim.

**Motion:** That the Government Oversight Committee refers Recommendation #1 to the Health and Human Services Committee for their consideration and possible implementation. (Motion by Sen. Nass, second by Sen. Trahan, PASSED, unanimous).

**Further Discussion:** Sen. Nass asked if the GOC needed to be more specific about a report back.

Director Ashcroft asked whether the GOC wanted to refer the recommendation via a letter or whether they wanted OPEGA and members of the GOC to go before the HHS Committee when they are in session to explain why it had been referred to them.

Sen. Simpson suggested waiting until later in the session or even during the interim. Director Ashcroft suggested that she and the GOC should plan to get before the HHS Committee late in the session so HHS could make plans for whether or not they wanted or needed to meet during the interim.

**Recommendation 2 – Budgetary Programs Should be Better Aligned With State’s Health Goals, Efforts and Related Performance Information and Recommendation 4 – Costs for Major Activities Within Budgetary Programs Should be Tracked Within the State’s Accounting System**

Sen. Nass said he thought that the right time to get a work group involved in making improvements to future budgets would be as people start thinking about the next budget cycle. He acknowledged this may be difficult because there will be a new campaign and a new Legislature.

Sen. Simpson asked if Sen. Diamond thought this might be something for the AFA Committee to consider during the interim.

Sen. Diamond believed Commissioner Low would have to be involved. The AFA Committee could look at these during the interim but given the priorities of what is before it, he did not want to make any commitments right now.

Director Ashcroft suggested that OPEGA bring these Recommendations back before the GOC later in the session once the budget is done. At that time, the Committee would be able to see what the fiscal environment and situation is and whether it makes sense to put together a work group over the interim. What OPEGA is suggesting needs to be figured out is at such a detail level, she is not sure that the AFA Committee, as a committee, would need to be involved in actually doing the work so much as monitoring whether it is getting done and whether the work group has come up with a plan that could be implemented.

Sen. Diamond supported bringing the recommendations back to the GOC at a later date and then deciding what to do at that point.

Sen. Nass said there is nothing wrong with holding action on these Recommendations until a future date. They offer a chance for improvements and just because the Legislature is engaged in a crisis right now doesn't mean the ideas need to be thrown overboard, clearly they need to be pushed forward at some point.

Sen. Simpson said certainly OFPR can start working with the Administration in terms of preparing for it.

**Motion:** That the Government Oversight Committee table Recommendations 2 and 4 until the Legislature is back into session and move forward when the GOC has a better understanding of what committees are going to be looking at it. (Motion by Rep. Bickford)

Chair Simpson determined that no motion was needed because the GOC's action was to bring Recommendations 2 and 4 back before the GOC during the Legislative Session.

### **Recommendation 3 – Budget Descriptions Should be Updated and More Specific**

Director Ashcroft said this Recommendation for updating the budget's program descriptions and making them more specific could be done for the next budget cycle. OPEGA is suggesting that the GOC, or probably the AFA Committee, decide what kind of description is desired that gives enough specificity so that when legislative committees are looking at the budget document they have a better idea of what the funds are procuring. Director Ashcroft said she believes the Department of Health and Human Services has already committed to working with the Bureau of the Budget to improve descriptions that speak to Health and Human Services programs. None of the other departments that have Fund for a Healthy Maine programs have been asked to respond to this suggestion. However, the AFA Committee could give the Bureau of Budget guidance as to what it expects to see in the program descriptions and that guidance is something the Bureau could easily incorporate into their work with the agencies in the next budget cycle.

Sen. Trahan believes this is an area where the Government Evaluations Act could be reprioritized to give more specific information.

**Motion:** That the Government Oversight Committee send a letter to the AFA Committee and ask if they would request that the departments work on improving the program descriptions included in the budget document. (Motion by Sen. Trahan, second by Sen. Brannigan, PASSED, unanimous).

Director Ashcroft summarized the motion. She will draft a memo to the AFA Committee letting them know that the GOC has taken up the Recommendation, that the GOC thinks it is worthwhile to pursue and you request that the AFA Committee let the departments know that they expect to see them working toward clearer budget descriptions. The letter would be copied to the departments.

## **RECESS**

The Government Oversight Committee recessed at 11:21 a.m. on the motion of the Chair.

## **RECONVENED**

The Chair reconvened the meeting at 11:39 a.m.

## **SUMMARY OF THE NOVEMBER 20, 2009 MEETING**

**Motion:** That the Meeting Summary of November 20, 2009 be accepted as written. (Motion by Sen. Nass, second by Sen. Brannigan, unanimous).

