



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

MEMBERS:

SEN. MARGARET M. CRAVEN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. NANCY B. SULLIVAN  
SEN. GARRETT P. MASON  
REP. DONALD E. PILON  
REP. ANDREA M. BOLAND  
REP. JOYCE A. FITZPATRICK  
REP. LESLIE T. FOSSEL  
REP. CHUCK KRUGER

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**February 24, 2012**  
**Accepted March 9, 2012**

**CALL TO ORDER**

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:00 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators:	Sen. Katz, Sen. Craven, Sen. McCormick and Sen. Mason Joining the meeting in progress: Sen. Diamond and Sen. Sullivan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Boland, Rep. Fitzpatrick, Rep. Fossel, and Rep. Kruger
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Legislators	Rep. Stacey Guerin
Executive Branch Officers and Staff Providing Information to the Committee:	Jennifer Smith, Legislative Coordinator, Department of Administrative and Financial Services

**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 FEBRUARY 10, 2012 GOC MEETING**

The Meeting Summary of February 10, 2012 was accepted as written.

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## NEW BUSINESS

- **State and Local Government Committee Request for Input on Government Evaluation Act**

Director Ashcroft summarized what had been done by the 124<sup>th</sup> GOC and State and Local Government (SLG) Committee regarding the Government Evaluation Act (GEA).

The 124<sup>th</sup> Committee recommended that the 125<sup>th</sup> SLG Committee review the provisions and effectiveness of the GEA. The 125<sup>th</sup> SLG Committee is in the process of reviewing the GEA and will be holding a public hearing/work session on March 7<sup>th</sup> and had sent a letter (included in the GOC's notebooks) asking for the GOC's input. Director Ashcroft noted that the SLG Committee is also reaching out to the other joint standing committees for their input and feedback about their experiences with the review process.

It was noted by Chair Burns that the Legislature asks State agencies to do a lot of work in preparing its GEA Report, and the amount of scrutiny the Report receives depends on which committee of jurisdiction and what time of the year the GEA Report was submitted. Each policy committee needs to take the appropriate amount of time to review agencies' GEA reports.

Rep. Boland, who is on the SLG Committee, reported that the Committee was recently reviewing DAFS under the GEA and was pleased with the reporting done. The SLG Committee's idea was to ask the other joint standing committees if they saw a need to simplify or streamline the process and have the reports focus on certain questions of interest to their committee.

Sen. Mason commented that, being a fairly new legislator he had not realized the GEA process occurred only once in a decade for each agency. He suggested the GOC Chairs send a letter to the joint standing committees explaining the process. Sen. Craven thought committee analysts were responsible for informing policy committees of the GEA process. Chair Burns agreed with Sen. Mason regarding sending a letter to the committees, but thought the letter should come from the SLG Committee rather the GOC.

Director Ashcroft asked if the GOC would be comfortable with her sharing what information OPEGA has from the previous Committee with the SLG Committee regarding the GEA process. The Committee agreed with the information being shared if it was provided to them first. The Director will email that information to the members prior to it being given to the SLG Committee.

- **Quarterly Requests List for OPEGA Reviews for GOC Consideration**

Director Ashcroft referred the GOC to the information in their notebooks regarding the Quarterly Listing of Audit Requests for GOC Consideration.

### **Guardians *ad Litem* in Title 22 and 19-A cases**

Chair Katz noted that the Judicial Branch, which is responsible for GALs, is a separate and co-equal branch of government. If there are concerns that the recommendations of the Judicial Branch's Task Force are not being fully implemented, he would recommend the follow-up be done by the Legislature's Judiciary Committee. Chair Burns agreed.

Sen. Sullivan does not think the GAL system is working to the benefit of the children and the problems do not appear to be with the Courts, but with the appointed GALs. GALs appear to be working without the supervision of the Courts or DHHS.

In response to Committee members' questions of how the original review request came before the GOC back in 2005, Director Ashcroft said the review was placed on OPEGA's work plan by the members of the GOC. At

that time, Senator Mitchell, a member of the GOC, had concerns about guardian *ad litem*s and whether they were serving the best interests of the children. The Director noted it is the same issue as the topic being considered at this meeting. Chief Justice Saufley and others at the Courts were amenable to finding a way to work with OPEGA in that 2005 review, but felt strongly they should not be in a position of reporting to the Legislature other than through the Judiciary Committee. GOC follow up on actions taken to address OPEGA's reported findings was funneled through the Judiciary Committee.

GOC members discussed other concerns they had heard from constituents or experienced personally with the performance of GALS. Chair Katz agreed there should be a way to have legitimate complaints adjudicated, but thinks the question is whether the venue for that is more appropriately with the GOC or the Judiciary Committee. He thinks the GOC is not the right Committee to be dealing with it. Rep. Kruger and Chair Burns agreed.

