



SEN. ROGER J. KATZ, CHAIR  
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. NANCY B. SULLIVAN  
SEN. DAVID TRAHAN  
REP. DONALD E. PILON  
REP. ANDREA M. BOLAND  
REP. JOYCE A. FITZPATRICK  
REP. LESLIE T. FOSSEL  
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

**November 15, 2011**

**Accepted January 6, 2012**

**CALL TO ORDER**

The Chair, Senator Katz asked Committee members if there was objection to calling the meeting to order without a quorum. Hearing none, the Government Oversight Committee was called to order at 9:14 a.m. in the Burton Cross Building. The Committee had a quorum at 9:20 a.m.

**ATTENDANCE**

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

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

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

Executive Branch Officers  
and Staff Providing  
Information to the Committee: Joseph Ponte, Commissioner, Department of Corrections  
Kim Robbins, Health Services Coordinator, Department of Corrections  
Patricia Barnhart, Warden, Maine State Prison  
Officer Dube, Correctional Officer, Maine Correctional Center  
Charlie Charlton, Unit Manager, Special Management Unit, Maine  
State Prison  
Sergeant Kozlowski and Officer Chadwick, Maine State Prison

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**SUMMARIES OF THE MAY 5 AND OCTOBER 18, 2011 GOC MEETINGS**

The Meeting Summaries of May 5 and October 18, 2011 were accepted as written.

## NEW BUSINESS

- **Presentation of Final Report on Health Care Services in State Correctional Facilities**

Director Ashcroft presented OPEGA's Report on Health Care Services in State Correctional Facilities.

Sen. Diamond noted that the DOC correctional facilities are ACA accredited and was curious how the deficiencies noted in OPEGA's report would be reflected in the accreditation process. He asked if the accreditation reports acknowledged the deficiencies, but the accreditations had been granted in spite of that, or were the deficiencies not mentioned by the accreditators. Director Ashcroft said OPEGA did not look at the reports from past accreditation themselves, but had inquired about the status of the accreditation for each of the facilities. OPEGA was told that the Maine Correctional Center had recently undergone its reaccreditation with good results and that most are up for reaccreditation in 2012. The consultant's review was done in the fall of 2010 so there were not recent accreditation reports to match up with that time frame. The Director could not say whether prior reports had picked up the deficiencies in medical services, or what will be noted in the accreditations done in 2012. Sen. Diamond thinks the noted flaws did not just appear, but have been there for awhile and he is concerned with the accreditation process itself. He would like to know whether the accreditation process would identify these same deficiencies.

He also had concerns regarding issues identified with the medical files not being complete or consistently maintained, and MDOC's systems for monitoring contractor performance being inadequate. It puts the State in a vulnerable position, including from a financial side, and he would like assurance that those issues have been or are being addressed.

In response to Sen. Sullivan's questions Director Ashcroft provided the following information:

- Health care service requirements, such as the requirement for annual physicals, are set in DOC's prisoner health care policies. Those policies include requirements and procedures that are supposed to reflect the national standards of correctional health care and those policies become the standard of care that contracted providers need to meet. The requirement for vendors to comply with DOC policies are woven into the DOC's contracts with the vendors. So even if annual physicals are not specified in the contract the vendor is expected to provide it because it is required in DOC's policies.
- DOC contracts with the vendor to provide the services, so is the vendor's responsibility for meeting the service levels that DOC has contracted for.
- Most of the health care in the facilities was being delivered by contracted staff, but there was also some State nursing staff. This combination caused confusion about who was supposed to be supervising who, and created tension and friction in some of the correctional facilities.
- The vendor, CMS, has had problems maintaining the staffing levels that were required by the contracts.
- Each correctional facility had a different method for tracking when annual physical assessments were due even though the health care is provided by the same vendor. All of the tracking systems were a manual process so had room for error. The vendor had not created a consistent and effective means of tracking the health care for the whole system.

Sen. Sullivan noted there appears to be no penalties or accountability to vendors for not meeting contract provisions and the State does not do enough to follow up on whether the vendor is performing as expected for the money they are receiving. Director Ashcroft agreed.