## **NEW BUSINESS**

### **• Project Direction Recommendation Statement – Medical Services in the Correctional System**

Director Ashcroft said OPEGA has completed its preliminary research phase on this project and has a recommendation regarding what the scope of more detailed work on the review might be.

Director Ashcroft said OPEGA's recommendation is that it continue the review with a focus on the Department of Correction's management of the contracts with the two largest vendors that provide the majority of the Department's medical services. Such a review would address the question: *How well does the Department of Corrections manage its contracts for medical, dental, pharmaceutical, and adult mental health services to ensure compliance with contract terms, conditions and expectations with regard to performance, quality and costs?*

The scope of the question would include most of the healthcare services the Department procures for inmates. It would not include any substance abuse services or juvenile mental health services as those are provided by a number of different providers and increasing the scope to cover all of the vendors would greatly expand the project.

The Director noted that focusing on this question would allow OPEGA to opine on whether Corrections has processes in place that should ensure contractors are in compliance with their contracts. However, it would not necessarily result in independent verification by OPEGA as to the contractors' level of actual compliance with the contracts. The state of the contract management system currently in place, as well as any time and resource considerations for OPEGA, would impact the level of detail it would be reasonable for OPEGA to pursue.

In addition, focusing on this question would not produce an OPEGA opinion on whether services provided are of high quality or reasonable cost and may not address all of the varied concerns that prompted a review of this topic. However, OPEGA is recommending this approach because the Department of Correction's contract management capabilities is foundational to the other concerns raised and any necessary improvements would need to begin there in order to be sustained.

Director Ashcroft referred to the GOC's earlier discussion regarding priorities stating that this is where the GOC should make it known whether it wants OPEGA focused on something different related to this topic than what has been recommended. That is what this discussion is supposed to be about. OPEGA is looking to the GOC for its input and approval on how to move forward.

The GOC questions and comments included:

GOC: Sen. Brannigan asked if OPEGA got a hint of anything that was out of line or saw something the Department of Corrections (DOC) was not doing that would encourage OPEGA to take a look at.

OPEGA: Director Ashcroft said that this request had come to OPEGA from two avenues. One of those was a request from a legislator who had wanted to propose a bill for an OPEGA review of this in the last session because he was hearing from constituents that the contractor might not be in compliance with the staffing levels and the quality of staff that they were suppose to be providing. His concern was that the State may be paying for something that it was not getting.

GOC: Sen. Brannigan asked if the Director had been surprised to learn that every inmate got a negative response from DOC for any type of medical grievance.

OPEGA: Director Ashcroft said OPEGA had noted that the majority of the grievances had been denied, but some had been sustained and about 26 others had been sent back for reconsideration.

GOC: Sen. Diamond asked Associate Commissioner Lord if the Corrections Advisory Alternative Report included a review of the contract piece.

DOC: Ms. Lord said there were several recommendations around medical contract management that focused primarily on whether economies of scale could be gained through joint purchasing, particularly of pharmacy goods, and the Department has moved forward on that.

GOC: Sen. Diamond asked Ms. Lord what her response was to OPEGA's Project Direction Recommendation.