Rep. Boland noted that the Executive Branch was also a separate and co-equal branch of government and asked why the GOC should be limited in its efforts when it came to the Judicial Branch, but not so with the Executive Branch. Director Ashcroft said that neither past GOCs nor OPEGA had explored that question so she could not provide any rationale.

**Motion:** That the Government Oversight Committee refer the topic of Guardians *ad Litem* in Title 22 and 19-A cases back to the Judicial Committee asking them to review Judicial Branch action on the issues identified in OPEGA's 2006 report, informing them of the GOC's concerns and offering the GOC's support in moving legislation forward, if needed. (Motion by Rep. Fossel, second by Chair Burns, Passed unanimous vote, 12-0).

Director Ashcroft will draft a letter to the Judiciary Committee that will be provided to all the GOC members for their review prior to the Chairs' signing it.

### **Public Utilities Commission**

Director Ashcroft summarized what has been done on the Public Utilities Commission (PUC) review request to date. The GOC has received a memo from the Energy, Utilities and Technology (EUT) Committee, dated February 2, 2012 stating the Committee did not have concerns like those of Rep. Guerin and some GOC members nor did they have any particular questions or information they needed that an OPEGA review might help with.

Chair Burns did not know why some of the questions asked have not been answered and was disappointed that an oversight committee is not going to pursue the issues raised regarding the PUC. He noted that although the review request came from a specific source, it is a systemic problem and citizens need to have a venue they can go to that will address the problems raised. Chair Katz agreed, but the information provided to the GOC in support of a review of the PUC appears to be about a particular case and he did not want the Committee to be an avenue to appeal decisions from Administrative agencies. Sen. Sullivan agreed it was one particular case before the GOC, but there have been many complaints with the same issues.

In response to Rep. Fitzpatrick's notation that Rep. Guerin's bill regarding line extensions is going to the Senate, Chair Katz recognized Rep. Guerin. She reported that the bill passed through the EUT Committee and the House. In her conversation with the House Chair of the EUT Committee, the Committee thought in going forward the situation of a utility only charging 78% of the actual cost to construct a line extension has been fixed by this bill. Her constituent's problems with the PUC are an example of a wider problem with PUC that needs to be investigated. PUC was unwilling to correct the problem year after year, even though it was brought to their attention that CMP was under bidding and had been incurring losses in doing so.

In response to Sen. Katz's statement regarding his lack of understanding of the PUC's role, Director Ashcroft said she thinks the perception is that the PUC exists to protect the rate payer in a situation where there is a monopoly, and to play that role when citizens are having a problem with the utility. It seems the crux of the issue is whether the PUC is fulfilling that mandate, if that is indeed the mandate, and whether average citizens

have an avenue to get concerns heard and properly addressed in an unbiased way. Sen. Craven said citizens of Lewiston were treated very badly by PUC regarding the recent upgrade of power lines going through Lewiston. Rep. Boland also thinks the PUC is unresponsive to citizens.

Rep. Fitzpatrick noted that if PUC is the rate regulator and it is not taking into account the losses when setting rates, then all other utility customers are paying for CMP's losses through the rates they are paying.

Rep. Guerin said everyone acknowledges there are problems and is hopeful the GOC will vote to have OPEGA review the PUC.

Rep. Pilon asked if the GOC could put the Public Utilities Commission topic "On Deck". Director Ashcroft summarized the Committee's discussion to this point. The topic appears to be a more systemic issue and centers around the process that is available to citizens to proceed with concerns regarding the utilities that are regulated by the PUC. That is a systemic question that OPEGA could explore for the GOC, or alternatively the GOC could confine an OPEGA review to complaints about line extensions or something else. From the discussion, it appears to be a broader issue and is about the accessibility of a process meant to provide protection for citizens. The Committee could vote to put it on OPEGA's Work Plan or On Deck. Rep. Pilon asked if the GOC could review the On Deck list to determine if there are topics that the Committee may want to take off. Director Ashcroft noted that 3 additional requests have been received by OPEGA and will be presented at the GOC's March 9, 2012 meeting.

Chair Katz suggested that the PUC topic be put On Deck and then the Committee would have a more systemic review of the matter at another meeting once the 3 additional requests are presented. The GOC could prioritize at that time. Chair Burns agreed but does not want it to just languish there. Rep. Fossel noted his concern that by putting topics On Deck or the Work Plan, people have the sense that something is going to be accomplished in the near future. Reviewing the amount of work that is already On Deck or the Work Plan, he does not see how, in a reasonable amount of time, it would get done and asked if Director Ashcroft could give the Committee an estimate of the time it would take, given the resources that are currently available, to get through all those projects.

It was decided that at the GOC's March 9<sup>th</sup> meeting the other 3 new requests for review and the PUC topic will be included on the agenda so the Committee can discuss and prioritize them. The Director will also prepare an estimate of timing and resources regarding topics recently put On Deck and currently on OPEGA's Work Plan.