Chair Katz said perhaps CMS should not be allowed to bid on the new RFP that DOC will be putting out given the deficiencies identified in OPEGA's Report. Director Ashcroft said the past Administration did not feel

comfortable that the work of OPEGA's consultant provided sufficient evidence there was a significant and pervasive problem throughout all of Corrections. DOC had also claimed they were taking action on some of the issues identified in their management meeting minutes they just did not document or record what had been done to resolve the issues. Consequently OPEGA had not gotten to a place where everyone agreed on how pervasive the deficiencies were with regard to the contractor before the Administration changed. What was clear was that DOC was not doing independent assessments of the contractor's compliance. They were allowing CMS to self-report, and not doing a lot of independent auditing. When OPEGA's consultant presented results that appeared to be in conflict with what CMS itself was reporting, DOC did not have a way to determine which may be correct. The plan had been for DOC, in conjunction with OPEGA, to pull a larger sample of files and help them see what the pervasiveness of the issues were. However, that also did not occur prior to the changes in Administration and the new Administration has not needed that additional testing in order to move forward in addressing issues with CMS.

Chair Katz noted, even though only a small amount of files were reviewed, half showed no evidence that medications were properly being administered, that 60% did not have appropriate documentation on intake and other information needed, and 1/3 of the prisoners in the sample at the State Prison were not getting physicals pursuant to the contract. CMS' performance of the contract is totally unacceptable and he didn't think they should be considered for continuing to provide services for DOC.

Sen. McCormick asked if there was evidence that some prisoners were scheduled for the annual physical, but chose not to have one. Director Ashcroft said she did not know.

Sen. Diamond asked if DOC had options for contractors other than CMS and Correct RX to provide health care services. The Director said when DOC issues its RFP for the health care services contract it is expected there will be multiple firms that bid.

Chair Katz asked if CMS' contractual payment was impacted for times they were short staffed. Director Ashcroft said financial penalties had not been applied although there were penalties allowed for under the contract. OPEGA's consultant noted that there appeared to be a shifting of the staffing. For example, while not all the LPN positions were filled, there were additional people in other positions beyond what the contract required. So while DOC could have imposed financial penalties for not fulfilling the staffing requirements, DOC did not do that because additional staff had been added in other positions. It was becoming convoluted to figure out and this is another area where the new administration has plans for monitoring the staffing, penalties and the billing associated with staffing, in a different way than the past administration.

Chair Katz asked if there could be a prisoner with no record at all of what prescriptions he was given. Director Ashcroft said based on the results of the consultant's review of information for September 2010, and medications being distributed at that time, it seemed there could be a prisoner with no record. Chair Burns did not see how they would be able to reconcile the amount of medications that were available to the number that had been taken by prisoners given the deficiencies in the medication administration records. Such reconciliation is key to making sure medications are not being diverted.

Several GOC members wanted to know if the New Balance running shoes the State had been buying prisoners was included as a medical expense and if it was something the vendor charged in addition to their basic contractual arrangement. Director Ashcroft said the sneakers had been a prescribed item and believes they had been captured in medical expenses. She does not know if the cost of them was covered as part of the standard contract payment to the vendor or was an additional expense.

In response to Chair Katz's question of how much of DOC's costs were being reimbursed by MaineCare or a prisoner's private insurance, Sen. Craven said it was her understanding that if someone was in prison, the prison has to pay for the services, but when somebody goes to the hospital, MaineCare kicks in and pays for the medical services.

Chair Katz recognized Commissioner Ponte.

Commissioner Ponte said his first involvement in this review was as a participant in a conversation with Director Ashcroft, OPEGA's consultant MGT and staff from DOC. He said clearly there were problems and he felt that instead of DOC just talking or spending their effort pushing back, they could have spent their efforts on trying to fix those problems. When he came on board and found out that DOC's medical contract had been in effect nine years, he knew that the State was likely paying too much because of the lack of rebidding. One of the economies and cost benefits you always achieve is by rebidding contracts. When he first discussed this, he heard that no other vendors would be interested and no other bids would be received from the RFP. He inquired and found there were other companies interested in bidding on a DOC RFP. There are about 6-8 companies that have indicated they will be bidding.