- DOC: Ms. Lord said she was pleased with OPEGA's accumulation of the information on this topic and the way it had been presented. She commented that the Department can always use good assistance in improving contract management. She said she is very open to that suggestion if that is the way the GOC wants to proceed. She said Corrections has been putting a lot of their time into direct care so if they could get help with how they manage the contracts to gain better efficiencies or better quality, she is wide open to that.
- GOC: Sen. Diamond asked, in terms of timing, does Ms. Lord think it would be better for the DOC to do this after the session or can the Department work on budget matters and this at the same time.
- DOC: Ms. Lord affirmed that Corrections is strapped. Being subjected to OPEGA's review would require some effort on DOC's part and it is possible that would detract from other work.
- GOC: Sen. Nass asked for clarification of what contract management is.
- OPEGA: Director Ashcroft explained that contract management encompasses the processes and mechanisms being used to make sure that both the DOC and the vendor comply with the terms, conditions, and performance expectations, whether they are quality or financial, that are in that contract. If the contract calls for a particular staffing level and qualifications for those individuals for example, how does the Department assure itself that the contractor is in compliance with that and what does the Department do if it sees indications or has measurements showing that requirement is not being met. Do they apply any financial or other penalties that might be associated with that in the contract, etc. It is the whole realm of trying to make sure that everybody is complying with what is contained in the contract. In this particular case, the contract with CMS that OPEGA has reviewed has a lot of specifics in it in terms of what the vendor is expected to do and provide and is one of the better contracts in terms of being able to perform a comparison of what we are getting compared to what we are supposed to get. In this case, OPEGA would not be planning to review how the vendor is selected, although that is also sometimes part of a contract administration review.
- GOC: Sen. Nass said he would be in favor of OPEGA's recommended direction on this project.
- GOC: Sen. Diamond said he wanted to make sure the GOC takes into consideration the time that the AFA Committee will be taking of DOC over the next two months and to keep that in mind when the GOC decides on the scope of this review.
- OPEGA: Director Ashcroft said that unless the GOC has given a review high priority and it needs to get done, OPEGA typically works with the agency around staff availability and tries to minimize disruption of operations and other priorities. Of course, OPEGA also has to keep itself productive as well. OPEGA would encourage Ms. Lord to let her know if we have asked for something that they cannot do within the requested timeframe so OPEGA can adjust its work as it needs to. If it got to a point where that would delay a review, Director Ashcroft would be reporting that to the GOC so that the Committee would know the Department can't meet what we need right now, and what the impacts of that are. She would make the GOC aware that OPEGA was not going to meet the expectations of the GOC in terms of time frame for completing the review and OPEGA would proceed with the department as appropriate.
- GOC: Sen. Trahan said he sees an emerging theme from the departments that are coming before the GOC in that they are all saying that they are strapped because of the budgetary problems. He said the GOC may want to be careful in allowing them that excuse every time as a reason to either delay or change a review or put it off into the future. He said the oversight of the agencies is important and the GOC has to have confidence in OPEGA and give them the needed flexibility but still maintain an appropriate level of oversight. He is concerned about giving the departments a blank check for an excuse in the future for not providing timely information during a review.

GOC: Sen. Nass said the Legislature and the taxpayers have the right to expect that the departments, however strapped they are, are still functioning well. If they are not, that is a problem the Legislature needs to address.

**Motion:** That the Government Oversight Committee accepts OPEGA's Recommendation for Project Direction of the Medical Services in State Correctional Facilities to continue the review with the focus on the Department's management of contracts. (Motion by Sen. Nass, second by Sen. Trahan).

### **Further Discussion**

GOC: Sen. Brannigan said he has sympathy for the fact that departments are pretty near the bone in cutting back. He suggested that if the DOC could complain to the Committee of oversight if they are being hassled or asked to do more than they can in terms of providing requested information.

GOC: Sen. Diamond said that Senators Trahan and Nass raised good questions and concerns about ongoing excuses. However he feels this is going to be an unusual next few months in trying to deal with budget issues and his concern is that meeting OPEGA and the GOC's requests during the review could take a lot of the Department's time in the short window. He doesn't want the Department to be distracted from working on solutions to the budget problems but after that he would expect all departments, including DOC, to meet their obligations as subjects of a review.

GOC: Rep. Burns said he agrees with Sen. Diamond. He said the State is in difficult times and is going to have to take some extreme measures. However, we will be out of these difficult times in the near future and when that occurs, he does not want to hear the excuse that a department is too busy or at the bare bone and can't manage the department. That is the cost of doing business and departments have to manage their workloads or they have no value. For departments to say they are too busy to let the Legislature know what they are doing is not good enough.

**Motion:** That the Government Oversight Committee accepts OPEGA's Recommendation for Project Direction of the Medical Services in State Correctional Facilities to continue the review with focus on the Department's management of contracts, allowing some flexibility for the current budget situation. (Motion by Sen. Nass, second by Sen. Trahan, PASSED, unanimous).

### • **Review of Quarterly List of Requests Received**

Director Ashcroft referred members to the list of requests and said because 2 and 3 deal with the correctional system the GOC may want to take those up first while Associate Commissioner Lord is at the meeting.

#### **- Maine State Prison Inmates at County Jails**

The possible areas of focus are:

- Standardization of rules and policies for State inmates housed at county jails.
- Consistent application of policies and rules for DOC-run facilities to State inmates held at county facilities.
- Disparate treatment of State inmates and their safety in county jails.
- Access to adequate medical care comparable to that received by inmates at State correctional facilities.

Additional information provided was that standardizing procedures for how State inmates are treated in county jails is one of the goals of the State's Board of Corrections. According to the Board's Chair, all the different county procedures including medical and pharmaceutical services will need to be standardized before the whole system can be addressed.

The GOC discussed the work that is being done at this time by the State Board of Corrections and the Criminal Justice and Public Safety Committee and felt this request for a review of this topic is premature at this time.

**Motion:** That the Government Oversight Committee take no further action on the Maine State Prison Inmates at County Jails request. (Motion by Sen. Brannigan, second by Sen. Nass, PASSED, unanimous).