**Motion:** That the Government Oversight Committee put the Public Utilities Commission topic "On Deck". (Motion by Chair Burns, second by Sen. Sullivan, Passed, unanimous vote 12-0).

The GOC thanked Rep. Guerin for the information she provided.

Chair Katz asked if the Committee had objection to taking an item out of order. Hearing none the GOC moved to **Unfinished Business, DAFS State-wide Policy on Real Estate Sales.**

## **UNFINISHED BUSINESS**

- **DAFS State-wide Policy on Real Estate Sales**

- **Report Back From DAFS Regarding the State Real Estate Sales Rules**

Ms. Smith gave an update of what DAFS has done regarding its policy on real estate sales. At the GOC's last meeting they voted to move forward with legislation requiring DAFS to put its policy into a routine technical rule format. She met with Commissioner Millett, Deputy Commissioner Emery and Director McCormack. In reviewing BGS' statutes they found that BGS already has the authority to promulgate rules. DAFS is

currently in the process of changing their policy into a rule and will be taking it to rule making in the next few months. Consequently, the GOC's planned legislation is not needed for this purpose.

She also reported that she had spoken with Deputy Commissioner Erskine at IFW and Deputy Commissioner Nicolas at Conservation regarding DAFS' policy. A meeting is scheduled with them to go over DAFS' policy and to offer them help in moving forward in the same direction.

Ms. Smith said she would report back to the GOC in a month on how DAFS' rule making is going, and on the status of the policies in IFW and Conservation.

In response to Director Ashcroft's question of whether there would need to be any statutory changes to get IFW and Conservation where DAFS is, Ms. Smith said she believes they have the same authority under their statutes to do the same thing as what DAFS has done. She would be happy to invite the two Deputy Commissioners to the GOC meeting in a month to report back their progress regarding their routine technical rule making.

Ms. Smith asked the status of potentially revising the portion of statute that appeared to prohibit a State employee from purchasing State owned real estate. Director Ashcroft said it was a matter of Chief Deputy Attorney Pistner and her setting a time to meet to discuss the matter and what might need to be changed.

The GOC thanked Ms. Smith for her update.

- **Follow Up Status on OPEGA's Issued Reports**

The GOC, at its last meeting, wanted information regarding the status of follow up work done on past OPEGA reports. Director Ashcroft referred members to the information she prepared regarding the status of follow up.

Committee members felt follow up on OPEGA's reports was important and discussed what level of follow up should take place. Director Ashcroft noted in response to the Committee's discussion that she also thinks follow up is important and was looking to the Committee to provide guidance on what priority OPEGA's follow up work should be given in comparison to completing projects on OPEGA's Work Plan.

Following Committee discussion, it was decided that letters should be sent to the Commissioners of the agencies noted in OPEGA's reports asking that they report back on what has been done. The GOC can review the information received and then decide at that time whether independent OPEGA auditing is necessary. It was also recommended by Sen. McCormick that the agency not only advise whether they have implemented the recommendations, but include information on what the impact was from those changes. The Committee agreed. It was also decided that this follow up effort would be conducted during the Interim rather than while the Legislature was in session.

## **UNFINISHED BUSINESS**

- **OPEGA's Annual Report for 2011**

GOC members had no questions or comments regarding OPEGA's Annual Report.

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

**Maine State House Authority: Review of Certain Expenditures** – OPEGA has received the data it has requested from MSHA and has begun analyzing it to identify transactions that may fit the scope of the review. The Scope for the review is:

Maine State Housing Authority's expenditures for sponsorships, donations, memberships and contributions as well as any travel and meal, or other expenses, where the nature of the vendor and the amount of the expense raises questions as to reasonableness or necessity in relation to MSHA's mission and programs.

Initial time period under review is 2007 – 2011 with potential for review of transactions in years prior to 2007 as necessary.

The Committee members had no changes to the Scope.

**Child Development Services** is still in process and OPEGA is working towards finishing the review.

**Cost Per Prisoner in the Department of Corrections** – OPEGA is in the process of doing the data analysis to come up with the different numbers and statistics, etc. A final question was added to the review around how Maine compared to other States and Director Ashcroft asked how important answering that question was to the GOC.

Chair Burns felt the comparison question was the crux of the review. It does no good to know what the cost per prisoner is in Maine if they do not know how that compares to other states. Rep. Fossel and Sen. Mason agreed.

GOC members discussed what level of information they would like included in the comparison. Rep. Pilon noted that during the 123<sup>rd</sup> Legislative session the Criminal Justice Committee did work on cost per prisoner and may have looked at other regional states and suggested that the Director contact the OPLA Analyst.

Rep. Burns noted that whether juveniles are included and the make up of the population of inmates is important in the comparison.

## **SCHEDULE NEXT COMMITTEE MEETING**

The next GOC meeting is scheduled for Friday, March 9, 2012 at 9:00 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 11:44 a.m. on the motion of Chair Katz, second Rep. Fitzpatrick, unanimous.