Commissioner Ponte shared other information he had gleaned from the review of prisoner prescriptions his staff had been undertaking this year including:

- The national average for prescriptions per inmate is 2-3. In Maine, the average number is 7 prescriptions per inmate. He has been taking action to reduce that average and Maine is now down to 5 and working to get it to 2-3.
- Nationally, the average cost per prescription is \$8 and Maine is at \$35 per prescription and that is a reduction from what it had been. DOC wants proper care for inmates, but if other states are doing the same things for \$8 per prescription he wants to be in that range.
- There are inmates in Maine that have been maintained on oxycodone for five years. That is an overall systematic problem and the correctional facilities have created problems in not getting inmates off the serious medications. In the Commissioner's 42 years of working in a correctional facility, he could not recall, other than in Maine, having inmates on any serious narcotics inside a correctional facility.

DOC has been meeting with CMS to discuss alternatives and there have been substantial reductions in costs. Commissioner Ponte says he has informed everyone involved that they will live within the \$12 million budget budgeted for CMS. He thinks the medical services vendor got the message that they are not going to expend money without accountability, and that DOC expects to receive quality care. He noted that the pharmacy also exceeded their budget by approximately \$1 million last year. He reported that as of now, they were \$100,000 below budget this year.

The Commissioner thinks DOC has made good progress and is heading in the right direction in regard to addressing issues raised, and CMS understands that they are not going to tolerate anything but expert care and will be checked on frequently. In addition to other actions, the Commissioner has created a Quality Assurance Unit within the Department that includes four staff. That unit will also have a role in setting performance expectations and monitoring contractor performance.

Sen. Craven and Sen. Diamond asked how the inmates on the serious narcotics, or those coming into the facilities addicted to drugs, would be handled. Commissioner Ponte said that typically most inmates would not come into the population with heavy narcotic use, particularly a person who was previously in jail. If that should happen, that prisoner would be housed in the infirmary and weaned off the use of drugs before they were put into the general prison population. Commissioner Ponte said those already in prison and on serious narcotic medications will receive other medication with less narcotics and will receive all the other necessary treatments to get them off those medications as part of their medical care. They will be better able to get back into the community on medications they can afford. Inmates who go back into the community still on medications they had been receiving in prison and cannot afford, end up committing crimes to be able to get the narcotics on the outside.

Sen. Diamond asked what the plan was to lower the amount of prescriptions per prisoner. Commissioner Ponte said that to reduce medication use they need to review what medications are being prescribed and why. Some prescriptions have been for over the counter medications that really do not require prescriptions and will now be sold in the canteen services. There are also other ways of providing care than just medicating, for example in pain

management, and the doctor will work with the inmate on a better plan for their health care. Rep. Boland was pleased that Corrections was looking at other methods of medical care because in the past she had been told that was not allowed in the prison.

Rep. Fitzpatrick referred to the Agency Response section of the report and asked how the decrease in outside medical services was being achieved. The Commissioner said typically those decisions to send a prisoner outside are made by a doctor, and it was easier for the doctor to say he was not sure and wanted another opinion, and send the inmate out for care. It then became the State's responsibility to pay. Now those doctors understand their responsibilities to make good medical decisions. DOC is not telling doctors what the medical decision should be, but thinks doctors may have been sending prisoners out because they didn't want the liability of having made a bad medical decision. Now they are taking on that liability with good results. He assured the GOC that inmates are receiving quality medical care.

Chair Katz asked if the Commissioner could provide the GOC with the total figures, including CMS and Correct RX, for providing health care at the correctional facilities. Commissioner Ponte said the total medical costs for the year were approximately \$20 million. Inmates in Maine do not have to sign for MaineCare and some inmates, just to be stubborn, will not sign for MaineCare. In a lot of other States, the State becomes the guardian once the inmate is in the custody of the correctional facility and can sign for the inmate. That may be something that can be done legislatively at some point. Chair Katz noted it was about \$9,000 per prisoner per year for medical care.