#### **Further Discussion**

GOC: Sen. Nass asked if OPEGA notifies the person who made the request why the GOC voted the way they did.

OPEGA: Director Ashcroft said the information is conveyed to the requestor.

#### **- Inmate Programs at Maine State Prison**

The possible areas of focus are:

- Availability of inmate programs and impacts of inmate program reductions.
- Opportunities to improve rehabilitation programs available to inmates.
- Alternative methods for maintaining rehabilitation programs.

Director Ashcroft mentioned that, according to the Department of Corrections, some programs of short duration have been halted temporarily and others like Industries are routinely run while others are not offered until enough people sign up. Some of the educational programs are dependent on volunteers as well as staff which can impact whether or not they are available.

GOC: Sen. Diamond believes it would premature to review this request until all the programs have been considered as part of the current budget exercise and we see what is left.

**Motion:** That the Government Oversight Committee takes no further action on the Inmate Programs at Maine State Prison request. (Motion by Sen. Diamond, second by Sen. Trahan, PASSED, unanimous).

#### **- Maine State Police**

Director Ashcroft introduced Jennifer Henderson, Principal Analyst of OPEGA, for the presentation of this request. She disclosed that she has a conflict of interest regarding the topic in that her spouse is a member of the Maine State Police. Consequently, she removed herself from having any involvement with OPEGA's work on this request.

Ms. Henderson said the topic is a legislator request and the possible areas of focus are:

- Accuracy, completeness, equitability of Maine State Police (MSP) promotion process.
- Assessment of MSP culture and work environment.
- Impact, if any, on public safety.

A constituent and others at MSP have raised issues regarding the equitability of MSP's promotion process. Issues have also been raised concerning the organization's culture/environment and possible weaknesses in the avenues available to employees for raising concerns.

GOC: Sen. Brannigan said the Maine State Police has a strong union and asked why those concerns are not being taken to the union.

GOC: Sen. Nass said he has received calls from State Police saying the promotion system is not fair. His inclination would be to put the request "On Deck".

GOC: Sen. Diamond agreed that the State Police has a strong union and the GOC should not get into the middle of it at this point and moved for no further action on the request.

**Motion:** That the Government Oversight Committee takes no further action on the Maine State Police request. (Motion by Sen. Diamond, second by Sen. Brannigan).

**Further Discussion:**

GOC: Sen. Trahan said he agreed with the motion as he will be reprioritizing his requests for OPEGA reviews to base them around ways to save money. OPEGA is intended to be utilized to address legislative priorities and he does not think pursuing this topic at this time would be doing that.

GOC: Sen. Simpson said the intent for OPEGA is saving money and making sure the money we spend is being used appropriately.

GOC: Sen. McCormick said one of the concerns raised here is about the avenues available to employees for raising concerns. If that is the issue and the avenues are not sufficient, is OPEGA the appropriate place for lodging complaints.

GOC: Chair Simpson asked if OPEGA had any other information on the request.

OPEGA: Ms. Henderson said OPEGA has heard from more than a small handful of people who have expressed these concerns and that OPEGA has not called out the union itself as a specific issue.

GOC: Rep. Pendleton said she had initiated this request for review for a constituent because he had been trying to work through the process for two years. He has been told by the union that they cannot help him because they have Civil Service Rules. He goes back to the Department and they tell him they go by Civil Service Rules, but really don't. One issue is that people getting promoted are less experienced than others and she noted an incident that happened in York County several years ago. Rep. Pendleton said the documentation she has received from the constituent is extensive, including documents from the union, the Human Resources Office and the Department of Public Safety.

GOC: Sen. Brannigan asked how many individuals OPEGA heard from regarding the request.

OPEGA: Ms. Henderson said OPEGA has heard from approximately a dozen individuals.

GOC: Rep. Bickford asked if the requestor had brought the concerns before the Human Rights Commission.

GOC: Rep. Pendleton said that a Human Rights complaint had been filed.

GOC: Rep. Burns disclosed that he spent twenty-four years with the State Police and has two sons in the Department. He said that if the GOC decided to review the request the Agency would not suffer from it and could stand the scrutiny. On the other hand, having worked there, he knows there has always been an issue and, like other departments and agencies, the biggest concern comes from those who have not been promoted. He said he does not know if that is the situation, but they do have the union and a grievance procedure.