Chair Katz asked if the vendor that has not been meeting the requirements of its contract with DOC was going to be on equal footing with other potential bidders when the RFP goes out. Commissioner Ponte said he had asked CMS why they didn't tell the State in the past they needed to get costs down. CMS is a national company and could have seen that Maine's costs were out of line with other States. According to CMS they did have some of those conversations and the State told them to just keep doing what they were doing. Commissioner Ponte was not there so doesn't know for sure if that occurred, but the history concerns him and the fact they were not proactive about the issues will be a factor. Chair Katz wonders whether their lack of compliance in the past ought to be a disqualifying factor looking forward, especially as the Commissioner noted, if there are 6-8 other vendors who potentially will be bidding.

Commissioner Ponte is hoping to issue the RFP in three weeks with the contract taking effect July 1, 2012 and it will be a three year contract. DOC has offered the jails the opportunity to be part of the RFP, but some counties can get those services at a lower cost on their own. A copy of the RFP will be provided to the GOC.

Chair Burns asked if there was anything currently in place to reconcile medications so there is assurance they are all accounted for. Kim Robbins said independent audits are done and she has plans to audit all the medication administration records. They also have a quality assurance piece. Chair Burns hopes the system in place will show the number of narcotics brought into the facility, the number of prisoners receiving them and, at the end of the month, they will be able to know that those recipients actually received the medications. The Commissioner said narcotics are counted and are much more controlled than the other types of medications. Chair Burns said if you do not have a signature or some verification that the patient actually took the narcotic, counting them does not matter. He asked the price of an EMR system and the Commissioner said it would be \$800,000 to \$1 million.

The GOC members thanked Commissioner Ponte for the information he provided.

Members of the Committee had questions for Ms. Robbins regarding alternative treatment programs and the Electronic Medical Record system.

Ms. Robbins thinks the EMR system is a necessity for DOC, both as a practitioner and as someone trying to monitor the system. For example, each prisoner on a medication has a monthly record which has the list of medications for the month. Each time he comes to the window, the nurse has to document by hand that she has given out that medication. Some of what MGT saw was a blank box on the monthly form so it was not possible to tell whether the medication was given or not. The EMR would replace the handwritten documentation now needed to account for medication administration. The Maine State Prison alone has 800 prisoners and each

prisoner has an average of 7 medications. The amount of handwritten documentation and the potential for omissions and error is huge. She feels it is essential that DOC come up with funds for the EMR system. Facilities will then also be able to communicate with the hospital, and can quickly look to see what tests have been done so they do not re-order the same test. Ms. Robbins did check if Maine qualified for any grants or other assistance to help pay for an EMR system, but it does not. GOC members noted that the information still has to be entered into an EMR system electronically. Ms. Robbins agreed.

GOC members noted their concerns in the gaps in records of the medications being dispensed. They asked how many of those gaps were related to narcotic drugs. Ms. Robbins did not know. She thinks MGT (OPEGA's consultant) looked at how many blanks were on a page and not necessarily whether the blank was for a vitamin or narcotic. GOC members also noted that since there was a fifty percent error rate in the medication disbursement record keeping, DOC should have an interest in determining if there had been a significant amount of narcotic medications unaccounted for. Ms. Robbins said narcotics were counted every shift, three times a day and the count has to be accurate. The Committee asked how the nurse actually disbursed the medication to the prisoner and if the prisoner was watched to make sure the drug was swallowed. Ms. Robbins said a security guard is at the pill window when the nurse dispenses the medication. The prisoner takes it, puts it into his mouth, and it is the responsibility of the security guard, not a nurse, to do a mouth check before the prisoner leaves the line. The nurse would be told at that time by the security guard if he could see a pill, the inmate would have to spit the pill into a container, and security would mark that as a violation of administration of medication.

Ms. Robbins said every narcotic was counted at the correctional facilities. Some members of the GOC were concerned that the deficiencies in medication record keeping could mean that narcotics were going unaccounted for. Director Ashcroft said the issues seen by MGT were the blanks, or no record of the medication being taken. She asked Ms. Robbins if there was a way to go back to review the records to see how often narcotics may not have been properly documented as given and if those past records reconciled. Ms. Robbins will get that information for the GOC.

The Committee thanked Ms. Robbins for answering their questions.

The public hearing on OPEGA's Health Care Services in State Correctional Facilities Report was scheduled for December 20, 2011.