- GOC: Sen. Simpson said she is going to support the pending motion because she is concerned that using OPEGA for this kind of human resource complaint might dilute the importance of some of the larger issues facing the State. She is not saying it may not be a topic of interest at some point in time, but not at this time.
- GOC: Sen. Diamond asked if the matter had been brought before the Legislature's committee of jurisdiction.
- GOC: Rep. Pendleton said the constituent did talk with Sen. Gerzofsky, Chair of the Criminal Justice and Public Safety Committee and he referred the person to her.
- GOC: Sen. Diamond asked if the full Criminal Justice and Public Safety Committee was requested to look at the issue.
- GOC: Rep. Pendleton said her constituent only talked with the Senate Chair.
- OPEGA: Ms. Henderson said the GOC could request OPEGA to bring back more specific information or the request could be sent to another committee or body that would be appropriate to handle it.
- GOC: Chair Simpson said the GOC can vote on the pending motion and then have a new motion to send it to the Criminal Justice and Public Safety Committee.
- GOC: Sen. Nass asked if Rep. Pendleton had a sense as to why the union is not functioning well with regard to this individuals' issue.
- GOC: Rep. Pendleton said there is confusion over the Civil Service Rules and how the promotions are handled. There appears to be two different interpretations and each body the constituent has been to says they do not have jurisdiction over the issue.

Sen. Diamond withdrew his motion for no further action on the request and Sen. Brannigan withdrew his second.

**Motion:** That this matter be referred to the committee of jurisdiction, the Criminal Justice and Public Safety Committee. (Motion by Sen. Diamond, second by Sen. McCormick, PASSED, unanimous).

## UNFINISHED BUSINESS

- **Personnel Matters (Executive Session)**

**Motion:** Pursuant to 1 MRSA section 405, subsection 6A, the Government Oversight Committee moves into executive session for the purpose of discussing the performance evaluation of the Director of OPEGA and her request for reappointment. (Motion by Sen. Brannigan, second by Sen. Nass, PASSED unanimous).

The Government Oversight Committee recessed at 12: 40 p.m. to go into an executive session.

The Government Oversight Committee adjourned its executive session at 12:58 p.m. (Motion by Rep. Bickford, second by Sen. Nass, PASSED unanimous).

Chair Simpson reconvened the Government Oversight Committee meeting at 12:58 p.m.

- **Potential Changes to OPEGA Statute Regarding Confidentiality of Work Papers**

The GOC did not discuss this item.

## REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

### **Public Safety Answering Points and Dispatch Centers**

Sen. McCormick said he does not know how many incidents are occurring but he received information where a person involved in an automobile accident called 911, an hour went by with no response, dialed 911 again and was referred to the Augusta Police Department. The caller explained she did not want Augusta, she wanted the Hallowell Police Department. Augusta asked her if it was in regards to a dispatch to Winthrop Street in Augusta, and she said it was in reference to Winthrop Street in Hallowell so she needed the Hallowell Police. He said this is another example of the problems.

- **Update on Briefing to AFA on December 10, 2009**

Director Ashcroft referred the GOC to the information in their notebook that she had provided to the AFA Committee. The information contained a summary of the work OPEGA has done in reviewing professional and administrative contracts. She had asked the AFA Committee for input on whether OPEGA should proceed with its plan to take the subset of 69 contracts identified and proceed to ask questions of the agencies about those or similar contracted services or whether they would like OPEGA do something else that would be of more help to them. The AFA Committee determined they wanted OPEGA to proceed with what it had planned to do. OPEGA committed to completing that work by the end of January.

- **Information on Evaluating Tax Incentives**

Director Ashcroft referred to Sen. Nass' comments at the last GOC meeting that committees were talking about wanting to evaluate tax incentives, but did not know what the next step should be. Director Ashcroft said an OPEGA analyst came across work that is being done by an OPEGA peer office in the State of Washington regarding tax incentives and she wanted to share that information with the Committee. She familiarized the GOC with the materials in their notebooks that were excerpts of reports taken from the website of OPEGA's peer in Washington State.

Sen. Nass asked if the Director could find out if the State of Washington had a sunset review process.

Director Ashcroft mentioned that she planned to forward this information with a cover memo to the Analysts for the Committees for AFA, Taxation and Business, Research and Economic Development so they would be aware in case it was an approach that Maine was interested in pursuing.

## NEXT COMMITTEE MEETING

- **Discuss and Schedule Committee Meetings for January through March, 2010.**

The Committee will resume its meeting schedule on its approved meeting days of the 2<sup>nd</sup> and 4<sup>th</sup> Friday of the month through March, unless it decides to do differently. The next GOC meeting was scheduled for Friday, January 8, 2010 at 9:30 a.m.

## ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 1:13 p.m. on the motion of Sen. Nass, second by Sen. Trahan, unanimous.