## **RECESS**

The Government Oversight Committee recessed at 12:05 p.m. on the motion of Chair Katz.

## **RECONVENED**

Chair Burns reconvened the meeting at 12:45 p.m.

## **UNFINISHED BUSINESS**

- **Report Back From Maine State Prison**

- **Status of Action Items on MSP Strategic Plan, Particularly Those Related to Addressing Issues Raised in OPEGA's Report on Maine State Prison Management Issues**

In following up on the specific concerns noted in OPEGA's report, Director Ashcroft asked Warden Barnhart what changes had been made to reporting processes to assure that staff could report their concerns without fear of retribution, retaliation and assure timely action is taken on them. As a result of that discussion the Warden asked Director Ashcroft to review the questions on the prison's climate survey for employees to make sure it included questions that would give some reading on the specific areas that had been of concern. The prison is also now regularly conducting, by electronic means, an exit survey of employees leaving the prison.

Chair Burns recognized Commissioner Ponte and Warden Barnhart. The Warden introduced staff from the Correctional facilities at the meeting. Charlie Charlton, Unit Manager, Officer Chadwick, Sergeant Kozlowski all from the Maine State Prison and Officer Dube, Maine Correctional Center.

Commissioner Ponte does not think they are at the point where they can say that everyone at the prison is comfortable with the changes, but he is not receiving the amount of complaints he received when he first was appointed Commissioner either. Everybody in the Deputy Warden positions, the second layer of administrative staff at the prison, will be new soon. He thinks that helps because it cleans up historical issues staff had complained about in not being able to get help, and that no one listened to them. It also helps reinforce a new philosophy that staff is the most important part of the operation and their input is invaluable.

Commissioner Ponte said Judy Plummer will look at how Maine is measuring up nationally and will be able to see how Maine is doing in different areas in its correctional facilities compared to other states. DOC is very poor as an organization for staff accountability and performance based measures are not good. Part of problem is that over time with budget cuts, facilities stopped training supervisors and they need accountability from supervisors who have a direct impact on other staff.

The Commissioner said they are in the process of finalizing the policy regarding the mental health unit and there will be dramatic change from what has been in place. There is also now a better facility search plan and more frequent facility searches are now being done which is a safety issue for staff and inmates. They have established a mapping program to be able to look at where incidents occur in the facility, time of day, etc. and look at resolutions as to why they are happening and hopefully put a stop to them. Lastly, the Commissioner described a newly formed team to do perimeter security to take charge of the gangs in the prison.

Warden Barnhart referred to her memo to Commissioner Ponte that had been provided to the GOC. The memo summarizes changes that have been made or initiated since her last update to the GOC in August. That memo is attached to the Meeting Summary.

Warden Barnhart said she hoped the GOC has seen dramatic changes by the Commissioner and administrative staff. The prison has a new internal security team that has been wholly embraced by staff and is an excellent avenue to report information and be ahead of an issue before it becomes a problem.

DOC is allowing staff to go outside of Maine to be trained and that knowledge is brought back and shared with other staff.

Chair Burns noted the large decrease in the number of inmates in the Protective Custody (PC) Unit and the Special Management Unit (SMU). He asked how the number in the PC had gone from 64 to 10. Warden Barnhart said many inmates in the PC Unit had been there for many years. Even though their circumstances had changed over the years, they felt they just could not be safe anywhere else. After talking with them, many decided to come out of the PC Unit. There are also now only 52 prisoners in the SMU, down from 132 last year.

Sen. Craven asked what percentage of the prisoners at the Maine State Prison had mental health needs. Ms. Charlton said there is a spectrum of mental health needs at the Prison. Some inmates are in a special mental health unit because they need intensive treatment in order to stabilize and there are others in the general population who have only minor problems.

Sen. Craven asked Officer Dube about the change in culture. He said he works at the Bolduc Correctional Facility which is the minimum security unit for the prison and separate from the prison. When he started working at the prison he received a little outside training, but most of it was on the job training and alone a lot of the time. The inmates were telling him what he had to do. Officer Dube thinks a lot of the problems were that senior guards do not take ownership of what they were doing because that is the way they had been trained and training continued the same way.

In response to Rep. Pilon's questions, Officer Dube said the Bolduc Facility has two units, one has 120 and the other 96 inmates with the average age being 25-26 years old. Medication is self-administered, overseen by the guards, and the amount of medication issued has decreased.

Sen. Sullivan asked how many inmates may be veterans and perhaps they could get federal or MaineCare assistance, help from the Veterans Administration and perhaps bring in Veteran counselors, etc. Officer Dube was not sure how many of the inmates at his facility were veterans, but thought that would be helpful.

Chair Burns recognized Officer Chadwick and Sergeant Kozlowski.

Sgt. Kozlowski has worked at the Prison for 7 ½ years, with most years in the SMU. She received a lot of training from the group she worked with when she was hired so she was fortunate. She has heard that in some of the other units, what Officer Dube described for his initial training, was not unusual. It is important to her as a sergeant that she is working together with the officers in her unit and they are doing a good job as a group because it is safer for them and provides better care for the inmates. She thinks staff at the Prison, including herself, are having a difficult time in adjusting to the changes. The officers and sergeants are supposed to think differently after many years of doing things a certain way and those ways were working. Now they are questioned about how they do their jobs and have to be creative, but in order to change their ways they need a lot more training. If you do not train the officers you do not convince them it is going to be better. Unfortunately, right now she thinks in doing their jobs they sometimes have to cut corners, have to accomplish different activities in the same amount of time and at times they do not have enough staff. Sergeant Kozlowski said some officers have a do not care and whatever attitude, but some have positive attitudes.

Officer Chadwick has been at the Prison for almost 2 years. Change is difficult for both the staff and the inmates. The inmates are a little resistant because there were things they were able to do that they can no longer do and the guards have too much on their plate every day and get frustrated not being able to accomplish all that is needed. They have to occasionally cut corners because some days it is the only thing to do to be able to accommodate everyone. He received a lot of training from his Sr. Officers, but that may be because he started out on the night shift and there was more time to learn the job. He thinks not housing so many inmates in segregation is beginning to give both a positive and negative image to the inmates in that they are starting to test the limits on what they can get away with and that will catch up with them. The staff needs to be given the time to learn and training on how to deal with inmates that would usually go to segregation.

Warden Barnhart noted that the Administration has recognized the need for training and there is now a master scheduler with training a focal point of that person's job.

Sen. Craven would like to see the Sgt. and Officers back for the next follow-up. The GOC thanked them for attending the meeting to answer questions and give their opinions.

The Committee decided the next report back from the Maine State Prison will be at a February, 2012 meeting.

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

Director Ashcroft did not think she will be suggesting any changes to OPEGA's statute. She has received some input and suggestions from the Attorney General's Office that may be incorporated into OPEGA's process. The Director will report back to the Committee on a more defined plan and process at a future meeting.

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

Director Ashcroft has met with the OPLA Deputy Director and the Revisor of Statutes regarding legislation for quasi-governmental agencies. The first hurdle is trying to define which agencies the legislation is going to apply to. A quasi-independent agency or its characteristics are not defined in statute or anywhere.



The Director had initially planned to draft legislation that would apply to all boards and commissions that were under Title 5 because all those that have been considered as quasi-independent are listed there as a board or commission. The OPLA Deputy Director said that would probably cause all the smaller boards and commissions to come out of the woodwork on things in the legislation that don't make sense for them. She agreed and now intends to try to look at boards and commissions that are listed in Title 5 that do have the kind of characteristics, from what is seen in statute that might be significant enough to apply the kinds of legislative expectations the GOC has emphasized to them.

Director Ashcroft asked the Committee if the way she was proceeding made sense to them as opposed to doing legislation that had a broad brush approach. It means taking existing boards and commissions and trying to decide which of them the legislation she is drafting should apply to. She referred members to the information in their notebooks which lists the entities she has identified so far split into two groups. She has listed on that document the characteristics she sees in statute that caused her to pick out these entities as ones that seemed to have certain level of authority and independence and duties. The first group are mainly those that are specifically established in statute as a separate legal entity with certain powers and duties. Part of the problem is not all of the entities that may be thought of as quasi-independent are defined in statute as a body, corporate and politic, and Efficiency Maine Trust is one of them. Some agencies have fairly similar characteristics as those in Group A with the exception that they are not defined in statute as a body, corporate and political and some of the powers and duties are not as specified for financial management. There is also a group that is not established in a State agency, although under statute a commissioner of a State agency may play a role on their board. They do perform a governmental function, are not just an advisory board and powers and duties do include things such as the authority to enter into contracts, hire staff, acquire property, set fees, etc. so there are similar kinds of powers and duties to suggest they are not just a insubstantial board. Entities with those characteristics are listed in Group B.

The Director was looking to the GOC as to whether she should continue in the direction she is going. Does the Committee want to try to define the quasi-government agencies specifically by name, or do members want something more global?

Sen. Craven did not think that any of the points the GOC talked about for MTA were unreasonable, but does not know how to separate every non-profit that receives public dollars. Director Ashcroft said the criteria she has been using is not just whether it gets dollars, but whether it is an entity that is functioning in and of itself, performing a government function and has an administrative and oversight body that is separate from State government. It would be looking at entities created by the Legislature for a public purpose that might enter into contracts, have a staff of their own, and/or make discretionary decisions about where to spend their money and other matters without particular guidance from the Executive or Legislative Branches.

Chair Burns asked if there could be specifics and then general language that gives guidance to an entity that the requirements pertain to them without naming them. Director Ashcroft said that is a piece in the proposed legislation.

Sen. Sullivan would like to see the legislation have the minimum requirements, standards or good practice policy regardless of what the area of their expertise, interest or jurisdiction. The legislation needs to be encompassing, but not prescriptive in what it is doing and should not be telling the entities how to do things. Rep. Boland agreed.

Director Ashcroft said there would be three parts to the legislation:

- Part A would be making additions to statutory language that exists within Title 5 regarding boards and commissions. It is giving the board or commission the responsibility to establish written policies around certain issues, it requires the board or commission to ensure the organization is adhering to the policy and procedure they set. There is an extra piece of accountability built in requiring the board or commission report back to the legislative committee of jurisdiction, and would give an avenue to the policy committee to ask questions regarding what was going on in those particular areas of concern.

- Part B is looking forward to new boards and commissions and for those establishing them to think about certain standards or elements to be included in the authorizing legislation. This would apply only to boards and commissions established after a certain date.
- Part C would be unallocated language and would allow the policy committees of jurisdiction, for any existing board and commission, to look at what is in the legislation for model procedures and decide whether they want to make any changes to the statutes for any of the boards and commissions under their purview and give them authority to issue legislation to do that within a certain timeframe. That would require the GOC to be doing some work with the other policy committees as to why it would be worthwhile for them to take the time to avail themselves of the opportunity the legislation provides and look at some of the boards under their purview to determine whether changes or additions needed to be made.

Rep. Fossel noted from a previous discussion that not all groups had a committee of jurisdiction but should. Chair Burns asked if legislatively it could be accomplished that any entity would have to have a policy committee of jurisdiction. The Director said that could be built into the legislation.

Rep. Fitzpatrick noted that in Title 5 it states there will be minutes kept of all meetings and records of all actions and recently it was reported in the newspaper that there were minutes missing from a MSHA Board meeting and asked who would oversee that. Director Ashcroft said that is always going to be the weakness. Whatever is done in the Legislature that it is the Board's responsibility to make sure that what is in statute is complied with, but unless you have some way of asking a question from the policy committee or having OPEGA review, it is always going to be the weak place.

Chair Burns said he and Chair Katz had discussed the matter earlier and thought it may be helpful to get the information out to the agencies that it might have an impact on so they could have an opportunity to review it and give feedback.

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

The Child Development Services and the Cost Per Prisoner reviews are in progress and OPEGA is hoping to have the Reports to the GOC no later than February, 2012.

## **SCHEDULE NEXT COMMITTEE MEETING**

The next GOC meeting was scheduled for Tuesday, December 20, 2011, 9:00 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 2:45 p.m. (Motion by Sen. Sullivan, second by Rep. Fossel, unanimous).